

Destruction of unsold consumer goods

- We believe that the obligations in Article 20 (1) are partly duplicative to the obligations to report production and waste management in some member states of the EU. In such case the states already have available data on waste production and management from individual waste producers including economic operators and so it is not necessary to require more detailed information based on another legal regulation. Such obligation will represent an additional administrative burden for businesses in these member states.

We suggest to modify the last paragraph to:

*“The economic operator shall, upon request from a competent national authority provide all the information and documentation necessary to demonstrate the delivery and reception of the products as disclosed pursuant to paragraph 1(c) **with the exception when the information on the delivery and reception of the products as disclosed pursuant to paragraph 1(c) is available to the national authority on the basis of another legal act.** Such information and documentation shall be provided in paper or electronic form within [30 days] of receipt of the request.”*

In line with this we also suggest to modify the Article 20b (4) (ii) to:

*“When unsold consumer products that are apparel or clothing accessories are destroyed under an exemption referred to in paragraph 2, the economic operator shall, upon request from a competent national authority, provide all the information and documentation necessary to demonstrate: (i) the applicability of an exemption from the prohibition against destruction, and (ii) the delivery and reception of the products as disclosed pursuant to paragraph 3(c); **with the exception when the information on the delivery and reception of the products as disclosed pursuant to paragraph 2 is available to the national authority on the basis of another legal act.**”*

In line with this we also suggest to modify the Article 20c (8) (ii) to:

*“When unsold consumer products are destroyed under an exemption referred to in paragraphs 4 and 5, the economic operator shall, upon request from a competent national authority, provide all the information and documentation necessary to demonstrate (i) the applicability of an exemption from a prohibition against destruction, and (ii) the delivery and reception of the products as disclosed pursuant to paragraph 6(c); **with the exception when the information on the delivery and reception of the products as disclosed pursuant to paragraphs 4 and 5 is available to the national authority on the basis of another legal act.**”*

- In case the destruction of unsold consumer products includes recycling, we would welcome the modification of the text in Article 20c(5)(d) and (g) that in case of exemptions from destruction it will be necessary to hand over the products for destruction in compliance with the waste management hierarchy as defined in Directive 2008/98/EC. Although the obligation to comply with the waste hierarchy is set in Directive 2008/98/EC we believe it should be stipulated that in case the unsold consumer products are refused or not fit for donation for reuse or preparation for reuse the next step should be recycling.
- As follows from the definition of ‘destruction’ in the event of a ban on destruction of unsold consumer products, discarded products will only be able to be offered for reuse, remanufactured or handed over as waste for preparation for reuse. In this regard we have doubts that there are sufficient capacities for preparation for reuse or remanufacturing of such products in the EU. It is also necessary to consider whether such products will be exported outside the EU, where they can subsequently be recycled or disposed of, and why, under certain conditions, the recycling of such discarded products will not be allowed directly in the EU which would be more in line with principles of circular economy. We believe that the main environmental benefit in prohibiting the disposal of discarded unsold products comes from banning incineration and landfilling, as these disposal methods could have a negative impact on the environment.

In relation to this we suggest to modify the definition of ‘destruction’ under Art. 2(35) as follows: *“‘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, remanufacturing operations **or for recycling.**”*

- CZ is not convinced that, at this point, a solid argument can be made for a ban on destruction of any specific product group to be put directly into ESPR. Relevant data needs to be analyzed in order to articulate the impact of a specific ban before passing such decision. This is especially the case when the prohibition against the destruction of unsold consumer products impacts the fundamental rights. Nevertheless, in need of a compromise we are prepared to consider introducing a ban on a product group for which the most solid data is available. In any case, CZ does not support narrowing down the SME exemption under this article and would like to revert to its full extent.

### **Custom controls**

- Regarding custom controls CZ prefers the option where Article 13(4) remains deleted, but Article 13(3) is re-drafted to refer to the fact that controls should take place before allowing the release for free circulation.

## **Other**

- CZ welcomes the incorporation of the implementing act into the process of the working plan creation. Our reservation remains towards its indicative nature. CZ does not think that this solution would bring any added value as the indicative list of priority products will most likely arise right at the beginning of the work out of public consultation. A step in a more productive direction would be to make the implementing act mandatory in the sense that only the listed products can be considered for regulation but the regulation does not necessarily need to come to fruition. This approach would at least bring clarity and certainty for stakeholders and ensure Member States' involvement through comitology. In order to deal with the issue that the Commission would be unable to start preparing delegated acts in the absence of priority groups, the first product groups could be incorporated into the text of the basic act.
- Regarding substances of concern CZ would welcome an approach where only relevant substances of concern are tracked. This issue could be resolved for the purposes of each product group covered; the relevance evaluation could be based on consultations in the ecodesign forum. Mainly we seek to ensure that businesses are not burdened even beyond their technological capabilities in case it would not be feasible to keep up with the emergence of new SoC.
- CZ would like to reiterate its previous comments about the legislative technique used for definitions:
  - In some cases ESPR refers to definitions in other pieces of legislation (such as in the Market Surveillance Regulation – MSR). In other cases it defines terms which are defined in other pieces of legislation, such as definitions of „product presenting a risk“, „product presenting a serious risk“, „placing on the market“, „manufacturer“, „authorised representative“, „importer“, „distributor“, „economic operator“ (in the MSR), or „technical specification“, „conformity assessment body“, „conformity assessment“, „national accreditation body“, „CE marking“ (in Regulation (EC) 765/2008). If possible, reference to the definitions already present in other pieces of legislation should be preferred instead of repeating them.
  - (34) processing – the definition is confusing in that it refers to the definition in Regulation (EU) 2018/1807 (framework for the free flow of non-personal data) but in ESPR it is used also with regard to processing of personal data (Art. 12/3) or in another context – the term “processing services” (Art. 10/d).
  - (55) online marketplace – the definition should be aligned with the definition in the General Product Safety Regulation

- We advise to double check the use of terms “customer” and (now deleted) “end user” to be sure that it would not be appropriate to return “end user” in the text. More scrutiny regarding the coherence of the use of these terms with other product legislation (especially the Market Surveillance Regulation) might be necessary.
- On the topic of market surveillance, CZ would also like to voice its support for deleting Art. 59 from the text.



Council of the European Union  
General Secretariat

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## **NOTE**

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| From:    | BE, CZ, DE, DK, FI, IT, LU, PT, RO, SI Delegation                            |
| To:      | Working Party on Competitiveness and Growth (Internal Market – Ecodesign)    |
| Subject: | ESPR: BE, CZ, DE, DK, FI, IT, LU, PT, RO, SI comments on 3rd compromise text |

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FIN Written comments 19.4.2023

We warmly welcome the third compromise proposal presented by the Presidency and would like to thank the Presidency for taking our concerns into account. We would like to make the following observations and comments:

1. Recital 5: We support the added reference to usage of renewable resources or materials, and would like to see it also in Article 5. We find this would contribute to the goals of the regulation.
2. Recital 13 a: We wonder if this recital is really necessary as it seems to open a loophole. Custom-made products and small series production are both terms with no fixed content.
3. Recital 16: We support the new wording, but with reservations. We would like to inquire what is in practical terms meant by “when assessing the characteristics of the market”. We would also like to propose a change of wording: “when assessing the characteristics of the market and when drafting the applicable eco-design requirements”. Alternatively, we propose that “when assessing the characteristics of the market” be deleted altogether. These national solutions to be taken into account may concern e.g. energy efficient and environmentally friendly solutions for heating in a cold climate.

This is also a matter that should rather be dealt with in an operative article, not solely in a recital. We have proposed this to Article 5 and would like to reiterate the proposal.

4. Recital 17 a: We support the addition of this recital.
5. Recital 18 a & b: We support the establishment of the Ecodesign Expert Group.
6. Recital 27: Product passport at item level would not seem feasible, as the information would concern only that particular item. From the point of view of market surveillance, conclusions could then be drawn only concerning that particular item.
7. Recital 31: We value technology neutrality, and hence would like to reiterate the comment we have made before and propose the following formulation: “Digitalised information about the product and its life cycle or, where applicable, its passport should be easily accessible ~~by scanning through~~ a data carrier, such as a watermark or a quick response (QR) code **or generally applicable means utilizing wireless radio technologies**. Where possible, the data carrier should be on the product itself to ensure the information remains accessible throughout its life cycle. However, exceptions are possible depending on the nature, size or use of the products concerned.”
8. Recital 36: We would like to propose a change of wording in recital 36: “verification” to “control”. We find this would give a more adequate picture of what the customs authorities do.
9. Recital 103: While we think it is very important to take care that we manage to avoid duplication of requirements (as addressed in art 5(4)), we find that excluding an entire group of products would be counterproductive to the goals of the regulation. It is also not clear what would be meant by “sufficiently regulated”, especially as the requirements in different legislative instruments concern different aspects of the products. Furthermore, it is unclear what is meant by “means of transport” in recital 103, bearing in mind also that recital

42 refers to “motor vehicles and means of transport”. We find that eco-design may indeed have a place in regulating the production of a variety of means of transport. Therefore, we suggest deleting: “Products that are already sufficiently regulated under other Union legislation, e.g., means of transport, should not be taken into account.” Also, terminology in recital 42 should be checked.

10. Article 13: We support the change of terminology (“control” instead of “verification”) made in Article 13. We find it gives a more adequate picture of the activities of the customs authorities.
11. Article 16: We support the use of an implementing act in adopting the working plan. We find it is necessary if delegated acts are used for the eco-design requirements. We also prefer a binding list instead of an indicative one, this is essential for legal certainty.
12. Article 19.1: In the article it is stated that the Commission shall “make sure there are” initiatives which help SMEs to integrate environmental sustainability aspects including energy efficiency in their value chain. We find this formulation imprecise, and would like to see it specified or otherwise clarified – whether it will entail particular empowerments or tasks to the Commission, or if not, how this obligation is considered to be fulfilled.
13. Article 20 a: It is suggested that the Member States adopt “a policy preventing the destruction”. We find that this wording does not differ in any way from a categorical prohibition, and suggest a formulation accordingly: “a policy aiming to prevent”.
14. Article 20 b: We find the empowerment to the Commission to specify that this prohibition applies also to small and microenterprises too loose, bearing in mind that the prohibition may cause additional burden to these companies. Therefore, we would like to see SMEs excluded from the scope of the prohibition, and the same applies to other prohibitions to destroy unsold consumer products.
15. Article 70: Sufficient transposition times are essential in order to make the regulation robust and effective. The national legislative processes differ, and there may be differences as to what is possible. Therefore, we fear that the period of 12 months proposed in Article 70 may not be sufficient. We suggest 24 months instead.



## Another tool in the toolbox – proposal for a Frontrunner approach

### Why do we need a Frontrunner approach within the ESPR?

The implementation of Ecodesign product requirements did not exploit the full saving potentials for many product groups (European Court of Auditors <sup>1</sup>). The saving potentials of >70 % of the measures announced in the 3rd Ecodesign Work Plan (2016-2019) has not yet been realized (ECOS and EEB<sup>2</sup>). In some cases, the revisions of product regulations were finalized after the products requirements have already been fulfilled by almost all the products available on the market – and thus had only very limited effect to the market.

As stated in **Recital 5** of the current ESPR-proposal, it shall be ensured that “*frontrunners in sustainability progressively become[s] the norm*”. Frontrunners as dynamic updates of product requirements are seen as the solution to reach both (i) react on market developments in time and (ii) reduce the administrative burden for members states and the Commission alike.

### How does the Frontrunner approach work?

The basic mechanism of a Frontrunner approach is the following: Minimum requirements should be adapted dynamically in relation to the product(s) with the highest efficiency available on the market. Establishing this Frontrunner approach needs a constantly updated database such as the already existing EPREL database, possibly combined with information on quantities of products placed on the market (see **Article 4 (b)** of the original ESPR-proposal).

**Example:** If the average of the products in EPREL is significantly more efficient than the current efficiency requirement, the efficiency requirement increases, e.g. to the average efficiency of the top 30 % of products and with a transition period of 2 years. These changes would be set as amendments to the existing product regulations within the established (but streamlined) procedures.

### How to implement the Frontrunner approach into ESPR?

The proposed additions (see below) to the current ESPR-proposal would enable to implement a Frontrunner approach where it is considered appropriate. It is important to highlight that the additions **do not result in an obligation** to apply the Frontrunner approach but **make it possible**

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<sup>1</sup> European Court of Auditors: EU action on Ecodesign and Energy Labelling: important contribution to greater energy efficiency reduced by significant delays and non-compliance – Special Report. Available online at [https://www.eca.europa.eu/Lists/ECADocuments/SR20\\_01/SR\\_Ecodesign\\_and\\_energy\\_labels\\_EN.pdf](https://www.eca.europa.eu/Lists/ECADocuments/SR20_01/SR_Ecodesign_and_energy_labels_EN.pdf), accessed on 18 July 2022.

<sup>2</sup> ECOS and EEB: Delays in Ecodesign. Available online at [https://www.coolproducts.eu/wp-content/uploads/2021/09/EEB\\_ECOS-Delays-in-ecodesign-report.pdf](https://www.coolproducts.eu/wp-content/uploads/2021/09/EEB_ECOS-Delays-in-ecodesign-report.pdf), accessed on 18 July 2022.



to be applied (*'another tool in the toolbox'*). The decision if and how to apply the Frontrunner approach will be taken in the respective product regulations, based on the preparatory study and the impact assessment from the Commission.

Contrary to the criticism that has been voiced so far, according to which there is no sufficient data basis nor experience for the implementation of a Frontrunner approach until now, this is not necessary for our proposal. Since our proposal, as mentioned above, only aims to open up the scope of possible legislative instruments, the concrete elements and factors of the design of a Frontrunner would only have to be worked out in the context of the preparatory studies for the respective product regulation. Thus, the alleged insufficient data basis is simply no impediment at the moment.

Our proposal for the implementation of a Frontrunner approach will also not result in an uncontrollable automatism, because **the Commission will remain fully in charge** by triggering the Frontrunner amendment and negotiating the amendments of the regulations with the European Parliament and the member states.

Furthermore, our proposal will also **not lead to an additional burden on manufacturers** – quite the opposite is the fact. Manufacturers know market developments, because their business models are based on them. When manufacturers will also become familiar with the procedure of the Frontrunner approach, they will be best prepared for increasing product requirements. This is because the requirements are coupled with the market development (which they know) and are therefore predictable. This gives the manufacturers also the opportunity to plan their business model over longer timespans and better predict needed product innovations as well.

To implement the Frontrunner approach, the following additions to the ESPR-proposal are necessary:

#### **Recital (5 a)**

A mechanism to update the performance requirements dynamically shall ensure that adjustments of existing product legislation progress more efficiently and that more inefficient products are excluded from the market. The basic mechanism of this dynamic adjustment is the frontrunner approach. The frontrunner approach is a periodic and data-based adaptation of minimum performance requirements, e.g. in relation to the product(s) with the highest energy efficiency. Minimum requirements are thus set in relation to the current performance of the products available on the market.

#### **Article 5 – Ecodesign requirements**

3. Ecodesign requirements shall, as appropriate **to improve the specific product aspects**, include: **(a) dynamic or static** performance requirements as set out in Article 6 **or**;  
[...]

**8 a.** Where dynamic performance requirements are set, the Commission shall use the data acquired according to Article 4 (b), Article 12 and /or the product database defined by Regulation (EU) 2017/1369 of the European Parliament and of the Council to annually assess whether a product group meets certain threshold values. In the case the thresholds values are met, the Commission shall adapt the minimum performance requirements without further impact assessment and without consulting the Ecodesign Forum. The threshold values are specified in the delegated acts pursuant to Article 4 and represent an average value of the performance of a significant number of products of a product group, placed on the market in a specific year, covered by Article 4 (b), Article 12 and /or the product database defined by Regulation (EU) 2017/1369 of the European Parliament and of the Council.

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| <p><b>Recital 88</b></p> <p><b>Article 59a</b></p> <p><b>Market Surveillance Regulation</b></p> <p><i>Regulation (EU) 2019/1020 should apply to products subject to ecodesign requirements according to this Regulation.</i></p>                                                                                                                                                                                                                                            | <p>We welcome changes made in recital 88, explaining more accurately the relationship with Regulation Market Surveillance, together with adding article 59a, that states the general applicability of Market Surveillance Regulation to products subject to ecodesign requirements.</p> <p>A correction is however needed in the article. The wording « should apply » is not appropriate here, please replace it by “applies”</p>                                   | <p>Regulation (EU) 2019/1020 <b>should apply</b> to products subject to ecodesign requirements according to this Regulation.</p>                                                                                                                                                                                                                                                                                     |
| <p><b>Recital 89</b></p> <p>Beyond market surveillance authorities, customs authorities also have an important role to play in enforcing this Regulation with regard to imported goods and can rely on Council Regulation (EC) No 515/97 for that purpose.</p>                                                                                                                                                                                                              | <p>Recital needs some attention. Please take into account our previous remark, concerning adding the Regulation (EU) 2019/1020, to legal acts the customs authorities can rely on. Council Regulation (EC) No 515/97 is not the only one.</p>                                                                                                                                                                                                                        | <p><i>Recital 89</i></p> <p>Beyond market surveillance authorities, customs authorities also have an important role to play in enforcing this Regulation with regard to imported goods and can rely <b>for that purpose</b> on Council Regulation (EC) No 515/97 <b>and mechanisms of collaboration with national market surveillance authorities established in Regulation (EU) 2019/1020</b> for that purpose.</p> |
| <p><b>Recital 92</b></p> <p>Where problematic levels of non-compliance with ecodesign requirements are observed despite the enhanced planning, coordination and support laid down by this Regulation, the Commission should be able to intervene <b>in accordance with Article 11(4) of Regulation (EU) 2019/1020</b> to ensure that market surveillance authorities perform checks on an adequate scale. Therefore, in order to safeguard the effective enforcement of</p> | <p>Corresponding article (article 60) is deleted. Should the recital be kept?</p> <p>In addition: art.11(4) of regulation 2019/1020 confers already on EU COM powers to adopt acts in relation to conditions for checks, criteria for determination of the frequency of checks etc.</p> <p>If the recital is kept: it should be about <b>implementing</b> acts, not about delegated acts. Art.11(4) of regulation 2019/1020 is about <b>implementing</b> powers.</p> |                                                                                                                                                                                                                                                                                                                                                                                                                      |

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| <p>ecodesign requirements, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission <del>to lay down a minimum number of checks to be performed on specific products or requirements. This empowerment should be additional to the empowerment in</del> <b>accordance with</b> Article 11(4) of Regulation (EU) 2019/1020.</p>                                                                                                                                                                                                                                   | <p style="text-align: center; opacity: 0.5; font-size: 48px; transform: rotate(-30deg);">PUBLIC</p>                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <p><b>Recital 93</b></p> <p>Based on data entered into the information and communication system for market surveillance, the Commission should draw up a report containing information on the nature and number of checks performed, <b>and</b> on the levels of non-compliance identified <del>and on the nature and severity of penalties imposed</del> in relation to ecodesign requirements over the two previous calendar years. The reports should contain a comparison of Member States' activities with the activities planned and indicative benchmarks for market surveillance authorities.</p> | <p>Recital 93 needs attention. Please take into account our previous remark, concerning adding “<b>nature and severity of corrective measures</b>” into the report by Commission. MSA are obliged to take corrective measures and report them in ICSMS. The nature and severity of corrective measures is useful element for benchmarking.</p>                                                                               | <p>Based on data entered into the information and communication system for market surveillance, the Commission should draw up a report containing information on the nature and number of checks performed, <b>and</b> on the levels of non-compliance identified <b>and on the nature and severity of penalties imposed</b> in relation to ecodesign requirements over the two previous calendar years. The reports should contain a comparison of Member States' activities with the activities planned and indicative benchmarks for market surveillance authorities.</p> |
| <p><b>Recital 96</b></p> <p>Products should be placed on the market only if they do not present a risk. In order to better align with the specific nature of ecodesign requirements and to ensure that the focus of market surveillance efforts is on non-compliance with such requirements, a product presenting a risk should, for the purposes of this Regulation,</p>                                                                                                                                                                                                                                 | <p>Recital 96 needs attention. The more specific definition is of risk is indeed necessary, but articles 19 and 20 of Regulation (EU) 2019/1020 (referred to in the last sentence) are about <i>serious</i> risk, not just about risk. The question is also whether the serious risk – rapid intervention required - is applicable to Ecodesign.=&gt; Proposal to delete the reference to these articles in the recital.</p> | <p>Products should be placed on the market only if they do not present a risk. In order to better align with the specific nature of ecodesign requirements and to ensure that the focus of market surveillance efforts is on non-compliance with such requirements, a product presenting a risk should, for the purposes of this Regulation, be defined as a product that, by not complying with</p>                                                                                                                                                                         |

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| <p>be defined as a product that, by not complying with an ecodesign requirement or because a responsible economic operator does not comply with an ecodesign requirement, may adversely affect the environment or other public interests protected by the relevant requirements. This more specific definition should be used when applying Articles 19 and 20 of Regulation (EU) 2019/1020.</p>                                                                                                  | <p>PUBLIC</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <p>an ecodesign requirement or because a responsible economic operator does not comply with an ecodesign requirement, may adversely affect the environment or other public interests protected by the relevant requirements. This more specific definition should be used when applying Articles 19 and 20 of Regulation (EU) 2019/1020.</p>                                                                                                                                                                                                                                        |
| <p><b>Recital 104 (Prevention of circumvention and worsening of performance)</b></p> <p>Noting the importance of ensuring free movement of goods, banning practices illegally altering products' performance in order to reach a more favourable result and ensuring proper enforcement of ecodesign requirements, relevant provisions of this Regulation should be applicable to energy-related products placed on the market pursuant to implementing measures under Directive 2009/125/EC.</p> | <p>Recital 104 needs some attention. Please take into account our previous remark, concerning adding an explanation on some types of testing instructions provided in the harmonized standards, that may not be considered as illegal testing instructions, when they lead to more favorable results.</p>                                                                                                                                                                                         | <p>Noting the importance of ensuring free movement of goods, banning practices illegally altering products' performance in order to reach a more favourable result and ensuring proper enforcement of ecodesign requirements, relevant provisions of this Regulation should be applicable to energy-related products placed on the market pursuant to implementing measures under Directive 2009/125/EC. Instructions provided in the harmonized standards related to specific use patterns, product set-ups and environmental conditions should not be seen as such practices.</p> |
| <p><b>Art.2</b></p> <p><i>Term "Market surveillance authority"</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                            | <p>Term "Market surveillance authority" is defined in art.2(59). However, throughout the text, also the term "competent national authority" is used to indicate in fact "market surveillance authority": authority that carries out market surveillance tasks/verification of product compliance (recital 54, articles 12 and 31).</p> <p>The Regulation grants some rights to competent national authorities and create obligations for economic operators with regard to collaboration with</p> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |

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|                                                                                                                                                                                                                                                                                                                                                                 | <p>these authorities. In order to these provisions to work properly, there should be no ambiguity.</p> <p><b>We ask to replace the “competent authorities” by the clearly defined “market surveillance authorities”</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                            |
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| <i>Article 21 Authorised representatives</i>                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p>2. Before placing a product covered by a delegated act adopted pursuant to Article 4 on the market or putting it into service, manufacturers shall carry out the conformity assessment procedure specified in the delegated acts adopted pursuant to Article 4 and draw up the required technical documentation, or have it carried out on their behalf.</p> | <p>The obligations laid down in Article 21(1) <del>and the drawing up of technical documentation</del> shall not form part of the authorised representative’s mandate.</p> <p>Article 21.2 (‘and draw up the required technical documentation, or have it carried out on their behalf’) and Article 22.1 (‘the drawing up of technical documentation shall not form part of the authorised representative’s mandate’) are conflicting. The conformity assessment procedure can be carried out on behalf of the economic operator by a test house, but not the drawing up of the technical documentation.</p> <p>That cannot even be done by the authorised representative. The economic operator placing the product on the market needs to be the sole responsible of product compliance and liable party for any enforcement actions.</p> <p>See Article 10.3 (and Article 11) of the Radio Equipment Directive, where the wording is done correctly (<a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0053">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0053</a>).</p> | <p>2. Before placing a product covered by a delegated act adopted pursuant to Article 4 on the market or putting it into service, manufacturers shall carry out the conformity assessment procedure specified in the delegated acts adopted pursuant to Article 4, <b>or have it carried out on their behalf</b>, and draw up the required technical documentation, <del>or have it carried out on their behalf</del>.</p> |
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| <i>Article 23 Obligations of importers</i>                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                            |

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| <p><b><u>(d) that the manufacturer has complied with the requirements set out in Article 21(5) and (6).</u></b></p> <p>The importer shall further ensure that <del>the a</del> product <b><u>covered by a delegated implementing delegated act adopted pursuant to Article 4</u></b> bears the required CE marking referred to in Articles <del>38</del> <b><u>and 39</u></b>, or the alternative conformity marking as laid down in a delegated <b><u>implementing delegated</u></b> act adopted pursuant to Article 4, third subparagraph, point (f), and is accompanied by the required documents, and that the manufacturer has complied with the requirements set out in Article 21(5) and (6).</p> | <p>Article 23.2(d): this point is repeated in the paragraph below, please remove the duplication.</p> <p>There's a <b>wrong reference</b> in Article 23.2. Point (f) should be point (c).</p> | <p><del>(d) — that the manufacturer has complied with the requirements set out in Article 21(5) and (6).</del></p> <p>The importer shall further ensure that a product covered by delegated act adopted pursuant to Article 4 bears the required CE marking referred to in Articles 38 and 39, or the alternative conformity marking as laid down in a delegated act adopted pursuant to Article 4, third subparagraph, point (f), and is accompanied by the required documents, <u>and that the manufacturer has complied with the requirements set out in Article 21(5) and (6).</u></p> |
| <p>The importer shall further ensure that <del>the a</del> product <b><u>covered by a delegated implementing delegated act adopted pursuant to Article 4</u></b> bears the required CE marking referred to in Articles <del>38</del> <b><u>and 39</u></b>, or the alternative conformity marking as laid down in a delegated <b><u>implementing delegated</u></b> act adopted pursuant to Article 4, third subparagraph, point (f), and is accompanied by the required</p>                                                                                                                                                                                                                               |                                                                                                                                                                                               | <p>The importer shall further ensure that a product covered by a delegated act adopted pursuant to Article 4 bears the required CE marking referred to in Articles 38 and 39, or the alternative conformity marking as laid down in a delegated act adopted pursuant to Article 4, third subparagraph, point (f), and is accompanied by the required documents, and that the</p>                                                                                                                                                                                                           |

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| documents, and that the manufacturer has complied with the requirements set out in Article 21(5) and (6).                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | manufacturer has complied with the requirements set out in Article 21(5) and (6).                                                                                                                                                                                                                                                                                                                |
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| <i>Article 24</i><br><i>Obligations of distributors</i>                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                  |
| (a) the product bears the CE marking in accordance with Articles 38 and 39 or <del>alternative the</del> conformity marking adopted pursuant to <u>in accordance with</u> Article 4, third subparagraph, point (f), and, where relevant, is labelled or is linked to a product passport in accordance with that <del>delegated implementing</del> <u>delegated</u> acts;                                                                   | There's a wrong reference in <b>Article 24.2(a)</b> : 'point (f)' should be 'point (c)'.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | (a) the product bears the CE marking in accordance with Articles 38 and 39 or the conformity marking adopted in accordance with Article 4, third subparagraph, point ( <del>f</del> c), and, where relevant, is labelled or is linked to a product passport in accordance with that delegated acts;                                                                                              |
| <i>Article 29</i><br><i>Obligations of online marketplaces and online search engines</i><br><br>1. The cooperation referred to in Article 7(2) of Regulation (EU) 2019/1020 shall, with regard to the providers of online marketplaces and for the purposes of this Regulation, include in particular:<br><br><...><br><br>(e) upon request of the market surveillance authorities, when online marketplaces or online sellers have put in | Article 29 specifies cooperation obligations for <b>information society service providers</b> , referred to in Article 7(2) of Market Surveillance Regulation, namely for online market places and search engines.<br><br>Paragraph 1 is about obligations of online market places. A specific obligation in point e (allow scraping of online interface, remove obstacles for scraping) refers however to online market places <b>and</b> online sellers.<br><br>- Is it about obstacles that online sellers put in place on online market places? Than they should be called "dealers" as in the rest of the article.<br><br>- Is it about obstacles that online sellers put in place on their online interface, on web shops? <b>That makes sense.</b> But in this case the wording of paragraph 1 and a title of article <b>should be correspondingly adapted.</b> | Article 29<br><br>Obligations of <b>some information society service providers</b> <del>online marketplaces and online search engines</del><br><br>1. The cooperation referred to in Article 7(2) of Regulation (EU) 2019/1020 shall, with regard to the providers of online marketplaces <b>and online sellers</b> and for the purposes of this Regulation, include in particular:<br><br><...> |

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| <p>place technical obstacles to the extraction of data from their online interfaces, allowing those authorities to scrape such data for product compliance purposes based on the identification parameters provided by the requesting market surveillance authorities.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | <p>Article 7(2) of Market Surveillance Regulation is indeed about cooperation obligations for information society service providers, and <b>online sellers</b> are one type of them, together with providers of online market places and search engines.</p>                                                                                                                                                                                    |  |
| <p>3. As far as powers conferred by Member States in accordance with Article 14 of Regulation (EU) 2019/1020 are concerned, Member States shall confer on their market surveillance authorities the power, for all products covered by a relevant delegated <b>implementing delegated</b> act adopted pursuant to Article 4, to order an online marketplace to <del>remove act against one or more</del> specific <del>items of illegal</del> content referring to a non-compliant product, <u>including by removing it. Such content shall be considered as illegal content within the meaning of Article 3, point (h) of Regulation (EU) 2022/2065.</u> <del>from its online interface, disable access to it or display an explicit warning to end-users when they access it. Market surveillance authorities may, in accordance with Article 9 of Regulation (EU) 2022/2065, issue s</del>Such orders <del>shall comply with [Article 8(1)] of Regulation (EU) [the Digital Services Act].</del></p> | <p>Sentence at the end of paragraph 3 :</p> <p>“Market surveillance authorities may, in accordance with Article 9 of Regulation (EU) 2022/2065, issue such orders” should be removed, as the first sentence requires this already:</p> <p>“Member States shall confer on their market surveillance authorities the power &lt;...&gt; to order an online marketplace to remove act against one or more specific items of content &lt;...&gt;</p> |  |
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| <i>Article 30 Information obligations of economic operators</i>                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                 |
| Move Article 30.2 to Article 11                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Article 30.2 gives obligations to keep records of suppliers and customers. For <b>traceability</b> it would be relevant to use the <b>unique identifiers</b> defined in Article 11 for this. We propose to reformulated Article 30.2 and move it to Article 11. The link of who supplied what should be included, and the period for keeping the information should be clarified.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Move Article 30.2 to Article 11                                                                                                                                                                                                                                                                                                                                                 |
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| <i>Article 31 Monitoring and reporting of in-use data by economic operators</i>                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                 |
| Correct editing error                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | The newly introduced point (d) in <b>Article 31.2</b> on GDPR, should be in Article 31.3 which is on data collection. Article 31.2 is on showing in-use data to customers.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Please move Article 31.2(d) to the end of the list in Article 31.3                                                                                                                                                                                                                                                                                                              |
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| <b>Article 61</b><br>2. The Commission shall, every <del>2</del> <b>4</b> years, draw up a report by 30 June based on the information entered by market surveillance authorities into the information and communication system referred to in Article 34 of Regulation (EU) 2019/1020. ...<br>The report shall include:<br>(a) information on the nature and number of checks ...;<br>(b) <del>information on the levels of non-compliance identified and on the nature and severity of penalties</del> | We demand that the changes made to §2 (b) and (d) of Article 61 and in Recital 93 where the word 'penalties' is used, <b>are undone</b> . 'Penalties' <b>should be replaced by 'corrective measures'</b> , the words used in the Regulation on market surveillance. Regulation EU/2019/1020 imposes on MS reporting of in-depth check of compliance in the Information and Communication System for Market Surveillance (ICSMS), including corrective measures. The data are thus available.<br>=> We ask thus <b>to include</b> the information on the levels of non-compliance and the nature and severity of corrective measures and indicative benchmarks on corrective measures in the report, as this information is necessary to learn from the past experience for consistent and efficient market surveillance and thus for the overall market compliance. | <b>Article 61</b><br>2. The Commission shall...<br>The report shall include:<br>(a) information on the nature and number of checks ...;<br>(b) <b>information on the levels of non-compliance identified and on the nature and severity of penalties corrective measures imposed for the two four previous calendar years in relation to products covered by delegated acts</b> |

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| <p>imposed for the two <del>four</del> previous calendar years in relation to products covered by delegated acts adopted pursuant to Article 4 of this Regulation;</p> <p>(c) ...</p> <p>(d) indicative benchmarks for market surveillance authorities in relation to the frequency of checks and the nature and severity of penalties imposed.</p> |                                                                                                                                                                                                                                                                             | <p>adopted pursuant to Article 4 of this Regulation;</p> <p>(c) ...</p> <p>(d) indicative benchmarks for market surveillance authorities in relation to the frequency of checks and the nature and severity of penalties corrective measures imposed.</p> <p><i>Recital 93</i></p> <p>Based on data entered into the information and communication system for market surveillance, the Commission should draw up a report containing information on the nature and number of checks performed, and on the levels of non-compliance identified and on the nature and severity of penalties corrective measures imposed in relation to ecodesign requirements over the two previous calendar years. The reports should contain a comparison of Member States' activities with the activities planned and indicative benchmarks for market surveillance authorities.</p> |
| <p><b>Chapter XII - Safeguard procedures</b></p> <p>Article 63</p> <p>1.</p> <p>Where the market surveillance authorities of one Member State have sufficient reason to believe that a product covered by a delegated <del>implementing delegated</del> act adopted pursuant to Article 4 presents a</p>                                            | <p>The first subparagraph introduces an unnecessary pre-condition (discovering a risk) before checking the compliance of the product. Checking the compliance takes place randomly, without a preliminary knowledge of risk of an individual product, in execution of dedicated action plans. Action plans are indeed risk based, but in general way. Even</p> | <p>Article 63</p> <p>1.</p> <p>Where the market surveillance authorities of one Member State have sufficient reason to believe that a product covered by a delegated act adopted pursuant to Article 4 presents a</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

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| <p>risk, they shall carry out an evaluation covering all requirements relevant to the risk and laid down in this Regulation or in the relevant delegated <b>implementing delegated</b> act. The relevant economic operators shall cooperate as necessary with the.</p> <p>Where, in the course of that evaluation, the market surveillance authorities find that the product does not comply with the requirements laid down in the applicable delegated <b>implementing delegated</b> acts adopted pursuant to Article 4, they shall without delay require the relevant economic operator to take appropriate and proportionate corrective action, within a reasonable period prescribed by the market surveillance authorities and commensurate with the nature and where relevant the degree of the non-compliance, to bring the non-compliance to an end. The corrective action required to be taken by the economic operator may include the actions listed in Article 16(3) of Regulation (EU) 2019/1020.</p> | <p>when the risk mentioned here is those covered by the ESPR, it stays lacking sense: you cannot decide on existence risk (=non-compliance) before evaluating the compliance.</p> <p>We ask to limit corrective actions to points a-d, as other points as indicated in art.16(4) of Regulation 2019/1020, may only be required in cases where the product is liable to present a risk only in certain conditions or only to certain end users, which is never the case for the requirements under ESPR, they are not defined in function of target user or use conditions.</p> <p>Points a-d are suitable, other not.</p> | <p>risk, they shall carry out an evaluation covering all requirements relevant to the risk and laid down in this Regulation or in the relevant delegated act. The relevant economic operators shall cooperate as necessary with the market surveillance authorities.</p> <p>Where, <b>in the course of that evaluation</b>, the market surveillance authorities find that the product does not comply with the requirements laid down in the applicable delegated acts adopted pursuant to Article 4, they shall without delay require the relevant economic operator to take appropriate and proportionate corrective action, within a reasonable period prescribed by the market surveillance authorities and commensurate with the nature and where relevant the degree of the non-compliance, to bring the non-compliance to an end. The corrective action required to be taken by the economic operator may include the actions listed in Article 16(3, <b>a-d</b>) of Regulation (EU) 2019/1020.</p> |
| <p>8.</p> <p>Member States shall ensure that appropriate restrictive measures are taken in respect of the product <b>or manufacturer</b> concerned, such as withdrawal of the product from their market, without delay.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | <ul style="list-style-type: none"> <li><i>The notification of restrictive measures taken by MS should be required, at the end of the procedure for dealing with products presenting a risk (Article 63.8), the same as in art.64(2), for consistency.</i></li> </ul>                                                                                                                                                                                                                                                                                                                                                      | <p>Member States shall ensure that appropriate restrictive measures are taken in respect of the product <b>or manufacturer</b> concerned, such as withdrawal of the product from their market, without delay, <b>and shall inform the Commission accordingly.</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

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| <p><b>Article 64</b></p> <p><b>Union safeguard procedure</b></p> <p>&lt;...&gt;</p> <p>2. The Commission shall address its decision to all Member States and shall immediately communicate it to them and the relevant economic operator or operators.</p> <p>If the national measure is considered justified, all Member States shall <b>ensure that appropriate restrictive</b> take the measures, <b>such as withdrawal, are taken in respect of</b> necessary to ensure that the non-compliant product <b>within the scope of this Regulation</b> is withdrawn from their market, and shall inform the Commission accordingly.</p> <p>If the national measure is considered unjustified, the Member State concerned shall withdraw the measure.</p> <p>3. Where the national measure is considered justified and the non-compliance of the product is attributed to shortcomings in the harmonised standards referred to in Article 34 of this Regulation, the Commission shall apply the procedure provided for in Article 11 of Regulation (EU) No 1025/2012.</p> | <p>2.</p> <p><i>We ask for restoring this few words in blue, as more clear.</i></p> <p>3.</p> <p>It also is important to understand that this ‘standard wording’ comes from Decision 765/2008 which is definitely suitable for safety legislation, where it is possible that a product conforms to the harmonized standards, but still poses a risk. This can however never occur in Ecodesign, a product that is compliant with the requirements according to the harmonized standards is always compliant. It cannot be non-compliant because there would be a shortcoming in the standard.</p> <p>Presumption of conformity can also stem from shortcomings in an EU Ecolabel (Art34(3)). This situation is omitted here, and this may lead to confusion on how to solve issues.</p> | <p>2. The Commission shall address its decision to all Member States and shall immediately communicate it to them and the relevant economic operator or operators.</p> <p>If the national measure is considered justified, all Member States shall <b>ensure that appropriate restrictive</b> take the measures, <b>such as withdrawal from their market, are taken in respect of</b> necessary to ensure that the non-compliant product <b>within the scope of this Regulation</b> is withdrawn from their market, and shall inform the Commission accordingly.</p> <p>If the national measure is considered unjustified, the Member State concerned shall withdraw the measure.</p> <p>3. Where <del>the national measure is considered justified and the non-compliance of the product is attributed to</del> shortcomings <b>are found</b> in the harmonised standards <b>or EU Ecolabels</b> referred to in Article 34 of this Regulation, the Commission shall apply the procedure provided for in Article 11 of Regulation (EU) No 1025/2012.</p> |
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| <p>4. Where the national measure is considered justified and the non-compliance of the product is attributed to shortcomings in the common specifications referred to in Article 35, the Commission shall, without delay, adopt implementing acts amending or repealing the common specifications concerned.</p>                                                                                                                                                                                                                           | <p>Whether the national enforcement measures are justified, insufficient or exaggerated (i.e. unjustified), is not a relevant precondition for revising a faulty specification.</p> <p>It also is important a product that is compliant with the requirements according to the calculations and test methods in common specifications is always compliant. It cannot be non-compliant because there would be a shortcoming.</p> | <p>4. Where <del>the national measure is considered justified and the non-compliance of the product is attributed to</del> shortcomings <b>are found</b> in the common specifications referred to in Article 35, the Commission shall, without delay, adopt implementing acts amending or repealing the common specifications concerned.</p>                                                                                                                                                                                                                                        |
| <p><b>Article 65</b></p> <p><b>Formal non-compliance</b></p> <p>1. Where a Member State makes one of the following findings, it shall require the relevant economic operator to put an end to the non-compliance concerned: &lt;...&gt;</p> <p>Article 2(58): ‘product presenting a risk’ means a product that, by not complying with a requirement set out in or pursuant to this Regulation other than those listed in Article 65 (1), may adversely affect the environment or other public interests protected by that requirement;</p> | <p>Consistency with model provisions R34 of decision 768/2008.</p> <p>Also, attention needed to include formal non-compliances in definition of risk (article 2), to make possible considering a risk arising from formal non-compliances.</p>                                                                                                                                                                                  | <p>Article 65</p> <p>Formal non-compliance</p> <p>1. <b>Without prejudice of article 63,</b> Where a Member State makes one of the following findings, it shall require the relevant economic operator to put an end to the non-compliance concerned:&lt;...&gt;</p> <p>Article 2(58): ‘product presenting a risk’ means a product that, by not complying with a requirement set out in or pursuant to this Regulation <b>other than including</b> those listed in Article 65 (1), may adversely affect the environment or other public interests protected by that requirement</p> |
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| <p><i>Article 68 Penalties</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <p>Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are</p>                                                                                                                                                                                                                                                                                                                                                                    | <p>Please go back to <b>original wording</b>, keeping it similar to the current Ecodesign framework “ ,<i>taking into account the extent of non-compliance and the number of units of non-complying products</i></p>                                                                                                                                                                                                            | <p>Member States shall lay down the rules on penalties applicable to infringements of this Regulation and</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

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| <p>implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall notify the Commission of those provisions by [two years after the date of entry into force of this Regulation] at the latest and shall notify it without delay of any subsequent amendment affecting them.</p>                                                    | <p><i>placed on the Union market.”</i> (Article 20 2009/125/EC <a href="https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009L0125&amp;qid=1656682791300">https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009L0125&amp;qid=1656682791300</a>).</p> <p>The original wording requires to take stronger measures against non-compliances that have implicitly bigger impacts and were more</p> <p>For rules on penalties regarding infringements in relation to the <b>destruction of unsold goods</b> should be in place on the moment any such requirements apply. So here a due date should be introduced, taking into account the first moment any such requirements apply. <b>A 2 years</b> delay could be too long.</p> | <p>shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive, <b>taking into account the extent of non-compliance and the number of units of non-complying products placed on the Union market</b>. Member States shall notify the Commission of those provisions by [two years after the date of entry into force of this Regulation] at the latest and shall notify it without delay of any subsequent amendment affecting them.</p> |
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| <p><i>ANNEX IV - Internal production control (Module A)</i></p>                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p>2. Technical documentation</p> <p>The manufacturer shall establish the technical documentation. The documentation shall make it possible to assess the product's conformity to the requirements of the delegated act adopted pursuant to Article 4. The technical documentation shall specify the applicable requirements and cover, as far as relevant for the assessment,</p> | <p>The test reports in Annex IV.2 should fulfil certain criteria to enable more efficient market surveillance and better compliance.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <p>PLEASE ADD AT THE END:</p> <p>Test reports should include at least:</p> <ul style="list-style-type: none"> <li>-Unique identification of the product (if the product is places on the market with another unique identification a declaration of identity is required to declare that the test report is also applicable to that product);</li> </ul>                                                                                                                                                                        |

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| <p>the design, manufacture and operation of the product. The technical documentation shall, wherever applicable, contain at least the following elements:</p> <ul style="list-style-type: none"> <li>– a general description of the product and of its intended use,</li> <li>– conceptual design and manufacturing drawings and schemes of components, sub-assemblies, circuits, etc.</li> <li>– descriptions and explanations necessary for the understanding of those drawings and schemes and the operation of the product,</li> <li>– a list of the harmonised standards, common specification or other relevant technical specifications the references of which have been published in the Official Journal of the European Union, applied in full or in part, and descriptions of the solutions adopted to meet the requirements where those harmonised standards have not been applied. In the event of partly applied harmonised standards, the technical documentation shall specify the parts which have been applied,</li> </ul> |  | <ul style="list-style-type: none"> <li>-intended use of the product;</li> <li>-(harmonized) standards used;</li> <li>-any accreditation of the laboratory;</li> <li>-information on calibration of measurement equipment;</li> <li>-ambient conditions during the test;</li> <li>-measurement results of each individual parameter required in the calculations of the implementing act;</li> <li>-the calculation, including formulas used;</li> <li>-comparison of the measured results with the thresholds in the implementing act; and</li> <li>-name and signature of the person responsible for the test</li> </ul> |
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| <ul style="list-style-type: none"> <li>– results of design calculations made, examinations carried out, etc.,</li> <li>– the results of measurements carried out in relation to ecodesign requirements, including details of the conformity of these measurements as compared with the ecodesign requirements set out in the delegated act adopted pursuant to Article 4,</li> <li>– test reports, and</li> <li>– a copy of the information provided in accordance with the information requirements pursuant to Article 7,</li> </ul> |  |  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|--|





Council of the  
European Union

Brussels, 5 April 2023  
(OR. en)

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Interinstitutional File:  
2022/0095(COD)

LIMITE

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ENER 176  
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NOTE

|                 |                                                                                                                                                                                                                                        |
|-----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| From:           | Presidency                                                                                                                                                                                                                             |
| To:             | Delegations                                                                                                                                                                                                                            |
| No. prev. doc.: | 6199/23                                                                                                                                                                                                                                |
| No. Cion doc.:  | 7854/22                                                                                                                                                                                                                                |
| Subject:        | Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a framework for setting ecodesign requirements for sustainable products and repealing Directive 2009/125/EC<br>- Presidency third compromise text |

In view of the upcoming Working Party for Competitiveness and Growth (Internal Market – Ecodesign) on 19 April 2023, delegations will find in Annex to this note a Presidency third compromise text.

Changes compared to the Commission proposal are marked in bold and underlined for the new text and in strikethrough for deletions. Changes compared to the previous compromise text (doc. 6199/23) are highlighted in yellow.



**ANNEX**

2022/0095 (COD)

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**establishing a framework for setting ecodesign requirements for sustainable products and  
repealing Directive 2009/125/EC  
(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure,

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<sup>1</sup> OJ C „, p. .

Whereas:

- (1) The European Green Deal<sup>2</sup> is Europe's sustainable growth strategy that aims to transform the Union into a fair and prosperous society, with a modern, competitive, climate-neutral and circular economy. It sets the ambitious objective of ensuring that the Union becomes the first climate neutral continent by 2050. It recognises the advantages of investing in the Union's competitive sustainability by building a fairer, greener and more digital Europe. Products have a pivotal role to play in this green transition. Underlining that current production processes and consumption patterns remain too linear and dependent on a throughput of new materials extracted, traded and processed goods that are ~~and~~ finally disposed of as waste or emissions, the European Green Deal emphasises the urgent need to transition to a circular economy model and stresses the significant progress that remains to be made. It also identifies energy efficiency as a priority for the decarbonisation of the energy sector and for reaching the climate objectives in 2030 and 2050.

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<sup>2</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions *The European Green Deal* COM(2019)640 final.

- (2) To accelerate the transition to a circular economy model, the Commission designed a future-oriented agenda in its Circular Economy Action Plan for a cleaner and more competitive Europe<sup>3</sup> (CEAP), with the objective of making the regulatory framework fit for a sustainable future. As set out in ~~this~~ **that** plan, there is currently no comprehensive set of requirements to ensure that all products placed on the Union market become increasingly sustainable and stand the test of circularity. In particular, product design does not sufficiently promote sustainability over the whole life cycle. As a result, products are being replaced frequently, involving significant energy and resource use in order to produce and distribute new products and dispose of old ones. **Due to the lack of relevant information and affordable options, it** ~~It~~ is still too difficult for economic operators and citizens to make sustainable choices in relation to products ~~given that relevant information and affordable options to do so are lacking~~. This leads to missed opportunities for sustainability and for value-retaining operations, limited demand for secondary materials and obstacles to the adoption of circular business models.

**(2a) A fully functioning internal market for sustainable products is a pre-requisite for the establishment of a circular economy in the Union. Common ecodesign requirements at Union level would enable the development, deployment and scale-up of new circular economy business models throughout the internal market and boost long-term competitiveness of the Union. Such measures would also remove a disproportionate burden on companies and provide industry and consumers with access to reliable and clear data, thereby allowing for more sustainable choices to be made.**

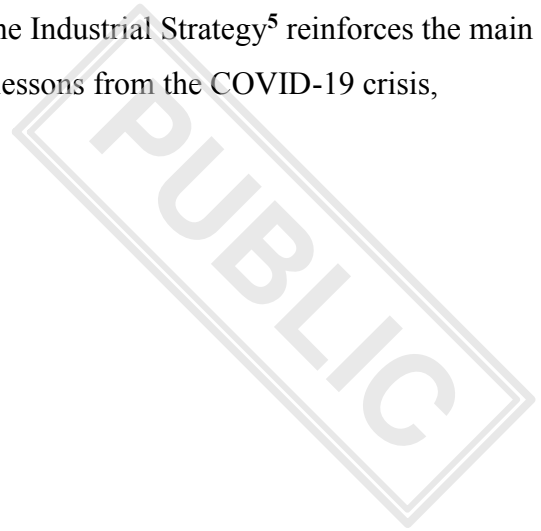
- (3) The European Industrial Strategy<sup>4</sup> sets out the Union's overarching ambition to foster a 'twin transition' to climate neutrality and digital leadership. It echoes the European Green Deal in pointing to the leading role that Europe's industry must play in ~~this~~ **that**, by reducing its carbon and material footprint and embedding circularity across the economy, and underlines

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<sup>3</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions *A new Circular Economy Action Plan For a cleaner and more competitive Europe* COM(2020)98 final.

<sup>4</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions *A New Industrial Strategy for Europe* COM(2020)102 final.

the need to move away from traditional models, and revolutionise the way we design, make, use and dispose of products. The 2021 Update to the Industrial Strategy<sup>5</sup> reinforces the main messages of the 2020 Strategy and focuses on the lessons from the COVID-19 crisis, including the need to foster resilience.



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<sup>5</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions *Updating the 2020 New Industrial Strategy: Building a stronger Single Market for Europe's recovery* COM(2021)350 final

- (4) In the absence of legislation at Union level, diverging national approaches to improving the environmental sustainability of products have already emerged, ranging from information requirements on the duration of software compatibility of electronic devices to reporting obligations on handling unsold durable goods. This is an indication that further national efforts to achieve the aims pursued by this Regulation will likely lead to further fragmentation of the internal market. Therefore, in order to **contribute to safeguard** the functioning of the internal market while ensuring a high level of environmental protection, ~~there is a need for a~~ **harmonised** regulatory framework to progressively introduce ecodesign requirements for products **is needed**. This Regulation will **provide such a framework**, by making the ecodesign approach initially set out in Directive 2009/125/EC of the European Parliament and of the Council<sup>6</sup> applicable to the broadest possible range of products, ~~provide such a framework~~. **In view of the importance of sustainable products for the transition to a climateneutral and circular economy, and in order to provide legal certainty to all operators involved and to prevent barriers in the internal market, it is necessary to create a harmonised regulatory framework for setting ecodesign requirements of products that are placed on the market.**

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<sup>6</sup> Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (Text with EEA relevance) (OJ L 285, 31.10.2009, p. 10).

- (5) This Regulation will contribute to making products fit for a climate-neutral, resource-efficient and circular economy, reducing waste and ensuring that the performance of frontrunners in sustainability progressively becomes the norm. It should provide for the setting of new ecodesign requirements to improve product durability, reusability, upgradability and reparability, improve possibilities for **lightweight design**, refurbishment and maintenance, address the presence of hazardous chemicals in products, increase their energy and resource efficiency, **including in regard to strategic and critical raw material**, reduce their expected generation of waste materials and increase recycled content in products, while ensuring their performance and safety, enabling remanufacturing and high-quality recycling and reducing carbon and environmental footprints. **Ecodesign requirements could also concern resource use, including requirements related to usage of renewable resources or materials with bio-based content in the product.**

**(5 a) A mechanism to update the performance requirements dynamically shall ensure that adjustments of existing product legislation progress more efficiently and that more inefficient products are excluded from the market. The basic mechanism of this dynamic adjustment is the frontrunner approach. The frontrunner approach is a periodic and data-based adaptation of minimum performance requirements, e.g. in relation to the product(s) with the highest energy efficiency. Minimum requirements are thus set in relation to the current performance of the products available on the market.**

- (6) The European Parliament, in its Resolution of 25 November 2020 ‘Towards a more sustainable single market for business and consumers’<sup>7</sup>, welcomed promoting durable products which are easier to repair, re-use and recycle. In its report on the New Circular Economy Action Plan adopted on 16 February 2021<sup>8</sup>, the European Parliament further endorsed the agenda presented by the Commission in the CEAP. It considered that the transition to a circular economy can provide solutions to address the current environmental challenges and the economic crisis brought on by the COVID-19 pandemic. The Council, in its conclusions on ‘Making the Recovery Circular and Green’ adopted on 11 December 2020<sup>9</sup>, also welcomed the Commission’s intention to submit legislative proposals as part of a comprehensive and integrated sustainable product policy framework that promotes climate

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<sup>7</sup>P9\_TA(2020)0318.

<sup>8</sup> P9\_TA(2021)0040. <sup>9</sup>  
13852/20.

neutrality, energy and resource efficiency and a non-toxic circular economy, **that** protects public health and biodiversity, and empowers and protects consumers and public buyers.

- (7) This Regulation should contribute to achieving the Union's climate and energy objectives. In line with the goals set out in the Paris Agreement, ratified by the Union in 2016<sup>9</sup>, Regulation (EU) 2021/1119 of the European Parliament and of the Council, the 'European Climate Law'<sup>10</sup> establishes a binding Union domestic reduction commitment of net greenhouse gas emissions of at least 55 % by 2030 and enshrines in legislation the target of economy-wide climate neutrality by 2050. In 2021 the Commission adopted the Fit for 55 Package<sup>12</sup> to make the Union's climate and energy policies fit for achieving these objectives. To do so, in line with the energy efficiency first principle enshrined in Directive (EU) 2018/2002 of the European Parliament and of the Council<sup>11</sup>, energy efficiency improvements need to be significantly stepped up, to around 36% in terms of final energy consumption by 2030<sup>12</sup>. Product requirements established under this Regulation should play a significant role towards this target by substantially decreasing products' energy footprint. ~~These~~ **Those reaching** energy efficiency requirements will also reduce consumer vulnerability to energy price increases. As recognised by the Paris Agreement improving the sustainability of consumption and production will also play an important role in addressing climate change.

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<sup>9</sup> Council Decision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change (OJ L 282, 19.10.2016, p. 1).

<sup>10</sup> Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') (OJ L 243, 9.7.2021, p. 1 ). <sup>12</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_3541](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_3541)

<sup>11</sup> Directive (EU) 2018/2002 of the European Parliament and of the Council of 11 December 2018 amending Directive 2012/27/EU on energy efficiency (OJ L 328, 21.12.2018, p. 210).

<sup>12</sup> According to the impact assessment accompanying the Climate Target Plan (*Stepping up Europe's 2030 climate ambition – Investing in a climate-neutral future for the benefit of our people*, COM/2020/562 final) and to the [Energy Efficiency Directive proposal]



- (8) This Regulation should also contribute to achieving the Union's wider environmental objectives. The 8th Environmental Action Programme<sup>13</sup> enshrines in a legal framework the Union's objective of staying within the planetary boundaries and identifies enabling conditions to achieve priority objectives, which include the transition to a non-toxic circular economy. The European Green Deal also calls for the Union to better monitor, report, prevent and remedy air, water, soil and consumer products pollution. This means that chemicals, materials and products have to be as safe and sustainable as possible by design and during their life cycle, leading to non-toxic material cycles<sup>14</sup>. In addition, both the European Green Deal and the CEAP recognise that the Union internal market provides a critical mass that is able to influence global standards on product sustainability and product design. This Regulation should therefore play a significant role towards achieving several targets established under the ~~United Nations~~<sup>2</sup> Sustainable Development Goals of the ~~UN's~~ **United Nations** 2030 Agenda for Sustainable Development 'Responsible consumption and production'<sup>15</sup>, both inside and outside the Union.

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<sup>13</sup> Decision (EU) 2022/.... of the European Parliament and of the Council of ... on a General Union Environment Action Programme to 2030 [Add reference when published in OJ – trilogue agreement 2 December 2021].

<sup>14</sup> As set out in the EU Action Plan *Towards zero pollution for air, water and soil* (COM(2021)400 final) and the *Chemicals Strategy for Sustainability* (COM(2020)667 final), which calls for embracing the zero pollution goals in production and consumption.

<sup>15</sup> Including in particular targets under SDG 12 ("Responsible consumption and production").

- (9) Directive 2009/125/EC establishes a framework for the setting of ecodesign requirements for energy-related products. **Together with Regulation (EU) 2017/1369 of the European Parliament and of the Council**<sup>16</sup>. It has, in combination with Regulation (EU) 2017/1369 of the European Parliament and of the Council, significantly reduced EU primary energy demand for products and it is estimated these savings will continue to increase. Implementing measures adopted under Directive 2009/125/EC have also included requirements on circularity aspects, such as durability, reparability and recyclability. At the same time, instruments such as the EU Ecolabel, introduced by Regulation (EC) No 66/2010 of the European Parliament and of the Council<sup>17</sup> or the EU green public procurement criteria<sup>18</sup> are broader in scope but have a reduced impact due to the limitations of voluntary approaches.
- (10) Directive 2009/125/EC has been generally successful in fostering the energy efficiency and some circularity aspects of energy-related products, and its **ecodesign** approach has the potential to progressively address the sustainability of all products. To deliver on Green Deal commitments, this approach should be extended to other product groups and systematically address key aspects for increasing the environmental sustainability of products with binding requirements, **and also specify where requirements on such key aspects are not necessary to increase the environmental sustainability of products**. By ensuring that only products that meet those requirements are placed on the Union market, this Regulation should not only improve the free movement of such products by avoiding national disparities, but also reduce the negative life cycle environmental impacts of products for which such requirements are set.
- (11) In order to create an effective and future-proof **harmonised** regulatory framework, it is necessary to allow for the setting of ecodesign requirements on all physical goods placed on the market or put into service, including components and intermediate products. **Digital content that is an integral part of a physical goods product should be also included in the scope**. This should allow the Commissions to take into account the broadest range of products possible when prioritising the **establishment setting** of ecodesign requirements and thereby maximise their effectiveness. Where needed, specific exemptions should be made when

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<sup>16</sup> Regulation (EU) 2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU (OJ L 198, 28.7.2017, p. 1).

<sup>17</sup> Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel (OJ L 27, 30.1.2010, p. 1).

<sup>18</sup> Communication “Public procurement for a better environment” (COM (2008) 400)  
[https://ec.europa.eu/environment/gpp/eu\\_gpp\\_criteria\\_en.htm](https://ec.europa.eu/environment/gpp/eu_gpp_criteria_en.htm)

setting ecodesign requirements, **in particular where ecodesign requirements are not necessary to contribute to the environmental sustainability of specific products parameters,** **or** for example for products with a particular purpose that could not be fulfilled when complying with ecodesign requirements. In addition, **exemptions exclusions** should be made at the level of the framework for those products for which it is already clear that ecodesign requirements would not be suitable or where other frameworks provide for the setting of such requirements. This should be the case for food and feed as defined in Regulation (EC) No 178/2002 of the European Parliament and of the Council<sup>19</sup>, medicinal products for human use as defined in Directive 2001/83/EC of the European Parliament and of the Council<sup>20</sup>, veterinary medicinal products as defined in Regulation (EU) 2019/6 of the European Parliament and of the Council<sup>21</sup>, living plants, animals and micro-organisms, products of human origin, and products of plants and animals relating directly to their future reproduction.

- (12) The proposal for a Directive of the European Parliament and of the Council on the energy performance of buildings (recast)<sup>22</sup> requires Member States to set minimum energy performance requirements for building elements that form part of the building envelope and system requirements in respect to overall energy performance, the proper installation and the appropriate dimensioning, adjustment and control of technical building systems installed in new or existing buildings. It is consistent with the objectives of this Regulation that these minimum energy performance requirements may in certain circumstances limit the installation of energy-related products which comply with this Regulation and its **delegated implementing delegated** acts, provided that such requirements do not constitute an unjustifiable market barrier.

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<sup>19</sup> Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1).

<sup>20</sup> Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ L 311, 28.11.2001, p. 67).

<sup>21</sup> Regulation (EU) 2019/6 of the European Parliament and of the Council of 11 December 2018 on veterinary medicinal products and repealing Directive 2001/82/EC (OJ L 4, 7.1.2019, p. 43).

<sup>22</sup>COM (2021) 802 final.

- (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 delegated~~ acts ~~in accordance with Article 290 TFEU~~ in accordance with Article 290 TFEU should be ~~conferred delegated to~~ delegated to ~~upon~~ the Commission ~~to supplement this Regulation by setting for it to be able to set~~ to supplement this Regulation by setting out ~~the specific~~ ecodesign requirements ~~applicable~~. Those ecodesign requirements should ~~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~~<sup>23</sup>;

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<sup>23</sup> ~~Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16~~

**(13a) When defining the product group, the Commission should for example consider if products which are custom-made products and small series production should be exempted from the application of whole or parts of the ecodesign requirements.**

- (14) **Ecodesign requirements are performance and information requirements. In order to allow the Commission to set ecodesign requirements as appropriate to the product groups covered, ecodesign requirements should include performance and information requirements.** Those requirements should be used to improve product aspects relevant for environmental sustainability, such as energy efficiency, durability, reparability and carbon and environmental footprints. Ecodesign requirements should be transparent, objective, proportionate and in compliance with international trade rules. **In view that Circular and sustainable business models, including those based on the resale of second-hand goods, need to be promoted. In line with this, ecodesign requirements should not apply to products already placed on the market. Products which are modified or reworked in such a substantial way that they are to be considered as new products having been placed on the market should however be subject to ecodesign requirements if they fall within the scope of the an implementing delegated act setting out them. This assessment should be made on a case-by case basis and where applicable in line with product specific sectoral legislation. The “Commission’s Blue Guide” ‘Blue Guide’ on the implementation of EU product rules 2022 can also be a useful tool for determining when a product should be considered new when it is altered in a substantial manner. 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**

- (15) Once a delegated **an implementing a delegated** act setting ecodesign requirements is adopted by the Commission for a given product group, Member States should, in order to ensure the functioning of the internal market, no longer be allowed to set national performance requirements based on product parameters covered by such performance requirements laid down in that delegated **implementing delegated** act, and no longer be allowed to set national information requirements based on product parameters covered by such information requirements laid down in that delegated **implementing delegated** act. **In order to ensure the functioning of the internal market and promote environmentally sustainable**

products, the empowerment to set ecodesign requirements should include the possibility, in duly justified cases, to establish that no performance requirement or no information requirement or neither is necessary for specific product parameters. In order to ensure the functioning of the internal market, the Commission should be empowered to establish that no ecodesign requirements in the form of performance requirements and/or in the form of information requirements are necessary in relation to a specific product parameter, **when setting ecodesign requirements, when this is appropriate [in view of XXX]. When a delegated act expressly provides that no performance or no information requirement or neither is necessary for a specific parameter, Member States should no longer be allowed to introduce or maintain national requirements based on product parameters under this Regulation with the exception of setting minimum energy performance requirements in accordance with Directive 2010/31/EU. Member states' powers from Article 114 TFEU are still to be considered and not to be restricted. 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.**

- (16) 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. For example, 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. **Ecodesign requirements should thus not be set on products with the sole purpose of which is to serve defence or national security. For dual-use products, any requirements shall meet the criteria of not having have negative impacts on security needs and activities of armed forces and take into account** Therefore, for military or sensitive equipment ecodesign requirements should take into 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<sup>24</sup>. Similarly, the space industry 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 devices<sup>25</sup> and *in vitro* diagnostic medical devices as defined in Article 2(2) of Regulation (EU) 2017/746 on *in vitro* diagnostic medical devices<sup>26</sup>, the Commission should take into account of the need to not negatively affect health and safety of patients and users. **The Commission should furthermore, when assessing the characteristics of the market, strive to consider national characteristics, such the different climate conditions in Member States and relevant national energy efficient practices and technologies, as well as practices and technologies used in Member States with proven beneficial environmental effects.**

- (17) To avoid duplication of efforts and regulatory burden, consistency should be ensured between this Regulation and requirements set in or pursuant to other Union legislation, especially products, chemicals and waste legislation<sup>27</sup>. However, the existence of empowerments under other Union legislation to set requirements with the same or similar effects as requirements under this Regulation does not limit the empowerments included in this Regulation, unless specified in this Regulation.

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<sup>24</sup> Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.8.2009, p. 76).

<sup>25</sup> Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009 and repealing Council Directives 90/385/EEC and 93/42/EEC (OJ L 117 5.5.2017, p. 1).

<sup>26</sup> Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 on *in vitro* diagnostic medical devices and repealing Directive 98/79/EC and Commission Decision 2010/227/EU (OJ L 117, 5.5.2017, p. 176).

<sup>27</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions *on the implementation of the circular economy package - options to address the interface between chemical, product and waste legislation* (COM(2018) 32 final).

**(17a) ~~When considering preparing the implementing delegated acts~~ ecodesign requirements, the Commission should pay close attention to existing Union legislation in order to avoid conflicts or overlaps with existing legal provisions. The Commission should in the early preparation of delegated acts setting out ecodesign requirements identify and evaluate if, and then how, to address a specific product group that is already regulated by Union harmonization legislation to avoid duplications of requirements and ensure a coherent and legally clear treatment of the product group. In addition, the Commission should also assess how to best articulate the future eco-design measures, be they product specific or horizontal, with other applicable Union frameworks in order to ensure optimal complementarity and to avoid conflicts and overlaps of obligations. In the unlikely event of a conflict between this Regulation and another Union legislation with the same objective of improving products' environmental sustainability, the specific provision in or derived from either legislation which regulates this in a more specific manner should apply.**

(18) Delegated acts **~~Implementing Delegated acts pursuant to Article 4~~** including setting ecodesign requirements should, as was the case **for implementing measures** under Directive 2009/125/EC, undergo a dedicated impact assessment and stakeholder consultation, and should be drawn up in line with the Commission's Better Regulation guidelines, and include an assessment of the international dimension and impacts on third countries. When **drawing up the impact assessment**~~doing so~~, the Commission should take due consideration of all aspects of the life cycle of the product and base its impact assessment on best available evidence. When preparing ecodesign requirements the Commission should use a scientific approach and also take into consideration relevant technical information in particular coming from Regulation (EC) No 66/2010 of the European Parliament and of the Council<sup>28</sup>, Directive 2010/75/EU of the European Parliament and of the Council<sup>29</sup>, technical screening criteria

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<sup>28</sup> Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel (OJ L 27, 30.1.2010, p. 1).

<sup>29</sup> Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17).



adopted pursuant to Regulation (EU) 2020/852 of the European Parliament and of the Council<sup>30</sup> and green public procurement criteria<sup>31</sup>.

**(18a) In the specific context of preparing ecodesign requirements, it is of utmost importance that all necessary expertise, including through the consultation of Member States' experts and through public consultations is taken into consideration. A dedicated Ecodesign Expert Group should hence be established for the consultation of experts designated by the Member States prior to the adoption of all delegated acts setting out ecodesign requirements pursuant to this Regulation.**

**(18b) In accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making, it will be for the Member States to decide which experts are to participate in the Ecodesign Expert Group. Members of that group should be consulted in a timely manner and be provided with the draft delegated acts, the draft agenda and any other relevant documents in sufficient time to prepare. At the end of any meeting of the Ecodesign Expert Group or in the follow-up to such meetings, the Commission services should state the conclusions they have drawn from the discussions, including how they will take the experts' views into consideration and how they intend to proceed. Those conclusions should be recorded in the minutes of the meeting. Where the material content of a draft delegated act is changed in any way, the Commission should give members of the Ecodesign Expert Group the opportunity to react.**

(19) In order to take into account the diversity of products, the Commission should select the methods to assess the 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 **and their international connectivity**. 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

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<sup>30</sup> Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

<sup>31</sup> Communication “Public procurement for a better environment” (COM (2008) 400)

Recommendation (EU) 2021/2279<sup>32</sup> **as well as other methods based on ISO 14040/14044, e.g. type III environmental declarations (ISO 14025)**, 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.**

- (20) Performance requirements should relate to a selected product parameter relevant to the targeted product aspect for which potential for improving environmental sustainability has been identified. Such requirements may include minimum or maximum levels of performance in relation to the product parameter, non-quantitative requirements that aim to improve performance in relation to the product parameter, or requirements related to a product's functional performance to ensure that the selected performance requirements do not negatively impact the ability of the product to perform the function for which it was designed and marketed. Regarding minimum or maximum levels, they may for example take the form of a limit on energy consumption in the use phase or on the quantities of a given material incorporated in the product, a requirement for minimum quantities of recycled content, or a limit on a specific environmental impact category or on an aggregation of all relevant environmental impacts. An example of a non-quantitative requirement is the prohibition of a specific technical solution that is detrimental to product reparability. Performance requirements will be used to ensure the removal of the worst performing products from the market where this is necessary to contribute to the environmental sustainability objectives of the Regulation. **A performance requirement should aim to make sure the total positive impacts on all aspects and parameters resulting from the requirement outweigh the total**

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<sup>32</sup> Commission Recommendation (EU) 2021/2279 of 15 December 2021 on the use of the Environmental Footprint methods to measure and communicate the life cycle environmental performance of products and organisations.

**negative impacts on all aspects and parameters, and that the requirement is set at a level providing the highest environmental sustainability benefits while the costs fulfil the criteria that there should be no significant negative impact on consumers in terms of the affordability of relevant products, no disproportionate negative impact on the competitiveness of economic actors, at least of SMEs and no disproportionate administrative burden on manufacturers or other economic actors. When the Commission envisages a combination of requirements, it should assess them as a whole and identify the combination of requirements that delivers the highest environmental sustainability benefits while the costs fulfil the same criteria.**

- (21) In order to ensure consistency, performance requirements should complement the implementation of Union legislation on waste. ~~R-While~~ requirements for placing on the market packaging as a final product ~~are~~**are** laid down under European Parliament and Council Directive 94/62/EC<sup>33</sup> this Regulation may **however, when duly motivated,** complement that Directive by setting product-based requirements ~~focussing~~ on the packaging of specific products ~~when placed on the market~~ **where such a requirement can.** ~~Where relevant, such complementary requirements should~~ contribute ~~in particular~~ to minimising the amount of packaging used, in turn contributing to the prevention of waste generation in the Union.

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<sup>33</sup> European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (OJ L 365, 31.12.1994, p. 10).

(22) Chemical safety is a recognised element of product sustainability. It is based on chemicals' intrinsic hazards to health or the environment in combination with specific or generic exposure, and is addressed by chemicals legislation, such as Regulation (EC) No 1935/2004 of the European Parliament and of the Council<sup>34</sup>, Regulation (EC) No 1907/2006 of the European Parliament and of the Council<sup>35</sup>, Regulation (EC) No 1272/2008<sup>38</sup>, Regulation (EC) No 1223/2009 of the European Parliament and of the Council<sup>39</sup>, Regulation (EU) 2017/745 of the European Parliament and of the Council<sup>40</sup> and ~~Directive 2009/48/EC of the European Parliament and of the Council~~, and Regulation (EU) 2019/1021 of the European Parliament and of the Council<sup>4373839</sup>, and and Directive 2009/48/EC of the European Parliament and of the Council<sup>40</sup>. This Regulation should not enable the restriction of substances based on chemical safety, as done under other Union legislation. Similarly, this Regulation should not enable the restriction of substances for reasons related to food safety. Union law on chemicals and food, however, does not allow addressing, through restrictions

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<sup>34</sup> Regulation (EC) No 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC (OJ L 338, 13.11.2004, p. 4).

<sup>35</sup> Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive <sup>36</sup> /45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. <sup>37</sup> ).

<sup>38</sup> **Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006**

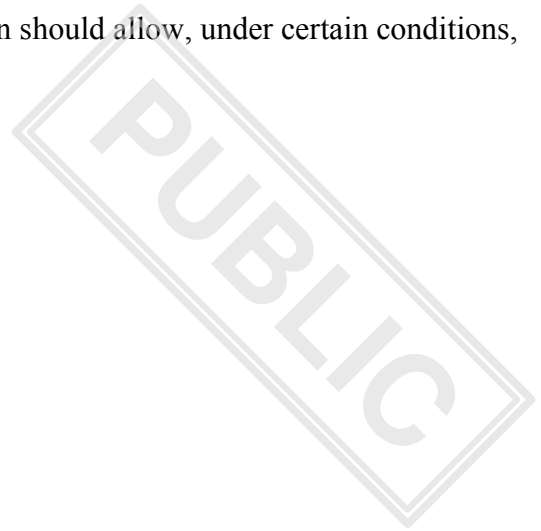
<sup>38</sup> Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products (OJ L 342, 22.12.2009, p. 59).

<sup>39</sup> Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 on in vitro diagnostic medical devices and repealing Directive 98/79/EC and Commission Decision 2010/227/EU (OJ L 117, 5.5.2017, p. 176). <sup>41</sup>

**Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants (OJ L 169, 25.6.2019, p. 45–77)**

<sup>40</sup> **Directive 2009/48/EC of the European Parliament and of the Council of 18 June 2009 on the safety of toys (OJ L 170, 30.6.2009, p. 1).**

on certain substances, impacts on sustainability that are unrelated to chemical safety or food safety. To overcome this limitation, this Regulation should allow, under certain conditions,



for the restriction, primarily for reasons other than chemical or food safety, of substances present in products or used in their manufacturing processes which negatively affect products' sustainability.

**(22a) The Commission, when setting performance requirements should be able to prevent substances that hinder circularity from being included in a product. The identification of such substances should be part of the Commission's assessment prior to the setting of ecodesign criteria for a specific product group and the Commission should in this assessment, for instance, take into account whether a substance makes the re-use or recycling of a product more complicated or negatively affects the properties of the recycled material, for example through its colour or smell. Where a substance has already been established as being a substance that hinders circularity for another product group, this can be an indication that it also hinders circularity for other product groups. The identification, and possible restriction, of a substance that hinders circularity could also trigger an information requirement. The Commission should consult stakeholders and the Ecodesign Expert Group on determining which substances are of concern in the consultation related to the preparation of ecodesign requirements.**

This Regulation **also** should not result in the duplication or replacement of restrictions of substances covered by Directive 2011/65/EU of the European Parliament and of the Council<sup>41</sup>, which has as its objective the protection of human health and the environment, including the environmentally sound recovery and disposal of waste from electrical and electronic equipment.

- (23) 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**

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<sup>41</sup> Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (OJ L 174, 1.7.2011, p. 88).

**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 delegated** 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.

- (24) Where delegated **implementing delegated** 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 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.
- (25) Information on the presence of substances of concern in products is a key element to identify and promote products that are sustainable. The chemical composition of products determines largely their functionalities and impacts, as well as the possibilities for their re-use or for recovery once they become waste. The Chemicals Strategy for Sustainability<sup>42</sup> calls for minimising the presence of substances of concern in products, and ensuring the availability of information on chemical content and safe use, by introducing information requirements and tracking the presence of substances of concern throughout the life cycle of materials and products. Regulation (EC) No 1272/2008 of the European Parliament and of the Council<sup>43</sup> and other existing chemicals legislation such as Regulation (EC) No 1223/2009 already ensure

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<sup>42</sup>Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions *Chemicals Strategy for Sustainability Towards a Toxic-Free Environment* COM(2020)667 final.

<sup>43</sup> Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ L 353, 31.12.2008, p. 1).

communication on hazards to health or the environment posed by certain substances of concern on their own or in a mixture. Users of substances and mixtures should also be informed about pertinent sustainability-related information not primarily related to hazards to health or the environment. Furthermore, users of products other than substances or mixtures, and managers of waste from such products, should also receive sustainability-related information, including information primarily related to chemicals' hazards to health or the environment. Therefore, this Regulation should allow for the setting of requirements related to the tracking and communication of sustainability information, including the presence of substances of concern in products throughout their life cycle, including with a view to their decontamination and recovery when they become waste. Such a framework should aim to progressively cover **all substances of concern in all products listed in working plans setting out the list of product groups to be subject of ecodesign requirements** **product groups the Commission intends to tackle. Such requirements on the tracking of substances of concern should by default be included where an information requirement is to be set under this Regulation, after relevant impact assessment and consultation on ecodesign requirements with stakeholders and experts has taken place. Such a requirement on substances of concern should always be specified in such a way that**

**ensures the criteria applicable to ecodesign requirements are fulfilled. In order for the Commission to make sure such an information requirement does not entail disproportionate administrative negative impact on economic operators, the Commission should be allowed, amongst other measures, to lay down longer deadlines for the entry into application of the information requirements on certain substances of concern. The Commission should also be able to, in duly justified cases, provide exemptions from the requirements. For instance, an exemption based on technical feasibility may apply in cases where the presence of a substances in a product cannot be verified with the current available technologies. It might also be relevant to set thresholds for such reasons. 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.**

- (26) The information requirements set under this Regulation should include the requirement to make available a product passport. The product passport is an important tool for making information available to actors along the entire value chain and the availability of a product passport should significantly enhance end-to-end traceability of a product throughout its value chain. Among other things, the product passport should help consumers make informed choices by improving their access to product information relevant to them, allow economic operators other value chain actors such as repairers or recyclers to access relevant information, and enable competent national authorities to perform their duties. To this end, the product passport should not replace but complement non-digital forms of transmitting information, such as information in the product manual or on a label. In addition, it should be possible for the product passport to be used for information on other sustainability aspects applicable to the relevant product group pursuant to other Union legislation.

**(26a) When determining in the delegated acts setting ecodesign requirements the period for which the product passport is to remain available, the duration of the life cycle of the specific product group should be taken into consideration with a view to ensure information on the product remains available also for end-of-life operations when appropriate considering the administrative burden of economic actors.**

**(26b) Actors such as manufacturers, repairers, refurbishers and other economic actors but also competent national authorities may be given a right to update the product passport. Economic actors who repair, upgrade or refurbish a product after it has been placed on the market should for example, where appropriate, be given the right to update the product passport in order that more accurate information are given. The economic operator should guarantee that each previous version of the product passport is separately stored and remain accessible. Competent national authorities could be given a right to update the product passport for example in situations where a product is no longer in conformity.**

- (27) To take account of the nature of the product and its market, the information to be included in the product passport should be carefully examined on a case-by-case basis when preparing product-specific rules. To optimise access to the resulting information while also protecting intellectual property rights, the product passport needs to be designed and implemented

allowing differentiated access to the information included in the product passport depending on the type of information and the typology of stakeholders. Similarly, to avoid costs to companies and the public that are disproportionate to the wider benefits, the product passport should be specific to the item, batch or product model, depending on for example the complexity of the value chain, the size, nature or impacts of the products considered. **The impact assessment carried out when preparing delegated act setting ecodesign requirements should also analyse the costs and benefits of setting information requirements through digital product passports on model, batch or item level. A ‘model’ usually means a version of a product of which all units share the same technical characteristics relevant for the ecodesign requirements and the same model identifier, a ‘batch’ usually means a subset of a specific model composed of all products produced in a specific manufacturing plant at a specific moment in time and an ‘item’ usually means a single unit of a model. The impact assessment should also, to the extent that the digital passport relies on standards which are not free of charge, consider whether this is suitable and how disproportionate costs for SMEs can be avoided.**

**(27a) In order Union legislation law already establishes various information requirements for products and sets up systems to make this information available to economic operators and consumers. Whenever feasible, the Commission should aim to ensure consistency and to reduce the administrative burden on economic operators due to potential duplication of reporting obligations under other Union legislations, the and information requirements under this Regulation. In particular, The the Commission should consider the feasibility, whenever relevant, to link the of linking information requirements under this Regulation to the other existing information requirements under EU law, such as the obligation to provide safety data sheets for substances and mixtures according to Regulation (EC) No 1907/2006. When feasible, tThe Commission should also consider linking link the digital product passport to existing Union databasedatabases and tools such as EPREL or SCIP with the digital product passport.**

(28) In order to ensure interoperability, the types of permitted data carriers should be specified. For the same reason, the data carrier and the unique product identifier should be released in accordance with internationally recognised standards. The power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to amend this Regulation by replacing or adding standards in accordance with which the data carrier and the unique identifiers may be released, in light of technical or scientific progress. This should ensure that

the information contained in the product passport can be recorded and transmitted by all economic operators, as well as to guarantee the compatibility of the unique identifier with external components such as scanning devices.

- (29) In order to not unnecessarily delay the establishment of ecodesign requirements other than on the product passport or to ensure that product passports can be effectively implemented, the Commission should be allowed to exempt product groups from the product passport requirements in case technical specifications are not available in relation to the essential requirements for the technical design and operation of the product passport. Similarly, in order to prevent unnecessary administrative burden for economic operator, the Commission should be allowed to exempt product groups from the product passport requirements in case other Union law already includes a system for the digital provision of product information allowing actors along the value chain to access relevant product information and facilitating the verification of product compliance by competent national authorities. These exemptions should be periodically reviewed taking into account further availability of technical specifications.
- (30) Unique identification of products is a fundamental element to enable traceability across the supply chain. Therefore, the product passport should be linked to a unique product identifier. In addition, where appropriate, the passport should allow for the tracing of the actors and manufacturing facilities related to that product. In order to ensure interoperability, the unique operator identifiers and unique facility identifiers enabling traceability should be released in accordance with internationally recognised standards. The power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to amend this Regulation by replacing or adding standards in accordance with which unique operator identifiers and unique facility identifiers may be released, in light of technical or scientific progress.
- (31) Digitalised information about the product and its life cycle or, where applicable, its passport should be easily accessible by scanning a data carrier, such as a watermark or a quick response (QR) code. Where possible, the data carrier should be on the product itself to ensure the information remains accessible throughout its life cycle. However, **exceptions** **exceptions** are possible depending on the nature, size or use of the products concerned.
- (32) To ensure that the product passport is flexible, agile and market-driven and evolving in line with business models, markets and innovation, it should be based on a decentralised data system, set up and maintained by economic operators. However, for enforcement and

monitoring purposes, it may be necessary that competent national authorities and the Commission have direct access to a record of all data carriers and unique identifiers linked to products placed on the market or put in service.

- (33) To ensure the effective roll-out of the product passport, technical design, data requirements and operation of the product passport should adhere to a set of essential technical requirements. Such requirements should provide a basis for the consistent deployment of the product passport across sectors. Technical specifications should be established to ensure the effective implementation of those essential requirements, either in the form of harmonised standard referenced in the Official Journal or, as a fall-back option, common specification adopted by the Commission **via implementing acts**. The technical design should ensure that the product passport carries data in a secure way, respecting privacy rules. The digital product passport will be developed in an open dialogue with international partners, in order to take account of their views when developing technical specifications and to ensure that they help remove trade barriers for greener products and lower costs for sustainable investments, marketing and compliance. Technical specifications and requirements related to traceability across the value chain should, in order to allow for their effective implementation, to the extent possible be developed based on a consensual approach and on the involvement, buy-in, and effective collaboration of a diverse set of actors, including standardisation bodies, industry associations, consumer organisations, experts, NGOs and international partners, including developing economies.
- (34) In order to improve enforcement of ecodesign requirements, it is necessary that national authorities and the Commission have direct access to a record of all data carriers and unique identifiers linked to products placed on the market or put in service. To this end, the Commission should set up and maintain a product passport registry to store such data. Where needed to further facilitate enforcement, the Commission should, as appropriate, specify other information included in the product passport that needs to be stored in the registry.

**(34a) The Commission should set up and maintain a user-friendly web portal where stakeholders such as consumers, economic operators and other relevant actors can have access to information included in the product passports in compliance with the differentiated access rights specified in the delegated acts setting ecodesign**

**requirements. The web portal should link to information already stored by the economic operator in its decentralised product passport.**

- (35) Any processing of personal data pursuant to this Regulation should comply with the applicable rules on the protection of personal data. Processing of personal data by the competent national authorities within Member States should be carried out in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>44</sup>. Processing of personal data by the Commission should be carried out in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>47</sup>.
- (36) Effective enforcement in relation to products placed on the Union market, whether domestically produced or imported, is essential for achieving the aims of this Regulation. Therefore, where the Commission has set up a registry, customs authorities should have direct access to it via the EU Single Window Environment for Customs set up by Regulation (EU) .../.... The role of customs should be to ensure that the reference of a product passport is made available in the customs declaration and that this reference corresponds to a unique product identifier that is stored in the registry. This would allow the verification by customs that a product passport exists for imported products.
- (37) ~~Where certain information included in the product passport is stored in the registry in addition to data carriers and unique identifiers, the Commission should be able to provide, where appropriate, that customs authorities verify the consistency between this information and the customs declaration, in order to improve the compliance of products with ecodesign requirements and taking into account the need to avoid disproportionate burden for customs authorities.~~
- (38) The information included in the product passport can allow customs authorities to enrich and facilitate risk management and enable the better targeting of controls at the border. Therefore,

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<sup>44</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).<sup>47</sup>

Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

customs authorities should be able to retrieve and use the information included in the product passport and the related registry for carrying out their tasks in accordance with Union legislation including for risk management in accordance with Regulation (EU) No 952/2013 of the European Parliament and of the Council<sup>45</sup>.

- (39) To drive consumers towards more sustainable choices, labels should, when required by the delegated **implementing delegated** acts adopted pursuant to this Regulation, provide information allowing for the effective comparison of products, for instance by indicating classes of performance. Specifically for consumers, physical labels can be an additional source of information at the place of sale. They can provide a quick visual basis for consumers to distinguish between products based on their performance in relation to a specific product parameter or set of product parameters. They should, where appropriate, also allow for the accessing of additional information by bearing specific references like website addresses, dynamic QR codes, links to online labels or any appropriate consumer-oriented means. The Commission should set out in the relevant delegated **implementing delegated** act the most effective way of displaying such labels, including in the case of online distance selling, taking into account the implications for customers and economic operators and the characteristics of the products concerned. The Commission may also require the label to be printed on the packaging of the product.
- (40) Regulation (EU) 2017/1369 setting a framework on energy labelling applies, in parallel to this Regulation, to energy-related products. ~~E This means that~~ energy labels are **a successful** ~~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 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**

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<sup>45</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

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.

- (41) Consumers should be protected from misleading information that could hamper their choices for more sustainable products. For ~~this~~ **those** reasons it should be prohibited to place on the market products bearing a label mimicking the labels provided for in this Regulation. Only labels which copy or are closely similar to the layout or the graphics of the labels provided for in this Regulation should be considered as mimicking labels.
- (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 are considered as priorities for it plans to adopt** ~~delegated~~ **implementing delegated** acts setting out ecodesign requirements as well as the product aspects for which it intends to adopt ~~delegated~~ **implementing delegated** acts **setting out horizontal requirements of horizontal application.** The list of products in the working plan shall be implemented on a mandatory basis by the Commission. The Commission, however, shall be allowed to regulate products or product groups beyond that list, if necessary. The Commission should base its prioritisation on a set of criteria pertaining in particular to the ~~delegated~~ **implementing delegated** 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. Considering their importance for meeting the Union's energy objectives, the working plans should include an adequate share of actions related to energy-related products. 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 should also be consulted through the Ecodesign Forum.<sup>2</sup> Due to the complementarities between this Regulation and Regulation (EU) 2017/1369 for energy-related products, the Commission should strive to align 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. Product groups which under Union law are already subject to specific environmental requirements, such as for example motor vehicles and means of transport (with the exemption of eBikes and eScooters), should not to be prioritised the first for the establishment of ecodesign requirements, such as for example motor vehicles.

- (43) In addressing construction products, this Where other, more product-specific regulations, enable the Commission to adopt delegated acts regulating environmental sustainability, and such delegated acts have been adopted, this Regulation should only in exceptional cases intervene in a complementary manner. Ecodesign requirements for construction products will be should be laid down under the [the revised Construction Products EN 29 EN Regulation should] For example, t. This Regulation should not be able to set requirements on final final construction products only when the ecodesign requirements on environmental sustainability obligations for such products have already been have been developed under created by the revised Construction Products Regulation<sup>46</sup> and its implementation do not are unlikely to sufficiently achieve the environmental sustainability objectives pursued by this Regulation. In addition, Only in exceptional cases where requirements under the Construction Products Regulation are insufficient or ineffective, and cannot be amended or complemented under the Construction Products Regulation in a reasonable time, this Regulation should be able to intervene in a complementary manner on construction products, provided the administrative cost entailed, including as a result of economic actors being subject to two conformity assessment procedures, is shown to be reasonable. To avoid that economic operators become subject to a duplication of or potentially conflicting requirements or delegated acts the Commission

<sup>46</sup> Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC.



**should, before preparing such complementary requirements under the Construction Product Regulation, consider if the delegated act already adopted under this Regulation can be repealed or amended so that requirements are instead included in delegated act being adopted under the Construction Products Regulation.** ~~When~~ formulating working plans **under this Regulation**, the Commission should **however** take into account that, in continuation of current practice, [the revised Construction Products Regulation] will, in relation to energy-related products that are also construction products, give prevalence to sustainability requirements set under this Regulation. This should be the case for instance for heaters, boilers, heat pumps, water and space heating appliances, fans, cooling and ventilating systems and photovoltaic products (excluding building-integrated photovoltaic panels). For these products, [the revised Construction Products Regulation] may **only** intervene in a complementary manner ~~where needed, mainly~~ in relation to safety aspects, also taking account of other Union legislation on products such as on gas appliances, low voltage, and machinery.

- (44) In order to encourage self-regulation as a valid alternative to regulatory approaches, this Regulation should, ~~in continuation of~~ **based on the experience gathered under** Directive 2009/125/EC, include the possibility for industry to submit self-regulation measures **as long as on the condition that the level of ambition of such measures is in line with the objectives of this Regulation.** The Commission should assess the self-regulation measures proposed by industry, along with the information and evidence submitted by the signatories, including in light of the international trade commitments of the Union and the need to ensure coherence with Union law. In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to adopt and update an act listing the self-regulation measures considered as valid alternatives ~~before to an delegated~~ **implementing delegated** act setting ecodesign requirements **is adopted**. It is also appropriate, for instance in view of relevant market or technological developments within the product group concerned, that the Commission be able to request a revised version of the self-regulation measure whenever considered necessary. Once a self-regulation measure is listed in an implementing act, there is a legitimate expectation for economic operators that the Commission will **first consider the content of such a measure before proposing** ~~not adopt a delegated~~ **implementing delegated** act establishing ecodesign requirements for this specific product group. However, it is not excluded that the Commission may adopt **horizontal** ecodesign requirements also applying to **some or all of** the products covered by a recognised

self-regulation measure for the product aspects not addressed by that self-regulation measure. Where the Commission considers that a self-regulation measure no longer fulfils the criteria set in this Regulation, it should remove that self-regulation from the implementing act listing the recognised self-regulation measures. Consequently, ecodesign requirements may then be established for the product groups previously addressed by the self-regulation measure, in accordance with this Regulation.

- (45) Micro, small and medium-sized enterprises (SMEs) could greatly benefit from an increase in the demand for sustainable products but could also face costs and difficulties with some of the requirements. **The Commission should, when establishing preparing ecodesign requirements under this Regulation, take into account the impact of the requirements on SMEs active in the relevant product sector.** The Member States and the Commission should, in their respective areas of responsibility, provide adequate information **including guidance**, ensure targeted and specialised training, and provide specific assistance and support, including financial, to SMEs active in the manufacturing of products for which ecodesign requirements are set. Those actions **are particularly important for product group groups where the presence of SMEs is relevant and** should, for example, cover the calculation of the product environmental footprint and the technical implementation of the product passport. Member States actions should be taken in respect of applicable State aid rules.

(46) The destruction of unsold consumer products, such as textiles and footwear, by economic operators is becoming a widespread environmental problem across the Union, in particular due to the rapid growth of online sales. It amounts to a loss of valuable economic resources as goods are produced, transported and afterwards destroyed without ever being used for their intended purpose. It is therefore necessary, in the interest of environmental protection, that this Regulation establishes a framework to prevent the destruction of unsold consumer products primarily intended for consumers pursuant to Directive (EU) 2019/771 of the European Parliament and of the Council<sup>47</sup>, **including products that have not been offered for sale, and** including products that have been returned by a consumer in view of their right of withdrawal as laid down by Directive (EU) 2011/83/EU of the European Parliament and of the Council<sup>48</sup>, **or in view of any commercial right of withdrawal offered by the economic operator, thus striving toward limiting the number of unused and fit-for-purpose products being destroyed. Products that have been returned, and cannot be sold again due to the condition of the product, and ~~are~~ not suitable for remanufacturing refurbishment, preparation for reuse or donation, should not constitute an unsold consumer product within the meaning of this Regulation. The concept of destruction as outlined in this Regulation should cover the last three activities on the waste hierarchy as defined in the Waste Framework Directive: recycling, other recovery and disposal. Remanufacturing and preparation for re-use should furthermore not be considered destruction. While recycling is an important waste treatment activity for a circular economy, it is unreasonable that products are manufactured only to immediately be recycled, hence the inclusion of recycling in the concept of destruction. Preventing destruction** ~~This~~ will reduce the environmental impact of those products by reducing the generation of waste and by dis-incentivising overproduction of products. In addition, given that several Member States have introduced national legislation on the destruction of unsold consumer products thereby creating market distortions, harmonised rules on the destruction of

<sup>47</sup> Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC (OJ L 136, 22.5.2019, p. 6).

<sup>48</sup> Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64).

unsold consumer products are necessary to ensure that distributors, retailers and other economic operators are subject to the same rules and incentives across Member States.

**Member states should not be prevented to maintain or introduce national bans as regards destruction of unsold consumer products for products which the Commission has not yet prepared an implementing act prohibiting the destruction of unsold consumer products if such national bans are in compliance with Union law.**

**(46a) Economic operators should take necessary measures to prevent the need to discard unsold consumer products that are fit for use. Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste currently under revision, lays down rules to prohibit export of products to third countries under the false pretense that they are being sold or donated for use, when such products are in fact destined for destruction.**

**(46b) Nothing in this Regulation should be construed as contradicting the order of the waste hierarchy as defined in Directive 2008/98/EC.**

**(46c) Member States should not be precluded from introducing or maintaining national measures as regards destruction of unsold consumer products for products which are not subject to the direct prohibition or not yet covered by an implementing act setting out a prohibition, provided that such measures are in line with the EU law.**

(47) To dis-incentivise the destruction of unsold consumer products and to further generate data on the occurrence of this practice, this Regulation should introduce a transparency obligation for economic operators holding consumer products in the Union, **with the exception of small and microenterprisesSMEs**, requiring them to disclose information on the number of unsold consumer products discarded per year. **When determining the scope of the transparency obligation, guidance should be found in the reference to the term “discard” in the definition of waste in Article 3.1 of Directive 2008/98/EC.** The economic operator should indicate the product type or category, the reasons for their discarding and their delivery for subsequent waste treatment operations. While economic operators should be free to determine how to disclose that information in a manner appropriate to their business environment, it should be considered a best practice to include the required information in a publicly available non-financial statement drafted in accordance with Article 19a of Directive 2013/34/EU of the

European Parliament and of the Council<sup>49</sup> where applicable. For those economic operators that are subject to reporting obligations according to Directive 2022/2464/EU the information could also be included in reporting under said directive. When preparing the implementing act on disclosure of information, the Commission should take account of the need to avoid a disproportionate administrative burden on economic operators, considering in particular the possibility of making use of existing reporting requirements in Union Law. Economic operators should furthermore set up a policy to ensure that they prevent the generation of waste.

**(47a) The unnecessarily high production volumes and short use phase of textiles cause significant environmental impact. Clothing should be valued higher, worn, and cared for more than what today's fast fashion culture entails. Newly produced but unsold textiles and especially clothes are among the items reportedly being destroyed. From a circular economy perspective, such wasting of valuable resources is in clear contradiction to the aims of this regulation of improving the environmental sustainability. It is therefore justified to prohibit the destruction of unsold consumer clothes and apparel.**

**(47b) Also for electronics there is an increasing number of reports that destruction is taking place, with negative environmental consequences, also considering the resources use including critical and strategic raw materials used during manufacturing. Therefore, electronics should be considered amongst the prioritised products for a prohibition against destruction.**

(48) In order to avoid ~~ensure uniform conditions for the implementation of the prohibition of~~ the destruction of unsold consumer products in the Union, where the destruction of such products is prevalent, implementing powers should be conferred on the Commission to adopt and update an act provisions applicable to the specify the product group in question ~~subject to this prohibition the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to supplement this Regulation by prohibiting the destruction of such products. Given the wide range of products that may potentially be~~

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<sup>49</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

destroyed without ever being sold or used, it is necessary to establish such empowerment in this Regulation. However, the prohibition set in the delegated acts should apply to specific product groups to be determined based on an assessment by the Commission of the extent to which the destruction of such products takes place in practice, taking into account the information made available by economic operators where appropriate. **In parallel to this assessment, in order to enable the first prohibition to be established as soon as possible, the Commission shall begin work on a prohibition on destruction of textiles and electronics, for which adequate evidence exists to justify an immediate prioritisation of these product groups.** To ensure that this **prohibition obligation** is proportionate, the Commission should consider specific exemptions under which destroying unsold consumer products may still be permitted, for instance in view of health and safety concerns. To monitor the effectiveness of this prohibition and to dis-incentivise circumvention, economic operators should be required to disclose the number of unsold consumer products destroyed and the reasons for their destruction under applicable exemptions. Finally, to avoid any undue administrative burden on **small and micro enterprises-SMEs**, they should be exempted from the obligations to disclose their unsold discarded products **from the obligations to disclose their unsold discarded consumer products** and from the prohibition to **destroy** ~~discard~~ specific products groups set out in delegated **implementing** acts. However, where there is reasonable **sufficient** evidence that **small and microenterprises-SMEs** may be used to circumvent those obligations, the Commission should be able to require, in those **delegated implementing** acts, for some product groups, that these obligations also apply to micro **or** ~~small or medium sized~~ enterprises.

**(48a) The Commission should, when necessary, always conduct an impact assessments before preparing any implementing act introducing any prohibition to destroy unsold consumer products which consider the impact on the environment, consumers, manufacturers and other economic operators, including SMEs, in terms of competitiveness — including in relation to markets outside the Union — innovation, market access and costs and benefits.**

**(48b) It is important that the Commission, when prioritising products that should be subject to prohibition against destruction of unsold consumer products, consults the Ecodesign Forum and the Ecodesign Expert Group.**

- (49) Economic operators should be responsible for products' compliance with the ecodesign requirements under this Regulation, in relation to their respective roles in the supply chain, so as to ensure those products' free movement on the internal market and to improve their sustainability. Economic operators intervening in the supply and distribution chain should take appropriate measures to ensure that they only make available on the market products that are in conformity with this Regulation and the delegated **implementing delegated** acts adopted pursuant to it.
- (50) The manufacturer, having detailed knowledge of the design and production process, **is best placed to carry out the conformity assessment procedure. Conformity assessment should therefore remain solely the obligation of the manufacturer. is responsible for carrying out the conformity assessment procedure applicable or having it carried out on their behalf.**
- (51) In order to safeguard the functioning of the internal market, it is necessary to ensure that products from third countries entering the Union market comply with this Regulation and the delegated **implementing delegated** acts adopted pursuant to it, whether imported as products, components, or intermediate products. In particular, it is necessary to ensure that appropriate conformity assessment procedures have been carried out by manufacturers with regard to those products. Provision should therefore be made for importers to ensure that the products they place on the market comply with those requirements and that the CE marking and documentation drawn up by manufacturers are available for inspection by the competent national authorities. Provision should also be made for importers to ensure, where applicable, that a product passport is available for those products.
- (52) When placing a product on the market, every importer should indicate on the product their name, registered trade name or registered trade mark as well as their postal address and, where available, electronic means of communication through which it can be contacted. Exceptions should be provided for in cases where the size of the product does not allow for such indications. This includes cases where the importer would have to open the packaging to put the name and address on the product or where the product is too small in size to affix this information.
- (53) As the distributor makes a product available on the market after it has been placed there by the manufacturer or importer, it should act with due care in relation to the applicable ecodesign requirements. The distributor should also ensure that its handling of the product does not

adversely affect its compliance with the requirements of this Regulation or the ~~delegated~~ **implementing delegated** acts adopted pursuant to it.

- (54) As distributors and importers are close to the marketplace and have an important role in ensuring product compliance, **they** should be involved in market surveillance tasks carried out by the competent national authorities, and **they** should be prepared to participate actively, providing those authorities with all necessary information relating to the product concerned.
- (55) As the dealer offers a product for sale, hire or hire purchase, or displays products to customers or installers, it is necessary for the dealer to ensure that its customers, **including potential customers**, can effectively access the information required under this Regulation, including in the case of distance selling. In particular, this Regulation should require dealers to ensure that the product passport is accessible to their customers, **including potential customers**, and that labels are clearly displayed, in line with the applicable requirements. The dealer should comply with this obligation every time the product is offered for hire.
- (56) To facilitate the choice of more sustainable products, labels, where required, should be displayed in a clearly visible and identifiable way. 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. 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.**
- (57) Any importer or distributor that either places on the market a product covered by a ~~delegated~~ **implementing delegated** act adopted pursuant to this Regulation under the importer's or distributor's own name or trademark, or modifies such a product **before it has been put into service** in such a way that compliance with this Regulation or with the relevant ~~delegated~~



**implementing delegated** act might be affected, should be considered to be the manufacturer and should assume the manufacturer's obligations.

- (58) Online marketplaces play a crucial role in the supply chain, allowing economic operators to reach a large number of customers. Given their important role in intermediating the sale of products between economic operators and customers, online marketplaces should take responsibility for addressing the sale of products that do not comply with ecodesign requirements and should cooperate with market surveillance authorities. Directive 2000/31/EC of the European Parliament and of the Council<sup>50</sup> provides the general framework for e-commerce and lays down certain obligations for online platforms. Regulation ~~{.../...}~~ **(EU) 2022/2065 on a Single Market for Digital Services (Digital Services Act) and amending Directive 2000/31/EC**<sup>54</sup> regulates the responsibility and accountability of providers of intermediary services online with regard to illegal content, including products that do not comply with ecodesign requirements. Building on this general framework, specific requirements to effectively address the sale of non-compliant products online should be brought in.

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<sup>50</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ L 178, 17.7.2000, p. 1). <sup>54</sup>

— ~~[Add reference when adopted Proposal for a regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC (COM(2020)825 final)]~~. Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) [OJ L 277, 27.10.2022, p. 1].

- (59) It is essential that online marketplaces cooperate closely with the market surveillance authorities. An obligation of cooperation with market surveillance authorities is imposed on information society service providers under Article 7(2) of Regulation (EU) 2019/1020 of the European Parliament and of the Council<sup>51</sup> in relation to products covered by that Regulation, including products for which ecodesign requirements are set. To further improve cooperation to tackle illegal content related to non-compliant products, this Regulation should include concrete obligations to put this cooperation into practice as regards online marketplaces. For instance, market surveillance authorities are constantly improving the technological tools they use for online market surveillance in order to identify non-compliant products sold online. For these tools to be operational, online marketplaces should grant access to their interfaces. Moreover, market surveillance authorities may also need to scrape data from the online marketplaces.
- (60) Article 14~~(4)~~ of Regulation (EU) 2019/1020 provides market surveillance authorities with the power, where no other effective means are available to eliminate a serious risk, to require the removal of content referring to non-compliant products from an online interface **or to require the explicit display of a warning to end-users when they access an online interface**. The powers entrusted to market surveillance authorities by Article 14~~(4)~~ of Regulation (EU) 2019/1020 also apply to this Regulation. However, for effective market surveillance under this Regulation and to avoid non-compliant products being present on the Union market, this power should apply in all necessary and proportionate cases, including for products presenting a less than serious risk. This power should be exercised in accordance with [Article 8]~~9~~ of the **Regulation (EU) 2022/2065** [Digital Services Act].
- (61) Ensuring a product's traceability throughout the whole supply chain facilitates the market surveillance authorities' task of tracing economic operators who placed on the market or made available on the market non-compliant products. The economic operators should therefore be required to keep the information on their transactions for a certain period of time.

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<sup>51</sup> Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011 (OJ L169, 25.6.2019, p. 1).

- (62) To speed up and facilitate the verification of compliance of products placed on the market, **the power to adopt acts in accordance with Article 290 TFEU should be delegated** the power to adopt **implementing powers should be conferred on** acts in accordance with Article 290 TFEU should be delegated to the Commission **to supplement this Regulation** to supplement this Regulation by requiring responsible economic operators, where necessary, to make specific parts of the technical documentation digitally available both to competent **national** authorities and to the Commission. This should allow competent national authorities to access this information without request, while continuing to guarantee the protection of trade secrets **and intellectual property rights**. Possible means of making this information digitally available should in principle include a product passport, or via inclusion in the compliance part of the product database referred to in Regulation (EU) 2017/1369, or on a website of the economic operator. Such an obligation should not take away from the competent national authorities' right to access other parts of the technical documentation on request.
- (63) ~~In order to allow for a better estimation of relevant products' market penetration, to better inform studies feeding into the drafting or updating of ecodesign requirement and working plans, and to help identify the market share of specific product groups in order to speed up the formulation or review of ecodesign requirements, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to supplement this Regulation by requiring the collection of adequate and reliable data on the sales of products, by allowing the collection of such data by or on behalf of the Commission directly from manufacturers or retailers. When adopting rules on monitoring and reporting, the Commission should take into account the need to maximise the available data on market penetration and the need to minimise the administrative burden for economic operators.~~
- (64) In order to improve future ecodesign requirements and improve end-users confidence identifying and correcting deviations between energy in-use and other performance parameters when measured under test conditions and actual functioning, the Commission should have access to **anonymised information about** products' actual energy consumption while in use and where relevant to other performance parameters. To that end, the power to adopt **implementing delegated** acts in accordance with Article 290 TFEU should be

delegated to the Commission to supplement this Regulation by requiring individual products, similarly to road vehicles, to determine their in-use energy consumption and other relevant performance parameters and display it to the end-user. For products connected to the internet, the power to adopt **implementing delegated** acts in accordance with Article 290 TFEU should be delegated to the Commission to supplement this Regulation by requiring economic operators to remotely collect **and anonymise** such in-use data and report it to the Commission, as it is essential to identify how the products perform and to inform the public. For products whose in use performance depends significantly also on climatic or geographical conditions, climatic or geographical information should also be collected, anonymised and reported.

**(64a) In order to help facilitate the verification of compliance with the ecodesign requirements, including to facilitate conformity assessment and market surveillance, the Commission should be empowered to require, where duly justified, that supply chain actors provide information on their supplies like quantity and type or chemical composition of materials used or production process employed, or information on the conditions of the provisions of their services. It should also be possible to allow manufacturers to have access to the documents relating such information or to the actual facilities of the supply chain actors to be able to access directly and by themselves the needed information if they do not provide the information requested within a reasonable time. The Commission should also be empowered to enable notified bodies and national authorities to verify the correctness of the information related to the activities of the supply chain actors.**

- (65) In order to ensure the effective and harmonised application of ecodesign requirements set under this Regulation, including on aspects such as energy use or efficiency, durability and reliability, and recycled content, compliance with those requirements should be measured using reliable, accurate and reproducible methods that take into account the generally recognised state-of-the-art methods. ~~delegated~~ **Implementing Delegated** acts establishing ecodesign requirements for products should in principle include the specifications for tests, measurements or calculations needed to establish or verify compliance. In addition, the power to adopt **implementing delegated** acts in accordance with Article 290 TFEU should be delegated to the Commission ~~to supplement this Regulation~~ by requiring the use of **online digital** tools reflecting applicable calculation requirements, in order to ensure their

harmonised application. **The Commission should will make available those tools after an internal testing period and should will establish the conditions ensuring proper functioning and remedies in case of malfunctioning.**

- (66) In order to ensure that ecodesign requirements achieve their intended effects, this Regulation should set out comprehensive and overarching provisions, applicable to all products covered by ecodesign requirements, prohibiting circumvention of such requirements. Therefore, any practice leading to an unjustified alteration of the product's performance during compliance testing or within a short period after putting the product into service, leading to a declared performance that misrepresents the product's actual performance while in use should be prohibited.
- (67) Where appropriate, delegated **implementing delegated** acts establishing ecodesign requirements for products ~~may~~ **should** refer to the use of standards to **assess their conformity with ecodesign requirements** ~~establish or verify compliance~~. In order to ensure that there are no barriers to trade on the internal market, such standards should be harmonised at Union level. Once a reference to such a standard has been adopted in accordance with Regulation (EU) No 1025/2012 of the European Parliament and of the Council<sup>56</sup> and published in the *Official Journal of the European Union*, products in conformity with such standards, for which ecodesign requirements have been adopted pursuant to this Regulation, should be considered in conformity with those requirements to the extent that they are covered by the relevant harmonised standards. Similarly, methods for tests, measurement or calculation that are in conformity with harmonised standards should be considered in conformity with the test, measurement and calculation requirements set out in the relevant delegated **implementing delegated** acts laying down ecodesign requirements, to the extent that they are covered by the relevant harmonised standards.

<sup>56</sup> Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and

93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council (OJ L 316, 14.11.2012, p. 12).

- (68) **In order to ensure uniform conditions for the implementation of this Regulation and in** the absence of harmonised standards, recourse to common specifications should be used as a fall-back solution to facilitate the manufacturer's obligation to comply with ecodesign requirements, for instance when the standardisation process is blocked due to lack of consensus between stakeholders or where there are undue delays in establishing a harmonised standard. Such delays could for example occur when the required quality is not reached. In addition, recourse to this solution should be possible where the Commission has restricted or withdrawn the references to relevant harmonised standards in line with Article 11(5) of Regulation (EU) No 1025/2012. **Those powers should be exercised in accordance with Regulation (EU) No 182/2011.** Compliance with common specifications should also give rise to the presumption of conformity.
- (69) In order to enable economic operators to demonstrate, and competent authorities to verify, that products made available on the market comply with the ecodesign requirements adopted pursuant to this Regulation, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to supplement this Regulation by laying down conformity assessment procedures appropriate and proportionate to the nature of the product concerned and of the product parameters regulated. To ensure coherence with other Union law, the conformity assessment procedures should be chosen from among the internal production control module included in this Regulation and the modules included in Decision No 768/2008/EC of the European Parliament and of the Council<sup>52</sup>, ranging from the least stringent to the most stringent depending. To further ensure that the applicable module is appropriate and proportionate to the nature of the product concerned and of the product parameters regulated, the Commission should where needed adapt the module chosen in light of that nature.
- (70) Manufacturers should draw up an EU declaration of conformity to provide information on the conformity of products with this Regulation. Manufacturers may also be required by other

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<sup>52</sup> Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC (OJ L 218, 13.8.2008, p. 82).

Union legislation to draw up an EU declaration of conformity. To ensure effective access to information for market surveillance purposes, a single EU declaration of conformity should be drawn up in respect of all Union acts. To reduce the administrative burden on economic operators, it should be possible for that single EU declaration of conformity to be a dossier made up of relevant individual declarations of conformity.

- (71) Regulation (EC) No 765/2008 of the European Parliament and of the Council<sup>53</sup> lays down rules on the accreditation of conformity assessment bodies, ~~provides a framework for the market surveillance of products and for controls on products from third countries, and~~ lays down the general principles of the CE marking. That Regulation should be applicable to products covered by this Regulation in order to ensure that products benefiting from the free movement of goods within the Union fulfil requirements providing a high level of protection of public interests such as human health, safety and the environment. Where ecodesign requirements have been adopted for a product, the CE marking should indicate that product's conformity with this Regulation and the ecodesign requirements adopted pursuant to it, insofar as they relate to the product. General principles governing the CE marking and its relationship to other markings are set out in Regulation (EC) No 765/2008. Considering that this Regulation provides for the setting of ecodesign requirements for a large range of products, the power to adopt **implementing delegated** ~~acts in accordance with Article 290 TFEU should be delegated to~~ **conferred on** the Commission to ~~supplement this Regulation by setting out alternative or more specific rules on the declaration of conformity or conformity marking in relation to ecodesign requirements in order to ensure coherence with requirements under Union law applicable to the products covered, prevent confusion with other markings or declarations and minimise administrative burden for economic operators.~~
- (72) Some of the conformity assessment modules laid down in Decision No 768/2008/EC require the intervention of conformity assessment bodies. In order to ensure uniform conditions for the implementation of this Regulation, those bodies should be notified to the Commission by Member State authorities.

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<sup>53</sup> Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).

- (73) To ensure a consistent level of quality in the performance of conformity assessment, it is necessary to set requirements for notifying authorities involved in the assessment, notification and monitoring of notified bodies. In particular, it should be ensured that the notifying authority is objective and impartial with regard to its activity. Furthermore, notifying authorities should be required to safeguard the confidentiality of the information they obtain, but should nonetheless be able to exchange information on notified bodies with national authorities, the notifying authorities of other Member States and the Commission to ensure consistency in the conformity assessment. To effectively establish and monitor the competence and independence of applicant bodies, notifying authorities should take as a basis for notification only the precise legal body applying, not taking into account the credentials of parent or sister companies. For the same reason, they should assess applicant bodies against all relevant requirements and conformity assessment tasks, relying on harmonised standards for the requirements and tasks covered by those standards.
- (74) Given their central role in ensuring the reliability of conformity assessments in relation to ecodesign requirements, it is essential that notifying authorities have a sufficient number of competent personnel and sufficient funding at their disposal for the proper performance of their tasks. ~~Where, in the implementation of this Regulation, it occurs that notifying authorities do not effectively verify and monitor notified bodies due to a lack of competent personnel, implementing powers should be conferred on the Commission to lay down a minimum number of full-time equivalents that should be at the disposal of notifying authorities, where appropriate in relation to specific conformity assessment tasks.~~
- (75) It is essential that all notified bodies perform their functions to the same level and under conditions of equal competition and autonomy. Therefore, requirements should be set for conformity assessment bodies wishing to obtain the status of notified body in order to provide conformity assessment activities. Those requirements should continue to apply to maintain the competence of the notified body. To ensure its autonomy, the notified body and the staff it employs should be required to maintain independence from economic operators in the value chain of the products in relation to which it has been notified and from other companies, including business associations and parent companies and subsidiaries.
- (76) If a conformity assessment body demonstrates conformity with the criteria laid down in harmonised standards it should be presumed to comply with the corresponding requirements set out in this Regulation.



- (77) Conformity assessment bodies frequently subcontract parts of their activities linked to the assessment of conformity or have recourse to a subsidiary. To ensure that products placed on the Union market comply with ecodesign requirements, conformity assessment subcontractors and subsidiaries should fulfil the same requirements as notified bodies in relation to the performance of conformity assessment tasks under this Regulation.
- (78) In order for notifying authorities to effectively establish and monitor the competence and independence of applicant bodies, those bodies should be and remain autonomous. Therefore, certain activities and decision-making processes, both regarding the conformity assessment of products and other activities internal to the notified body, should exclusively be carried out by the individual notified body itself.
- (79) To facilitate the process of establishing and monitoring the competence and independence of applicant bodies, applicant bodies should **provide a description of how relevant personnel, their status and tasks correspond to the conformity assessment, tasks in relation to which the body intends to be notified, such as in the form of** draw up and regularly update a qualification matrix. ~~This matrix should match personnel and their qualifications to specific conformity assessment tasks,~~ enabling the notifying authority to more effectively assess the adequacy of staffing and the continued autonomy of the notified body.
- (80) Since the services offered by notified bodies in a Member State might relate to products made available on the market throughout the Union, it is appropriate to give the other Member States and the Commission the opportunity to raise objections concerning a notified body. In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to request that the notifying Member State take corrective action if a notified body does not meet, or no longer meets, the requirements of this Regulation.
- (81) In the interests of facilitating and accelerating the conformity assessment procedure, and to ensure equal treatment of economic operators, it is crucial that the notified bodies apply the conformity assessment procedures consistently and without creating unnecessary burdens for economic operators.
- (82) Prior to taking a final decision on whether a product can be granted a conformity certificate, the economic operator that wishes to place that product on the market should be allowed to supplement the relevant documentation once only. This limitation is necessary to ensure that

notified bodies are not able to assist manufacturers in making changes until conformity is reached, as that would mean that the service provided resembles a consulting service and could in practice dilute the public interest nature of notified bodies' tasks. Where appropriate, notified bodies should also be able to restrict, suspend or withdraw any certificates or approval decisions.

- (83) To facilitate the identification and resolution of cases of non-conformity of notified bodies, manufacturers or products, notified bodies should proactively forward relevant information at their disposal to notifying authorities or market surveillance authorities.
- (84) It is essential to ensure efficient exchange of information between notified bodies and market surveillance authorities, including from other Member States. To that end, it is necessary for notifying authorities and notified bodies to ensure follow-up to requests for information from market surveillance authorities.
- (85) The Commission should enable appropriate coordination and cooperation between notified bodies. To ensure harmonised application of ecodesign requirements, notified bodies should discuss and coordinate on topics of possible divergence. ~~In that process, they should take as general guidance any document produced by the administrative cooperation group made up of market surveillance authorities, as referred to in Article 30(2) of Regulation (EU) 2019/1020.~~
- (86) In order to incentivise consumers to make sustainable choices, in particular when the more sustainable products are not affordable enough, mechanisms such as eco-vouchers and green taxation should be provided for. When Member States decide to make use of incentives to reward the best-performing products among those for which classes of performance have been set by delegated acts pursuant to this Regulation, they should do so by targeting those incentives at the highest two populated classes of performance, unless otherwise indicated by the relevant delegated act. However, Member States should not be able to prohibit the placing on the market of a product based on its class of performance. For the same reason, the power to adopt **implementing** acts ~~in accordance with Article 290 TFEU~~ should be ~~delegated~~ **conferred** to the Commission to **specify** ~~supplement this Regulation by further specifying~~ which product parameters or related levels of performance Member States' incentives concern in case no class of performance is determined in the applicable delegated act or where classes of performance are established in relation to more than one product parameter-, **in which cases the Commission should specify the parameters concerned by the Member States'**

**incentive.** The introduction of Member State incentives should be without prejudice to the application of the Union State aid rules.

- (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 **implementing** 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/EU<sup>54</sup> and 2014/25/EU<sup>55</sup> of the European Parliament and of the Council, to align their procurement with specific **minimum** green public procurement criteria or targets, to be set out in the **implementing** ~~delegated~~ acts adopted pursuant to this Regulation. **The Commission may require targets to be achieved by establishing, for instance, a percentage of all the tendering procedures concerning a particular product group to comply with public procurement requirements. The percentage may be expressed in the aggregate number or value of contracts for the purchase of relevant sustainable products, as compared to the overall number and value of relevant contracts for the sector or products at stake.** 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. **When considering the effect on the market situation, the Commission should take into account, among others, the effects of the requirements on competition and the best environmental products and solutions available on the market. When considering the economic feasibility for**

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<sup>54</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

<sup>55</sup> Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

**contracting authorities, the Commission should take into account that different contracting authorities in different Member States might have different budgetary capacities. In duly justified cases, contracting authorities should be able to derogate from the requirements such as when there is an emergency and applying the requirements would result in severe negative impact on public health. Furthermore, a deviation is permitted in cases of disproportionate technical obstacles, that cannot be overcome with reasonable effort or in exceptional cases, when the application would be contrary to the actual purpose of this provision.**

**(87a) Member States should not be precluded from introducing or maintaining national measures on green public procurement regarding product groups for which public procurement requirements under this Regulation have not yet been set and from introducing stricter national requirements regarding products which fall within the scope of implementing acts setting out green public procurement requirements, provided they are in line with Union law.**

- (88) Effective enforcement of ecodesign requirements is essential to ensure equal competition in the Union market and to ensure that this Regulation's expected benefits and contribution to achieving the Union's climate, energy and circularity objectives are achieved. Therefore, Regulation (EU) 2019/1020 setting out a horizontal framework for market surveillance and control of products entering the Union market should apply to products for which ecodesign requirements are set pursuant to this Regulation, in so far as there are no specific provisions with the same objective **that regulate in a more specific manner particular aspects of market surveillance and enforcement, nature or effect** in this Regulation. In addition, to lower the problematic levels of non-compliance of products covered by implementing measures adopted under Directive 2009/125/EC, to better prevent non-compliance with future ecodesign requirements, and taking account of the broader scope and increased ambition of this Regulation compared to Directive 2009/125/EC, this Regulation should contain specific additional rules ~~complementing~~ **complementing** the framework created by Regulation (EU) 2019/1020. Those specific additional rules should be aimed at further strengthening the planning, coordination and support of Member State efforts and should provide additional tools for the Commission to ensure sufficient action is taken by market surveillance ~~authorities~~ **authorities** to prevent non-compliance with ecodesign requirements.

- (89) Beyond market surveillance authorities, customs authorities also have an important role to play in enforcing this Regulation with regard to imported goods and can rely on Council Regulation (EC) No 515/97<sup>56</sup> for that purpose.
- (90) To ensure that appropriate checks are performed on an adequate scale in relation to ecodesign requirements, Member States should, **as part of the overarching national market surveillance strategy according to Article 13 of Regulation (EU) 2019/1020**, draw up a dedicated action plan identifying the products or requirements identified as priorities for market surveillance under this Regulation and the activities planned to reduce non-compliance of relevant products or with relevant ecodesign requirements. ~~Where relevant, this action plan should be part of Member States' national market surveillance strategies adopted pursuant to Article 13 of Regulation (EU) 2019/1020.~~ **While drawing up an action plan, Member States should take into account products regulated under the framework of Directive 2009/125/EC. In order to address those products regulated at the moment of entry into force of this Regulation, Member States should draw up the first action plan by 6 months of entry into force of this Regulation. Member States should draw up subsequent action plans at least every 4 years, which could be revised if needed. Where relevant, those action plans should be part of Member States' national market surveillance strategies adopted pursuant to Article 13 of Regulation (EU) 2019/1020.**
- (91) Priorities for market surveillance under this Regulation should be identified based on objective criteria such as the levels of non-compliance observed or the environmental impacts resulting from non-compliance. **Information on the environmental impacts of noncompliance can be derived from the impact assessments underlying the relevant ecodesign requirements.** The activities planned to address those priorities should in turn be proportionate to the facts leading to their prioritisation. ~~In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to determine products and requirements that Member States should consider as priorities for market surveillance in the context of their action plans identifying priorities for market surveillance under this Regulation and activities~~

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<sup>56</sup> Council Regulation (EC) No 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters (OJ L 82, 22.3.1997, p. 1).

**planned to reduce non-compliance.**

- (92) Where problematic levels of non-compliance with ecodesign requirements are observed despite the enhanced planning, coordination and support laid down by this Regulation, the Commission should be able to intervene **in accordance with Article 11(4) of Regulation (EU) 2019/1020** to ensure that market surveillance authorities perform checks on an adequate scale. Therefore, in order to safeguard the effective enforcement of ecodesign requirements, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission ~~to lay down a minimum number of checks to be performed on specific products or requirements. This empowerment should be additional to the empowerment in~~ **accordance with Article 11(4) of Regulation (EU) 2019/1020.**
- (93) Based on data entered into the information and communication system for market surveillance, the Commission should draw up a report containing information on the nature and number of checks performed, **and** on the levels of non-compliance identified ~~and on the nature and severity of penalties imposed~~ in relation to ecodesign requirements over the two previous calendar years. The reports should contain a comparison of Member States' activities with the activities planned and indicative benchmarks for market surveillance authorities.
- (94) ~~To further strengthen coordination of market surveillance authorities, the administrative cooperation group ('ADCO') set up pursuant to Regulation (EU) 2019/1020 should, for the purposes of identifying the products or requirements identified as priorities for market surveillance under this Regulation and the activities planned to reduce non-compliance is Regulation, meet at regular intervals and identify common priorities for market surveillance to be taken into account in Member States' action plans, priorities for the provision of Union support, and ecodesign requirements that are interpreted differently leading to market distortion.~~ **Whereas the Union Product Compliance Network established by Regulation (EU) 2019/1020 is meant to address "general, horizontal issues of market surveillance", the administrative cooperation group ('ADCO') established under Regulation (EU) 2019/1020 for the uniform application of this Regulation should, as part of or in addition to the tasks defined in Regulation (EU) 2019/1020, for the purposes of identifying the products or requirements identified as priorities for market surveillance under this Regulation and the activities planned to reduce non-compliance with this Regulation, meet at regular intervals and identify common priorities for market surveillance to be taken into account in Member States' action plans, priorities for the provision of Union**

**support, and ecodesign requirements that are interpreted differently leading to market distortion.**

- (95) ~~To support Member States in their efforts to ensure sufficient action is taken to prevent noncompliance with ecodesign requirements, the Commission should, where relevant, make use of the support measures provided for in Regulation (EU) 2019/1020. The Commission should organise and, where appropriate finance, joint market surveillance and testing projects in areas of common interest, joint investments in market surveillance capacities and common trainings for the staff of market surveillance authorities, notifying authorities and notified bodies. In addition, the Commission should draw up guidelines on how to apply and enforce ecodesign requirements where necessary to ensure their harmonised application.~~
- (96) Products should be placed on the market only if they do not present a risk. In order to better align with the specific nature of ecodesign requirements and to ensure that the focus of market surveillance efforts is on non-compliance with such requirements, a product presenting a risk should, for the purposes of this Regulation, be defined as a product that, by not complying with an ecodesign requirement or because a responsible economic operator does not comply with an ecodesign requirement, may adversely affect the environment or other public interests protected by the relevant requirements. This more specific definition should be used when applying Articles 19 and 20 of Regulation (EU) 2019/1020.
- (97) A procedure should exist under which interested parties are informed of measures intended to be taken with regard to products presenting a risk. It should also allow market surveillance authorities in the Member States, in cooperation with the relevant economic operators, to act at an early stage with regard to such products. To that end, the safeguard clause currently included in Directive 2009/125/EC should be updated and aligned with the safeguard procedures included in other Union harmonisation legislation and in Decision No 768/2008/EC. In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to determine whether national measures in respect of non-compliant products are justified or not.
- (98) The market surveillance authorities should have the right to require economic operators to take corrective action on the basis of findings that either a product is not compliant with

ecodesign requirements or that the economic operator has infringed the rules on the placing or making available on the market of products or other rules addressed to it.

- (99) When adopting delegated acts pursuant to Article 290 TFEU, it is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better LawMaking<sup>57</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

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<sup>57</sup>OJ L123, 12.5. 2016, p. 1.



(100) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission as regards: **(a) setting the ecodesign requirements for classes of products, specifying the conformity assessment, requiring availability of technical specifications, requiring products to measure energy use or in-use data, requirements on markings and as regards incentives and green public procurement, (b) (a) specifying implementation arrangements for the interconnection of the registry referred to in this Article 12 and the EU Customs Single Window Certificates Exchange; (be) establishing common requirements for the layout of labels; (c) establishing the working plan of the Commission (de) containing a list of self-regulation measures established as valid alternatives to a delegated act adopted pursuant to Article 4; (ed) setting out format for the disclosure of the information on unsold consumer products that have been discarded; (x) setting out exceptions to the small and micro enterprise exemptions to the transparency obligation and prohibitions (xx) setting out exceptions to the direct prohibition against the destruction of unsold consumer products, (xxx) setting out further prohibitions against the destruction of unsold consumer products; (xxxx) setting out exceptions to the SME exemptions to the transparency obligation and prohibitions, (fe) laying down, amending or repealing common specifications for ecodesign requirements, the essential requirements for product passports or for test, measurement or calculation methods; (f) laying down a minimum number of full-time equivalents considered sufficient for the proper monitoring of notified bodies; (g) requiring a Member State to take corrective action, including withdrawal of the notification, for non-compliant notified bodies; (v) establishing rules for Member States incentives; (vv) setting minimum mandatory requirements for green public procurement;** (h) listing the products or requirements that Member States must at least consider as priorities for market surveillance; and (i) deciding, pursuant to the Union safeguard procedure, whether a national measure is justified or not. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>63</sup>

<sup>63</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers ([OJ L 55, 28.2.2011, p. 13](#)).

- (101) To enhance trust in products placed on the market, in particular as regards the fact that they comply with ecodesign requirements, the public needs to be sure that economic operators placing non-compliant products on the market will be subject to penalties. It is therefore necessary that Member States lay down effective, proportionate and dissuasive penalties in national law for failure to comply with this Regulation.
- (102) The Commission should carry out an evaluation of this Regulation. Pursuant to paragraph 22 of the Interinstitutional Agreement on Better Law-Making, that evaluation should be based on the five criteria of efficiency, effectiveness, relevance, coherence and EU value added and should provide the basis for impact assessments of possible further measures. The Commission should submit to the European Parliament, to the Council, the European Economic and Social Committee, and to the Committee of the Regions a report on the implementation of this Regulation and its impact on the environmental sustainability of products and the functioning of the internal market. Where appropriate, the report should be accompanied by a proposal to amend relevant provisions of this Regulation.
- (103) It is necessary that ecodesign requirements apply to the widest possible range of products, and not only energy-related products, and that the definition of ecodesign requirements is widened to encompass all aspects of circularity. **Products that are already sufficiently regulated under other Union legislation, e.g., means of transport (with the exemption of eBikes and eScooters) should not be taken into account.** It is also necessary to align this Regulation to the New Legislative Framework set out in Regulation (EC) No 765/2008 and Decision No 768/2008/EC, and to improve the provisions related to market surveillance. Directive 2009/125/EC should therefore be replaced. In order to ensure legal certainty for all economic operators from the date of entry into force of this Regulation and to guarantee a level playing-field for businesses operating on the internal market, the provisions setting out transparency obligations related to the discarding of unsold consumer products, circumvention, and market surveillance, should be of uniform application for all operators across the Union. Directive 2009/125/EC should therefore be replaced by a Regulation.
- (104) In order to ensure legal certainty and continuity for products placed on the market or put into service in conformity with implementing measures adopted pursuant to Directive 2009/125/EC, in its version applicable on the date of application of this Regulation, those measures should remain in force beyond that date, and until repealed by a delegated act adopted pursuant to this Regulation. For the same reasons, a number of provisions of Directive 2009/125/EC should continue to have full effect in the context of applying these

implementing measures. This concerns in particular provisions of Directive 2009/125/EC excluding means of transport for goods or persons from its scope, establishing definitions relevant for implementing measures, setting economic operators' responsibilities in relation to products placed on the market, specifying the details of the relevant conformity assessment procedures and the EC declaration of conformity, establishing a presumption of conformity for products which have been awarded the EU ecolabel and enabling necessary action in relation to harmonised standards. Noting the importance of ensuring free movement of goods, banning practices illegally altering products' performance in order to reach a more favourable result and ensuring proper enforcement of ecodesign requirements, relevant provisions of this Regulation should be applicable to energy-related products placed on the market pursuant to implementing measures under Directive 2009/125/EC.

(105) Since the objectives of this Regulation, namely to improve environmental sustainability of products and to ensure the free movement in the internal market of products for which ecodesign requirements are set, cannot be sufficiently achieved by the Member States, but can rather, by reason of its scale and effects, only be achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

## **Chapter I - General provisions**

### *Article 1*

#### *Subject matter and scope*

1. This Regulation establishes a framework ~~to improve the environmental sustainability of products and to ensure free movement in the internal market by~~ **for** setting ecodesign requirements that products shall **have to comply with to be placed on the market or put into service, with the aim to improve the environmental sustainability of products and to ensure free movement in the internal market.** ~~fulfil to be placed on the market or put into service. Those ecodesign requirements, which shall be further elaborated by the Commission in delegated acts, relate to:~~

- ~~(a) product durability and reliability;~~
- ~~(b) product reusability;~~
- ~~(c) product upgradability, reparability, maintenance and refurbishment;~~
- ~~(d) the presence of substances of concern in products;~~
- ~~(e) product energy and resource efficiency;~~
- ~~(f) recycled content in products;~~
- ~~(g) product remanufacturing and recycling; (h) products' carbon and environmental footprints;~~
- ~~(i) products' expected generation of waste materials.~~

This Regulation also establishes a digital product passport ('product passport'), provides for the setting of mandatory green public procurement **criteria requirements** and creates a framework to prevent unsold consumer products from being destroyed.

2. 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) means of transport for persons or goods, apart from e-bikes and e-scooters

*Article 2*  
*Definitions*

For the purposes of this Regulation, the following definitions shall apply:

- (1) ‘product’ means any physical goods that is placed on the market or put into service;
- (2) ‘component’ means a product intended to be incorporated into another product;
- (3) ‘intermediate product’ means a product that requires further manufacturing or transformation such as mixing, coating or assembling to make it suitable for end-users customers;
- (4) ‘energy-related product’ means any product that has an impact on energy consumption during use;
- (5) ‘product group’ means a set of products that serve similar purposes and are similar in terms of use, or have similar functional properties, and are similar in terms of consumer perception;
- (6) ‘ecodesign’ means the integration of environmental sustainability considerations into the characteristics of a product and the processes taking place throughout the product’s value chain;
- (7) ‘ecodesign requirement’ means a performance requirement or an information requirement aimed at making a product or processes taking place throughout the product’s value chain more environmentally sustainable;
- (8) ‘performance requirement’ means a quantitative or non-quantitative requirement for or in relation to a product or processes taking place throughout the product’s value chain to achieve a certain performance level in relation to a product parameter referred to in Annex I;
- (9) ‘information requirement’ means an obligation for a product or processes taking place throughout the product’s value chain to be accompanied by information as specified in Article 7(2);
- (10) ‘supply chain’ means all upstream activities and processes of the value chain of the product, up to the point where the product reaches the end-user customer;

- (11) 'value chain' means all activities and processes that are part of the life cycle of a product, as well as its possible remanufacturing;
- (12) 'life cycle' means the consecutive and interlinked stages of a product's life, consisting of raw material acquisition or generation from natural resources, pre-processing, manufacturing, storage, distribution, installation, use, maintenance, repair, upgrading, refurbishment and reuse, and end-of-life;
- (13) 'end-of-life' means the life cycle stage that begins when a product is discarded and ends when the product is returned to nature as a waste product or enters another product's life cycle;
- (14) 'environmental impact' means any change to the environment, whether adverse or beneficial, wholly or partially resulting from a product during its life cycle;
- (15) 'class of performance' means a range of performance levels in relation to one or more product parameters referred to in Annex I, ordered into successive steps to allow for product differentiation;
- (16) 'remanufacturing' means an ~~industrial process~~ **operation** in which a **new** product is ~~produced~~ **manufactured** from objects that are **either** waste, products or components 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;
- (17) 'upgrading' means **actions carried out to** enhancing the functionality, performance, capacity, **safety** or aesthetics of a product;
- (18) 'refurbishment' means **actions carried out to** **preparing, cleaning,** testing and preparing or modifying **and, where necessary repairing** an object that is waste or a product **in order** to restore **either** 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;~~
- (19) 'maintenance' means ~~an~~ **actions** carried out to keep a product in a condition where it is able to function as required **fulfil its intended use**;
- (20) 'repair' means **an action carried out that returns** returning a defective **object that is a waste or a** product or waste to a condition where it fulfils its intended use;

- (21) ‘durability’ means the ability of a product to function as required, under specified conditions of use, maintenance and repair, until a **condition after one or more limiting events prevents its functioning is reached**;
- (22) ‘reliability’ means the probability that a product functions as required under given conditions, **including maintenance**, for a given duration without **a limiting event**;
- (22a) ‘limiting event’ means an occurrence with the result that a function, which fulfils the intended use, is no longer delivered;**
- (23) ‘environmental footprint’ means a quantification of a product’s environmental impacts, whether in relation to a single environmental impact category or an aggregated set of impact categories based on the Product Environmental Footprint method; **or on methods based on ISO 14040/14044, e.g. type III environmental declarations (ISO 14025);**
- (24) ‘Product Environmental Footprint method’ means the life cycle assessment method to quantify the environmental impacts of products established by Recommendation (EU) 2021/2279**f**;
- (25) ‘**product**-carbon footprint’ means the sum of greenhouse gas (GHG) emissions and GHG removals in a product system, expressed as CO<sub>2</sub> equivalents and based on a life cycle assessment using the single impact category of climate change; **as established by Recommendation (EU) 2021/2279; as established by recognized international and European methods based on ISO 14040/14044, e.g. type III environmental declarations (ISO 14025)**
- (26) ‘~~public contracts~~’ means ~~public contracts as defined in Article 2(5) of Directive 2014/24/EU;~~
- (27) ‘substance’ means a substance as defined in Article 3, point (1), of Regulation (EC) No 1907/2006;
- (27a) ‘mixture’ means a mixture as defined in Article 3, point (2), of Regulation (EC) 1907/2006**
- (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, 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;

(29) ‘product passport’ means a set of data specific to a product that includes the information specified in the applicable delegated **implementing delegated** act adopted pursuant to Article 4 and that is accessible via electronic means through a data carrier in accordance with Chapter III;

(30) ‘data carrier’ means **an element that contains the unique product identifier. It can be** a linear bar code symbol, a two-dimensional symbol or other automatic identification data capture medium that can be read by a device;



- (31) ‘unique product identifier’ means a unique string of characters for the identification of products that also enables a web link to the product passport;
- (32) ‘unique operator identifier’ means a unique string of characters for the identification of actors involved in the value chain of products;
- (33) ‘unique facility identifier’ means a unique string of characters for the identification of locations or buildings involved in the value chain of a product or used by actors involved in the value chain of a product;
- (34) ‘processing’ **(in relation to data)** means processing as defined in Article 3, point (2), of Regulation (EU) 2018/1807; **for non-personal data; whereas for the processing of personal data the definitions of applicable rules on the protection of personal data applies;**
- (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;
- (35a) ‘customer’ means a natural or legal person who buys, hires or receives a product for own use whether or not acting for purposes which are outside its trade, business, craft or profession;**
- (35b) ‘consumer’ means a consumer as defined in Article 2, point (2), of Directive (EU) 2019/771;**
- (36) ‘consumer product’ means any product, excluding components and intermediate products, primarily intended for consumers ~~as defined in Article 2, point (2), of Directive (EU) 2019/771;~~
- (37) ‘unsold consumer product’ means any consumer product 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 **or, where applicable, in view of the commercial guarantee for withdrawal provided by the ~~retailer~~trader regarding the product concerned.**

(38) 'self-regulation measure' means a voluntary agreement or codes of conduct, concluded by **economic operators or** industry sectors on their own initiative, which they are responsible for enforcing;

**(38a) 'Reasoned request' means all requests by the market surveillance authorities to hand over documents and information to prove the conformity of a product, including when carrying out random checks.**

(39) 'making available on the market' means any supply of a product, for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge;

(40) 'placing on the market' means the first making available of a product on the Union market;

(41) 'putting into service' means the first use, for its intended purpose, in the Union, of a product;

(42) 'manufacturer' means any natural or legal person who manufactures a product or who has ~~such~~ a product designed or manufactured, and markets that product under its name or trademark ~~or, in the absence of such person or an importer, any natural or legal person who places on the market or puts into service a product~~ **or, in the absence of such person or an importer, any natural or legal person who places on the market or puts into service a product;**

(43) 'authorised representative' means any natural or legal person established in the Union who has received a written mandate from the manufacturer to act on its behalf in relation to specified tasks with regard to the manufacturer's obligations under this Regulation;

(44) 'importer' means any natural or legal person established in the Union who places a product from a third country on the Union market;

(45) 'distributor' means any natural or legal person in the supply chain, other than the manufacturer or the importer, who makes a product available on the market;

(46) 'economic operator' means the manufacturer, the authorised representative, the importer, the distributor, the dealer and the fulfilment service provider;

(47) 'technical specification' means a document that prescribes technical requirements to be fulfilled by a product, process or service;

- (48) 'harmonised standard' means a standard as defined in Article 2(1), point (c), of Regulation (EU) No 1025/2012;
- (49) 'CE marking' means a marking by which the manufacturer indicates that the relevant product is in conformity with the applicable requirements set out in Union harmonisation legislation providing for its affixing;
- (50) 'accreditation' means accreditation as defined in Article 2(10) of Regulation (EC) No 765/2008;
- (51) 'national accreditation body' means a national accreditation body as defined in Article 2(11) of Regulation (EC) No 765/2008;
- (52) 'conformity assessment' means the process demonstrating whether the **ecodesign** requirements set out in the relevant ~~delegated~~ **implementing delegated** acts adopted pursuant to Article 4 have been fulfilled;
- (53) 'conformity assessment body' means a body that performs conformity assessment activities including calibration, testing, certification and inspection;
- (54) 'notified body' means a conformity assessment body notified in accordance with Chapter IX of this Regulation;
- (55) 'online marketplace' means a provider of an intermediary service using software, including a website, part of a website or an application, that allows customers to conclude distance contracts with economic operators for the sale of products covered by ~~delegated~~ **implementing delegated** acts adopted pursuant to Article 4;
- (56) 'dealer' means a retailer or any other natural or legal person who offers products for sale, hire or hire purchase, or displays products to customers **or installers** in the course of a commercial activity, **including through distance selling**, whether or not in return for payment;
- (57) 'distance selling' means the offer for sale, hire or hire purchase of products, online or through other means of distance sales, whereby the potential customer cannot physically access the product displayed;

- (58) ‘product presenting a risk’ means a product that, by not complying with a requirement set out in or pursuant to this Regulation other than those listed in Article 65 (1), may adversely affect the environment or other public interests protected by that requirement;
- (59) ‘product presenting a serious risk’ means a product presenting a risk for which, based on an assessment, the degree of the relevant non-compliance or the associated harm is considered to require rapid intervention by the market surveillance authorities, including cases where the effects of the non-compliance are not immediate.

In addition, the definitions of ‘waste’, ‘hazardous waste’, ‘re-use’, ‘recovery’, ‘preparing for re-use’ and ‘recycling’ in Article 3, points (1), (2), (13), (15), (16) and (17), of Directive 2008/98/EC of the European Parliament and of the Council<sup>58</sup> shall apply.

The definitions of ‘market surveillance’, ‘market surveillance authority’, ‘fulfilment service provider’, ‘online interface’, ‘corrective action’, ~~‘end-user’~~, ‘recall’, ‘withdrawal’, ‘customs authorities’ and ‘release for free circulation’ in Article 3, points (3), (4), (11), (15), (16), ~~(21)~~, (22), (23), (24) and (25), of Regulation (EU) 2019/1020 shall also apply.

The definitions of ‘SMEs’, ‘small enterprises’ and ‘microenterprises’ in Article 2(1), (2) and (3), of Annex I to Commission Recommendation 2003/361/EC<sup>59</sup> shall also apply.

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<sup>58</sup> Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).

<sup>59</sup> Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

*Article 3*  
*Free movement*

1. Products shall only be placed on the market or put into service if they comply with the ecodesign requirements set out in the ~~delegated~~ **implementing delegated** acts adopted pursuant to Article 4 applicable to those products.
2. Member States shall not prohibit, restrict or impede the placing on the market or putting into service of products that comply with the performance requirements set out in ~~delegated~~ **implementing delegated** acts adopted pursuant to Article 4 for reasons of non-compliance with national performance requirements relating to product parameters referred to in Annex I covered by performance requirements included in such ~~delegated~~ **implementing delegated** acts.

Member States shall not prohibit, restrict or impede the placing on the market or putting into service of products that comply with the information requirements set out in ~~delegated~~ **implementing delegated** acts adopted pursuant to Article 4 for reasons of non-compliance with national information requirements relating to product parameters referred to in Annex I covered by information requirements included in such ~~delegated~~ **implementing delegated** acts.

3. **Notwithstanding** ~~Paragraph 2 shall not prevent~~ Member States **shall not be precluded** from setting minimum energy performance requirements in accordance with Article 4(1) and system requirements in accordance with Article 8 of Directive 2010/31/EU of the European Parliament and of the Council<sup>60</sup>.
4. ~~Member States shall not prohibit, restrict or impede the placing on the market or putting into service of products on grounds of non-compliance with national requirements relating to product parameters referred to in Annex I, for which a delegated act adopted pursuant to Article 4 provides that no performance, no information or neither performance nor information requirements are necessary.~~ **Member States shall not prohibit, restrict or impede the placing on the market or putting into service of products, for which a delegated act pursuant to Article 4, under exceptional circumstances, provides that no**

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<sup>60</sup> Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (OJ L 153, 18.6.2010, p. 13).

**performance, no information or neither performance nor information requirements are necessary for one or several specific parameters as referred to in Annex I, on grounds of non-compliance with national requirements relating to such parameters.**

5. At trade fair, exhibitions and similar events, Member States shall not prevent the showing of products that do not comply with delegated **implementing delegated** acts adopted pursuant to Article 4, provided that a visible sign clearly indicates that such products do not comply and that they are not for sale until they have been brought into conformity.

## Chapter II - Ecodesign requirements

### Article 4

*Empowerments to adopt delegated **delegated implementing** acts*

**The Commission shall may adopt implementing acts establishing ecodesign requirements for, or in relation to, products to improve their environmental sustainability. Those implementing acts should be established pursuant to Articles 5, 6, 7 and 7a.**

**Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(3).** The Commission is empowered to adopt delegated acts in accordance with Article 66, after consulting the ecodesign expert group referred to in (new) article 17a and the ecodesign forum referred to in article 17, to supplement this Regulation by establishing ecodesign requirements for, or in relation to, products to improve their environmental sustainability. Those requirements **delegated acts** shall include the elements **and respective ways of identifying them** listed in Annex VI. **Ecodesign requirements** and shall be established in accordance with Articles 5, 6 and 7 and Chapter III. **1** The empowerment to adopt ecodesign requirements includes the power to establish that no performance requirements, no information requirements or neither performance nor information requirements are necessary for certain specified product parameters referred to in Annex I. **The Commission is empowered to adopt delegated acts in accordance with Article 66, after consulting the Ecodesign Expert Group referred to in Article 17a and the Ecodesign Forum referred to in Article 17, to supplement this Regulation by establishing ecodesign requirements for product to improve their environmental sustainability. Those delegated acts shall include the elements and respective ways of identifying them listed in Article 7.a.**

**Ecodesign requirements shall be established in accordance with Articles 5, 6 and 7 and Chapter III.**

**The empowerment to adopt delegated acts to establish ecodesign requirements includes the possibility to establish, that no performance requirements, no information requirements or neither performance nor information requirements are necessary for certain specified product parameters referred to in Annex I only in the exceptional circumstances where establishing a requirement related to that specific product parameter as referred to in Annex 1 would have a negative impact on the other ecodesign requirements considered for the product group or would prevent meeting the objectives of this Regulation. This shall be without prejudice to the rights of the Member States under art. 114 TFEU.**

**The empowerment to adopt delegated acts to establish ecodesign requirements does not include the possibility to adopt a delegated act that establishes that no ecodesign requirement at all is necessary for a product group.**

When establishing ecodesign requirements in delegated ~~delegated implementing~~ acts referred to in the first subparagraph **of this Article**, the Commission shall also ~~supplement this Regulation by~~ **supplement this Regulation by** specifying ~~ing~~ the applicable conformity assessment procedures from ~~either among the the~~ **the** modules ~~A~~ set out in Annex IV ~~to this Regulation and or one of the~~ **modules B to H set out in** Annex II to Decision No 768/2008/EC, with the adaptations necessary in view of the product or ecodesign requirements concerned, in accordance with Article 36 **of this Regulation**.

~~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:** ~~Delegated acts referred to in the first subparagraph 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 the relevant 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 **defined** a 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);

**(iv) requiring supply chain actors to comply with the obligations listed under points a) to c) of Article 31(a).**

~~(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);~~

**~~(bb) 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);

~~(eii)~~ 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:**

**(i) 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,** ~~(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,**~~ 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;~~

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

## *Article 5*

### *Ecodesign requirements*

1. The Commission shall, **taking into consideration all the following product aspects** as appropriate, to the relevant product groups **in order to address relevant adverse environmental impacts which arise in any** and with due consideration for all **of the** stages of the products' life cycle **or to further improve already existing beneficial environmental impacts,** establish ecodesign requirements **based on the product parameters in Annex I** to improve **the following product aspects when relevant to the product group concerned** the following product aspects:

- (a) durability;
- (b) reliability;
- (c) reusability;
- (d) upgradability;

(e) reparability;

**(ee) non-destructive replacement of product components**

(f) possibility of maintenance and refurbishment;

(g) presence of substances of concern;

(h) energy use ~~or~~ **and** energy efficiency;

**(ha) water use and water efficiency;**

(i) resource use ~~or~~ **and** resource efficiency;

**(ia) material use and material efficiency;**

(j) recycled content;

(k) possibility of remanufacturing **and recycling;**

**(ka) possibility of recycling;**

(l) possibility of recovery of materials;

**(-m) carbon and environmental footprint;**

(m) ~~environmental impacts, including carbon and environmental footprint~~ **contribution to climate change, pollution of water, air and soil, land use;**

(n) expected generation of waste ~~materials~~.

**1a. The Commission shall select or develop one or several tools or methodologies as regards the setting of ecodesign requirements. When the Commission selects or develops one or several methodologies or tools to be used for the setting of ecodesign requirements it shall consult with the Expert Group referred to in Article 17.a.**

2. Ecodesign requirements shall be established for a specific product group. **A delegated act may exclude from the scope a subset of products belonging to the regulated product group or exempt them from some of the requirements, taking into account:**

- (a) patterns of use or typical real-life use;
- (b) product characteristics, including material composition, size or ability to withstand  
specific conditions of use or specific environments
- (c) applicable standards, methods, legislation and policies, or the lack thereof
- (d) requirements for security, military, safety or medical purposes
- (e) the specifics of the product's market, including the volume of sales and the way in which products are marketed; and
- (f) bespoke products or products produced in very small quantities.

**2a.** However, ~~where~~ Where two or more product groups display technical one or more similarities allowing a product aspect referred to in paragraph 1 to be improved based on a common ecodesign requirements, such ecodesign requirements may be established horizontally for those product groups (“horizontal requirements”).

Horizontal ecodesign requirements shall effectively improve environmental sustainability with respect to the product aspect concerned.

When establishing horizontal ecodesign requirements, the Commission shall also take into account the effectiveness of such an approach, in particular its ability to address a large number of products, including product groups that have not been prioritised individually in the working plan referred to in Article 16.

A horizontal ecodesign requirement might be further adapted to the specificities of the product groups covered.

An horizontal ecodesign requirement ~~established pursuant to the third subparagraph~~ may cover products falling in the scope of a self-regulation measure listed pursuant to Article 18(3) ~~established as a valid alternative pursuant to Article 18(3), where the Commission considers that in~~ case that self-regulation measure does not address the product aspect covered by that horizontal ecodesign requirement or the ecodesign requirement addresses the same aspect in a more stringent manner.

3. Ecodesign requirements shall, as appropriate **to improve the specific product aspects,**  
**include;**

- (a) **dynamic or static** performance requirements as set  
out in Article 6 **or;** (b) information requirements as set  
out in Article 7; **or both**

**(c ) 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 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.** 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 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 **and the Ecodesign Expert Group referred to in Article 17a and the results of the public consultation.**

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, but also potential** 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 burden on manufacturers or other ~~economic~~ actors **in the value chain, in particular SMEs.**

6. **In order to facilitate the verification of compliance with ecodesign requirements, the** ~~The~~ Commission shall, where appropriate, **require,** ~~supply chain actors to:~~

- (a) — provide, upon request, manufacturers, notified bodies and competent national authorities with available **relevant** information related to their supplies or services that is relevant in order to verify compliance with ecodesign requirements;
- (b) — allow, in the absence of information referred to in point (a), manufacturers to assess their supplies or services in order to verify compliance with ecodesign requirements and give access to relevant documents or facilities to those manufacturers;
- (c) — enable notified bodies and competent national authorities to verify the correctness of **relevant** information related to their activities and relevant for verifying compliance with ecodesign requirements.

**The Commission shall, when establishing requirements referred to in points (a) and (b) of paragraph 6, take into account the need to avoid disproportionate burdens on SME's.**

7. **Ecodesign requirements shall be verifiable.** The Commission shall, where appropriate, identify appropriate means of verification for specific ecodesign requirements, including directly on the product or on the basis of the technical documentation. **The Commission shall specify, as a minimum, the content, the format, the manner, and the order in which the information necessary for the verification of compliance is to be made available.**
8. The Commission shall publish relevant studies and analyses used in the establishment of ecodesign requirements in accordance with this Regulation.

**8a. Where dynamic performance requirements are set, the Commission shall use the data acquired according to Article 4 (b), Article 12 and /or the product database defined by Regulation (EU) 2017/1369 of the European Parliament and of the Council to annually assess whether a product group meets certain threshold values. In the case the thresholds values are met, the Commission shall adapt the minimum performance requirements without further impact assessment and without consulting the Ecodesign Forum. The threshold values are specified in the delegated acts pursuant to Article 4 and represent an average value of the performance of a significant number of products of a product group, placed on the market in a specific year, covered by Article 4 (bb), Article 12 and /or the product database defined by Regulation (EU) 2017/1369 of the European Parliament and of the Council.**

9. **In case the For each product group concerned contains substances by ecodesign requirements,** the Commission shall **establish-determine,** where relevant, which substances **is a substance of concern within the meaning fall under the definition in Article 2 (28), point (c), of paragraph 28 of Article 28** taking into account **at least,** **whether:**
- (a) **based on the state-of-the-art technologies, the substances make the re-use, [remanufacturing, repairing] or recycling process substantially more complicated, costly, environmentally impactful, or energy- or resource-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 or olfactory properties of the recycled material, e.g. through its colour and smell.

The identification of such substances shall not be based on reasons relating primarily to chemical safety.

#### Article 6

##### Performance requirements

1. Products shall comply with performance **Performance** requirements shall be set to improve ~~relate~~ related to the **specific** product aspects listed in Article 5(1), ~~as laid down in the delegated acts adopted pursuant to Article 4.~~ The performance requirements shall be tailored to the particular characteristics of the product group concerned. The performance requirements shall in order to improve the product group's environmental sustainability effectively address adverse environmental impacts of products throughout their lifecycle, or further improve already existing beneficial environmental impacts in relation to environmental sustainability.
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:
  - (a) minimum or maximum levels in relation to a specific product parameter ~~referred to in Annex I~~ or a combination thereof or;
  - (b) non-quantitative requirements that aim to improve performance in relation to one or more product parameters, ~~referred to in Annex I,~~ or both.
  - (c) ~~requirements related to the functional performance of a product.~~ requirements related to the functional performance of a product.
3. Performance requirements based on the product parameter set out in Annex I, point (f), shall, where relevant, restrict the presence of substances in products for reasons relating primarily to improve the environmental sustainability of the products. Performance requirements based on the product parameter set out in Annex I, point (f), shall not restrict the presence of substances in products for reasons relating primarily to chemical safety.
4. When establishing performance requirements, the Commission shall follow the procedure set out in Annex II.



5. **Based on the outcome of its analysis in accordance with Annex II, the Commission shall choose one or several performance requirements to be imposed on the relevant product group. The Commission shall consider all the relevant and significant negative effects of the relevant products on the environment and the environmental sustainability of the product, and identify the most effective performance requirement(s) to reduce these negative effects.**

**When establishing each performance requirement for a specific aspect as listed in Article 5(1), the Commission shall assess the possible positive and negative impacts of this requirement on other aspects or parameters listed in Annex I.**

#### *Article 7*

##### *Information requirements*

1. ~~Products shall comply with information~~ **Information** requirements **shall require 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.~~
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;~~

**(iii) information for treatment facilities on disassembly, reuse, recycling or disposal at end of life, as relevant**

- (iv)** 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 product parameters referred to in Annex **II**.

- (v) the carbon footprint and environmental carbon footprint referred to in Article 5 (1) point m and Annex I;**

Where ~~an~~ delegated **implementing delegated** 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.

**2a. The information requirements referred to in Article 7(2), point b, shall be tailored to the particular characteristics of the product groups concerned and the intended recipients of the information, such as customers, users or actors involved in value retaining operations.**

**The information requirements referred to in Article 7(2), point b, shall encourage sustainable product choices for customers and economic actors downstream, ensure appropriate use, facilitate value retaining operations such as repair, refurbishment, remanufacturing, upgrade, recycling and maintenance, and ensure correct treatment at end-of-life.**

**When a performance requirement is established for a specific parameter a corresponding information requirement may also be established, as appropriate. An information requirement can also be established without a corresponding performance requirement on that parameter.**

**2b. Based on its analysis, the Commission shall choose one or several information requirement(s) to be imposed on the relevant product group. The Commission shall choose the requirement(s) that have the highest likelihood of driving customers, users or other**

**economic actors to adopt more environmentally sustainable behaviours while the costs associated with the requirement(s) fulfil the criteria in Article 5(5), points c), d) and f).**

3. Information requirements based on the product parameter set out in Annex I, point (f), shall not provide obligations on the labelling of substances or mixtures for reasons relating primarily to their hazards to health or the environment.
4. When establishing the information requirements referred to in paragraph 2, point (b), point (i), the Commission shall, as appropriate in **view of the specificity of the product group,** determine classes of performance. **Such requirements can be based on classes of performance, on aggregated scores, in absolute terms or in any form that enables potential customers to choose the best performing products.**

Those classes of performance shall correspond to statistically significant improvements in performance levels.

5. **Unless otherwise provided for under the second paragraph of this Article, point c),** ~~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~~ **delegated** 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.**

**The Commission may, as appropriate for the product group concerned, set thresholds for when the information requirement regarding substances of concern are to apply.**

Where the Commission sets out information requirements in ~~an~~ **delegated** ~~implementing~~ **act** adopted pursuant to Article 4, it shall **assess and where relevant:**

- ~~(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 **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), paragraph 28 of Article 28 Article 2(28), point a), 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.~~

6. Information requirements shall indicate the manner in which the required information shall **is to** be made available. The required information shall, ~~as appropriate,~~ be provided in **the product passport, when available, and shall, when necessary as a complement, be provided in at least one or more** of the following manners:

- (a) on the product itself;
- (b) on the product's packaging;
- (c) ~~in the product passport referred to in Article 8;~~
- (d) c) on a label referred to in Article 14;
- (e) d) in a user manual;
- (f) e) on a free access website or application.

Information ~~ensuring~~ **enabling** the ~~traceability~~ **tracking** of substances **of concern** pursuant to paragraph 5 shall be given either on the product or be accessible through a data carrier included on the product.

7. The information to be supplied pursuant to information requirements shall be provided in a language which can be easily understood by **customers** ~~consumers and other end-users~~, as determined by the Member State in which the product is to be made available on the market or put into service.

**Article 7a Content of ~~the implementing-delegated act~~**

**[Former Annex VI with adjustments]**

**The ~~implementing-delegated~~ acts adopted pursuant to Article 4 shall specify the following elements:**

- (a) the definition of the product ~~group or~~ groups covered;**
- (b) the ecodesign requirements for the product groups covered, ~~in line with Article 4 a~~**
- ~~(3) where relevant, the parameters for which no ecodesign requirement is necessary;~~**
- (ca) where relevant, the parameters for which the Commission explicitly states that no ecodesign requirements are necessary, pursuant to Article 4 third subparagraph.**
- (c) the test, measurement or calculation standards or methods to be used pursuant to**

Article 32 (1); where relevant, requirements for the use of online tools pursuant to Article 32 (2);

- (d) where relevant, the transitional methods, the harmonised standards, the reference numbers of which have been published in the *Official Journal of the European Union*, or common specifications to be used;
- (e) the conformity assessment module to be used pursuant to Article 4, third subparagraph, of this Regulation as set out either in the modules A of Annex IV to this Regulation or in one of the modules B-H in Annex II to Decision 768/2008/EC. Where the module to be applied is different from the module set out in Annex IV, the factors leading to the selection of that specific procedure.

Where different conformity assessment modules [among the modules B-H] in Annex II to Decision 768/2008/EC, are to be used pursuant to other Union legislation for the same product, the module defined in the [delegated]delegated [implementing] act adopted pursuant to Article 4 of this Regulation shall prevail for the ecodesign requirement concerned;

- (f) dates of application ensuring adequate appropriate time for implementation ensuring at least XX months after the entry into force of the delegated act, any staged or transitional measure or periods, taking into account possible impacts on market surveillance authorities SMEs or on specific product groups manufactured primarily by SMEs.

The time economic operators are given to comply with the requirements established in the delegated act shall take into account in particular the complexity of the ecodesign requirements, changes needed in the product design production process, the organisation of the supply chains, and the innovative cycle including contractual duration in the sector concerned. The time SME:s might need to comply shall in particular be taken into consideration.

- (g) the duration of the transitional period during which Member States are to permit the placing on the market or putting into service of products, which comply with the national measuresregulations in force in their territory on the date of [application] of the implementing delegated act.

,(h) the date for the evaluation and possible revision of the **implementing-delegated** act  
taking into account technological progress.

When setting the date for evaluation, the Commission shall take into consideration the need to adapt the requirements to technical progress, societal changes, availability of standards and methods, policy objectives, environmental issues, and other relevant elements. The time period after which the review should be carried out shall be fixed with regard to the need to ensure legal certainty and stability, the maturity of the market, the characteristics of the product group, and other relevant elements.

## Chapter III - Digital product passport

### *Article 8* *Product passport*

- ~~1. The information requirements referred to in Article 7(1) shall provide that products can only be placed on the market or put into service if a product passport is available in accordance with the applicable delegated act adopted pursuant to Article 4 and Articles 9 and 10.~~
2. The requirements related to the product passport laid down in the delegated **implementing delegated** acts adopted pursuant to Article 4 shall, ~~as appropriate for the product groups covered,~~ **be based on the characteristics of the product groups covered and** specify the following:
  - (a) the information to be included in the product passport pursuant to Annex III;
  - (b) **one or more** ~~the types of data carriers~~ **which may** ~~to be used;~~
  - (c) the layout in which the data carrier shall **is to** be presented and its positioning;
  - (d) whether the product passport is to correspond to the model, batch, or item level, **and a definition of these levels;**

- (e) the manner in which the product passport ~~shall~~ **is to** be made accessible to customers before they are bound by **a contract for** a sales, **hire or hire purchase** contract, including in case of distance selling;
- (f) the actors that ~~shall~~ **are to** have access to information in the product passport and to what information they ~~shall~~ **are to** have access, ~~including~~ **such as** customers, ~~end-users,~~ manufacturers, importers and distributors, dealers, repairers, **refurbishers,** remanufacturers, recyclers, competent national authorities, public interest organisations and the Commission, or any organisation acting on their behalf;
- (g) the actors that may introduce or update the information in the product passport, including where needed the creation of a new product passport, and what information they may introduce or update, ~~including~~ **such as** manufacturers, repairers, maintenance professionals, **refurbishers,** remanufacturers, recyclers, competent national authorities, **and the Commission,** or any organisation acting on their behalf;
- (h) the period for which the product passport ~~shall~~ **is to** remain available.

3- The requirements referred to in paragraph 2 shall:

- (a) ensure that actors along the value chain, in particular consumers, economic operators and competent national authorities, can access product information **which is understandable and** relevant to them;
- (b) facilitate the verification of product compliance by competent national authorities; **and**
- (c) improve traceability of products along the value chain; **and**
- (d) **respect trade secrets in the meaning of Article 2 (1) Directive (EU) 2016/943.**

4- When establishing the requirements related to the product passport, the Commission may exempt product groups from the requirement **to have a Digital Product Passport whereset out in paragraph 1 of this Article where:**



- (a) technical specifications **of the product passport** are not available in relation to the essential requirements included in Article 10; or
- (b) other Union law includes a system for the digital provision of information related to a product group for which the Commission considers that it achieves the objectives referred to in paragraph 3, points (a) and (b).

*Article 9*  
*General requirements for the product passport*

1. A product passport shall meet the following conditions:

- (a) it shall be connected through a data carrier to a unique product identifier;
- (b) the data carrier shall be physically present on **or in** the product, its packaging or on documentation accompanying the product, as specified in the applicable ~~delegated~~ **implementing delegated** act adopted pursuant to Article 4;
- (c) the data carrier and the unique product identifier shall comply with **International Organization for Standardisation/International Electrotechnical Commission standard ('ISO/IEC') 15459:2015 standards referred to in point (l) in Annex III;**
- (d) ~~all~~ information included in the product passport shall be based on open, standards, developed with an inter-operable format and shall be machine-readable, structured, and searchable, **as appropriate, and** in accordance with the essential requirements set out in Article 10. **The information shall be transferable through an open interoperable data exchange network without vendor lock-in.**
- (e) the information included in the product passport shall refer to the product model, batch, or item as specified in the ~~delegated~~ **implementing delegated** act adopted pursuant to Article 4;
- (f) the access to information included in the product passport shall be regulated in accordance with the essential requirements set out in Article 10 and the specific access rights at product group level shall be identified in the applicable ~~delegated~~ **implementing delegated** act adopted pursuant to Article 4.

~~The Commission is empowered to adopt delegated acts in accordance with Article 66 to amend the first subparagraph, point (c), of this Article **point (1) in Annex III**, in light of technical and scientific progress by replacing the standard referred to in that point **Annex** or adding other European or international standards with which the data carrier and the unique identifiers shall comply for the purposes of meeting the conditions set out in this Article.~~

2. Where other Union legislation requires or allows the inclusion of specific information in the product passport, that information may be added to the information to be included in the product passport pursuant to the applicable delegated **implementing** act adopted pursuant to Article 4. **pursuant to the applicable delegated act adopted pursuant to Article 4.**
3. The economic operator placing the product on the market shall provide dealers with a digital copy of the data carrier to allow the dealer to make it accessible to customers where they cannot physically access the product. The economic operator shall provide that digital copy, **or its webpage link where it is available**, free of charge and within 5 working days of the dealer's request.

#### *Article 10*

##### *Technical design and operation of the product passport*

The technical design and operation of the product passport shall comply with the following essential requirements:

- (a) product passports shall be fully interoperable with other product passports required by delegated **implementing-delegated** acts adopted pursuant to Article 4 in relation to the technical, semantic and organisational aspects of end-to-end communication and data transfer;
- (b) consumers, economic operators and other relevant actors shall have free access to the product passport based on their respective access rights set out in the applicable ~~delegated~~ **implementingdelegated** act adopted pursuant to Article 4;
- (c) the data included in the product passport shall be stored **by** the economic operator responsible for its creation or by operators authorised to act on their behalf;

- (d) if the data included in the product passport is stored or otherwise processed by operators authorised to act on their behalf, those operators shall not be allowed to sell, re-use or process such data, in whole or in part, beyond what is necessary for the provision of the relevant storing or processing services;
- (e) the product passport shall remain available for the period specified in ~~delegated~~ **implementingdelegated** acts adopted pursuant to Article 4, including after an insolvency, a liquidation or a cessation of activity in the Union of the economic operator that created the product passport;
- (f) the rights to access and to introduce, modify or update information in the product passport shall be restricted based on the access rights specified in ~~delegated~~ **implementingdelegated** acts adopted pursuant to Article 4:

**(fa) with specific consideration shall be taken to ensure of the protection of information that constitutes trade secrets in the meaning of Article 2 (1) Directive (EU) 2016/943 or intellectual property rights;**

- (g) data authentication, reliability and integrity shall be ensured;
- (h) product passports shall be designed and operated so that a high level of security and privacy is ensured and fraud is avoided.

### *Article 11*

#### *Unique operator identifier and unique facility identifier*

1. The unique operator identifiers referred to in Annex III, points (g) and (h), and the unique facility identifiers referred to in Annex III, point (i), shall comply with the ~~ISO/IEC standard 15459:2015~~ **standards referred to in in Annex III point (l).**
2. Where a unique operator identifier referred to in Annex III, point (h), is not yet available, the economic operator creating **or updating** the product passport shall request a unique operator identifier on behalf of the relevant actor.

Before issuing a request as referred to in the first subparagraph, the economic operator creating **or updating** the product passport shall seek confirmation from the actor concerned

that no unique operator identifier exists and shall provide the supply chain actor concerned with full details of the released unique operator identifier.

3. Where a unique facility identifier referred to in Annex III, point (i), is not yet available, the economic operator creating **or updating** the product passport shall request a unique facility identifier on behalf of the actor responsible for the relevant location or building.

Before issuing a request as referred to in the first subparagraph, the economic operator creating **or updating** the product passport shall seek confirmation from the responsible actor that no unique facility identifier exists and provide the responsible actor with the full details of the released unique facility identifier.

4. ~~The Commission is empowered to adopt delegated acts in accordance with Article 66 to amend paragraph 1 of this Article in light of technical and scientific progress by replacing the standard referred to in that paragraph or adding European or international standards with which unique operator identifiers referred to in Annex III, points (g) and (h), and unique facility identifiers referred to in Annex III, point (i), may comply for the purposes of meeting the conditions set out in this Article.~~
5. **The Commission shall adopt an implementing act setting out the procedure to create or obtain the unique product identifier, the unique operator identifier and the unique facility identifier. That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 67(2).**

#### **Article 11a Update of the standards applicable to the digital product passport**

**The Commission is empowered to adopt delegated acts in accordance with Article 66 to amend point (l) of Annex III in light of technical and scientific progress by replacing the standards referred to or adding European or international standards with which the data carriers, the unique operator identifiers referred to in Annex III, points (g) and (h), and the unique facility identifiers referred to in Annex III, point (i), shall comply with for the purposes of meeting the conditions set out in this Chapter.**

*Article 12*  
*Product passport registry*

1. ~~By [2 years from entering into force of this Regulation], the~~ The Commission shall set up and ~~manage~~ maintain a digital registry (**“the registry”**) **storing in a secure manner at least the unique product identifiers, the economic operator identifiers and the facility identifiers.** ~~storing information included in the product passports required by delegated acts adopted pursuant to Article 4.~~

~~The registry referred to in the first subparagraph shall at least include a list of the data carriers and unique product identifiers referred to in Article 9(1).~~

~~The Commission shall ensure that the information stored in the registry referred to in the first subparagraph is processed securely and in compliance with Union law, including applicable rules on the protection of personal data.~~

2. The Commission shall, in the ~~delegated~~ **implementing delegated** acts adopted pursuant to Article 4, specify the information which, in addition to being included in the product passport, shall be stored in the registry ~~referred to in paragraph 1~~, taking into account at least the following criteria:
  - (a) the need to allow for the verification of the authenticity of the product passport;
  - (b) the relevance of information for improving the efficiency and effectiveness of market surveillance checks and customs controls in relation to products covered by ~~delegated~~ **implementing delegated** acts adopted pursuant to Article 4;
  - (c) the need to avoid disproportionate administrative burden for economic operators.
3. In relation to its responsibility to ~~establish~~ **set up** and manage the registry ~~referred to in paragraph 1~~ and the processing of any personal data that might result from that activity, the Commission shall be regarded as controller as defined in Article 3, point (8), of Regulation (EU) 2018/1725.

4. The economic operator placing the product on the market or putting it into service shall upload, in the registry referred to in paragraph 1, the identifiers referred to in paragraph 1 and the information referred to in paragraph 2.
5. The Commission, competent national authorities and customs authorities shall have access to the registry referred to in this Article for carrying out their duties pursuant to Union legislation law.

**Article 12a [Webportal for information in the digital product passport]**

**The Commission shall set up and maintain a web portal allowing stakeholders to search for information included in product passports. The web portal shall be designed to guarantee that stakeholders can search for the information in line with their respective access rights pursuant to Article 10.4b.**

**[Article 13]**

**Customs controls relating to the product passport**

1. **The Commission shall interconnect the registry referred to in Article 12(1) with the EU Customs Single Window Certificates Exchange (EU CSW-CERTEX), thus enabling the automated exchange of information with the national customs systems through the EU Single Window Environment for Customs established by Regulation (EU) 2022/2399<sup>61</sup> .../....**

**The Commission shall adopt an implementing act specifying the details of the implementation arrangements of the interconnection referred to in the first subparagraph.**

**This implementing act shall be adopted in accordance with the examination procedure referred to in Article 67(3).**

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<sup>61</sup> **Regulation (EU) 2022/2399 of the European Parliament and of the Council of 23 November 2022 establishing the European Union Single Window Environment for Customs and amending Regulation (EU) No 952/2013** <sup>62</sup> Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

~~The interconnection referred to in the first subparagraph shall be in place operational within four years from the date of adoption entry into force of the implementing act referred to in the second subparagraph.~~

~~Paragraphs 3 to 6 of this Article shall apply as from the moment the interconnection is in place. Paragraphs 3 to 5a of this Article shall apply as from the moment the interconnection is operational.~~

2. ~~Declarants as defined in Article 5, point (15), of Regulation (EU) 952/2013 shall include the unique product identifier referred to in Article 9(1), point (a), in the customs declaration for release for free circulation of any product covered by a delegated implementing delegated act adopted pursuant to Article 4.~~

~~This paragraph shall apply from the moment the registry referred to in Article 12(1) is in place.~~

3. ~~Before allowing the release for free circulation, eCustoms authorities shall control verify, through the interconnection referred to in paragraph 1 of this Article, whether the unique product identifier indicated by the declarant in accordance with paragraph 2 matches a unique product identifier included in the registry referred to in Article 12(1).~~

~~The release for free circulation shall not be deemed to be proof of compliance with Union law.~~

4. ~~Where information included in the product passport is also stored in the registry referred to in Article 12(1), the Commission may, specify, in the delegated acts adopted pursuant to Article 4, that customs authorities shall, in addition to the verification referred to in paragraph 3 of this Article, verify consistency between the information stored in the registry and the customs declaration before allowing the release for free circulation. In such case, the Commission shall take into account at least the following criteria:~~

~~(a) — the need to improve compliance of products placed on the Union market with ecodesign requirements;~~

~~(b) — the need to avoid disproportionate burden for customs authorities.~~

~~Where customs authorities establish further to the verification laid down in this paragraph that there are discrepancies between the information stored in the registry and the customs declaration, customs authorities shall refuse the release of that product for free circulation. Customs authorities may take any other actions they deem appropriate in accordance with market surveillance legislation and customs legislation, and also registering the refusal in the registry referred to in Article 12(1) and notifying competent national authorities of the refusal. The release for free circulation shall not be deemed to be proof of conformity with Union law.~~

- ~~5. The control verification referred to in paragraphs 3 and 4 shall take place electronically and automatically via the EU Single Window Environment for Customs.~~
- ~~6. Customs authorities may retrieve and use the information included in the product passport and the registry referred to in Article 12(1) for carrying out their duties pursuant to Union legislation, including for risk management in accordance with Articles 46 and 47 of Regulation (EU) No 952/2013.~~

~~6a — This Article is without prejudice to any other Union legislation, in particular the Union Customs Code and its Articles 46, 47 and 134 and Chapter VII of Regulation (EU) 2019/1020 on market surveillance and compliance of products.~~

## Chapter IV - Labels

### *Article 14* *Labels*

1. Where the information requirements referred in Article 7(1) specify that information shall be included in a label pursuant to Article 7(6), point (d-c), the ~~delegated~~ **implementing** **delegated** acts adopted pursuant to Article 4 shall specify:
  - (a) the content of the label;
  - (b) the layout of the label taking account visibility and legibility;



- (c) the manner in which the label shall be displayed to customers including in case of distance selling, taking into account the requirements set out in Article 26 and the implications for the relevant economic operators;
- (d) ~~where appropriate~~ **where needed**, electronic means for generating labels.
2. Where an information requirement entails the inclusion in a label of the class of performance of a product as referred to in Article 7(4), the layout of the label referred to in paragraph 1, point (b), shall enable customers to easily compare product performance in relation to the relevant product parameter and to choose better performing products.
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 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**.
4. When establishing the information requirements referred to in paragraph 1, the Commission shall, where appropriate, require the label to include data carriers or other means to allow customers to access additional information on the product, including means allowing access to the product passport ~~referred to in Article 8~~.
5. The Commission ~~may~~ **shall** adopt implementing acts establishing common requirements for the layout of the labels required pursuant to Article 7(6), point (d-c).

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

*Article 15*  
*Mimicking labels*

**Products shall not be placed on the market or put into service if they display labels which, by mimicking the labels provided for in Article 14, are likely to mislead or confuse customers.**

**~~Where products are not required to have a label in accordance with delegated implementing acts adopted pursuant to Article 4 do not require products to have a label, or where products are not covered by delegated implementing acts adopted pursuant to Article 4, those products may shall not be placed on the market or put into service if they supply or display labels which, by mimicking the labels provided for in Article 14, are likely to mislead or confuse customers with respect to the labels provided for in Article 14.~~**

## **Chapter V - Prioritisation, planning and consultation**

### *Article 16*

#### *Prioritisation and planning*

1. When prioritising products to be covered by ecodesign requirements ~~in accordance with this Regulation~~, the Commission shall **analyse** ~~take into account their~~ **the** potential contribution **of those products** to achieving Union climate, environmental and energy efficiency objectives; **and to fostering the Union economic resilience and competitiveness**, as well as **taking into account at least** the following criteria:
  - (a) the potential for improving the product aspects listed in Article 5(1) without entailing disproportionate costs, taking into account in particular:
    - (i) the absence or insufficiency of Union law or failure of market forces or selfregulation measures adopted in accordance with Article 18 to address the objective properly; and
    - (ii) the disparity in the performance of products available on the market with equivalent functionality in relation to the product aspects listed in Article 5(1);
  - (b) the volume of sales and trade of the product within the Union;
  - (c) the distribution of the environmental impacts, energy use and waste generation across the value chain, ~~in particular whether they take place within the Union;~~

- (d) the need to regularly review and adapt delegated **implementing delegated** acts adopted pursuant to Article 4 in light of technological and market developments **also reflecting societal changes and trends**.

**1a. When prioritising aspects to be covered by a horizontal requirements in accordance with this Regulation, the Commission shall also take into consideration the added value in having horizontal requirements imposed on a range of products and product groups.**

2. **Based on the analysis referred to in paragraph 1 and 1.a. of this Article, the** The Commission shall, **by [12 3 months after the entry into force of this Regulation],** adopt **an implementing act establishing** and regularly update a working plan, covering a period of at least 3 years, setting out an **indicative** list of product groups **which will be considered priorities** for ~~which it intends to establish~~ **the establishment of** ecodesign requirements in accordance with this Regulation **and regularly update it**. That **indicative** list shall include products aspects referred to in Article 5(1) **which will be considered priorities for the establishment of** for which the Commission intends to adopt horizontal ecodesign requirements ~~established pursuant to~~ **in accordance with** Article 5(2), second subparagraph. **The indicative list shall also indicate which products may be considered for such horizontal requirements.**

**That implementing act shall be adopted in accordance with the examination procedure referred to in Article 67(3).**

**~~By [2 years 12 months after the entry into force of this Regulation]], at the latest, the Commission shall adopt the working plan. Before the end of the covered period, the Commission shall update the working plan, unless it duly justifies to the Ecodesign Forum and the Ecodesign Expert Group the reasons for not updating the working plan in the covered period, and sets the date of the next update.~~**

~~When~~ **Before** adopting or updating the working plan referred to in the first subparagraph **referred to in the first subparagraph**, the Commission shall ~~take into account the criteria set out in paragraph 1 of this Article and shall~~ **take into account the criteria set out in paragraph 1 of this Article and** **shall** consult the Ecodesign Forum referred to in Article 17 **and the Ecodesign Expert Group referred to in Article 17a.**

**3. The Commission shall inform the European Parliament and the Council annually of the progress made in the implementation of the working plan. In the case of delays in the implementation of the working plan, the Commission shall give an explanation of the main causes of the delays and how it intends to ensure progress in the implementation.**

*Article 17*

*Ecodesign Forum*

The Commission shall establish an expert group referred to as the Ecodesign Forum with ~~ensure that when it conducts its activities, it observes a balanced participation of experts~~ designated by Member States' representatives and of all interested parties involved with the product or product group in question, such as industry, including SMEs and craft industry, trade unions, traders, retailers, importers, environmental protection groups, **actors involved in circular economy activities, European Standardisation Organisations** and consumer organisations (~~"Ecodesign Forum"~~). These parties The Ecodesign Forum shall contribute in particular to preparing ecodesign requirements, examining the effectiveness of the established market surveillance mechanisms and assessing self-regulation measures and preparing developing in its early preparation implementing acts on prohibitions of destruction of unsold consumer products.

To that end, the Commission shall ~~establish an expert group, in which those parties shall meet, referred to as the 'Ecodesign Forum'.~~

Article 17a

Ecodesign Expert Group

**1. The Commission shall establish an expert group composed of experts designated by the Member States ('Ecodesign Expert Group').**

The Commission shall consult the Ecodesign Expert Group at least on:

- a) setting priorities and planning,
- b) ~~developing ecodesign requirements, and assessing and~~ b) developing ecodesign requirements,
- e) evaluating self-regulation measures pursuant to Article 18,

~~d) — c) — developing priorities as regards prohibitions of destruction of unsold consumer products pursuant to Article 20, and~~

~~(d) measures to enhance compliance with the Regulation, such as education and information campaigns, exchange of best practices between Member States, or support to SMEs.~~

~~e) — reviewing the effectiveness of the market surveillance mechanisms in place.~~

**2. The consultation with the Ecodesign Expert Group under Article 17a shall take place after the consultation pursuant to Article 17. The consultation referred to in Article 66(4) shall at least include consultation with the Expert Group.**

**The Commission shall take into account the views of the Ecodesign Expert Group.**

**The Commission shall regularly, at least every 6 months, inform the Ecodesign Expert Group on its progress on actions presented in the working plans and on the work of the Ecodesign Forum.**

**[The members of the Ecodesign Expert Group shall receive the invitation to the meeting and the draft agenda not less than 30 calendar days before the meeting. They shall receive the draft delegated acts and any other relevant documents sufficiently in advance of the meeting of the Expert Group and not less than 14 calendar days before the date of the meeting. In urgent or exceptional cases, this time limit may be reduced to 5 calendar days before the date of the meeting.]**

## *Article 18*

### *Self-regulation measures*

1. ~~Two or more economic~~ **Economic** operators may submit **to the Commission** a self-regulation measure establishing ecodesign requirements for products ~~to the Commission as an alternative to a delegated act adopted pursuant to Article 4~~ **not falling within the scope of a delegated implementing delegated act adopted pursuant to Article 4**. Those operators shall provide evidence that the criteria referred to in paragraph 3, points (a) to (e), are fulfilled. With respect to paragraph ~~32~~, point ~~(ae)~~, that evidence shall consist of a structured technical, environmental and economic analysis, justifying the ecodesign requirements and objectives of the

selfregulation measure, and assessing the impacts of the ecodesign requirements set in that selfregulation measure.

2. The **submitted** self-regulation measure shall contain the following information:
- (a) a list of the economic operators that are signatories to the self-regulation measure;
  - (b) the ecodesign requirements applicable to products covered by the self-regulation measure;
  - (c) a detailed, transparent and objective monitoring plan, with clearly identified responsibilities for industry and independent inspectors, including the criteria set out in point 6 of Annex VII;
  - (d) rules on information to be reported by signatories and on testing and inspections- **and;**
  - (e) **an explanatory note explaining how the submitted self-regulation measure would meet the objectives of this Regulation more quickly or at lesser expense than mandatory requirements under Union law, supported by evidence.**

The information referred to in this paragraph shall be kept up-to-date and be available on a publicly accessible website.

3. The Commission shall assess **the submitted** ~~the proposed~~ self-regulation measure, and, where necessary, shall seek scientific advice from Union decentralised agencies. **In the assessment the Commission** ~~On the basis of that assessment, it shall~~ **verify whether** ~~establish whether it is a valid alternative to a delegated act adopted pursuant to Article 4 where~~ the following criteria are fulfilled:

- (a) the self-regulation measure contributes to improving the environmental sustainability of products and ensuring the free movement in the internal market **more** quickly or at a lesser expense than **would** a delegated **implementingdelegated** act adopted pursuant to Article 4; **and consists of product requirements that are necessary to achieve the objectives of this Regulation;**

**(aa) the self-regulation measure is submitted by at least two economic operators;**

- (b) the market share in terms of volume of the signatories to the self-regulation measure in relation to the products covered by that measure is at least 80 % of units placed on the market or put into service;
- (c) the self-regulation measure complies with the criteria set out in Annex VII;
- (d) ~~the product covered by the self-regulation measure does not fall within the scope of a delegated act adopted pursuant to Article 4;~~
- (e) the self-regulation measure is in line with Union legislation **law** and international trade commitments of the Union.
- (f) **the independent inspectors referred to in point (c) of paragraph 2 have been selected and properly empowered as regards the self-regulation measure in accordance with Annex VII (6).**
- (g) **the self-regulation measure does not contain a label that can be confused with the Ecodesign label or the Energy label.**

**~~The Commission may, if appropriate given the market structure for the product(s) in question, adjust the percentage provided in point b) downwards if the 80 % threshold results in the exclusion of or a disadvantage to SMEs.~~**

**The Commission shall during the assessment consult the Ecodesign Forum and the Ecodesign Expert Group, in said order, on the submitted self-regulation measure.**

The Commission shall adopt an implementing act containing a list of self-regulation measures **which fulfil the criteria of this paragraph** ~~established as valid alternatives to a delegated act adopted pursuant to Article 4.~~ That implementing act shall be adopted in accordance with the **examination** ~~advisory~~ procedure referred to in Article 67(32).

4. The Commission may at any point in time request the signatories of a self-regulation measure **listed in an implementing act adopted pursuant to paragraph 3, third subparagraph,** to submit a revised and updated version of that measure in view of relevant market or technological developments within the product group concerned or where it has reason to believe that the criteria set out in paragraph 3 are no longer fulfilled. **The Commission shall**

**set a deadline, appropriate for the product group in question, for the submission of such a revised and updated version.**

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 **and freely** accessible 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 selfregulation measure. **The list shall be updated in accordance with the examination procedure referred to in Article 67(3).**

#### *Article 19*

##### *Micro, small and medium-sized enterprises*

1. In the context of programmes from which SMEs can benefit, the Commission shall ~~take into account~~ **make sure there are** initiatives which help SMEs to integrate environmental sustainability ~~aspects~~ including energy efficiency in their value chain.
2. When adopting ~~delegated~~ **implementing delegated** acts pursuant to Article 4 the Commission shall, ~~where appropriate,~~ accompany those acts with guidelines **and digital tools** covering specificities of SMEs active in the product or product group sector affected for facilitating the application of this Regulation by SMEs. **The Commission shall provide specific support for SME's for the implementation of requirements regarding product passports.**
3. Member States shall take appropriate measures to help SMEs apply ecodesign requirements set out in ~~delegated~~ **implementing delegated** acts adopted pursuant to Article 4.



Those measures shall at least include ensuring the availability of one-stop shops or similar mechanisms to raise awareness and create networking opportunities for SMEs to adapt to requirements. **The Commission shall may provide support in the implementation of those measures.**

In addition, without prejudice to applicable State aid rules, such measures may include:

- (a) financial support, including by giving fiscal advantages and providing physical and digital infrastructure investments;
- (b) access to finance;
- (c) specialised management and staff training;
- (d) organisational and technical assistance.

## Chapter VI - Destruction of unsold consumer products

### SECTION I – GENERAL

#### *Article 20aa General principle to prevent discarding*

Economic operators shall take necessary measures which are technically feasible and economically viable can reasonably be expected to prevent the need to discard unsold consumer products that are fit for use.

#### *Article 20a Policy of management of unsold consumer products*

An economic operator that repeatedly repeatedly discards unsold consumer products, or has unsold consumer products discarded on their behalf or any person that has gained mutual possession, shall set up:

a) — A policy for minimizing waste generation of unsold consumer products and promoting and supporting sustainable production and consumption models

b) — A a policy limiting preventing the number destruction of unsold consumer products and waste generation of unsold consumer products, including an implementation strategy. Such economic operators shall also provide a description of the status of the implementation and results achieved by the policy, updated on a yearly basis.

The information referred to above shall be disclosed at least on an easily accessible page of the economic operators' website.

Economic operators that are subject to the obligation to publish the sustainability reporting in their management report pursuant to Articles 19a or 29a of Directive 2013/34/EU may include the information referred to above in that sustainability reporting [, provided such information is covered by the sustainability reporting standards adopted pursuant to Article 29b of that Directive].

This article shall not apply to small and microenterprises.

### SECTION 2 – TRANSPARENCY

#### *Article 20*

**Disclosure of information on ~~Destruction of~~ unsold consumer products**

1. An economic operator, which is not an SME, that discards unsold consumer products directly, or on behalf of another economic operator or has unsold consumer products discarded on their behalf or any person that has gained mutual possession, shall disclose:
  - (a) the number and weight amount (in tons) of unsold consumer products discarded per year, differentiated per type or category of products;
  - (b) the reasons for the discarding of products;
  - (c) the proportion of the delivery of discarded products, whether directly or through a third party, to each of the following activities: preparing for re-use, remanufacturing, recycling, other recovery, for example, energy recovery and disposal operations in accordance with the waste hierarchy as defined by Article 4 of Directive 2008/98/EC .

**Unsold consumer products that have become non-compliant with national or EU legislation after being placed on the market or put into service due to the coming into force of new or changed legislation, are exempted from the requirements in paragraph 1.**

The economic operator shall disclose that information ~~on a freely~~, at least on an easily accessible page of their website. Economic operators that are subject to the obligation to publish the sustainability reporting in their management report pursuant to Articles 19a or 29a of Directive 2013/34/EU may include the information referred to above in that sustainability reporting [, provided such information is covered by the sustainability reporting standards adopted pursuant to Article 29b of that Directive].

The information shall be disclosed on an annual basis and shall cover the unsold consumer products discarded during the previous financial year. The information for each year shall be publically available for a period of 5 years. The first disclosure shall cover unsold consumer products ~~rejected-discarded~~ during the first full financial year of this regulation being in force.

The economic operator shall, upon request from a competent national authority, provide all the information and documentation necessary to demonstrate the delivery and reception of the products as disclosed pursuant to paragraph 1(c). Such information and documentation shall be provided in paper or electronic form within 30 days of receipt of the request.

- 1a. The obligation in paragraph 1 of this Article shall not apply to small and micro enterprises. However, Commission shall be empowered to adopt implementing acts to specify that a specific SME is small or microenterprises, are to comply with the reporting obligation referred to in paragraph 1, in any of the following situations:
- (i) where, for medium-sized enterprises, there is sufficient evidence that they account for a substantial proportion-number of unsold consumer products being destroyed discarded; or
  - (ii) where, for microenterprises or small enterprises or medium-sized enterprises, there is sufficient evidence that, by handling unsold consumer products directly, or on behalf of one or several economic operators, they allow such economic operators, subject to the obligation referred to in paragraph 1, to circumvent it.
2. The Commission shall may adopt implementing acts setting out the details and format, including the delimitation of product types or categories and how the information is to be verified, with consideration given to the need to protect sensitive information and trade secrets, for the disclosure of the information referred to in paragraph 1 by economic operators not disclosing them in their management report as referred to in paragraph 1, fourth subparagraph.

The first implementing act shall be adopted no later than [OJ note: 6 12 months after entry into force of this regulation].

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 implementing 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, setting out the prohibition of destroying unsold consumer products by specifying:

(ia) the type of unsold consumer products for which economic operators are prohibited to destroy unsold consumer products in the Union,

(iib) the exemptions applicable to this prohibition of unsold consumer products

(iiic) the reporting obligation of the economic operators on the compliance with this prohibition of unsold consumer products, as well as on the compliance with the exemptions if applicable.

(d) the implementing date, and where appropriate, any staged or transitional measure or period regarding the application of the prohibition of destroying unsold consumer products shall be fixed taking account, in particular, of possible impacts on SMEs or on specific product groups manufactured primarily by SMEs.

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

3a. The implementing act referred to in paragraph 3 shall meet the following criteria respect the following principles:

(a) the destruction of unsold the considered type of unsold consumer products falling within is prevalent, without reasonable justifications,

(b) certain product group has significant the prohibition of destroying the considered type of unsold consumer products is likely to reduce the negative environmental impact, without causing disproportional administrative burdens.

3.b. The prohibition referred to in paragraph 3 shall not apply to SMEs, except:

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

ii ) for microenterprises, small enterprises or medium-sized enterprises, there is sufficient (  
b

evidence that, by discarding unsold consumer products directly, or on behalf of one or several economic operators, they allow such economic operators, subject to the obligation referred to in paragraph 3 they are used to circumvent it the prohibition referred to paragraph 3.

**3.c.** The exemptions referred to in point (c) of paragraph 1 shall respect the following principles:

**(a)** The exemption shall apply to all or part of the prohibition.

**(b)** The exemption shall be adapted to the specificities of the type of unsold consumer products

**(c)** where appropriate, the exemption shall be temporary or permanent

**(d)** The exemption shall allow recycling or energy recovery as appropriate, in the event that any preparation for re-use is not appropriate.

The exemptions shall not constitute a means of arbitrary discrimination and shall be based on one of the following justifications:

**(i)** health and safety concerns;

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

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

**(iv)** refusal of products for donation, preparing for re-use or remanufacturing;

**(v)** non-compliant products, counterfeit products, or products rendered unsaleable due to infringement of intellectual property rights.

**4.** When prioritising unsold consumer products to be covered by preparing a delegated an implementing act referred adopted pursuant to in paragraph 3, the Commission shall:

**(a)** assess the prevalence and environmental impact of the destruction of specific consumer products, including the resource and energy waste resulting from such destruction;

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

(c) — consult the Ecodesign Forum referred to in Article 17 ~~and the Ecodesign Expert Group referred to in Article 17a~~, and take account of ~~their~~ its views on ~~the prioritisation of products subject to possible~~ prohibitions of destruction of unsold consumer products referred to in paragraph 3

4.a. ~~When preparing a draft implementing act referred to in paragraph 3, the Commission shall:~~

~~(ca) carry out an impact assessment based on best available evidence and analyses; and on additional studies as necessary;~~

~~(db) carry out appropriate consultation with stakeholders, the Ecodesign Forum referred to in Article 17a and the Ecodesign Expert Group referred to in Article 17a;~~

5. Where ~~When~~ unsold consumer products are destroyed under an exemption referred to in paragraph 3, second subparagraph, the responsible economic operator shall disclose ~~at least~~ on a freely ~~an easily~~ accessible ~~page of their~~ website, ~~if such exists~~ or otherwise make publicly available:

(a) — the number of unsold consumer products ~~units~~ destroyed;

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

(c) — the ~~proportion of the~~ delivery of the products destroyed to ~~each of the following activities: recycling, other recovery, e.g.~~ energy recovery and disposal operations in accordance with the ~~exemption and the~~ waste hierarchy as defined by Article 4 of Directive 2008/98/EC.

The details and format for the disclosure of information ~~shall be~~ provided in the implementing act adopted pursuant to paragraph ~~23~~, 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~~

**6. — When unsold consumer products are destroyed under an exemption referred to in paragraph 3, the economic operator shall, upon request from a competent national authority, provide all the information and documentation necessary to demonstrate**

**(i) — the applicability of an exemption from a prohibition to destroy, and**

**(ii) — the delivery and reception of the products as disclosed pursuant to paragraph 5(c)**

**Such information and documentation shall be provided within [30 days] of receipt of a request by a competent national authority.**

### **SECTION 3 - PROHIBITION**

#### **Article 20b**

**Prohibition against the destruction of unsold consumer products that are apparel or clothing accessories**



- 1. From [24 months after entry into force of this Regulation], destruction of unsold consumer products that are apparel or clothing accessories, listed in Chapters 61 and 62 of the TARIC established in Council Regulation (EEC) No 2658/87<sup>62</sup>, is prohibited.**
- 2. The Commission shall [OJ note: 12 months after entry into force of this Regulation] adopt implementing acts specifying the relevant exemptions from the prohibition against destruction of unsold consumer products that are apparel or clothing accessories based on the principles laid down in Article 20c paragraph 4 and on the justifications laid down in Article 20c paragraph 5.**
- 3. When unsold consumer products that are apparel or clothing accessories are destroyed under an exemption referred to in paragraph 2, the responsible economic operator shall disclose information as laid down in Article 20c paragraph 6.**

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<sup>62</sup> Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

4. When unsold consumer products that are apparel or clothing accessories are destroyed under an exemption referred to in paragraph 2, the economic operator shall, upon request from a competent national authority, provide all the information and documentation necessary to demonstrate:

(i) the applicability of an exemption from the prohibition against destruction, and

(ii) the delivery and reception of the products as disclosed pursuant to paragraph 3(c)

Such information and documentation shall be provided within 30 days of receipt of a request by a competent national authority. 5. Paragraph 1 shall not apply to small or microenterprises.

5. The Commission shall be empowered to adopt implementing acts to specify that the prohibition against destruction of unsold consumer products that are apparel or clothing accessories shall apply to small and microenterprises, where the Commission finds that there is sufficient evidence that they:

a) account for a substantial number of unsold consumer products that are apparel or clothing accessories being destroyed; or

b) by destroying unsold consumer products that are apparel or clothing accessories directly, or on behalf of one or several economic operators, they allow such economic operators subject to the obligation referred to in paragraph 1, to circumvent it.

6. Implementing acts referred to in this article shall be adopted in accordance with the examination procedure referred to in Article 67(3).

#### *Article 20c*

#### *Empowerment to the Commission to adopt implementing acts setting out prohibitions against destruction of unsold consumer products*

1. Notwithstanding Article 20b, the Commission shall be empowered to adopt implementing acts setting out prohibitions against destruction of unsold consumer products by economic operators taking into account when the following criteria are fulfilled:

(a) destruction of the type of unsold consumer products has a negative environmental impact;

(b) a prohibition would not lead to significant disproportionate administrative burden.

**2. The implementing acts shall specify:**

(a) the type of unsold consumer products that shall fall into the scope of the act, ensuring products are not treated in a discriminatory manner;

(b) the applicable exemptions;

(c) the details and format of the reporting obligation of economic operators when destroying unsold consumer products under an exemption;

(d) the date of application, and where appropriate, any tiered or transitional measures or periods. Such dates shall be fixed taking account, in particular, possible impacts on SMEs.

**3. When preparing an implementing act referred to in paragraph 1, the Commission shall:**

(a) carry out an impact assessment based on best available evidence and analyses, and on additional studies as necessary;

(b) carry out appropriate consultation with stakeholders, the Ecodesign Forum referred to in Article 17 and the Ecodesign Expert Group referred to in Article 17a;

**4. Exemptions from the prohibition shall respect the following principles:**

(a) The exemption shall apply to all or part of the prohibition;

(b) The exemption shall be adapted to the specificities of the type of unsold consumer products in the scope;

(c) The exemption shall apply for a limited or unlimited time.

**5. The exemptions shall not constitute a means of arbitrary discrimination and shall be based on one of the following justifications:**

- (a) health and safety reasons;
- (b) the products are damaged as a result of their handling or detected after a product has been returned by a consumer, despite the measures taken in accordance with Article 20a;
- (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;
- (e) products which are illegal under national or Union law including non-compliant products, counterfeit products, or products rendered unsellable due to infringement of intellectual property rights;
- (f) products exceeding their expiry date;
- (g) products for which destruction is the option with the least negative environmental impact

6. When unsold consumer products are destroyed under an exemption referred to in paragraph 4 and 5, the responsible economic operator shall disclose:

- (a) the number and weight of unsold consumer products units destroyed;
- (b) the reasons for their destruction, referring to the applicable exemption;
- (c) the proportion of the delivery of the products destroyed to each of the following activities: recycling, other recovery, e.g. energy recovery and disposal operations in accordance with the exemption and the waste hierarchy as defined by Article 4 of Directive 2008/98/EC.

The information referred to above shall be disclosed at least on an easily accessible page of the economic operator's website. Economic operators that are subject to the obligation to publish the sustainability reporting in their management report pursuant to Articles 19a or 29a of Directive 2013/34/EU may include the information referred to above in that sustainability reporting ], provided such information is covered by the sustainability reporting standards adopted pursuant to Article 29b of that Directive].

7. The details and format for the disclosure of information provided in the implementing act adopted pursuant to Article 20 paragraph 2 shall apply to the information to be disclosed pursuant to paragraph 6, unless the implementing act adopted pursuant to paragraph 1 provides otherwise.

8. When unsold consumer products are destroyed under an exemption referred to in paragraphs 4 and 5, the economic operator shall, upon request from a competent national authority, provide all the information and documentation necessary to demonstrate

(i) the applicability of an exemption from a prohibition against destruction, and

(ii) the delivery and reception of the products as disclosed pursuant to paragraph 6(c)

Such information and documentation shall be provided within [30 days] of receipt of a request by a competent national authority.

9. This Article shall not apply to small and microenterprises. However, the Commission shall be empowered to adopt implementing acts to specify or may, in the implementing acts adopted pursuant to paragraph 1, provide that the prohibition against destruction of unsold consumer products referred to in paragraph 1 shall apply to small or microenterprises:

(a) where there is sufficient evidence that they account for a substantial number of unsold consumer products being destroyed;

(b) where there is sufficient evidence that by discarding unsold consumer products directly or indirectly on behalf of one or several economic operators, they allow such economic operators to circumvent the prohibition to destroy unsold consumer products referred to in the implementing act.

10. Implementing acts according to this Article shall be adopted in accordance with the examination procedure referred to in Article 67(3).

#### **Article 20d**

**Prioritisation of unsold consumer products for setting a prohibition against destruction**

**1. The Commission shall, no later than [OJ Office: 36 months after entry into force of this Regulation] and once every 12 months thereafter, publish an indicative list of products groups for which it intends to carry out impact assessments under Article 20c, taking into account:**

- (a) the prevalence of the destruction of specific consumer products;**
- (b) comparative environmental impact resulting from such destruction;**
- (c) the information available including the information disclosed by economic operators pursuant to Article 20.**

**2. The Commission shall, when carrying out an impact assessment as referred to in Article 5(4), assess whether a prohibition against destruction of the relevant product group should be established, pursuant to Article 20c.]**

## **Chapter VII - Obligations of economic operators**

### *Article 21*

#### *Obligations of manufacturers*

1. When placing products covered by a delegated **implementing delegated** act adopted pursuant to Article 4 on the market or putting them into service, manufacturers shall ensure that :
  - (a) those products have been designed and manufactured in accordance with the requirements set out in Article 6 the delegated **implementing delegated** acts adopted pursuant to Article 4;
  - (b) those products are accompanied by the information required by the Article 7 and the delegated **implementing delegated** acts adopted pursuant to Article 4 **and**;

(c) a product passport is available in accordance with Article 8 and the ~~delegated~~ **implementing delegated** acts adopted pursuant to Article 4.

2. Before placing a product covered by a ~~delegated~~ **implementing delegated** act adopted pursuant to Article 4 on the market or putting it into service, manufacturers shall carry out the conformity assessment procedure specified in the ~~delegated~~ **implementing delegated** acts adopted pursuant to Article 4 and draw up the required technical documentation, or have it carried out on their behalf.

Where compliance of a product covered by a ~~delegated~~ **implementing delegated** act adopted pursuant to Article 4 with the applicable requirements has been demonstrated by that procedure, manufacturers shall draw up an EU declaration of conformity in accordance with Article 37 and affix the CE marking in accordance with Article 39. However, where the Commission has specified alternative rules pursuant to Article 4, third subparagraph, point (cf), the manufacturer shall ~~draw up a conformity declaration and~~ affix conformity marking in accordance with those rules.

3. Manufacturers shall keep the technical documentation and the EU declaration of conformity for 10 years after ~~the last item of the~~ **a product model covered by a** ~~delegated~~ **implementing delegated** **act adopted pursuant to Article 4** has been placed on the market or put into service **unless a different period has been specified in that** ~~delegated~~ **implementing delegated** **act**. ~~Delegated acts adopted pursuant to Article 4 may specify a period longer or shorter than 10 years in order to take account of the nature of the products or requirements concerned.~~
4. Manufacturers shall ensure that procedures are in place **for products covered by a** ~~delegated~~ **implementing delegated** **act adopted pursuant to Article 4 which are part of a** ~~for~~ series production to remain in conformity with the applicable requirements. Changes in the production process, product design or in characteristics, as well as changes in harmonised standards, common specifications or other technical specifications by reference to which product conformity is declared or by application of which its conformity is verified, shall be adequately taken into account by manufacturers and, in case they found that the product's conformity is affected, manufacturers shall carry out a re-assessment in accordance with the **applicable** conformity assessment procedure ~~specified in the delegated acts adopted pursuant to Article 4~~, or have it carried out on their behalf.

5. Manufacturers shall ensure that their products **covered by a delegated implementing delegated act adopted pursuant to Article 4** bear a type, batch or serial number or other element allowing their identification, or, where the size or nature of the product does not allow so, that the required information is provided on the packaging or in a document accompanying the product.
6. Manufacturers shall ~~indicate, on their~~ **for** products **covered by a delegated implementing delegated act adopted pursuant to Article 4, indicate** their name, registered trade name or registered trade mark, ~~and the postal address and, where available, electronic means of communication, where they can be contacted:~~
- (a) **on the public part of the product passport, when applicable, where available, and**
  - (b) **on the product** or, where this is not possible, on its packaging, **or** in a document accompanying the product ~~or, where available, in a product passport.~~

The address shall indicate a single point where the manufacturer can be contacted. The contact details shall be clear, understandable and legible.

7. Manufacturers shall ensure that ~~that~~ a product covered by a delegated **implementing delegated** act adopted pursuant to Article 4 is accompanied by instructions that enable **customers and other relevant actors** ~~consumers and other end-users~~ to safely assemble, install, operate, store, maintain, repair and dispose of the product in a language that can be easily understood **by customers** ~~consumers and other end-users~~, as determined by the Member State concerned. Such instructions shall be clear, understandable and legible and include at least the information **set out in Article 7(2), point (b), point (ii), and as** specified in the delegated **implementing delegated** acts adopted pursuant to Article 4 ~~and pursuant to Article 7(2)(b), point (ii).~~
8. Manufacturers who consider or have reason to believe that a product covered by a delegated **implementing delegated** act adopted pursuant to Article 4 that they have ~~been~~ placed on the market or put into service is not in conformity with the requirements set out in ~~those that~~ **delegated implementing delegated** acts shall immediately take the necessary corrective ~~measures~~ **action to bring that product into conformity**, ~~to withdraw it that~~ product or recall it, **if as** appropriate.



Manufacturers shall immediately inform the market surveillance authorities of the Member States in which they made the product available or put it into service of the suspected noncompliance and of any corrective ~~measures~~ action taken.

9. Manufacturers shall, for products covered by a delegated ~~implementing delegated act~~ adopted pursuant to Article 4, further to a reasoned request from a competent national authority, provide all the information and documentation necessary to demonstrate the conformity of ~~the~~ those products, including the technical documentation, in a language that can be easily understood by that authority. That information and documentation shall be provided in either paper or electronic form. ~~The relevant documents shall be made available~~ within 10 days of receipt of a request by a competent national authority.

Manufacturers shall cooperate with the competent national authority, on any action taken to remedy any case of non-compliance with the requirements set out in a ~~delegated~~ implementing delegated act adopted pursuant to Article 4 by which the product in question is covered.

## *Article 22*

### *Authorised representatives*

1. A manufacturer may, by a written mandate, appoint an authorised representative.

The obligations laid down in Article 21(1) and the drawing up of technical documentation shall not form part of the authorised representative's mandate.

2. An authorised representative shall perform the tasks specified in the mandate received from the manufacturer. The mandate shall allow the authorised representative to do at least the following:
- (a) keep the EU declaration of conformity and technical documentation at the disposal of the national market surveillance authorities for 10 years after the last item of a product model covered by a ~~delegated~~ implementing act adopted pursuant to Article 4 has been placed on the market or put into service unless a different period has been specified in that ~~delegated~~ implementing delegated act;

- (b) cooperate with the competent national authorities, at their request, on any measures taken with regard to non-compliances of the product covered by the authorised representative's mandate;
- (c) further to a reasoned request from a competent national authority, provide that authority with all the information and documentation necessary to demonstrate the conformity of a product in a language that can be easily understood by that authority;
- (d) further to a request from a competent national authority, ~~make available~~ **provide** relevant documents within 10 days of the receipt of such a request **and**;
- (e) terminate the mandate if the manufacturer acts contrary to its obligations under this Regulation ~~and the delegated act adopted pursuant to Article 4.~~

### *Article 23*

#### *Obligations of importers*

1. Importers shall, ~~with regard to only place on the market~~ products covered by a ~~delegated~~ **implementing delegated** act adopted pursuant to Article 4, ~~only place on the market products~~ that comply with the requirements set out in the applicable ~~delegated~~ **implementing delegated** acts.
2. Before placing a product covered by a ~~delegated~~ **implementing delegated** act adopted pursuant to Article 4 on the market, importers shall ensure that:
  - (a) the appropriate conformity assessment procedure has been carried out by the manufacturer and that the manufacturer has drawn up the technical documentation;
  - (b) products are accompanied by the information required by ~~the Article 7 and the delegated~~ **implementing delegated** acts adopted pursuant to Article 4;
  - (c) a product passport is available in accordance with ~~Article 8 and the delegated~~ **implementing delegated** acts adopted pursuant to Article 4, **and**;
  - (d) **that the manufacturer has complied with the requirements set out in Article 21(5) and (6).**

The importer shall further ensure that ~~the a~~ product **covered by a delegated implementing delegated act adopted pursuant to Article 4** bears the required CE marking referred to in Articles 38 **and 39**, or the alternative conformity marking as laid down in a ~~delegated~~ **implementing delegated** act adopted pursuant to Article 4, third subparagraph, point (f), and is accompanied by the required documents, and that the manufacturer has complied with the requirements set out in Article 21(5) and (6).

Where importers consider or have reason to believe that a product is not in conformity with the requirements set out in the applicable ~~delegated~~ **implementing delegated** acts adopted pursuant to Article 4, they shall not place the product on the market or put it into service until it has been brought into conformity.

3. Importers shall indicate on ~~the a~~ product **for products covered by an delegated implementing delegated act adopted pursuant to Article 4, indicate** their name, registered trade name or registered trade mark, ~~and the~~ postal address and, ~~where available~~, electronic means of communication, where they can be contacted:
  - (a) **on the public part of the product passport, when applicable where available, and**
  - (b) **on the product** or, where this is not possible, on the packaging, **or** in a document accompanying the product ~~or, where available, in a product passport~~.

The contact details shall be clear, understandable and legible.

4. Importers shall ensure that ~~the a~~ product **covered by a delegated implementing delegated act adopted pursuant to Article 4** is accompanied by instructions that enable the **customer and other relevant actors** ~~consumer~~ to **safely** assemble, install, operate, store, maintain, repair and dispose of the product, in a language that can be easily understood **by customers** ~~consumers and other end-users~~, as determined by the Member State concerned. Such instructions shall be clear, understandable and legible and shall include at least the information **set out in Article 7(2), point (b), point (ii), as** specified in the ~~delegated~~ **implementing delegated** acts adopted pursuant to Article
5. Importers shall ensure that, while a product is under their responsibility, storage or transport conditions do not jeopardise its compliance with the requirements set out in a ~~delegated~~ **implementing delegated** act adopted pursuant to Article 4 by which it is covered.

6. Importers who consider or have reason to believe that a product covered by a ~~delegated~~ **implementing delegated** act adopted pursuant to Article 4, which they have placed on the market ~~or put into service~~, is not in conformity with the requirements set out in that ~~delegated~~ **implementing delegated** act shall immediately take the necessary corrective ~~measures~~ action ~~necessary to bring that product into conformity~~, to withdraw it that product or recall it, ~~if as~~ appropriate.

Importers shall immediately inform the market surveillance authorities of the Member States in which they made the product available of the suspected non-compliance and of any corrective ~~measures~~ action taken.

7. Importers shall, ~~for 10 years or the period specified by a delegated act adopted pursuant to Article 4~~, keep a copy of the EU declaration of conformity at the disposal of the market surveillance authorities and ensure that the technical documentation can be made available to those authorities, upon request, for 10 years after the last item of a product model covered by a delegated implementing delegated act adopted pursuant to Article 4 has been placed on the market or put into service, unless a different period has been specified in that delegated implementing delegated act.
8. Importers shall, further to a reasoned request from a competent national authority, provide it with all the information and documentation necessary to demonstrate the conformity of a product covered by a delegated implementing delegated act adopted pursuant to Article 4, including technical documentation, in a language that can be easily understood by that authority. That information and documentation shall be provided in ~~either~~ paper or electronic form. ~~The relevant documents shall be made available~~ within 10 days of receipt of a request by the competent national authority ~~of a Member State~~.

Importers shall cooperate with the competent national authority on any action taken to remedy any case of non-compliance with the requirements set out in a ~~delegated~~ **implementing delegated** act adopted pursuant to Article 4 by which the product in question is covered.

#### *Article 24*

#### *Obligations of distributors*

1. When making a product covered by a ~~delegated~~ **implementing delegated** act adopted pursuant to Article 4 available on the market, distributors shall act with due care in relation to the requirements set out in that act.
2. Before making a product covered by a ~~delegated~~ **implementing delegated** act adopted pursuant to Article 4 available on the market, distributors shall verify that ~~the following~~:
  - (a) the product bears the CE marking in accordance with Articles 38 and 39 or ~~alternative~~ **the** conformity marking adopted ~~pursuant to~~ **in accordance with** Article 4, third subparagraph, point (f), and, where relevant, is labelled or is linked to a product passport in accordance with that ~~delegated~~ **implementing delegated** acts;
  - (b) the product is accompanied by the required documents and by instructions, ~~to that~~ enable the ~~customer~~ **consumer** to **safely** assemble, install, operate, store, maintain, **repair** and dispose of the product, in a language that can be easily understood by ~~customers~~ **consumers and other end-users**, as determined by the Member State in which the product is to be made available on the market, and that such instructions are clear, understandable and legible and include at least the information set out in Article 7(2), point (b), point (ii), as ~~laid down~~ **specified** in the ~~delegated~~ **implementing delegated** act adopted pursuant to Article 4 **and**;
  - (c) the manufacturer and the importer have complied with the requirements set out in Article 21(5) and (6) and Article 23(3).
3. Where a distributor considers or has reason to believe that a product, before making it available on the market, or its manufacturer is not complying with the requirements set out in a ~~delegated~~ **implementing delegated** act adopted pursuant to Article 4, they shall not make the product available on the market until the product has been brought into conformity or the manufacturer complies.

Distributors shall ensure that, while a product is under their responsibility, storage or transport conditions do not jeopardise its compliance with the requirements set out in in the ~~delegated~~ **implementing delegated** act adopted pursuant to Article 4.

4. Distributors who consider or have reason to believe that a product which they have made available on the market is not in conformity with the requirements set out in a ~~delegated~~ **implementing delegated** act adopted pursuant to Article 4 shall make sure that the **necessary** corrective ~~measures~~ **action necessary to bring that product into conformity is taken**, to withdraw it or recall it, if as appropriate, are taken.

Distributors shall immediately inform the market surveillance authorities of the Member States in which they made the product available of the suspected non-compliance and of any corrective ~~measures~~ **action** taken.

5. Distributors shall, further to a reasoned request from a competent national authority, provide the authority with all the information and documentation to which they have access and that is relevant for demonstrating the conformity of a product. That information and documentation shall be provided in ~~either~~ paper or electronic form, **within 10 days of receipt of a request by a competent national authority**.

Distributors shall cooperate with that authority on any corrective action taken to remedy any case of non-compliance with a ~~delegated~~ **implementing delegated** act adopted pursuant to Article 4 by which the product in question is covered.

## *Article 25*

### *Obligations of dealers*

1. Dealers shall ensure that their **potential customers and** customers have access to any relevant information **accompanying the products, as** required by the ~~delegated~~ **implementing delegated** acts adopted pursuant to Article 4, including in case of distance selling.
2. Dealers shall ensure that the product passport is easily accessible to **potential customers and** customers, including in case of distance selling, as set out ~~specified~~ in Article 8(2), point (e), and **specified in the** ~~delegated~~ **implementing delegated** acts adopted pursuant to Article 4 by which the product is covered.
3. Dealers shall, **including in case of distance selling**:
  - (a) display to **potential customers and** customers, in a visible manner, ~~including for online distance selling~~, labels provided in accordance with Article 26(1), point (b)2) or

**26(1), point (c)(3);-and;**

- (b) make reference to the information included in labels provided in accordance with Article 26(**1, point (b)2**) or **26(1), point (c)(3)** in visual advertisements or in technical promotional material for a specific model, in accordance with ~~delegated~~ **implementing** **delegated** acts adopted pursuant to Article 4 by which the product is covered **and**;
- (c) not provide or display other labels, marks, symbols or inscriptions that are likely to mislead or confuse customers with respect to the information included on the label.

#### *Article 26*

##### *Obligations related to labels*

1. Where a ~~delegated~~ **implementing delegated** 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:
  - 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~~ **implementing delegated** act. **As an alternative to supplying the label with the product, delegated acts referred to in Article 4 may provide that it is sufficient for the economic operator to ensure that digital copies of the label are provided in the digital product passport/database, in accordance with that delegated act.;**
- ~~2. Where a delegated 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~~
- ~~3. Where a delegated 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~~

- c) ensure that its labels are accurate and shall, as part of the applicable conformity assessment procedure, produce technical documentation sufficient to enable the accuracy to be assessed.

~~4. Where a delegated 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:~~

**2. Where an ~~implementing delegated~~ act adopted pursuant to Article 4 requires products to have a label as referred to in Article 14, the economic operator making the product available or putting it into service shall:**

- a) make reference to the information included in the label, in visual advertisements or in technical promotional material for a specific model in accordance with the relevant delegated ~~implementing delegated~~ act adopted pursuant to Article 4;
- b) not provide or display other labels, marks, symbols or inscriptions that are likely to mislead or confuse customers with respect to the information included on the label.

#### *Article 27*

##### *Obligations of fulfilment service providers*

Fulfilment service providers shall ensure that, for products that they handle that are covered by a delegated ~~implementing delegated~~ act adopted pursuant to Article 4, the conditions during warehousing, packaging, addressing or dispatching, do not jeopardise the products' compliance with ~~the requirements set out in~~ that delegated ~~implementing delegated~~ act. **If no manufacturer, no importer and no authorized representative for the product they handle is established in the Union, fulfilment service providers shall perform the tasks describes in (EU) 2019/1020, Article 4 (3).**

#### *Article 28*

##### *Cases in which obligations of manufacturers apply to importers and distributors*

An importer or distributor shall be considered a manufacturer for the purposes of this Regulation ~~and shall be subject to the obligations of a manufacturer under Article 21,~~ where they:



- (1) place a product covered by a delegated **implementing delegated** act adopted pursuant to Article 4 on the market under their name or trademark or;
- (2) modify **such** a product already placed on the market ~~but not yet put into service~~ in a way that affects compliance with the requirements set out in delegated **implementing delegated** acts adopted pursuant to Article 4 by which the product is covered.

**This Article shall not apply to used products that undergo modifications that do not result in the products being considered new.**

#### *Article 29*

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

1. The cooperation referred to in Article 7(2) of Regulation (EU) 2019/1020 shall, with regard to **the providers of** online marketplaces and for the purposes of this Regulation, include in particular:
  - (a) cooperating to ensure effective market surveillance measures, including by abstaining from putting in place obstacles to such measures;
  - (b) informing the market surveillance authorities of any action taken **with regard to noncompliance or suspected non-compliance** concerning products covered by a ~~delegated~~ **implementing delegated** act adopted pursuant to Article 4;
  - (c) establishing a regular and structured exchange of information on ~~offers~~ **content** that ~~have~~ **has** been removed ~~on the basis of this Article~~ by online marketplaces **as referred to in paragraph 3**;

- (d) allowing online tools operated by market surveillance authorities to access their interfaces in order to identify non-compliant products and;
- (e) upon request of the market surveillance authorities, when online marketplaces, or online sellers have put in place technical obstacles to the extraction of data from their online interfaces, allowing those authorities to scrape such data for product compliance purposes based on the identification parameters provided by the requesting market surveillance authorities.

2. For the purpose of the requirements of ~~[Article 22(7)]~~ Article 31(1) of Regulation (EU) 2022/2065 ~~[the Digital Services Act]~~, online marketplaces shall design and organise their online interface in a way that enables dealers to fulfil their obligations set out in Article 25 of this Regulation and allows economic operators to fulfil their obligations under Article 30(1) of this Regulation.

The information shall ~~be able to~~ be provided for each product offered and displayed or otherwise made easily accessible ~~by~~ for customers on the product listing.

In particular, where ~~delegated~~ implementing delegated acts adopted pursuant to Article 4 require online visual advertising for certain products to be accompanied by online electronic information to be displayed on the display mechanism, online marketplaces shall enable dealers to show it. This obligation shall also apply to online search engines and other online platforms that provide online visual advertising for the products concerned.

3. As far as powers conferred by Member States in accordance with Article 14 of Regulation (EU) 2019/1020 are concerned, Member States shall confer on their market surveillance authorities the power, for all products covered by a relevant ~~delegated~~ implementing delegated act adopted pursuant to Article 4, to order an online marketplace to ~~remove act against one or more specific items of illegal~~ content referring to a non-compliant product, including by removing it. Such content shall be considered as illegal content within the meaning of Article 3, point (h) of Regulation (EU) 2022/2065. ~~from its online interface, disable access to it or display an explicit warning to end users when they access it.~~

Market surveillance authorities may, in accordance with Article 9 of Regulation (EU) 2022/2065, issue s~~Such orders shall comply with [Article 8(1)] of Regulation (EU) [the Digital Services Act].~~

4. ~~Online marketplaces shall take the necessary measures to receive and process the orders referred to in paragraph 2 in accordance with [Article 8] of Regulation (EU) .../... [the Digital Services Act].~~
5. Online marketplaces shall establish a single contact point allowing for direct communication with Member States' market surveillance authorities in relation to compliance with this Regulation ~~and the delegated acts adopted pursuant to Article 4.~~

This contact point may be the same contact point as the one referred to in [Article 20(1)] of Regulation (EU) .../... [the General Product Safety Regulation] or ~~[Article 10(1)]~~ Article 11(1) of Regulation (EU) 2022/2065 ~~[the Digital Services Act].~~

#### *Article 30*

##### *Information obligations of economic operators*

1. ~~Where products~~ When making a product covered by a delegated **implementing delegated act adopted pursuant to Article 4** are made available on the market ~~online or through other means of distance selling,~~ sales by the relevant economic operators, ~~the relevant product offer shall~~ ensure that the product offer clearly and visibly provides ~~at least the following information:~~
  - (a) the name, registered trade name or registered trade mark of the manufacturer, as well as the postal ~~or~~ and ~~electronic~~ email address where they can be contacted;
  - (b) in case the manufacturer is not established in the Union, the name, postal address, telephone number and email address of the economic operator established in the Union within the meaning of Article 4(2) of Regulation (EU) 2019/1020, and;
  - (c) information to identify the product, including its type and, ~~where available, batch or serial number and any other~~ a product identifier.
2. Economic operators shall, upon reasoned request, provide the market surveillance authorities with:

- (a) the name of any economic operator who has supplied them with a product falling within the scope of a delegated **implementing delegated** act adopted pursuant to Article 4;
- (b) any economic operator to whom they have supplied such products, as well as the quantities and exact models.

Economic operators shall be able to provide this information for 10 years after they have been supplied with the relevant products and for 10 years after they have supplied such products **unless a different period has been specified in that delegated implementing delegated act. That information shall be provided in paper or electronic form within 10 days of receipt of a request by the market surveillance authority.** ~~When adopting delegated acts pursuant to Article 4, the Commission may specify a period of more or less than 10 years to take account of the nature of the relevant products or requirements.~~

- 3. When requiring manufacturers, their authorised representatives or importers to make parts of the technical documentation related to the relevant product digitally available pursuant to Article 4, third subparagraph, point (a), the Commission shall take into account the following criteria:
  - (a) the need to facilitate the verification of compliance with the applicable requirements by market surveillance authorities;
  - (b) the need to avoid disproportionate administrative burden for economic operators, **in particular for SMEs, and;**
  - (c) **the need to protect the economic operators' trade secrets and intellectual property rights.**

The Commission shall specify the manner in which the relevant parts of the technical documentation ~~shall~~ **are to** be made available **in the relevant delegated implementing act.** ~~Where available, t~~ Technical documentation shall be made available through the product passport, **where available.**

~~Article 31~~ **Article 31**

*Monitoring and reporting of in-use data by obligations of economic operators*

~~1. When requiring manufacturers, their authorised representatives or importers to make available to the Commission, information on the quantities of a product covered by delegated acts adopted pursuant to Article 4, third subparagraph, point (b), the Commission shall take into account the following criteria:~~

~~(a) the availability of evidence on the market penetrations of the relevant product in order to facilitate the review of delegated acts adopted pursuant to Article 4 applicable to that product;~~

~~(b) the need to avoid disproportionate administrative burden for economic operators.~~

~~The Commission shall specify the period of time to which the information referred to in the first subparagraph shall relate. That information shall be differentiated per product model.~~

~~The Commission shall ensure that the resulting data is processed securely and in compliance with Union law.~~

~~The Commission shall specify in those delegated acts the means through which the relevant information shall be made available and its periodicity.~~

**1a. The Commission shall, as appropriate to the product group concerned, require products to measure and report in-use data in accordance with paragraph 2 and 3 when this is necessary to ensure energy-efficient usage of products or to develop new product ecodesign requirements;**

~~2. When requiring a product to be able to measure the energy it consumes or its performance in relation to other relevant product parameters referred to in Annex I while in use, pursuant to Article 4, third subparagraph, point (c), the Commission shall take into account the following criteria:~~

~~(a) the usefulness of in-use data for customers end-users to understand and manage the energy use or performance of the product;~~

- (b) the technical feasibility of recording in-use data and;
- (c) the need to avoid disproportionate administrative burden for economic operators, in particular for SMEs.
- (d) anonymisation of data, given the need to ensure privacy of data in line with the Regulation [GDPR].

Products covered by a requirement set pursuant to Article 4, third subparagraph, point (c), shall, when this is necessary and appropriate in line with the criteria in paragraph 2, record the resulting in-use data and make it visible to the customer end-user.

3- When requiring manufacturers, their authorised representatives or importers to collect, anonymise ~~or~~ and report to the Commission in-use data referred to in paragraph 2, pursuant to Article 4, third subparagraph, point (d), the Commission shall take into account the following criteria:

- (a) the usefulness of in-use data for the Commission when reviewing ecodesign requirements or assisting market surveillance authorities with statistical information for their risk-based analysis and;
- (b) the need to avoid disproportionate administrative burden for economic operators, in particular for SMEs.

Such requirements referred to in the first subparagraph may in particular consist of:

- ~~(a)~~ (i) collecting and anonymising the in-use data if it can be accessed remotely via the internet, unless the customer end-user expressly refuses to make that data available;
- ~~(b)~~ (ii) after anonymising the data collected under point (a), and report reporting it to the Commission at least once a year. The economic operator shall include the product database identification number of the model as referred to in Article 12(5) of Regulation (EU) No 2017/1369 and, if relevant to their performance, general geographical information on the products.

The Commission shall specify the details and format for reporting the **anonymised** in-use data as referred to in the second subparagraph, point (b-), **in the relevant ~~delegated~~ implementing delegated act.**

- 4- The Commission shall periodically assess the in-use data received pursuant to paragraph 3 and shall, where appropriate, publish aggregated datasets.

#### **Article 31a**

##### **Requirements on supply chain actors**

**[The below text is the previous Article 5(6), amended and transformed into a separate Article]**

**In order to facilitate the verification of compliance with ecodesign requirements, the Commission shall, where appropriate, require supply chain actors to:**

- (a) **provide, upon request, manufacturers, notified bodies and competent national authorities with available relevant information related to their supplies or services;**
- (b) **allow, in the absence of information referred to in point (a), manufacturers to assess their supplies or services and give access to relevant documents or facilities to those manufacturers;**
- (c) **enable notified bodies and competent national authorities to verify the correctness of relevant information related to their activities.**

**The requirement under the first paragraph should be non-discriminatory, not give rise to disproportionate administrative burden and take into consideration economic actors legitimate needs to protect trade secrets. The Commission shall, when establishing requirements referred to in points (a) and (b) of paragraph 6, take into account the needs of SMEs including SME's difficulties in accessing information.**

## Chapter VIII - Conformity of products

### Article 32

#### *Test, measurement and calculation methods*

1. For the purposes of compliance and verification of compliance with ecodesign requirements, tests, measurements and calculations shall be made using **harmonised standards** ~~and other~~ reliable, accurate and reproducible methods that take into account the generally recognised state-of-the art methods. Such methods shall fulfil the **requirements on** test, measurement and calculation ~~requirements~~ **methods** set out in the relevant ~~delegated~~ **implementing delegated** acts adopted pursuant to Article 4.
2. ~~Where necessary to ensure compliance with ecodesign requirements set out in delegated acts adopted pursuant to Article 4, third subparagraph, point (e), the Commission may require the use of online tools for the calculation of the performance of products in relation to the relevant product parameter referred to in Annex I reflecting the applicable calculation requirements.~~

~~Where~~ **When** setting **the requirement to** such requirements for the use of online **digital** tools **pursuant to Article 4, third subparagraph, point (e)**, the Commission shall take into account the following criteria:

- (a) the need to ensure the harmonised application of calculation requirements;
- (b) the need to minimise administrative burden imposed on economic operators ~~complying with the relevant requirements~~.

Online tools shall be freely accessible for economic operators ~~complying with the relevant requirements~~.

### Article 33



**Prevention of ~~c~~Circumvention and worsening of performance**

**-1. An economic operator shall not engage in any behaviour that undermines the compliance with this Regulation regardless of whether that behaviour is of a contractual, commercial, technical or any other nature.**

1. Products falling within the scope of a ~~delegated~~ **implementing delegated** act adopted pursuant to Article 4 shall not be placed on the market or put into service if they are designed to alter their behaviour or properties when they are tested in order to reach a more favourable result for any of the product parameters regulated in ~~delegated~~ **implementing delegated** acts adopted pursuant to Article 4 by which the products are covered.

For the purposes of this paragraph, products designed to be able to detect they are being tested and automatically alter their performance in response and products pre-set to alter their performance at the time of testing shall constitute products designed to alter their behaviour or properties when they are tested.

2. Economic operators placing **on the market or putting into service** a product covered by a ~~delegated~~ **implementing delegated** act adopted pursuant to Article 4 shall not prescribe instructions specific to testing that alter the behaviour or the properties of products in order to reach a more favourable result for any of the product parameters regulated in ~~delegated~~ **implementing delegated** acts adopted pursuant to Article 4 by which the products are covered.

For the purposes of this paragraph, instructions leading to a manual alteration of the product before a test that alters the performance of the product shall constitute instructions specific to testing that alter the behaviour or the properties of products.

3. Products falling within the scope of a ~~delegated~~ **implementing delegated** act adopted pursuant to Article 4 shall not be placed on the market or put into service if they are designed to alter their behaviour or properties within a short period after putting the product into service leading to a worsening of their performance in relation to any of the product parameters regulated in ~~delegated~~ **implementing delegated** acts adopted pursuant to Article 4 by which the products are covered ~~or their functional performance from the perspective of the user.~~

4. Software or firmware updates shall not worsen product performance in relation to any of the product parameters regulated in ~~delegated~~ **implementing delegated** acts adopted pursuant to Article 4 by which the products are covered ~~or the functional performance from the perspective of the user~~ when measured with the test method used for the conformity assessment, except with explicit consent of the **customer** ~~end-user~~ prior to the update. No ~~performance change~~ shall occur as a result of rejecting the update.

Software or firmware updates shall not **in any case** worsen performance referred to in the first subparagraph to the extent that the product becomes non-compliant with the requirements set out in ~~delegated~~ **implementing delegated** acts adopted pursuant to Article 4 applicable at the time of the placing on the market or putting into service of the product.

#### Article 34

##### *Presumption of conformity*

1. Tests, measurement or calculation methods referred to in Article 32 which are in conformity with harmonised standards or parts thereof, the references of which have been published in *the Official Journal of the European Union*, shall be presumed to be in conformity with the requirements set out in that Article and with test, measurement and calculation requirements set out in ~~delegated~~ **implementing delegated** acts adopted pursuant to Article 4 to the extent that those requirements are covered by such harmonised standards or parts thereof.
2. Products which are in conformity with harmonised standards or parts thereof, the references of which have been published in the *Official Journal of the European Union* shall be presumed to be in conformity with ecodesign requirements set out in ~~delegated~~ **implementing delegated** acts adopted pursuant to Article 4 to the extent that those requirements are covered by such harmonised standards or parts thereof.
3. Products covered by ~~an~~ **implementing delegated** act adopted pursuant to Article 4, which have been awarded the EU Ecolabel pursuant to Regulation (EC) No 66/2010 **or nationally, or regionally officially recognised EN ISO 14024 type I environmental labels as referred to in that Regulation,** shall be presumed to comply with the ecodesign requirements set out in that ~~delegated~~ **implementing delegated** act in so far as **the criteria established by those labels are covered by and are at least as strict as those**

~~requirements~~ those requirements are covered by the EU Ecolabel criteria established according to Article 16(2) of Regulation (EC) No 66/2010.

## Article 35

### Common specifications

~~[The changes map the non-paper on common specification of Article 17 of the Machinery proposal to be aligned after negotiations have been completed]~~ The changes mirror the document 5424/1/23 “Proposal for a Regulation of the European Parliament and of the Council on machinery products - Analysis of the final compromise text with a view to agreement”

1. The Commission may adopt implementing acts ~~laying down~~ **establishing** common specifications for ecodesign requirements, the essential requirements for product passports referred to in Article 10 or for test, measurement or calculation methods referred to in Article 32, in the following situations: **for products covered by implementing delegated acts adopted pursuant to Article 4 where the following conditions have been fulfilled:**
  - (a) the Commission has requested, pursuant to Article 10(1) of Regulation No 1025/2012, one or more European standardisation organisations to draft a harmonised standard for it has requested, pursuant to Article 10(1) of Regulation 1025/2012, one or more European standardisation organisations to draft a harmonised standard in relation to for an ecodesign requirement or, an essential requirement for product passports referred to in Article 10 of this Regulation or for a test, measurement or calculation method referred to in Article 32 of this Regulation that is not covered by a harmonised standard or part thereof, the references of which have been published in the Official Journal of the European Union and there are either undue delays in the standardisation procedure or and the request has not been accepted or the European standardisation deliverables addressing that request the request has not been accepted by any of the European standardisation organisations or the harmonised standard addressing that request is not delivered within the deadline set in accordance with Article 10(1) of Regulation 1025/2012; and
  - (-b) no reference to harmonised standards for an ecodesign requirement or method is published in the Official Journal of the European Union in accordance with Regulation with Regulation (EU) No 1025/2012 and no such reference is expected to

**be published within a reasonable period;**

- (b)** ~~the Commission has decided in accordance with the procedure referred to in Article 11(5) of Regulation (EU) No 1025/2012 to maintain with restriction or to withdraw the references to the harmonised standards or parts thereof by which an ecodesign requirements or method is covered.~~

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

**1a. Before preparing a draft implementing act referred to in paragraph 1, the Commission shall inform the committee referred to in Article 22 of Regulation EU (No) 1025/2012 that it considers that the conditions in paragraph 1 of this article are fulfilled.**

**1b. ~~In the~~ When preparing the draft implementing act establishing the common specification, ~~the early preparation of the draft implementing act establishing the common specification,~~ the Commission shall take into account ~~gather~~ the views of the Ecodesign Forum and the Ecodesign Expert Group. Based on that consultation, the Commission shall prepare the draft implementing act.**

2. Test, measurement and calculation methods referred to in Article 32 which are in conformity with common specification or parts thereof shall be presumed to be in conformity with the requirements set out in that Article and with test, measurement and calculation requirements set out in delegated **implementing delegated** acts adopted pursuant to Article 4 to the extent that those requirements are covered by such common specification or parts thereof.
3. Products which are in conformity with common specifications or parts thereof shall be presumed to be in conformity with ecodesign requirements set out in the ~~delegated~~ **implementing delegated** act adopted pursuant to Article 4 by which those products are covered to the extent that those requirements are covered **by** those common specifications or parts thereof.
4. **Where a harmonised standard is adopted by an European standardisation organisation and proposed to the Commission for the publication of its reference in the Official**

Journal of the European Union, the Commission shall assess the harmonised standard in accordance with Regulation (EU) No 1025/2012. When references of a harmonised standard are published in the *Official Journal of the European Union*, the Commission shall ~~assess whether to~~ repeal implementing acts referred to in paragraph 1, or parts thereof which cover the same ecodesign requirements, essential requirements for product passports and the test, measurement or calculation methods.

5. When a Member State considers that a common specification does not entirely satisfy the ecodesign requirements, the essential requirements for product passports and the test, measurement or calculation methods, it shall inform the Commission thereof with a detailed explanation and the Commission shall assess that information and, if appropriate, may amend the implementing act establishing the common specification in question.

1.

*Article 36*  
*Conformity assessment*

When specifying the applicable conformity assessment procedure pursuant to Article 4, second subparagraph, the Commission shall consider the following criteria:

- (a)** whether the module concerned is appropriate to the type of product, **appropriate to the relevant ecodesign requirements** and proportionate to the public interest pursued;
- (b)** the nature of the **risks entailed by the product and the extent to which conformity assessment corresponds to the type and degree of risk,** ~~product parameters referred to in Annex I on which the relevant ecodesign requirements are based, in particular whether performance in relation to those product parameters can be verified on the product itself;~~
- (c)** where third party involvement is mandatory, the need for the manufacturer to have a choice between **the quality assurance and product certification** modules set out in Annex II of Decision No 768/2008/EC.

2. ~~Where relevant, records~~ **Records** and correspondence relating to the conformity assessment shall be drawn up in an official language of the Member State where a notified body involved in a conformity assessment procedure referred to in paragraph 1 is established, or in a language accepted by that body.

1.

*Article 37*  
*EU declaration of conformity*

The EU declaration of conformity shall state that the fulfilment of ecodesign requirements specified in the applicable ~~delegated~~ **implementing delegated** acts adopted pursuant to Article 4 **or according to Article 34** has been demonstrated.

2. The EU declaration of conformity shall have the model structure set out in Annex V, shall contain the elements specified in the applicable conformity assessment procedure and a reference to the applicable ~~delegated~~ **implementing delegated** acts adopted pursuant to Article 4. It shall be continuously updated. It shall be translated into the language or languages required by the Member State in which the product is placed or made available **on the market**.
3. Where a product covered by a ~~delegated~~ **implementing delegated** act adopted pursuant to Article 4 is subject to more than one Union act requiring an EU declaration of conformity, a single EU declaration of conformity shall be drawn up in respect of all such Union acts. That declaration shall state the Union acts concerned and their publication references. ~~It may be a dossier made up of relevant individual EU declarations of conformity.~~
4. By drawing up the EU declaration of conformity, the manufacturer shall assume responsibility for the compliance of the product.

*Article 38*

1.

*General principles of the CE marking*

The CE marking shall be subject to the general principles set out in Article 30 of Regulation (EC) No 765/2008.

*Article 39*

*Rules and conditions for affixing the CE marking*

The CE marking shall be affixed visibly, legibly and indelibly to the product. Where that is not possible or not warranted on account of the nature of the product, it shall be affixed to the packaging and to the accompanying documents.

2. The CE marking shall be affixed before the product is placed on the market **or put into service**.

3. For a product in the ~~conformity assessment~~ **production control phase** of which a notified body participates, the CE marking shall be followed by the identification number of that notified body.

The identification number of the notified body shall be affixed by the body itself or, under its instructions, by the manufacturer or its authorised representative.

4. The CE marking and, where applicable, the identification number of the notified body may be followed by a pictogram or other marking indicating a special risk or use.



- 1.
5. Member States shall build upon existing mechanisms to ensure correct application of the regime governing the CE marking and take appropriate action in the event of improper use of the marking.

#### *Article 40*

##### *~~Alternative conformity declarations and~~ Specifying rules on markings*

When specifying ~~alternative~~ rules on the ~~declaration of conformity or markings~~, **for products without requirements for CE marking in Union law**, indicating conformity with the applicable requirements under Union law pursuant to Article 4, third subparagraph, point (f), the Commission shall take into account the following criteria:

- (a) the need to minimise administrative burden for economic operators;
- (b) the need to ensure coherence with other ~~conformity declarations and~~ markings applicable to a specific product;
- (c) the need to prevent confusion about the meaning of ~~conformity declarations and~~ markings under other Union law.

## **Chapter IX - Notification of conformity assessment bodies**

#### *Article 41*

##### *Notification*

Member States shall notify the Commission and the other Member States of bodies authorised to carry out the third-party conformity assessment tasks **when** provided for under the ~~delegated~~ **implementing delegated** acts adopted pursuant to Article 4.

#### *Article 42*

##### *Notifying authorities*

1. Member States shall designate a notifying authority that shall be responsible for setting up and carrying out the necessary procedures for the assessment and notification of conformity assessment bodies and the monitoring of notified bodies, including compliance with the provisions of Article 47.

2. Member States may decide that the assessment and monitoring referred to in paragraph 1 shall be carried out by a national accreditation body within the meaning of and in accordance with Regulation (EC) No 765/2008.
3. Where the notifying authority delegates or **otherwise** entrusts the assessment, notification or monitoring referred to in paragraph 1 to a body which is not a governmental entity, that body shall be a legal entity and shall comply *mutatis mutandis* with the requirements laid down in Article 43. In addition, it shall have arrangements to cover liabilities arising out of its activities.
4. The notifying authority shall take full responsibility for the tasks performed by the body referred to in paragraph 3.

*Article 43*  
*Requirements relating to notifying authorities*

1. A notifying authority shall be established in such a way that no conflict of interest with conformity assessment bodies ~~or notified bodies~~ occurs.
2. A notifying authority shall be organised and operated so as to safeguard the objectivity and impartiality of its activities.
3. A notifying authority shall be organised in such a way that each decision relating to notification of a conformity assessment body is taken by competent persons different from those who carried out the assessment.
4. A notifying authority shall not offer or provide any activities that conformity assessment bodies perform, or consultancy services on a commercial or competitive basis.
5. A notifying authority shall safeguard the confidentiality of the information it obtains. However, it shall, upon request, exchange information on notified bodies with the Commission, with notifying authorities of other Member States and with other relevant national authorities, **which shall safeguard confidentiality of the information received**.
6. A notifying authority shall take as a basis for notification only the specific conformity assessment body applying for notification and not take account of the capacities or personnel

of parent or sister companies. The authority shall assess that body against all relevant requirements and conformity assessment tasks.

7. A notifying authority shall have a sufficient number of competent personnel and sufficient funding at its disposal for the proper performance of its tasks.

~~The Commission may adopt implementing acts laying down a minimum number of full-time equivalents considered sufficient for the proper monitoring of notified bodies, where appropriate in relation to specific conformity assessment tasks. Where monitoring is carried out by a national accreditation body or a body referred to in Article 42(3), this minimum number shall apply to that body.~~

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

#### *Article 44*

##### *Information obligation on notifying authorities*

Member States shall inform the Commission of their procedures for the assessment and notification of conformity assessment bodies and the monitoring of notified bodies, and of any changes thereto.

The Commission shall make that information publicly available.

#### *Article 45*

##### *Requirements relating to notified bodies*

1. For the purposes of notification, a conformity assessment body shall meet the requirements laid down in paragraphs 2 to 11.
2. A conformity assessment body shall be established under the national law of a Member State and have legal personality.
3. A conformity assessment body shall be a third-party body independent of the organisation or the product it assesses. It shall not have any business ties with organisations that have an interest in the products it assesses, in particular manufacturers, their trade partners and their shareholding investors.

**However, a body belonging to a business association or professional federation representing undertakings involved in the design, manufacturing, provision, assembly, use or maintenance of products which it assesses, may, on condition that its independence and the absence of any conflict of interest are demonstrated, be considered such a body.**

This shall not preclude the conformity assessment body from carrying out conformity assessment activities for competing manufacturers.

4. A conformity assessment body, its top-level management and the personnel responsible for carrying out the conformity assessment tasks shall not be the designer, manufacturer, supplier, importer, distributor, installer, purchaser, owner, user or maintainer of the products which they assess, nor the representative of any of those parties. This shall not preclude the use of assessed products that are necessary for the operations of the conformity assessment body or the use of such products for personal purposes.

A conformity assessment body, its top-level management and the personnel responsible for carrying out the conformity assessment tasks shall not be directly involved in the design, manufacture or construction, the marketing, installation, use or maintenance of those products, or represent the parties engaged in those activities. They shall not engage in any activity that may conflict with their independence of judgement or integrity in relation to conformity assessment activities for which they are notified. This shall apply in particular to consultancy services.

Conformity assessment bodies shall ensure that the activities of its parent or sister companies, subsidiaries or subcontractors do not affect the confidentiality, objectivity or impartiality of their conformity assessment activities.

~~The~~ **A conformity assessment body shall not delegate to a subcontractor or a subsidiary** ~~the~~ establishment and the supervision of internal procedures, general policies, codes of conduct or other internal rules, the assignment of **its** personnel to specific tasks and the conformity assessment decisions ~~may not be delegated to a subcontractor or a subsidiary.~~

5. Conformity assessment bodies and their personnel shall carry out the conformity assessment activities with the highest degree of professional integrity and the requisite technical

competence in the specific field. They shall be free from all pressures and inducements, particularly financial, which might influence their judgement or the results of their conformity assessment activities, especially as regards persons or groups of persons with an interest in the results of those activities.

6. A conformity assessment body shall be capable of carrying out all the conformity assessment tasks assigned to it under the relevant ~~delegated~~ **implementing delegated** act adopted pursuant to Article 4 and in relation to which it has been notified, whether those tasks are carried out by the conformity assessment body itself or on its behalf and under its responsibility.

At all times and for each conformity assessment procedure, and for each kind or category of products in relation to which it has been notified, a conformity assessment body shall have at its disposal the necessary:

- (a) personnel with technical knowledge, and sufficient and appropriate experience to perform the conformity assessment tasks. ~~Personnel responsible for taking assessment decisions shall be employed by the conformity assessment body under the national law of the notifying Member State, shall not have any other potential conflict of interest, shall be competent to verify the assessments made by other staff, external experts or subcontractors. The number of such personnel shall be sufficient to ensure business continuity and a consistent approach to conformity assessments;~~
- (b) descriptions of procedures in accordance with which conformity assessment is carried out, ensuring the of these **transparency and the ability of reproduction of those** procedures ~~and the ability to reproduce them. This shall include a qualification matrix that matches~~ **including a description of how** relevant personnel, their respective status and tasks ~~within the conformity assessment body with~~ **correspond to** the conformity assessment tasks in relation to which the body intends to be notified;
- (c) appropriate policies and procedures to distinguish the tasks it carries out as a notified body from other activities;
- (d) procedures for the performance of activities, which take due account of the size of an undertaking, the sector in which it operates, its structure, the degree of complexity of

the product technology in question and the mass or serial nature of the production process.

It shall have the means necessary to perform the technical and administrative tasks connected with the conformity assessment activities in an appropriate manner and shall have access to all necessary equipment or facilities.

7. The personnel responsible for carrying out conformity assessment activities shall have the following:
- (a) sound technical and vocational training covering all the conformity assessment activities in relation to which the conformity assessment body has been notified;
  - (b) satisfactory knowledge of the requirements of the assessments they carry out and adequate authority to carry out those assessments, including appropriate knowledge and understanding of the relevant legislation, test, measurement and calculation requirements, of the applicable harmonised standards or common specifications and of the relevant provisions of this Regulation, and of the ~~delegated~~ **implementing** **delegated** acts adopted pursuant to Article 4;
  - (c) the ability to draw up certificates, records and reports demonstrating that assessments have been carried out.

**7a. Personnel responsible for taking assessment decisions shall be employed by the conformity assessment body under the national law of the notifying Member State, shall not have any other potential conflict of interest, shall be competent to verify the assessments made by other staff, external experts or subcontractors. The number of such personnel shall be sufficient to ensure business continuity and a consistent approach to conformity assessments.**

8. The impartiality of the conformity assessment bodies and their top-level management and of the assessment personnel shall be guaranteed.

The remuneration of the top-level management and assessment personnel of a conformity assessment body shall not depend on the number of assessments carried out or their results.

9. Conformity assessment bodies shall take out liability insurance unless liability is assumed by the State in accordance with national law, or the Member State itself is directly responsible for the conformity assessment.
10. The personnel of a conformity assessment body shall observe professional secrecy regarding all information obtained in carrying out the conformity assessment tasks under the relevant delegated **implementing delegated** acts adopted pursuant to Article 4, except in relation to the notifying authorities and other national authorities of the Member State in which its activities are carried out. Proprietary rights shall be protected.
11. Conformity assessment bodies shall participate in, or ensure that their assessment personnel are informed ~~about~~ **of**, the relevant standardisation activities ~~and apply as general guidance the administrative decisions and documents produced as a result of the work of that group.~~

#### *Article 46*

##### *Presumption of conformity of conformity assessment bodies*

Where a conformity assessment body demonstrates its conformity with the criteria laid down in the relevant harmonised standards or parts thereof the references of which have been published in the *Official Journal of the European Union* it shall be presumed to comply with the requirements set out in Article 45 in so far as the applicable harmonised standards cover those requirements.

#### *Article 47*

##### *Subsidiaries of and subcontracting by notified bodies*

1. Where a notified body subcontracts specific tasks connected with conformity assessment or has recourse to a subsidiary, it shall ensure that the subcontractor or the subsidiary meets the requirements set out in Article 45 and shall inform the notifying authority accordingly.
2. Notified bodies shall take full responsibility for the tasks performed by subcontractors or subsidiaries wherever these are established. ~~The relevant notified bodies shall~~ **monitor** ~~establish procedures for the on-going monitoring of the competence, activities and performance of its subcontractors or subsidiaries, taking into account the qualification matrix referred to in Article 45(6).~~



3. Activities may be subcontracted or carried out by a subsidiary only with the agreement of the client.
4. Notified bodies shall keep at the disposal of the notifying authority the relevant documents concerning the assessment and monitoring of the qualifications of the subcontractor or the subsidiary and the work carried out by them under the relevant delegated **implementing** **delegated** acts adopted pursuant to Article 4.

*Article 48*  
*Application for notification*

1. A conformity assessment body shall submit an application for notification to the notifying authority of the Member State in which it is established.
2. That application shall be accompanied by a description of the conformity assessment activities, the conformity assessment module or modules and the product or products for which that body claims to be competent, ~~the qualification matrix referred to in Article 45(6),~~ as well as by an accreditation certificate, where one exists, issued by a national accreditation body attesting that the conformity assessment body fulfils the requirements laid down in Article 45. The accreditation certificate shall relate only to the precise legal body applying for notification and shall be based, in addition to relevant harmonised standards, on the specific requirements and conformity assessment tasks set out in the relevant delegated **implementing** **delegated** act adopted pursuant to Article 4.
3. Where the conformity assessment body concerned cannot provide an accreditation certificate, it shall provide the notifying authority with all the documentary evidence necessary for the verification, recognition and regular monitoring of its compliance with the requirements laid down in Article 45.

*Article 49*  
*Notification procedure*

1. Notifying authorities only notify conformity assessment bodies which have satisfied the requirements laid down in Article 45.
2. They shall notify the Commission and the other Member States using the electronic notification tool developed and managed by the Commission.

3. The notification shall include full details of the conformity assessment activities, the conformity assessment module or modules and product or products concerned and the relevant attestation of competence.
4. Where a notification is not based on an accreditation certificate as referred to in Article 48(2), the notifying authority shall provide the Commission and the other Member States with documentary evidence which attests to the conformity assessment body's competence and the arrangements in place to ensure that that body will be monitored regularly and will continue to satisfy the requirements laid down in Article 45.
5. The body concerned may perform the activities of a notified body if the Commission or the other Member States do not raise any objections within 2 weeks of a notification where an accreditation certificate is used, or within 2 months of a notification where accreditation is not used.

Only such a body shall be considered a notified body for the purposes of this Regulation.

6. ~~The notification shall become valid the day after the body is included in the list of notified bodies referred to in Article 50(2) by the Commission. The body concerned may perform the activities of a notified body only after the notification has become valid.~~

~~The Commission shall not publish a notification if it is aware or becomes aware that the relevant notified body does not meet the requirements laid down in Article 45 **and inform the relevant notifying authority of the reasons for not publishing that notification.**~~

7. The Commission and the other Member States shall be notified of any subsequent relevant changes to the notification.

#### *Article 50*

##### *Identification numbers and lists of notified bodies*

1. The Commission shall assign an identification number to a notified body.

It shall assign a single such number even where the body is notified under several Union acts.

2. The Commission shall make the list of the bodies notified under this Regulation publicly available, including the identification numbers that have been allocated to them and the activities for which they have been notified.

The Commission shall ensure that that list is kept up to date.

#### *Article 51* *Changes to notifications*

1. Where a notifying authority has ascertained or has been informed that a notified body no longer meets the requirements laid down in Article 45, or that it is failing to fulfil its obligations, the notifying authority shall restrict, suspend or withdraw notification as appropriate, depending on the seriousness of the failure to meet those requirements or fulfil those obligations. It shall immediately inform the Commission and the other Member States accordingly.
2. In the event of restriction, suspension or withdrawal of notification, or where the notified body has ceased its activity, the notifying Member State shall take appropriate steps to ensure that this body's files are either processed by another notified body or kept available for the responsible notifying and market surveillance authorities at their request.

#### *Article 52* *Challenge of the competence of notified bodies*

1. The Commission shall investigate all cases where it doubts, or doubt is brought to its attention regarding, the competence of a notified body or the continued fulfilment by a notified body of the requirements and responsibilities to which it is subject.
2. The notifying Member State shall provide the Commission, on request, with all information relating to the basis for the notification or the maintenance of the competence of the body concerned.
3. The Commission shall ensure that all sensitive information obtained in the course of its investigations is treated confidentially.
4. Where the Commission ascertains that a notified body does not meet or no longer meets the requirements for its notification, it shall **inform the notifying Member State accordingly**

**and request it to take the necessary corrective measures, including withdrawal of the notification if necessary.**

adopt an implementing act requiring the notifying Member State to take the necessary corrective action **measures**, including withdrawal of the notification if necessary. That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 67(2).

The Commission shall update the list of notified bodies referred to in Article 50(2) within 2 weeks of the implementing act being adopted **corrective action being notified pursuant to Article 49(7).**

### *Article 53*

#### *Operational obligations of notified bodies*

1. Notified bodies shall carry out conformity assessments in accordance with the conformity assessment procedures provided for in the delegated **implementing delegated** acts adopted pursuant to Article 4.
2. Conformity assessments shall be carried out in a proportionate manner, avoiding unnecessary burdens for economic operators. **Notified bodies** ~~Conformity assessment bodies~~ shall perform their activities taking due account of the size of an undertaking, the sector in which it operates, its structure, the degree of complexity of the product technology in question and the mass or serial nature of the production process.

In so doing they shall nevertheless respect the degree of rigour and the level of protection required for the compliance of the product with the relevant requirements.

3. Where a notified body finds that a manufacturer does not meet the relevant requirements or corresponding harmonised standards, common specifications or other technical specifications, it shall require that manufacturer to take appropriate corrective measures ~~in view of a second and final conformity assessment, unless the deficiencies cannot be remedied, in which case~~ **and** it shall not issue a certificate ~~or approval decision~~.
4. Where, in the course of the monitoring of conformity following the issue of a certificate ~~or approval decision~~ **in accordance with the conformity assessment procedures provided for in a delegated implementing delegated act adopted pursuant to Article 4,** a notified body

finds that a product or the manufacturer does not comply or no longer complies, it shall require the manufacturer to take appropriate corrective measures and shall suspend or withdraw the certificate ~~or approval decision~~ if necessary.

5. Where corrective measures are not taken or do not have the required effect, the notified body shall restrict, suspend or withdraw any certificates ~~or approval decisions~~, as appropriate.
6. **~~When taking conformity assessment decisions, including when deciding on the need to suspend or withdraw a certificate or approval decisions in light of possible non-compliance, notified bodies shall apply clear and pre-determined criteria.~~**
7. ~~Notified bodies shall ensure rotation among the personnel carrying out different conformity assessment tasks.~~

*Article 54*  
*Information obligation on notified bodies*

1. Notified bodies shall inform the notifying authority of the following:
  - (a) any refusal, restriction, suspension or withdrawal of a certificate;
  - (b) any circumstances affecting the scope of and conditions for notification;
  - (c) any request for information which they have received from market surveillance authorities regarding conformity assessment activities;
  - (d) on request, conformity assessment activities performed within the scope of their notification and any other activity performed, including cross-border activities and subcontracting.
2. Notified bodies shall provide the other bodies notified under this Regulation which carry out similar conformity assessment activities that cover the same ~~products~~ **product group** with relevant information on issues relating to negative and, on request, positive conformity assessment results.
3. Where the Commission or a Member State's market surveillance authority submits a request to a notified body established on the territory of another Member State relating to

a conformity assessment carried out by that notified body, it shall send a copy of that request to the notifying authority of that other Member State. The notified body concerned shall respond without delay and within 15 days at the latest to the request. The notifying authority shall ensure that such requests are resolved by the notified body ~~unless there is a legitimate reason for not doing so.~~

4. Where notified bodies have or receive evidence that:

- (a) another notified body does not comply with the requirements laid down in Article 45 or its obligations; or
- (b) a product placed on the market does not comply with ecodesign requirements set out in delegated **implementing delegated** acts adopted pursuant to Article 4 by which that product is covered; or
- (c) a product placed on the market, due to its physical condition, is likely to cause a serious risk;

they shall alert and share such evidence with the relevant market surveillance or notifying authority, as appropriate.

#### *Article 55* *Exchange of experience*

The Commission shall provide for the organisation of exchange of experience between the Member States' authorities responsible for notification policy.

#### *Article 56* *Coordination of notified bodies*

1. The Commission shall ensure that appropriate coordination and cooperation between bodies notified under this Regulation are put in place and properly operated in the form of a group or groups of notified bodies, where appropriate including groups of bodies notified under the same delegated **implementing delegated** act adopted pursuant to Article 4 or in relation to similar conformity assessment tasks.

Notified bodies shall participate in the work of any relevant group, directly or by means of designated representatives.

2. Notified bodies shall apply as general guidance any relevant documents produced as a result of the work of the groups referred to in paragraph 1.
3. Coordination and cooperation in the groups referred to in paragraph 1 shall aim at ensuring the harmonised application of this Regulation and of the ~~delegated~~ **implementing delegated** acts adopted pursuant to Article 4. ~~In doing so, the groups shall follow as general guidance any relevant documents produced by the administrative cooperation group set up pursuant to Article 30(2) of Regulation (EU) 2019/1020.~~

## Chapter X - Incentives

### *Article 57*

#### *Member State incentives*

1. Member States incentives relating to products covered by a ~~delegated~~ **implementing delegated** act adopted pursuant to Article 4 that determines classes of performance in accordance with Article 7(4), in relation to a product parameter referred to in Annex I, shall concern the highest two classes of performance that are populated at Union level or, where relevant, products with an EU Ecolabel **including products fulfilling equivalent requirements** ~~unless otherwise specified in that delegated act.~~
  - 1a. **The Commission is empowered to adopt implementing acts specifying the product parameters referred to in Annex I for the products covered by a delegated act adopted pursuant to Article 4 which can be subject to Member States incentives in order to boost demand of environmentally sustainable products. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 66(3).**
  2. **The implementing acts referred to in paragraph 1a shall comply with the following criteria:**
    - ~~2.~~ a) Where a ~~delegated~~ **implementing delegated** 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 ~~may further~~ **may, in order to boost demand of environmentally sustainable products,** 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 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.

3. b) Where a delegated **implementing delegated** act adopted pursuant to Article 4 does not determine classes of performance, the Commission may specify **in an implementing act that** in the delegated acts adopted pursuant to Article 4, third subparagraph, point (g), requirements **on performance** related to product parameters that products concerned by Member State incentives shall meet.

**When deciding which product parameter requirements regarding incentives shall concern, the Commission shall, as appropriate for the product group concerned, consider where there is potential in boosting demand of more well-performing products, and the likelihood that incentives would help achieve this goal.**

3. When **preparing the implementing acts referred to in paragraph 2** ~~doing so~~, the Commission shall take into account **the following criteria** ~~the following criteria~~:

(a) **the number of products in each class of performance;**

(a)(b) the **need to ensure** relative affordability of the products meeting those requirements, **to avoid significant negative impacts on consumers.**

(b) the need to ensure sufficient demand for more environmentally sustainable products.

4. **The implementing acts adopted under paragraphs 2 and 3 shall be adopted in accordance with the examination procedure referred to in Article 67(3).**



*Article 58*  
*Green public procurement*

- 1.** Requirements pursuant to Article 4, third subparagraph, point (h) for **The Commission is empowered to adopt implementing acts shall in the implementing act pursuant to Article 4 a specifying 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 supply and demand for environmentally sustainable products falling in the scope of those implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(3).**
- 1a.** The requirements referred to in paragraph 1 shall be set **on products which are covered by delegated acts setting out ecodesign requirements** 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 level,~~
- (ab)** ~~Include requirements shall on the product parameters for which ecodesign requirements have been set~~ 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, **(v) carbon intensity/carbon content.**
- (ba)** ~~Where classes of performance have been defined for the products in accordance with Article 7(4), require products to fulfil the highest class of performance that are populated at Union level,~~
- (c)** ~~Where EN ISO 14024 type I ecolabelling schemes are present for the product,~~ **require products to be awarded with such labels or proof that they fulfil their criteria.**

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) national or regional EN ISO 14024 type I ecolabelling schemes

(vi) mandatory requirements for specific product groups resulting from international agreements and initiatives such as e.g. the G7 agreements for decarbonizing basic materials or the Global Arrangement on Sustainable Steel and Aluminium (GSA)

- (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 buy more environmentally sustainable products, without entailing disproportionate costs, also taking into account the life cycle costs of products and the societal life cycle costs.

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(d) the market situation at Union level, including the competitive pressure, of the relevant product group.

(e) the effects of the requirements on competition.

3. Contracting authorities and contracting entities referred to in paragraph 1 may, in duly justified cases, derogate from the mandatory requirements specified in an implementing act referred to in paragraph 1 on the grounds of public security and public health.  
~~Contracting authorities may also, in duly justified cases, derogate from the mandatory requirements, when those would lead to disproportionate technical difficulties.~~  
Contracting authorities may also, in duly justified cases, deviate from the mandatory requirements, when those would lead to disproportionate technical obstacles or unreasonable effort contrary to the purpose of this provision.

4. A deviation from the requirements in paragraph 1 is permitted in the construction sector, when the Member states have implemented suitable sustainability standards for the entire works project.

## Chapter XI - Market surveillance

### Article 59a

#### Market Surveillance Regulation

Regulation (EU) 2019/1020 should apply to products subject to ecodesign requirements according to this Regulation.

### *Article 59*

#### *Market surveillance action plans*

1. ~~Without prejudice to Article 13 of Regulation (EU) 2019/1020, e~~ Each Member State shall, at least every 2-4 years, as part of the overarching national market surveillance strategy according to Article 13 of Regulation (EU) 2019/1020, draw up an action plan outlining the market surveillance activities planned to ensure that appropriate checks are performed on an adequate scale in relation to this Regulation and the delegated implementing delegated acts

adopted pursuant to Article 4. Each Member State shall draw up the first such action plan by [16 July 2024 **6 months of entry into force of this Regulation**].

The action plan referred to in paragraph 1 shall at least include:

- (a) the products or requirements identified **by the Member States** as priorities for market surveillance, taking into account **paragraph 3 of Article 11 of Regulation (EU) 2019/1020, and the potential environmental impacts of non-compliance** the common priorities identified by the administrative cooperation group pursuant to Article 62(1), point (a), **and in accordance with the implementing acts referred to in paragraph 5;**
- (b) the market surveillance activities planned in order to reduce non-compliance for those products or requirements identified as priorities, ~~including the nature and minimum number of checks planned~~ to be performed during the period covered by the action plan.

2. The priorities for market surveillance referred to in paragraph 1, point (a), shall be identified on the basis of objective criteria, including, **where such information is easily available:**

- (a) the levels of non-compliance observed in the **national or Union** market;
- (b) the environmental impacts of non-compliance;
- (c) the number of relevant products made available on national markets; and (d)

the number of relevant economic operators active on those markets.

3. **The nature and number of checks planned pursuant to paragraph 1, point (b), shall be proportionate to the objective criteria used to identify the priorities in line with paragraph 2.**

4. ~~Member States shall communicate their action plans to the Commission and other Member States through the information and communication system referred to in Article 34 of Regulation (EU) 2019/1020.~~

5. ~~The Commission may adopt implementing acts listing the products or requirements that Member States shall at least consider as **take into consideration when setting** priorities for market surveillance pursuant to paragraph 1, point (a).~~

~~Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 67(2).~~

*Article 60*  
*Minimum number of checks*

1. ~~The Commission is empowered to adopt delegated acts in accordance with Article 66 to supplement this Regulation by laying down the minimum number of checks to be performed by the market surveillance authorities of each Member State on specific products covered by delegated acts adopted pursuant to Article 4 or in relation to specific requirements set out in such delegated acts. The delegated act may, where relevant, specify the nature of the checks required and methods to be used.~~

~~The minimum number of checks shall be established on the basis of the following criteria:~~

- ~~(a) the criteria listed in Article 59(2);~~
  - ~~(b) the activities planned in Member States' action plans;~~
  - ~~(c) the common priorities identified by the administrative cooperation group pursuant to Article 62(1), point (a);~~
  - ~~(d) where relevant, the priorities included in the implementing acts referred to in Article 59(5).~~
2. ~~Market surveillance authorities shall have the right to recover from the responsible economic operator the costs of document inspection and physical product testing in case of noncompliance with delegated acts adopted pursuant to Article 4.~~

*Article 61*  
*Reporting and benchmarking*

1. ~~Market surveillance authorities shall enter into the information and communication system referred to in Article 34 of Regulation (EU) 2019/1020 information on the nature and severity of any penalty imposed in relation to non-compliance with this Regulation.~~
2. The Commission shall, every ~~2~~ **4** years, draw up a report by 30 June based on the information entered by market surveillance authorities into the information and communication system referred to in Article 34 of Regulation (EU) 2019/1020. The first of these reports shall be published by [OP: Please add date: ~~two~~ **four** years after date of application of this Regulation].

The report shall include:

- (a) information on the nature and number of checks performed by market surveillance authorities during the ~~two~~ **four** previous calendar years pursuant to Article 34(4) and (5) of Regulation (EU) 2019/1020;
  - (b) ~~information on the levels of non-compliance identified and on the nature and severity of penalties imposed for the two~~ **four** previous calendar years in relation to products covered by delegated acts adopted pursuant to Article 4 of this Regulation;
  - (c) **an evaluation** ~~a comparison~~ of this information **in relation to** ~~with~~ the activities planned in the context of the action plans drawn up pursuant to Article 59(1);
  - (d) indicative benchmarks for market surveillance authorities in relation to the frequency of checks ~~and the nature and severity of penalties imposed.~~
3. The Commission shall publish the report referred to in paragraph 2 of this Article in the information and communication system referred to in Article 34 of Regulation (EU) 2019/1020 and shall make public a summary of the report.

## *Article 62*

### *Market surveillance coordination and support*

1. For the purposes of this Regulation, ~~the administrative cooperation group ('ADCO') set up pursuant to Article 30(2) of Regulation (EU) 2019/1020 shall meet at regular intervals and, where necessary, at the reasoned request of the Commission or of two or more participating market surveillance authorities.~~

~~In the context of performing its tasks set out in Article 32 of Regulation (EU) 2019/1020, the ADCO shall support the implementation of the action plans drawn up pursuant to Article 59(1) and shall identify:~~

- ~~(a) common priorities for market surveillance as referred to in Article 59(1), point (a), based on objective criteria as referred to in Article 59(2);~~
- ~~(b) priorities for Union support pursuant to paragraph 2;~~
- ~~(c) requirements set out in delegated acts adopted pursuant to Article 4 that are applied or interpreted differently that should be priorities for the organisation of common trainings or adoption of guidelines pursuant to paragraph 2 of this Article.~~

~~2.~~ Based on priorities identified by the ADCO, the Commission shall:

- (a) organise joint market surveillance and testing projects in areas of common interest;
- (b) organise joint investment in market surveillance capacities, including equipment and IT tools;
- (c) organise common trainings for the staff of market surveillance authorities, customs authorities, notifying authorities and notified bodies, including on the correct interpretation and application of requirements set out in delegated acts adopted pursuant to Article 4 and on methods and techniques relevant for applying or verifying compliance with such conformity assessment and compliance verification;
- (d) elaborate guidelines for the application and enforcement of requirements set out in delegated acts adopted pursuant to Article 4, including common practices and methodologies for effective market surveillance.

The Union shall, where appropriate, finance the actions referred to in points (a), (b) and (c).

~~3.~~ The Commission shall provide technical and logistic support to ensure the ADCO fulfils its tasks set out in Article 32 of Regulation (EU) 2019/1020 where such tasks relate to this Regulation and this Article.

## Chapter XII - Safeguard procedures

### *Article 63*

#### *Procedure for dealing with products presenting a risk at national level*

1. Where the market surveillance authorities of one Member State have sufficient reason to believe that a product covered by a delegated implementing delegated act adopted pursuant to Article 4 presents a risk, they shall carry out an evaluation covering all requirements relevant to the risk and laid down in this Regulation or in the relevant delegated implementing delegated act. ~~The relevant economic operators shall cooperate as necessary with the market surveillance authorities.~~



Where, in the course of that evaluation, the market surveillance authorities find that the product does not comply with the requirements laid down in the applicable ~~delegated~~ **implementing delegated** acts adopted pursuant to Article 4, they shall without delay require the relevant economic operator to take appropriate and proportionate corrective action, within a reasonable period prescribed by the market surveillance authorities and commensurate with the nature and where relevant the degree of the non-compliance, to bring the non-compliance to an end. The corrective action required to be taken by the economic operator may include the actions listed in Article 16(3) of Regulation (EU) 2019/1020.

~~The~~ **Where appropriate, the** market surveillance authorities shall inform the relevant notified body accordingly.

2. Where the market surveillance authorities consider that non-compliance is not restricted to their national territory, they shall inform the Commission and the other Member States of the results of the evaluation and of the actions which they have required the economic operator to take.
3. The **relevant** economic operator shall ensure that all appropriate corrective action is taken in respect of all the products concerned that it has made available on the market throughout the Union.
4. Where the relevant economic operator does not take corrective action within the period referred to in the second subparagraph of paragraph 1 or the non-compliance persists, the market surveillance authorities shall take all appropriate provisional measures to prohibit or restrict the making available of the product concerned on their national market, to withdraw the product from that market or to recall it. **[To be aligned with the Machinery Regulation]**

They shall inform the Commission and the other Member States, without delay, of those measures.

5. The information to the Commission and the other Member States referred to in paragraph 4 shall be communicated through the information and communication system referred to in Article 34 of Regulation (EU) 2019/1020 and shall include all available details, in particular the data necessary for the identification of the non-compliant product, the origin of the

product, the nature of the non-compliance alleged and the non-compliance involved, the nature and duration of the national measures taken and the arguments put forward by the relevant economic operator. The market surveillance authorities shall also indicate whether the non-compliance is due to either:

- (a) failure of the product to meet requirements set out in the relevant ~~delegated~~ **implementing delegated** act adopted pursuant to Article 4; or
- (b) shortcomings in the harmonised standards or common specification referred to in Articles 34 and 35 conferring a presumption of conformity.

- 6. Member States other than the Member State initiating the procedure shall without delay inform the Commission and the other Member States of any measures adopted and of any additional information at their disposal relating to the non-compliance of the product concerned, and, in the event of disagreement with the notified national measure, of their objections.
- 7. Where, within three months of receipt of the information referred to in paragraph 4, no objection has been raised by either a Member State or the Commission in respect of a provisional measure taken by a Member State, that measure shall be deemed justified. Measures may specify a period longer or shorter than three months in order to take account of the specificities of the products or requirements concerned.
- 8. Member States shall ensure that appropriate restrictive measures are taken in respect of the product **or manufacturer** concerned, such as withdrawal of the product from their market, without delay.

*Article 64*  
*Union safeguard procedure*

- 1. Where, on completion of the procedure set out in Article 63(3) and (4), objections are raised against a measure taken by a Member State, or where the Commission considers a national measure to be contrary to Union legislation, the Commission shall without delay enter into consultation with the Member States and the relevant economic operator or operators and

shall evaluate the national measure. On the basis of the results of that evaluation, the Commission shall decide by means of an implementing act whether the national measure is justified or not.

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

2. The Commission shall address its decision to all Member States and shall immediately communicate it to them and the relevant economic operator or operators.

If the national measure is considered justified, all Member States shall **ensure that appropriate restrictive** take the measures, **such as withdrawal, are taken in respect of necessary to ensure that** the non-compliant product **within the scope of this Regulation is withdrawn from their market**, and shall inform the Commission accordingly.

If the national measure is considered unjustified, the Member State concerned shall withdraw the measure.

3. Where the national measure is considered justified and the non-compliance of the product is attributed to shortcomings in the harmonised standards referred to in Article 34 of this Regulation, the Commission shall apply the procedure provided for in Article 11 of Regulation (EU) No 1025/2012.

4. Where the national measure is considered justified and the non-compliance of the product is attributed to shortcomings in the common specifications referred to in Article 35, the Commission shall, without delay, adopt implementing acts amending or repealing the common specifications concerned. **1**

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

#### *Article 65* *Formal non-compliance*

1. Where a Member State makes one of the following findings, it shall require the relevant economic operator to put an end to the non-compliance concerned:

- (a) the CE marking has been affixed in violation of Article 30 of Regulation (EC) No 765/2008 or of Article 39 of this Regulation;
- (b) the CE marking has not been affixed;
- (c) the identification number of the notified body has been affixed in violation of Article 39 or has not been affixed where required;
- (d) the EU declaration of conformity has not been drawn up;
- (e) the EU declaration of conformity has not been drawn up correctly;
- (f) the technical documentation is not available, not complete or contains errors;
- (g) the information referred to in Article 21(6) or Article 23(3) is absent, false or incomplete;
- (h) any other administrative requirement provided for in Article 21 or Article 23 or in the applicable ~~delegated~~ **implementing delegated** act adopted pursuant to Article 4, is not fulfilled.

2. Where the non-compliance referred to in paragraph 1 persists, the Member State concerned shall take all appropriate measures to restrict or prohibit the product being made available on the market or ensure that it is recalled or withdrawn from the market.

## Chapter XIII - Delegated powers and committee procedure

### *Article 66*

#### *Exercise of the delegation*

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in ~~Article 4,~~ **Article 4,** ~~Article 11a,~~ Article 9(1), second subparagraph **and** Article 11(4), ~~and Article 20(3), and Article 61(1)~~ shall be conferred on the Commission for a period of six years from *[one month after the entry into force of this act]*. The Commission shall draw up a report in respect of the delegation of

power not later than nine months before the end of the six-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in **Article 11a**, ~~Article 4~~, **Article 4**, Article 9(1), second subparagraph **and** Article 11(4) ~~Article 20(3)~~, ~~and Article 61(1)~~ may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State acting in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to **Article 11a**, ~~Article 4~~, **Article 4**, Article 9(1), second subparagraph, **and** Article 11(4), ~~and Article 20(3)~~, ~~and Article 61(1)~~ shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

*Article 67*  
*Committee procedure*

1. The Commission shall be assisted by a Committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

## Chapter XIV - Final provisions

### *Article 68* *Penalties*

Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive, ~~taking into account the extent of noncompliance and the number of units of non-complying products placed on the Union market.~~ Member States shall notify the Commission of those provisions by [~~one~~ **two** ~~years~~ *after the date of application* **entry into force** *of this Regulation*] at the latest and shall notify it without delay of any subsequent amendment affecting them.

### *Article 69* *Evaluation*

No ~~sooner~~ **later** than [~~8-5~~ **8** *years after the date of application of this Regulation*] **and every** [~~8-5~~ **8** *years thereafter*], the Commission shall carry out an evaluation of this Regulation and of its contribution to the functioning of the internal market and the improvement of the environmental sustainability of products. The Commission shall present a report on the main findings to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions. Member States shall provide the Commission with the information necessary for the preparation of that report.

**The Commission shall however carry out its first evaluation of the prohibition to destroy consumer goods as laid down in Article 20.b and 20.c within 4 years after the date of application of this Regulation.**

Where the Commission finds it appropriate, the report shall be accompanied by a legislative proposal for amendment of the relevant provisions of this Regulation.

*Article 70*  
*Repeal and transitional provisions*

1. Directive 2009/125/EC is repealed.
2. References to the repealed Directive shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex VIII.
3. **Notwithstanding paragraph (1) of this Article,** Article 1(3), Article 2, Article 3(1), Articles 4, 5 and 8, Article 9(3), Article 10 and Annexes IV, V and VI of Directive 2009/125/EC, as applicable on [OP: *please insert the day before the date of application of this Regulation*] shall continue to apply to implementing measures adopted pursuant to Article 15 of that Directive.
4. Articles 3, 33 and Articles 59 to 65 of this Regulation shall apply to implementing measures adopted pursuant to Article 15 of Directive 2009/125/EC.
5. For products placed on the market or put into service in accordance with Directive 2009/125/EC before the date of application of a delegated act adopted pursuant to Article 4 of this Regulation covering the same products, the manufacturer shall, for a period of 10 years as from the date when the last of that product was manufactured, make an electronic version of documentation relating to the conformity assessment and the declaration of conformity available for inspection within 10 days of a request received from market surveillance authorities or the Commission.
6. **Member States shall [OJ note: by 12 months after entry into force of this Regulation] adapt national legislation and take other necessary measures to make sure they comply with the provisions related to Market Surveillance.**

*Article 71*  
*Entry into force **and application***

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

**It shall apply from [the date of entry into force of this Regulation] unless otherwise provided.**

**However, Article 20(1) and Article 20a shall apply from 6 months after the entry into force of this Regulation.**

This Regulation shall be binding in its entirety and directly applicable in all Member States. Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

**ANNEX I**



### **Product parameters**

The following parameters **shall** ~~may~~, as appropriate **to the relevant product groups**, ~~and where necessary supplemented by others~~, be used as a basis for improving the product aspects referred to in Article 5(1):

- (a) durability and reliability of the product or its components as expressed through the product's guaranteed lifetime, technical lifetime, mean time between failures, indication of real use information on the product, resistance to stresses or ageing mechanisms;
- (b) ease of repair and maintenance as expressed through: characteristics, availability and delivery time of spare parts, modularity, compatibility with commonly available spare parts, availability of repair and maintenance instructions, number of materials and components used, use of standard components, use of component and material coding standards for the identification of components and materials, number and complexity of processes and tools needed, ease of non-destructive disassembly and re-assembly, conditions for access to product data, conditions for access to or use of hardware and software needed;
- (c) ease of upgrading, re-use, remanufacturing and refurbishment as expressed through: number of materials and components used, use of standard components, use of component and material coding standards for the identification of components and materials, number and complexity of processes and tools needed, ease of non-destructive disassembly and reassembly, conditions for access to product data, conditions for access to or use of hardware and software needed, conditions of access to test protocols or not commonly available testing equipment, availability of guarantees specific to remanufactured or refurbished products, conditions for access to or use of technologies protected by intellectual property rights, modularity;
- (d) ease and quality of recycling as expressed through: use of easily recyclable materials, safe, easy and non-destructive access to recyclable components and materials or components and materials containing hazardous substances, material composition and homogeneity, possibility for high-purity sorting, number of materials and components used, use of standard components, use of component and material coding standards for the identification of

components and materials, number and complexity of processes and tools needed, ease of non-destructive disassembly and re-assembly, conditions for access to product data, conditions for access to or use of hardware and software needed;

- (e) avoidance of technical solutions detrimental to re-use, upgrading, repair, maintenance, refurbishment, remanufacturing and recycling of products and components;
- (f) use of substances, on their own, as constituents of substances or in mixtures, during the production process of products, or leading to their presence in products, including once these products become waste;
- (g) **use or** consumption of energy, water and other resources, **including critical raw materials** in one or more life cycle stages of the product, including the effect of physical factors or software and firmware updates on product efficiency and including the impact on deforestation;
- (h) use or content of recycled materials **and recovery of materials, including critical raw materials;**
- (i) weight and volume of the product and its packaging, and the product-to-packaging ratio;
- (j) incorporation of used components
- (k) quantity, characteristics and availability of consumables needed for proper use and maintenance **as expressed through yield, technical lifetime, ability to reuse, repair, and manufacture, mass-resource efficiency, interoperability;**
- (l) the environmental footprint of the product, expressed as a quantification, in accordance with the applicable delegated **implementing delegated** act, of a product's life cycle environmental impacts, whether in relation to one or more environmental impact categories or an aggregated set of impact categories;
- (m) the carbon **and environment** footprint of the product;
- (n) microplastic release **as expressed through the release during relevant product lifecycle stages including manufacturing, transport, end-use, and end of life stages;**

- (o) emissions to air, water or soil released in one or more life cycle stages of the product **as expressed through quantities and nature of emissions, including noise;**
- (p) amounts of waste generated, including plastic waste and packaging waste and their ease of reuse, and amounts of hazardous waste generated;
- (q) **functional performance and** conditions for use **including as expressed through inter alia ability in performing its intended use, precautions of use, skills required, compatibility with other products or systems, etc.;**
- (r) **lightweight design as expressed through reduction of material consumption, load- and stress-optimisation of structures, integration of functions within the material or into a single product component, use of lower density or high-strength materials and hybrid materials, and optimisation of manufacturing, production and assembly processes with respect to material savings, recycling and other circularity aspects, and waste reduction.**

**Procedure for defining performance requirements**

Performance requirements shall be set as follows:

- (1) A technical, environmental and economic analysis shall select a number of representative models of the product or products in question on the market and identify the technical options for improving the product performance in relation to the parameters referred to in Annex I - in view of product-specific or horizontal requirements - taking into account the economic viability of the options and avoiding any significant increase of other life cycle environmental impacts, and significant loss of performance or of usefulness for consumers.

The technical, environmental and economic analysis shall also identify, for the parameter under consideration, the best-performing products and technologies available on the market.

The performance of products available on international markets and benchmarks set in other countries' legislation shall be taken into consideration during the analysis referred to in the first subparagraph as well as when setting requirements.

**The Commission shall also take into consideration the net environmental balance between the environmental benefits and burdens; impact on innovation, aesthetics and design choices whether there is a method or metrics for expressing the product parameter for which the performance requirement is established, and whether the compliance with the product parameter, for which the performance requirement is established, is verifiable or measurable by Market surveillance authorities.**

Based on this analysis, and taking into account economic and technical feasibility, including the availability of key resources and technologies, as well as the potential for improvement, levels or nonquantitative requirements shall be defined.

Any concentration limit for substances as referred to in Annex I, point (f), shall be based on a thorough analysis of the sustainability of the substances and their identified alternatives, and

shall not have significant adverse effects on human health or the environment. Any performance requirement on substances as referred to in Annex I, point (f), shall take into consideration existing chemical safety assessments performed by the relevant Union bodies for the substances concerned, as well as safe and sustainable by design criteria for chemicals and materials developed by the Commission. Proposed concentration limits shall also consider aspects of enforceability, such as analytical detection limits.

Where relevant, the analysis referred to in the first subparagraph shall take into account the likely impacts of climate change on the product during its prospective lifetime, and the product's potential to improve climate resilience throughout its life cycle.

A sensitivity analysis covering the relevant factors, such as the price of energy or other resources, the cost of raw materials and necessary technologies, production costs, discount rates, and, where appropriate, external environmental costs, including avoided greenhouse gas emissions, must be carried out.

- (2) For the development of the technical, environmental and economic analyses, relevant information available in the framework of other Union activities shall be taken into account and shall include technical information used as a basis for or derived from Regulation (EC) No 66/2010, Directive 2010/75/EU and Green Public Procurement criteria.

That shall also apply for information available from existing programmes applied in other parts of the world for setting the specific ecodesign requirement of products traded with the Union's economic partners.

- (3) ~~The date of entry into force of the performance requirements shall, where relevant, take into account the time needed to adapt the product design and production processes.~~

### **Elements to be taken into consideration for information requirements**

**When deciding which information requirements, other than requirements on the digital product passport and substances of concern, are appropriate for the product group concerned the Commission shall, apart from Article 5 and 7, take into consideration the following elements:**

- a) the potential for improvement and relative effectiveness in delivering a better environmental sustainability**
- b) the technical feasibility of such information requirements**
- c) the needs of various economic operators, including SMEs**
- d) the need for potential customers to make informed choices**
- e) the need to verify compliance with the requirements**
- f) the legitimate need to protect confidential business information, intellectual property rights and trade secrets**
- g) the need to provide information on the performance of the products for each aspect covered by a performance requirement**
- h) the added value in providing information on the performance of the products for aspects not covered by performance requirements.**

**The Commission will include information requirements in its analysis and impact assessment related to performance requirements referred to in Article 6 and this Annex. In particular, the Commission will assess the type of information and the manner in which it should be made available to ensure that it is relevant and understood by the target group.**

PUBLIC

**Digital Product Passport****(referred to in ~~Article~~Articles 8, 9, 10 and 11)**

The requirements related to the product passport laid down in the ~~delegated~~ **implementing** **delegated** acts adopted pursuant to Article 4 shall specify what information shall or may be included in the product passport from among the following elements:

- (a) information required under Articles 7(2) **point (b)** and ~~8(2)~~**Article 7(5)** or by other Union law applicable to the relevant product group;
- (b) the unique product identifier at the level indicated in the applicable delegated act adopted pursuant to Article 4;
- (c) the Global Trade Identification Number as provided for in standard ISO/IEC 15459-6 or equivalent of products or their parts;
- (d) relevant commodity codes, such as a TARIC code as defined in Council Regulation (EEC) No 2658/87<sup>69</sup>;
- (e) compliance documentation and information required under this Regulation or other Union law applicable to the product, such as the declaration of conformity, technical documentation or conformity certificates;
- (f) user manuals, instructions, warnings or safety information, as required by other Union legislation applicable to the product;
- (g) information related to the manufacturer, such as its unique operator identifier and the information referred to in Article 21(7);

<sup>69</sup> Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).



- (h) unique operator identifiers other than that of the manufacturer;
- (i) unique facility identifiers;
- (j) information related to the importer, including the information referred to in Article 23(3) and its EORI number;
- (k) the name, contact details and unique operator identifier code of the economic operator established in the Union responsible for carrying out the tasks set out in Article 4 of Regulation (EU) 2019/1020, or Article 15 of Regulation (EU) [...] on general product safety, or similar tasks pursuant to other EU legislation applicable to the product.
- (l) **The data carrier, the unique product identifier referred to in point (b), the unique operators identifiers referred to in points (g) and (h), and the unique facility identifiers referred to in point (i) shall, where relevant for the concerned products, comply with International Organization for Standardisation/International Electrotechnical Commission standard ('ISO/IEC') 15459-1:2014; International Organization for Standardisation/International Electrotechnical Commission standard ('ISO/IEC') 15459-2:2015; International Organization for Standardisation/International Electrotechnical Commission standard ('ISO/IEC') 15459-3:2014; International Organization for Standardisation/International Electrotechnical Commission standard ('ISO/IEC') 15459-4:2014; International Organization for Standardisation/International Electrotechnical Commission standard ('ISO/IEC') 15459-5:2014; International Organization for Standardisation/International Electrotechnical Commission standard ('ISO/IEC') 15459-6:2014.**

The delegated **implementing delegated** acts adopted pursuant to Article 4 shall identify information relevant to ecodesign requirements that manufacturers may include in the product passport in addition to the information required pursuant to Article 8(2), point (a), including

information on specific voluntary labels applicable to the product. That shall include whether an EU Ecolabel has been awarded to the product in line with Regulation (EC) No 66/2010.

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ANNEX III

**ANNEX IV**

### **Internal production control**

#### **(Module A)**

1. Internal production control is the conformity assessment procedure whereby the manufacturer fulfils the obligations laid down in points 2, 3 and 4, and ensures and declares on its sole responsibility that the product satisfies the requirements of the delegated act adopted pursuant to Article 4.

2. Technical documentation

The manufacturer shall establish the technical documentation. The documentation shall make it possible to assess the product's conformity to the requirements of the delegated act adopted pursuant to Article 4. The technical documentation shall specify the applicable requirements and cover, as far as relevant for the assessment, the design, manufacture and operation of the product. The technical documentation shall, wherever applicable, contain at least the following elements:

- a general description of the product and of its intended use,
- conceptual design and manufacturing drawings and schemes of components, subassemblies, circuits, etc.
- descriptions and explanations necessary for the understanding of those drawings and schemes and the operation of the product,

- a list of the harmonised standards, common specification or other relevant technical specifications the references of which have been published in the Official Journal of the European Union, applied in full or in part, and descriptions of the solutions adopted to meet the requirements where those harmonised standards have not been applied. In the event of partly applied harmonised standards, the technical documentation shall specify the parts which have been applied,
- results of design calculations made, examinations carried out, etc.,
- the results of measurements carried out in relation to ecodesign requirements, including details of the conformity of these measurements as compared with the ecodesign requirements set out in the delegated act adopted pursuant to Article 4,
- test reports, and
- a copy of the information provided in accordance with the information requirements pursuant to Article 7,

### 3. Manufacturing

The manufacturer shall take all measures necessary so that the manufacturing process and its monitoring ensure compliance of the product with the technical documentation referred to in point 2 and with requirements of the delegated act adopted pursuant to Article 4.

### 4. CE marking and EU declaration of conformity

The manufacturer shall affix the required conformity marking to each individual product that satisfies requirements of the delegated act adopted pursuant to Article 4.

The manufacturer shall draw up a written declaration of conformity for each product model in accordance with Article 37 and keep it, together with the technical documentation, at the disposal of the competent national authorities for ten years after the product has been placed on the market or put into service. The declaration of conformity shall identify the product for which it has been drawn up.

A copy of the declaration of conformity shall be made available to the relevant authorities upon request.

5. Authorised representative

The manufacturer's obligations set out in point 4 may be fulfilled by his or her authorised representative, on his or her behalf and under his or her responsibility, provided that they are specified in the mandate.

**ANNEX V**

**EU declaration of conformity**

**(referred to in Article 37)**

The EU declaration of conformity shall contain the following elements:

- (1) No ... (unique identification of the product)
- (2) Name and address of the manufacturer and, where applicable, its authorised representative;
- (3) This EU declaration of conformity is issued under the sole responsibility of the manufacturer.

- (4) Object of the declaration (description of the product sufficient for its unambiguous identification and allowing traceability; it may, where necessary for the identification of the ~~EU fertilising~~ product, include an image);
- (5) The object of the declaration described above is in conformity with this Regulation, the delegated act adopted pursuant to Article 4 and, where applicable, other Union harmonisation legislation;
- (6) references to the relevant harmonised standards or to the common specifications used or references to the other technical specifications in relation to which conformity is declared;
- (7) where applicable, the notified body ... (name, number) performed ... (description of intervention) and issued the certificate or approval decision ... (number);
- (8) where appropriate, the reference to other Union legislation providing for the affixing of the CE mark that is applied; and
- (9) the identification and signature of the person empowered to bind the manufacturer or its authorised representative.

(10) Additional information:

Signed for and on behalf of:

(place and date of issue):

(name, function) (signature):





**Contents of delegated acts**

**(referred to in Article 4)**

The delegated acts adopted pursuant to Article 4 are to specify the following technical elements:

- (1) the definition of the product groups covered;
- (2) the ecodesign requirements for the product groups covered, in line with Article 4 and based on the parameters referred to in Annex I;
- (3) where relevant, the parameters referred to in Annex I for which no ecodesign requirement is necessary;
- (4) the test, measurement or calculation standards or methods to be used pursuant to Article **32(1); where relevant, requirements for the use of online tools pursuant to Article 32(2);**
- (5) where relevant, the transitional methods, harmonised standards, the reference numbers of which have been published in the *Official Journal of the European Union*, or common specifications to be used;
- (6) the conformity assessment module to be used pursuant to Article 4, second subparagraph, as set out under Annex II to Decision 768/2008/EC. Where the module to be applied is different from the module set out in Annex IV, the factors leading to the selection of that specific procedure.



~~Where different conformity assessment modules, referred to in Annex II to Decision 768/2008/EC, are to be used pursuant to other Union legislation for the same product, the module defined in the delegated act adopted pursuant to Article 4 shall prevail for the ecodesign requirement concerned;~~

- ~~(7) requirements on information to be provided by manufacturers, including on the elements of the technical documentation to enable the verification of compliance of the product with the ecodesign requirements. Where relevant, any additional information requirements pursuant to Articles 30 and 31;~~
- ~~(8) implementation dates **ensuring at least 18 months after the entry into force of the delegated act**, any staged or transitional measure or periods, taking into account possible impacts on **market surveillance authorities**, SMEs or on specific product groups manufactured primarily by SMEs;~~
- ~~(9) the duration of the transitional period during which Member States are to permit the placing on the market or putting into service of products, which comply with the regulations in force in their territory on the date of adoption of the delegated acts adopted pursuant to Article 4;~~
- ~~(10) the date for the evaluation and possible revision of the delegated act, taking into account technological progress.~~
- ~~(11) other environmental labels who are equivalent to the ecodesign requirements pursuant to Article 34.~~

## **ANNEX VII**

### **Criteria for self-regulation measures**

(referred to in Article 18)

The following non-exhaustive list of ~~indicative~~ criteria **shall** ~~may~~ be used to assess self-regulation measures **in accordance with Article 18** ~~as an alternative to a delegated act adopted pursuant to Article 4 of this Regulation:~~

#### **1. Openness of participation**

Self-regulation measures must be open to the participation of any operators placing on the market a product covered by the self-regulation measure, including third country operators **and SMEs**, both in the preparatory and in the implementation phases. Economic operators intending to establish a self-regulation measure should make a public announcement of their intention to do so before the process of developing the measure is started.

#### **2. Sustainability and added value**

Self-regulation measures must respond to the policy objectives of this Regulation and must be consistent with the economic and social dimensions of sustainable development.

Self-regulation measures must have an integrated approach to the protection of the interests of consumers, health, **environment**, quality of life and economic interests.

#### **3. Representativeness**

Industry and their associations taking part in a self-regulation measure must represent a large majority of the relevant economic sector, in accordance with Article 18(3), first subparagraph, point (b). Care must be taken to ensure respect for Union competition legislation, in particular Article 101 of the Treaty on the Functioning of the European Union regarding anticompetitive agreements.

#### **4. Quantified and staged objectives**

The objectives defined by the signatories in their self-regulation measures must be set in clear and unambiguous terms, starting from a well-defined baseline. If the self-regulation measure covers a long time-span, interim targets must be included. It must be possible to monitor compliance with objectives and interim targets in an affordable and credible way using clear and reliable indicators.

#### 5. **Involvement of civil society**

With a view to ensuring transparency, self-regulation measures must be publicised, including online and via other electronic means of disseminating information.

Stakeholders including Member States, industry, environmental NGOs and consumers' associations must be invited to comment on a self-regulation measure.

#### 6. **Monitoring and reporting**

An independent inspector must monitor compliance of signatories with the self-regulation measure. The self-regulation measure must empower the independent inspector to verify compliance with the requirements of the self-regulation measure. It must also lay down the procedure to select an independent inspector and how it will be ensured that the inspector is free of conflict of interest and has the necessary skills for verifying compliance with the requirements set out in the self-regulation measure.

Every year, each signatory must report all the information and data necessary for the independent inspector to reliably verify the signatory's compliance with the self-regulation measure.

The independent inspector must draw up a compliance report at end of each one-year reporting period.

Where a signatory has not complied with the requirements of the self-regulation measure, it must take corrective action.

**The results of any market surveillance activity conducted by a market surveillance authority where non-compliance with the SRM requirements has been identified,**

**should be taken into account by the independent inspector, in particular in the compliance report, and corrective action shall be taken.**

7. **Cost-effectiveness of administering a self-regulation measure**

The cost of administering the self-regulation measure, in particular as regards monitoring, must not lead to a disproportionate administrative burden, as compared to their objectives and to other available policy instruments.

Correlation table

| <b>Directive 2009/125/EC</b> | <b>This Regulation</b>   |
|------------------------------|--------------------------|
| <b>Article 1</b>             | <b>Article 1</b>         |
| <b>Article 2</b>             | <b>Article 2</b>         |
| <b>Article 3</b>             | <b>-</b>                 |
| <b>Article 4</b>             | <b>Article 23</b>        |
| <b>Article 5</b>             | <b>Articles 37-39</b>    |
| <b>Article 6</b>             | <b>Article 3</b>         |
| <b>Article 7</b>             | <b>Articles 63 to 65</b> |
| <b>Article 8</b>             | <b>Articles 21, 36</b>   |
| <b>Article 9</b>             | <b>Article 34</b>        |
| <b>Article 10</b>            | <b>-</b>                 |
| <b>Article 11</b>            | <b>Article 5(6)</b>      |
| <b>Article 12</b>            | <b>Article 62</b>        |
| <b>Article 13</b>            | <b>Article 19</b>        |
| <b>Article 14</b>            | <b>Article 7</b>         |
| <b>Article 15</b>            | <b>Articles 4 and 5</b>  |
| <b>-</b>                     | <b>Article 8-15</b>      |
| <b>Article 16</b>            | <b>Article 16</b>        |
| <b>Article 17</b>            | <b>Article 18</b>        |
| <b>Article 18</b>            | <b>Articles 17</b>       |
| <b>-</b>                     | <b>Article 20</b>        |
|                              | <b>Article 22</b>        |
|                              | <b>Articles 24-33</b>    |

|                   |                      |
|-------------------|----------------------|
|                   | <b>Article 35</b>    |
|                   | <b>Article 40-61</b> |
|                   | <b>Article 66</b>    |
| <b>Article 19</b> | <b>Article 67</b>    |
| <b>Article 20</b> | <b>Article 68</b>    |
| <b>Article 21</b> | <b>Article 69</b>    |
| <b>Article 22</b> | -                    |

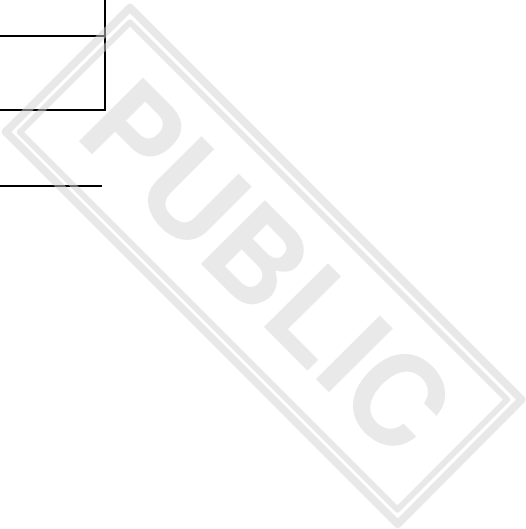
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ANNEX VIII

| <b>Directive 2009/125/EC</b> | <b>This Regulation</b>        |
|------------------------------|-------------------------------|
| <b>Article 23</b>            | -                             |
| <b>Article 24</b>            | <b>Article 70</b>             |
| <b>Article 25</b>            | <b>Article 71</b>             |
| <b>Article 26</b>            | -                             |
| <b>ANNEX I</b>               | <b>Articles 5, 7, ANNEX I</b> |
| <b>ANNEX II</b>              | <b>ANNEX II</b>               |
| -                            | <b>ANNEX III</b>              |
| <b>ANNEX III</b>             | -                             |
| <b>ANNEX IV</b>              | <b>ANNEX IV</b>               |
| <b>ANNEX V</b>               | -                             |
| <b>ANNEX VI</b>              | <b>ANNEX V</b>                |
| <b>ANNEX VII</b>             | <b>ANNEX VI</b>               |
| <b>ANNEX VIII</b>            | <b>ANNEX VII</b>              |

|                 |                   |
|-----------------|-------------------|
| <b>ANNEX IX</b> | -                 |
| <b>ANNEX X</b>  | <b>ANNEX VIII</b> |

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ANNEX VIII



# *Ministero delle Imprese e del Made in Italy*

DIREZIONE GENERALE PER LA POLITICA INDUSTRIALE, L'INNOVAZIONE E LE PMI  
DIVISIONE III - ECONOMIA CIRCOLARE E POLITICHE PER LO SVILUPPO ECOSOSTENIBILE

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

### **Third compromise text (8080/23)**

#### **Discussion note 8481/23**

Italy carefully analysed the third compromise text and the Discussion note 8481/23 submitted by the Swedish Presidency and would like to thank for the efforts made for advancing the negotiations.

Although we support the Presidency's ambition to reach a General Approach on the 22 of May 2023, the new text introduces some important changes with respect to several crucial points of this new Ecodesign regulation, which would have needed more time to be properly examined also with a view to reaching some negotiating compromises.

Despite the limited time available for carrying out this analysis, Italy was able to reach a concerted national position on the third compromise text, which you will find detailed in the table enclosed to this note.

The main aspects of the Italian position can be briefly outlined as follows:

- **Destruction of unsold consumer products.** Italy examined the Swedish Presidency's proposal as a whole in relation to this issue and the introduction of a direct ban for certain product groups. As represented on several occasions, Italy is against the introduction of a general ban on the destruction of unsold consumer goods in the regulation. Likewise, we are against the introduction of a direct ban for some product groups (see comments below).

In our view, this approach:

- It is not based on any scientific basis, lacking at present the necessary data on which to base such a ban, whether general in nature or specific to certain product groups;
- It is discriminatory, contrary to the intentions stated in the new Article 20c, toward the product groups chosen for the introduction of a different ban. Unlike the product groups for which the ban will be introduced by implementing acts, those to be banned under the new Article 20b are chosen without a prior impact assessment.

In addition, we believe that at the current stage also the medium companies, not only the micro and the small ones, must be excluded from the duties arising from this Section of the framework regulation both in terms of transparency obligation and of prohibition of destruction. We therefore support the return to the previous version of the proposal with regard to this aspect.

In light of the above:





- we believe that recycling should be excluded from the definition of destruction;
  - all SMEs should be excluded from obligations related to the destruction rules (included the transparency obligations);
  - we support Article 20a, 20aa and 20, but we have some drafting suggestions (see below);
  - we call for the deletion of Article 20b;
  - we support, with some proposed amendments, Article 20c, which establishes the procedure to be followed by the Commission in selecting the products to be banned, the indication of which could be included in the Commission's working plan, which, according to the proposal, is also an implementing act;
  - therefore, the Working Plan should become the point where the overall plan for the application of the ESPR Regulation is known to everybody. In this respect, the WP should also include also the list of the products for which the Commission intends to carry out impact assessments for setting a prohibition against the destruction of Article 20d, together with the priorities for ecodesign requirements;
  - Textile could be indicated in a recital as one of the priority group that the Commission will take into consideration for the impact assessment under article 20c.
- **Substances of Concerns.** As a general consideration, Italy has always supported the need for SoC aspects to be regulated within the specific legislative framework for chemicals (i.e. REACH). The regulation of these substances within the Ecodesign Regulation should be limited to aspects that affect the circularity.

This said, Italy's main concern refers to the definition of "Substances of Concerns" under Article 2(28) of the third compromise text, which reflects the original proposal. As underlined on several occasions, it appears too broad and makes the information requirements pursuant to art. 7, par. 5, too expensive and difficult to manage in practice for companies, in particular for SMEs.

With this in mind, we believe that the definition should be limited to substances in (a) and (c), and (b) should be deleted. This is our preferred option (see, comment to Article 2(28)).

- **Digital Product Passport.** We generally support the introduction of DPP and the current version of Chapter III. Nevertheless, we have raised **some concerns** over a few points:
  - Decentralised structure. In order to address the concerns related to the administrative and economic burden for companies (in particular, SMEs) and to the controls by public competent authorities, we propose to introduce the possibility for MSs to set some form of centralization at national levels. This would be an alternative and not a duplication for enterprises, which would thus be relieved of the need to retain data;
  - New exclusion from the scope of the Ecodesign regulation. We have identified some customs regimes, which make it impossible to apply the Ecodesign regulation to the good which fall under them. We listed them under Article 1;
  - DPP as a default option. We believe that the choice to use the DPP should be made on a case-by-case basis and, therefore, left to the secondary legislation. This approach would enable



the Commission and the other actors involved in the decision-making process to take into account several cases which would not allow the use of DPP (see our comments below);

- Customs controls (art. 13). We generally support Article 13. With regard to paragraph 4, we would like to reintroduce it, but we think that the Commission and MS should introduce some mechanism to address the specific issues raised by the postal shipments.

With regard to the suggestions submitted to the delegation with the Discussion note 8481/23, we would support the n. 2a (One could consider transforming the empowerment for the Commission in Article 13(4) into an implementing act with stricter criteria for what needs to be fulfilled before such an implementing act is put forward).

- **Scope.** In addition to the exclusions mentioned in the previous section, we also ask for the exclusion from the scope of the Ecodesign framework regulation of the packaging and tailor-made products. With regard to the former, we believe that all the aspects related to the Ecodesign of the packaging, including the cases where it is a specific part of another product, should be regulated under the Packaging regulation currently under negotiation. On the other hand, tailor-made 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.
- **Ecodesign requirements.** Since the beginning of the negotiation, we shared some technical comments related to the list of aspects (article 5, par. 1) and parameters (Annex I) and on the method of calculation of the environmental impacts (including the definition of Functional Unit). Even if some of them are reflected in the amendments included in the third compromise text, we continue to see some inconsistency with the scientific approach to ecodesign (see comments in the table).
- **Empowerment to the Commission to adopt Ecodesign requirements.** This aspect is particularly sensitive for Italy as one of the main manufacturing countries of the European Union.

Italy continues to support the use of implementing acts for the adoption of Ecodesign requirements under Article 4 of the Ecodesign regulation. In our opinion, national authorities must be fully involved in the definition and adoption of ecodesign requirements under this new framework regulation, which has a very wide scope. In this regard, as already stressed in several occasions, we hold the use of the implementing acts is essential to ensure the involvement and maximum active participation of national governments in regulatory processes that are so important for production systems and the environment and to ensure a just transition.

With this in mind, Italy put forward a compromise proposal, which aims at accommodating both the requests of the Member States to be involved in the adoption of the secondary legislation and the concerns represented by the European Commission. At the same time, this proposal ensures the necessary legal certainty for companies to plan their investments, responding to MS's concerns emerged during the negotiation.

According to our understanding and expertise in the subject matter, we consider that all the necessary elements for developing the future ecodesign requirements for each group of products are already present in the current version of the framework regulation. Nevertheless, we are open



to discuss the additional elements missing in the text according to the Commission and Presidency's judgment.

- **National measures.** We made several negative comments on the parts of the text, which allow the adoption of national measures and/or legislation, which could have a negative impact on the harmonization and the internal market (i.e. national labels).



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| 2022/0095 (COD)                                                                                                                                 |  |  |
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| Proposal for a                                                                                                                                  |  |  |
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| <b>REGULATION OF THE<br/>EUROPEAN PARLIAMENT<br/>AND OF THE COUNCIL</b>                                                                         |  |  |
|                                                                                                                                                 |  |  |
| <b>establishing a framework for<br/>setting ecodesign requirements<br/>for sustainable products and<br/>repealing Directive<br/>2009/125/EC</b> |  |  |
| <b>(Text with EEA relevance)</b>                                                                                                                |  |  |
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| THE EUROPEAN<br>PARLIAMENT AND THE<br>COUNCIL OF THE<br>EUROPEAN UNION,                                                                         |  |  |
|                                                                                                                                                 |  |  |
| Having regard to the Treaty on the<br>Functioning of the European<br>Union, and in particular Article<br>114 thereof,                           |  |  |
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| Having regard to the proposal<br>from the European Commission,                                                                                  |  |  |
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| After transmission of the draft legislative act to the national parliaments,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |  |
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| Having regard to the opinion of the European Economic and Social Committee, Acting in accordance with the ordinary legislative procedure,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |  |
| Whereas:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |  |
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| (1) The European Green Deal is Europe's sustainable growth strategy that aims to transform the Union into a fair and prosperous society, with a modern, competitive, climate-neutral and circular economy. It sets the ambitious objective of ensuring that the Union becomes the first climate neutral continent by 2050. It recognises the advantages of investing in the Union's competitive sustainability by building a fairer, greener and more digital Europe. Products have a pivotal role to play in this green transition. Underlining that current production processes and consumption patterns remain too linear and dependent on a throughput of new materials |  |  |



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| <p>extracted, traded and processed goods <b>that are</b> <del>and</del> finally disposed of as waste or emissions, the European Green Deal emphasises the urgent need to transition to a circular economy model and stresses the significant progress that remains to be made. It also identifies energy efficiency as a priority for the decarbonisation of the energy sector and for reaching the climate objectives in 2030 and 2050.</p>                                                                                     |  |  |
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| <p>(2) To accelerate the transition to a circular economy model, the Commission designed a future-oriented agenda in its Circular Economy Action Plan for a cleaner and more competitive Europe<sup>3</sup> (CEAP), with the objective of making the regulatory framework fit for a sustainable future. As set out in <del>this</del> <b>that</b> plan, there is currently no comprehensive set of requirements to ensure that all products placed on the Union market become increasingly sustainable and stand the test of</p> |  |  |



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| <p>circularity. In particular, product design does not sufficiently promote sustainability over the whole life cycle. As a result, products are being replaced frequently, involving significant energy and resource use in order to produce and distribute new products and dispose of old ones. <b>Due to the lack of relevant information and affordable options, it is</b> still too difficult for economic operators and citizens to make sustainable choices in relation to products <del>given that relevant information and affordable options to do so are lacking</del>. This leads to missed opportunities for sustainability and for value-retaining operations, limited demand for secondary materials and obstacles to the adoption of circular business models.</p> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |  |
| <p><b>(2a) A fully functioning internal market for sustainable products is a pre-requisite for the establishment of a circular economy in the Union. Common ecodesign requirements at Union level</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |  |



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| <p>would enable the development, deployment and scale-up of new circular economy business models throughout the internal market and boost long-term competitiveness of the Union. Such measures would also remove a disproportionate burden on companies and provide industry and consumers with access to reliable and clear data, thereby allowing for more sustainable choices to be made.</p>                                                                                                                                                                     |  |  |
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| <p>(3) The European Industrial Strategy<sup>4</sup> sets out the Union's overarching ambition to foster a 'twin transition' to climate neutrality and digital leadership. It echoes the European Green Deal in pointing to the leading role that Europe's industry must play in <del>this</del> <b>that</b>, by reducing its carbon and material footprint and embedding circularity across the economy, and underlines the need to move away from traditional models, and revolutionise the way we design, make, use and dispose of products. The 2021 Update to</p> |  |  |





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| <p>the Industrial Strategy<sup>5</sup> reinforces the main messages of the 2020 Strategy and focuses on the lessons from the COVID-19 crisis, including the need to foster resilience.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |  |  |
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| <p>(4) In the absence of legislation at Union level, diverging national approaches to improving the environmental sustainability of products have already emerged, ranging from information requirements on the duration of software compatibility of electronic devices to reporting obligations on handling unsold durable goods. This is an indication that further national efforts to achieve the aims pursued by this Regulation will likely lead to further fragmentation of the internal market. Therefore, in order to <b>contribute to safeguard</b> the functioning of the internal market while ensuring a high level of environmental protection, <del>there is a need for</del> a <b>harmonised</b> regulatory framework to progressively introduce</p> |  |  |



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| <p>ecodesign requirements for products <b>is needed</b>. This Regulation will <b>provide such a framework</b>, by making the ecodesign approach initially set out in Directive 2009/125/EC of the European Parliament and of the Council<sup>6</sup> applicable to the broadest possible range of products, <del>provide such a framework</del>. <b>In view of the importance of sustainable products for the transition to a climate-neutral and circular economy, and in order to provide legal certainty to all operators involved and to prevent barriers in the internal market, it is necessary to create a harmonised regulatory framework for setting ecodesign requirements of products that are placed on the market.</b></p> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                           |
| <p><b>(5)</b> This Regulation will contribute to making products fit for a climate-neutral, resource-efficient and circular economy, reducing waste and ensuring that the performance of frontrunners in sustainability progressively</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <p>This paragraph mixes up objectives to be reached (e.g., climate-neutral), with possible ecodesign strategies/requirements to reach them (e.g., resource-efficient). Even though very important, only one environmental impact category is mentioned, i.e., climate change. It would be much more appropriate to refer to the environmental impact of the product in general and, if of interest, highlight climate change. In addition, “reducing waste” is already included in “circular</p> | <p>This Regulation will contribute to <b>radically reducing the environmental impact of products, in terms of ecological damages (e.g., climate change, acidification, eutrophication, ecotoxicity, land use), humane damages (e.g., human toxicity, winter smog,</b></p> |



becomes the norm. It should provide for the setting of new ecodesign requirements to improve product durability, reusability, upgradability and reparability, improve possibilities for **lightweight design**, refurbishment and maintenance, address the presence of hazardous chemicals in products, increase their energy and resource efficiency, **including in regard to strategic and critical raw material**, reduce their expected generation of waste materials and increase recycled content in products, while ensuring their performance and safety, enabling remanufacturing and high-quality recycling and reducing carbon and environmental footprints. **Ecodesign requirements could also concern resource use, including requirements related to usage of renewable resources or materials with bio-based content in the product.**

economy” (either bio or techno-cycles), but here it is listed after circular economy. It should be either erased or rephrased. The ecodesign requirements introduced here should be improved in terms of completeness, e.g., no mention of **product use intensification**, and hierarchy, e.g., the product durability, or better still the "**product lifespan extension**", could be reached by the following set of sub-requirements which, (those missing are in bold), are kept so far on the same level: maintenance; upgradability **and adaptability**; reparability; **reusability, refurbishment; remanufacturing**).

**summer smog, stratospheric ozone depletion) and resources depletion** ~~making products fit for a climate neutral, resource efficient and circular economy, reducing waste and~~ ensuring that the performance of frontrunners in sustainability progressively becomes the norm. It should provide for the setting of new ecodesign requirements to improve product durability (i.e. **enabling/improving maintenance**), ~~reusability, upgradability, refurbishment, and~~ reparability, **reusability, remanufacturing, product use intensification and reliability, improve possibilities for lightweight design, refurbishment and maintenance, address the presence of hazardous chemicals in minimizing products' toxicity/harmfulness in all life cycle phases, increase their minimize** energy and **material** resource **efficiency**, ~~including in regard to strategic and critical raw material, reduce their expected generation of waste materials and increase recycled content in products, while ensuring their performance and safety, enabling remanufacturing and~~ **ensuring** high-quality recycling, **composting and energy recovery. and reducing carbon and environmental footprints. Ecodesign requirements could**



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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  | <p>also concern resource conservation/renewability use, including requirements related to the usage of renewable energy resources or materials with bio-based or recycled content in the product.</p> <p>All those requirements aim at reducing environmental footprint, e.g., carbon footprint, human toxicity, resources depletion.</p> |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |                                                                                                                                                                                                                                                                                                                                           |
| <p>(6) The European Parliament, in its Resolution of 25 November 2020 ‘Towards a more sustainable single market for business and consumers’<sup>7</sup>, welcomed promoting durable products which are easier to repair, re-use and recycle. In its report on the New Circular Economy Action Plan adopted on 16 February 2021<sup>8</sup>, the European Parliament further endorsed the agenda presented by the Commission in the CEAP. It considered that the transition to a circular economy can provide solutions to address the current environmental challenges and the economic crisis brought on by the</p> |  |                                                                                                                                                                                                                                                                                                                                           |



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| <p>COVID-19 pandemic. The Council, in its conclusions on ‘Making the Recovery Circular and Green’ adopted on 11 December 2020<sup>9</sup>, also welcomed the Commission’s intention to submit legislative proposals as part of a comprehensive and integrated sustainable product policy framework that promotes climate neutrality, energy and resource efficiency and a non-toxic circular economy, <b>that</b> protects public health and biodiversity, and empowers and protects consumers and public buyers.</p> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |  |
| <p>(7) This Regulation should contribute to achieving the Union’s climate and energy objectives. In line with the goals set out in the Paris Agreement, ratified by the Union in 2016<sup>10</sup>, Regulation(EU) 2021/1119 of the European Parliament and of the Council, the ‘European Climate Law’<sup>11</sup> establishes a binding Union domestic reduction commitment of net greenhouse</p>                                                                                                                   |  |  |



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gas emissions of at least 55 % by 2030 and enshrines in legislation the target of economy-wide climate neutrality by 2050. In 2021 the Commission adopted the Fit for 55 Package<sup>12</sup> to make the Union's climate and energy policies fit for achieving these objectives. To do so, in line with the energy efficiency first principle enshrined in Directive (EU) 2018/2002 of the European Parliament and of the Council<sup>13</sup>, energy efficiency improvements need to be significantly stepped up, to around 36% in terms of final energy consumption by 2030<sup>14</sup>. Product requirements established under this Regulation should play a significant role towards this target by substantially decreasing products' energy footprint. ~~These~~ **Those reaching** energy efficiency requirements will also reduce consumer vulnerability to energy price increases. As recognised by the Paris Agreement improving the sustainability of consumption and production will also play an



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| important role in addressing climate change.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |  |
| <p>(8) This Regulation should also contribute to achieving the Union's wider environmental objectives. The 8th Environmental Action Programme<sup>15</sup> enshrines in a legal framework the Union's objective of staying within the planetary boundaries and identifies enabling conditions to achieve priority objectives, which include the transition to a non-toxic circular economy. The European Green Deal also calls for the Union to better monitor, report, prevent and remedy air, water, soil and consumer products pollution. This means that chemicals, materials and products have to be as safe and sustainable as possible by design and during their life cycle, leading to non-toxic material cycles<sup>16</sup>. In addition, both the European Green Deal and the CEAP recognise that the Union internal market provides a critical mass that is able to influence global standards on</p> |  |  |



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| <p>product sustainability and product design. This Regulation should therefore play a significant role towards achieving several targets established under the <del>United Nations</del><sup>2</sup> Sustainable Development Goals of the <del>UN</del><sup>2</sup>s <b>United Nations</b> 2030 Agenda for Sustainable Development ‘Responsible consumption and production’, both inside and outside the Union.</p> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                     |  |  |
| <p>(9) Directive 2009/125/EC establishes a framework for the setting of ecodesign requirements for energy-related products. <b>Together with Regulation (EU) 2017/1369 of the European Parliament and of the Council<sup>18</sup>.</b> <del>It, It has, in combination with Regulation</del></p>                                                                                                                    |  |  |





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| <p>(EU) 2017/1369 of the European Parliament and of the Council, significantly reduced EU primary energy demand for products and it is estimated these savings will continue to increase. Implementing measures adopted under Directive 2009/125/EC have also included requirements on circularity aspects, such as durability, reparability and recyclability. At the same time, instruments such as the EU Ecolabel, introduced by Regulation (EC) No 66/2010 of the European Parliament and of the Council<sup>19</sup> or the EU green public procurement criteria<sup>20</sup> are broader in scope but have a reduced impact due to the limitations of voluntary approaches.</p> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |  |
| <p>(10) Directive 2009/125/EC has been generally successful in fostering the energy efficiency and some circularity aspects of energy-related products, and its <b>ecodesign</b> approach has the potential to progressively address the sustainability of all products. To deliver on Green Deal</p>                                                                                                                                                                                                                                                                                                                                                                                  |  |  |



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| <p>commitments, this approach should be extended to other product groups and systematically address key aspects for increasing the environmental sustainability of products with binding requirements, <b>and also specify where requirements on such key aspects are not necessary to increase the environmental sustainability of products.</b> By ensuring that only products that meet those requirements are placed on the Union market, this Regulation should not only improve the free movement of such products by avoiding national disparities, but also reduce the negative life cycle environmental impacts of products for which such requirements are set.</p> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |  |  |



(11) In order to create an effective and future-proof **harmonised** regulatory framework, it is necessary to allow for the setting of ecodesign requirements on all physical goods placed on the market or put into service, including components and intermediate products. **Digital content that is an integral part of a physical goods product should be also included in the scope.** This should allow the Commissions to take into account the broadest range of products possible when prioritising the **establishment setting** of ecodesign requirements and thereby maximise their effectiveness. Where needed, specific exemptions should be made when setting ecodesign requirements, **in particular where ecodesign requirements are not necessary to contribute to the environmental sustainability of specific products parameters, or** for example for products with a particular purpose that could not be fulfilled when complying with ecodesign requirements. In

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.

In order to create an effective and future-proof **harmonised** regulatory framework, it is necessary to allow for the setting of ecodesign requirements on all physical goods placed on the market or put into service, including components and intermediate products. **Digital content that is an integral part of a physical goods product should be also included in the scope.** This should allow the Commissions to take into account the broadest range of products possible when prioritising the **establishment setting** of ecodesign requirements and thereby maximise their effectiveness. Where needed, specific exemptions should be made when setting ecodesign requirements, **in particular where ecodesign requirements are not necessary to contribute to the environmental sustainability of specific products parameters, or** for example for products with a particular purpose that could not be fulfilled when complying with ecodesign requirements. In addition, **exemptions exclusions** should be made at the level of the framework for those products for which it is already clear that ecodesign requirements would not be suitable or where other frameworks provide for the setting of such requirements. This should be the case for



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| <p>addition, <b>exemptions exclusions</b> should be made at the level of the framework for those products for which it is already clear that ecodesign requirements would not be suitable or where other frameworks provide for the setting of such requirements. This should be the case for food and feed as defined in Regulation (EC) No 178/2002 of the European Parliament and of the Council<sup>21</sup>, medicinal products for human use as defined in Directive 2001/83/EC of the European Parliament and of the Council<sup>22</sup>, veterinary medicinal products as defined in Regulation (EU) 2019/6 of the European Parliament and of the Council<sup>23</sup>, living plants, animals and micro-organisms, products of human origin, and products of plants and animals relating directly to their future reproduction.</p> |  | <p>food and feed as defined in Regulation (EC) No 178/2002 of the European Parliament and of the Council<sup>21</sup>, medicinal products for human use as defined in Directive 2001/83/EC of the European Parliament and of the Council<sup>22</sup>, veterinary medicinal products as defined in Regulation (EU) 2019/6 of the European Parliament and of the Council<sup>23</sup>, living plants, animals and micro-organisms, products of human origin, <b>and</b> products of plants and animals relating directly to their future reproduction, <b>packaging and tailor-made products</b>.</p> |
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| <p>(12) The proposal for a Directive of the European Parliament and of the Council on the energy performance of buildings (recast)<sup>24</sup> requires Member</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |



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| <p>States to set minimum energy performance requirements for building elements that form part of the building envelope and system requirements in respect to overall energy performance, the proper installation and the appropriate dimensioning, adjustment and control of technical building systems installed in new or existing buildings. It is consistent with the objectives of this Regulation that these minimum energy performance requirements may in certain circumstances limit the installation of energy-related products which comply with this Regulation and its <del>delegated</del><b>implementing</b> <del>delegated</del> acts, provided that such requirements do not constitute an unjustifiable market barrier.</p> |                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                |
| <p>(13) In order to improve the environmental sustainability of products, <del>and to ensure the free movement of products in the internal market, and to ensure uniform conditions for the implementation of this Regulation</del> the power to adopt</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <p>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.</p> | <p>(13) In order to improve the environmental sustainability of products, <del>and to ensure the free movement of products in the internal market, and to ensure uniform conditions for the implementation of this Regulation</del> the power to adopt <del>implementing</del> <del>delegated</del> acts <del>in accordance with Article 290 TFEU in</del></p> |



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~~implementing delegated acts in accordance with Article 290 TFEU in accordance with Article 290 TFEU should be conferred delegated to~~ delegated to ~~upon~~ the Commission ~~to supplement this Regulation by setting for it to be able to set~~ to supplement this Regulation by setting out the specific ecodesign requirements applicable. Those ecodesign requirements should ~~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

accordance with Article 290 TFEU should be ~~conferred delegated to~~ delegated to ~~upon~~ the Commission ~~to supplement this Regulation by setting for it to be able to set~~ to supplement this Regulation by setting out the specific ecodesign requirements applicable. Those ecodesign requirements should ~~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<sup>25</sup>.~~



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| <p>sustainability to be improved based on the same requirements. <del>Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>25</sup>.</del></p>                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  |
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| <p><b>(13a) When defining the product group, the Commission should for example consider if products which are custom-made products and small series production should be exempted from the application of whole or parts of the ecodesign requirements.</b></p>                                                                                                                                                         | <p>We welcome this new recital which refers to the need to consider the specificities of custom-made products and small productions.</p> <p>Nevertheless, we believe that tailor-made products should be excluded from the scope of this regulation (see comment to Article 1).</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                            |  |
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| <p><b>(14) Ecodesign requirements are performance and information requirements. In order to allow the Commission to set ecodesign requirements as appropriate to the product groups covered, ecodesign requirements should include performance and information requirements.</b> Those requirements should be used to improve product aspects relevant for environmental sustainability, such as energy efficiency,</p> | <p>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 <b>preparing, cleaning, testing and, where necessary repairing</b> an object that is waste or a product to restore its performance or functionality within the intended use, <b>and</b> range of performance originally conceived at the design stage, <b>applicable at the time of its placing on the market.</b>”</p> |  |



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durability, reparability and carbon and environmental footprints. Ecodesign requirements should be transparent, objective, proportionate and in compliance with international trade rules. **In view that Circular and sustainable business models, including those based on the resale of second-hand goods, need to be promoted. In line with this, ecodesign requirements should not apply to products already placed on the market. Products which are modified or reworked in such a substantial way that they are to be considered as new products having been placed on the market should however be subject to ecodesign requirements if they fall within the scope of the ~~an implementing delegated act setting out them.~~** This assessment should be made on a case-by case basis and where applicable in line with product specific sectoral legislation. The “Commission’s Blue Guide” **‘Blue Guide’** on the





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| <p>implementation of EU product rules 2022 can also be a useful tool for determining when a product should be considered new when it is altered in a substantial manner.</p> <p>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.</p>                                                                                                                                                                                                               |  |  |
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| <p>(15) Once a delegated <del>an</del> <b>implementing a delegated</b> act setting ecodesign requirements is adopted by the Commission for a given product group, Member States should, in order to ensure the functioning of the internal market, no longer be allowed to set national performance requirements based on product parameters covered by such performance requirements laid down in that <del>delegated</del> <b>implementing delegated</b> act, and no longer be allowed to set national information requirements based on product parameters covered by such</p> |  |  |



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information requirements laid down in that delegated ~~implementing~~ delegated act. In order to ensure the functioning of the internal market and promote environmentally sustainable products, the empowerment to set ecodesign requirements should include the possibility, in duly justified cases, to establish that no performance requirement or no information requirement or neither is necessary for specific product parameters. In order to ensure the functioning of the internal market, the Commission should be empowered to establish that no ecodesign requirements in the form of performance requirements and/or in the form of information requirements are necessary in relation to a specific product parameter, when setting ecodesign requirements, when this is appropriate [in view of XXX]. When a delegated act expressly provides that no performance or no information requirement or neither is necessary for a specific parameter, Member States



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| <p>should no longer be allowed to introduce or maintain national requirements based on product parameters under this Regulation with the exception of setting minimum energy performance requirements in accordance with Directive 2010/31/EU. 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.</p> |  |  |
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| <p>(16) 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. For example, defence equipment has to be able to operate under specific and sometimes harsh conditions, which needs to be considered</p>                                                                                                                                                                                                                            |  |  |



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when setting ecodesign requirements. Certain information on defence equipment should not be disclosed and should be protected.

**Ecodesign requirements should thus not be set on products with the sole purpose of which is to serve defence or national security. For dual-use products, any requirements shall meet the criteria of not having have negative impacts on security needs and activities of armed forces and take into account**  
~~Therefore, for military or sensitive equipment ecodesign requirements should take into 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<sup>26</sup>. Similarly, the space industry 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



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| <p>resilience and expected performance. Further, for medical devices as defined in Article 2(1) of Regulation (EU) 2017/745 on medical devices<sup>27</sup> and in vitro diagnostic medical devices as defined in Article 2(2) of Regulation (EU) 2017/746 on in vitro diagnostic medical devices<sup>28</sup>, the Commission should take into account of the need to not negatively affect health and safety of patients and users. <b>The Commission should furthermore, when assessing the characteristics of the market, strive to consider national characteristics, such as the different climate conditions in Member States and relevant national energy efficient practices and technologies, as well as practices and technologies used in Member States with proven beneficial environmental effects.</b></p> |  |  |
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| <p>(17) To avoid duplication of efforts and regulatory burden, consistency should be ensured between this Regulation and</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |  |



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| requirements set in or pursuant to other Union legislation, especially products, chemicals and waste legislation. However, the existence of empowerments under other Union legislation to set requirements with the same or similar effects as requirements under this Regulation does not limit the empowerments included in this Regulation, unless specified in this Regulation.                                                                                                                                                             |  |  |
| <b>(17a) When considering preparing the implementing delegated acts ecodesign requirements, the Commission should pay close attention to existing Union legislation in order to avoid conflicts or overlaps with existing legal provisions. The Commission should in the early preparation of delegated acts setting out ecodesign requirements identify and evaluate if, and then how, to address a specific product group that is already regulated by Union harmonization legislation to avoid duplications of requirements and ensure a</b> |  |  |



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| <p>coherent and legally clear treatment of the product group. In addition, the Commission should also assess how to best articulate the future eco-design measures, be they product specific or horizontal, with other applicable Union frameworks in order to ensure optimal complementarity and to avoid conflicts and overlaps of obligations. In the unlikely event of a conflict between this Regulation and another Union legislation with the same objective of improving products' environmental sustainability, the specific provision in or derived from either legislation which regulates this in a more specific manner should apply.</p> |  |  |
| <p>(18) Delegated acts <del>Implementing—Delegated acts pursuant to Article 4</del> including setting ecodesign requirements should, as was the case for implementing measures under Directive 2009/125/EC, undergo a dedicated impact assessment and stakeholder consultation, and</p>                                                                                                                                                                                                                                                                                                                                                                |  |  |



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should be drawn up in line with the Commission's Better Regulation guidelines, and include an assessment of the international dimension and impacts on third countries. When **drawing up the impact assessment**~~doing~~ ~~so~~, the Commission should take due consideration of all aspects of the life cycle of the product and base its impact assessment on best available evidence. When preparing ecodesign requirements the Commission should use a scientific approach and also take into consideration relevant technical information in particular coming from Regulation (EC) No 66/2010 of the European Parliament and of the Council<sup>30</sup>, Directive 2010/75/EU of the European Parliament and of the Council<sup>31</sup>, technical screening criteria adopted pursuant to Regulation (EU) 2020/852 of the European Parliament and of the Council<sup>32</sup> and green public procurement criteria<sup>33</sup>.





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| <p>(18a) In the specific context of preparing ecodesign requirements, it is of utmost importance that all necessary expertise, including through the consultation of Member States' experts and through public consultations is taken into consideration. A dedicated Ecodesign Expert Group should hence be established for the consultation of experts designated by the Member States prior to the adoption of all delegated acts setting out ecodesign requirements pursuant to this Regulation.</p> |  |  |
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| <p>(18b) In accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making, it will be for the Member States to decide which experts are to participate in the Ecodesign Expert Group. Members of that group should be consulted in a timely manner and be provided with the draft delegated acts, the draft agenda</p>                                                                                                                              |  |  |



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| <p>and any other relevant documents in sufficient time to prepare. At the end of any meeting of the Ecodesign Expert Group or in the follow-up to such meetings, the Commission services should state the conclusions they have drawn from the discussions, including how they will take the experts' views into consideration and how they intend to proceed. Those conclusions should be recorded in the minutes of the meeting. Where the material content of a draft delegated act is changed in any way, the Commission should give members of the Ecodesign Expert Group the opportunity to react.</p> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <p>(19) In order to take into account the diversity of products, the Commission should select the methods to assess the setting of the ecodesign requirements <del>and, as appropriate, develop them further</del> <b>Such methods are to be based</b> on the nature of the product, its most relevant aspects and its impacts over its life cycle.</p>                                                                                                                                                                                                                                                      | <p>With regard to recital 19, Italy has two drafting suggestions:</p> <ol style="list-style-type: none"><li>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;</li><li>2. Second, we would delete the words “when needed” because dedicated studies are always needed when setting new or revised ecodesign requirements as the experience with Directive 2009/125/EC has shown.</li></ol> | <p>(19) In order to take into account the diversity of products, the Commission should select the methods to assess the <b>feasibility of</b> setting of the ecodesign requirements <del>and, as appropriate, develop them further</del> <b>Such methods are to be based</b> 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</p> |



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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) 2021/2279<sup>34</sup>, 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

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) 2021/2279<sup>34</sup>, 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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| <p>should develop new methods or tools where appropriate. <del>New approaches may also be needed for the preparation of mandatory public procurement criteria and for bans on the destruction of unsold consumer products.</del></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <p>(20) Performance requirements should relate to a selected product parameter relevant to the targeted product aspect for which potential for improving environmental sustainability has been identified. Such requirements may include minimum or maximum levels of performance in relation to the product parameter, non-quantitative requirements that aim to improve performance in relation to the product parameter, or requirements related to a product's functional performance to ensure that the selected performance requirements do not negatively impact the ability of the product to perform the function for which it was designed and marketed. Regarding minimum or maximum levels, they may for example take the form of a limit</p> | <p>With regard to the new part of this recital we reiterate our previous comments to <i>Discussion note 7675/23</i>.</p> <p>The criteria established in the first part, such as “ the total positive impacts on all aspects and parameters resulting from the requirement outweigh the total negative impacts on all aspects and parameters” are too general. There is no real scientific way to assess the balance and it will be easy for the Commission to state that they consider that the total positive impacts on all aspects and parameters resulting from the requirements must outweigh the total negative impacts, because there is no way to prove the contrary.</p> <p>We support the last sentence of this recital, but we propose a possible modification taking into account the previous comment.</p> | <p>Performance requirements should relate to a selected product parameter relevant to the targeted product aspect for which potential for improving environmental sustainability has been identified. Such requirements may include minimum or maximum levels of performance in relation to the product parameter, non-quantitative requirements that aim to improve performance in relation to the product parameter, or requirements related to a product's functional performance to ensure that the selected performance requirements do not negatively impact the ability of the product to perform the function for which it was designed and marketed. Regarding minimum or maximum levels, they may for example take the form of a limit on energy consumption in the use phase or on the quantities of a given material incorporated in the product, a requirement for minimum quantities of recycled content, or a limit on a specific environmental impact category or on an aggregation of all relevant</p> |



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on energy consumption in the use phase or on the quantities of a given material incorporated in the product, a requirement for minimum quantities of recycled content, or a limit on a specific environmental impact category or on an aggregation of all relevant environmental impacts. An example of a non-quantitative requirement is the prohibition of a specific technical solution that is detrimental to product reparability. Performance requirements will be used to ensure the removal of the worst performing products from the market where this is necessary to contribute to the environmental sustainability objectives of the Regulation. **A performance requirement should aim to make sure the total positive impacts on all aspects and parameters resulting from the requirement outweigh the total negative impacts on all aspects and parameters, and that the requirement is set at a level providing the highest environmental sustainability benefits while the costs fulfil the**

environmental impacts. An example of a non-quantitative requirement is the prohibition of a specific technical solution that is detrimental to product reparability. Performance requirements will be used to ensure the removal of the worst performing products from the market where this is necessary to contribute to the environmental sustainability objectives of the Regulation. **A performance requirement should aim to make sure the total positive impacts on all aspects and parameters resulting from the requirement outweigh the total negative impacts on all aspects and parameters, and that the requirement is set at a level providing the highest environmental sustainability benefits while the costs fulfill the criteria that there should be no significant negative impact on consumers in terms of the affordability of relevant products, no disproportionate negative impact on the competitiveness of economic actors, at least of SMEs and no disproportionate administrative burden on manufacturers or other economic actors. When the Commission envisages a combination of requirements, it should assess them as a whole and identify the combination of requirements that delivers the highest environmental**



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| <p>criteria that there should be no significant negative impact on consumers in terms of the affordability of relevant products, no disproportionate negative impact on the competitiveness of economic actors, at least of SMEs and no disproportionate administrative burden on manufacturers or other economic actors. When the Commission envisages a combination of requirements, it should assess them as a whole and identify the combination of requirements that delivers the highest environmental sustainability benefits while the costs fulfil the same criteria.</p> |                                                                                                                                | <p>sustainability benefits while the costs and fulfill all the same criteria in Article 5 point 5.</p>                                                                                                                                                                                                                                                                                              |
| <p>(21) In order to ensure consistency, performance requirements should complement the implementation of Union legislation on waste. <b>While</b> requirements for placing on the market packaging as a final product <b>are</b> laid down under European Parliament and Council Directive 94/62/EC<sup>35</sup> this</p>                                                                                                                                                                                                                                                          | <p>In line with our request to exclude the packaging from the scope of this regulation, we suggest to delete this recital.</p> | <p><del>In order to ensure consistency, performance requirements should complement the implementation of Union legislation on waste. While requirements for placing on the market packaging as a final product are laid down under European Parliament and Council Directive 94/62/EC<sup>35</sup> this Regulation may however, when duly motivated, complement that Directive by setting</del></p> |



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| Regulation may <b>however, when duly motivated,</b> complement that Directive by setting product-based requirements <b>focussing</b> on the packaging of specific products <b>when placed on the market where such a requirement can.</b> Where relevant, <b>such complementary requirements should contribute in particular</b> to minimising the amount of packaging used, in turn contributing to the prevention of waste generation in the Union. |  | <del>product-based requirements focussing on the packaging of specific products when placed on the market where such a requirement can.</del> Where relevant, <b>such complementary requirements should contribute in particular</b> to minimising the amount of packaging used, in turn contributing to the prevention of waste generation in the Union. |
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(22) Chemical safety is a recognised element of product sustainability. It is based on chemicals' intrinsic hazards to health or the environment in combination with specific or generic exposure, and is addressed by chemicals legislation, such as Regulation (EC) No 1935/2004 of the European Parliament and of the Council<sup>36</sup>, Regulation (EC) No 1907/2006 of the European Parliament and of the Council<sup>37</sup>, Regulation (EC) No **1272/2008<sup>38</sup>**, **Regulation (EC) No 1223/2009** of the European Parliament and of the Council<sup>39</sup>, Regulation (EU) 2017/745 of the European Parliament and of the Council ~~and Directive 2009/48/EC of the European Parliament and of the Council,~~ **and Regulation (EU) 2019/1021 of the European Parliament and of the Council<sup>41</sup>**, and **Directive 2009/48/EC of the European Parliament and of the Council**. This Regulation should not enable the restriction of substances based on chemical safety, as done under other Union





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legislation. Similarly, this Regulation should not enable the restriction of substances for reasons related to food safety. Union law on chemicals and food, however, does not allow addressing, through restrictions on certain substances, impacts on sustainability that are unrelated to chemical safety or food safety. To overcome this limitation, this Regulation should allow, under certain conditions, for the restriction, primarily for reasons other than chemical or food safety, of substances present in products or used in their manufacturing processes which negatively affect products' sustainability.



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(22a) The Commission, when setting performance requirements should be able to prevent substances that hinder circularity from being included in a product. The identification of such substances should be part of the Commission's assessment prior to the setting of ecodesign criteria for a specific product group and the Commission should in this assessment, for instance, take into account whether a substance makes the re-use or recycling of a product more complicated or negatively affects the properties of the recycled material, for example through its colour or smell. Where a substance has already been established as being a substance that hinders circularity for another product group, this can be an indication that it also hinders circularity for other product groups. The identification, and possible restriction, of a substance that hinders circularity could also trigger an information



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| <p><b>requirement. The Commission should consult stakeholders and the Ecodesign Expert Group on determining which substances are of concern in the consultation related to the preparation of ecodesign requirements.</b> This Regulation <del>also</del> should not result in the duplication or replacement of restrictions of substances covered by Directive 2011/65/EU of the European Parliament and of the Council<sup>43</sup>, which has as its objective the protection of human health and the environment, including the environmentally sound recovery and disposal of waste from electrical and electronic equipment.</p> |  |  |
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(23) 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** **delegated** act includes

The Environmental Footprint (based on the LCA approach) is indeed the most reliable and comprehensive value (parameter) to certify the environmental impact reduction. In fact, product durability (life span extension) is one of the key strategies to reduce the Environmental Footprint, but not the only one. And for some products durability over a certain breakeven point could lead to improve the environmental impact in relation to the "functional unit".

“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.”

Here again, the phrase mixes up objectives to be reached (to reduce carbon footprint), with possible ecodesign requirements to reach it (e.g. reparability).

Furthermore, one only impact category (carbon footprint) is highlighted, whether an LCA approach is acknowledged by the same EU as the most reliable multi-impact assessment method.

Finally, circular economy, generally refers to techno and bio-cycles, so some of the ecodesign requirements are not clearly included, such as “energy minimization in use”.



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| <p>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.</p> |                                                         |                                                         |
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| (24) Where <del>delegated</del>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | With regard to recital 24, we reiterate the request for | (24)Where <del>delegated</del> <b>implementing</b> acts |



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| <p><b>implementing—delegated</b> 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 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.</p> | <p>clarification in order to understand the exact meaning of the word “relative sustainability”. A drafting suggestion is proposed.</p> | <p>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 <b>characteristics related to the expected use</b> and <b>relative</b> sustainability and could be used by both consumers and public authorities. As such, they are intended to drive the market towards more sustainable products.</p> |
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(25) Information on the presence of substances of concern in products is a key element to identify and promote products that are sustainable. The chemical composition of products determines largely their functionalities and impacts, as well as the possibilities for their re-use or for recovery once they become waste. The Chemicals Strategy for Sustainability calls for minimising the presence of substances of concern in products, and ensuring the availability of information on chemical content and safe use, by introducing information requirements and tracking the presence of substances of concern throughout the life cycle of materials and products. Regulation (EC) No 1272/2008 of the European Parliament and of the Council and other existing chemicals legislation such as Regulation (EC) No 1223/2009 already ensure communication on hazards to health or the environment posed by certain substances of concern on their own or in a mixture. Users of

We don't agree with the reformulation of Recital 25, in the part where it refers to the substance tracing requirements as a default option.

(25) Information on the presence of substances of concern in products is a key element to identify and promote products that are sustainable. The chemical composition of products determines largely their functionalities and impacts, as well as the possibilities for their re-use or for recovery once they become waste. The Chemicals Strategy for Sustainability calls for minimising the presence of substances of concern in products, and ensuring the availability of information on chemical content and safe use, by introducing information requirements and tracking the presence of substances of concern throughout the life cycle of materials and products. Regulation (EC) No 1272/2008 of the European Parliament and of the Council and other existing chemicals legislation such as Regulation (EC) No 1223/2009 already ensure communication on hazards to health or the environment posed by certain substances of concern on their own or in a mixture. Users of substances and mixtures should also be informed about pertinent sustainability-related information not primarily related to hazards to health or the environment. Furthermore, users of products other than substances or mixtures, and managers of waste from such products, should also receive sustainability-related



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substances and mixtures should also be informed about pertinent sustainability-related information not primarily related to hazards to health or the environment. Furthermore, users of products other than substances or mixtures, and managers of waste from such products, should also receive sustainability-related information, including information primarily related to chemicals' hazards to health or the environment. Therefore, this Regulation should allow for the setting of requirements related to the tracking and communication of sustainability information, including the presence of substances of concern in products throughout their life cycle, including with a view to their decontamination and recovery when they become waste. Such a framework should aim to progressively cover **all** substances of concern in all products listed in working plans setting out the **indicative list of product groups to be subject of ecodesign requirements product groups the Commission intends to**

information, including information primarily related to chemicals' hazards to health or the environment. Therefore, this Regulation should allow for the setting of requirements related to the tracking and communication of sustainability information, including the presence of substances of concern in products throughout their life cycle, including with a view to their decontamination and recovery when they become waste. Such a framework should aim to progressively cover **all** substances of concern in **all** products listed in working plans setting out the **indicative list of product groups to be subject of ecodesign requirements product groups the Commission intends to tackle. Such requirements on the tracking of substances of concern should by default be included where an information requirement is to be set under this Regulation, after relevant impact assessment and consultation on ecodesign requirements with stakeholders and experts has taken place. Such a requirement on substances of concern should always be specified in such a way that ensures the criteria applicable to ecodesign requirements are fulfilled. In order for the Commission to make sure such an information requirement does not entail disproportionate**





Such requirements on the tracking of substances of concern should by default be included where an information requirement is to be set under this Regulation, after relevant impact assessment and consultation on ecodesign requirements with stakeholders and experts has taken place. Such a requirement on substances of concern should always be specified in such a way that

ensures the criteria applicable to ecodesign requirements are fulfilled. In order for the Commission to make sure such an information requirement does not entail disproportionate administrative negative impact on economic operators, the Commission should be allowed, amongst other measures, to lay down longer deadlines for the entry into application of the information requirements on certain substances of concern. The Commission should also be able to, in duly justified cases, provide exemptions from the requirements. For instance, an

administrative negative impact on economic operators, the Commission should be allowed, amongst other measures, to lay down longer deadlines for the entry into application of the information requirements on certain substances of concern. The Commission should also be able to, in duly justified cases, provide exemptions from the requirements. For instance, an exemption based on technical feasibility may apply in cases where the presence of a substance in a product cannot be verified with the current available technologies. It might also be relevant to set thresholds for such reasons. 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 substance has already been established as being a substance of concern that hinders circularity for another product group this can give indication that the chemical hinders circularity also for other product groups.



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exemption based on technical feasibility may apply in cases where the presence of a substances in a product cannot be verified with the current available technologies. It might also be relevant to set thresholds for such reasons.

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



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**circularity also for other  
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| <p>(26) The information requirements set under this Regulation should include the requirement to make available a product passport. The product passport is an important tool for making information available to actors along the entire value chain and the availability of a product passport should significantly enhance end-to-end traceability of a product throughout its value chain. Among other things, the product passport should help consumers make informed choices by improving their access to product information relevant to them, allow economic operators other value chain actors such as repairers or recyclers to access relevant information, and enable competent national authorities to perform their duties. To this end, the product passport should not replace but complement non-digital forms of transmitting information, such as information in the product manual or on a label. In addition, it should be possible for the product passport to be used for information on</p> |  |  |
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| other sustainability aspects applicable to the relevant product group pursuant to other Union legislation.                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| (26a) When determining in the delegated acts setting ecodesign requirements the period for which the product passport is to remain available, the duration of the life cycle of the specific product group should be taken into consideration with a view to ensure information on the product remains available also for end-of-life operations when appropriate considering the administrative burden of economic actors. | We support this new recital.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| (26b) Actors such as manufacturers, repairers, refurbishers and other economic actors but also competent national authorities may be given a right to update the product passport. Economic actors who repair, upgrade or refurbish a product after it has been placed on the market should for example, where                                                                                                              | <p>Italy does not support the proposal introducing the new recital (26b).</p> <p>The problem addressed by the proposal depends on the specific DPP model for a certain product. The idea of a DPP to be updated implies the presence of multiple actors who have different access rights on the same DPP. These actors can be either at the reseller/representative level or at the repairer/remanufacturer level.</p> <p>However, these practices are only applicable to certain categories of products, for which a more in-depth study in</p> | <del>(26b) Actors such as manufacturers, repairers, refurbishers and other economic actors but also competent national authorities may be given a right to update the product passport. Economic actors who repair, upgrade or refurbish a product after it has been placed on the market should for example, where appropriate, be given the right to update the product passport in order that more accurate information</del> |



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| <p>appropriate, be given the right to update the product passport in order that more accurate information are given. The economic operator should guarantee that each previous version of the product passport is separately stored and remain accessible. Competent national authorities could be given a right to update the product passport for example in situations where a product is no longer in conformity.</p> | <p>secondary legislation is also possible.</p> <p>From a customs perspective, for example, it is to be clarified how a product imported with a DPP as "non-functional" and re-exported with a second DPP as "reconditioned" or "upgraded" should be considered, considering that the exported product could be repurchased in the domestic market.</p> <p>In light of the above considerations, Italy proposes the following rewording of the recital. We also suggest to move it after the current recital 55.</p> <p>In addition, we would like to stress that the information introduced by different actors must be recognizable to the user of the DPP. In other words, it must be clear who updated/modified the module of the DPP. E.g.: if a part is changed in a product and then the repairer adds a module, it must be clear who did what.</p> | <p><del>are given. The economic operator should guarantee that each previous version of the product passport is separately stored and remain accessible. Competent national authorities could be given a right to update the product passport for example in situations where a product is no longer in conformity.</del></p> |
| <p>(27) To take account of the nature of the product and its market, the information to be included in the product passport should be carefully examined on a case-by-case basis when preparing product-specific rules. To optimise access to the resulting information while also protecting intellectual property rights, the product passport needs</p>                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                               |



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to be designed and implemented allowing differentiated access to the information included in the product passport depending on the type of information and the typology of stakeholders. Similarly, to avoid costs to companies and the public that are disproportionate to the wider benefits, the product passport should be specific to the item, batch or product model, depending on for example the complexity of the value chain, the size, nature or impacts of the products considered. **The impact assessment carried out when preparing delegated act setting ecodesign requirements should also—analyse the costs and benefits of setting information requirements through digital product passports on model, batch or item level. A ‘model’ usually means a version of a product of which all units share the same technical characteristics relevant for the ecodesign requirements and the same model identifier, a ‘batch’ usually means a subset of a specific model composed of all**



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| <p>products produced in a specific manufacturing plant at a specific moment in time and an ‘item’ usually means a single unit of a model. The impact assessment should also, to the extent that the digital passport relies on standards which are not free of charge, consider whether this is suitable and how disproportionate costs for SMEs can be avoided.</p>                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                      |  |
| <p>(27a) <del>In order</del> Union legislation law already establishes various information requirements for products and sets-up systems to make this information available to economic operators and consumers. Whenever feasible, the Commission should aim to ensure consistency and to reduce the administrative burden on economic operators due to potential duplication of reporting obligations under other Union legislations, the and information requirements under this Regulation. In particular, <del>The</del> the Commission should consider the feasibility, whenever relevant, to link the of</p> | <p>It is necessary to ensure maximum protection of the confidentiality of the company data to be uploaded in the Digital Product Passport and make a link to existing databases (e.g., EPREL &amp; SCIP).</p> <p>We therefore support the text of the presidency (recitals 27a).</p> |  |





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| <p>linking information requirements under this Regulation to the other existing information requirements under EU law, such as the obligation to provide safety data sheets for substances and mixtures according to Regulation (EC) No 1907/2006. When feasible, <b>t</b>The Commission should also <del>consider linking</del> link the digital product passport to existing Union <del>data</del> databases and tools such as EPREL or SCIP with the digital product passport.</p> |  |  |
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| <p>(28) In order to ensure interoperability, the types of permitted data carriers should be specified. For the same reason, the data carrier and the unique product identifier should be released in accordance with internationally recognised standards. The power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to amend this Regulation by replacing or adding standards in accordance with</p>                                         |  |  |



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| which the data carrier and the unique identifiers may be released, in light of technical or scientific progress. This should ensure that the information contained in the product passport can be recorded and transmitted by all economic operators, as well as to guarantee the compatibility of the unique identifier with external components such as scanning devices.                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| (29) In order to not unnecessarily delay the establishment of ecodesign requirements other than on the product passport or to ensure that product passports can be effectively implemented, the Commission should be allowed to exempt product groups from the product passport requirements in case technical specifications are not available in relation to the essential requirements for the technical design and operation of the product passport. Similarly, in order to prevent unnecessary administrative burden for economic operator, the Commission should be allowed to | <p>The proposal of the Commission and the third compromise text provide for a mandatory DPP as a general rule. Few exceptions are regulated under Article 8, para. 4, of the proposal.</p> <p>After a careful examination of the text, an in-deep debate among Member States and with the Commission, we believe that it is necessary to further amend the text with regard to the obligation for all products to carry a DPP. In our opinion, the framework regulation should leave to the secondary legislation the possibility to set a duty to make available the information requirements through a DPP on a case-by-case basis.</p> <p>This is necessary in order to take into account the existence of cases in which some products or products group, or some types of trades (i.e. C2B for single items), could not carry a DPP for specific and objective circumstances.</p> <p>The proposed exemption could be based on the volume of</p> | (29) In order to not unnecessarily delay the establishment of ecodesign requirements other than on the product passport or to ensure that product passports can be effectively implemented, the Commission should be allowed to exempt product groups from the product passport requirements in case technical specifications are not available in relation to the essential requirements for the technical design and operation of the product passport. Similarly, in order to prevent unnecessary administrative burden for economic operator, the Commission should be allowed to exempt product groups from the product passport requirements in case other Union law already includes a system for the digital provision of product information allowing |



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| exempt product groups from the product passport requirements in case other Union law already includes a system for the digital provision of product information allowing actors along the value chain to access relevant product information and facilitating the verification of product compliance by competent national authorities. These exemptions should be periodically reviewed taking into account further availability of technical specifications. | exempt products within that specific market, the cost-benefit ratio in owning a DPP, risk analysis, the value of the specific exempt product, the type of production (artisanal or industrial), or specific considerations to be made explicit in the individual implementing acts.                              | actors along the value chain to access relevant product information and facilitating the verification of product compliance by competent national authorities.<br><br><b>Furthermore, some groups of products could be exempt from having a passport due to the volume of exempt products within that specific market, the cost-benefit ratio in owning a DPP, risk analysis, the value of the specific exempt product, the type of production (artisanal or industrial), or specific considerations to be made explicit in the individual implementing acts. These exemptions should be decided implementing acts and periodically reviewed taking into account further availability of technical specifications.</b> |
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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                | We believe that consideration should be given to temporarily suspending the effects of the ESPR regulation by specific decisions. This power should be given to both the Commission and individual member states for national or European emergency situations.<br>A new recital should be added in this regard. | <b>The Commission and the Member States should be able to provide exceptions and derogations from the requirements of the regulation in emergency situations, if the application of the ecodesign requirements has serious negative repercussions on public health or on national and European security. Derogations should be temporary and event-related.</b>                                                                                                                                                                                                                                                                                                                                                        |
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| (30) Unique identification of                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |



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| <p>products is a fundamental element to enable traceability across the supply chain. Therefore, the product passport should be linked to a unique product identifier. In addition, where appropriate, the passport should allow for the tracing of the actors and manufacturing facilities related to that product. In order to ensure interoperability, the unique operator identifiers and unique facility identifiers enabling traceability should be released in accordance with internationally recognised standards. The power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to amend this Regulation by replacing or adding standards in accordance with which unique operator identifiers and unique facility identifiers may be released, in light of technical or scientific progress.</p> |  |  |
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| <p>(31) Digitalised information about the product and its life cycle or, where applicable, its passport should be easily accessible by scanning a data carrier, such as a</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |  |  |



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| <p>watermark or a quick response (QR) code. Where possible, the data carrier should be on the product itself to ensure the information remains accessible throughout its life cycle. However, <b>exceptions</b> <b>exemptions</b> are possible depending on the nature, size or use of the products concerned.</p>                                                                                                                                                                                                         |  |  |
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| <p>(32) To ensure that the product passport is flexible, agile and market-driven and evolving in line with business models, markets and innovation, it should be based on a decentralised data system, set up and maintained by economic operators. However, for enforcement and monitoring purposes, it may be necessary that competent national authorities and the Commission have direct access to a record of all data carriers and unique identifiers linked to products placed on the market or put in service.</p> |  |  |
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| <p>(33) To ensure the effective roll-out of the product passport, technical design, data</p>                                                                                                                                                                                                                                                                                                                                                                                                                               |  |  |



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requirements and operation of the product passport should adhere to a set of essential technical requirements. Such requirements should provide a basis for the consistent deployment of the product passport across sectors. Technical specifications should be established to ensure the effective implementation of those essential requirements, either in the form of harmonised standard referenced in the Official Journal or, as a fall-back option, common specification adopted by the Commission **via implementing acts**. The technical design should ensure that the product passport carries data in a secure way, respecting privacy rules. The digital product passport will be developed in an open dialogue with international partners, in order to take account of their views when developing technical specifications and to ensure that they help remove trade barriers for greener products and lower costs for sustainable investments, marketing and compliance. Technical specifications and requirements related to



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| <p>traceability across the value chain should, in order to allow for their effective implementation, to the extent possible be developed based on a consensual approach and on the involvement, buy-in, and effective collaboration of a diverse set of actors, including standardisation bodies, industry associations, consumer organisations, experts, NGOs and international partners, including developing economies.</p>                                                                                                                                              |  |  |
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| <p>(34) In order to improve enforcement of ecodesign requirements, it is necessary that national authorities and the Commission have direct access to a record of all data carriers and unique identifiers linked to products placed on the market or put in service. To this end, the Commission should set up and maintain a product passport registry to store such data. Where needed to further facilitate enforcement, the Commission should, as appropriate, specify other information included in the product passport that needs to be stored in the registry.</p> |  |  |



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| <b>(34a) The Commission should set up and maintain a user-friendly web portal where stakeholders such as consumers, economic operators and other relevant actors can have access to information included in the product passports in compliance with the differentiated access rights specified in the delegated acts setting ecodesign requirements. The web portal should link to information already stored by the economic operator in its decentralised product passport.</b> | Italy agrees with the new proposal regarding the inclusion of recital 34a. |  |
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| (35) Any processing of personal data pursuant to this Regulation should comply with the applicable rules on the protection of personal data. Processing of personal data by the competent national authorities within Member States should be carried out in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council <sup>46</sup> . Processing of personal data by the Commission should be carried out                                            |                                                                            |  |





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| in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council <sup>47</sup> .                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
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| (36) Effective enforcement in relation to products placed on the Union market, whether domestically produced or imported, is essential for achieving the aims of this Regulation. Therefore, where the Commission has set up a registry, customs authorities should have direct access to it via the EU Single Window Environment for Customs set up by Regulation (EU) .../.... The role of customs should be to ensure that the reference of a product passport is made available in the customs declaration and that this reference corresponds to a unique product identifier that is stored in the registry. This would allow the verification by customs that a product passport exists for imported products. |  | (36)Effective enforcement in relation to products placed on the Union market, whether domestically produced or imported, is essential for achieving the aims of this Regulation. Therefore, where the Commission has set up a registry, customs authorities should have direct access to it via the EU Single Window Environment for Customs set up by Regulation (EU) .../.... The role of customs should be to ensure that the reference of a product passport is made available in the customs declaration and that this reference corresponds to a unique product identifier that is stored in the registry. This would <b>at least</b> allow the verification by customs that a product passport exists for imported products. |
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| (37) <del>Where certain information included in the product passport is stored in the registry in addition to</del>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |



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| <p>data carriers and unique identifiers, the Commission should be able to provide, where appropriate, that customs authorities verify the consistency between this information and the customs declaration, in order to improve the compliance of products with ecodesign requirements and taking into account the need to avoid disproportionate burden for customs authorities.</p>                                                                                                                                                                 |  |  |
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| <p>(38) The information included in the product passport can allow customs authorities to enrich and facilitate risk management and enable the better targeting of controls at the border. Therefore, customs authorities should be able to retrieve and use the information included in the product passport and the related registry for carrying out their tasks in accordance with Union legislation including for risk management in accordance with Regulation (EU) No 952/2013 of the European Parliament and of the Council<sup>48</sup>.</p> |  |  |



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| <p>(39) To drive consumers towards more sustainable choices, labels should, when required by the <del>delegated implementing—delegated</del> acts adopted pursuant to this Regulation, provide information allowing for the effective comparison of products, for instance by indicating classes of performance. Specifically for consumers, physical labels can be an additional source of information at the place of sale. They can provide a quick visual basis for consumers to distinguish between products based on their performance in relation to a specific product parameter or set of product parameters. They should, where appropriate, also allow for the accessing of additional information by bearing specific references like website addresses, dynamic QR codes, links to online labels or any appropriate consumer-oriented means. The Commission should set out in the relevant <del>delegated implementing—delegated</del> act the most effective way of displaying</p> |  |  |
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| such labels, including in the case of online distance selling, taking into account the implications for customers and economic operators and the characteristics of the products concerned. The Commission may also require the label to be printed on the packaging of the product. |  |  |
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(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 a successful 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 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~~



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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. .



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| <p>(41) Consumers should be protected from misleading information that could hamper their choices for more sustainable products. For <del>this</del> <b>those</b> reasons it should be prohibited to place on the market products bearing a label mimicking the labels provided for in this Regulation. <b>Only labels which copy or are closely similar to the layout or the graphics of the labels provided for in this Regulation should be considered as mimicking labels.</b></p>                        |  |  |
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| <p>(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 <b>for</b> which <b>are</b></p> |  |  |



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considered as priorities for it plans to adopt delegated implementing—delegated acts setting out ecodesign requirements as well as the product aspects for which it intends to adopt delegated implementing—delegated acts setting out horizontal requirements of horizontal application. The Commission should base its prioritisation on a set of criteria pertaining in particular to the delegated implementing—delegated 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





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**products.** Considering their importance for meeting the Union's energy objectives, the working plans should include an adequate share of actions related to energy-related products. **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** ~~should also be consulted through the Ecodesign Forum.~~ Due to the complementarities between this Regulation and Regulation (EU) 2017/1369 for energy-related products, **the Commission should strive to align 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.~~ **Product groups which under Union law are already subject to specific environmental requirements, such as for example motor vehicles and means of transport**



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| <p>should not to be prioritised the first for the establishment of ecodesign requirements, such as for example motor vehicles.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |  |
| <p>(43) In addressing construction products, this Where other, more product-specific regulations, enable the Commission to adopt delegated acts regulating environmental sustainability, and such delegated acts have been adopted, this Regulation should only in exceptional cases intervene in a complementary manner. Ecodesign requirements for construction products will be should be laid down under the [the revised Construction Products EN 29 EN Regulation should] For example, t. This Regulation should not be able to set requirements on final final construction products only when the ecodesign requirements on environmental sustainability obligations for such products have already been have been developed under created by [the revised</p> |  |  |



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Construction Products Regulation<sup>49</sup> and its implementation ~~do not~~ are unlikely to sufficiently achieve the environmental sustainability objectives pursued by this Regulation. In addition, Only in exceptional cases where requirements under the Construction Products Regulation are insufficient or ineffective, and cannot be amended or complemented under the Construction Products Regulation in a reasonable time, this Regulation should be able to intervene in a complementary manner on construction products, provided the administrative cost entailed, including as a result of economic actors being subject to two conformity assessment procedures, is shown to be reasonable. To avoid that economic operators become subject to a duplication of or potentially conflicting requirements or delegated acts the Commission should, before preparing such complementary



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requirements under the Construction Product Regulation, consider if the delegated act already adopted under this Regulation can be repealed or amended so that requirements are instead included in delegated act being adopted under the Construction Products Regulation. ~~When~~ When formulating working plans under this Regulation, the Commission should however take into account that, in continuation of current practice, [the revised Construction Products Regulation] will, in relation to energy-related products that are also construction products, give prevalence to sustainability requirements set under this Regulation. This should be the case for instance for heaters, boilers, heat pumps, water and space heating appliances, fans, cooling and ventilating systems and photovoltaic products (excluding building-integrated photovoltaic panels). For these products, [the revised Construction Products



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| <p>Regulation] may <b>only</b> intervene in a complementary manner <b>where needed, mainly</b> in relation to safety aspects, also taking account of other Union legislation on products such as on gas appliances, low voltage, and machinery.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |  |
| <p>(44) In order to encourage self-regulation as a valid alternative to regulatory approaches, this Regulation should, <b>in continuation of based on the experience gathered under</b> Directive 2009/125/EC, include the possibility for industry to submit self-regulation measures <b>as long as on the condition that the level of ambition of such measures is in line with the objectives of this Regulation.</b> The Commission should assess the self-regulation measures proposed by industry, along with the information and evidence submitted by the signatories, including in light of the international trade commitments of the Union and the need to ensure coherence with Union law. In order to ensure uniform</p> |  |  |



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conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to adopt and update an act listing the self-regulation measures considered as valid alternatives **before to an delegated** **implementing delegated** act setting ecodesign requirements **is adopted**. It is also appropriate, for instance in view of relevant market or technological developments within the product group concerned, that the Commission be able to request a revised version of the self-regulation measure whenever considered necessary. Once a self-regulation measure is listed in an implementing act, there is a legitimate expectation for economic operators that the Commission will **first consider the content of such a measure before proposing not adopt a delegated** **implementing delegated** act establishing ecodesign requirements for this specific product group. However, it is not excluded that the Commission may adopt



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| <p>horizontal ecodesign requirements also applying to some or all of the products covered by a recognised self-regulation measure for the product aspects not addressed by that self-regulation measure. Where the Commission considers that a self-regulation measure no longer fulfils the criteria set in this Regulation, it should remove that self-regulation from the implementing act listing the recognised self-regulation measures. Consequently, ecodesign requirements may then be established for the product groups previously addressed by the self-regulation measure, in accordance with this Regulation.</p> |  |  |
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| <p>(45) Micro, small and medium-sized enterprises (SMEs) could greatly benefit from an increase in the demand for sustainable products but could also face costs and difficulties with some of the requirements. <b>The Commission should, when establishing preparing ecodesign requirements under this Regulation, take into account</b></p>                                                                                                                                                                                                                                                                                  |  |  |



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| <p><b>the impact of the requirements on SMEs active in the relevant product sector.</b> The Member States and the Commission should, in their respective areas of responsibility, provide adequate information <b>including guidance</b>, ensure targeted and specialised training, and provide specific assistance and support, including financial, to SMEs active in the manufacturing of products for which ecodesign requirements are set. Those actions <b>are particularly important for product groups where the presence of SMEs is relevant</b> and should, for example, cover the calculation of the product environmental footprint and the technical implementation of the product passport. Member States actions should be taken in respect of applicable State aid rules.</p> |                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                               |
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| <p>(46) The destruction of unsold consumer products, such as textiles and footwear, by economic operators is becoming a widespread environmental problem across the Union, in particular due to the rapid growth</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <p>We agree on the content of the Recital, but it should be kept very general without the specifications of products. Why textiles and footwear are given as examples here, given that there is no study pointing to this direction? We suggest the deletion of the two products.</p> <p>We suggest also to add that the products are placed on the EU</p> | <p>(47) The destruction of unsold consumer products, <del>such as textiles and footwear</del>, by economic operators is becoming a widespread environmental problem across the Union, in particular due to the rapid growth of online sales. It amounts to a loss of valuable economic resources as goods</p> |





of online sales. It amounts to a loss of valuable economic resources as goods are produced, transported and afterwards destroyed without ever being used for their intended purpose. It is therefore necessary, in the interest of environmental protection, that this Regulation establishes a framework to prevent the destruction of unsold **consumer** products primarily intended for consumers pursuant to Directive (EU) 2019/771 of the European Parliament and of the Council<sup>50</sup>, **including products that have not been offered for sale, and** including products that have been returned by a consumer in view of their right of withdrawal as laid down by Directive (EU) 2011/83/EU of the European Parliament and of the Council<sup>51</sup>, **or in view of any commercial right of withdrawal offered by the economic operator, thus striving toward limiting the number of unused and fit-for-purpose products being destroyed. Products that have been returned, and cannot be**

market before they remain unsold, because the EU legislation can work only on these products.

are produced, transported **placed on the EU market**, and afterwards destroyed without ever being used for their intended purpose. It is therefore necessary, in the interest of environmental protection, that this Regulation establishes a framework to prevent the destruction of unsold **consumer** products primarily intended for consumers pursuant to Directive (EU) 2019/771 of the European Parliament and of the Council<sup>50</sup>, **including products that have not been offered for sale, and** including products that have been returned by a consumer in view of their right of withdrawal as laid down by Directive (EU) 2011/83/EU of the European Parliament and of the Council<sup>51</sup>, **or in view of any commercial right of withdrawal offered by the economic operator, thus striving toward limiting the number of unused and fit-for-purpose products being destroyed. Products that have been returned, and cannot be sold again due to the condition of the product, and are not suitable for remanufacturing, refurbishment, preparation for reuse or donation, should not constitute an unsold consumer product within the meaning of this Regulation. The concept of destruction as outlined in this Regulation should cover the last three**



sold again due to the condition of the product, and ~~are~~ is not suitable for remanufacturing, refurbishment, preparation for reuse or donation, should not constitute an unsold consumer product within the meaning of this Regulation. The concept of destruction as outlined in this Regulation should cover the last three activities on the waste hierarchy as defined in the Waste Framework Directive: recycling, other recovery and disposal. Remanufacturing and preparation for re-use should furthermore not be considered destruction. While recycling is an important waste treatment activity for a circular economy, it is unreasonable that products are manufactured only to immediately be recycled, hence the inclusion of recycling in the concept of destruction. Preventing destruction This will reduce the environmental impact of those products by reducing the generation of waste and by disincentivising overproduction of products. In addition, given that several Member States have

activities on the waste hierarchy as defined in the Waste Framework Directive: recycling, other recovery and disposal. Remanufacturing and preparation for re-use should furthermore not be considered destruction. While recycling is an important waste treatment activity for a circular economy, it is unreasonable that products are manufactured only to immediately be recycled, hence the inclusion of recycling in the concept of destruction. Preventing destruction This will reduce the environmental impact of those products by reducing the generation of waste and by disincentivising overproduction of products. In addition, given that several Member States have introduced national legislation on the destruction of unsold consumer products thereby creating market distortions, harmonised rules on the destruction of unsold consumer products are necessary to ensure that distributors, retailers and other economic operators are subject to the same rules and incentives across Member States.

~~Member states should not be prevented to maintain or introduce national bans as regards destruction of unsold consumer products for products which the Commission has not yet prepared an implementing act prohibiting the~~



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| <p>introduced national legislation on the destruction of unsold consumer products thereby creating market distortions, harmonised rules on the destruction of unsold consumer products are necessary to ensure that distributors, retailers and other economic operators are subject to the same rules and incentives across Member States.</p> <p><del>Member states should not be prevented to maintain or introduce national bans as regards destruction of unsold consumer products for products which the Commission has not yet prepared an implementing act prohibiting the destruction of unsold consumer products if such national bans are in compliance with Union law.</del></p> |  | <p><del>destruction of unsold consumer products if such national bans are in compliance with Union law.</del></p> |
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| <p>(46a) Economic operators should take necessary measures to prevent the need to discard unsold consumer products that are fit for use. Regulation (EC) No 1013/2006 of the European Parliament and of the Council</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |                                                                                                                   |



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| of 14 June 2006 on shipments of waste currently under revision, lays down rules to prohibit export of products to third countries under the false pretense that they are being sold or donated for use, when such products are in fact destined for destruction.                                                                            |                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                        |
| (46b) Nothing in this Regulation should be construed as contradicting the order of the waste hierarchy as defined in Directive 2008/98/EC.                                                                                                                                                                                                  |                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                        |
| (46c) Member States should not be precluded from introducing or maintaining national measures as regards destruction of unsold consumer products for products which are not subject to the direct prohibition or not yet covered by an implementing act setting out a prohibition, provided that such measures are in line with the EU law. | Since Italy is against the direct prohibition in this Regulation we propose to remove this concept from the recital. | (46c) Member States should not be precluded from introducing or maintaining national measures as regards destruction of unsold consumer products for products which are not <del>subject to the direct prohibition or not</del> yet covered by an implementing act setting out a prohibition, provided that such measures are in line with the EU law. |
| (47) To take account of the nature of the product and its market, the                                                                                                                                                                                                                                                                       |                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                        |



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information to be included in the product passport should be carefully examined on a case-by-case basis when preparing product-specific rules. To optimise access to the resulting information while also protecting intellectual property rights, the product passport needs to be designed and implemented allowing differentiated access to the information included in the product passport depending on the type of information and the typology of stakeholders. Similarly, to avoid costs to companies and the public that are disproportionate to the wider benefits, the product passport should be specific to the item, batch or product model, depending on for example the complexity of the value chain, the size, nature or impacts of the products considered. **The impact assessment carried out when preparing delegated act setting ecodesign requirements should also analyse the costs and benefits of setting information requirements through digital product passports on model,**



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| <p>batch or item level. A ‘model’ usually means a version of a product of which all units share the same technical characteristics relevant for the ecodesign requirements and the same model identifier, a ‘batch’ usually means a subset of a specific model composed of all products produced in a specific manufacturing plant at a specific moment in time and an ‘item’ usually means a single unit of a model. The impact assessment should also, to the extent that the digital passport relies on standards which are not free of charge, consider whether this is suitable and how disproportionate costs for SMEs can be avoided .</p> |                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                         |
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| <p>(47a) The unnecessarily high production volumes and short use phase of textiles cause significant environmental impact. Clothing should be valued higher, worn, and cared for more than what today’s fast fashion culture entails. Newly</p>                                                                                                                                                                                                                                                                                                                                                                                                   | <p>We do not support this recital because there is no justification for the destruction of consumer clothes and apparel (see comment to article 20b). We propose a rephrasing that indicates these products as a priority for the assessment of the prohibition of destruction.</p> | <p>(47a) The unnecessarily high production volumes and short use phase of textiles cause significant environmental impact. Clothing should be valued higher, worn, and cared for more than what today’s fast fashion culture entails. Newly produced but unsold textiles and especially clothes are among the items</p> |



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| <p>produced but unsold textiles and especially clothes are among the items reportedly being destroyed. From a circular economy perspective, such wasting of valuable resources is in clear contradiction to the aims of this regulation of improving the environmental sustainability. It is therefore justified to prohibit the destruction of unsold consumer clothes and apparel.</p> |                                                                                                                                                                                | <p>reportedly being destroyed. From a circular economy perspective, such wasting of valuable resources is in clear contradiction to the aims of this regulation of improving the environmental sustainability. It is therefore justified to prohibit the destruction of unsold consumer clothes and apparel prioritised products for the assessment of the opportunity to set a prohibition against destruction.</p>             |
| <p>(47b) Also for electronics there is an increasing number of reports that destruction is taking place, with negative environmental consequences, also considering the resources use including critical and strategic raw materials used during manufacturing. Therefore, electronics should be considered amongst the prioritised products for a prohibition against destruction.</p>  | <p>It is suggested to modify recital 47b to consider electronics as another priority product for the assessment of the feasibility of the prohibition against destruction.</p> | <p>(47b) Also for electronics there is an increasing number of reports that destruction is taking place, with negative environmental consequences, also considering the resources use including critical and strategic raw materials used during manufacturing. Therefore, electronics should be considered amongst the prioritised products for the assessment of the opportunity to set a prohibition against destruction.</p> |
| <p>(48) To dis-incentivise the destruction of unsold consumer products and to further generate</p>                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                  |



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data on the occurrence of this practice, this Regulation should introduce a transparency obligation for economic operators holding consumer products in the Union, **with the exception of small and microenterprisesSMEs,** requiring them to disclose information on the number of unsold consumer products discarded per year. **When determining the scope of the transparency obligation, guidance should be found in the reference to the term “discard” in the definition of waste in Article 3.1 of Directive 2008/98/EC.** The economic operator should indicate the product type or category, the reasons for their discarding and their delivery for subsequent waste treatment operations. While economic operators should be free to determine how to disclose that information in a manner appropriate to their business environment, it should be considered a best practice to include the required information in a publicly available non-





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| <p>financial statement drafted in accordance with Article 19a of Directive 2013/34/EU of the European Parliament and of the Council<sup>52</sup> where applicable. <b>For those economic operators that are subject to reporting obligations according to Directive 2022/2464/EU the information could also be included in reporting under said directive.</b> When preparing the implementing act on disclosure of information, the Commission should take account of the need to avoid a disproportionate administrative burden on economic operators, considering in particular the possibility of making use of existing reporting requirements in Union Law. Economic operators should furthermore set up a policy to ensure that they prevent the generation of waste.</p> |  |  |
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(49) In order to ~~avoid~~**ensure uniform conditions for the implementation of the prohibition of** the destruction of unsold consumer products **in the Union**, where the destruction of such products is prevalent, **implementing powers should be conferred on the Commission to adopt and update an act provisions applicable to the specify the product group in question subject to this prohibition** the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to supplement this Regulation by prohibiting the destruction of such products. Given the wide range of products that may potentially be destroyed without ever being sold or used, it is ~~necessary to establish such empowerment in this Regulation.~~ However, the prohibition set in the delegated acts should apply to ~~specific product groups~~ to be determined based on an assessment by the Commission of the extent to which the destruction of such products takes place in practice, taking into



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account the information made available by economic operators where appropriate. **In parallel to this assessment, in order to enable the first prohibition to be established as soon as possible, the Commission shall begin work on a prohibition on destruction of textiles and electronics, for which adequate evidence exists to justify an immediate prioritisation of these product groups.** To ensure that this **prohibition obligation** is proportionate, the Commission should consider specific exemptions under which destroying unsold consumer products may still be permitted, for instance in view of health and safety concerns. To monitor the effectiveness of this prohibition and to dis-incentivise circumvention, economic operators should be required to disclose the number of unsold consumer products destroyed and the reasons for their destruction under applicable exemptions. Finally, to avoid any undue administrative burden on **small and micro enterprises SMEs,**



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| <p>they should be exempted from the obligations to disclose their unsold discarded products <b>from the obligations to disclose their unsold discarded consumer products</b> and from the prohibition to <b>destroy discard</b> specific products groups set out in <del>delegated</del> <b>implementing</b> acts. However, where there is reasonable <b>sufficient</b> evidence that <b>small and microenterprises</b> <del>SMEs</del> may be used to circumvent those obligations, the Commission should be able to require, in those <del>delegated</del> <b>implementing</b> acts, for some product groups, that these obligations also apply to micro <b>or, small or medium sized</b> enterprises.</p> |                                                                                                                                                                                     | -                                                                                                                                                                                                                                                                                                                                                                                   |
| <p>(48a) The Commission should, <b>when necessary, always</b> conduct an impact assessments before preparing any implementing act introducing any prohibition to destroy unsold consumer products which consider the impact on the environment, consumers, manufacturers and other</p>                                                                                                                                                                                                                                                                                                                                                                                                                       | <p>Italy disagrees that the impact assessment has to be done when necessary. It shall be done always to avoid personal judgment and opinions interference in the final decision</p> | <p>(48a) The Commission should, <b>when necessary, always</b> conduct an impact assessments before preparing any implementing act introducing any prohibition to destroy unsold consumer products which consider the impact on the environment, consumers, manufacturers and other economic operators, including SMEs, <b>in terms of competitiveness including in relation</b></p> |



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| economic operators, including SMEs, in terms of competitiveness including in relation to markets outside the Union innovation, market access and costs and benefits.                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | to markets outside the Union innovation, market access and costs and benefits.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| (48b) It is important that the Commission, when prioritising products that should be subject to prohibition against destruction of unsold consumer products, consults the Ecodesign Forum and the Ecodesign Expert Group.                                                                                                                                                                                                                                              | Italy proposes the rephrasing of the Recital to made clear that the Commission shall consult the Ecodesign Forum and the Ecodesign Expert Group.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | (48b) <del>It is important that the Commission, when</del> When prioritising products that should be subject to prohibition against destruction of unsold consumer products, <del>the Commission should consult</del> the Ecodesign Forum and the Ecodesign Expert Group.                                                                                                                                                                                                                                                                                                                                                                     |
| (50) Economic operators should be responsible for products' compliance with the ecodesign requirements under this Regulation, in relation to their respective roles in the supply chain, so as to ensure those products' free movement on the internal market and to improve their sustainability. Economic operators intervening in the supply and distribution chain should take appropriate measures to ensure that they only make available on the market products | <p>How can a distributor be able to understand if point (b) of article 24, paragraph 2, is fulfilled? Point (b) establishes a sort of verification action by the distributor, but he/she may not have the competencies to evaluate the content of the product information and he/she has not the legal authority to ask the manufacturer to make compliant a product that he has not the authority to judge as non-compliant. Indeed, he/she can only check that the prescribed CE marking and enclosed documents are available. Therefore, the distributors have only the possibility to check the presence of the above-mentioned documents, but they cannot judge the correctness of the content.</p> <p>These comments are reflected in the proposed modification of recitals 49 and 54, and entail the need to amend also the corresponding article 24, paragraph 2, let. (b).</p> | Economic operators should be responsible for products' compliance with the ecodesign requirements under this Regulation, in relation to their respective roles in the supply chain, so as to ensure those products' free movement on the internal market and to improve their sustainability. Economic operators intervening in the <del>supply and</del> distribution chain should take, <b>according to their legal responsibilities</b> , appropriate measures to ensure that they only make available on the market products that are in conformity with this Regulation and the <del>delegated implementing delegated</del> acts adopted |



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| that are in conformity with this Regulation and the <del>delegated</del> <b>implementing—delegated</b> acts adopted pursuant to it.                                                                                                                                                                                                                                                                         |  | pursuant to it. |
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| (51) The manufacturer, having detailed knowledge of the design and production process, <b>is best placed to carry out the conformity assessment procedure.</b> <del>Conformity assessment should therefore remain solely the obligation of the manufacturer.</del> <b>is responsible for carrying out the conformity assessment procedure applicable or having it carried out on their behalf.</b>          |  |                 |
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| (52) In order to safeguard the functioning of the internal market, it is necessary to ensure that products from third countries entering the Union market comply with this Regulation and the <del>delegated</del> <b>implementing delegated</b> acts adopted pursuant to it, whether imported as products, components, or intermediate products. In particular, it is necessary to ensure that appropriate |  |                 |



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| <p>conformity assessment procedures have been carried out by manufacturers with regard to those products. Provision should therefore be made for importers to ensure that the products they place on the market comply with those requirements and that the CE marking and documentation drawn up by manufacturers are available for inspection by the competent national authorities. Provision should also be made for importers to ensure, where applicable, that a product passport is available for those products.</p> |  |   |
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| <p>(53) When placing a product on the,—<b>market</b>, every importer should indicate on the product their name, registered trade name or registered trade mark as well as their postal address and, <del>where available</del>, electronic means of communication through which it can be contacted. Exceptions should be provided for in cases where the size of the product does not allow for such indications. This includes cases where the importer would have to open the packaging to put the name and</p>           |  | - |



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| address on the product or where the product is too small in size to affix this information.                                                                                                                                                                                                                                                                                                                                                                           |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| (54) As the distributor makes a product available on the market after it has been placed there by the manufacturer or importer, it should act with due care in relation to the applicable ecodesign requirements. The distributor should also ensure that its handling of the product does not adversely affect its compliance with the requirements of this Regulation or the <del>delegated</del> <b>implementing</b> <b>delegated</b> acts adopted pursuant to it. |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| (55) As distributors and importers are close to the marketplace and have an important role in ensuring product compliance, <b>they</b> should be involved in market surveillance tasks carried out by the competent national authorities, and <b>they</b> should be prepared to participate actively, providing those authorities with                                                                                                                                |  | (54) As distributors and importers are close to the marketplace and have an important role in ensuring product compliance, <b>they</b> should be involved in market surveillance tasks carried out by the competent national authorities, and <b>they</b> should be prepared to participate actively, <b>according to their legal responsibilities and role</b> , providing those authorities with all necessary information relating to the product concerned. |





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| all necessary information relating to the product concerned.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                             |                                                                                                                                                                                                |
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| (56) As the dealer offers a product for sale, hire or hire purchase, or displays products to customers or installers, it is necessary for the dealer to ensure that its customers, <b>including potential customers</b> , can effectively access the information required under this Regulation, including in the case of distance selling. In particular, this Regulation should require dealers to ensure that the product passport is accessible to their customers, <b>including potential customers</b> , and that labels are clearly displayed, in line with the applicable requirements. The dealer should comply with this obligation every time the product is offered for hire. |                             |                                                                                                                                                                                                |
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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | See comment to recital 26b. | <b>(55b) Economic actors modifying products by upgrading, refurbishing, remanufacturing or after other operations should be able to upgrade passport or create a new one if not available.</b> |



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| <p>(57) To facilitate the choice of more sustainable products, labels, where required, should be displayed in a clearly visible and identifiable way. 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. 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. <b>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</b></p> | <p>The modification suggested is essential to assure that only EU labels can be used in products covered by an implementing act under this Regulation and not national (environmental) labels.</p> | <p>(56) To facilitate the choice of more sustainable products, labels, where required, should be displayed in a clearly visible and identifiable way. 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. 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. <b>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 EU legislation such as the EU Ecolabel and could continue to be displayed as required by that legislation. <del>Neither the EU Ecolabel nor any other nationally or regionally officially recognised EN ISO 14024 type I environmental labels should</del></b></p> |
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| 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.                                                                                                                                                                                                                                                                                                                                       |  | <del>be considered as misleading.</del> |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |                                         |
| (58) Any importer or distributor that either places on the market a product covered by a <del>delegated implementing—delegated</del> act adopted pursuant to this Regulation under the importer's or distributor's own name or trademark, or modifies such a product <b>before it has been put into service</b> in such a way that compliance with this Regulation or with the relevant <del>delegated implementing—delegated</del> act might be affected, should be considered to be the manufacturer and should assume the manufacturer's obligations. |  |                                         |
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| (59) Online marketplaces play a crucial role in the supply chain, allowing economic operators to reach a large number of                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |                                         |



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customers. Given their important role in intermediating the sale of products between economic operators and customers, online marketplaces should take responsibility for addressing the sale of products that do not comply with ecodesign requirements and should cooperate with market surveillance authorities. Directive 2000/31/EC of the European Parliament and of the Council<sup>53</sup> provides the general framework for e-commerce and lays down certain obligations for online platforms. Regulation ~~{.../...}~~ **(EU) 2022/2065 on a Single Market for Digital Services (Digital Services Act) and amending Directive 2000/31/EC**<sup>54</sup> regulates the responsibility and accountability of providers of intermediary services online with regard to illegal content, including products that do not comply with ecodesign requirements. Building on this general framework, specific requirements to effectively address the sale of



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| non-compliant products online should be brought in.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |  |
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| (60) It is essential that online marketplaces cooperate closely with the market surveillance authorities. An obligation of cooperation with market surveillance authorities is imposed on information society service providers under Article 7(2) of Regulation (EU) 2019/1020 of the European Parliament and of the Council <sup>55</sup> in relation to products covered by that Regulation, including products for which ecodesign requirements are set. To further improve cooperation to tackle illegal content related to non-compliant products, this Regulation should include concrete obligations to put this cooperation into practice as regards online marketplaces. For instance, market surveillance authorities are constantly improving the technological tools they use for online market surveillance in order to identify non-compliant products sold |  |  |



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| online. For these tools to be operational, online marketplaces should grant access to their interfaces. Moreover, market surveillance authorities may also need to scrape data from the online marketplaces.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |  |  |
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| (61) Article 14(4) of Regulation (EU) 2019/1020 provides market surveillance authorities with the power, where no other effective means are available to eliminate a serious risk, to require the removal of content referring to non-compliant products from an online interface <del>or to require the explicit display of a warning to end-users when they access an online interface</del> . The powers entrusted to market surveillance authorities by Article 14(4) of Regulation (EU) 2019/1020 also apply to this Regulation. However, for effective market surveillance under this Regulation and to avoid non-compliant products being present on the Union market, this power should apply in all necessary and proportionate cases, including for products presenting a less than |  |  |



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| serious risk. This power should be exercised in accordance with [Article 8]-9] of the <b>Regulation (EU) 2022/2065</b> [Digital Services Act].                                                                                                                                                                                                                                                  |  |  |
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| (62) Ensuring a product's traceability throughout the whole supply chain facilitates the market surveillance authorities' task of tracing economic operators who placed on the market or made available on the market non-compliant products. The economic operators should therefore be required to keep the information on their transactions for a certain period of time.                   |  |  |
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| (63) To speed up and facilitate the verification of compliance of products placed on the market, <b>the power to adopt acts in acts in accordance with Article 290 TFEU should be delegated</b> the power to adopt implementing powers should be conferred on acts in accordance with Article 290 TFEU should be delegated to the Commission <b>to supplement this Regulation</b> to supplement |  |  |



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| <p><del>this Regulation</del> by requiring responsible economic operators, where necessary, to make specific parts of the technical documentation digitally available both to competent <b>national</b> authorities and to the Commission. This should allow competent national authorities to access this information without request, while continuing to guarantee the protection of trade secrets <b>and intellectual property rights</b>. Possible means of making this information digitally available should in principle include a product passport, or via inclusion in the compliance part of the product database referred to in Regulation (EU) 2017/1369, or on a website of the economic operator. Such an obligation should not take away from the competent national authorities' right to access other parts of the technical documentation on request.</p> |  |  |
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| <p>(64) <del>In order to allow for a better estimation of relevant products' market penetration, to better inform studies feeding</del></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |  |  |





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| <p><del>into the drafting or updating of ecodesign requirement and working plans, and to help identify the market share of specific product groups in order to speed up the formulation or review of ecodesign requirements, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to supplement this Regulation by requiring the collection of adequate and reliable data on the sales of products, by allowing the collection of such data by or on behalf of the Commission directly from manufacturers or retailers. When adopting rules on monitoring and reporting, the Commission should take into account the need to maximise the available data on market penetration and the need to minimise the administrative burden for economic operators.</del></p> |  |  |
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| <p>(65) In order to improve future ecodesign requirements and improve end-users confidence</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |  |



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identifying and correcting deviations between energy in-use and other performance parameters when measured under test conditions and actual functioning, the Commission should have access to **anonymised information about products'** actual energy consumption while in use and where relevant to other performance parameters. To that end, the power to adopt **implementing-delegated** acts in accordance with Article 290 TFEU should be delegated to the Commission to supplement this Regulation by requiring individual products, similarly to road vehicles, to determine their in-use energy consumption and other relevant performance parameters and display it to the end-user. For products connected to the internet, the power to adopt **implementing-delegated** acts in accordance with Article 290 TFEU should be delegated to the Commission to supplement this Regulation by requiring economic operators to remotely collect **and anonymise** such in-



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| <p>use data and report it to the Commission, as it is essential to identify how the products perform and to inform the public. For products whose in use performance depends significantly also on climatic or geographical conditions, climatic or geographical information should also be collected, anonymised and reported.</p>                                                                                                                                                                                                                                                 |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |  |
| <p><b>(64a) In order to help facilitate the verification of compliance with the ecodesign requirements, including to facilitate conformity assessment and market surveillance, the Commission should be empowered to require, where duly justified, that supply chain actors provide information on their supplies like quantity and type or chemical composition of materials used or production process employed, or information on the conditions of the provisions of their services. It should also be possible to allow manufacturers to have access to the documents</b></p> |  |  |



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| <p>relating such information or to the actual facilities of the supply chain actors to be able to access directly and by themselves the needed information if they do not provide the information requested within a reasonable time. The Commission should also be empowered to enable notified bodies and national authorities to verify the correctness of the information related to the activities of the supply chain actors.</p>                                                                                                     |  |  |
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| <p>(66) In order to ensure the effective and harmonised application of ecodesign requirements set under this Regulation, including on aspects such as energy use or efficiency, durability and reliability, and recycled content, compliance with those requirements should be measured using reliable, accurate and reproducible methods that take into account the generally recognised state-of-the-art methods. <del>delegated</del><br/><b>Implementing—Delegated</b> acts establishing ecodesign requirements for products should</p> |  |  |



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| <p>in principle include the specifications for tests, measurements or calculations needed to establish or verify compliance. In addition, the power to adopt <b>implementing delegated</b> acts in accordance with <del>Article 290 TFEU</del> should be delegated to the Commission <del>to supplement this Regulation</del> by requiring the use of <del>online</del> <b>digital</b> tools reflecting applicable calculation requirements, in order to ensure their harmonised application. <b>The Commission should will—make available those tools after an internal testing period and should will establish the conditions ensuring proper functioning and remedies in case of malfunctioning.</b></p> |  |  |
| <p>(67) order to ensure that ecodesign requirements achieve their intended effects, this Regulation should set out comprehensive and overarching provisions, applicable to all products covered by ecodesign requirements, prohibiting circumvention of such requirements. Therefore, any</p>                                                                                                                                                                                                                                                                                                                                                                                                                |  |  |



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| practice leading to an unjustified alteration of the product's performance during compliance testing or within a short period after putting the product into service, leading to a declared performance that misrepresents the product's actual performance while in use should be prohibited.                                                                                                                                                                                                                                                                                                                                                                                                                 |  |  |
| (68) Where appropriate, delegated <b>implementing</b> <b>delegated</b> acts establishing ecodesign requirements for products <del>may</del> <b>should</b> refer to the use of standards to <b>assess their conformity with ecodesign requirements</b> <del>establish or verify compliance</del> . In order to ensure that there are no barriers to trade on the internal market, such standards should be harmonised at Union level. Once a reference to such a standard has been adopted in accordance with Regulation (EU) No 1025/2012 of the European Parliament and of the Council <sup>56</sup> and published in the Official Journal of the European Union, products in conformity with such standards, |  |  |



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| <p>for which ecodesign requirements have been adopted pursuant to this Regulation, should be considered in conformity with those requirements to the extent that they are covered by the relevant harmonised standards. Similarly, methods for tests, measurement or calculation that are in conformity with harmonised standards should be considered in conformity with the test, measurement and calculation requirements set out in the relevant delegated <b>implementing delegated</b> acts laying down ecodesign requirements, to the extent that they are covered by the relevant harmonised standards.</p> |   |  |
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| <p>(69) <b>In order to ensure uniform conditions for the implementation of this Regulation and in</b> the absence of harmonised standards, recourse to common specifications should be used as a fall-back solution to facilitate the manufacturer's obligation to comply with ecodesign requirements, for instance when the standardisation process is blocked due to lack of</p>                                                                                                                                                                                                                                  | - |  |



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| <p>consensus between stakeholders or where there are undue delays in establishing a harmonised standard. Such delays could for example occur when the required quality is not reached. In addition, recourse to this solution should be possible where the Commission has restricted or withdrawn the references to relevant harmonised standards in line with Article 11(5) of Regulation (EU) No 1025/2012. <b>Those powers should be exercised in accordance with Regulation (EU) No 182/2011.</b> Compliance with common specifications should also give rise to the presumption of conformity.</p> |  |  |
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| <p>(70) In order to enable economic operators to demonstrate, and competent authorities to verify, that products made available on the market comply with the ecodesign requirements adopted pursuant to this Regulation, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to supplement this Regulation by laying down conformity</p>                                                                                                                                                                                                                 |  |  |





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| <p>assessment procedures appropriate and proportionate to the nature of the product concerned and of the product parameters regulated. To ensure coherence with other Union law, the conformity assessment procedures should be chosen from among the internal production control module included in this Regulation and the modules included in Decision No 768/2008/EC of the European Parliament and of the Council<sup>57</sup>, ranging from the least stringent to the most stringent depending. To further ensure that the applicable module is appropriate and proportionate to the nature of the product concerned and of the product parameters regulated, the Commission should where needed adapt the module chosen in light of that nature.</p> |  |  |
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| <p>(71) Manufacturers should draw up an EU declaration of conformity to provide information on the conformity of products with this Regulation. Manufacturers may also be</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  |  |



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| required by other Union legislation to draw up an EU declaration of conformity. To ensure effective access to information for market surveillance purposes, a single EU declaration of conformity should be drawn up in respect of all Union acts. To reduce the administrative burden on economic operators, it should be possible for that single EU declaration of conformity to be a dossier made up of relevant individual declarations of conformity.                   |  |  |
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| (72) Regulation (EC) No 765/2008 of the European Parliament and of the Council <sup>58</sup> lays down rules on the accreditation of conformity assessment bodies, <del>provides a framework for the market surveillance of products and for controls on products from third countries, and</del> lays down the general principles of the CE marking. That Regulation should be applicable to products covered by this Regulation in order to ensure that products benefiting |  |  |



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from the free movement of goods within the Union fulfil requirements providing a high level of protection of public interests such as human health, safety and the environment. Where ecodesign requirements have been adopted for a product, the CE marking should indicate that product's conformity with this Regulation and the ecodesign requirements adopted pursuant to it, insofar as they relate to the product. General principles governing the CE marking and its relationship to other markings are set out in Regulation (EC) No 765/2008. Considering that this Regulation provides for the setting of ecodesign requirements for a large range of products, the power to adopt **implementing delegated** acts in accordance with ~~Article 290 TFEU~~ should be ~~delegated to~~ **conferred on** the Commission to ~~supplement this Regulation~~ by setting out ~~alternative or more specific rules on the declaration of conformity or conformity marking in relation to ecodesign requirements in order to ensure coherence with~~



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| requirements under Union law applicable to the products covered, prevent confusion with other markings or declarations and minimise administrative burden for economic operators.                                                                                                                                                                                                   |  |  |
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| (73) Some of the conformity assessment modules laid down in Decision No 768/2008/EC require the intervention of conformity assessment bodies. In order to ensure uniform conditions for the implementation of this Regulation, those bodies should be notified to the Commission by Member State authorities.                                                                       |  |  |
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| (74) To ensure a consistent level of quality in the performance of conformity assessment, it is necessary to set requirements for notifying authorities involved in the assessment, notification and monitoring of notified bodies. In particular, it should be ensured that the notifying authority is objective and impartial with regard to its activity. Furthermore, notifying |  |  |



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| <p>authorities should be required to safeguard the confidentiality of the information they obtain, but should nonetheless be able to exchange information on notified bodies with national authorities, the notifying authorities of other Member States and the Commission to ensure consistency in the conformity assessment. To effectively establish and monitor the competence and independence of applicant bodies, notifying authorities should take as a basis for notification only the precise legal body applying, not taking into account the credentials of parent or sister companies. For the same reason, they should assess applicant bodies against all relevant requirements and conformity assessment tasks, relying on harmonised standards for the requirements and tasks covered by those standards.</p> |  |  |
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| <p>(75) Given their central role in ensuring the reliability of conformity assessments in relation to ecodesign requirements, it is essential that</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |  |



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| <p>notifying authorities have a sufficient number of competent personnel and sufficient funding at their disposal for the proper performance of their tasks. <del>Where, in the implementation of this Regulation, it occurs that notifying authorities do not effectively verify and monitor notified bodies due to a lack of competent personnel, implementing powers should be conferred on the Commission to lay down a minimum number of full-time equivalents that should be at the disposal of notifying authorities, where appropriate in relation to specific conformity assessment tasks.</del></p> |  |  |
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| <p>(76) It is essential that all notified bodies perform their functions to the same level and under conditions of equal competition and autonomy. Therefore, requirements should be set for conformity assessment bodies wishing to obtain the status of notified body in order to provide conformity assessment activities. Those requirements should continue to apply to</p>                                                                                                                                                                                                                              |  |  |



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| maintain the competence of the notified body. To ensure its autonomy, the notified body and the staff it employs should be required to maintain independence from economic operators in the value chain of the products in relation to which it has been notified and from other companies, including business associations and parent companies and subsidiaries. |  |  |
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| (77) If a conformity assessment body demonstrates conformity with the criteria laid down in harmonised standards it should be presumed to comply with the corresponding requirements set out in this Regulation.                                                                                                                                                   |  |  |
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| (78) Conformity assessment bodies frequently subcontract parts of their activities linked to the assessment of conformity or have recourse to a subsidiary. To ensure that products placed on the Union market comply with ecodesign requirements, conformity assessment subcontractors and subsidiaries should fulfil the same                                    |  |  |



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| requirements as notified bodies in relation to the performance of conformity assessment tasks under this Regulation.                                                                                                                                                                                                                                                                                                            |  |  |
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| (79) In order for notifying authorities to effectively establish and monitor the competence and independence of applicant bodies, those bodies should be and remain autonomous. Therefore, certain activities and decision-making processes, both regarding the conformity assessment of products and other activities internal to the notified body, should exclusively be carried out by the individual notified body itself. |  |  |
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| (80) To facilitate the process of establishing and monitoring the competence and independence of applicant bodies, applicant bodies should <b>provide a description of how relevant personnel, their status and tasks correspond to the conformity assessment, tasks in relation to which the body intends to be notified, such as in the form of draw-up and</b>                                                               |  |  |





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| <p><del>regularly update</del> a qualification matrix, <del>This matrix should match personnel and their qualifications to specific conformity assessment tasks</del>, enabling the notifying authority to more effectively assess the adequacy of staffing and the continued autonomy of the notified body.</p>                                                                                                                                                                                                                                                                                     |  |  |
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| <p>(81) Since the services offered by notified bodies in a Member State might relate to products made available on the market throughout the Union, it is appropriate to give the other Member States and the Commission the opportunity to raise objections concerning a notified body. In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to request that the notifying Member State take corrective action if a notified body does not meet, or no longer meets, the requirements of this Regulation.</p> |  |  |
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| <p>(82) In the interests of</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |  |



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| facilitating and accelerating the conformity assessment procedure, and to ensure equal treatment of economic operators, it is crucial that the notified bodies apply the conformity assessment procedures consistently and without creating unnecessary burdens for economic operators.                                                                                                                                                                                                                                                                                                                                                                                                        |  |  |
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| (83) Prior to taking a final decision on whether a product can be granted a conformity certificate, the economic operator that wishes to place that product on the market should be allowed to supplement the relevant documentation once only. This limitation is necessary to ensure that notified bodies are not able to assist manufacturers in making changes until conformity is reached, as that would mean that the service provided resembles a consulting service and could in practice dilute the public interest nature of notified bodies' tasks. Where appropriate, notified bodies should also be able to restrict, suspend or withdraw any certificates or approval decisions. |  |  |



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| (84) To facilitate the identification and resolution of cases of non-conformity of notified bodies, manufacturers or products, notified bodies should proactively forward relevant information at their disposal to notifying authorities or market surveillance authorities.                                                      |  |  |
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| (85) It is essential to ensure efficient exchange of information between notified bodies and market surveillance authorities, including from other Member States. To that end, it is necessary for notifying authorities and notified bodies to ensure follow-up to requests for information from market surveillance authorities. |  |  |
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| (86) The Commission should enable appropriate coordination and cooperation between notified bodies. To ensure harmonised application of ecodesign requirements, notified bodies should discuss and coordinate on topics of possible divergence. <del>It</del>                                                                      |  |  |



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| <p><del>that process, they should take as general guidance any document produced by the administrative cooperation group made up of market surveillance authorities, as referred to in Article 30(2) of Regulation (EU) 2019/1020.</del></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |  |  |
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| <p>(87) In order to incentivise consumers to make sustainable choices, in particular when the more sustainable products are not affordable enough, mechanisms such as eco-vouchers and green taxation should be provided for. When Member States decide to make use of incentives to reward the best-performing products among those for which classes of performance have been set by delegated acts pursuant to this Regulation, they should do so by targeting those incentives at the highest two populated classes of performance, unless otherwise indicated by the relevant delegated act. However, Member States should not be able to prohibit the placing on the market of a product based on its class of performance. For the same reason, the power to adopt</p> |  |  |



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| <p><b>implementing</b> acts in accordance with Article 290 TFEU should be delegated <b>conferred</b> to the Commission to <b>specify</b> <del>supplement this Regulation by further specifying</del> which product parameters or related levels of performance Member States' incentives concern in case no class of performance is determined in the applicable delegated act or where classes of performance are established in relation to more than one product parameter., <b>in which cases the Commission should specify the parameters concerned by the Member States' incentive.</b> The introduction of Member State incentives should be without prejudice to the application of the Union State aid rules.</p> |  |  |
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| <p><b>(87a) Member States should not be precluded from introducing or maintaining national measures on green public procurement regarding product groups for which public <input type="text"/> procurement requirements under this Regulation have not yet been set</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                |  |  |



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| and from introducing stricter national requirements regarding products which fall within the scope of implementing acts setting out green public procurement requirements, provided they are in line with Union law.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |  |  |
| (88) 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 <b>implementing</b> acts in accordance with Article 290 TFEU should be <del>delegated</del> <b>conferred</b> to the Commission to require , where appropriate, contracting authorities and entities as defined in Directive 2014/24/EU <sup>59</sup> and 2014/25/EU <sup>60</sup> of the European Parliament and of the Council, to align their procurement with specific <b>minimum</b> green public procurement criteria or targets, to |  |  |



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be set out in the **implementing** ~~delegated~~ acts adopted pursuant to this Regulation. **The Commission may require targets to be achieved by establishing, for instance, a percentage of all the tendering procedures concerning a particular product group to comply with public procurement requirements. The percentage may be expressed in the aggregate number or value of contracts for the purchase of relevant sustainable products, as compared to the overall number and value of relevant contracts for the sector or products at stake.** 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



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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.

When considering the effect on the market situation, the Commission should take into account, among others, the effects of the requirements on competition and the best environmental products and solutions available on the market. When considering the economic feasibility for contracting authorities, the Commission should take into account that different contracting authorities in





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| <p>different Member States might have different budgetary capacities. In duly justified cases, contracting authorities should be able to derogate from the requirements such as when there is an emergency and applying the requirements would result in severe negative impact on public health.</p> |  |  |
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(89) Effective enforcement of ecodesign requirements is essential to ensure equal competition in the Union market and to ensure that this Regulation's expected benefits and contribution to achieving the Union's climate, energy and circularity objectives are achieved. Therefore, Regulation (EU) 2019/1020 setting out a horizontal framework for market surveillance and control of products entering the Union market should apply to products for which ecodesign requirements are set pursuant to this Regulation, in so far as there are no specific provisions with the same objective **that regulate in a more specific manner particular aspects of market surveillance and enforcement, nature or effect** in this Regulation. In addition, to lower the problematic levels of non-compliance of products covered by implementing measures adopted under Directive 2009/125/EC, to better prevent non-compliance with future ecodesign requirements, and

Italy disagrees that this Regulation may overcome Regulation (EU) 2019/1020.

Effective enforcement of ecodesign requirements is essential to ensure equal competition in the Union market and to ensure that this Regulation's expected benefits and contribution to achieving the Union's climate, energy and circularity objectives are achieved. Therefore, Regulation (EU) 2019/1020 setting out a horizontal framework for market surveillance and control of products entering the Union market should apply to products for which eco-design requirements are set pursuant to this Regulation, ~~in so far as there are no specific provisions with the same objective that regulate in a more specific manner particular aspects of market surveillance and enforcement, nature or effect~~ in this Regulation. In addition, to lower the problematic levels of non-compliance of products covered by implementing measures adopted under Directive 2009/125/EC, to better prevent non-compliance with future ecodesign requirements, and taking account of the broader scope and increased ambition of this Regulation compared to Directive 2009/125/EC, this Regulation should contain specific additional rules ~~complementing~~ **complementing** the framework created by Regulation (EU) 2019/1020. Those specific additional rules



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taking account of the broader scope and increased ambition of this Regulation compared to Directive 2009/125/EC, this Regulation should contain specific additional rules ~~complementing~~**complementing** the framework created by Regulation (EU) 2019/1020. Those specific additional rules should be aimed at further strengthening the planning, coordination and support of Member State efforts and should provide additional tools for the Commission to ensure sufficient action is taken by market surveillance ~~authorities~~**authorities** to prevent non-compliance with ecodesign requirements.

~~should be aimed at further strengthening the planning, coordination and support of Member State efforts and should provide additional tools for the Commission to ensure sufficient action is taken by market surveillance — authorities~~**authorities**~~— to prevent non-compliance with ecodesign requirements.~~



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| (90) Beyond market surveillance authorities, customs authorities also have an important role to play in enforcing this Regulation with regard to imported goods and can rely on Council Regulation (EC) No 515/97 <sup>61</sup> for that purpose.                                                                                                                                                                                                                                                                                                                                                                                                                                              |   |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |   |  |
| (91) To ensure that appropriate checks are performed on an adequate scale in relation to ecodesign requirements, Member States should, <b>as part of the overarching national market surveillance strategy according to Article 13 of Regulation (EU) 2019/1020</b> , draw up a dedicated action plan identifying the products or requirements identified as priorities for market surveillance under this Regulation and the activities planned to reduce non-compliance of relevant products or with relevant ecodesign requirements. <del>Where relevant, this action plan should be part of Member States' national market surveillance strategies adopted pursuant to Article 13 of</del> | - |  |



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| <p><del>Regulation (EU) 2019/1020.</del><br/>While drawing up an action plan, Member States should take into account products regulated under the framework of Directive 2009/125/EC. In order to address those products regulated at the moment of entry into force of this Regulation, Member States should draw up the first action plan by 6 months of entry into force of this Regulation. <del>Member States should draw up subsequent action plans at least every 4 years, which could be revised if needed. Where relevant, those action plans should be part of Member States' national market surveillance strategies adopted pursuant to Article 13 of Regulation (EU) 2019/1020.</del></p> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |  |
| <p>(92) Priorities for market surveillance under this Regulation should be identified based on objective criteria such as the levels of non-compliance observed or the environmental impacts resulting from non-compliance. <b>Information on the</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |  |



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| <p>environmental impacts of non-compliance can be derived from the impact assessments underlying the relevant ecodesign requirements. The activities planned to address those priorities should in turn be proportionate to the facts leading to their prioritisation. <del>In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to determine products and requirements that Member States should consider as priorities for market surveillance in the context of their action plans identifying priorities for market surveillance under this Regulation and activities planned to reduce non-compliance.</del></p> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |  |  |
| <p>(93) Where problematic levels of non-compliance with ecodesign requirements are observed despite the enhanced planning, coordination and support laid down by this Regulation, the Commission</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |  |



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| <p>should be able to intervene <b>in accordance with Article 11(4) of Regulation (EU) 2019/1020</b> to ensure that market surveillance authorities perform checks on an adequate scale. Therefore, in order to safeguard the effective enforcement of ecodesign requirements, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission <del>to lay down a minimum number of checks to be performed on specific products or requirements. This empowerment should be additional to the empowerment in accordance with</del> Article 11(4) of Regulation (EU) 2019/1020.</p> |  |  |
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| <p>(94) Based on data entered into the information and communication system for market surveillance, the Commission should draw up a report containing information on the nature and number of checks performed, <b>and</b> on the levels of non-compliance identified <del>and on the nature and severity of penalties imposed</del> in relation to ecodesign requirements over the</p>                                                                                                                                                                                                                            |  |  |



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| two previous calendar years. The reports should contain a comparison of Member States' activities with the activities planned and indicative benchmarks for market surveillance authorities.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |  |  |
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| <p>(95) <del>To further strengthen coordination of market surveillance authorities, the administrative cooperation group ('ADCO') set up pursuant to Regulation (EU) 2019/1020 should, for the purposes of identifying the products or requirements identified as priorities for market surveillance under this Regulation and the activities planned to reduce non-compliance in Regulation, meet at regular intervals and identify common priorities for market surveillance to be taken into account in Member States' action plans, priorities for the provision of Union support, and ecodesign requirements that are interpreted differently leading to market distortion.</del> <b>Whereas the Union Product Compliance Network established by Regulation (EU)</b></p> |  |  |





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| <p>2019/1020 is meant to address “general, horizontal issues of market surveillance”, the administrative cooperation group (‘ADCO’) established under Regulation (EU) 2019/1020 for the uniform application of this Regulation should, as part of or in addition to the tasks defined in Regulation (EU) 2019/1020, for the purposes of identifying the products or requirements identified as priorities for market surveillance under this Regulation and the activities planned to reduce non-compliance with this Regulation, meet at regular intervals and identify common priorities for market surveillance to be taken into account in Member States’ action plans, priorities for the provision of Union support, and ecodesign requirements that are interpreted differently leading to market distortion.</p> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |  |
| <p>(96) To support Member States in their efforts to ensure sufficient action is taken to prevent non-</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |  |  |



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| <p>compliance with ecodesign requirements, the Commission should, where relevant, make use of the support measures provided for in Regulation (EU) 2019/1020. The Commission should organise and, where appropriate finance, joint market surveillance and testing projects in areas of common interest, joint investments in market surveillance capacities and common trainings for the staff of market surveillance authorities, notifying authorities and notified bodies. In addition, the Commission should draw up guidelines on how to apply and enforce ecodesign requirements where necessary to ensure their harmonised application.</p> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |  |
| <p>(97) Products should be placed on the market only if they do not present a risk. In order to better align with the specific nature of ecodesign requirements and to ensure that the focus of market surveillance efforts is on non-compliance with such requirements, a product presenting a risk should, for the</p>                                                                                                                                                                                                                                                                                                                            |  |  |



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| <p>purposes of this Regulation, be defined as a product that, by not complying with an ecodesign requirement or because a responsible economic operator does not comply with an ecodesign requirement, may adversely affect the environment or other public interestsprotected by the relevant requirements. This more specific definition should be used when applying Articles 19 and 20 of Regulation (EU) 2019/1020.</p>                                                                                                                    |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |  |
| <p>(98) A procedure should exist under which interested parties are informed of measures intended to be taken with regard to products presenting a risk. It should also allow market surveillance authorities in the Member States, in cooperation with the relevant economic operators, to act at an early stage with regard to such products. To that end, the safeguard clause currently included in Directive 2009/125/EC should be updated and aligned with the safeguard procedures included in other Union harmonisation legislation</p> |  |  |



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| and in Decision No 768/2008/EC. In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to determine whether national measures in respect of non-compliant products are justified or not.                                                                                          |  |  |
|                                                                                                                                                                                                                                                                                                                                                                       |  |  |
| (99) The market surveillance authorities should have the right to require economic operators to take corrective action on the basis of findings that either a product is not compliant with ecodesign requirements or that the economic operator has infringed the rules on the placing or making available on the market of products or other rules addressed to it. |  |  |
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| <p>(100) When adopting delegated acts pursuant to Article 290 TFEU, it is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law- Making<sup>62</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.</p> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  |  |
| <p>(101) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission as regards: <b>(a) setting the ecodesign</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |  |



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requirements for classes of products, specifying the conformity assessment, requiring availability of technical specifications, requiring products to measure energy use or in-use data, requirements on markings and as regards incentives and green public procurement, (b) (a) specifying implementation arrangements for the interconnection of the registry referred to in this Article 12 and the EU Customs Single Window Certificates Exchange; (be) establishing common requirements for the layout of labels; (c) establishing the working plan of the Commission (de) containing a list of self-regulation measures established as valid alternatives to a delegated act adopted pursuant to Article 4; (ed) setting out format for the disclosure of the information on unsold consumer products that have been discarded; (x) setting out exceptions to the small and micro enterprise exemptions to the transparency obligation and



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prohibitions (xx) setting out exceptions to the direct prohibition against the destruction of unsold consumer products, (xxx) setting out further prohibitions against the destruction of unsold consumer products; (xxxx) setting out exceptions to the SME exemptions to the transparency obligation and prohibitions, (fe) laying down, amending or repealing common specifications for ecodesign requirements, the essential requirements for product passports or for test, measurement or calculation methods; (f) laying down a minimum number of full-time equivalents considered sufficient for the proper monitoring of notified bodies; (g) requiring a Member State to take corrective action, including withdrawal of the notification, for non-compliant notified bodies; (y) establishing rules for Member States incentives; (yy) setting minimum mandatory requirements for green public procurement; (h) listing the products or requirements that Member States must at least



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| consider as priorities for market surveillance; and (i) deciding, pursuant to the Union safeguard procedure, whether a national measure is justified or not. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council <sup>63</sup>                                                                                                                                    |  |  |
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| (102) To enhance trust in products placed on the market, in particular as regards the fact that they comply with ecodesign requirements, the public needs to be sure that economic operators placing non-compliant products on the market will be subject to penalties. It is therefore necessary that Member States lay down effective, proportionate and dissuasive penalties in national law for failure to comply with this Regulation. |  |  |
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| (103) The Commission should carry out an evaluation of this Regulation. Pursuant to paragraph 22 of the Interinstitutional Agreement on Better Law-Making, that                                                                                                                                                                                                                                                                             |  |  |





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| <p>evaluation should be based on the five criteria of efficiency, effectiveness, relevance, coherence and EU value added and should provide the basis for impact assessments of possible further measures. The Commission should submit to the European Parliament, to the Council, the European Economic and Social Committee, and to the Committee of the Regions a report on the implementation of this Regulation and its impact on the environmental sustainability of products and the functioning of the internal market. Where appropriate, the report should be accompanied by a proposal to amend relevant provisions of this Regulation.</p> |                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                     |
| <p>(104) It is necessary that ecodesign requirements apply to the widest possible range of products, and not only energy-related products, and that the definition of ecodesign requirements is widened to encompass all aspects of circularity. <b>Products that are</b></p>                                                                                                                                                                                                                                                                                                                                                                           | <p>We suggest a modification that reflects our comments on Article 20, which we have already sent. According to our proposal, the transparency obligation should be applied only once a product is covered by a product's specific act.</p> | <p>(103) It is necessary that ecodesign requirements apply to the widest possible range of products, and not only energy-related products, and that the definition of ecodesign requirements is widened to encompass all aspects of circularity. <b>Products that are already sufficiently regulated under other Union legislation, e.g., means of transport, should not be</b></p> |



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| <p><b>already sufficiently regulated under other Union legislation, e.g., means of transport, should not be taken into account.</b> It is also necessary to align this Regulation to the New Legislative Framework set out in Regulation (EC) No 765/2008 and Decision No 768/2008/EC, and to improve the provisions related to market surveillance. Directive 2009/125/EC should therefore be replaced. In order to ensure legal certainty for all economic operators from the date of entry into force of this Regulation and to guarantee a level playing-field for businesses operating on the internal market, the provisions setting out transparency obligations related to the discarding of unsold consumer products, circumvention, and market surveillance, should be of uniform application for all operators across the Union. Directive 2009/125/EC should therefore be replaced by a Regulation.</p> |  | <p><b>taken into account.</b> It is also necessary to align this Regulation to the New Legislative Framework set out in Regulation (EC) No 765/2008 and Decision No 768/2008/EC, and to improve the provisions related to market surveillance. Directive 2009/125/EC should therefore be replaced. In order to ensure legal certainty for all economic operators from the date of entry into force of this Regulation and to guarantee a level playing-field for businesses operating on the internal market, the provisions setting out transparency obligations related to the discarding of unsold consumer products, circumvention, and market surveillance, should be of uniform application for all operators across the Union <b>once a product is covered by an implementing/delegated act according to Article 4.</b> Directive 2009/125/EC should therefore be replaced by a Regulation.</p> |
| <p>(105) In order to ensure legal certainty and continuity for</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |



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products placed on the market or put into service in conformity with implementing measures adopted pursuant to Directive 2009/125/EC, in its version applicable on the date of application of this Regulation, those measures should remain in force beyond that date, and until repealed by a delegated act adopted pursuant to this Regulation. For the same reasons, a number of provisions of Directive 2009/125/EC should continue to have full effect in the context of applying these implementing measures. This concerns in particular provisions of Directive 2009/125/EC excluding means of transport for goods or persons from its scope, establishing definitions relevant for implementing measures, setting economic operators' responsibilities in relation to products placed on the market, specifying the details of the relevant conformity assessment procedures and the EC declaration of conformity, establishing a presumption of conformity for products which



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| <p>have been awarded the EU ecolabel and enabling necessary action in relation to harmonised standards. Noting the importance of ensuring free movement of goods, banning practices illegally altering products' performance in order to reach a more favourable result and ensuring proper enforcement of ecodesign requirements, relevant provisions of this Regulation should be applicable to energy-related products placed on the market pursuant to implementing measures under Directive 2009/125/EC.</p> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |  |
| <p>(106) Since the objectives of this Regulation, namely to improve environmental sustainability of products and to ensure the free movement in the internal market of products for which ecodesign requirements are set, cannot be sufficiently achieved by the Member States, but can rather, by reason of its scale and effects, only be achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5</p>                                   |  |  |



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| of the Treaty on European Union (TEU). In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,                                                                                                                                                                                                           |  |  |
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| HAVE ADOPTED THIS REGULATION:                                                                                                                                                                                                                                                                                                                                                                                             |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                           |  |  |
| <b>Chapter I - General provisions</b>                                                                                                                                                                                                                                                                                                                                                                                     |  |  |
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| Article 1<br>Subject matter and scope                                                                                                                                                                                                                                                                                                                                                                                     |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                           |  |  |
| 1. This Regulation establishes a framework to improve the environmental sustainability of products and to ensure free movement in the internal market by for setting ecodesign requirements that products shall have to comply with to be placed on the market or put into service, with the aim to improve the environmental sustainability of products and to ensure free movement in the internal market. fulfil to be |  |  |



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| placed on the market or put into service. Those ecodesign requirements, which shall be further elaborated by the Commission in delegated acts, relate to: |  |  |
|                                                                                                                                                           |  |  |
| (a) product durability and reliability;                                                                                                                   |  |  |
|                                                                                                                                                           |  |  |
| (b) product reusability;                                                                                                                                  |  |  |
|                                                                                                                                                           |  |  |
| (c) product-upgradability, reparability, maintenance and refurbishment;                                                                                   |  |  |
|                                                                                                                                                           |  |  |
| (d) the presence of substances of concern in products;                                                                                                    |  |  |
|                                                                                                                                                           |  |  |
| (e) product energy and resource efficiency;                                                                                                               |  |  |
|                                                                                                                                                           |  |  |
| (f) recycled content in products;                                                                                                                         |  |  |
|                                                                                                                                                           |  |  |
| (g) product-remanufacturing and recycling;                                                                                                                |  |  |
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| (h) <del>products' carbon and environmental footprints;</del>                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |  |
| (i) <del>products' expected generation of waste materials.</del>                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |  |
| This Regulation also establishes a digital product passport ('product passport'), provides for the setting of mandatory green public procurement <b>criteria requirements</b> and creates a framework to prevent unsold consumer products from being destroyed. |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |  |
| 2. This Regulation shall apply to <b>products with the exception of any physical good that is placed on the market or put into service, including components and intermediate products.</b> However, it shall not apply to:                                     | <p>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:</p> <ol style="list-style-type: none"><li>1. <b>Packaging</b>: ecodesign elements for such products should fall within the scope of the Regulation on Packaging and Packaging Waste currently under revision;</li><li>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.</li></ol> <p>In addition, we believe that the following cases need to be excluded from the scope of the regulation:</p> |  |



1. goods of a non-commercial nature, as defined by Commission Delegated Regulation (EU) 2015/2446 art. 1 point 21 and exempted from the obligation to submit an entry summary declaration as defined in art. 104. The Member States can provide controls for products contained in postal shipments after risk analysis;
2. products referred to in art. 136 of Commission Delegated Regulation (EU) 2015/2446 excluding letter l;
3. goods defined by Regulation (EC) n. 1186/2009 of the Council, excluding articles 23-27;
4. goods defined by Regulation (EC) n. 1186/2009 of the Council, articles 23-27, following the results of the risk analysis ordered by the member countries;
5. goods in transit;
6. goods introduced into the Union territory under a duty suspension regime, intended for the inward processing regime or for their inclusion in products subsequently destined for export outside the Union territory;
7. goods imported as defective or which are defective at the time of acceptance of the customs declaration (art.70 paragraph 1 of the Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code) for which release for free circulation is not possible. However, these products should be monitored for frauds;
8. goods abandoned at the Customs during storage in temporary deposits, confiscated goods, seized goods. If the goods in question were already subject to ecodesign standards before the administrative provision and are subsequently placed on the market, the economic





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|                                                                                          | operator who introduces the goods into the internal market is obliged of regularizing the products;                         |                                                                                     |
|                                                                                          | 9. goods abandoned at the Customs during storage in temporary deposits, confiscated goods, seized goods donated to charity. |                                                                                     |
|                                                                                          |                                                                                                                             |                                                                                     |
| (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                            |                                                                                                                             | (g) products of plants and animals relating directly to their future reproduction-; |



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| future reproduction.                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <b>h) packaging;</b><br><b>i) tailor-made products.</b>                                                                                                                                                                                            |
|                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                    |
| Article 2<br>Definitions                                                                 | <p>In Article 2 is missing a key definition of ecodesign, which indeed should be introduced into the same text, i.e., the functional unit.</p> <p>Indeed, for each product (type), a particular functional unit must be defined, being the basis, together with the life cycle approach, of any environmental assessment. This demonstrates a clear interdependence with the "traditional" concept of performance and with the different types of products (even within a "product group"), as well as with the most reliable methods for assessing the environmental impact of a product. The functional (unit) approach is essential to be introduced in the preliminary ecodesign requirements (or approaches) for environmental sustainability, together with the life cycle phases approach.</p> <p>It would be useful to add a definition of LCA and of professional repairer.</p> | <b>(x) functional unit means a quantified performance of the product under evaluation, to be used as a reference unit in the context of a life cycle environmental impact assessment (ISO 14050, Environmental Management - Vocabulary, 2020).</b> |
|                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                    |
| For the purposes of this Regulation, the following definitions shall apply:              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                    |
|                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                    |
| (1) 'product' means any physical goods that is placed on the market or put into service; | <p>The current Ecodesign Directive (Article 2.1 2009/125/EC) has wording that excludes highly integrated products whose compliance cannot be assessed independently because of this high integration.</p> <p>What is the policy for co-branded products? Are they different</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <p>(1) 'product' means any physical goods that is placed on the market or put into service <b>and of which the environmental sustainability can be assessed independently;</b></p>                                                                 |



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|                                                                                                                                                                                                        | products? |                                                                                                                                                                          |
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| (2) 'component' means a product intended to be incorporated into another product;                                                                                                                      |           |                                                                                                                                                                          |
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| (3) 'intermediate product' means a product that requires further manufacturing or transformation such as mixing, coating or assembling to make it suitable for <del>end-users</del> <b>customers</b> ; |           |                                                                                                                                                                          |
|                                                                                                                                                                                                        |           |                                                                                                                                                                          |
| (4) 'energy-related product' means any product that has an impact on energy consumption during use;                                                                                                    |           |                                                                                                                                                                          |
|                                                                                                                                                                                                        |           |                                                                                                                                                                          |
| (5) 'product group' means a set of products that serve similar purposes and are similar in terms of use, or have similar functional properties, and are similar in terms of consumer perception;       |           |                                                                                                                                                                          |
|                                                                                                                                                                                                        |           |                                                                                                                                                                          |
| (6) 'ecodesign' means the integration of environmental sustainability considerations into the characteristics of a product                                                                             |           | (6) 'ecodesign' means the integration of environmental sustainability considerations into the characteristics of a product and the processes taking place throughout the |



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| and the processes taking place throughout the product's value chain;                                                                                                                                                        |  | product's <del>value-chain</del> <b>life cycle</b> ;                                                                                                                                                                                                                                           |
| (7) 'ecodesign requirement' means a performance requirement or an information requirement aimed at making a product <b>or processes taking place throughout the product's value chain</b> more environmentally sustainable; |  | (7) 'ecodesign requirement' means a performance requirement or an information requirement aimed at making a product <b>or processes taking place throughout the product's <del>value-chain</del> life cycle</b> more environmentally sustainable <b>by reducing its environmental impact</b> ; |
| (8) 'performance requirement' means a quantitative or non-quantitative requirement for or in relation to a product to achieve a certain performance level in relation to a product parameter referred to in Annex I;        |  |                                                                                                                                                                                                                                                                                                |
| (9) 'information requirement' means an obligation for a product to be accompanied by information as specified in Article 7(2);                                                                                              |  |                                                                                                                                                                                                                                                                                                |
| (10) 'supply chain' means all upstream activities and processes of the value chain of the product, up to the point where the product reaches the <del>end-user</del> <b>customer</b> ;                                      |  |                                                                                                                                                                                                                                                                                                |



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| (11) 'value chain' means all activities and processes that are part of the life cycle of a product, as well as its possible remanufacturing;                                                                                                                                                                          |                                                                                                                                                                    |   |
|                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                    |   |
| (12) 'life cycle' means the consecutive and interlinked stages of a product's life, consisting of raw material acquisition or generation from natural resources, pre-processing, manufacturing, storage, distribution, installation, use, maintenance, repair, upgrading, refurbishment and re- use, and end-of-life; | When we are talking about distribution it is worth wise to highlight and make explicit that we are talking even about packaging (primary, secondary and tertiary). | - |
|                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                    |   |
| (13) 'end-of-life' means the life cycle stage that begins when a product is discarded and ends when the product is returned to nature as a waste product or enters another product's life cycle;                                                                                                                      |                                                                                                                                                                    |   |
|                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                    |   |
| (14) 'environmental impact' means any change to the environment, whether adverse or beneficial, wholly or partially resulting from a product during its                                                                                                                                                               |                                                                                                                                                                    |   |



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| life cycle;                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                               |
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| (15) ‘class of performance’ means a range of performance levels in relation to one or more product parameters referred to in Annex I, ordered into successive steps to allow for product differentiation;                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                               |
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| (16) ‘remanufacturing’ means an <del>industrial process operation</del> in which a <b>new</b> product is <del>produced</del> <b>manufactured</b> from objects that are <b>either</b> waste, products or components and in which at least one change is made to the product that affects <del>the</del> <b>its</b> safety, performance, purpose or type <del>of the product typically placed on the market with a commercial guarantee</del> ; | <p>‘Remanufacturing’ is used in definition (35) on the destruction of products. Remanufactured products are considered not to be destroyed. This should cover all possible remanufacturing ways, or certain remanufacturing operations will be considered to be ‘destruction’? A ban on ‘destruction’ would effectively prohibit remanufacturing of products into products of the same model, which is not the intention.</p> <p>The comma after waste should be removed because remanufacturing should be done only from objects that are “waste components” or “waste products”-Manufacturing and products from components that are not waste components or waste products cannot be considered as remanufacturing but as the normal manufacturing. A waste component or a waste product not necessarily is broken.</p> <p>By adding ‘<b>either</b>’ and the “comma” the current definition can be read as to refer to any manufacturing process, including for completely new products (i.e. ‘means an operation in which a</p> | (16) ‘remanufacturing’ means an <del>industrial process operation</del> in which a <b>new</b> product is <del>produced</del> <b>manufactured</b> from objects that are <b>either</b> waste, products or components and in which at least one change is made to the product that affects <del>the</del> <b>its</b> safety, performance, purpose or type <del>of the product typically placed on the market with a commercial guarantee</del> ; |



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|                                                                                                                                                           | <p>new—product is manufactured from objects that are ... components’). This is not the intention and will lead to unintended consequences. The remanufacturing is an end-of-life operation and not a “normal” manufacturing process for completely new products.</p> <p>Note: How to consider the re-manufacturing of a unit of the same product model, such as in the case of an ink cartridge of a printer?</p> <p>In general, we would like to stress that remanufacturing definition is not coherent with most of the authors’ interpretations. Another one is proposed.</p> <p>Question on "waste": There should be consistency across the different pieces of legislation such as WEEE and Waste Framework Directive about the use the accountability of the wastes. If waste is included in this remanufacturing (definition n. 16) and refurbishment (definition n. 17), how are these wastes counted as part of WEEE collection targets?</p> | <p><b>(16) remanufacturing means an industrial process to return a used product to at least its original performance with a warranty equivalent to or better than the one of the newly manufactured product. Re-manufacturing effort may involve the dismantling of the product, the restoration and replacement of components and testing of the individual parts and the whole product to ensure that it is within its original design specifications.</b></p> |
| <p>(17) ‘upgrading’ means <b>actions carried out to</b> enhancing the functionality, performance, capacity, <b>safety</b> or aesthetics of a product;</p> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |



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| <p>(18) ‘refurbishment’ means <b>actions carried out to preparing, cleaning, testing and preparing or modifying and, where necessary repairing</b> an object that is waste or a product <b>in order</b> to restore <b>either</b> its performance or functionality within the intended use, <b>and</b> range of performance <b>and</b> <del>maintenance</del> originally conceived at the design stage, <b>applicable at the time of its placing on the market.</b> <del>or to meet applicable technical standards or regulatory requirements with the result of making a fully functional product;</del></p> | <p>The Refurbishing’s definition to be better coherent with most of the authors could be improved. Another one is proposed.</p> <p>-</p> <p>-</p> |  |
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| <p>(19) ‘maintenance’ means <b>an</b> actions <b>s</b> carried out to keep a product in a condition where it is able to <del>function as required</del> <b>fulfil its intended use;</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                   |  |
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| <p>(20) ‘repair’ means <b>an action carried out that returns</b> <del>returning a defective</del> <b>object that is a waste or a</b> product or waste to a condition where it fulfils its intended use;</p>                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                   |  |





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| (21) 'durability' means the ability of a product to function as required, under specified conditions of use, maintenance and repair, until a <b>condition after one or more limiting events prevents its functioning is reached;</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                            |
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| (22) 'reliability' means the probability that a product functions as required under given conditions, <b>including maintenance,</b> for a given duration without a limiting event;                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                     | -                                                                                                                                                                                                                                                                                                                                          |
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| (22a) 'limiting event' means an occurrence with the result that a function, which fulfils the intended use, is no longer delivered;                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                            |
|                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                            |
| (23) 'environmental footprint' means a quantification of a product's environmental impacts, whether in relation to a single environmental impact category or an aggregated set of impact categories based on the Product             | <p>It is of key relevance/necessary to make reference to Life Cycle Assessment (LCA) as the most reliable method to evaluate the environmental Footprint; indeed, as reported here the EU is working on the PEF, Product Environmental Footprint, which is in all based on LCA method and approach.</p> <p>In addition, as already pointed out, although we generally support the adoption and implementation of the PEF method</p> | <p>Only if comment on the right side is not taken into account with a proper answer the following suggestion applies:</p> <p>(23) 'environmental footprint' means a quantification of a product's environmental impacts, whether in relation to a single environmental impact category or an aggregated set of impact categories based</p> |



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| <p>Environmental Footprint method;</p> | <p>which has proven to be a valuable instrument in assessing the environmental footprint of many products thanks to its comprehensive multi-impact approach, there are still a number of aspects currently not addressed: for instance the reference to the mass balance approach to measure the circularity of products; and ISO 14067, which specifies the principles, requirements and guidelines for the quantification and reporting of the carbon footprint of a product; further development of PEF database and category rules (PEFCRs). PEF Product Database and Category Rules (PEFCR) need to be further developed. Currently, PEFCRs are only available, or under development, for about 25 product categories. The creation of new PEFCRs will require considerable time and effort. A reference to other international standards should be therefore included. Among them and currently widely used by industry there are, for instance, ISO 14025 (on the Environmental labels and declarations — Type III environmental declarations — Principles and procedures), ISO 14040 (Environmental management — Life cycle assessment — Principles and framework) and ISO 14044 (Environmental management — Life cycle assessment — Requirements and guidelines) which already provide effective a trustful criteria to assess certain aspects of the environmental footprint of products. In addition, other limitations of the PEF approach (e.g. does not adequately consider the circularity of raw materials, the use of biomass, the absorption of biogenic carbon), as well as some criticalities related to the toxicity assessment models, should be addressed before establishing regulatory requirements based only on this methodology.</p> <p>Given the above-mentioned current limits, we believe that the Commission’s proposal to adopt the PEF method as the privileged method for the assessment of ecodesign</p> | <p>on the Product Environmental Footprint method <b>and other internationally recognized standards, scientifically validated and auditable methods such as ISO 14040/44 or EN50693.</b></p> |
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|                                                                                                                                                                                       | <p>requirements for different product groups implies, at the same time, the need for further effort to develop it and make it fit for purpose. We would therefore like to know what actions the Commission intends to take to overcome the outlined limitations of the PEF method.</p> <p>Whatever methodology is used, even a qualitative one, the concept of Functional Unit is crucial to be taken into consideration. The “Functional Unit” is defined as “a quantified performance of the product that is being assessed, to use as a reference unit within an environmental impact assessment of the life cycle“ (ISO 14050, Environmental Management – Vocabulary, 2020). Thus, for each type of product, a particular functional unit should be defined, being the basis of each environmental assessment. That shows a clear interdependence with the “traditional” concept of performance and the different types of products (even within a “product group”), and the most reliable methods to evaluate the environmental impact of a product (see above). The Functional (Unit) approach is essential to be introduced in the design for environmental sustainability preliminary specifications, together with the approach to the Life Cycle stages.</p> |                                                                                                                                                                                                          |
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| (24) ‘Product Environmental Footprint method’ means the life cycle assessment method to quantify the environmental impacts of products established by Recommendation (EU) 2021/2279f; |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | ‘Product Environmental Footprint method’ means the <b>L</b> ife <b>e</b> Cycle <b>a</b> ssessment method to quantify the environmental impacts of products established by Recommendation (EU)2021/2279f; |
|                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                          |



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| <p>(25) <b>‘product carbon footprint’</b> means the sum of greenhouse gas (GHG) emissions and GHG removals in a product system, expressed as CO<sub>2</sub> equivalents and based on a life cycle assessment using the single impact category of climate change; <b>as established by Recommendation (EU) 2021/2279;</b></p> | -                                                                                                                                                                                          |  |
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| <p>(26) <del>‘public contracts’ means public contracts as defined in Article 2(5) of Directive 2014/24/EU;</del></p>                                                                                                                                                                                                         |                                                                                                                                                                                            |  |
|                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                            |  |
| <p>(27) ‘substance’ means a substance as defined in Article 3, point (1), of Regulation (EC) No 1907/2006;</p>                                                                                                                                                                                                               |                                                                                                                                                                                            |  |
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| <p><b>(27a) ‘mixture’ means a mixture as defined in Article 3, point (2), of Regulation (EC) 1907/2006</b></p>                                                                                                                                                                                                               |                                                                                                                                                                                            |  |
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| <p>(28) ‘substance of concern’ means a substance that:</p>                                                                                                                                                                                                                                                                   | <p>With particular reference to the definition of SoC, this, as underlined on several occasions, appears too broad and makes the disclosure obligation pursuant to art. 7, par. 5, too</p> |  |



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|  | <p>expensive and difficult to apply in practice.</p> <p>The initial definition proposed in Article 2(28), confirmed in the compromise text, opens the scope of the ESPR to different types of products depending on the scope of each sub-point. For example, subpoint (a) includes "substances of very high concern" (SVHCs) as defined by REACH Regulation (EC) No. 1907/2006, which applies to substances/mixtures/articles (not waste per se) and ensures that information on such substances is passed down the supply chain through the Safety Data Sheet for substances and mixtures and through Safe Use Communication Documents in the case of articles; subpoint (b) is derived from CLP Regulation (EC) No. 1272/2008, which applies to (hazardous) substances/mixtures, and extends the scope to substances meeting additional classification criteria, some of which are also included in point (a) (carcinogenic, mutagenic and toxic for reproduction category 1, PBT, vPvB and Endocrine Interfering are substances already included in point (a)); the amount of substances for which reporting would be required would be extended to a large number of substances leading to a major impact on European manufacturing companies; Subpoint (c) would apply to (consumer) waste products/components entering recycling facilities through current recycling streams. It should be noted that some recycling streams may be very heterogeneous in terms of the types of waste materials, which adds some complexity to the technical definition of the list of critical substances in criterion (c). As a result, the problem with opening up the scope of the ESPR is that many different products will fall within the scope, while not all substances listed in the initial subpoint (b) are relevant to cover (when focusing on</p> |  |
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|  | <p>products).</p> <p>First, we believe it is necessary to pursue the harmonization of SoC definitions. The definition of SoC under the ESPR should be aligned with the interpretation given in the Chemical Strategy for Sustainability (CSS) and other pieces of legislation, such as the Biocidal Products Regulation, more focussed on the hazardous substances most affected.</p> <p><b>More specifically, the definition of art. 2(28) is very broad and difficult to manage in practice for companies, in particular for SMEs.</b></p> <p>Therefore, we believe that the definition should be limited to substances in (a) and (c), and (b) should be deleted.</p> <p>Alternatively, we propose to at least modify the text of point b) deleting categories 3 and 4 for chronic hazard to the aquatic environment, and deleting the specific target organ toxicity – single exposure categories 1 and 2. Chronic Aquatic Hazard categories 3 and 4 cover less severe hazards and do not seem relevant for ESPR purposes. Furthermore, the Chemicals Strategy for Sustainability considers substances that have a chronic effect and with continuous exposure (i.e. whose effect develops after repeated and continuous exposure) as SoC. Therefore, it appears inconsistent with Chemical Strategy for Sustainability to consider in the ESPR Regulation the substances that fall into the category of specific toxicity for target organs - single exposure (STOT).</p> <p>In case our preferred option won't be taken into account, here below is a second and alternative suggestion:</p> <p>(28) 'substance of concern' means a substance that:</p> <p>(a) meets the criteria laid down in Article 57 and is identified</p> |  |
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|  | <p>in accordance with Article 59(1) of Regulation (EC) No 1907/2006; or</p> <p>(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:</p> <ul style="list-style-type: none"><li>- carcinogenicity categories 1 and 2,</li><li>- germ cell mutagenicity categories 1 and 2,</li><li>- 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 very Bioaccumulative (vPvBs); Persistent, Mobile and Toxic (PMT), very Persistent very Mobile (vPvM); Endocrine disruption],</li><li>- respiratory sensitisation category 1,</li><li>- skin sensitisation category 1,</li><li>- chronic hazard to the aquatic environment categories 1 to <del>2</del> <b>4</b>,</li><li>- hazardous to the ozone layer,</li><li>- specific target organ toxicity – repeated exposure categories 1 and 2,</li><li>- <del>specific target organ toxicity – single exposure categories 1 and 2</del> <b>or and</b></li></ul> <p>(c) <del>negatively affects</del> <b>impede</b> the re-use and recycling of materials in the product in which it is present;</p> |  |
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| (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:                                                                                                                                                                                                                         |  | <del>is classified in Part 3 of Annex VI to Regulation (EC) No 1272/2008 in one of the following hazard classes or hazard categories:</del>                                                                                                                                                                                                                           |
| – carcinogenicity categories 1 and 2,                                                                                                                                                                                                                                                                                                                        |  | <del>carcinogenicity categories 1 and 2,</del>                                                                                                                                                                                                                                                                                                                        |
| – germ cell mutagenicity categories 1 and 2,                                                                                                                                                                                                                                                                                                                 |  | <del>germ cell mutagenicity categories 1 and 2,</del>                                                                                                                                                                                                                                                                                                                 |
| – 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 very Bioaccumulative (vPvBs); Persistent, Mobile and Toxic (PMT), very Persistent very Mobile (vPvM); Endocrine disruption], |  | <del>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 very Bioaccumulative (vPvBs); Persistent, Mobile and Toxic (PMT), very Persistent very Mobile (vPvM); Endocrine disruption],</del> |





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| – respiratory sensitisation category 1,                                                             |                                                                                                                                                                                                                                                                                                                                                                                                  | <del>respiratory sensitisation category 1,</del>                                                                             |
|                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                              |
| – skin sensitisation category 1,                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                  | <del>skin sensitisation category 1,</del>                                                                                    |
|                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                              |
| – chronic hazard to the aquatic environment categories 1 to 4,                                      |                                                                                                                                                                                                                                                                                                                                                                                                  | <del>chronic hazard to the aquatic environment categories 1 to 4,</del>                                                      |
|                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                              |
| – hazardous to the ozone layer,                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                  | <del>hazardous to the ozone layer,</del>                                                                                     |
|                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                              |
| – specific target organ toxicity<br>– repeated exposure categories 1 and 2,                         |                                                                                                                                                                                                                                                                                                                                                                                                  | <del>specific target organ toxicity—repeated exposure categories 1 and 2,</del>                                              |
|                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                              |
| – specific target organ toxicity<br>– single exposure categories 1 and 2; or                        |                                                                                                                                                                                                                                                                                                                                                                                                  | <del>specific target organ toxicity—single exposure categories 1 and 2; or</del>                                             |
|                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                              |
| (c) negatively affects the re-use and recycling of materials in the product in which it is present; | Also, according to letter c) any substance that hinders recycling can be a SoC. In this case, it is considered that the definition of substances of concern should focus only on hazardous substances which prevent the re-use and recycling of products. This is in line with the objective of the Ecodesign Regulation to regulate the sustainability of products and not their dangerousness. | (c) <del>negatively affects</del> <b>impede</b> the re-use and recycling of materials in the product in which it is present; |



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| (29) ‘product passport’ means a set of data specific to a product that includes the information specified in the applicable delegated <del>act</del> <b>implementing delegated</b> act adopted pursuant to Article 4 and that is accessible via electronic means through a data carrier in accordance with Chapter III; |  |  |
|                                                                                                                                                                                                                                                                                                                         |  |  |
| (30) ‘data carrier’ means a linear bar code symbol, a two-dimensional symbol or other automatic identification data capture medium that can be read by a device;                                                                                                                                                        |  |  |
|                                                                                                                                                                                                                                                                                                                         |  |  |
| (31) ‘unique product identifier’ means a unique string of characters for the identification of products that also enables a web link to the product passport;                                                                                                                                                           |  |  |
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| (32) ‘unique operator identifier’ means a unique string of characters for the identification of actors involved in the value chain of products;                                                                                                                                                                         |  |  |
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| (33) 'unique facility identifier' means a unique string of characters for the identification of locations or buildings involved in the value chain of a product or used by actors involved in the value chain of a product; |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| (34) 'processing' means processing as defined in Article 3, point (2), of Regulation (EU) 2018/1807;                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| (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; | <p>We reiterate the need to modify this definition.</p> <p>First, the intentional damage of a private property cannot be under an ecodesign requirement until when the damage is intentional in order to have the damaged product become not fit for use and therefore a waste. The equation between destruction and intentional damage of a product as waste seems meaningless.</p> <p>In addition, the definition of destruction in the case of unsold consumer products should exclude preparing for re-use, refurbishment, recycling or remanufacturing operations. These processes allow for the creation of new products, so cannot be considered as destruction in the same way as incineration or landfilling. In addition, recycling is the only way to treat unsold consumer products that are not suitable for consumer use or donation, due to qualified defects affecting the safety or performance of the products. Without the possibility to recycle such products, there would be no outlet for unsold consumer products with quality defects.</p> | <p>(35) 'destruction' means the intentional damaging <b>of a product to make it becoming a waste</b> or <b>the</b> discarding of a product as waste with the exception of discarding for the only purpose of delivering a product for preparing for re-use, <b>for recycling, for refurbishment</b> or remanufacturing operations;</p> <p>(35) 'destruction' means the intentional damaging <b>of a product to make it becoming a waste</b> or <b>the</b> discarding of a product as waste <del>with the exception of discarding for the only purpose of delivering a product for preparing for re-use or remanufacturing operations</del> <b>for other recovery, e.g. energy recovery and disposal;</b></p> |



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|                                                                                                                                                                                                                      | <p>In this regard, we stress that the data collected in the report shared by the European Commission on “Data on Destruction of Unsold Consumers products” (October 2022) account separately data on “recycling” and data on “destruction”.</p> <p>Two alternative amendemments are proposed.</p> |                                                                                                                                      |
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| <p><b>(35a) ‘customer’ means a natural or legal person who buys, hires or receives a product for own use whether or not acting for purposes which are outside its trade, business, craft or profession;</b></p>      |                                                                                                                                                                                                                                                                                                   |                                                                                                                                      |
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| <p><b>(35b) ‘consumer’ means a consumer as defined in Article 2, point (2), of Directive (EU) 2019/771;</b></p>                                                                                                      |                                                                                                                                                                                                                                                                                                   |                                                                                                                                      |
|                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                   |                                                                                                                                      |
| <p><b>(36) ‘consumer product’ means any product, excluding components and intermediate products, primarily intended for consumers <del>as defined in Article 2, point (2), of Directive (EU) 2019/771;</del></b></p> |                                                                                                                                                                                                                                                                                                   |                                                                                                                                      |
|                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                   |                                                                                                                                      |
| <p><b>(37) ‘unsold consumer product’ means any consumer product that has not been sold or that has been</b></p>                                                                                                      | <p>The products should be placed on the market or put into service before they can be sold (to the final consumer, user or customer). This has to be highlighted in the definition. Clearly</p>                                                                                                   | <p><b>(37) ‘unsold consumer product’ means any consumer product <b>placed on the market or put into service</b> that has not</b></p> |



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| returned by a consumer in view of their right of withdrawal in accordance with Article 9 of Directive (EU) 2011/83/EU <b>or, where applicable, in view of the commercial guarantee for withdrawal provided by the <del>retailer</del>trader</b> regarding the product concerned. | <p>a product returned by a consumer has been placed on the market because it has been sold, but it has to be clarified that the requirement applies only to “consumer products that have not been sold” only if they are placed on the market. The proposed modification of the text is meant to specify this. In other words, this definition (and the provisions of Art. 20) does not apply to consumer products that have not been placed on the market (for example products in the storage of the manufacturer but not legally placed on the market). This interpretation has to be clarified.</p> <p>Commercial guarantees are not only provided for by retailers but also by manufacturers, therefore “retailer” should be substituted by ”economic operator”.</p> | <b>been</b> 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 <b>or, where applicable, in view of the commercial guarantee for withdrawal provided by the <b>economic operator</b> <del>retailer</del> trader</b> regarding the product concerned. |
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| (38) ‘self-regulation measure’ means a voluntary agreement or codes of conduct, concluded by <b>economic operators</b> or industry sectors on their own initiative, which they are responsible for enforcing;                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                              |
|                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                              |
| (39) ‘making available on the market’ means any supply of a product, for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge;                                                           | -                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                              |



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| (40) 'placing on the market' means the first making available of a product on the Union market;                                                                                                                                                                                                                                                                                                                                                                                              |  |  |
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| (41) 'putting into service' means the first use, for its intended purpose, in the Union, of a product;                                                                                                                                                                                                                                                                                                                                                                                       |  |  |
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| (42) 'manufacturer' means any natural or legal person who manufactures a product or who has <del>such</del> a product designed or manufactured, and markets that product under its name or trademark <del>or, in the absence of such person or an importer, any natural or legal person who places on the market or puts into service a product</del> or, in the absence of such person or an importer, any natural or legal person who places on the market or puts into service a product; |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |  |
| (43) 'authorised representative' means any natural or legal person established in the Union who has received a written mandate from                                                                                                                                                                                                                                                                                                                                                          |  |  |



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| the manufacturer to act on its behalf in relation to specified tasks with regard to the manufacturer's obligations under this Regulation;                           |  |  |
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| (44) 'importer' means any natural or legal person established in the Union who places a product from a third country on the Union market;                           |  |  |
|                                                                                                                                                                     |  |  |
| (45) 'distributor' means any natural or legal person in the supply chain, other than the manufacturer or the importer, who makes a product available on the market; |  |  |
|                                                                                                                                                                     |  |  |
| (46) 'economic operator' means the manufacturer, the authorised representative, the importer, the distributor, the dealer and the fulfilment service provider;      |  |  |
|                                                                                                                                                                     |  |  |
| (47) 'technical specification' means a document that prescribes technical requirements to be fulfilled by a product, process or service;                            |  |  |
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| (48) ‘harmonised standard’ means a standard as defined in Article 2(1), point (c), of Regulation (EU) No 1025/2012;                                                                                                      |  |  |
| (49) ‘CE marking’ means a marking by which the manufacturer indicates that the relevant product is in conformity with the applicable requirements set out in Union harmonisation legislation providing for its affixing; |  |  |
| (50) ‘accreditation’ means accreditation as defined in Article 2(10) of Regulation (EC) No 765/2008;                                                                                                                     |  |  |
| (51) ‘national accreditation body’ means a national accreditation body as defined in Article 2(11) of Regulation (EC) No 765/2008;                                                                                       |  |  |
| (52) ‘conformity assessment’ means the process demonstrating whether the <b>ecodesign</b> requirements set out in the relevant delegated <b>implementing</b>                                                             |  |  |





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| <b>delegated</b> acts adopted pursuant to Article 4 have been fulfilled;                                                                                                                                                                                                                                                                                |  |  |
|                                                                                                                                                                                                                                                                                                                                                         |  |  |
| (53) ‘conformity assessment body’ means a body that performs conformity assessment activities including calibration, testing, certification and inspection;                                                                                                                                                                                             |  |  |
|                                                                                                                                                                                                                                                                                                                                                         |  |  |
| (54) ‘notified body’ means a conformity assessment body notified in accordance with Chapter IX of this Regulation;                                                                                                                                                                                                                                      |  |  |
|                                                                                                                                                                                                                                                                                                                                                         |  |  |
| (55) ‘online marketplace’ means a provider of an intermediary service using software, including a website, part of a website or an application, that allows customers to conclude distance contracts with economic operators for the sale of products covered by <del>delegated</del> <b>implementing delegated</b> acts adopted pursuant to Article 4; |  |  |
|                                                                                                                                                                                                                                                                                                                                                         |  |  |
| (56) ‘dealer’ means a retailer or any other natural or legal person who offers products for sale, hire or hire purchase, or displays products to customers <b>or</b>                                                                                                                                                                                    |  |  |



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| <b>installers</b> in the course of a commercial activity, <b>including through distance selling</b> , whether or not in return for payment;                                                                                                                                   |  |  |
|                                                                                                                                                                                                                                                                               |  |  |
| (57) ‘distance selling’ means the offer for sale, hire or hire purchase of products, online or through other means of distance sales, whereby the potential customer cannot physically access the product displayed;                                                          |  |  |
|                                                                                                                                                                                                                                                                               |  |  |
| (58) ‘product presenting a risk’ means a product that, by not complying with a requirement set out in or pursuant to this Regulation other than those listed in Article 65 (1), may adversely affect the environment or other public interests protected by that requirement; |  |  |
|                                                                                                                                                                                                                                                                               |  |  |
| (59) ‘product presenting a serious risk’ means a product presenting a risk for which, based on an assessment, the degree of the relevant non-compliance or the associated harm is considered to require rapid intervention by                                                 |  |  |



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| the market surveillance authorities, including cases where the effects of the non-compliance are not immediate.                                                                                                                                                                                                                                                                                          |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                          |  |  |
| In addition, the definitions of ‘waste’, ‘hazardous waste’, ‘re-use’, ‘recovery’, ‘preparing for re-use’ and ‘recycling’ in Article 3, points (1), (2), (13), (15), (16) and (17), of Directive 2008/98/EC of the European Parliament and of the Council <sup>64</sup> shall apply.                                                                                                                      |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                          |  |  |
| The definitions of ‘market surveillance’, ‘market surveillance authority’, ‘fulfilment service provider’, ‘online interface’, ‘corrective action’, <del>‘end-user’</del> , ‘recall’, ‘withdrawal’, ‘customs authorities’ and ‘release for free circulation’ in Article 3, points (3), (4), (11), (15), (16), <del>(21)</del> , (22), (23), (24) and (25), of Regulation (EU) 2019/1020 shall also apply. |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                          |  |  |
| The definitions of ‘SMEs’, ‘small enterprises’ and ‘microenterprises’ in Article 2(1),                                                                                                                                                                                                                                                                                                                   |  |  |



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| (2) and (3), of Annex I to Commission Recommendation 2003/361/EC <sup>65</sup> shall also apply.                                                                                                                                                                                                                                                                                                                                                     |  |  |
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| Article 3<br>Free movement                                                                                                                                                                                                                                                                                                                                                                                                                           |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |  |
| 1. Products shall only be placed on the market or put into service if they comply with the ecodesign requirements set out in the <del>delegated</del> <b>implementing delegated</b> acts adopted pursuant to Article 4 applicable to those products.                                                                                                                                                                                                 |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |  |
| 2. Member States shall not prohibit, restrict or impede the placing on the market or putting into service of products that comply with the performance requirements set out in <del>delegated</del> <b>implementing—delegated</b> acts adopted pursuant to Article 4 for reasons of non-compliance with national performance requirements relating to product parameters referred to in Annex I covered by performance requirements included in such |  |  |



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| <del>delegated-</del><br><b>implementingdelegated</b> acts.                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |  |
| Member States shall not prohibit, restrict or impede the placing on the market or putting into service of products that comply with the information requirements set out in <del>delegated</del><br><b>implementingdelegated</b> acts adopted pursuant to Article 4 for reasons of non-compliance with national information requirements relating to product parameters referred to in Annex I covered by information requirements included in such <del>delegated-</del><br><b>implementingdelegated</b> acts. |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |  |
| 3. <b>Notwithstanding</b><br><del>p</del> Paragraph 2 <del>shall not prevent</del><br>Member States <b>shall not be precluded</b> from setting minimum energy performance requirements in accordance with Article 4(1) and system requirements in accordance with Article 8 of Directive 2010/31/EU of the European Parliament and of the Council <sup>66</sup> .                                                                                                                                               |  |  |



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| <p><del>4. Member States shall not prohibit, restrict or impede the placing on the market or putting into service of products on grounds of non-compliance with national requirements relating to product parameters referred to in Annex I, for which a delegated act adopted pursuant to Article 4 provides that no performance, no information or neither performance nor information requirements are necessary.</del></p> <p><b>Member States shall not prohibit, restrict or impede the placing on the market or putting into service of products, for which a delegated act pursuant to Article 4, under exceptional circumstances, provides that no performance, no information or neither performance nor information requirements are necessary for one or several specific parameters as referred to in Annex I, on grounds of non-compliance with national requirements relating to such parameters.</b></p> | <p>We support the reintroduction 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.</p> |  |
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| <p>5. At trade fair, exhibitions and similar events, Member States shall not prevent the showing of products that do not comply with <del>delegated</del> <b>implementing—delegated</b> acts adopted pursuant to Article 4, provided that a visible sign clearly indicates that such products do not comply and that they are not for sale until they have been brought into conformity.</p> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |
| <b>Chapter II - Ecodesign requirements</b>                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |
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| <p>Article 4<br/>Empowerments to adopt <del>delegated</del> <b>delegated</b> <b>implementing</b> acts</p>                                                                                                                                                                                                                                                                                    | <p><b>As already stated during the last COREPER meeting, the use of implementing acts for the definition of the Ecodesign requirements is very important for Italy.</b></p> <p>With this in mind, <b>Italy intends to put forward a compromise proposal</b>, which aims at accommodating both the requests of the Member States to be involved in the adoption of the secondary legislation and the concerns represented by the European Commission. At the same time, <b>this proposal ensures the necessary legal certainty for companies to plan their investments</b>, responding to MS's concerns emerged during the negotiation.</p> <p>Responding to the Commission's concern about having to</p> |  |



|  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |
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|  | <p>issue an overly detailed and complex Regulation, our proposal is:</p> <ul style="list-style-type: none"><li>• to support the 5 years revision clause (article 69) in the second compromise text instead of the 8 years previously proposed;</li><li>• to include in the Framework Regulation the indication of the first 4 or 5 product groups to be included in the first work plan of the European Commission and to be regulated during the first five years from the entry into force of the regulation;</li><li>• to use the implementing acts to adopt the Ecodesign requirements for the above-mentioned first 4 or 5 groups of products.</li></ul> <p>The experience gained in this first period will fill the information gap emerged during the discussion due to the lack of previous adequate practice. This would be fundamental to inform the Member States' decision during the revision process, which could result in a confirmation of the previous choice or in substitution of the implementing acts with the delegated acts.</p> <p>The described approach, therefore, does not affect the scope of the Framework Regulation, but it defines the work over the next five years, guaranteeing the necessary legal certainty to the industry with positive effects on the investment planning.</p> |  |
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~~The Commission shall may adopt implementing acts establishing ecodesign requirements for, or in relation to, products to improve their environmental sustainability. Those implementing acts should be established pursuant to Articles 5, 6, 7 and 7a.~~

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

Commission is empowered to adopt delegated acts in accordance with Article 66, after consulting the ecodesign expert group referred to in (new) article 17a and the ecodesign forum referred to in article 17, to supplement this Regulation by establishing ecodesign requirements for, or in relation to, products to improve their environmental sustainability. Those requirements ~~delegated acts~~ shall include the elements ~~and respective ways of identifying them~~ listed in Annex VI. Ecodesign requirements and shall be established in accordance



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~~with Articles 5, 6 and 7 and Chapter III.] The empowerment to adopt ecodesign requirements includes the power to establish that no performance requirements, no information requirements or neither performance nor information requirements are necessary for certain specified product parameters referred to in Annex I.~~

**The Commission is empowered to adopt delegated acts in accordance with Article 66, after consulting the Ecodesign Expert Group referred to in Article 17a and the Ecodesign Forum referred to in Article 17, to supplement this Regulation by establishing ecodesign requirements for product to improve their environmental sustainability. Those delegated acts shall include the elements and respective ways of identifying them listed in Article 7.a.**

**Ecodesign requirements shall be established in accordance with Articles 5, 6 and 7 and Chapter III.**



|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |
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| <p>The empowerment to adopt delegated acts to establish ecodesign requirements includes the possibility to establish, that no performance requirements, no information requirements or neither performance nor information requirements are necessary for certain specified product parameters referred to in Annex I only in the exceptional circumstances where establishing a requirement related to that specific product parameter as referred to in Annex1 would have a negative impact on the other ecodesign requirements considered for the product group or would prevent meeting the objectives of this Regulation.</p> | <p>A clarification is needed: is this point related to the – potentially exceptional - case when the setting of an ecodesign requirement on a parameter has been identified as needed, but its setting will have a larger negative impact on other parameters (for example shifting the environmental negative impact but not reducing it)?</p> <p>Or is it saying that for all parameters referred to in Annex I an ecodesign requirement shall be set apart from in that exceptional case? In this second case, what is the relation of this paragraph with Article 5.1 (saying the same thing) and Article 5.4(b) stating that ..”The establishment of ecodesign requirements on the most significant aspects of a product among those listed in paragraph 1.....”?</p> <p>It is unclear if for any product group eco-design requirements shall be defined for all parameters referred to in Annex I or not.</p> |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |
| <p>The empowerment to adopt delegated acts to establish ecodesign requirements does not include the possibility to adopt a delegated act that establishes that no ecodesign requirement at all is necessary</p>                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |



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| for a product group.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |   |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |   |   |
| <p>When establishing ecodesign requirements in <del>delegated</del> <b>delegated implementing</b> acts referred to in the first subparagraph <b>of this Article</b>, the Commission shall also <del>supplement this Regulation by</del> <b>supplement this Regulation by</b> specifying <del>ing</del> the applicable conformity assessment procedures from <b>either among the the</b> modules <b>A</b> set out in Annex IV to this Regulation <del>and</del> <b>or one of the modules B to H set out in</b> Annex II to Decision No 768/2008/EC, with the adaptations necessary in view of the product or ecodesign requirements concerned, in accordance with Article 36 <b>of this Regulation</b>.</p> | - |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |   |   |
| <p><del>Delegated acts referred to in the first subparagraph may also supplement this Regulation by</del> <b>When adopting implementing acts referred to in the first subparagraph the Commission may, as appropriate in view to</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |   | — |



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| <p><del>the specificities of the product group, include any of the following requirements:</del><br/>Delegated acts referred to in the first subparagraph may, as appropriate in view to the specificities of the product group, include any of the following requirements:</p>                                                                                                                               |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                               |  |  |
| <p>(a) Where this is necessary for effective market surveillance:</p>                                                                                                                                                                                                                                                                                                                                         |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                               |  |  |
| <p>(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 <del>that the relevant</del> product has been placed on the market or put into service <del>in order to take taking</del> into account of the nature of the product or requirements concerned;</p> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                               |  |  |
| <p>(-aa-ii) requiring economic operators to provide,</p>                                                                                                                                                                                                                                                                                                                                                      |  |  |



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| 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;                                                                                                                      |  |  |
|                                                                                                                                                                                                                                                                                                     |  |  |
| (a <del>iii</del> ) 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); |  |  |
|                                                                                                                                                                                                                                                                                                     |  |  |
| (iv) requiring supply chain actors to comply with the obligations listed under points a) to c) of Article 31(a).                                                                                                                                                                                    |  |  |
|                                                                                                                                                                                                                                                                                                     |  |  |
| <del>(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);</del>                  |  |  |



|                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                 |
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|                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                 |
| <b>(b) Where this is necessary in order to ensure energy-efficient usage of products or to develop future ecodesign requirements:</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. | <b>(b) Where this is necessary in order to ensure energy-efficient usage of products <del>or to develop future ecodesign requirements</del></b> |
|                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                 |
| (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);                                              |                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                 |
|                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                 |
| ( <del>di</del> ii) requiring manufacturers, their authorised representatives or importers to collect, <b>and</b> anonymise, <del>or report to the Commission</del> the in-use data referred to in point (c) <b>and report to the Commission</b> , in accordance with Article 31(3); | -                                                                                                                                                                                                                                                                                                                                                                         | -                                                                                                                                               |
|                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                 |
| (eii) requiring the use of <del>online</del> <b>digital</b> tools to calculate the                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                 |



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| performance of a product in relation to a product parameter referred to in Annex I, in accordance with Article 32(2);                                                                                                                                                                                                                                                                                                                                                                                                                            |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |  |  |
| <b>(c) In order to ensure transparency about conformity with ecodesign requirements:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |  |  |
| <b>(i) 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, (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, indicating conformity with ecodesign requirements by way of derogation from Articles 37 and 39, in accordance with Article 40;</b> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |  |  |
| <b>(d) In order to boost demand of environmentally sustainable products:</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |  |





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| <del>(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;</del>                                            |                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <del>(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 productparameters referred to in Annex I and established in accordance with Article 58.</del>           | -                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                      |
|                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Article 5 Ecodesign requirements                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                      |
|                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 1. The Commission shall, <del>taking into consideration all the following product aspects</del> as appropriate, to the relevant product groups <del>in order to address relevant adverse environmental impacts which arise in any and with due consideration for all of the</del> stages | Italy welcomes the new wording of this Article.<br><br>Nevertheless, a key approach to be added (even) here is the functional one.<br><br>We want to call attention to Carbon Footprint and Environmental Footprint: both assessments are based on the two key principles of assessing the environmental impact caused by all the inputs and outputs of all of the processes along | 1. The Commission shall, <del>taking into consideration all the following product aspects</del> as appropriate, to the relevant product groups <del>in order to address relevant</del> <b>adverse</b> <b>damaging</b> <b>environmental impacts which arise in any</b> and <del>with due consideration for all from all of the</del> stages of the products' life cycle <b>and in relation to its functional unit</b> |



of the products' life cycle **or to further improve already existing beneficial environmental impacts,** establish ecodesign requirements **based on the product parameters in Annex I** to improve **the following product aspects when relevant to the product group concerned** the following product aspects:

the "Life Cycle Stages" of a product and in relation to the "Functional Unit". As known the Carbon Footprint is a mono-indicator assessment (it assesses the Global Warming Potential, UNI EN ISO 14067:2018.), while the Product Environmental Footprint (PEF, is a methodology by the European Commission's Joint Research Center (JRC), [https://ec.europa.eu/environment/eussd/smgp/ef\\_methods.htm](https://ec.europa.eu/environment/eussd/smgp/ef_methods.htm)) is based on Life Cycle Assessment (ISO 14040 ff), i.e. is a multi-indicator assessment method (in fact, it assesses even the Global Warming Potential). All these issues should be clarified and reference to norms and other EU initiatives should be made explicit. The "European Commission concluded that Life Cycle Assessments provide the best framework for assessing the potential environmental impacts of products currently available",  
But indeed, an LCA (ISO 14040 ff) require competencies, datasets and software to be performed. In this respect, the EU should provide freely accessible datasets, software and support to companies/organisations, especially SMSs.  
Whatever methodology is used, even a qualitative one, the concept of Functional Unit is crucial to be taken into consideration as already mentioned in a previous comment.  
In "Attachment 1: Product parameters", some indications are given for the assessment of the pursuing level of the listed requirements, i.e. they do not assess the environmental impact as the Environmental Footprint (LCA based) and the Carbon Footprint. This should be made sharply clear. Said this, still in "Attachment 1: Product parameters", in none of the cases, it is clear how to proceed to an evaluation and if this makes reference to existing norms, e.g. "EN 45555:2019 Assessment method for recyclability and recoverability", "EN 45557:2020 Assessment method for the proportion of recycled material

**or to further improve already existing beneficial environmental impacts,** establish ecodesign requirements **based on the product parameters in Annex I** to improve **the following product aspects when relevant to the product group concerned** the following product aspects:



|                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                    |
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|                 | <p>content”, etc.<br/>Finally, in “Attachment 1: Product parameters” both Environmental Footprint and Carbon Footprint are mentioned, but even here without any reference to the methods/standard to follow (see above).</p> <p>The ecodesign requirements listed are not covering all aspects to design a low environmental impact product.<br/>Furthermore, they could be better described in terms of their hierarchy (e.g. improving maintainability leads to extending the product durability, but they are treated as two different requirements (a) and (c)).<br/>In the amendment cell (right) is proposed a possible comprehensive set of ecodesign requirements (or ecodesign guidelines), where missing aspects and different terminology are highlighted).</p>                                                            |                                                                                                                                                                                                                                                    |
| (a) durability; | <p>The product “durability” (commonly referred to as "<b>product lifespan extension</b>") could be reached by the following set of sub-requirements indicated in the list as requirements at the same hierarchical level, but they could be gathered: “(d) upgradability;” “(f) possibility of maintenance and refurbishment;” “(e) reparability;” “(c) reusability;” “(k) possibility of remanufacturing.”<br/>Furthermore, the following other sub-requirements could favor product durability/life span extension but are missing <b>appropriately durable components lifespan (e.g. ; adaptability</b> (e.g. to a changing context of use).<br/>In the requirements list is missing <b>the Possibility of disassembly</b> (i.e. design for disassembly) of components, which may favor most of the listed sub-requirements of</p> | (a) Durability (or <b>Product Lifespan Extension</b> ): <b>appropriately durable components lifespan, upgradability and adaptability, possibility of maintenance and refurbishment, reparability, reusability, possibility of remanufacturing;</b> |



|                                                     |                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                 |
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|                                                     | durability/product lifespan extension. But since the possibility of disassembly, when applied to incompatible materials, may favor the possibility of recycling, energy recovery and composting, it usually presented as a requirement per se.                                                                                                                                    |                                                                                                                                                 |
| (b) reliability;                                    |                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                 |
| (c) reusability;                                    | In the requirements list is missing <b>the Possibility to intensify product use</b> (e.g. Design products (and services) for shared use, Design multifunctional products with common substitutable components).                                                                                                                                                                   | <del>(e) reusability;</del> <b>(c) Possibility to intensify product use;</b>                                                                    |
| (d) upgradability;                                  |                                                                                                                                                                                                                                                                                                                                                                                   | <del>upgradability;</del>                                                                                                                       |
| (e) reparability;                                   |                                                                                                                                                                                                                                                                                                                                                                                   | <del>reparability;</del>                                                                                                                        |
| (f) possibility of maintenance and refurbishment;   |                                                                                                                                                                                                                                                                                                                                                                                   | <del>possibility of maintenance and refurbishment;</del>                                                                                        |
| (g) presence of substances of concern;              | “(g) presence of substances of concern” is commonly referred to as “ <b>Minimising Resources Toxicity and Harmfulness</b> ”; and it is common (could be useful to) split/specify the type of the resource, in this sense following sub-requirements are missing <b>selecting nontoxic and harmless substances and materials; selecting nontoxic and harmless energy resources</b> | <del>(g) presence of substances of concern;</del> <b>(d) Minimising toxicity and harmfulness of substances, materials and energy resources;</b> |
| (h) energy use <del>or</del> and energy efficiency; | (h) Energy use and Energy Efficiency is commonly referred to as “ <b>Minimising Energy Consumption</b> ”; furthermore Energy use and Efficiency could be too generic if not related to the life                                                                                                                                                                                   | <del>(h) energy use or and energy efficiency;</del> <b>(e) Minimising Energy Consumption in all life cycle phases;</b>                          |



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|                                              | cycle phases, in this sense following sub-requirements are missing: <b>(Minimising energy consumption) during pre-production and production; (Minimising energy consumption during) transportation and storage</b> (e.g. optimise the use of local materials and energies); <b>(Selecting the most efficient energy consumption systems during) use stage.</b>                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                  |
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| <b>(ha) water use and water efficiency;</b>  | <p>“(ha) water use and water efficiency” and “(ia) material use and material efficiency;” could be gathered under “(i) resource use or and resource efficiency”, usually referred to as <b>Minimising Materials Resources Consumption</b>.</p> <p>Furthermore, <b>Minimising Materials Resources Consumption</b> is too generic if not related to the life cycle phases, in this sense following sub-requirements are missing: <b>Minimising material content of a product, Minimising scraps and discards, Minimising or avoiding packaging</b> (i.e., in a Life Cycle approach packaging is part of the product-system related to the distribution phase), <b>Minimising material resources consumption during use.</b></p> | <del>(ha) water use and water efficiency</del>                                                                                                                                                                                                                                   |
| (i) resource use or and resource efficiency; |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <del>(i) resource use or and resource efficiency;</del><br><b>(f) Minimising Materials Resources Consumption: minimising material content of a product, minimising scraps and discards, minimising or avoid packaging, minimising material resources consumption during use;</b> |
|                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                  |



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| (ia) material use and material efficiency;        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <del>(ia) material use and material efficiency;</del>                                                                                                                                                                                                                                                                                                                 |
| (j) recycled content;                             | “(j) recycled content” is commonly referred to as a sub-requirement of <b>"Optimising resources conservation/renewability"</b> , which includes both material and energy resources; in this framework other sub-requirements are missing: <b>Optimising the use of renewable materials, minimising the use of those materials which are being depleted, Optimize the use of recycled materials, Optimising the use of renewable energy resources, minimising the use of energy resources which are being depleted, Optimizing the use of dissipated energy;</b>                                                                                                                                                                                                             | <del>(j) recycled content;</del> (g) <b>Optimising resources conservation/renewability: optimising the use of renewable materials and energies, minimising the use of those materials and energy resources which are being depleted; optimising the use of recycled materials, optimizing the use of dissipated energy;</b>                                           |
| (k) possibility of remanufacturing and recycling; |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <del>(k) possibility of remanufacturing;</del>                                                                                                                                                                                                                                                                                                                        |
| (ka) possibility of recycling;                    | “(ka) possibility of recycling” is usually referred to as <b>"Material Life Extension"</b> , which includes “(ka) possibility of recycling”, but even <b>"possibility of energy recovery, "possibility of composting which are missing.</b> Furthermore, some horizontal sub-requirements are missing: <b>Adopt the cascade approach</b> (e.g. arrange and facilitate recycling of materials in components with lower mechanical requirements, till energy recovery), <b>Selecting materials with most efficient recycling technologies, improving end-of-life collection and transportation, Material identification, Minimising the number of different incompatible materials, Facilitating disassembly/separation of incompatible materials, Facilitating cleaning.</b> | <del>(ka) possibility of recycling;</del> (h) <b>Material Life Extension: adopting a cascade approach, selecting materials with most efficient recycling technologies, improving end-of-life collection and transportation, material identification, minimising the number of different incompatible materials, facilitating cleaning; possibility of composting.</b> |



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| (l) possibility of recovery of materials;                                                                                                                                                                         |                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                              |
| <b>(-m) carbon and environmental footprint;</b>                                                                                                                                                                   |                                                                                                                                                                                                                                    | <del>(-m) carbon and environmental footprint;</del>                                                                                                                                                                                                                          |
| <b>(m) environmental impacts, including carbon and environmental footprint contribution to climate change, pollution of water, air and soil, land use;</b>                                                        | The minimization of “(m) contribution to climate change, pollution of water, air and soil, land use” is the aim to be reached through the following of ecodesign requirements: aim and requirements should be on different levels. | <del>(m) contribution to climate change, pollution of water, air and soil, land use;</del>                                                                                                                                                                                   |
| (n) expected generation of waste materials.                                                                                                                                                                       | “(n) expected generation of waste”, as written it does not sound as an ecodesign specification; if related to waste minimisation and valorisation it seems included already in other specifications).                              | <del>(n) expected generation of waste</del> <b>(i) Possibility of Disassembly, for both product lifespan extension (component disassembly), and for material life extension (incompatible materials Disassembly).</b>                                                        |
| <b>1a. The Commission shall select or develop one or several tools or methodologies as regards the setting of ecodesign requirements. When the Commission selects or develops one or several methodologies or</b> |                                                                                                                                                                                                                                    | <b>1a. The Commission shall select or develop one or several tools or methodologies as regards the setting of ecodesign requirements. When the Commission selects or develops one or several methodologies or tools to be used for the setting of ecodesign requirements</b> |



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| tools to be used for the setting of ecodesign requirements it shall consult with the Expert Group referred to in Article 17.a.                                                                                                                           |  | it shall consult with the Expert Group referred to in Article 17.a and the Ecodesign Forum referred to in Article 17. |
|                                                                                                                                                                                                                                                          |  |                                                                                                                       |
| 2. Ecodesign requirements shall be established for a specific product group. A delegated act may exclude from the scope a subset of products belonging to the regulated product group or exempt them from some of the requirements, taking into account: |  |                                                                                                                       |
|                                                                                                                                                                                                                                                          |  |                                                                                                                       |
| (a) patterns of use or typical real-life use;                                                                                                                                                                                                            |  |                                                                                                                       |
|                                                                                                                                                                                                                                                          |  |                                                                                                                       |
| (b) product characteristics, including material composition, size or ability to withstand specific conditions of use or specific environments                                                                                                            |  |                                                                                                                       |
|                                                                                                                                                                                                                                                          |  |                                                                                                                       |
| (c) applicable standards, methods, legislation and policies, or the lack thereof                                                                                                                                                                         |  |                                                                                                                       |
|                                                                                                                                                                                                                                                          |  |                                                                                                                       |
| (d) requirements for                                                                                                                                                                                                                                     |  |                                                                                                                       |





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| security, military, safety or medical purposes                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                    |  |
| (e) the specifics of the product's market, including the volume of sales and the way in which products are marketed; and                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                    |  |
| (f) bespoke products or products produced in very small quantities.                                                                                                                                                                                                                                                                                                          | <p>We welcome this amendment, even though we would prefer the exclusion of tailor-made products from the scope of the regulation.</p> <p>We would suggest to use the same terminology in recital 13a and here.</p> |  |
| 2a. However, <del>where</del> two or more product groups display technical <b>one or more</b> similarities allowing a product aspect referred to in paragraph 1 to be improved based on a common <b>ecodesign</b> requirements, <b>such</b> <del>ecodesign</del> requirements may be established horizontally for those product groups ( <b>“horizontal requirements”</b> ). |                                                                                                                                                                                                                    |  |
| <b>Horizontal</b> <b>ecodesign</b> <b>requirements</b> <b>shall</b> <b>effectively</b> <b>improve</b> <b>environmental</b> <b>sustainability</b> <b>with respect to the</b>                                                                                                                                                                                                  | -                                                                                                                                                                                                                  |  |



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| <b>product aspect concerned.</b>                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                        |
| <p><b>When establishing horizontal ecodesign requirements, the Commission shall also take into account the effectiveness of such an approach, in particular its ability to address a large number of products, including product groups that have not been prioritised individually in the working plan referred to in Article 16.</b></p>                                                                   | <p>As already stated, the horizontal requirements should not be used as a way to delay the implementation of the ecodesign requirement on the single product groups that have been prioritized in the Working Plan.</p> <p>Since now in Article 16 the working plan includes the identification of the horizontal aspects to be addressed (Article 16, para 1a and para 2) the third paragraph should be modified accordingly.</p> | <p><b>When establishing horizontal ecodesign requirements, the Commission shall also take into account the effectiveness of such an approach, <del>in particular its ability to address a large number of products, including for the product aspects groups that have not been prioritised for this purpose individually</del> in the working plan referred to in Article 16.</b></p> |
| <p><b>A horizontal ecodesign requirement might be further adapted to the specificities of the product groups covered.</b></p>                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                        |
| <p><b>An horizontal ecodesign requirement established pursuant to the third subparagraph may cover products falling in the scope of a self-regulation measure listed pursuant to Article 18(3) established as a valid alternative pursuant to Article 18(3), where the Commission considers that in case that self-regulation measure does not address the product aspect covered by that horizontal</b></p> |                                                                                                                                                                                                                                                                                                                                                                                                                                    | —                                                                                                                                                                                                                                                                                                                                                                                      |



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| ecodesign requirement <b>or the</b><br><b>ecodesign requirement</b><br><b>addresses the same aspect in a</b><br><b>more stringent manner.</b>                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                      |
| 3. Ecodesign requirements shall, as appropriate <b>to improve the specific product aspects,</b> <b>include:</b>                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                      |
| (a) performance requirements as set out in Article 6 <b>or;</b>                                                                                                                                                                                                                | -                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                      |
| (b) information requirements as set out in Article 7; <b>or both</b>                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                      |
| <b>(c) or both.</b>                                                                                                                                                                                                                                                            | We agree.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                      |
| <del>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</del> | <p>In this paragraph, the last paragraph should be reintroduced because it is important to avoid that Member States set performance requirements or information requirements for specific product aspects that are considered not worth of being addressed at EU level in a delegated act. By allowing these product aspects to be included in a delegated act, the MS is not allowed to address them in national legislation.</p> <p>In any case, the reason for the deletion of the last paragraph should be explained.</p> | <b>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.</b> |



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| specific product aspects.                                                                                                           |  |  |
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| 4. When preparing ecodesign requirements, the Commission shall:                                                                     |  |  |
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| (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;                                                                                  |  |  |



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| <p>(b) carry out an impact assessment based on best available evidence and analyses, and as appropriate on additional studies and research results produced under <del>European</del> <b>Union</b> 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<b>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.</b> 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;</p> | <p>-</p> |  |
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| (c) take into consideration relevant technical information used as a basis for or derived from Union <del>legislation</del> <b>law</b> or instruments, including Regulation (EC) No 66/2010, Directive 2010/75/EU, technical screening 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 <b>and the Ecodesign Expert Group referred to in Article 17a and the results of the public consultation.</b>                                                                                                                             |  |  |
|                                                                                                                                                                                                                                                                                                                                     |  |  |
| 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;                                                                                                                                                                                                                                                           |  |  |



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| (c) there shall be no significant negative impact on consumers in terms of the affordability of relevant products, also taking into account <del>the purchase price, but also potential</del> access to second-hand products, durability and the <b>cost, including</b> life cycle cost of products; | The purchase price is an important element to be taken into account since products with a lower environmental impact are usually also more expensive and not all consumers may afford them. The possibility to have access almost only to second-hand products for poorer consumer would create or increase the discrimination among customers. | (c) there shall be no significant negative impact on consumers in terms of the affordability of relevant products, <del>also</del> taking into account <b>the purchase price,</b> <del>the purchase price, but also potential</del> access to second-hand products, durability and the <b>cost, including</b> life cycle cost of products; |
|                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                            |
| (d) there shall be no disproportionate negative impact on the competitiveness of economic operators and other actors <del>in the value chain, at least</del> <b>and in particular</b> of SMEs;                                                                                                       |                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                            |
|                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                            |
| (e) there shall be no proprietary technology imposed on manufacturers or other <del>economic</del> actors <b>in the value chain</b> ;                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                            |
|                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                            |
| (f) there shall be no disproportionate administrative burden on manufacturers or other <del>economic</del> actors <b>in the value chain, in particular SMEs.</b>                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                 | (f) there shall be no disproportionate administrative <b>and economic</b> burden on manufacturers or other <del>economic</del> actors <b>in the value chain, in particular SMEs.</b>                                                                                                                                                       |
|                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                            |



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| 6. <del>In order to facilitate the verification of compliance with ecodesign requirements, the Commission shall, where appropriate, require, supply chain actors to:</del>                                                                                             |  |  |
|                                                                                                                                                                                                                                                                        |  |  |
| (a) <del>provide, upon request, manufacturers, notified bodies and competent national authorities with available relevant information related to their supplies or services that is relevant in order to verify compliance with ecodesign requirements;</del>          |  |  |
| (b) <del>allow, in the absence of information referred to in point (a), manufacturers to assess their supplies or services in order to verify compliance with ecodesign requirements and give access to relevant documents or facilities to those manufacturers;</del> |  |  |
|                                                                                                                                                                                                                                                                        |  |  |
| (c) <del>enable notified bodies and competent national authorities to verify the correctness of relevant information related to their activities and relevant for</del>                                                                                                |  |  |





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| verifying compliance with ecodesign requirements.                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <del>The Commission shall, when establishing requirements referred to in points (a) and (b) of paragraph 6, take into account the need to avoid disproportionate burdens on SME's.</del>                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <p>7. Ecodesign requirements shall be verifiable. The Commission shall, where appropriate, identify appropriate means of verification for specific ecodesign requirements, including directly on the product or on the basis of the technical documentation. The Commission shall specify, as a minimum, the content, the format, the manner, and the order in which the information necessary for the verification of compliance is to be made available.</p> | <p>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.</p> | <p>7. Ecodesign requirements shall be verifiable. 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. The Commission shall specify, as a minimum, the content, the format, the manner, and the order in which the information necessary for the verification of compliance is to be made available.</p> |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 8. The Commission shall publish relevant studies and                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |



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| analyses used in the establishment of ecodesign requirements in accordance with this Regulation.                                                                                                                                                                                                                                                                                     |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                      |  |  |
| 9. <del>In case the</del> For each product group concerned <del>contains substances by ecodesign requirements, the Commission shall establish determine,</del> where relevant, which substances <del>is a substance of concern within the meaning fall under the definition in Article 2 (28), point (c), of paragraph 28 of Article 28</del> taking into account at least, whether: |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                      |  |  |
| (a) based on the state-of-the-art technologies, the substances make the re-use, <del>remanufacturing, repairing</del> or recycling process substantially more complicated, <del>costly, environmentally impactful, or energy- or resource-demanding,</del>                                                                                                                           |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                      |  |  |
| (b) the substances impair the technical properties or functionalities, the                                                                                                                                                                                                                                                                                                           |  |  |



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| usefulness or the value of the recycled material or products manufactured from this recycled material,                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                 |
| (c) the substances negatively impact cosmetic, or aesthetic or olfactory properties of the recycled material, e.g. through its colour and smell.                                                                                                                                                         | With reference to the proposed reformulation of art. 5, par. 9, as already proposed, we propose to eliminate point c) since it is based on a personal perspective: who and how can the Commission assess on verifiable technical bases whether the cosmetic/aesthetic or olfactory aspect of a recycled material is worsened by the presence of a specific substance? | (c) the substances negatively impact cosmetic, or aesthetic or olfactory properties of the recycled material, e.g. through its colour and smell.                                                                                                                                                                                                                                                |
| The identification of such substances shall not be based on reasons relating primarily to chemical safety.                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                 |
| Article 6<br>Performance requirements                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                 |
| 1. Products shall comply with performance requirements shall be set to improve relate related to the specific product aspects listed in Article 5(1), as laid down in the delegated acts adopted pursuant to Article 4. The performance requirements shall be tailored to the particular characteristics | A timeframe should be defined in order to improve continuously the environmental benefit.                                                                                                                                                                                                                                                                             | 1. Products shall comply with performance requirements shall be set to improve relate related to the specific product aspects listed in Article 5(1), as laid down in the delegated acts adopted pursuant to Article 4. The performance requirements shall be tailored to the particular characteristics of the product group concerned. The performance requirements shall in order to improve |



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| of the product group concerned. The performance requirements shall in order to improve the product group's environmental sustainability effectively address adverse environmental impacts of products throughout their lifecycle, or further improve already existing beneficial environmental impacts in relation to environmental sustainability. |                                                                                                                                           | the product group's environmental sustainability effectively address adverse environmental impacts of products throughout their lifecycle, or further improve already existing beneficial environmental impacts in relation to environmental sustainability.<br><b>The performance requirements to product groups should be updated every three years.</b> |
| 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:                                                                                                                                                                                           |                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                            |
| (a) minimum or maximum levels in relation to a specific product parameter referred to in Annex I or a combination thereof <b>or</b> ;                                                                                                                                                                                                               | In sustainability is better to have a multi-level evaluation, so the inclusion of quantitative <b>and</b> qualitative data is preferable. | (a) minimum or maximum levels in relation to a specific product parameter referred to in Annex I or a combination thereof <b>or and</b> ;                                                                                                                                                                                                                  |
| (b) non-quantitative requirements that aim to improve performance in relation to one or more product parameters; referred to in Annex I, <b>or both</b> .                                                                                                                                                                                           | -                                                                                                                                         | (b) non-quantitative requirements that aim to improve performance in relation to one or more product parameters; referred to in Annex I, <b>or both</b> .                                                                                                                                                                                                  |



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| (c) requirements related to the functional performance of a product.                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                  |                                                                                                                                                                                                         |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                  |                                                                                                                                                                                                         |
| <p>3. Performance requirements based on the product parameter set out in Annex I, point (f), shall, where relevant, restrict the presence of substances in products for reasons relating primarily to improve the environmental sustainability of the products. Performance requirements based on the product parameter set out in Annex I, point (f), shall not restrict the presence of substances in products for reasons relating primarily to chemical safety.</p> |                                                                                                                  |                                                                                                                                                                                                         |
| 4. When establishing performance requirements, the Commission shall follow the procedure set out in Annex II.                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                  |                                                                                                                                                                                                         |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                  |                                                                                                                                                                                                         |
| <p>5. Based on the outcome of its analysis in accordance with Annex II, the Commission shall choose one or several performance requirements to</p>                                                                                                                                                                                                                                                                                                                      | <p>It is important to include more parameters in the evaluation of products considering the functional unit.</p> | <p>5. Based on the outcome of its analysis in accordance with Annex II, the Commission shall choose <del>one or</del> several performance requirements to be imposed on the relevant product group,</p> |



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| be imposed on the relevant product group, The Commission shall consider all the relevant and significant negative effects of the relevant products on the environment and the environmental sustainability of the product, and identify the most effective performance requirement(s) to reduce these negative effects. |                                                                                                                                                                                                                                                                                                          | The Commission shall consider all the relevant and significant negative effects of the relevant products on the environment and the environmental sustainability of the product, and identify the most effective performance requirement(s) in relation to its functional unit to reduce these negative effects. |
|                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                  |
| When establishing each performance requirement for a specific aspect as listed in Article 5(1), the Commission shall assess the possible positive and negative impacts of this requirement on other aspects or parameters listed in Annex I.                                                                            |                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                  |
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| Article 7<br>Information requirements                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                  |
|                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                  |
| 1. <del>Products shall comply with information</del> <b>Information requirements shall require information to be provided on relate</b> related to the product                                                                                                                                                          | Information on all items listed in 5.1 is not necessarily relevant, available, or feasible for all items listed in 5.1.<br><br>The proposal of the Commission and the third compromise text provide for a mandatory DPP as a general rule. Few exceptions are regulated under Article 8, para. 4, of the | 1. <del>Products shall comply with information</del> Information requirements <del>shall</del> <b>may require, where appropriate, information to be provided on</b> relate related to the product aspects listed in Article 5(1), <del>as laid</del>                                                             |



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| aspects listed in Article 5(1), <del>as laid down in the delegated acts adopted pursuant to Article 4.</del>                                                                                    | <p>proposal.</p> <p>After a careful examination of the text, an in-deep debate among Member States and with the Commission, we believe that it is necessary to further amend the text with regard to the obligation for all products to carry a DPP. In our opinion, the framework regulation should leave to the secondary legislation the possibility to set a duty to make available the information requirements through a DPP on a case-by-case basis.</p> <p>This is necessary in order to take into account the existence of cases in which some products or products group, or some types of trades (i.e. C2B for single items), could not carry a DPP for specific and objective circumstances.</p> <p>See also comment to recital 29.</p> | <del>down in the delegated acts adopted pursuant to Article 4.</del>                                                                                                                                                             |
| 2. The information requirements <del>referred to in paragraph 1</del> 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; <del>and</del> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | include, <del>as a minimum</del> <b>where appropriate</b> , requirements related to the product passport referred to in Chapter III and requirements related to substances of concern referred to in paragraph 5; <del>and</del> |
| (b) <del>as appropriate, require products to be</del>                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                  |



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| accompanied by:                                                                                                                                                                                                                                                                                                                                                                                                                  |  |  |
| (b) as appropriate, <del>considering the technical feasibility and when such requirements will improve the environmental sustainability of the product group concerned,</del> also require products to be accompanied by:                                                                                                                                                                                                        |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                  |  |  |
| (i) information on the performance of the product in relation to <b>one or more of</b> the product parameters referred to in Annex I.                                                                                                                                                                                                                                                                                            |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                  |  |  |
| (ii) information for <b>customers and other actors</b> <del>consumers and other end-users</del> on how to install, use, maintain and repair the product, <b>including its reparability</b> , in order to minimise its impact on the environment and to ensure optimum durability, as well as on how to return or <del>dispose of the product at end-of-life</del> <b>handle the product at the end of its life, as relevant;</b> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                  |  |  |
| (iii) <del>information for treatment facilities on</del>                                                                                                                                                                                                                                                                                                                                                                         |  |  |





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| <del>disassembly, reuse, recycling, or disposal at end of life, as relevant;</del>                                                                                                                                |                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                           |
|                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                           |
| <b>(iii) information for treatment facilities on disassembly, reuse, recycling or disposal at end of life, as relevant</b>                                                                                        |                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                           |
|                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                           |
| <b>(iv)</b> 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 product parameters referred to in Annex II. | 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 <del>improve</del> <b>maintain the</b> performance in relation to product parameters referred to in Annex II. |
|                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                           |
| <b>(v) the carbon footprint and environmental carbon footprint referred to in Article 5 (1) point m and Annex I;</b>                                                                                              |                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                           |
|                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                           |
| Where <del>aan</del> delegated <del>implementing</del> <b>delegated</b> acts contains horizontal ecodesign requirements for two or more product groups as referred to in                                          |                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                           |



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| Article 5(2), second subparagraph, point (a) of this paragraph shall not apply.                                                                                                                                                                                                                                                                             |  |  |
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| 2a. The information requirements referred to in Article 7(2), point b, shall be tailored to the particular characteristics of the product groups concerned and the intended recipients of the information, such as customers, users or actors involved in value retaining operations.                                                                       |  |  |
|                                                                                                                                                                                                                                                                                                                                                             |  |  |
| The information requirements referred to in Article 7(2), point b, shall encourage sustainable product choices for customers and economic actors downstream, ensure appropriate use, facilitate value retaining operations such as repair, refurbishment, remanufacturing, upgrade, recycling and maintenance, and ensure correct treatment at end-of-life. |  |  |
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| When a performance requirement is established for a                                                                                                                                                                                                                                                                                                         |  |  |



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| specific parameter a corresponding information requirement may also be established, as appropriate. An information requirement can also be established without a corresponding performance requirement on that parameter.                                                                                                                                                                                                                             |  |  |
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| 2b. Based on its analysis, the Commission shall choose one or several information requirement(s) to be imposed on the relevant product group. The Commission shall choose the requirement(s) that have the highest likelihood of driving customers, users or other economic actors to adopt more environmentally sustainable behaviours while the costs associated with the requirement(s) fulfil the criteria in Article 5(5), points c), d) and f). |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |  |
| 3. Information requirements based on the product parameter set out in Annex I, point (f), shall not provide obligations on the labelling of substances or                                                                                                                                                                                                                                                                                             |  |  |



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| mixtures for reasons relating primarily to their hazards to health or the environment.                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                      |
|                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                      |
| <p>4. When establishing the information requirements referred to in paragraph 2, point (b), point (i), the Commission shall, as appropriate in <b>view of the specificity of the product group</b>, determine classes of performance. <b>Such requirements can be based on classes of performance, on aggregated scores, in absolute terms or in any form that enables potential customers to choose the best performing products.</b></p> |                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                      |
|                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                      |
| Those classes of performance shall correspond to <del>statistically</del> significant improvements in performance levels.                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                      |
|                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                      |
| <p>5. <b>Unless otherwise provided for under the second paragraph of this Article, point c),</b> <del>t</del>The information requirements referred to in paragraph 1 shall enable the tracking of <del>all</del></p>                                                                                                                                                                                                                       | <p>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 a "where appropriate," and the assessment should be made during the preparatory study.</p> | <p><b>Unless otherwise provided for under the second paragraph of this Article, point c),</b> <del>t</del>The information requirements referred to in paragraph 1 shall enable <b>where appropriate</b> the tracking of <del>all</del> substances of concern <b>throughout the life cycle of</b></p> |



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| substances of concern <b>throughout the life cycle of</b> products, unless such tracking is already enabled by another <del>delegated</del> <b>implementing</b> <del>delegated</del> act adopted pursuant to Article 4 covering the products concerned and shall include at least the following: |   | products, unless such tracking is already enabled by another <del>delegated</del> <b>implementing—delegated</b> 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) <del>where relevant,</del> 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 <del>main</del> <b>relevant</b> components, or spare parts;                                                                                                   |   |                                                                                                                                                                                                                             |
| (d) relevant instructions for the safe use of the product;                                                                                                                                                                                                                                       |   |                                                                                                                                                                                                                             |
| (e) information relevant for disassembly, <b>recycling</b> ,                                                                                                                                                                                                                                     | - |                                                                                                                                                                                                                             |



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| reuse and end of life management.                                                                                                                                             |                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                    |
|                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                    |
| The Commission may, as appropriate for the product group concerned, set thresholds for when the information requirement regarding substances of concern are to apply.         | We welcome this new paragraph. 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 same or less stringent than those already specified in the substance regulations (e.g., 0.1 percent for SVHCs). |                                                                                                                                                                                                    |
|                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                    |
| Where the Commission sets out information requirements in a delegated implementing act adopted pursuant to Article 4, it shall assess and where relevant:                     |                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                    |
|                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                    |
| <del>(a) — where applicable, establish which substances fall under the definition in Article 2(28), point (c), for the purposes of the product groups covered;</del>          |                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                    |
|                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                    |
| <del>(b)</del> lay down deadlines for the entry into application of the information requirements referred to in the first subparagraph, with possible differentiation between | The differentiation of the deadline for providing information should be for individual information and not for individual substances.                                                                                                                                                                          | lay down deadlines for the entry into application of the information requirements referred to in the first subparagraph, with possible differentiation between <b>information substances</b> ; and |



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| substances;and                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                      |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                      |  |
| <p>(e) <del>where relevant,</del><br/>provide <del>duly justified</del><br/>exemptions for substances of concern or information elements from the information requirements referred to in the first subparagraph. <b>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 28 of Article 28</b>Article 2(28), point a), 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.</p> | We welcome this amendment of let. c. |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                      |  |
| <p>(d) <del>where relevant,</del><br/>refer to existing information requirements under Union law, or if not possible, ensure consistency with those requirements.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                      |  |



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| <p>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.</p>                                                                                     |                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <p>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.</p>                              |                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <p>6. Information requirements shall indicate the manner in which the required information shall <del>isto</del> be made available. The required information shall, <del>as appropriate,</del> be provided in <b>the product passport, when available,</b> and shall, when necessary as a complement, be provided in at least one or more of the</p> | <p>We welcome the reintroduction of the phrase "where appropriate".</p> <p>In line with our proposal to provide for a DPP on a case-by case basis to be evaluated in the second legislation, we have some drafting suggestions.</p> | <p>Information requirements shall indicate the manner in which the required information shall <del>isto</del> be made available. The required information shall, <del>as appropriate,</del> be provided in <b>the product passport, when available,</b> <del>and shall, when necessary as a complement,</del> <b>When the product passport is not available, information requirements shall be provided in</b> at least one or more of the following manners:</p> |





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| following manners:                                                                                                                                                                                             |  |  |
|                                                                                                                                                                                                                |  |  |
| (a) on the product itself;                                                                                                                                                                                     |  |  |
|                                                                                                                                                                                                                |  |  |
| (b) on the product's packaging;                                                                                                                                                                                |  |  |
|                                                                                                                                                                                                                |  |  |
| (c) in the product passport referred to in Article 8;                                                                                                                                                          |  |  |
|                                                                                                                                                                                                                |  |  |
| (d-c) on a label referred to in Article 14;                                                                                                                                                                    |  |  |
|                                                                                                                                                                                                                |  |  |
| (e-d) in a user manual;                                                                                                                                                                                        |  |  |
|                                                                                                                                                                                                                |  |  |
| (f-e) on a free access website or application.                                                                                                                                                                 |  |  |
|                                                                                                                                                                                                                |  |  |
| Information ensuring enabling the traceability tracking of substances of concern pursuant to paragraph 5 shall be given either on the product or be accessible through a data carrier included on the product. |  |  |
|                                                                                                                                                                                                                |  |  |
| 7. The information to be supplied pursuant to information requirements shall be provided in a language which can be easily                                                                                     |  |  |



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| understood by <b>customers</b><br><del>consumers and other end-users</del> , as<br>determined by the Member State<br>in which the product is to be made<br>available on the market or put into<br>service. |                              |  |
|                                                                                                                                                                                                            |                              |  |
| <b>Article 7a</b><br><b>Content of the implementing<br/>delegated act</b>                                                                                                                                  | We welcome this new article. |  |
|                                                                                                                                                                                                            |                              |  |
| <b>[Former Annex VI with<br/>adjustments]</b>                                                                                                                                                              |                              |  |
|                                                                                                                                                                                                            |                              |  |
| <b>The <del>implementing-delegated</del><br/>acts adopted pursuant to<br/>Article 4 shall specify the<br/>following elements:</b>                                                                          |                              |  |
| <b>(a) the definition of the<br/>product group or groups<br/>covered;</b>                                                                                                                                  |                              |  |
|                                                                                                                                                                                                            |                              |  |
| <b>(b) the ecodesign<br/>requirements for the product<br/>groups covered, <del>in line with<br/>Article 4 a</del></b>                                                                                      |                              |  |
|                                                                                                                                                                                                            |                              |  |
| <b>(3) <del>where relevant, the<br/>parameters for which no</del></b>                                                                                                                                      |                              |  |



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| <del>ecodesign requirement is necessary;</del>                                                                                                                                                                 |  |  |
|                                                                                                                                                                                                                |  |  |
| (ca) where relevant, the parameters for which the Commission explicitly states that noecodesign requirements are necessary, pursuant to Article 4 third subparagraph.                                          |  |  |
|                                                                                                                                                                                                                |  |  |
| (c) the test, measurement or calculation standards or methods to be used pursuant to Article 32 (1); where relevant, requirements for the use of online tools pursuant to Article 32 (2);                      |  |  |
|                                                                                                                                                                                                                |  |  |
| (d) where relevant, the transitional methods, the harmonised standards, the reference numbers of which have been published in the Official Journal of the European Union, or common specifications to be used; |  |  |
|                                                                                                                                                                                                                |  |  |
| (e) the conformity assessment module to be used pursuant to Article 4, third subparagraph,                                                                                                                     |  |  |



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| <p>of this Regulation as set out either in the modules <b>A</b> of Annex IV to this Regulation or in one of the modules B-H in Annex II to Decision 768/2008/EC. Where the module to be applied is different from the module set out in Annex IV, the factors leading to the selection of that specific procedure.</p>                                                                 |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                        |  |  |
| <p>Where different conformity assessment modules [among the modules B-H] in Annex II to Decision 768/2008/EC, are to be used pursuant to other Union legislation for the same product, the module defined in the <b>delegated</b> <b>delegated</b> <b>implementing</b> act adopted pursuant to Article 4 of this Regulation shall prevail for the ecodesign requirement concerned;</p> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                        |  |  |
| <p><b>(f)</b> dates of application ensuring adequate appropriate time for implementation <del>ensuring at least XX months after the entry into force of the</del></p>                                                                                                                                                                                                                  |  |  |



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| <del>delegated act</del> , any staged or transitional measure or periods, taking into account possible impacts on market surveillance authorities SMEs or on specific product groups manufactured primarily by SMEs.                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                           |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                           |
| The time economic operators are given to comply with the requirements established in the delegated act shall take into account in particular the complexity of the ecodesign requirements, changes needed in the product design production process, the organisation of the supply chains, and the innovative cycle including contractual duration in the sector concerned. The time SME:s might need to comply shall in particular be taken into consideration. |                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                           |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                           |
| (g) the duration of the transitional period during which Member States are to permit the placing on the market or putting into service of products, which comply with                                                                                                                                                                                                                                                                                            | Despite our general support to this provision, we cannot support the transitional period in this case. The placing on the market of product not complying with an EU regulation shall cease immediately at the date of application of that regulation. The point should be rephrased as proposed. | <del>the duration of the transitional period during which</del> Member States <del>shall not are to</del> permit the placing on the market or putting into service of products, which comply with the national measures <del>regulations</del> in force in their territory from <del>on</del> the date of |



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| the <del>national</del><br><del>measures</del> <del>regulations</del> in force in<br>their territory on the date of<br>[application] of the<br><del>implementing-delegated</del> act.                                                                                                                                                                                                                                                                                                                                                                                          |  | [application] of the <del>implementing</del><br><del>delegated</del> |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  |                                                                      |
| (h) the date for the evaluation<br>and possible revision of the<br><del>implementing—delegated</del> act,<br><del>taking into account</del><br><del>technological progress.</del>                                                                                                                                                                                                                                                                                                                                                                                              |  | -                                                                    |
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| When setting the date for<br>evaluation, the Commission<br>shall take into consideration the<br>need to adapt the requirements<br>to technical progress, societal<br>changes, availability of<br>standards and methods, policy<br>objectives, environmental<br>issues, and other relevant<br>elements. The time period after<br>which the review should be<br>carried out shall be fixed with<br>regard to the need to ensure<br>legal certainty and stability, the<br>maturity of the market, the<br>characteristics of the product<br>group, and other relevant<br>elements. |  |                                                                      |
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| <b>Chapter III - Digital product passport</b>                                                                                                                                                                                                                                                             |                                                |  |
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| Article 8<br>Product passport                                                                                                                                                                                                                                                                             |                                                |  |
|                                                                                                                                                                                                                                                                                                           |                                                |  |
| <del>1. The information requirements referred to in Article 7(1) shall provide that products can only be placed on the market or put into service if a product passport is available in accordance with the applicable delegated act adopted pursuant to Article 4 and Articles 9 and 10.</del>           |                                                |  |
|                                                                                                                                                                                                                                                                                                           |                                                |  |
| <del>2. The requirements related to the product passport laid down in the delegated <b>implementing delegated</b> acts adopted pursuant to Article 4 shall, as appropriate for the product groups covered, be based on the characteristics of the product groups covered and specify the following:</del> | We reiterate our previous drafting suggestion. |  |
|                                                                                                                                                                                                                                                                                                           |                                                |  |
| (a) the information to be included in the product passport                                                                                                                                                                                                                                                |                                                |  |



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| pursuant to Annex III;                                                                                                                                                                                                                                                                                       |  |                                                                                                                                                                                                                                                                                                                                                                                                                    |
|                                                                                                                                                                                                                                                                                                              |  |                                                                                                                                                                                                                                                                                                                                                                                                                    |
| (b) <del>one or more the types of data carriers which may be used;</del>                                                                                                                                                                                                                                     |  |                                                                                                                                                                                                                                                                                                                                                                                                                    |
|                                                                                                                                                                                                                                                                                                              |  |                                                                                                                                                                                                                                                                                                                                                                                                                    |
| (c) the layout in which the data carrier <del>shall</del> <b>is to</b> be presented and its positioning;                                                                                                                                                                                                     |  |                                                                                                                                                                                                                                                                                                                                                                                                                    |
|                                                                                                                                                                                                                                                                                                              |  |                                                                                                                                                                                                                                                                                                                                                                                                                    |
| (d) whether the product passport is to correspond to the model, batch, or item level, <b>and a definition of these levels;</b>                                                                                                                                                                               |  |                                                                                                                                                                                                                                                                                                                                                                                                                    |
|                                                                                                                                                                                                                                                                                                              |  |                                                                                                                                                                                                                                                                                                                                                                                                                    |
| (e) the manner in which the product passport <del>shall</del> <b>is to</b> be made accessible to customers before they are bound by <b>a contract for a sales, hire or hire purchase contract</b> , including in case of distance selling;                                                                   |  |                                                                                                                                                                                                                                                                                                                                                                                                                    |
|                                                                                                                                                                                                                                                                                                              |  |                                                                                                                                                                                                                                                                                                                                                                                                                    |
| (f) the actors that <del>shall</del> <b>are to</b> have access to information in the product passport and to what information they <del>shall</del> <b>are to</b> have access, <del>including such as</del> customers, <del>end-users</del> , manufacturers, importers and distributors, dealers, repairers, |  | (f) the actors that <del>shall</del> <b>are to</b> have access to information in the product passport and to what information they <del>shall</del> <b>are to</b> have access, <del>including such as</del> customers, <del>end-users</del> , manufacturers, importers and distributors, dealers, <b>professional</b> repairers, <b>refurbishers</b> , remanufacturers, recyclers, competent national authorities, |





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| refurbishers, remanufacturers, recyclers, competent national authorities, public interest organisations and the Commission, or any organisation acting on their behalf;                                                                                                                                                                                                                                                 |  | public interest organisations and the Commission, or any organisation acting on their behalf;                                                                                                                                                                                                                                                                                                                                        |
|                                                                                                                                                                                                                                                                                                                                                                                                                         |  |                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| (g) the actors that may introduce or update the information in the product passport, including where needed the creation of a new product passport, and what information they may introduce or update, including such as manufacturers, repairers, maintenance professionals, refurbishers, remanufacturers, recyclers, competent national authorities, and the Commission, or any organisation acting on their behalf; |  | (g) the actors that may introduce or update the information in the product passport, including where needed the creation of a new product passport, and what information they may introduce or update, including such as manufacturers, professional repairers, maintenance professionals, refurbishers, remanufacturers, recyclers, competent national authorities, and the Commission, or any organisation acting on their behalf; |
|                                                                                                                                                                                                                                                                                                                                                                                                                         |  |                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| (h) the period for which the product passport shall is to remain available.                                                                                                                                                                                                                                                                                                                                             |  | (i) the modalities by which suppliers and recipients of an article, a mixture or a substance shall communicate to manufacturers in accordance with Article 7 (8).                                                                                                                                                                                                                                                                    |
|                                                                                                                                                                                                                                                                                                                                                                                                                         |  |                                                                                                                                                                                                                                                                                                                                                                                                                                      |
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| 3- The requirements referred to in paragraph 2 shall:                                                                                                                                                             |                                                                                                                                                                                                                                                              |  |
| (a) ensure that actors along the value chain, in particular consumers, economic operators and competent national authorities, can access product information <b>which is understandable and</b> relevant to them; |                                                                                                                                                                                                                                                              |  |
| (b) facilitate the verification of product compliance by competent national authorities; <b>and</b>                                                                                                               |                                                                                                                                                                                                                                                              |  |
| (c) improve traceability of products along the value chain; <b>and</b>                                                                                                                                            |                                                                                                                                                                                                                                                              |  |
| <b>(d) respect trade secrets in the meaning of Article 2 (1) Directive (EU) 2016/943.</b>                                                                                                                         |                                                                                                                                                                                                                                                              |  |
| 4- When establishing the requirements related to the product passport, the Commission may exempt product groups from the requirement <b>to have a Digital Product Passport</b>                                    | <p>The proposal of the Commission and the third compromise text provide for a mandatory DPP as a general rule. Few exceptions are regulated under Article 8, para. 4, of the proposal.</p> <p>After a careful examination of the text, an in-deep debate</p> |  |



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| <p>where set out in paragraph 1 of this Article where:</p>                                                                                                                                                                          | <p>among Member States and with the Commission, we believe that it is necessary to further amend the text with regard to the obligation for all products to carry a DPP. In our opinion, the framework regulation should leave to the secondary legislation the possibility to set a duty to make available the information requirements through a DPP on a case-by-case basis.</p> <p>This is necessary in order to take into account the existence of cases in which some products or products group, or some types of trades (i.e. C2B for single items), could not carry a DPP for specific and objective circumstances.</p> |                                                                                                    |
|                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                    |
| <p>(a) technical specifications of the product passport are not available in relation to the essential requirements included in Article 10; or</p>                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                    |
|                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                    |
| <p>(b) other Union law includes a system for the digital provision of information related to a product group for which the Commission considers that it achieves the objectives referred to in paragraph 3, points (a) and (b).</p> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <p><b>.(c) the presence of a product passport has a significant cost compared to benefits.</b></p> |
|                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                    |
| <p>Article 9<br/>General requirements for the product passport</p>                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                    |



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| 1. A product passport shall meet the following conditions:                                                                                                                                                                                                    |   |  |
|                                                                                                                                                                                                                                                               |   |  |
| (a) it shall be connected through a data carrier to a unique product identifier;                                                                                                                                                                              |   |  |
|                                                                                                                                                                                                                                                               |   |  |
| (b) the data carrier shall be physically present on <b>or in</b> the product, its packaging or on documentation accompanying the product, as specified in the applicable <del>delegated</del> <b>implementingdelegated</b> act adopted pursuant to Article 4; |   |  |
|                                                                                                                                                                                                                                                               |   |  |
| (c) the data carrier and the unique product identifier shall comply with <b>International Organization for Standardisation/International Electrotechnical Commission standard (‘ISO/IEC’) 15459:2015</b> standards referred to in point (l) in Annex III;     |   |  |
|                                                                                                                                                                                                                                                               |   |  |
| (d) <del>all</del> information included in the product passport shall be based on open, standards, developed with an inter-operable                                                                                                                           | - |  |



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| <p>format and shall be machine-readable, structured, and searchable, <b>as appropriate, and</b> in accordance with the essential requirements set out in Article 10.</p> <p><b>The information shall be transferable through an open interoperable data exchange network without vendor lock-in.</b></p>                                       |  |  |
|                                                                                                                                                                                                                                                                                                                                                |  |  |
| <p>(e) the information included in the product passport shall refer to the product model, batch, or item as specified in the <del>delegated</del> <b>implementing delegated</b> act adopted pursuant to Article 4;</p>                                                                                                                         |  |  |
|                                                                                                                                                                                                                                                                                                                                                |  |  |
| <p>(f) the access to information included in the product passport shall be regulated in accordance with the essential requirements set out in Article 10 and the specific access rights at product group level shall be identified in the applicable <del>delegated</del> <b>implementing delegated</b> act adopted pursuant to Article 4.</p> |  |  |
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| <p>The Commission is empowered to adopt delegated acts in accordance with Article 66 to amend the first subparagraph, point (c), of this Article <b>point (f) in Annex III</b>, in light of technical and scientific progress by replacing the standard referred to in that point <del>Annex</del> or adding other European or international standards with which the data carrier and the unique identifiers shall comply for the purposes of meeting the conditions set out in this Article.</p> |  |                                                                                                   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |                                                                                                   |
| <p>2. Where other Union legislation requires or allows the inclusion of specific information in the product passport, that information may be added to the information to be included in the product passport pursuant to the applicable delegated <b>implementing</b> act adopted pursuant to Article 4. <b>pursuant to the applicable delegated act adopted pursuant to Article 4.</b></p>                                                                                                       |  |                                                                                                   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |                                                                                                   |
| <p>3. The economic operator placing the product on the market</p>                                                                                                                                                                                                                                                                                                                                                                                                                                  |  | <p>The <b>first</b> economic operator placing the product on the market shall provide dealers</p> |



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| shall provide dealers with a digital copy of the data carrier to allow the dealer to make it accessible to customers where they cannot physically access the product. The economic operator shall provide that digital copy, <b>or its webpage link where it is available</b> , free of charge and within 5 working days of the dealer's request. |  | with a digital copy of the data carrier to allow the dealer to make it accessible to customers where they cannot physically access the product. The economic operator shall provide that digital copy, <b>or its webpage link where it is available</b> , free of charge and within 5 working days of the dealer's request. |
|                                                                                                                                                                                                                                                                                                                                                   |  |                                                                                                                                                                                                                                                                                                                             |
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| Article 10<br>Technical design and operation of the product passport                                                                                                                                                                                                                                                                              |  |                                                                                                                                                                                                                                                                                                                             |
|                                                                                                                                                                                                                                                                                                                                                   |  |                                                                                                                                                                                                                                                                                                                             |
| The technical design and operation of the product passport shall comply with the following essential requirements:                                                                                                                                                                                                                                |  |                                                                                                                                                                                                                                                                                                                             |
|                                                                                                                                                                                                                                                                                                                                                   |  |                                                                                                                                                                                                                                                                                                                             |
| (a) product passports shall be fully interoperable with other product passports required by delegated <b>implementing delegated</b> acts adopted pursuant to Article 4 in relation to the technical, semantic and organisational aspects of end-to-end communication and data                                                                     |  |                                                                                                                                                                                                                                                                                                                             |



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| transfer;                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  |
|                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  |
| (b) consumers, economic operators and other relevant actors shall have free access to the product passport based on their respective access rights set out in the applicable <del>delegated</del> <b>implementing delegated</b> act adopted pursuant to Article 4; | -                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |
|                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  |
| (c) the data included in the product passport shall be stored <b>by</b> the economic operator responsible for its creation or by operators authorised to act on their behalf;                                                                                      | <p>As already shared in previous comments, decentralized architecture poses several problems both in terms of administrative burdens for micro companies and SMEs and from the competent national authorities' perspective.</p> <p>We are aware of the Commission's position on the possibility of centralizing the data collection and storage system, but we nevertheless believe it is important to introduce the possibility of providing for some form of centralization of the DPP system.</p> <p><b>Therefore, our proposal would be to provide the possibility (not an obligation) for Member States to introduce forms of centralization of data collection and storage through national authorities or through selected private entities to be institutionally entrusted with this task.</b> A control by public authorities would also prevent non-European economic entities operating in the "big data" management sector from entering the market, creating monopoly situations and turning a development opportunity into a problem.</p> |  |





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| (d) if the data included in the product passport is stored or otherwise processed by operators authorised to act on their behalf, those operators shall not be allowed to sell, re-use or process such data, in whole or in part, beyond what is necessary for the provision of the relevant storing or processing services; |  |  |
|                                                                                                                                                                                                                                                                                                                              |  |  |
| (e) the product passport shall remain available for the period specified in <del>delegated</del> <b>implementingdelegated</b> acts adopted pursuant to Article 4, including after an insolvency, a liquidation or a cessation of activity in the Union of the economic operator that created the product passport;           |  |  |
|                                                                                                                                                                                                                                                                                                                              |  |  |
| (f) the rights to access and to introduce, modify or update information in <b>the</b> product passport shall be restricted based on the access rights specified in <del>delegated</del> <b>implementingdelegated</b> acts                                                                                                    |  |  |



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| adopted pursuant to Article 4;                                                                                                                                                                                           |  |                                                                                                                                                                                                             |
|                                                                                                                                                                                                                          |  |                                                                                                                                                                                                             |
| (fa) with _____ specific consideration shall be taken to ensure of the protection of information that constitutes trade secrets in the meaning of Article 2 (1) Directive (EU) 2016/943 or intellectual property rights; |  |                                                                                                                                                                                                             |
|                                                                                                                                                                                                                          |  |                                                                                                                                                                                                             |
| (g) data authentication, reliability and integrity shall be ensured;                                                                                                                                                     |  |                                                                                                                                                                                                             |
|                                                                                                                                                                                                                          |  |                                                                                                                                                                                                             |
| (h) product passports shall be designed and operated so that a high level of security and privacy is ensured and fraud is avoided.                                                                                       |  | (i) the product passport should be a long-lasting part of the product which can be easily maintained and updated during the lifetime of the product, even when the product is resold, one or several times. |
|                                                                                                                                                                                                                          |  |                                                                                                                                                                                                             |
| Article 11<br>Unique operator identifier and unique facility identifier                                                                                                                                                  |  |                                                                                                                                                                                                             |
|                                                                                                                                                                                                                          |  |                                                                                                                                                                                                             |
| 1. The unique operator identifiers referred to in Annex III, points (g) and (h), and the unique facility identifiers referred                                                                                            |  |                                                                                                                                                                                                             |



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| to in Annex III, point (i), shall comply with the <del>ISO/IEC standard 15459:2015 standards</del> referred to in in Annex III point (l).                                                                                                                                                                                                             |  |  |
|                                                                                                                                                                                                                                                                                                                                                       |  |  |
| 2. Where a unique operator identifier referred to in Annex III, point (h), is not yet available, the economic operator creating <b>or updating</b> the product passport shall request a unique operator identifier on behalf of the relevant actor.                                                                                                   |  |  |
|                                                                                                                                                                                                                                                                                                                                                       |  |  |
| Before issuing a request as referred to in the first subparagraph, the economic operator creating <b>or updating</b> the product passport shall seek confirmation from the actor concerned that no unique operator identifier exists and shall provide the supply chain actor concerned with full details of the released unique operator identifier. |  |  |
|                                                                                                                                                                                                                                                                                                                                                       |  |  |
| 3. Where a unique facility identifier referred to in Annex III, point (i), is not yet available, the economic operator creating <b>or</b>                                                                                                                                                                                                             |  |  |



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| <p><b>updating</b> the product passport shall request a unique facility identifier on behalf of the actor responsible for the relevant location or building.</p>                                                                                                                                                                                                                                                                                                             |  |  |
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| <p>Before issuing a request as referred to in the first subparagraph, the economic operator creating <b>or updating</b> the product passport shall seek confirmation from the responsible actor that no unique facility identifier exists and provide the responsible actor with the full details of the released unique facility identifier.</p>                                                                                                                            |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |  |
| <p><del>4. The Commission is empowered to adopt delegated acts in accordance with Article 66 to amend paragraph 1 of this Article in light of technical and scientific progress by replacing the standard referred to in that paragraph or adding European or international standards with which unique operator identifiers referred to in Annex III, points (g) and (h), and unique facility identifiers referred to in Annex III, point (i), may comply for the</del></p> |  |  |



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| <del>purposes of meeting the conditions set out in this Article.</del>                                                                                                                                                                                                                                                                         |  |  |
|                                                                                                                                                                                                                                                                                                                                                |  |  |
| <b>5. The Commission shall adopt an implementing act setting out the procedure to create or obtain the unique product identifier, the unique operator identifier and the unique facility identifier. That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 67(2).</b>                        |  |  |
|                                                                                                                                                                                                                                                                                                                                                |  |  |
| <b>Article 11a</b>                                                                                                                                                                                                                                                                                                                             |  |  |
| <b>Update of the standards applicable to the digital product passport</b>                                                                                                                                                                                                                                                                      |  |  |
|                                                                                                                                                                                                                                                                                                                                                |  |  |
| <b>The Commission is empowered to adopt delegated acts in accordance with Article 66 to amend point (l) of Annex III in light of technical and scientific progress by replacing the standards referred to or adding European or international standards with which the data carriers, the unique operator identifiers referred to in Annex</b> |  |  |



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| III, points (g) and (h), and the unique facility identifiers referred to in Annex III, point (i), shall comply with for the purposes of meeting the conditions set out in this Chapter.                                                                                                                                                                                                                                                   |  |  |
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| Article 12<br>Product passport registry                                                                                                                                                                                                                                                                                                                                                                                                   |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                           |  |  |
| 1. By [2 years from entering into force of this Regulation], <del>the</del> The Commission shall set up and <del>manage</del> maintain a digital registry (“the registry”) storing in a secure manner at least the unique product identifiers, the economic operator identifiers and the facility identifiers. <del>storing information included in the product passports required by delegated acts adopted pursuant to Article 4.</del> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                           |  |  |
| <del>The registry referred to in the first subparagraph shall at least include a list of the data carriers and unique product identifiers referred to in Article 9(1).</del>                                                                                                                                                                                                                                                              |  |  |
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| <p><del>The Commission shall ensure that the information stored in the registry referred to in the first subparagraph is processed securely and in compliance with Union law, including applicable rules on the protection of personal data.</del></p>                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                            |
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| <p>2. The Commission shall, in the <del>delegated</del> <b>implementing delegated</b> acts adopted pursuant to Article 4, specify the information which, in addition to being included in the product passport, shall be stored in the registry <del>referred to in paragraph 1</del>, taking into account at least the following criteria:</p> | <p>In paragraph 2, it is suggested to delete the words “in addition to being included in the product passport,” to not prohibit at least in principle to have specific product information only available in the registry and not in the DPP. This is especially important for point a) for the verification of the authenticity of the product passport the same information about the authenticity cannot be present also in the passport itself and c) to avoid a disproportionate administrative burden for economic operators the registry could become a sort of mini-DPP</p> | <p>2. The Commission shall, in the <del>delegated</del> <b>implementing delegated</b> acts adopted pursuant to Article 4, specify the information which, <del>in addition to being included in the product passport</del>, shall be stored in the registry <del>referred to in paragraph 1</del>, taking into account at least the following criteria:</p> |
|                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                            |
| <p>(a) the need to allow for the verification of the authenticity of the product passport;</p>                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                            |
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| <p>(b) the relevance of information for improving the efficiency and effectiveness of market surveillance checks and customs controls in relation to products covered by <del>delegated</del> <b>implementing delegated</b> acts</p>                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                            |



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| adopted pursuant to Article 4;                                                                                                                                                                                                                                                                                                          |  |  |
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| (c) the need to avoid disproportionate administrative burden for economic operators.                                                                                                                                                                                                                                                    |  |  |
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| 3. In relation to its responsibility to <del>establish</del> <b>set up</b> and manage the registry <del>referred to in paragraph 1</del> and the processing of any personal data that might result from that activity, the Commission shall be regarded as controller as defined in Article 3, point (8), of Regulation (EU) 2018/1725. |  |  |
|                                                                                                                                                                                                                                                                                                                                         |  |  |
| 4. The economic operator placing the product on the market or putting it into service shall upload, in the registry <del>referred to in paragraph 1</del> , <b>the identifiers referred to in paragraph 1</b> and the information referred to in paragraph 2.                                                                           |  |  |
|                                                                                                                                                                                                                                                                                                                                         |  |  |
| 5. The Commission, competent national authorities and customs authorities shall have access to the registry <del>referred to in this Article</del> for carrying out their                                                                                                                                                               |  |  |





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| duties pursuant to Union legislation law.                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |
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| <b>Article 12a</b><br><b>[Webportal for information in the digital product passport]</b>                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |
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| <b>The Commission shall set up and maintain a web portal allowing stakeholders to search for information included in product passports. The web portal shall be designed to guarantee that stakeholders can search for the information in line with their respective access rights pursuant to Article 10.1.b.</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |
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| <b>[Article 13</b><br>Customs controls relating to the product passport                                                                                                                                                                                                                                            | <p>With regard to the customs controls, we have some concerns with regard to the issue of "bundled" goods.</p> <p>From what has emerged so far, by ESPR regulation in the import documents there should be a registry code that contains part of the "ecodesign" information. At Customs, it should be checked that goods for which there is a registry code present this code and that it is the correct one. However, "mixed" products present more than a few problems and in general there is some problem in associating TARIC codes with products checked for "ecodesign" requirements.</p> |  |
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| <p>1. The Commission shall interconnect the registry <del>referred to in Article 12(1)</del> with the EU Customs Single Window Certificates Exchange (EU CSW-CERTEX), thus enabling the automated exchange of information with the national customs systems through the EU Single Window Environment for Customs established by Regulation (EU2022/2399<sup>67</sup> .../.....</p> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                    |  |  |
| <p>The Commission shall adopt an implementing act specifying the details of the implementation arrangements of the interconnection referred to in the first subparagraph.</p>                                                                                                                                                                                                      |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                    |  |  |
| <p>This implementing act shall be adopted in accordance with the examination procedurereferred to in Article 67(3).</p>                                                                                                                                                                                                                                                            |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                    |  |  |
| <p>The interconnection referred to in the first subparagraph shall be <del>in place</del> <b>operational</b> within four years from the date of <del>adoption</del> <b>entry into force</b> of the</p>                                                                                                                                                                             |  |  |



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| implementing act referred to in the second subparagraph.                                                                                                                                                                                                                                                                                         |                             |                                                                                                                                                                                              |
| Paragraphs 3 to 6 of this Article shall apply as from the moment the interconnection is in place. Paragraphs 3 to 5a of this Article shall apply as from the moment the interconnection is operational.                                                                                                                                          |                             |                                                                                                                                                                                              |
|                                                                                                                                                                                                                                                                                                                                                  |                             |                                                                                                                                                                                              |
| 2. Declarants as defined in Article 5, point (15), of Regulation (EU) 952/2013 shall include the unique product identifier referred to in Article 9(1), point (a), in the customs declaration for release for free circulation of any product covered by a <del>delegated</del> <b>implementing—delegated</b> act adopted pursuant to Article 4. |                             |                                                                                                                                                                                              |
|                                                                                                                                                                                                                                                                                                                                                  |                             |                                                                                                                                                                                              |
| This paragraph shall apply from the moment the registry <del>referred to in Article 12(1)</del> is in place.                                                                                                                                                                                                                                     |                             |                                                                                                                                                                                              |
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| 3. <del>Before allowing the release for free circulation, e</del> Customs authorities shall <b>control</b> <del>verify</del> , <b>through the interconnection</b>                                                                                                                                                                                | See comments to recital 29. | <del>Before allowing the release for free circulation, e</del> <b>When a digital passport is required, e</b> customs authorities shall <b>control</b> <del>verify</del> , <b>through the</b> |



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| referred to in paragraph 1 of this Article, whether the unique product identifier indicated by the declarant in accordance with paragraph 2 matches a unique product identifier included in the registry referred to in Article 12(1).                                                                                                                                                                                                                                                                                                                 |  | interconnection referred to in paragraph 1 of this Article, whether the uniqueproduct identifier indicated by the declarant in accordance with paragraph 2 matches a unique product identifier included in the registry referred to in Article 12(1). |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |                                                                                                                                                                                                                                                       |
| <b>The release for free circulation shall not be deemed to be proof of compliance with Union law.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                  |  |                                                                                                                                                                                                                                                       |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |                                                                                                                                                                                                                                                       |
| 4. Where information included in the product passport is also stored in the registry referred to in Article 12(1), the Commission may, specify, in the delegated acts adopted pursuant to Article 4, that customs authorities shall, in addition to the verification referred to in paragraph 3 of this Article, verify consistency between the information stored in the registry and the customs declaration before allowing the release for free circulation. In such case, the Commission shall take into account at least the following criteria: |  |                                                                                                                                                                                                                                                       |



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| (a) <del>the need to improve compliance of products placed on the Union market with ecodesign requirements;</del>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |  |
| (b) <del>the need to avoid disproportionate burden for customs authorities.</del>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |  |
| <del>Where customs authorities establish further to the verification laid down in this paragraph that there are discrepancies between the information stored in the registry and the customs declaration, customs authorities shall refuse the release of that product for free circulation.</del><br>Customs authorities may take any other actions they deem appropriate in accordance with market surveillance legislation and customs legislation, and also registering the refusal in the registry referred to in Article 12(1) and notifying competent national authorities of the refusal. |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |  |



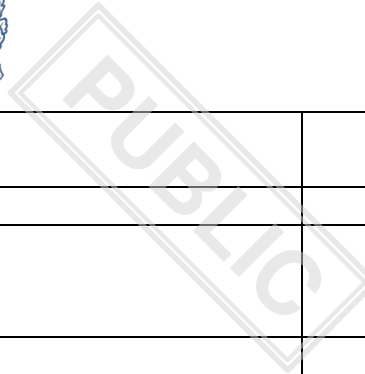
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| <del>The release for free circulation shall not be deemed to be proof of conformity with Union law.</del>                                                                                                                                                                                                              |  |  |
|                                                                                                                                                                                                                                                                                                                        |  |  |
| 5. The <b>control verification</b> referred to in paragraphs 3 and 4 shall take place electronically and automatically via the EU Single Window Environment for Customs.                                                                                                                                               |  |  |
|                                                                                                                                                                                                                                                                                                                        |  |  |
| 6. Customs authorities may retrieve and use the information included in the product passport and the registry <del>referred to in Article 12(1)</del> for carrying out their duties pursuant to Union legislation, including for risk management in accordance with Articles 46 and 47 of Regulation (EU) No 952/2013. |  |  |
|                                                                                                                                                                                                                                                                                                                        |  |  |
| <b>6a This Article is without prejudice to any other Union legislation, in particular the Union Customs Code and its Articles 46, 47 and 134 and Chapter VII of Regulation (EU) 2019/1020 on market surveillance and compliance of products.</b>                                                                       |  |  |



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| <b>Chapter IV - Labels</b>                                                                                                                                                                                                                                           |  |  |
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| Article 14<br>Labels                                                                                                                                                                                                                                                 |  |  |
|                                                                                                                                                                                                                                                                      |  |  |
| 1. Where the information requirements referred in Article 7(1) specify that information shall be included in a label pursuant to Article 7(6), point (d—c), the <del>delegated</del> <b>implementing delegated</b> acts adopted pursuant to Article 4 shall specify: |  |  |
|                                                                                                                                                                                                                                                                      |  |  |
| (a) the content of the label;                                                                                                                                                                                                                                        |  |  |
|                                                                                                                                                                                                                                                                      |  |  |
| (b) the layout of the label taking account visibility and legibility;                                                                                                                                                                                                |  |  |
|                                                                                                                                                                                                                                                                      |  |  |
| (c) the manner in which the label shall be displayed to customers including in case of distance selling, taking into account the requirements set out in Article 26 and the implications                                                                             |  |  |



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| for the relevant economic operators;                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| (d) <del>where appropriate</del> <b>where needed</b> , electronic means for generating labels.                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 2. Where an information requirement entails the inclusion in a label of the class of performance of a product as referred to in Article 7(4), the layout of the label referred to in paragraph 1, point (b), shall enable customers to easily compare product performance in relation to the relevant product parameter and to choose better performing products.       |                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 3. For energy-related products <b>that are subject to energy labels established pursuant to Regulation (EU) 2017/1369</b> , <del>only</del> 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 <del>established pursuant to Regulation (EU) 2017/1369</del> | 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 <b>that are subject to energy labels established pursuant to Regulation (EU) 2017/1369</b> , <del>only</del> 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 <del>established pursuant to Regulation (EU) 2017/1369</del> <b>and where this information is considered to be more relevant than the information covered by the energy label,</b> |





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| <p><del>2017/1369</del>—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. <b>instead of the energy label.</b></p> |  | <p>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. <b>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.</b></p> |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <p>4. When establishing the information requirements referred to in paragraph 1, the Commission shall, where appropriate, require the label to include data carriers or other means to allow customers to access additional information on the product, including means allowing access to the product passport referred to in Article 8.</p>                                                                                                                              |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
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| <p>5. The Commission <del>may</del> shall adopt implementing acts establishing common</p>                                                                                                                                                                                                                                                                                                                                                                                  |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |



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| requirements for the layout of the labels required pursuant to Article 7(6), point (d-c).                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(3).                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Article 15<br>Mimicking labels                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Products shall not be placed on the market or put into service if they display labels which, by mimicking the labels provided for in Article 14, are likely to mislead or confuse customers.</b>                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <del>Where products are not required to have a label in accordance with delegated implementing acts adopted pursuant to Article 4 do not require products to have a label, or where products are not covered by delegated implementing acts adopted pursuant to Article 4, those products may shall not be placed on the market or put into</del> | <p>The too generic prohibition in the new formulation proposed by the Presidency for this Article could be interpreted that any label is not allowed anymore on any product also outside the scope of the ESPR Regulation, which cannot be the intention of the legislator. For this latter point, the text of Art 15 in the second compromise text was clearer because the prohibition applied only to products in scope of ESPR in that text.</p> <p>For products in scope of ESPR, the problem of mimicking labels should address three cases: 1) products where a delegated act has set a label 2) products covered by a delegated act but with no definition of a label and 3) all other</p> | <p><del>Products shall not be placed on the market or put into service if they display labels which, by mimicking the labels provided for in Article 14, are likely to mislead or confuse customers</del></p> <p>New proposed text of Article 15</p> <p>1. Products covered by delegated acts adopted pursuant to Article 4, specifying that information requirements referred in Article 7(1) shall be included in a label pursuant to Article 7(6) point (c), shall not</p> |



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| <p><del>service if they supply or display labels which, by mimicking the labels provided for in Article 14, are likely to mislead or confuse customers with respect to the labels provided for in Article 14.</del></p> | <p>products in scope of the ESPR Regulation not yet covered by a delegated act. The new proposed text for Article 15 is proposed accordingly. Note that in point 1 the words “other labels” are essential because these products have already at least one ecodesign label.</p> <p>It should be clarified if the prohibition to display a label mimicking the layout/content provided in Article 14 is applicable also to products not in scope of the ESPR regulation.</p> | <p>be placed on the market or put into service if they display other labels which by mimicking the label provided for in Article 14 are likely to mislead or confuse customers.</p> <p>2. Products covered by delegated acts adopted pursuant to Article 4, where no label pursuant to Article 7(6) point (c) is defined, shall not be placed on the market or put into service if they display other labels which by mimicking the labels provided for in Article 14 are likely to mislead or confuse customers.</p> <p>3. Products not covered by delegated acts adopted pursuant to Article 4 shall not be placed on the market or put into service if they display labels which by mimicking the labels provided for in Article 14 are likely to mislead or confuse customers.</p> |
|                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| <p><b>Chapter V - Prioritisation, planning and consultation</b></p>                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| <p>Article 16<br/>Prioritisation and planning</p>                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
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| <p>1. When prioritising products to be covered by ecodesign requirements <del>in accordance with this Regulation</del>, the Commission shall <b>analyse take into account</b> <del>their</del> <b>the</b> potential contribution of <b>those products</b> to achieving Union climate, environmental and energy efficiency objectives, <b>and to fostering the Union economic resilience and competitiveness</b>, <del>as well as taking into account at least</del> the following criteria:</p> | <p>The Working Plan should become the point where the overall plan for the application of the ESPR Regulation is known to everybody.</p> <p>In this respect, the WP should also include also the list of the products for which the Commission intends to carry out impact assessments for setting a prohibition against the destruction of Article 20d, see the modification proposed for paragraph 2 below.</p> <p>We support the inclusion of a reference to “resilience and competitiveness”.</p> | - |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |   |
| <p>(a) the potential for improving the product aspects listed in Article 5(1) without entailing disproportionate costs, taking into account in particular:</p>                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |   |
| <p>(i) the absence or insufficiency of Union law or failure of market forces or self-regulation measures adopted in accordance with Article 18 to address the objective properly; and</p>                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |   |
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| <p>(ii) the disparity in the performance of products</p>                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |   |



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| available on the market with equivalent functionality in relation to the product aspects listed in Article 5(1);                                                                                                                       |                            |  |
|                                                                                                                                                                                                                                        |                            |  |
| (b) the volume of sales and trade of the product within the Union;                                                                                                                                                                     |                            |  |
|                                                                                                                                                                                                                                        |                            |  |
| (c) the distribution of the environmental impacts, energy use and waste generation across the value chain, <del>in particular whether they take place within the Union;</del>                                                          | We agree with the removal. |  |
|                                                                                                                                                                                                                                        |                            |  |
| (d) the need to regularly review and adapt <del>delegated</del> <b>implementing—delegated</b> acts adopted pursuant to Article 4 in light of technological and market developments <b>also reflecting societal changes and trends.</b> |                            |  |
|                                                                                                                                                                                                                                        |                            |  |
| <b>1a. When prioritising aspects to be covered by a horizontal requirements in accordance with this Regulation, the Commission shall also take into consideration the added value in</b>                                               |                            |  |



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| <b>having horizontal requirements imposed on a range of products and product groups.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <p>2. Based on the analysis referred to in paragraph 1 and 1.a. of this Article, the The Commission shall, by [12 months after the entry into force of this Regulation], adopt an implementing act establishing and regularly update a working plan, covering a period of at least 3 years, setting out an indicative list of product groups which will be considered priorities for which it intends to establish the establishment of ecodesign requirements in accordance with this Regulation and regularly update it. That indicative list shall include products aspects referred to in Article 5(1) which will be considered priorities for the establishment of for which the Commission intends to adopt horizontal ecodesign requirements established pursuant to in accordance with Article 5(2), second subparagraph. The indicative list</p> | <p>We support the idea of considering the working plan as an implementing act, but only providing that the list of products is prescriptive.</p> <p>The reference to Article 20d about the prioritisation of unsold consumer products for setting a prohibition against destruction is added to have the list of products groups for which the Commission intends to carry out impact assessments under Article 20c added to the Working Plan</p> <p>We have said that the list of the product cannot be “indicative” due to the time and efforts associated with its preparation through an implementing act with examination procedure, the consultation Ecodesign Forum referred and the Ecodesign Expert Group of the and the obligation of the Commission (in point 3 of Art. 16) to report annually to the European Parliament and the Council annually of the progress made in the implementation of the working plan.</p> <p>It is proposed to remove the term “indicative”. The flexibility is given by the fact that the Commission may choose the order of priority of the products in the list and the list itself is updated every three years.</p> <p>How can an “indicative” list be subject to the obligation of the Commission to give to the EP and the Council an explanation of the main causes of the delays and how it intends to ensure progress in the implementation (point 3 of Art 16)?</p> <p>In addition, setting an indicative list could be counterproductive for industries if then the listed products are</p> | <p>2. Based on the analysis referred to in paragraph 1 and 1.a. of this Article and in point 1 of Article 20d, the The Commission shall, by [12 months after the entry into force of this Regulation], adopt an implementing act establishing and regularly update a working plan, covering a period of at least 3 years, setting out an indicative list of product groups which will be considered priorities for which it intends to establish the establishment of ecodesign requirements in accordance with this Regulation and regularly update it. That indicative list shall include products aspects referred to in Article 5(1) which will be considered priorities for the establishment of for which the Commission intends to adopt horizontal ecodesign requirements established pursuant to in accordance with Article 5(2), second subparagraph. The indicative list shall also indicate which products may be considered for such horizontal requirements.</p> |



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| shall also indicate which products may be considered for such horizontal requirements.                                                                                                                                                                                                                                                                                                                                      | not considered by the Commission.<br><br>However, should Article 20b (prohibition of destruction of apparel and accessories) be deleted and the list of products in Article 20d be included in the WP we can accept to keep the “indicative”. |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                               |  |
| That implementing act shall be adopted in accordance with the examination procedurereferred to in Article 67(3).                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                               |  |
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| <del>By [2 years 12 months after the entry into force of this Regulation]], at the latest, the Commission shall adopt the working plan. Before the end of the covered period, the Commission shall update the working plan, unless it duly justifies to the Ecodesign Forum and the Ecodesign Expert Group the reasons for not updating the working plan in the covered period, and sets the date of the next update.</del> |                                                                                                                                                                                                                                               |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                               |  |
| <del>When</del> Before adopting or updating the working plan referred to in the first subparagraph referred to in the                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                               |  |



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| <p><b>first subparagraph,</b> the Commission shall <del>take into account the criteria set out in paragraph 1 of this Article and</del> <b>shall take into account the criteria set out in paragraph 1 of this Article and shall</b> consult the Ecodesign Forum referred to in Article 17 <b>and the Ecodesign Expert Group referred to in Article 17a.</b></p>      |                                                                                                                                       |                                                                                           |
|                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                       |                                                                                           |
| <p><b>3. The Commission shall inform the European Parliament and the Council annually of the progress made in the implementation of the working plan. In the case of delays in the implementation of the working plan, the Commission shall give an explanation of the main causes of the delays and how it intends to ensure progress in the implementation.</b></p> |                                                                                                                                       |                                                                                           |
|                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                       |                                                                                           |
| <p>Article 17<br/>Ecodesign Forum</p>                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                       |                                                                                           |
|                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                       |                                                                                           |
| <p>The Commission shall <b>establish an expert group referred to as</b></p>                                                                                                                                                                                                                                                                                           | <p>In order to prevent such a forum from being a place for "light" confrontation rather than, as necessary, a place for effective</p> | <p>The Commission shall <b>establish an expert group referred to as the Ecodesign</b></p> |





**the Ecodesign Forum with ensure that when it conducts its activities, it observes a balanced participation of experts designated by Member States' representatives and of all interested parties involved with the product or product group in question, such as industry, including SMEs and craft industry, trade unions, traders, retailers, importers, environmental protection groups, actors involved in circular economy activities, European Standardisation Organisations and consumer organisations ("Ecodesign Forum"). These parties—The Ecodesign Forum shall contribute in particular to preparing ecodesign requirements, examining the effectiveness of the established market surveillance mechanisms and assessing self-regulation measures and preparing developing in its early preparation implementing acts on prohibitions of destruction of unsold consumer products.**

consultation with interested stakeholders, we propose some changes to the article.

In line with the new last paragraph in Article 17a, we also believe that some procedural rules should be established to give stakeholders time to react to proposed new product-specific regulations. We suggest the following paragraph to be added to Article 17.

The words “in its early preparation” are unclear, suggest to delete them.

~~Forum with ensure that when it conducts its activities, it observes a balanced participation of experts designated by Member States' representatives and of all interested parties involved with the product or product group in question, such as industry, including SMEs and craft industry, trade unions, traders, retailers, importers, environmental protection groups, actors involved in circular economy activities, European Standardisation Organisations and consumer organisations ("Ecodesign Forum"). These parties—The Ecodesign Forum shall be consulted contribute in particular to for the discussion about setting priorities and planning, preparing ecodesign requirements, examining the effectiveness of the established market surveillance mechanisms and assessing self-regulation measures and preparing developing in its early preparation implementing acts on prohibitions of destruction of unsold consumer products. The Ecodesign Forum shall be consulted also before adopting delegated acts referred to in Article 66(4).~~

Finally, the Commission shall:

- (a) Provide appropriate time, at least 30 working days, for consultation before and after the Ecodesign Forum takes place.



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|                                                                                                                                                         |  | <p>(b) Report to the Ecodesign Forum at an appropriate time, 2 months after the meeting takes place, the conclusions of the discussion.</p> <p>(c) Ensure the Ecodesign Forum shall carry out its tasks in accordance with the principle of transparency.</p> <p>(d) Publish the minutes of the meetings of the Forum and other relevant documents on the Commission website</p> |
|                                                                                                                                                         |  |                                                                                                                                                                                                                                                                                                                                                                                  |
| <p><del>To that end, the Commission shall establish an expert group, in which those parties shall meet, referred to as the 'Ecodesign Forum'.</del></p> |  |                                                                                                                                                                                                                                                                                                                                                                                  |
|                                                                                                                                                         |  |                                                                                                                                                                                                                                                                                                                                                                                  |
| <p><b>Article 17a</b><br/><b>Ecodesign Expert Group</b></p>                                                                                             |  |                                                                                                                                                                                                                                                                                                                                                                                  |
|                                                                                                                                                         |  |                                                                                                                                                                                                                                                                                                                                                                                  |
| <p><b>1.</b> The Commission shall establish an expert group composed of experts designated by the Member States ('Ecodesign Expert Group').</p>         |  |                                                                                                                                                                                                                                                                                                                                                                                  |
|                                                                                                                                                         |  |                                                                                                                                                                                                                                                                                                                                                                                  |
| <p><b>The Commission shall consult the Ecodesign Expert Group on:</b></p>                                                                               |  |                                                                                                                                                                                                                                                                                                                                                                                  |



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| <b>a) setting priorities and planning,</b>                                                                                                                                         |                                                                            |                                                                                                                                |
|                                                                                                                                                                                    |                                                                            |                                                                                                                                |
| <b>b) developing ecodesign requirements, and assessing and b) developing ecodesign requirements,</b>                                                                               |                                                                            |                                                                                                                                |
|                                                                                                                                                                                    |                                                                            |                                                                                                                                |
| <b>c) evaluating self-regulation measures pursuant to Article 18,</b>                                                                                                              |                                                                            |                                                                                                                                |
|                                                                                                                                                                                    |                                                                            |                                                                                                                                |
| <b>d) e) developing priorities as regards prohibitions of destruction of unsold consumer products pursuant to Article 20, and</b>                                                  | We disagree with the deletion of this point (d) and later point (e).       | <b>d) developing priorities as regards prohibitions of destruction of unsold consumer products pursuant to Article 20, and</b> |
|                                                                                                                                                                                    |                                                                            |                                                                                                                                |
| <b>(d ) measures to enhance compliance with the Regulation, such as education and information campaigns, exchange of best practices between Member States, or support to SMEs.</b> |                                                                            |                                                                                                                                |
|                                                                                                                                                                                    |                                                                            |                                                                                                                                |
| <b>e) reviewing the effectiveness of the market surveillance mechanisms in</b>                                                                                                     | We disagree with the deletion of this point and suggest a new formulation. | <b>e) examining the effectiveness of the market surveillance for the enforced eco-design regulations</b>                       |



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| place.                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                          |
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| <b>2.</b> The consultation with the Ecodesign Expert Group under Article 17a shall take place after the consultation pursuant to Article 17. The consultation referred to in Article 66(4) shall at least include consultation with the Expert Group. |                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                          |
|                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                          |
| The Commission shall take into account the views of the Ecodesign Expert Group.                                                                                                                                                                       | -                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                          |
|                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                          |
| The Commission shall regularly, at least every 6 months, inform the Ecodesign Expert Group on its progress on actions presented in the working plans and on the work of the Ecodesign Forum.                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                          |
| [The members of the Ecodesign Expert Group shall receive the invitation to the meeting and the draft agenda not less than 30 calendar days before the meeting. They shall receive the draft delegated acts and any                                    | <p>30 days is is the minimum time for the consultation of national interested parties in order to prepare a national position on the content of the delegated act. This is the time limit for the current product specific ecodesign and energy labelling regulation for energy-related products.</p> <p>15 days are needed for urgent/exceptional cases, although in 3 decades of eco-design and energy labelling no exceptional</p> | <p>[The members of the Ecodesign Expert Group shall receive the invitation to the meeting and the draft agenda not less than 30 calendar days before the meeting along with .<del>They shall receive the draft delegated acts and any other relevant documents sufficiently in</del></p> |



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| <p>other relevant documents sufficiently in advance of the meeting of the Expert Group and not less than 14 calendar days before the date of the meeting. In <input type="text"/> urgent or exceptional cases, this time limit may be reduced to 5 calendar days before the date of the meeting.]</p>                                                                                                                                                                                                                                                                         | <p>case has happened. Note that real exceptional cases dealing with actual exceptional risks for the environment/consumer can be dealt within other EU laws dealing with emergency situations (for example another pandemic).</p> | <p><del>advance of the meeting of the Expert Group and not less than 14 calendar days before the date of the meeting. In</del> urgent or exceptional cases, this time limit may be reduced to <del>5</del> 15 calendar days before the date of the meeting.]</p> |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                  |
| Article 18                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                  |
| Self-regulation measures                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                  |
| <p>1. <del>Two or more economic</del> <b>Economic</b> operators may submit to the Commission a self-regulation measure establishing ecodesign requirements for products to the Commission as an alternative to a delegated act adopted pursuant to Article 4 not falling within the scope of a delegated <b>implementing delegated</b> act adopted pursuant to Article 4. Those operators shall provide evidence that the criteria referred to in paragraph 3, points (a) to (e), are fulfilled. With respect to paragraph <del>32</del>, point (ae), that evidence shall</p> |                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                  |



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| consist of a structured technical, environmental and economic analysis, justifying the ecodesign requirements and objectives of the self- regulation measure, and assessing the impacts of the ecodesign requirements set in that self- regulation measure. |  |   |
|                                                                                                                                                                                                                                                             |  |   |
| 2. The <b>submitted</b> self-regulation measure shall contain the following information:                                                                                                                                                                    |  |   |
|                                                                                                                                                                                                                                                             |  |   |
| (a) a list of the economic operators that are signatories to the self-regulation measure;                                                                                                                                                                   |  |   |
|                                                                                                                                                                                                                                                             |  |   |
| (b) the ecodesign requirements applicable to products covered by the self-regulationmeasure;                                                                                                                                                                |  |   |
|                                                                                                                                                                                                                                                             |  |   |
| (c) a detailed, transparent and objective monitoring plan, with clearly identified responsibilities for industry and independent inspectors, including the criteria set out inpoint 6 of Annex VII;                                                         |  |   |
|                                                                                                                                                                                                                                                             |  |   |
| (d) rules on information                                                                                                                                                                                                                                    |  | - |



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| to be reported by signatories and on testing and inspections. <b>and;</b>                                                                                                                                                                                                                                                                                                                                                                                         |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |  |
| (e) an explanatory note explaining how the submitted self-regulation measure would meet the objectives of this Regulation more quickly or at lesser expense than mandatory requirements under Union law, supported by evidence.                                                                                                                                                                                                                                   |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |  |
| The information referred to in this paragraph shall be kept up-to-date and be available on a publicly accessible website.                                                                                                                                                                                                                                                                                                                                         |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |  |
| 3. The Commission shall assess <b>the submitted</b> <del>the proposed</del> self-regulation measure, and, where necessary, shall seek scientific advice from Union decentralised agencies. <b>In the assessment the Commission</b> <del>On the basis of that assessment,</del> it shall <b>verify whether</b> <del>establish whether</del> it is a valid alternative to a delegated act adopted pursuant to Article 4 where the following criteria are fulfilled: |  |  |
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| <p>(a) the self-regulation measure contributes to improving the environmental sustainability of products and ensuring the free movement in the internal market <b>more</b> quickly or at a lesser expense than <del>would a delegated act</del> <b>implementing delegated</b> act adopted pursuant to Article 4;, <b>and consists of product requirements that are necessary to achieve the objectives of this Regulation;</b></p> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |  |
| <p><b>(aa) the self-regulation measure is submitted by at least two economic operators;</b></p>                                                                                                                                                                                                                                                                                                                                    |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |  |
| <p>(b) the market share in terms of volume of the signatories to the self-regulation measure in relation to the products covered by that measure is at least 80 % of units placed on the market or put into service;</p>                                                                                                                                                                                                           |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |  |
| <p>(c) the self-regulation measure complies with the criteria set out in Annex VII;</p>                                                                                                                                                                                                                                                                                                                                            |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |  |
| <p>(d) <del>the product covered</del></p>                                                                                                                                                                                                                                                                                                                                                                                          |  |  |





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| by the self-regulation measure does not fall within the scope of a delegated act adopted pursuant to Article 4;                                                                                                        |                                                                                             |  |
| (e) the self-regulation measure is in line with Union legislation law and international trade commitments of the Union.                                                                                                |                                                                                             |  |
|                                                                                                                                                                                                                        |                                                                                             |  |
| (f) the independent inspectors referred to in point (c) of paragraph 2 have been selected and properly empowered as regards the self-regulation measure in accordance with Annex VII (6).                              |                                                                                             |  |
|                                                                                                                                                                                                                        |                                                                                             |  |
| (g) the self-regulation measure does not contain a label that can be confused with the Ecodesign label or the Energy label.                                                                                            |                                                                                             |  |
|                                                                                                                                                                                                                        |                                                                                             |  |
| The Commission may, if appropriate given the market structure for the product(s) in question, adjust the percentage provided in point b) downwards if the 80 % threshold results in the exclusion of or a disadvantage | We welcome and support this new paragraph which responds to the concerns previously raised. |  |



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| to SMEs.                                                                                                                                                                                                                                                                                                                                                               |  |  |
| The Commission shall during the assessment consult the Ecodesign Forum and the Ecodesign Expert Group, in said order, on the submitted self-regulation measure.                                                                                                                                                                                                        |  |  |
|                                                                                                                                                                                                                                                                                                                                                                        |  |  |
| The Commission shall adopt an implementing act containing a list of self-regulation measures <b>which fulfil the criteria of this paragraph</b> established as valid alternatives to a delegated act adopted pursuant to Article 4. That implementing act shall be adopted in accordance with the <b>examination</b> advisory procedure referred to in Article 67(32). |  |  |
|                                                                                                                                                                                                                                                                                                                                                                        |  |  |
| 4. The Commission may at any point in time request the signatories of a self-regulation measure <b>listed in an implementing act adopted pursuant to paragraph 3, third subparagraph</b> , to submit a revised and updated version of that measure in view of relevant market or technological developments within the product                                         |  |  |



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| <p>group concerned or where it has reason to believe that the criteria set out in paragraph 3 are no longer fulfilled. <b>The Commission shall set a deadline, appropriate for the product group in question, for the submission of such a revised and updated version.</b></p>                                                                                                                                                                                                                                                                                    |                                                                    |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                    |  |
| <p>5. Once a self-regulation measure has been listed in an implementing act adopted pursuant to paragraph 3, <del>second</del> <b>third</b> 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 <b>and freely</b> accessible website.</p> | <p>We welcome the addition of the words highlighted in yellow.</p> |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                    |  |
| <p>6. Where the Commission considers, <del>based on information received pursuant to paragraphs 4</del></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                    |  |



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| <p>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. The list shall be updated in accordance with the examination procedure referred to in Article 67(3).</p> |                                                                                                                                                                                                                               |                                                    |
| Article 19<br>Micro, small and medium-sized enterprises                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                               |                                                    |
| 1. In the context of programmes from which SMEs can benefit, the Commission shall take into account make sure there are initiatives which help                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <p>Italy welcomes the amendments to recital 45 and Article 19 in the third compromise text.</p> <p>It is also stressed that micro and SMEs do not have the financial resources to actively participate in the work of the</p> | <p><b>1a. The Commission shall finance the</b></p> |

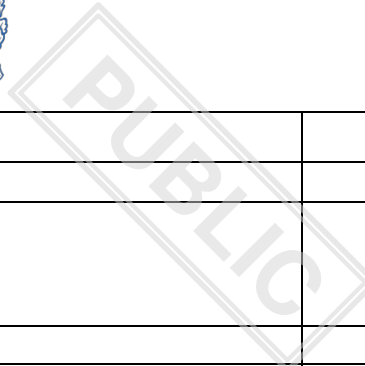


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| <p>SMEs to integrate environmental sustainability aspects including energy efficiency in their value chain.</p>                                                                                                                                                                                                                                                                                                                                                                                        | <p>Forum, and would risk being excluded. However, ecodesign measures will have to be implemented mainly by SMEs. Therefore, their presence in the Ecodesign Forum is necessary and should be guaranteed and funded by the Commission.</p>                                                                                                                                                                                                                                                                                                                                                          | <p><b>participation of SMEs as well as of their representative organisations in the ‘Ecodesign Forum’ in order to ensure that the Eco-design measures are SME-fit.</b></p>                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p>2. When adopting <del>delegated implementing—delegated</del> acts pursuant to Article 4 the Commission shall, <del>where appropriate,</del> accompany those acts with guidelines <b>and digital tools</b> covering specificities of SMEs active in the product or product group sector affected for facilitating the application of this Regulation by SMEs. <b>The Commission shall provide specific support for SME’s for the implementation of requirements regarding product passports.</b></p> | <p>With reference to the second paragraph of Article 19, a further specification seems necessary. Since Ecodesign is mainly based on LCA, we stress that SMEs need a specific tool at the European level to implement this assessment method in a simplified way. Indeed, most of them are not used to work with LCA in terms of staff skills, analysis laboratories and analysis costs. A possible solution to address this concern could be an online database developed by the Commission and available free of charge for most product groups with executed LCAs in order to reduce costs.</p> | <p>When adopting <del>delegated</del> <b>implementing delegated</b> acts pursuant to Article 4 the Commission shall, <del>where appropriate,</del> accompany those acts with guidelines <b>and digital tools</b> covering specificities of SMEs active in the product or product group sector affected for facilitating the application of this Regulation by SMEs. <b>The Commission shall provide specific support for SME’s for the implementation of the main requirements including specifically the adoption of LCAs and of the regarding product passports.</b></p> |
| <p>3. Member States shall take appropriate measures to help SMEs apply ecodesign requirements set out in <del>delegated implementing—delegated</del> acts adopted pursuant to Article 4.</p>                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p>Those measures shall at least</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |



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| include ensuring the availability of one-stop shops or similar mechanisms to raise awareness and create networking opportunities for SMEs to adapt to requirements. <b>The Commission shall may provide support in the implementation of those measures.</b> |  |  |
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| In addition, without prejudice to applicable State aid rules, such measures may include:                                                                                                                                                                     |  |  |
|                                                                                                                                                                                                                                                              |  |  |
| (a) financial support, including by giving fiscal advantages and providing physical and digital infrastructure investments;                                                                                                                                  |  |  |
|                                                                                                                                                                                                                                                              |  |  |
| (b) access to finance;                                                                                                                                                                                                                                       |  |  |
|                                                                                                                                                                                                                                                              |  |  |
| (c) specialised management and staff training;                                                                                                                                                                                                               |  |  |
|                                                                                                                                                                                                                                                              |  |  |
| (d) organisational and technical assistance.                                                                                                                                                                                                                 |  |  |
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| <b>Chapter VI - Destruction of unsold consumer products</b>                                                                                                                                                                                                  |  |  |
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| <b>SECTION I – GENERAL</b>                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                         |
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| <b>Article 20aa</b><br><b>General principle to prevent discarding</b>                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                         |
|                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                         |
| <b>Economic operators shall take necessary measures which can reasonably be expected to prevent the need to discard unsold consumer products that are fit for use.</b> | We agree with this new Article, even though it cannot be verified. Therefore it is a mere principle.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                         |
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| <b>Article 20a</b>                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                         |
| <b>Policy of management of unsold consumer products</b>                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                         |
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| <b>An economic operator that <del>repeatedly</del> discards unsold consumer products, or has unsold consumer products discarded on their behalf, shall set up:</b>     | <p>Any economic operator worldwide discards products, it is inevitable The new formulation sets an ecodesign obligation for any economic operator worldwide to set up a policy preventing the destruction of its own unsold consumer goods, + an implementing strategy + annual updates of the implementation of this policy. This is not only too much and should be limited to economic operators repeatedly discarding unsold products, but is also impossible to verify (how good is the set up policy?).</p> <p>In addition, product exemptions should be added to limit the impact of the obligation.</p> <p>Remind that destruction=discarding a product as a waste due</p> | <b>An economic operator that repeatedly discards unsold consumer products, or has unsold consumer products discarded on their behalf, shall set up:</b> |



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|                                                                                                                                                                                                                                                                                                                                                            | <p>to definition N 35</p> <p>The format to be used is the one defined within 12 months by the Commission through an implementing act according to Article 20.2. The list of exemptions has to be added to avoid unnecessary policies and strategies to be put in place by the economic operators</p> |                                                                                                                                                                                                                                                                                                                                                                                                                                       |
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| <p><del>a) A policy for minimizing waste generation of unsold consumer products and promoting and supporting sustainable production and consumption models</del></p>                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                       |
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| <p><del>b) A a policy limiting preventing the number destruction of unsold consumer products and waste generation of unsold consumer products, including an implementation strategy. Such economic operators shall also provide a description of the status of the implementation and results achieved by the policy, updated on a yearly basis.</del></p> |                                                                                                                                                                                                                                                                                                      | <p><del>b) A a policy limiting preventing the number destruction of unsold consumer products placed on the market or put into service in the EU and waste generation of unsold consumer products, including an implementation strategy to be regularly updated. Such economic operators shall also provide a description of the status of the implementation and results achieved by the policy, updated on a yearly basis.</del></p> |
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The information referred to above shall be disclosed at least on an easily accessible page of the economic operators' website.

The information referred to above shall be disclosed at least on an easily accessible page of the economic operators' website using the format

setting the details and including the delimitation of product types or categories and how the information is to be verified set out according to Article 20.2

Unsold consumer products that are discarded for one of the reasons below shall not trigger the obligations in this Article:

- a) health and safety reasons;
- b) the products are damaged as a result of their handling or detected after a product has been returned by a consumer, despite the measures taken in accordance with Article 20a;
- c) the 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;
- e) products which are illegal under national or Union law including non-compliant products, counterfeit products, or products rendered unsellable due to infringement of intellectual property rights;
- f) products exceeding their expiry date; or
- g) products for which destruction is the option with the least negative



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|                                                                                                                                                                                                                                                                                                                                                                                                       |  | environmental impact.<br>h) products that have become non-compliant with national or EU legislation after being placed on the market or put into service due to the coming into force of new or changed legislation. |
|                                                                                                                                                                                                                                                                                                                                                                                                       |  |                                                                                                                                                                                                                      |
| Economic operators that are subject to the obligation to publish the sustainability reporting in their management report pursuant to Articles 19a or 29a of Directive 2013/34/EU may include the information referred to above in that sustainability reporting [, provided such information is covered by the sustainability reporting standards adopted pursuant to Article 29b of that Directive]. |  |                                                                                                                                                                                                                      |
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| This article shall not apply to small and microenterprises.                                                                                                                                                                                                                                                                                                                                           |  |                                                                                                                                                                                                                      |
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| SECTION 2 –<br>TRANSPARENCY                                                                                                                                                                                                                                                                                                                                                                           |  |                                                                                                                                                                                                                      |
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| Article 20<br><b>Disclosure of information on</b><br><del>Destruction of</del> unsold consumer products                                                                                                                                     |                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                             |
| 1. An economic operator, <del>which is not an SME</del> , that discards unsold consumer products directly, <del>or on behalf of another economic operator or has unsold consumer products discarded on their behalf</del> , shall disclose: | We reiterate the proposal that only products where a product specific act has been enforced should be under this obligation and not immediately all products covered by the regulation.<br><br>The proper exemptions for triggering a reporting obligation should be added to be coherent and reduce administrative burden. | 1. An economic operator <del>which is not an SME</del> , that discards unsold consumer products <b>covered by a delegated act</b> directly, <del>or on behalf of another economic operator</del> or has unsold consumer products discarded on their behalf, shall disclose: |
| (a) the number and <del>weight amount (in tons)</del> of unsold consumer products discarded per year, differentiated per type or category of products;                                                                                      | -                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                             |
| (b) the reasons for the discarding of products;                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                             |
| (c) the <b>proportion of the</b> delivery of discarded products, <b>whether directly or through a third party, to each of the following activities:</b> preparing for re-use, remanufacturing, recycling, <b>other recovery, for</b>        |                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                             |



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| <p>example, energy recovery and disposal operations in accordance with the waste hierarchy as defined by Article 4 of Directive 2008/98/EC .</p>                                                                                                                   |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <p>Unsold consumer products that have become non-compliant with national or EU legislation after being placed on the market or put into service due to the coming into force of new or changed legislation, are exempted from the requirements in paragraph 1.</p> |  | <p>Unsold consumer products that are discarded for one of the reasons bellow have <del>become non-compliant with national or EU legislation after being placed on the market or put into service due to the coming into force of new or changed legislation,</del> are exempted from the requirements in this paragraph 1. :-</p> <ul style="list-style-type: none"><li>a) health and safety reasons;</li><li>b) the products are damaged as a result of their handling or detected after a product has been returned by a consumer, <del>despite the measures taken in accordance with Article 20a;</del></li><li>c) the fitness of the product for the purpose for which it is intended, taking into account, where applicable, Union and national law and technical standards;</li><li>d) refusal of products for donation, preparing for re-use or remanufacturing; or</li><li>e) products which are illegal under national or Union law including non-compliant products, counterfeit products, or products rendered unsellable due to infringement of intellectual property rights;</li><li>f) products exceeding their expiry date;</li></ul> |



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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                    | <p>or</p> <p>g) products for which destruction is the option with the least negative environmental impact.</p> <p>h) products that have become non-compliant with national or EU legislation after being placed on the market or put into service due to the coming into force of new or changed legislation</p> |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                    |                                                                                                                                                                                                                                                                                                                  |
| <p>The economic operator shall disclose that information <del>on a freely</del> at least <b>on an easily accessible page of their website.</b></p> <p><b>Economic operators that are subject to the obligation to publish the sustainability reporting in their management report pursuant to Articles 19a or 29a of Directive 2013/34/EU may include the information referred to above in that sustainability reporting [, provided such information is covered by the sustainability reporting standards adopted pursuant to Article 29b of that Directive].</b></p> |                                                    |                                                                                                                                                                                                                                                                                                                  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                    |                                                                                                                                                                                                                                                                                                                  |
| <b>The information shall be</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | The sentence “shall cover unsold consumer products | <b>The information shall be disclosed on an</b>                                                                                                                                                                                                                                                                  |



|                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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| <p>disclosed on an annual basis and shall cover the <b>unsold consumer</b> products discarded during the previous financial year. The information for each year shall be publically available for a period of 5 years. The first disclosure shall cover <b>unsold consumer</b> products <del>rejected—discarded</del> during the first full financial year of this regulation being in force.</p> | <p>discarded during the first full financial year of this regulation being in force” should be read with the provision in Point 2 where the Commission shall prepare the format for the disclosure of the unsold products within 12 months. However, should this not be the case the obligation for the economic operator should be delayed until when this format is ready. If the Commission respects the 12 months set out in 20.2 the two periods will coincide.</p> | <p>annual basis and shall cover the <b>unsold consumer</b> products discarded during the previous financial year. The information for each year shall be publically available for a period of 5 years. The first disclosure shall cover <b>unsold consumer</b> products <del>rejected—discarded</del> during the first full financial year of this regulation being in force <b>or during the first year ending on the date of application of the implementing act set out according to point 2 whichever is later.</b></p> |
| <p>The economic operator shall, upon request from a competent national authority, provide all the information and documentation necessary to demonstrate the delivery and reception of the products as disclosed pursuant to paragraph 1(c). Such information and documentation shall be provided in paper or electronic form within <b>30 days</b> of receipt of the request.</p>                | <p>The reporting obligation applies to products after their placing on the market, therefore the only competent authority is the market surveillance authority and the way to verify the quantities placed on the market is the fiscal documentation.</p>                                                                                                                                                                                                                | <p>The economic operator shall, upon request from a <del>competent</del> <b>national market surveillance</b> authority, provide all the information and documentation necessary to demonstrate the delivery and reception of the products <b>and their discarding</b> as disclosed pursuant to paragraph 1(c). Such information and documentation shall be provided in paper or electronic form within <b>30 days</b> of receipt of the request.</p>                                                                        |



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| <p><b>1a. The obligation in paragraph 1 of this Article shall not apply to small and micro enterprises. However, Commission shall be empowered to adopt implementing acts to specify that a specific SME is small or microenterprises, are to comply with the reporting obligation referred to in paragraph 1, in any of the following situations:</b></p> | <p>In regard to the exclusion from the transparency obligations of some enterprises, we would prefer to return to the original text. All the SMEs should be excluded.</p> <p>Alternatively, it should still be ensured that the Commission can also extend the exemption to medium-sized enterprises on a case-by-case basis.</p> | <p><b>1a. The obligation in paragraph 1 of this Article shall not apply to <del>small and micro enterprises</del> SME. However, Commission shall be empowered to adopt implementing acts to specify that a specific SME is <del>small or microenterprises</del> SME, are to comply with thereporting obligation referred to in paragraph 1, in any of the following situations:</b></p> |
| <p><b>(i) where, <del>for medium-sized enterprises,</del> there is sufficient evidence that they account for a substantial <del>proportion number</del> of unsold consumer products being <del>destroyeddiscarded</del>; or</b></p>                                                                                                                        |                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                         |
| <p><b>(ii) where, <del>for microenterprises or small enterprises or medium-sized enterprises,</del> there is sufficient evidence that, by handling unsold consumer products directly, oron behalf of one or several economic operators, they allow such economic operators, subject to the</b></p>                                                         |                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                         |



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| obligation referred to in paragraph 1, to circumvent it.                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                     |
| 2. The Commission shall <del>may</del> adopt implementing acts setting out the details and format, including the delimitation of product types or categories and how the information is to be verified, with consideration given to the need to protect sensitive information and trade secrets, for the disclosure of the information referred to in paragraph 1 by economic operators not disclosing them in their management report as referred to in paragraph 1, fourth subparagraph. |                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                     |
| The first implementing act shall be adopted no later than [OJ note: 6–12 months after entry into force of this regulation].                                                                                                                                                                                                                                                                                                                                                                | <p>The reporting shall be the same for all economic operators irrespective of the specific place where this reporting is done Therefore within 12 months the Commission shall define one implementing act setting the global details and format of the reporting obligations and how the information is to be verified valid for all economic operators.</p> <p><b>Other acts shall follow for the specific product types when they are addressed.</b></p> | <p><b>The first implementing act</b> setting out the details and format, and how the information is to be verified, with consideration given to the need to protect sensitive information and trade secrets shall be adopted no later than [OJ note: 6 12 months after entry into force of this regulation]. Other acts including the delimitation of product types or categories shall follow.</p> |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                     |





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| Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(3).                                                                                                                                                                                                                                                                                                                               |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |  |
| <b>3. The Commission shall be empowered to adopt delegated implementing 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, setting out the prohibition of destroying unsold consumer products by specifying:</b> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |  |
| <b>(ia) the type of unsold consumer products for which economic operators are prohibited to destroy unsold consumer products in the Union,</b>                                                                                                                                                                                                                                                                                                    |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |  |
| <b>(iib) the exemptions applicable to this prohibition of unsold</b>                                                                                                                                                                                                                                                                                                                                                                              |  |  |



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| consumer products                                                                                                                                                                                                                                                                                                         |  |  |
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| (iii) the reporting obligation of the economic operators on the compliance with this prohibition of unsold consumer products, as well as on the compliance with the exemptions if applicable.                                                                                                                             |  |  |
|                                                                                                                                                                                                                                                                                                                           |  |  |
| (d) the implementing date, and where appropriate, any staged or transitional measure or period regarding the application of the prohibition of destroying unsold consumer products shall be fixed taking account, in particular, of possible impact on SMEs or on specific product groups manufactured primarily by SMEs. |  |  |
|                                                                                                                                                                                                                                                                                                                           |  |  |
| Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(3).                                                                                                                                                                                                       |  |  |
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| 3a. The implementing act referred to in paragraph 3 shall meet the following criteria respect the following principles:                                                                                                                           |  |  |
|                                                                                                                                                                                                                                                   |  |  |
| (a) <del>the destruction of unsold the considered type of unsold consumer products falling within is prevalent, without reasonable justifications,</del>                                                                                          |  |  |
|                                                                                                                                                                                                                                                   |  |  |
| (b) <del>certain product group has significant the prohibition of destroying the considered type of unsold consumer products is likely to reduce the negative environmental impact. without causing disproportional administrative burdens.</del> |  |  |
|                                                                                                                                                                                                                                                   |  |  |
| <del>3.b. The prohibition referred to in paragraph 3 shall not apply to SMEs, except:</del>                                                                                                                                                       |  |  |
|                                                                                                                                                                                                                                                   |  |  |
| (ia) <del>where, for medium-sized enterprises, there is sufficient evidence that they account for a substantial</del>                                                                                                                             |  |  |



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| proportion of unsold consumer products being destroyed;                                                                                                                                                                                                                                                                                                                                       |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                               |  |  |
| <del>(iib) for microenterprises, small enterprises or medium-sized enterprises, there is sufficient evidence that, by discarding unsold consumer products directly, or on behalf of one or several economic operators, they allow such economic operators, subject to the obligation referred to in paragraph 3 they are used to circumvent it the prohibition referred to paragraph 3.</del> |  |  |
| <del>3.c. The exemptions referred to in point (c) of paragraph 1 shall respect the following principles:</del>                                                                                                                                                                                                                                                                                |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                               |  |  |
| <del>(a) The exemption shall apply to all or part of the prohibition,</del>                                                                                                                                                                                                                                                                                                                   |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                               |  |  |
| <del>(b) The exemption shall be adapted to the specificities of the type of unsold consumer products</del>                                                                                                                                                                                                                                                                                    |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                               |  |  |
| <del>(c) where appropriate,</del>                                                                                                                                                                                                                                                                                                                                                             |  |  |



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| <del>the exemption shall be temporary or permanent</del>                                                                                                                 |  |  |
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| <del>(d) The exemption shall allow recycling or energy recovery as appropriate, in the event that any preparation for re-use is not appropriate.</del>                   |  |  |
|                                                                                                                                                                          |  |  |
| <del>The exemptions shall not constitute a means of arbitrary discrimination and shall be based on</del>                                                                 |  |  |
| <del>one of the following justifications:</del>                                                                                                                          |  |  |
|                                                                                                                                                                          |  |  |
| <del>(i) health and safety concerns;</del>                                                                                                                               |  |  |
|                                                                                                                                                                          |  |  |
| <del>(ii) damage to products as a result of their handling or detected after a product has been returned by a consumer;</del>                                            |  |  |
|                                                                                                                                                                          |  |  |
| <del>(iii) fitness of the product for the purpose for which it is intended, taking into account, where applicable, Union and national law and technical standards;</del> |  |  |
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| <del>(iv) refusal of products for donation, preparing for re-use or remanufacturing;</del>                                                                                               |  |  |
|                                                                                                                                                                                          |  |  |
| <del>(v) non-compliant products, counterfeit products, or products rendered unsaleable due to infringement of intellectual property rights.</del>                                        |  |  |
|                                                                                                                                                                                          |  |  |
| <del>4. When prioritising unsold consumer products to be covered by preparing a delegated act referred to in paragraph 3, the Commission shall:</del>                                    |  |  |
|                                                                                                                                                                                          |  |  |
| <del>(a) assess the prevalence and environmental impact of the destruction of specific consumer products, including the resource and energy waste resulting from such destruction;</del> |  |  |
|                                                                                                                                                                                          |  |  |
| <del>(b) take into account the information disclosed by economic operators pursuant to paragraph 1;</del>                                                                                |  |  |
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| <p>(e) <del>consult the Ecodesign Forum referred to in Article 17 and the Ecodesign Expert Group referred to in Article 17a, and take account of their</del> its views on the <del>prioritisation of products subject to possible prohibitions of destruction of unsold</del> consumer products referred to in paragraph 3</p> |  |  |
|                                                                                                                                                                                                                                                                                                                                |  |  |
| <p>4.a. <del>When preparing a draft implementing act referred to in paragraph 3, the Commission shall:</del></p>                                                                                                                                                                                                               |  |  |
|                                                                                                                                                                                                                                                                                                                                |  |  |
| <p>(ea) <del>carry out an impact assessment based on best available evidence and analyses, and on additional studies as necessary;</del></p>                                                                                                                                                                                   |  |  |
|                                                                                                                                                                                                                                                                                                                                |  |  |
| <p>(db) <del>carry out appropriate consultation with stakeholders, the Ecodesign Forum referred to in Article 17a and the Ecodesign Expert Group referred to in Article 17a;</del></p>                                                                                                                                         |  |  |
|                                                                                                                                                                                                                                                                                                                                |  |  |
| <p>5. <del>Where</del> <del>When</del> <del>unsold</del></p>                                                                                                                                                                                                                                                                   |  |  |



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| consumer products are destroyed under an exemption referred to in paragraph 3, second subparagraph, the responsible economic operator shall disclose <b>at least on a freely an easily accessible page of their website, if such exists</b> or otherwise make publicly available:                               |  |  |
|                                                                                                                                                                                                                                                                                                                 |  |  |
| (a) the number of unsold consumer products <b>units</b> destroyed;                                                                                                                                                                                                                                              |  |  |
|                                                                                                                                                                                                                                                                                                                 |  |  |
| (b) the reasons for their destruction, referring to the applicable exemption;                                                                                                                                                                                                                                   |  |  |
|                                                                                                                                                                                                                                                                                                                 |  |  |
| (c) the <b>proportion of the</b> delivery of the products destroyed to <b>each of the following activities:</b> recycling, <b>other recovery, e.g.</b> energy recovery and disposal operations in accordance with the <b>exemption and the waste hierarchy</b> as defined by Article 4 of Directive 2008/98/EC. |  |  |
|                                                                                                                                                                                                                                                                                                                 |  |  |
| The details and format for the                                                                                                                                                                                                                                                                                  |  |  |





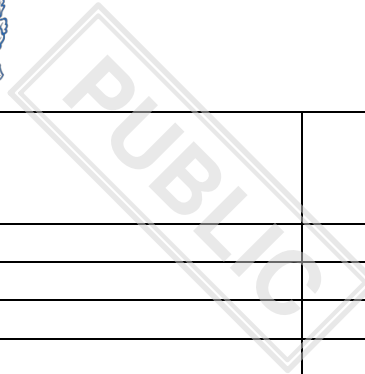
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| <p>disclosure of information shall be provided in the implementing act adopted pursuant to paragraph 23. shall apply to the information to be disclosed pursuant to this paragraph, unless the delegated act adopted pursuant to paragraph 3 provides otherwise.</p> |  |  |
|                                                                                                                                                                                                                                                                      |  |  |
| <p>6. This Article shall not apply to SMEs.</p>                                                                                                                                                                                                                      |  |  |
|                                                                                                                                                                                                                                                                      |  |  |
| <p>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:</p>       |  |  |
|                                                                                                                                                                                                                                                                      |  |  |
| <p>(a) medium-sized enterprises, where there is sufficient evidence that they account for a substantial proportion of unsold consumer products being destroyed;</p>                                                                                                  |  |  |
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| <p>(b) microenterprises, small enterprises or medium-sized</p>                                                                                                                                                                                                       |  |  |



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| <del>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</del>                          |  |  |
|                                                                                                                                                                                                                                                                |  |  |
| <del>6. When unsold consumer products are destroyed under an exemption referred to in paragraph 3, the economic operator shall, upon request from a competent national authority, provide all the information and documentation necessary to demonstrate</del> |  |  |
|                                                                                                                                                                                                                                                                |  |  |
| <del>(i) the applicability of an exemption from a prohibition to destroy, and</del>                                                                                                                                                                            |  |  |
|                                                                                                                                                                                                                                                                |  |  |
| <del>(ii) the delivery and reception of the products as disclosed pursuant to paragraph 5(c)</del>                                                                                                                                                             |  |  |
|                                                                                                                                                                                                                                                                |  |  |
| <del>Such information and documentation shall be</del>                                                                                                                                                                                                         |  |  |



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| <del>provided within [30 days] of receipt of a request by a competent national authority.</del>                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                    |
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| <b>SECTION 3 - PROHIBITION</b>                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                    |
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| <b>Article 20b</b>                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                    |
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| <b>Prohibition against the destruction of unsold consumer products that are apparel or clothing accessories</b>                                                                                   | <p>Italy examined the Swedish Presidency's proposal as a whole in relation to Article 20 and the introduction of a direct ban for certain product groups.</p> <p>As represented on several occasions, Italy is against the introduction of a general ban on the destruction of unsold consumer goods in the regulation. Likewise, we are against the introduction of a direct ban for some product groups (see comments below).</p> <p>Therefore, the entire article should be deleted and the prohibition of destruction shall be decided via implementing acts according to the following Article 20c.</p> | <del>Article 20b Prohibition against the destruction of unsold consumer products that are apparel or clothing accessories</del>                                                                                                                                                    |
|                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                    |
| <b>1. From [24 months after entry into force of this Regulation], destruction of unsold consumer products that are apparel or clothing accessories, listed in Chapters 61 and 62 of the TARIC</b> | <p>Why only apparel or clothing accessories?</p> <p>In our view, this approach:</p> <ul style="list-style-type: none"> <li>- It is not based on any scientific basis, lacking at present the necessary data on which to base such a ban, whether general in nature or specific to certain product groups. In this regard, we would also stress that the same conclusion</li> </ul>                                                                                                                                                                                                                           | <del>From [24 months after entry into force of this Regulation], destruction of unsold consumer products that are apparel or clothing accessories, listed in Chapters 61 and 62 of the TARIC established in Council Regulation (EEC) No 2658/87<sup>68</sup>, is prohibited.</del> |



**established in Council Regulation (EEC) No 2658/87<sup>68</sup>, is prohibited.**

has been reached by the research commissioned by the European Commission on the topic (see, Data On Destruction Of Unsold Consumer Products, October 2022). We read at page 21 “No EU-wide studies were identified with quantitative data on the destinations and especially the destruction of unsold textile products. Studies were only found from western and northern European countries; practices in southern and eastern Member States are likely to be different, not least due to different infrastructural and regulatory drivers (such as accessibility and cost of incineration and/or landfilling).”

And again, “[...] national infrastructure and policy may have a large influence on the destinations of unsold products, meaning that basing EU-wide estimates on the practices of a select number of countries might lead to inaccuracies. Further data is needed from a more representative share of Member States in order to provide a more comprehensive picture of the EU.”

In addition, the report shows that comparison between the compiled studies is difficult and that the majority of studies were based on limited sample sizes, from which estimates for the whole sector were extrapolated. Moreover, the accuracy of the estimation is limited “as they are likely highly influenced by the sample. In addition, some of the figures cited – such as those relating to the proportion of returned goods being destroyed – are now almost ten years old”;

-It is discriminatory, contrary to the intentions stated in the new Article XX, toward the product groups chosen for the introduction of a different ban. Unlike the product groups for which the ban will be introduced by implementing acts,



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|                                                                                                                                                                                                                                                                                                                                                                                                            | <p>those to be banned under the new Article X are chosen without a prior impact assessment.</p> <p>In regard to the exclusion from the ban of some enterprises, we would prefer to return to the original text. All the SMEs should be excluded. Alternatively, it should still be ensured that the Commission can also extend the exemption to medium-sized enterprises on a case-by-case basis.</p> |                                                                                                                                                                                                                                                                                                                                                                                                             |
|                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                             |
| <p><b>2.</b> The Commission shall [OJ note: 12 months after entry into force of this Regulation] adopt implementing acts specifying the relevant exemptions from the prohibition against destruction of unsold consumer products that are apparel or clothing accessories based on the principles laid down in Article 20c paragraph 4 and on the justifications laid down in Article 20c paragraph 5.</p> |                                                                                                                                                                                                                                                                                                                                                                                                       | <p><del>The Commission shall [OJ note: 12 months after entry into force of this Regulation] adopt implementing acts specifying the relevant exemptions from the prohibition against destruction of unsold consumer products that are apparel or clothing accessories based on the principles laid down in Article 20c paragraph 4 and on the justifications laid down in Article 20c paragraph 5.</del></p> |
|                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                             |
| <p><b>3.</b> When unsold consumer products that are apparel or clothing accessories are destroyed under an exemption referred to in paragraph 2, the</p>                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                       | <p><del>When unsold consumer products that are apparel or clothing accessories are destroyed under an exemption referred to in paragraph 2, the responsible economic operator shall disclose</del></p>                                                                                                                                                                                                      |



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| responsible economic operator shall disclose information as laid down in Article 20c paragraph 6.                                                                                                                                                                                                    |  | <del>information as laid down in Article 20c paragraph 6.</del>                                                                                                                                                                                                                                       |
|                                                                                                                                                                                                                                                                                                      |  |                                                                                                                                                                                                                                                                                                       |
| <u>4.</u> When unsold consumer products that are apparel or clothing accessories are destroyed under an exemption referred to in paragraph 2, the economic operator shall, upon request from a competent national authority, provide all the information and documentation necessary to demonstrate: |  | <del>When unsold consumer products that are apparel or clothing accessories are destroyed under an exemption referred to in paragraph 2, the economic operator shall, upon request from a competent national authority, provide all the information and documentation necessary to demonstrate:</del> |
|                                                                                                                                                                                                                                                                                                      |  |                                                                                                                                                                                                                                                                                                       |
| <u>(i)</u> the applicability of an exemption from the prohibition against destruction, and                                                                                                                                                                                                           |  | <del>the applicability of an exemption from the prohibition against destruction, and</del>                                                                                                                                                                                                            |
|                                                                                                                                                                                                                                                                                                      |  |                                                                                                                                                                                                                                                                                                       |
| <u>(ii)</u> the delivery and reception of the products as disclosed pursuant to paragraph 3(c)                                                                                                                                                                                                       |  | <del>the delivery and reception of the products as disclosed pursuant to paragraph 3(c)</del>                                                                                                                                                                                                         |
|                                                                                                                                                                                                                                                                                                      |  |                                                                                                                                                                                                                                                                                                       |
| Such information and documentation shall be provided within 30 days of receipt of a request by a                                                                                                                                                                                                     |  | <del>Such information and documentation shall be provided within 30 days of receipt of a request by a competent national authority.5. Paragraph 1 shall</del>                                                                                                                                         |



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| competent national authority.5. Paragraph 1 shall not apply to small or microenterprises.                                                                                                                                                                                                                   |  | not apply to small or microenterprises.                                                                                                                                                                                                                                                                  |
| 5. The Commission shall be empowered to adopt implementing acts to specify that the prohibition against destruction of unsold consumer products that are apparel or clothing accessories shall apply to small and microenterprises, where the Commission finds that there is sufficient evidence that they: |  | The Commission shall be empowered to adopt implementing acts to specify that the prohibition against destruction of unsold consumer products that are apparel or clothing accessories shall apply to small and microenterprises, where the Commission finds that there is sufficient evidence that they: |
| a) account for a substantial number of unsold consumer products that are apparel or clothing accessories being destroyed; or                                                                                                                                                                                |  | account for a substantial number of unsold consumer products that are apparel or clothing accessories being destroyed; or                                                                                                                                                                                |
| b) by destroying unsold consumer products that are apparel or clothing accessories directly, or on behalf of one or several economic operators, they allow such economic operators subject to the obligation referred to in paragraph 1, to circumvent it.                                                  |  | by destroying unsold consumer products that are apparel or clothing accessories directly, or on behalf of one or several economic operators, they allow such economic operators subject to the obligation referred to in paragraph 1, to circumvent it.                                                  |



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| <b>6.</b> Implementing acts referred to in this article shall be adopted in accordance with the examination procedure referred to in Article 67(3).                                                                                           |                                                                                                                                                                                                                                                                                                                         | <del>Implementing acts referred to in this article shall be adopted in accordance with the examination procedure referred to in Article 67(3).</del>                                                                                                                                                              |
|                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                   |
| <b>Article 20c</b>                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                   |
| <b>Empowerment to the Commission to adopt implementing acts setting out prohibitions against destruction of unsold consumer products</b>                                                                                                      |                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                   |
|                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                   |
| <b>1.</b> Notwithstanding Article 20b, the Commission shall be empowered to adopt implementing acts setting out prohibitions against destruction of unsold consumer products by economic operators when the following criteria are fulfilled: | The first paragraph should be modified after the deletion of Article 20b about apparel or clothing accessories.<br>The timing is the same as in Art 20b, that is 24 months after the entry into force of the Regulation, so that in any case apparel or clothing accessories can be the first products to be addressed. | <del>1. Notwithstanding Article 20b, the Commission shall, 24 months after entry into force of this Regulation be empowered , starting to adopt implementing acts setting out prohibitions against destruction of unsold consumer products by economic operators when the following criteria are fulfilled:</del> |
|                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                   |
| <b>(a)</b> destruction of the type of unsold consumer products has a negative environmental impact;                                                                                                                                           |                                                                                                                                                                                                                                                                                                                         | <del>a) the prevalence of the destruction of specific consumer products; b) consumer products placed on the EU market are repeatedly discarded by economic operators or discarded on</del>                                                                                                                        |





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|                                                                                         |  | <p>their behalf</p> <p>b) economic operators addressed in Article 20a have failed to set the requested policy for minimizing waste generation of unsold consumer products and promoting and supporting sustainable production and consumption models in the EU, for preventing the number destruction of unsold consumer products and waste generation of unsold consumer products, including an implementation strategy in the EU</p> <p>c) economic operators addressed in Article 20a have failed to provide a regularly updated description of the status of the implementation and results achieved by the requested policy;</p> <p><del>(a)</del> (d) the destruction of the type of unsold consumer products has a significant negative environmental impact</p> |
|                                                                                         |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| (b) a prohibition would not lead to significant disproportionate administrative burden. |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|                                                                                         |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 2. The implementing acts shall specify:                                                 |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
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| <b>(a)</b> the type of unsold consumer products that shall fall into the scope of the act, ensuring products are not treated in a discriminatory manner;                                      |  |  |
|                                                                                                                                                                                               |  |  |
| <b>(b)</b> the applicable exemptions;                                                                                                                                                         |  |  |
|                                                                                                                                                                                               |  |  |
| <b>(c)</b> the details and format of the reporting obligation of economic operators when destroying unsold consumer products under an exemption;                                              |  |  |
|                                                                                                                                                                                               |  |  |
| <b>(d)</b> the date of application, and where appropriate, any tiered or transitional measures or periods. Such dates shall be fixed taking account, in particular, possible impacts on SMEs. |  |  |
|                                                                                                                                                                                               |  |  |
| <b>3.</b> When preparing an implementing act referred to in paragraph 1, the Commission shall:                                                                                                |  |  |



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| <b>(a)</b> carry out an impact assessment based on best available evidence and analyses, and on additional studies as necessary;                                          |  |  |
|                                                                                                                                                                           |  |  |
| <b>(b)</b> carry out appropriate consultation with stakeholders, the Ecodesign Forum referred to in Article 17 and the Ecodesign Expert Group referred to in Article 17a; |  |  |
|                                                                                                                                                                           |  |  |
| <b>4.</b> Exemptions from the prohibition shall respect the following principles:                                                                                         |  |  |
|                                                                                                                                                                           |  |  |
| <b>(a)</b> The exemption shall apply to all or part of the prohibition;                                                                                                   |  |  |
|                                                                                                                                                                           |  |  |
| <b>(b)</b> The exemption shall be adapted to the specificities of the type of unsold consumer products in the scope;                                                      |  |  |
|                                                                                                                                                                           |  |  |
| <b>(c)</b> The exemption shall                                                                                                                                            |  |  |



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| apply for a limited or unlimited time.                                                                                                                                                   |  |                                                                                                                                                         |
|                                                                                                                                                                                          |  |                                                                                                                                                         |
| <b>5.</b> The exemptions shall not constitute a means of arbitrary discrimination and shall be based on one of the following justifications:                                             |  | <b>5.</b> The exemptions <del>shall not constitute a means of arbitrary discrimination and</del> shall be based on one of the following justifications: |
|                                                                                                                                                                                          |  |                                                                                                                                                         |
| <b>a)</b> health and safety reasons;                                                                                                                                                     |  | <b>a)</b> health and safety reasons <del>due to the destruction of the products;</del>                                                                  |
|                                                                                                                                                                                          |  |                                                                                                                                                         |
| <b>b)</b> the products are damaged as a result of their handling or detected after a product has been returned by a consumer, despite the measures taken in accordance with Article 20a; |  |                                                                                                                                                         |
| <b>c)</b> fitness of the product for the purpose for which it is intended, taking into account, where applicable, Union and national law and technical standards;                        |  |                                                                                                                                                         |
| <b>d)</b> refusal of products for donation, preparing for re-use or remanufacturing;                                                                                                     |  |                                                                                                                                                         |
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| <b>e) products which are illegal under national or Union law including non-compliant products, counterfeit products, or products rendered unsellable due to infringement of intellectual property rights;</b> |  |  |
| <b>f) products exceeding their expiry date;</b>                                                                                                                                                               |  |  |
| <b>g) products for which destruction is the option with the least negative environmental impact</b>                                                                                                           |  |  |
|                                                                                                                                                                                                               |  |  |
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| <b>6. When unsold consumer products are destroyed under an exemption referred to in paragraph 4 and 5, the responsible economic operator shall disclose:</b>                                                  |  |  |
|                                                                                                                                                                                                               |  |  |
| <b>(a) the number and weight of unsold consumer products units destroyed;</b>                                                                                                                                 |  |  |
|                                                                                                                                                                                                               |  |  |
| <b>(b) the reasons for their destruction, referring to the applicable exemption;</b>                                                                                                                          |  |  |



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| <p>(c) the proportion of the delivery of the products destroyed to each of the following activities: recycling, other recovery, e.g. energy recovery and disposal operations in accordance with the exemption and the waste hierarchy as defined by Article 4 of Directive 2008/98/EC.</p>                                                                                                                                                                                                                                                  |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |  |  |
| <p>The information referred to above shall be disclosed at least on an easily accessible page of the economic operator's website. Economic operators that are subject to the obligation to publish the sustainability reporting in their management report pursuant to Articles 19a or 29a of Directive 2013/34/EU may include the information referred to above in that sustainability reporting [, provided such information is covered by the sustainability reporting standards adopted pursuant to Article 29b of that Directive].</p> |  |  |



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| <b>7.</b> The details and format for the disclosure of information provided in the implementing act adopted pursuant to Article 20 paragraph 2 shall apply to the information to be disclosed pursuant to paragraph 6, unless the implementing act adopted pursuant to paragraph 1 provides otherwise. |  |  |
|                                                                                                                                                                                                                                                                                                        |  |  |
| <b>8.</b> When unsold consumer products are destroyed under an exemption referred to in paragraphs 4 and 5, the economic operator shall, upon request from a competent national authority, provide all the information and documentation necessary to demonstrate                                      |  |  |
|                                                                                                                                                                                                                                                                                                        |  |  |
| <b>(i)</b> the applicability of an exemption from a prohibition against destruction, and                                                                                                                                                                                                               |  |  |
|                                                                                                                                                                                                                                                                                                        |  |  |
| <b>(ii)</b> the delivery and reception of the products as                                                                                                                                                                                                                                              |  |  |



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| disclosed pursuant to paragraph 6(c)                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                |  |
|                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                |  |
| Such information and documentation shall be provided within [30 days] of receipt of a request by a competent national authority.                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                |  |
|                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                |  |
| <u>2.</u> This Article shall not apply to small and microenterprises. However, the Commission shall be empowered to adopt implementing acts to specify or may, in the implementing acts adopted pursuant to paragraph 1, provide that the prohibition against destruction of unsold consumer products referred to in paragraph 1 shall apply to small or microenterprises: | In regard to the exclusion from the ban of some enterprises, we would prefer to return to the original text. All the SMEs should be excluded. Alternatively, it should still be ensured that the Commission can also extend the exemption to medium-sized enterprises on a case-by-case basis. |  |
|                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                |  |
| (a) where there is sufficient evidence that they account for a substantial number of unsold consumer products being destroyed;                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                |  |
|                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                |  |
| (b) where there is                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                |  |





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| sufficient evidence that by discarding unsold consumer products directly or indirectly on behalf of one or several economic operators, they allow such economic operators to circumvent the prohibition to destroy unsold consumer products referred to in the implementing act. |                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                |
|                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                |
| 10. Implementing acts according to this Article shall be adopted in accordance with the examination procedure referred to in Article 67(3).                                                                                                                                      |                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                |
|                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                |
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|                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                |
| Article 20d<br>Prioritisation of unsold consumer products for setting a prohibition against destruction                                                                                                                                                                          | We support this new article.                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                |
|                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                |
| 1. The Commission shall, no later than [OJ Office: 36 months after entry into force of this Regulation] and once every 12 months thereafter, publish an indicative list of products                                                                                              | 36 months are too much for the list of products, it appears that after apparel and accessories the Commission would need a lot of time to decide the second product group.<br>A first list of products eligible for the prioritisation shall be published after 12 months within the Working Plan of Article 16. | 1. The Commission shall, <del>no later than [OJ Office: 36 months after entry into force of this Regulation]</del> and <del>once every 12 months thereafter, publish an indicative list of</del> include the products groups for which it intends to carry out |



|                                                                                                                                                                                                                                  |                                                                                                                                                                           |                                                                                                                     |
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| groups for which it intends to carry out impact assessments under Article 20c, taking into account:                                                                                                                              | There is also no scope in updating the list every 12 months. All the updated of the planning for the application of the ESPR shall be done in the Working Plan in Art. 16 | impact assessments under Article 20c, in the Working Plan established according to Article 16, taking into account: |
|                                                                                                                                                                                                                                  |                                                                                                                                                                           |                                                                                                                     |
| (a) the prevalence of the destruction of specific consumer products;                                                                                                                                                             |                                                                                                                                                                           |                                                                                                                     |
|                                                                                                                                                                                                                                  |                                                                                                                                                                           |                                                                                                                     |
| (b) comparative environmental impact resulting from such destruction;                                                                                                                                                            |                                                                                                                                                                           |                                                                                                                     |
|                                                                                                                                                                                                                                  |                                                                                                                                                                           |                                                                                                                     |
| (c) the information available including the information disclosed by economic operators pursuant to Article 20.                                                                                                                  |                                                                                                                                                                           |                                                                                                                     |
|                                                                                                                                                                                                                                  |                                                                                                                                                                           |                                                                                                                     |
| [2. The Commission shall, when carrying out an impact assessment as referred to in Article 5(4), assess whether a prohibition against destruction of the relevant product group should be established, pursuant to Article 20c.] |                                                                                                                                                                           |                                                                                                                     |
|                                                                                                                                                                                                                                  |                                                                                                                                                                           |                                                                                                                     |
| Chapter VII - Obligations of economic operators                                                                                                                                                                                  | Italy welcomes the amendments presented in third                                                                                                                          |                                                                                                                     |



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|                                                                                                                                                                                                                       | compromise text by the Swedish Presidency with regard to Articles 21-31. |  |
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| Article 21                                                                                                                                                                                                            |                                                                          |  |
| Obligations of manufacturers                                                                                                                                                                                          |                                                                          |  |
|                                                                                                                                                                                                                       |                                                                          |  |
| 1. When placing products covered by a <del>delegated</del> <b>implementingdelegated</b> act adopted pursuant to Article 4 on the market or putting them into service, manufacturers shall ensure that :               | <hr/>                                                                    |  |
|                                                                                                                                                                                                                       |                                                                          |  |
| (a) those products have been designed and manufactured in accordance with the requirements set out in <del>Article 6</del> the <del>delegated</del> <b>implementing delegated</b> acts adopted pursuant to Article 4; |                                                                          |  |
|                                                                                                                                                                                                                       |                                                                          |  |
| (b) those products are accompanied by the information required by <del>the</del> Article 7 and the <del>delegated</del> <b>implementing delegated</b> acts adopted pursuant to Article 4 <b>and</b> ;                 |                                                                          |  |



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| (c) a product passport is available in accordance with Article 8 and the <del>delegated</del> <b>implementing—delegated</b> acts adopted pursuant to Article 4.                                                                                                                                                                                                                                                                            |       |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                            |       |  |
| 2. Before placing a product covered by a <del>delegated</del> <b>implementing—delegated</b> act adopted pursuant to Article 4 on the market or putting it into service, manufacturers shall carry out the conformity assessment procedure specified in the <del>delegated</del> <b>implementing delegated</b> acts adopted pursuant to Article 4 and draw up the required technical documentation, or have it carried out on their behalf. | <hr/> |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                            |       |  |
| Where compliance of a product covered by a <del>delegated</del> <b>implementing—delegated</b> act adopted pursuant to Article 4 with the applicable requirements has been demonstrated by that procedure, manufacturers shall draw up an EU declaration of                                                                                                                                                                                 |       |  |



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| conformity in accordance with Article 37 and affix the CE marking in accordance with Article 39. However, where the Commission has specified alternative rules pursuant to Article 4, third subparagraph, point (cf), the manufacturer shall <del>draw up a conformity declaration and</del> affix conformity marking in accordance with those rules.                                                                                                                                                                                                                                          |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  |  |
| 3. Manufacturers shall keep the technical documentation and the EU declaration of conformity for 10 years after <b>the last item of the a product model covered by a delegated implementing delegated act</b> adopted pursuant to Article 4 has been placed on the market or put into service <b>unless a different period has been specified in that delegated implementing delegated act.</b> <del>Delegated acts adopted pursuant to Article 4 may specify a period longer or shorter than 10 years in order to take account of the nature of the products or requirements concerned.</del> |  |  |
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| <p>4. Manufacturers shall ensure that procedures are in place <b>for products covered by a delegated implementing—delegated act adopted pursuant to Article 4 which are part of a for</b> series production to remain in conformity with the applicable requirements. Changes in the production process, product design or in characteristics, as well as changes in harmonised standards, common specifications or other technical specifications by reference to which product conformity is declared or by application of which its conformity is verified, shall be adequately taken into account by manufacturers and, in case they found that the product's conformity is affected, manufacturers shall carry out a re-assessment in accordance with the <b>applicable</b> conformity assessment procedure <b>specified in the delegated acts adopted pursuant to Article 4</b>, or have it carried out on their behalf.</p> | - |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |   |  |
| 5. Manufacturers shall ensure                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |   |  |



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| that their products <b>covered by a delegated <del>implementing</del> delegated act adopted pursuant to Article 4</b> bear a type, batch or serial number or other element allowing their identification, or, where the size or nature of the product does not allow so, that the required information is provided on the packaging or in a document accompanying the product. |   |  |
|                                                                                                                                                                                                                                                                                                                                                                                |   |  |
| 6. Manufacturers shall <del>indicate, on their for</del> products <b>covered by a <del>delegated</del> implementing delegated act adopted pursuant to Article 4,</b> <del>indicate</del> their name, registered trade name or registered trade mark, <del>and the postal address and, where available,</del> electronic means of communication, where they can be contacted:   | - |  |
|                                                                                                                                                                                                                                                                                                                                                                                |   |  |
| <b>a)</b> <del>on the public part of the product passport, when applicable, where available,</del> and                                                                                                                                                                                                                                                                         |   |  |
|                                                                                                                                                                                                                                                                                                                                                                                |   |  |
| <b>b)</b> <del>on the product or, where this is not possible, on its</del>                                                                                                                                                                                                                                                                                                     |   |  |



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| packaging, <b>or</b> in a document accompanying the product <del>or, where available, in a product passport.</del>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |  |
| The address shall indicate a single point where the manufacturer can be contacted. The contact details shall be clear, understandable and legible.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |  |
| 7. Manufacturers shall ensure that <del>that</del> a product covered by a <del>delegated</del> <b>implementing delegated</b> act adopted pursuant to Article 4 is accompanied by instructions that enable <b>customers and other relevant actors</b> <del>consumers and other end-users</del> to safely assemble, install, operate, store, maintain, repair and dispose of the product in a language that can be easily understood <del>by consumers</del> <b>by customers</b> <del>consumers and other end-users</del> , as determined by the Member State concerned. Such instructions shall be clear, understandable and legible and include at least the information <b>set out in Article 7(2), point (b), point (ii), and as</b> |  |  |





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| specified in the <del>delegated</del> <b>implementing-delegated</b> acts adopted pursuant to Article 4 <del>and pursuant to Article 7(2)(b), point (ii).</del>                                                                                                                                                                                                                                                                                                                                                                                                              |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |  |  |
| 8. Manufacturers who consider or have reason to believe that a product covered by a <del>delegated</del> <b>implementing-delegated</b> act adopted pursuant to Article 4 that they have <del>been</del> placed on the market or put into service is not in conformity with the requirements set out in <del>those that</del> <b>delegated implementing-delegated</b> acts shall immediately take the necessary corrective <del>measures</del> <b>action to bring that product into conformity</b> , to withdraw it that product or recall it, <del>if</del> as appropriate. |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |  |  |
| Manufacturers shall immediately inform the market surveillance authorities of the Member States in which they made the product available <del>or put it into service</del> of the suspected non-compliance and of any corrective <del>measures</del>                                                                                                                                                                                                                                                                                                                        |  |  |



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| action taken.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |   |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |   |  |
| <p>9. Manufacturers shall, <b>for products covered by a delegated implementing—delegated act adopted pursuant to Article 4,</b> further to a reasoned request from a competent national authority, provide all the information and documentation necessary to demonstrate the conformity of <del>the</del> <b>those</b> products, including the technical documentation, in a language that can be easily understood by that authority. That information and documentation shall be provided in <del>either</del> paper or electronic form, <del>The relevant documents shall be made available</del> within 10 days of receipt of a request by a competent national authority.</p> | - |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |   |  |
| <p>Manufacturers shall cooperate with the competent national authority, on any action taken to remedy any case of non-compliance with the requirements set out in a delegated <b>implementing—delegated act</b> adopted pursuant to Article 4 by</p>                                                                                                                                                                                                                                                                                                                                                                                                                                | - |  |



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| which the product in question is covered.                                                                                                                                                            |  |  |
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| Article 22<br>Authorised representatives                                                                                                                                                             |  |  |
|                                                                                                                                                                                                      |  |  |
| 1. A manufacturer may, by a written mandate, appoint an authorised representative.                                                                                                                   |  |  |
|                                                                                                                                                                                                      |  |  |
| The obligations laid down in Article 21(1) and the drawing up of technical documentation shall not form part of the authorised representative's mandate.                                             |  |  |
|                                                                                                                                                                                                      |  |  |
| 2. An authorised representative shall perform the tasks specified in the mandate received from the manufacturer. The mandate shall allow the authorised representative to do at least the following: |  |  |
|                                                                                                                                                                                                      |  |  |
| (a) keep the EU declaration of conformity and technical documentation at the disposal of the national market surveillance authorities for 10 years after <del>the last item of a</del>               |  |  |



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| product <del>model</del> covered by a delegated <b>implementing</b> act adopted pursuant to Article 4 has been placed on the market or put into service <b>unless a different period has been specified in that delegated implementing delegated act</b> ;   |  |  |
|                                                                                                                                                                                                                                                              |  |  |
| (b) cooperate with the competent national authorities, at their request, on any measures taken with regard to non-compliances of the product covered by the authorised representative's mandate;                                                             |  |  |
| (c) further to a reasoned request from a competent national authority, provide that authority with all the information and documentation necessary to demonstrate the conformity of a product in a language that can be easily understood by that authority; |  |  |
|                                                                                                                                                                                                                                                              |  |  |
| (d) further to a request from a competent national authority, <del>make</del> <b>provide</b> relevant documents within 10 days of the receipt of                                                                                                             |  |  |



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| such a request <b>and</b> ;                                                                                                                                                                                                                                                                                                                 |  |  |
|                                                                                                                                                                                                                                                                                                                                             |  |  |
| (e) terminate the mandate if the manufacturer acts contrary to its obligations under this Regulation <del>and the delegated act adopted pursuant to Article 4.</del>                                                                                                                                                                        |  |  |
|                                                                                                                                                                                                                                                                                                                                             |  |  |
|                                                                                                                                                                                                                                                                                                                                             |  |  |
| Article 23<br>Obligations of importers                                                                                                                                                                                                                                                                                                      |  |  |
|                                                                                                                                                                                                                                                                                                                                             |  |  |
| 1. Importers shall, <b>with regard to only place on the market</b> products covered by a <del>delegated</del> <b>implementing delegated</b> act adopted pursuant to Article 4, <b>only place on the market products</b> that comply with the requirements set out in the applicable <del>delegated</del> <b>implementingdelegated</b> acts. |  |  |
|                                                                                                                                                                                                                                                                                                                                             |  |  |
| 2. Before placing a product covered by a <del>delegated</del> <b>implementing—delegated</b> act                                                                                                                                                                                                                                             |  |  |



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| adopted pursuant to Article 4 on the market, importers shall ensure that:                                                                                                   |   |  |
|                                                                                                                                                                             |   |  |
| (a) the appropriate conformity assessment procedure has been carried out by the manufacturer and that the manufacturer has drawn up the technical documentation;            |   |  |
|                                                                                                                                                                             |   |  |
| (b) products are accompanied by the information required by <del>the Article 7 and the delegated</del> <b>implementing delegated</b> acts adopted pursuant to Article 4;    |   |  |
|                                                                                                                                                                             |   |  |
| (c) a product passport is available in accordance with <del>Article 8 and the delegated</del> <b>implementing—delegated</b> acts adopted pursuant to Article 4, <b>and.</b> | - |  |
|                                                                                                                                                                             |   |  |
| (d) that the manufacturer has complied with the requirements set out in Article 21(5) and (6).                                                                              |   |  |
| The importer shall further ensure                                                                                                                                           |   |  |



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| <p>that <del>the a</del> product covered by a delegated <del>implementing</del> <b>delegated</b> act adopted pursuant to Article 4 bears the required CE marking referred to in Articles 38 and 39, or the alternative conformity marking as laid down in a delegated <del>implementing</del> <b>delegated</b> act adopted pursuant to Article 4, third subparagraph, point (f), and is accompanied by the required documents, and that the manufacturer has complied with the requirements set out in Article 21(5) and (6).</p> |          |  |
| <p>Where importers consider or have reason to believe that a product is not in conformity with the requirements set out in the applicable <del>delegated</del> <b>implementing—delegated</b> acts adopted pursuant to Article 4, they shall not place the product on the market or put it into service until it has been brought into conformity.</p>                                                                                                                                                                             |          |  |
| <p>3. Importers shall indicate on <del>the a product</del>, for products covered by an <del>delegated</del> <b>implementing—delegated</b> act</p>                                                                                                                                                                                                                                                                                                                                                                                 | <p>—</p> |  |



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| <b>adopted pursuant to Article 4, indicate</b> their name, registered trade name or registered trade mark, <del>and the postal address and, where available,</del> electronic means of communication, where they can be contacted:                                               |  |  |
|                                                                                                                                                                                                                                                                                  |  |  |
| <b>a) on the public part of the product passport, when applicable</b> <del>where available, and</del>                                                                                                                                                                            |  |  |
|                                                                                                                                                                                                                                                                                  |  |  |
| <b>b) on the product</b> or, where this is not possible, on the packaging, <b>or</b> in a document accompanying the product <del>or, where available, in a product passport.</del>                                                                                               |  |  |
|                                                                                                                                                                                                                                                                                  |  |  |
| The contact details shall be clear, understandable and legible.                                                                                                                                                                                                                  |  |  |
|                                                                                                                                                                                                                                                                                  |  |  |
| 4. Importers shall ensure that <del>the a</del> product covered by a <del>delegated</del> <b>implementing delegated</b> act adopted pursuant to Article 4 is accompanied by instructions that enable the <b>customer and other relevant actors</b> <del>consumer</del> to safely |  |  |





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| <p>assemble, install, operate, store, maintain, repair and dispose of the product, in a language that can be easily understood <del>by customers</del> consumers and other end-users, as determined by the Member State concerned. Such instructions shall be clear, understandable and legible and shall include at least the information set out in Article 7(2), point (b), point (ii), as specified in the <del>delegated implementing—delegated</del> acts adopted pursuant to Article</p> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |  |
| <p>5. Importers shall ensure that, while a product is under their responsibility, storage or transport conditions do not jeopardise its compliance with the requirements set out in a <del>delegated</del> <b>implementing delegated</b> act adopted pursuant to Article 4 by which it is covered.</p>                                                                                                                                                                                          |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |  |
| <p>6. Importers who consider or have reason to believe that a product covered by a <del>delegated</del> <b>implementing—delegated</b> act adopted pursuant to Article 4,</p>                                                                                                                                                                                                                                                                                                                    |  |  |



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| <p>which they have placed on the market <del>or put into service</del>, is not in conformity with the requirements set out in that <del>delegated</del> <b>implementing delegated</b> act shall immediately take the <b>necessary</b> corrective <del>measures action necessary to bring that product into conformity</del>, to withdraw <del>it that product</del> or recall it, <del>if</del> as appropriate.</p> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                     |  |  |
| <p>Importers shall immediately inform the market surveillance authorities of the Member States in which they made the product available of the suspected non-compliance and of any corrective <del>measures action</del> taken.</p>                                                                                                                                                                                 |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                     |  |  |
| <p>7. Importers shall, <del>for 10 years or the period specified by a delegated act adopted pursuant to Article 4</del>, keep a copy of the EU declaration of conformity at the disposal of the market surveillance authorities and ensure that the technical documentation can be made available to those authorities,</p>                                                                                         |  |  |



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| <p>upon request, for 10 years after <del>the last item of a product model covered by a delegated implementing—delegated</del> act adopted pursuant to Article 4 has been placed on the market or put into service, unless a different period has been specified in that <del>delegated implementing—delegated</del> act.</p>                                                                                                                                                                                                                                                                                                                                                  |  |  |
| <p>8. Importers shall, further to a reasoned request from a competent national authority, provide it with all the information and documentation necessary to demonstrate the conformity of a product covered by a <del>delegated implementing—delegated</del> act adopted pursuant to Article 4, including technical documentation, in a language that can be easily understood by that authority. That information and documentation shall be provided in <del>either</del> paper or electronic form, <del>The relevant documents shall be made available—</del>within 10 days of receipt of a request by the competent national authority <del>of a Member State.</del></p> |  |  |



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| Importers shall cooperate with the competent national authority on any action taken to remedy any case of non-compliance with the requirements set out in a <del>delegated</del> <b>implementing delegated</b> act adopted pursuant to Article 4 by which the product in question is covered. |  |  |
|                                                                                                                                                                                                                                                                                               |  |  |
| Article 24<br>Obligations of distributors                                                                                                                                                                                                                                                     |  |  |
|                                                                                                                                                                                                                                                                                               |  |  |
| 1. When making a product covered by a <del>delegated</del> <b>implementing—delegated</b> act adopted pursuant to Article 4 available on the market, distributors shall act with due care in relation to the requirements set out in that act.                                                 |  |  |
|                                                                                                                                                                                                                                                                                               |  |  |
| 2. Before making a product covered by a <del>delegated</del> <b>implementing—delegated</b> act adopted pursuant to Article 4 available on the market, distributors shall verify that <del>the</del> <b>the following:</b>                                                                     |  |  |
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| <p>(a) the product bears the CE marking in accordance with Articles 38 and 39 or <del>alternative</del> <b>the</b> conformity marking adopted pursuant to <del>in accordance with</del> Article 4, third subparagraph, point (f), and, where relevant, is labelled or is linked to a product passport in accordance with that <del>delegated</del> <b>implementing</b> <del>delegated</del> acts;</p>                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |  |
| <p>(b) the product is accompanied by the required documents and by instructions, <del>to</del> <b>that</b> enable the <del>customer consumer</del> <b>customer</b> to <b>safely</b> assemble, install, operate, store, maintain, <b>repair</b> and dispose of the product, in a language that can be easily understood by <del>customers consumers and other end-users</del> <b>customers</b>, as determined by the Member State in which the product is to be made available on the market, and that such instructions are clear, understandable and legible and include at least the information set out in Article 7(2), point (b), point (ii), as <del>laid down</del> <b>specified</b> in the <del>delegated</del> <b>implementing</b> acts;</p> | <p>How can a distributor be able to understand if point (b) is fulfilled? Point (b) establishes a sort of verification action by the distributor, but he/she may not have the competencies to evaluate the content of the product information and he/she has not the legal authority to ask the manufacturer to make compliant a product that he has not the authority to judge as non-compliant. Indeed, he/she can only check that the prescribed CE marking and enclosed document are available. Therefore, the distributors have only the possibility to check the presence of the above-mentioned documents, but they cannot judge the correctness of the content.</p> |  |



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| <b>delegated</b> act adopted pursuant to Article 4 <b>and</b> ;                                                                                                                                                                                                                                                                                                                                                            |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                            |  |  |
| (c) the manufacturer and the importer have complied with the requirements set out in Article 21(5) and (6) and Article 23(3).                                                                                                                                                                                                                                                                                              |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                            |  |  |
| 3. Where a distributor considers or has reason to believe that a product, before making it available on the market, or its manufacturer is not complying with the requirements set out in a <del>delegated</del> <b>implementing delegated</b> act adopted pursuant to Article 4, they shall not make the product available on the market until the product has been brought into conformity or the manufacturer complies. |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                            |  |  |
| Distributors shall ensure that, while a product is under their responsibility, storage or transport conditions do not jeopardise its compliance with the requirements set out in the <del>delegated</del> <b>implementing delegated</b> act adopted pursuant to Article 4.                                                                                                                                                 |  |  |



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| <p>4. Distributors who consider or have reason to believe that a product which they have made available on the market is not in conformity with the requirements set out in a <del>delegated</del> <b>implementing—delegated</b> act adopted pursuant to Article 4 shall make sure that the <b>necessary</b> corrective <b>measures</b> <b>action necessary to bring that product into conformity is taken</b>, to withdraw it or recall it, if as appropriate, are taken.</p> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  |  |
| <p>Distributors shall immediately inform the market surveillance authorities of the Member States in which they made the product available of the suspected non-compliance and of any corrective <b>measures</b> <b>action</b> taken.</p>                                                                                                                                                                                                                                      |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  |  |
| <p>5. Distributors shall, further to a reasoned request from a competent national authority, provide the authority with all the information and documentation to which they have access and that is relevant for demonstrating the</p>                                                                                                                                                                                                                                         |  |  |



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| conformity of a product. That information and documentation shall be provided in <del>either</del> paper or electronic form, <b>within 10 days of receipt of a request by a competent national authority.</b>                                                                               |  |  |
|                                                                                                                                                                                                                                                                                             |  |  |
| Distributors shall cooperate with that authority on any corrective action taken to remedy any case of non-compliance with a <del>delegated</del> <b>implementing—delegated</b> act adopted pursuant to Article 4 by which the product in question is covered.                               |  |  |
|                                                                                                                                                                                                                                                                                             |  |  |
| Article 25<br>Obligations of dealers                                                                                                                                                                                                                                                        |  |  |
|                                                                                                                                                                                                                                                                                             |  |  |
| 1. Dealers shall ensure that their <b>potential customers and</b> customers have access to any relevant information <b>accompanying the products, as</b> required by the delegated <b>implementing delegated</b> acts adopted pursuant to Article 4, including in case of distance selling. |  |  |
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| <p>2. Dealers shall ensure that the product passport is easily accessible to <b>potential customers and</b> customers, including in case of distance selling, as set out <del>specified</del> in Article 8(2), <b>point (e)</b>, and <b>specified in the delegated implementing—delegated</b> acts adopted pursuant to Article 4 by which the product is covered.</p> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                       |  |  |
| <p>3. Dealers shall, <b>including in case of distance selling</b>:</p>                                                                                                                                                                                                                                                                                                |  |  |
|                                                                                                                                                                                                                                                                                                                                                                       |  |  |
| <p>(a) display to <b>potential customers and</b> customers, in a visible manner, <del>including for online distance selling</del>, labels provided in accordance with Article 26(1), <b>point (b)2)</b> or <b>26(1), point (c)(3);</b> and;</p>                                                                                                                       |  |  |
|                                                                                                                                                                                                                                                                                                                                                                       |  |  |
| <p>(b) make reference to the information included in labels provided in accordance with Article 26(1), <b>point (b)2)</b> or <b>26(1), point (c)(3)</b> in visual advertisements or in technical promotional material for a specific model, in accordance</p>                                                                                                         |  |  |



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| with delegated <b>implementing delegated</b> acts adopted pursuant to Article 4 by which the product is covered <b>and</b> ;                                                                                                                       |  |  |
|                                                                                                                                                                                                                                                    |  |  |
| (c) not provide or display other labels, marks, symbols or inscriptions that are likely to mislead or confuse customers with respect to the information included on the label.                                                                     |  |  |
|                                                                                                                                                                                                                                                    |  |  |
| Article 26<br>Obligations related to labels                                                                                                                                                                                                        |  |  |
|                                                                                                                                                                                                                                                    |  |  |
| 1. Where a delegated <del>implementing—delegated</del> 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: |  |  |
|                                                                                                                                                                                                                                                    |  |  |
| <b>a)</b> ensure that products are accompanied, for each individual unit and free of charge, by printed labels <b>or digital copies of the label</b> in accordance with                                                                            |  |  |



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| that delegated <b>implementing delegated act.</b> As an alternative to supplying the label with the product, delegated acts referred to in Article 4 may provide that it is sufficient for the economic operator to ensure that digital copies of the label are provided in the digital product passport/database, in accordance with that delegated act.; |  |  |
|                                                                                                                                                                                                                                                                                                                                                            |  |  |
| <del>2. Where a delegated 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</del>                                                                                                                                 |  |  |
|                                                                                                                                                                                                                                                                                                                                                            |  |  |
| <b>b) deliver provide</b> printed labels or digital copies of the label to the dealer free of charge, promptly and in any event within 5 working days of the dealer's request;                                                                                                                                                                             |  |  |
|                                                                                                                                                                                                                                                                                                                                                            |  |  |
| <del>3. Where a delegated act adopted pursuant to Article 4 requires products to have a label</del>                                                                                                                                                                                                                                                        |  |  |



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| <del>as referred to in Article 14, the economic operator placing the product on the market or putting it into service shall</del>                                                                                                |  |  |
|                                                                                                                                                                                                                                  |  |  |
| <b>c)</b> ensure that its labels are accurate and shall, as part of the applicable conformity assessment procedure, produce technical documentation sufficient to enable the accuracy to be assessed.                            |  |  |
|                                                                                                                                                                                                                                  |  |  |
| <del>4. Where a delegated 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:</del>      |  |  |
| <b>2. Where an implementing delegated act adopted pursuant to Article 4 requires products to have a label as referred to in Article 14, the economic operator making the product available or putting it into service shall:</b> |  |  |
|                                                                                                                                                                                                                                  |  |  |
| <b>a)</b> make reference to the information included in the label,                                                                                                                                                               |  |  |



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| in visual advertisements or in technical promotional material for a specific model in accordance with the relevant <del>delegated</del> <b>implementing—delegated</b> act adopted pursuant to Article 4;                                                                                                                                                                                                    |   |   |
|                                                                                                                                                                                                                                                                                                                                                                                                             |   |   |
| <b>b)</b> not provide or display other labels, marks, symbols or inscriptions that are likely to mislead or confuse customers with respect to the information included on the label.                                                                                                                                                                                                                        |   | - |
|                                                                                                                                                                                                                                                                                                                                                                                                             |   |   |
| Article 27<br>Obligations of fulfilment service providers                                                                                                                                                                                                                                                                                                                                                   |   |   |
|                                                                                                                                                                                                                                                                                                                                                                                                             |   |   |
| Fulfilment service providers shall ensure that, for products that they handle that are covered by a <del>delegated</del> <b>implementing delegated</b> act adopted pursuant to Article 4, the conditions during warehousing, packaging, addressing or dispatching, do not jeopardise the products' compliance with <del>the requirements set out in that delegated</del> <b>implementing delegated</b> act. | - | - |



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| Article 28<br>Cases in which obligations of manufacturers apply to importers and distributors                                                                                                                                                                                              |  |  |
|                                                                                                                                                                                                                                                                                            |  |  |
| An importer or distributor shall be considered a manufacturer for the purposes of this Regulation<br><del>and shall be subject to the obligations of a manufacturer under Article 21,</del> where they:                                                                                    |  |  |
|                                                                                                                                                                                                                                                                                            |  |  |
| (1) place a product covered by a <del>delegated</del> <b>implementing delegated</b> act adopted pursuant to Article 4 on the market under their name or trademark <b>or</b> ;                                                                                                              |  |  |
|                                                                                                                                                                                                                                                                                            |  |  |
| (2) modify <b>such</b> a product already placed on the market <b>but not yet put into service</b> in a way that affects compliance with the requirements set out in <del>delegated</del> <b>implementing—delegated</b> acts adopted pursuant to Article 4 by which the product is covered. |  |  |
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| <b>This Article shall not apply to used products that undergo modifications that do not result in the products being considered new.</b>                                                                      |  |  |
|                                                                                                                                                                                                               |  |  |
| Article 29<br><br>Obligations of online marketplaces and online search engines                                                                                                                                |  |  |
|                                                                                                                                                                                                               |  |  |
| 1. The cooperation referred to in Article 7(2) of Regulation (EU) 2019/1020 shall, with regard to <b>the providers of</b> online marketplaces and for the purposes of this Regulation, include in particular: |  |  |
|                                                                                                                                                                                                               |  |  |
| (a) cooperating to ensure effective market surveillance measures, including by abstaining from putting in place obstacles to such measures;                                                                   |  |  |
|                                                                                                                                                                                                               |  |  |
| (b) informing the market surveillance authorities of any action taken <b>with regard to non-compliance or suspected non-compliance</b> concerning products                                                    |  |  |



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| covered by a <del>delegated</del><br><b>implementing—delegated</b> act<br>adopted pursuant to Article 4;                                                                                                                                                                                                                                                                                                                        |   |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                 |   |  |
| (c) establishing a regular<br>and structured exchange of<br>information on <b>offers content</b><br>that <del>have</del> <b>has</b> been removed <del>on</del><br><del>the basis of this Article</del> by online<br>marketplaces <b>as referred to in</b><br><b>paragraph 3</b> ;                                                                                                                                               |   |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                 |   |  |
| (d) allowing online tools<br>operated by market surveillance<br>authorities to access their<br>interfaces in order to identify non-<br>compliant products <b>and</b> ;                                                                                                                                                                                                                                                          |   |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                 |   |  |
| (e) upon request of the<br>market surveillance authorities,<br>when online marketplaces, or<br>online <b>sellers</b> have put in place<br>technical obstacles to the<br>extraction of data from their<br>online interfaces, allowing those<br>authorities to scrape such data for<br>product compliance purposes<br>based on the identification<br>parameters provided by the<br>requesting market surveillance<br>authorities. | - |  |





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| <p>2. For the purpose of the requirements of <del>{Article 22(7)}</del> <b>Article 31(1)</b> of Regulation (EU) <b>2022/2065</b> <del>{the Digital Services Act}</del>, online marketplaces shall design and organise their online interface in a way that enables dealers to fulfil their obligations set out in Article 25 <b>of this Regulation</b> and allows economic operators to fulfil their obligations under Article 30(1) of this Regulation.</p> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |  |
| <p>The information shall <del>be able to</del> be provided for each product offered and displayed or otherwise made easily accessible <del>by</del> <b>for</b> customers on the product listing.</p>                                                                                                                                                                                                                                                         |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |  |
| <p>In particular, where <del>delegated implementing—delegated</del> acts adopted pursuant to Article 4 require online visual advertising for certain products to be accompanied by online electronic information to be displayed on the display mechanism, online marketplaces shall enable dealers to show it. This obligation shall</p>                                                                                                                    |  |  |



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| also apply to online search engines and other online platforms that provide online visual advertising for the products concerned.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |   |
| 3. As far as powers conferred by Member States in accordance with Article 14 of Regulation (EU) 2019/1020 are concerned, Member States shall confer on their market surveillance authorities the power, for all products covered by a relevant delegated <del>implementing</del> <b>delegated</b> act adopted pursuant to Article 4, to order an online marketplace to <del>remove act against one or more specific items of illegal</del> content referring to a non-compliant product, <b>including by removing it. Such content shall be considered as illegal content within the meaning of Article 3, point (h) of Regulation (EU) 2022/2065. from its online interface, disable access to it or display an explicit warning to end-users when they access it.</b> Market surveillance authorities may, in accordance with Article 9 of Regulation |  | - |



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| (EU) 2022/2065, issue sSuch orders shall comply with <del>{Article 8(1)} of Regulation (EU) [the Digital Services Act]</del> .                                                                                                                                                 |  |  |
|                                                                                                                                                                                                                                                                                |  |  |
| 4. <del>Online marketplaces shall take the necessary measures to receive and process the orders referred to in paragraph 2 in accordance with {Article 8} of Regulation (EU) .../... [the Digital Services Act]</del> .                                                        |  |  |
|                                                                                                                                                                                                                                                                                |  |  |
| 5. Online marketplaces shall establish a single contact point allowing for direct communication with Member States' market surveillance authorities in relation to compliance with this Regulation <del>and the delegated acts adopted pursuant to Article 4.</del>            |  |  |
| This contact point may be the same contact point as the one referred to in [Article 20(1)] of Regulation (EU) .../... [the General Product Safety Regulation] or <del>{Article 10(1)}</del> Article 11(1) of Regulation (EU) 2022/2065 <del>{the Digital Services Act}</del> . |  |  |



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| Article 30<br>Information obligations of<br>economic operators                                                                                                                                                                                                                                                                                                                                                                       |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |  |
| 1. <del>Where products</del> <b>When making a product covered by a delegated <del>implementing</del> delegated act adopted pursuant to Article 4</b> <del>are made available on the market online or through other means of distance selling, sales by the relevant economic operators, the relevant product offer shall</del> <b>ensure that the product offer</b> clearly and visibly provides at least the following information: |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |  |
| (a) the name, registered trade name or registered trade mark of the manufacturer, as well as the postal <del>or</del> <b>and electronic email</b> address where they can be contacted;                                                                                                                                                                                                                                               |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |  |
| (b) in case the manufacturer is not established in the Union, the name, <b>postal</b> address, telephone number and                                                                                                                                                                                                                                                                                                                  |  |  |



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| email address of the economic operator established in the Union within the meaning of Article 4(2) of Regulation (EU) 2019/1020, and;                                                      |  |  |
|                                                                                                                                                                                            |  |  |
| (c) information to identify the product, including its type and, where available, batch or serial number and any other a product identifier.                                               |  |  |
|                                                                                                                                                                                            |  |  |
| 2. Economic operators shall, upon <b>reasoned</b> request, provide the market surveillance authorities with:                                                                               |  |  |
|                                                                                                                                                                                            |  |  |
| (a) the name of any economic operator who has supplied them with a product falling within the scope of a delegated <b>implementing</b> <b>delegated</b> act adopted pursuant to Article 4; |  |  |
|                                                                                                                                                                                            |  |  |
| (b) any economic operator to whom they have supplied such products, as well as the quantities and exact models.                                                                            |  |  |
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| <p>Economic operators shall be able to provide this information for 10 years after they have been supplied with the relevant products and for 10 years after they have supplied such products <b>unless a different period has been specified in that delegated implementing—delegated act.</b> That information shall be provided in paper or electronic form within 10 days of receipt of a request by the market surveillance authority. <del>When adopting delegated acts pursuant to Article 4, the Commission may specify a period of more or less than 10 years to take account of the nature of the relevant products or requirements.</del></p> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |  |
| <p>3. When requiring manufacturers, their authorised representatives or importers to make parts of the technical documentation related to the relevant product digitally available pursuant to Article 4, third subparagraph, point (a), the Commission shall take into account the following criteria:</p>                                                                                                                                                                                                                                                                                                                                              |  |  |



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|                                                                                                                                                                                                                                                                                                                                                                            |  |  |
| (a) the need to facilitate the verification of compliance with the applicable requirements by market surveillance authorities;                                                                                                                                                                                                                                             |  |  |
|                                                                                                                                                                                                                                                                                                                                                                            |  |  |
| (b) the need to avoid disproportionate administrative burden for economic operators, <b>in particular for SMEs, and;</b>                                                                                                                                                                                                                                                   |  |  |
|                                                                                                                                                                                                                                                                                                                                                                            |  |  |
| (c) <b>the need to protect the economic operators' trade secrets and intellectual property rights.</b>                                                                                                                                                                                                                                                                     |  |  |
|                                                                                                                                                                                                                                                                                                                                                                            |  |  |
| The Commission shall specify the manner in which the relevant parts of the technical documentation <del>shall</del> <b>are to</b> be made available <b>in the relevant delegated implementing act.</b> <del>Where available, technical</del> <b>Where available, technical</b> documentation shall be made available through the product passport, <b>where available.</b> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                            |  |  |
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| <del>Article 31</del> <b>Article 31</b><br><br>Monitoring and reporting of in-use data by obligations of economic operators                                                                                                                                                                                                      |  |  |
|                                                                                                                                                                                                                                                                                                                                  |  |  |
| <del>1. When requiring manufacturers, their authorised representatives or importers to make available to the Commission, information on the quantities of a product covered by delegated acts adopted pursuant to Article 4, third subparagraph, point (b), the Commission shall take into account the following criteria:</del> |  |  |
|                                                                                                                                                                                                                                                                                                                                  |  |  |
| <del>(a) the availability of evidence on the market penetrations of the relevant product in order to facilitate the review of delegated acts adopted pursuant to Article 4 applicable to that product;</del>                                                                                                                     |  |  |
|                                                                                                                                                                                                                                                                                                                                  |  |  |
| <del>(b) the need to avoid disproportionate administrative burden for economic operators.</del>                                                                                                                                                                                                                                  |  |  |
|                                                                                                                                                                                                                                                                                                                                  |  |  |





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| <del>The Commission shall specify the period of time to which the information referred to in the first subparagraph shall relate. That information shall be differentiated per product model.</del>                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                          |
|                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                          |
| <del>The Commission shall ensure that the resulting data is processed securely and in compliance with Union law.</del>                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                          |
|                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                          |
| <del>The Commission shall specify in those delegated acts the means through which the relevant information shall be made available and its periodicity.</del>                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                          |
|                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                          |
| <b>1a. The Commission shall, as appropriate to the product group concerned, require products to measure and report in-use data in accordance with paragraph 2 and 3 when this is necessary to ensure energy-efficient usage of products or to develop new product ecodesign requirements;</b> | we propose to remove the collection of information in order to have data for setting future requirements from the possible obligation to report anonymous in-use consumption information. The Commission has other ways to collect such information during the preparatory studies. We believe that a burden shall not be placed on economic operators with the only purpose to collect data for possible future legislation. | <b>1a. The Commission shall, as appropriate to the product group concerned, require products to measure and report in-use data in accordance with paragraph 2 and 3 when this is necessary to ensure energy-efficient usage of products <del>or to develop new product ecodesign requirements;</del></b> |
|                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                          |
| <del>2-</del> When requiring a product to                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                          |



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| be able to measure the energy it consumes or its performance in relation to other relevant product parameters referred to in Annex I while in use, pursuant to Article 4, third subparagraph, point (c), the Commission shall take into account the following criteria: |  |   |
|                                                                                                                                                                                                                                                                         |  |   |
| <b>(a)</b> the usefulness of in-use data for <b>customers end-users</b> to understand and manage the energy use or performance of the product;                                                                                                                          |  |   |
|                                                                                                                                                                                                                                                                         |  |   |
| <b>(b)</b> the technical feasibility of recording in-use data <b>and</b> ;                                                                                                                                                                                              |  |   |
|                                                                                                                                                                                                                                                                         |  |   |
| <b>(c)</b> the need to avoid disproportionate administrative burden for economic operators., <b>in particular for SMEs.</b>                                                                                                                                             |  | - |
|                                                                                                                                                                                                                                                                         |  |   |
| <b>(d)</b> anonymisation of data, given the need to ensure privacy of data in line with the Regulation [GDPR].                                                                                                                                                          |  |   |
|                                                                                                                                                                                                                                                                         |  |   |
| Products covered by a requirement set pursuant to                                                                                                                                                                                                                       |  |   |



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| Article 4, third subparagraph, point (c), shall, <b>when this is necessary and appropriate in line with the criteria in paragraph 2</b> , record the resulting in-use data and make it visible to the <b>customer end-user</b> .                                                                                    |  |  |
|                                                                                                                                                                                                                                                                                                                     |  |  |
| 3- When requiring manufacturers, their authorised representatives or importers to collect, anonymise <del>or</del> <b>and</b> report to the Commission in-use data referred to in paragraph 2, pursuant to Article 4, third subparagraph, point (d), the Commission shall take into account the following criteria: |  |  |
|                                                                                                                                                                                                                                                                                                                     |  |  |
| <b>(a)</b> the usefulness of in-use data for the Commission when reviewing ecodesign requirements or assisting market surveillance authorities with statistical information for their risk-based analysis <b>and</b> ;                                                                                              |  |  |
|                                                                                                                                                                                                                                                                                                                     |  |  |
| <b>(b)</b> the need to avoid disproportionate administrative burden for economic operators, <b>in particular for SMEs</b> .                                                                                                                                                                                         |  |  |



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| Such requirements referred to in the first subparagraph may in particular consist of:                                                                                                                    |                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <del>(a)</del> (i) collecting <b>and anonymising</b> the in-use data if it can be accessed remotely via the internet, unless the <b>customer end-user</b> expressly refuses to make that data available; | The proposed modification aims at guaranteeing the right to refuse the collection of personal information by manufacturers without adverse effects on the consumer. | <del>(a)</del> (i) collecting <b>and anonymising</b> the in-use data if it can be accessed remotely via the internet, <del>unless only</del> if the <b>customer end-user</b> expressly <del>refuses-allows</del> to make that data available. <b>To this extent, the possibility to collect in-use data shall be disabled as a default setting when the product is placed on the market or put into service and shall not be enabled during the product installation if any. The customer shall be informed by the manufacturer, its authorised representative or importer about the possibility to collect this data and shall expressly allow to make that data available by enabling the product to collect in-use data and transmit it via the internet. No performance change of the product shall occur as a result of rejecting this permission.</b> |
| <del>(b)</del> ———)(ii) after anonymising the data collected under point (a)), <b>and reporting</b> it to the                                                                                            | -                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |



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| Commission at least once a year.<br>The economic operator shall include the product database identification number of the model as referred to in Article 12(5) of Regulation (EU) No 2017/1369 and, if relevant to their performance, <b>general</b> geographical information on the products. |  |  |
|                                                                                                                                                                                                                                                                                                 |  |  |
| The Commission shall specify the details and format for reporting the <b>anonymised</b> in-use data as referred to in the second subparagraph, point (b)), <b>in the relevant delegated implementing delegated act.</b>                                                                         |  |  |
|                                                                                                                                                                                                                                                                                                 |  |  |
| 4- The Commission shall periodically assess the in-use data received pursuant to paragraph 3 and shall, where appropriate, publish aggregated datasets.                                                                                                                                         |  |  |
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| <b>Article 31a</b><br><b>Requirements on supply chain actors</b>                                                                                                                                                                                                                                |  |  |
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| <b>[The below text is the previous Article 5(6), amended and transformed into a separate Article]</b>                                                                                                    |  |  |
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| <b>In order to facilitate the verification of compliance with ecodesign requirements, the Commission shall, where appropriate, require supply chain actors to:</b>                                       |  |  |
|                                                                                                                                                                                                          |  |  |
| <b>(a) provide, upon request, manufacturers, notified bodies and competent national authorities with available relevant information related to their supplies or services;</b>                           |  |  |
|                                                                                                                                                                                                          |  |  |
| <b>(c) allow, in the absence of information referred to in point (a), manufacturers to assess their supplies or services and give access to relevant documents or facilities to those manufacturers;</b> |  |  |
|                                                                                                                                                                                                          |  |  |
| <b>(b) enable notified bodies and competent national</b>                                                                                                                                                 |  |  |



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| authorities to verify the correctness of relevant information related to their activities.                                                                                                                                                                                                                                                                                                                                |                                                 |  |
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| The requirement under the first paragraph should be non-discriminatory, not give raise to disproportionate administrative burden and take into consideration economic actors legitimate needs to protect trade secrets. The Commission shall, when establishing requirements referred to in points (a) and (b) of paragraph 6, take into account the needs of SMEs including SME's difficulties in accessing information. |                                                 |  |
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| Chapter VIII - Conformity of products                                                                                                                                                                                                                                                                                                                                                                                     |                                                 |  |
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|                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                 |  |
| Article 32<br>Test, measurement and calculation methods                                                                                                                                                                                                                                                                                                                                                                   | Italy supports the amendments made to the text. |  |
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| <p>1. For the purposes of compliance and verification of compliance with ecodesign requirements, tests, measurements and calculations shall be made using <b>harmonised standards</b> <b>or</b> <b>other</b> reliable, accurate and reproducible methods that take into account the generally recognised state-of-the-art methods. Such methods shall fulfil the <b>requirements on</b> test, measurement and calculation <b>requirements methods</b> set out in the relevant <b>delegated implementing—delegated</b> acts adopted pursuant to Article 4.</p> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |  |  |
| <p>2. <del>Where necessary to ensure compliance with ecodesign requirements set out in delegated acts adopted pursuant to Article 4, third subparagraph, point (e), the Commission may require the use of online tools for the calculation of the performance of products in relation to the relevant product parameter referred to in Annex I reflecting the applicable calculation requirements.</del></p>                                                                                                                                                  |  |  |





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| <p><del>Where</del> <b>When</b> setting <del>the</del> <b>requirement</b> <del>to</del> such <del>requirements for the use of online</del> <b>digital tools pursuant to Article 4, third subparagraph, point (e),</b> the Commission shall take into account the following criteria:</p> | <p>It is also suggested that an additional specification may be added to the second paragraph.</p>               |                                                                                                                   |
|                                                                                                                                                                                                                                                                                          |                                                                                                                  |                                                                                                                   |
| <p>(a) the need to ensure the harmonised application of calculation requirements;</p>                                                                                                                                                                                                    |                                                                                                                  |                                                                                                                   |
|                                                                                                                                                                                                                                                                                          |                                                                                                                  |                                                                                                                   |
| <p>(b) the need to minimise administrative burden imposed on economic operators <del>complying with the relevant requirements.</del></p>                                                                                                                                                 |                                                                                                                  | <p><b>c) the need to base these digital tools on relevant European on international harmonized standards.</b></p> |
|                                                                                                                                                                                                                                                                                          |                                                                                                                  |                                                                                                                   |
|                                                                                                                                                                                                                                                                                          |                                                                                                                  |                                                                                                                   |
| <p>Online tools shall be freely accessible for economic operators <del>complying with the relevant requirements.</del></p>                                                                                                                                                               |                                                                                                                  |                                                                                                                   |
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| <p>Article 33<br/><b>Prevention of cCircumvention and worsening of performance</b></p>                                                                                                                                                                                                   | <p>Italy supports the changes made to this article, which reflects previously proposed drafting suggestions.</p> |                                                                                                                   |
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| <p><b>-1. An economic operator shall not engage in any behaviour that undermines the compliance with this Regulation regardless of whether that behaviour is of a contractual, commercial, technical or any other nature.</b></p>                                                                                                                                                                                                                                                        |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |  |
| <p>1. Products falling within the scope of a <del>delegated implementing—delegated</del> act adopted pursuant to Article 4 shall not be placed on the market or put into service if they are designed to alter their behaviour or properties when they are tested in order to reach a more favourable result for any of the product parameters regulated in <del>delegated</del> <b>implementing delegated</b> acts adopted pursuant to Article 4 by which the products are covered.</p> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |  |
| <p>For the purposes of this paragraph, products designed to be able to detect they are being tested and automatically alter their performance in response and products pre-set to alter their</p>                                                                                                                                                                                                                                                                                        |  |  |



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| performance at the time of testing shall constitute products designed to alter their behaviour or properties when they are tested.                                                                                                                                                                                                                                                                                                                                                                                    |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |  |
| 2. Economic operators placing <b>on the market or putting into service</b> a product covered by a <del>delegated</del> <b>implementing delegated</b> act adopted pursuant to Article 4 shall not prescribe instructions specific to testing that alter the behaviour or the properties of products in order to reach a more favourable result for any of the product parameters regulated in <del>delegated</del> <b>implementing—delegated</b> acts adopted pursuant to Article 4 by which the products are covered. |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |  |
| For the purposes of this paragraph, instructions leading to a manual alteration of the product before a test that alters the performance of the product shall constitute instructions specific to testing that alter the behaviour or the properties of products.                                                                                                                                                                                                                                                     |  |  |
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| 3. Products falling within the                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |  |



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| <p>scope of a <del>delegated implementing—delegated</del> act adopted pursuant to Article 4 shall not be placed on the market or put into service if they are designed to alter their behaviour or properties within a short period after putting the product into service leading to a worsening of their performance in relation to any of the product parameters regulated in <del>delegated implementing—delegated</del> acts adopted pursuant to Article 4 by which the products are covered <del>or their functional performance from the perspective of the user.</del></p> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |  |
| <p>4. Software or firmware updates shall not worsen product performance in relation to any of the product parameters regulated in <del>delegated implementing delegated</del> acts adopted pursuant to Article 4 by which the products are covered <del>or the functional performance from the perspective of the user</del> when measured with the test method used for the conformity assessment, except with explicit consent of the <del>customer end-user</del> prior to the</p>                                                                                              |  |  |



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| update. No <del>performance</del> change shall occur as a result of rejecting the update.                                                                                                                                                                                                                                                                                                  |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                            |  |  |
| Software or firmware updates shall not <b>in any case</b> worsen performance referred to in the first subparagraph to the extent that the product becomes non-compliant with the requirements set out in <del>delegated</del> <b>implementing—delegated</b> acts adopted pursuant to Article 4 applicable at the time of the placing on the market or putting into service of the product. |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                            |  |  |
| Article 34<br>Presumption of conformity                                                                                                                                                                                                                                                                                                                                                    |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                            |  |  |
| 1. Tests, measurement or calculation methods referred to in Article 32 which are in conformity with harmonised standards or parts thereof, the references of which have been published in the Official Journal of the European Union, shall be presumed to be in conformity with the requirements set out in that Article and with test,                                                   |  |  |



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| measurement and calculation requirements set out in <del>delegated implementing—delegated</del> acts adopted pursuant to Article 4 to the extent that those requirements are covered by such harmonised standards or parts thereof.                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                  |
| 2. Products which are in conformity with harmonised standards or parts thereof, the references of which have been published in the Official Journal of the European Union shall be presumed to be in conformity with ecodesign requirements set out in <del>delegated implementing delegated</del> acts adopted pursuant to Article 4 to the extent that those requirements are covered by such harmonised standards or parts thereof. |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                  |
| 3. Products covered by <del>aan delegated implementing delegated</del> act adopted pursuant to Article 4, which have been awarded the EU Ecolabel pursuant to Regulation (EC) No 66/2010 <b>or nationally, or regionally officially recognised</b>                                                                                                                                                                                     | We oppose the proposed amendment to the third paragraph of Article 34 insofar as it refers to national or regional labels. In our opinion, only the EU eco-label should be considered proof of compliance with EU requirements and no other national or regional label, even if officially recognized as an EN ISO 14024 Type I environmental label. This is to avoid forcing the adoption of national/regional environmental labels by manufacturers to demonstrate compliance with EU | Products covered by <del>aan delegated implementing—delegated</del> act adopted pursuant to Article 4, which have been awarded the EU Ecolabel pursuant to Regulation (EC) No 66/2010 <b>or nationally, or regionally officially recognised EN ISO 14024 type I environmental labels</b> as referred to in that Regulation, shall be presumed to |



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| <p>EN ISO 14024 type I environmental labels as referred to in that Regulation, shall be presumed to comply with the ecodesign requirements set out in that delegated <del>implementing</del> act in so far as <b>the criteria established by those labels are covered by and are at least as strict as those requirements</b> <del>those requirements are covered by the EU Ecolabel criteria established according to Article 16(2) of Regulation (EC) No 66/2010.</del></p> | <p>requirements as a result of a conformity assessment of the label that might be different from the conformity assessment set out in the implementing act for that parameter. In other words, the adoption of non-European environmental labels should not be promoted by an EU-wide eco-design regulation.</p> | <p>comply with the ecodesign requirements set out in that <del>delegated</del> <b>implementing delegated</b> act in so far as <b>the criteria established by those labels are covered by and are at least as strict as those requirements</b> <del>those requirements are covered by the EU Ecolabel criteria established according to Article 16(2) of Regulation (EC) No 66/2010.</del></p> |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                               |
| <p>Article 35<br/>Common specifications</p>                                                                                                                                                                                                                                                                                                                                                                                                                                   | <p>Italy welcomes the new wording of Article 35.</p>                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                               |
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| <p>[<del>The changes map the non-paper on common specification of Article 17 of the Machinery proposal</del></p> <p><del>—to be aligned after negotiations have been completed</del> <b>The changes mirror the document 5424/1/23 “Proposal for a Regulation of the European Parliament and of the Council on machinery products - Analysis of the final compromise text with a view to agreement”]</b></p>                                                                                                   |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |  |  |
| <p><b>1.</b> The Commission may adopt implementing acts <del>laying down</del> <b>establishing</b> common specifications for ecodesign requirements, the essential requirements for product passports referred to in Article 10 or for test, measurement or calculation methods referred to in Article 32, <del>in the following situations:</del> <b>for products covered by implementing delegated delegated acts adopted pursuant to Article 4 where the following conditions have been fulfilled:</b></p> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |  |  |





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| <p><b>(a)</b> the Commission has requested, pursuant to Article 10(1) of Regulation No 1025/2012, one or more European standardisation organisations to draft a harmonised standard for it has requested, <del>pursuant to Article 10(1) of Regulation 1025/2012,</del> one or more European standardisation organisations to draft a harmonised standard in relation to <del>for</del> an ecodesign requirement <del>or,</del> an essential requirement for product passports referred to in Article 10 of this Regulation or for a test, measurement or calculation method referred to in Article 32 of this Regulation that is not covered by a harmonised standard or part thereof, the references of which have been published in the Official Journal of the European Union and there are either undue delays in the standardisation procedure <del>or</del> and the request has not been accepted or the European standardisation deliverables addressing that request <del>the request has not been</del></p> | <p>Only a small addition to letter a of the first paragraph is suggested so as to make it mirror letter b.</p> | <p><b>a.</b> the Commission has requested, pursuant to Article 10(1) of Regulation No 1025/2012, one or more European standardisation organisations to draft a harmonised standard for it has requested, <del>pursuant to Article 10(1) of Regulation 1025/2012,</del> one or more European standardisation organisations to draft a harmonised standard in relation to <del>for</del> an ecodesign requirement <del>or,</del> an essential requirement for product passports referred to in Article 10 of this Regulation or for a test, measurement or calculation method referred to in Article 32 of this Regulation that is not covered by a harmonised standard or part thereof, the references of which have been published in the Official Journal of the European Union and there are either undue delays in the standardisation procedure <del>or</del> and the request has not been accepted or the European standardisation deliverables addressing that request <del>the request has not been accepted by any of the European standardisation organisations or the harmonised standard addressing that request is not delivered within the deadline set in accordance with</del> <b>Article 10(1) of Regulation 1025/2012 and no such deliver is expected within a reasonable period;</b> and</p> |
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| <del>accepted by any of the European standardisation organisations or the harmonised standard addressing that request is not delivered within the deadline set in accordance with <b>Article</b> 10(1) of Regulation 1025/2012; and</del>                                                                |  |  |
|                                                                                                                                                                                                                                                                                                          |  |  |
| <del>(-b) no reference to harmonised standards for an ecodesign requirement or method is published in the Official Journal of the European Union in accordance with Regulation (EU) No 1025/2012 and no such reference is expected to be published within a reasonable period;</del>                     |  |  |
|                                                                                                                                                                                                                                                                                                          |  |  |
| <del>(b) the Commission has decided in accordance with the procedure referred to in Article 11(5) of Regulation (EU) No 1025/2012 to maintain with restriction or to withdraw the references to the harmonised standards or parts thereof by which an ecodesign requirements or method is covered.</del> |  |  |



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| Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(3).                                                                                                                                                                                                                                                                                                                |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |  |
| <b>1a. Before preparing a draft implementing act referred to in paragraph 1, the Commission shall inform the committee referred to in Article 22 of Regulation EU (No) 1025/2012 that it considers that the conditions in paragraph 1 of this article are fulfilled.</b>                                                                                                                                                           |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |  |
| <b>1b. <del>In the</del> When preparing the draft implementing act establishing the common specification, <del>the early preparation of the draft implementing act establishing the common specification,</del> the Commission shall take into account <del>gather</del> the views of the Ecodesign Forum and the Ecodesign Expert Group. Based on that consultation, the Commission shall prepare the draft implementing act.</b> |  |  |
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| <p>2. Test, measurement and calculation methods referred to in Article 32 which are in conformity with common specification or parts thereof shall be presumed to be in conformity with the requirements set out in that Article and with test, measurement and calculation requirements set out in <del>delegated</del> <b>implementing—delegated</b> acts adopted pursuant to Article 4 to the extent that those requirements are covered by such common specification or parts thereof.</p> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  |  |
| <p>3. Products which are in conformity with common specifications or parts thereof shall be presumed to be in conformity with ecodesign requirements set out in the <del>delegated</del> <b>implementing delegated</b> act adopted pursuant to Article 4 by which those products are covered to the extent that those requirements are covered <b>by</b> those common specifications or parts thereof.</p>                                                                                     |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  |  |
| <p>4. Where a harmonised</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |  |



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| <p>standard is adopted by an European standardisation organisation and proposed to the Commission for the publication of its reference in the Official Journal of the European Union, the Commission shall assess the harmonised standard in accordance with Regulation (EU) No 1025/2012. When references of a harmonised standard are published in the Official Journal of the European Union, the Commission shall assess <del>whether to repeal</del> implementing acts referred to in paragraph 1, or parts thereof which cover the same ecodesign requirements, essential requirements for product passports and the test, measurement or calculation methods.</p> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |  |
| <p>5. When a Member State considers that a common specification does not entirely satisfy the ecodesign requirements, the essential requirements for product passports and the test,</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |  |



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| measurement or calculation methods, it shall inform the Commission thereof with a detailed explanation and the Commission shall assess that information and, if appropriate, may amend the implementing act establishing the common specification in question. |                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                     |
|                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                     |
| Article 36<br>Conformity assessment                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                     |
|                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                     |
| 1. When specifying the applicable conformity assessment procedure pursuant to Article 4, second subparagraph, the Commission shall consider the following criteria:                                                                                            | It is suggested to include a reference in paragraph e of new Article 7a, where it is required that if a module other than that described in Annex IV (i.e., Module A) is prescribed in the conformity assessment, the factors that led to this decision should be specified. | When specifying the applicable conformity assessment procedure pursuant to Article 4, second subparagraph, the Commission shall consider <b>point (e) of Article 7a and the</b> following criteria: |
|                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                     |
| (a) whether the module concerned is appropriate to the type of product, <b>appropriate to the relevant ecodesign requirements</b> and proportionate to the public interest pursued;                                                                            |                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                     |
|                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                     |
| (b) the nature of the <b>risks entailed by the product and the</b>                                                                                                                                                                                             |                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                     |



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| <p>extent to which conformity assessment corresponds to the type and degree of risk, product parameters referred to in Annex I on which the relevant ecodesign requirements are based, in particular whether performance in relation to those product parameters can be verified on the product itself;</p>                               |                                                                                                         |                                                                                                                                                                 |
|                                                                                                                                                                                                                                                                                                                                           |                                                                                                         |                                                                                                                                                                 |
| <p>(c) where third party involvement is mandatory, the need for the manufacturer to have a choice between <b>the quality assurance and product certification</b> modules set out in Annex II of Decision No 768/2008/EC.</p>                                                                                                              | <p>The addition of (d) is intended to take into account the specificities of non-serial production.</p> | <p><b>d) in case of non in series products the conformity assessment procedure shall be simplified according to Decision No 768/2008/EC art. 4, par. 4.</b></p> |
|                                                                                                                                                                                                                                                                                                                                           |                                                                                                         |                                                                                                                                                                 |
| <p>2. <del>Where relevant, records</del> <b>Records</b> and correspondence relating to the conformity assessment shall be drawn up in an official language of the Member State where a notified body involved in a conformity assessment procedure referred to in paragraph 1 is established, or in a language accepted by that body.</p> |                                                                                                         |                                                                                                                                                                 |
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| Article 37                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Italy welcomes and supports the amendments to the above articles. |  |
| EU declaration of conformity                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                   |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                   |  |
| 1. The EU declaration of conformity shall state that the fulfilment of ecodesign requirements specified in the applicable <del>delegated</del> <b>implementing—delegated</b> acts adopted pursuant to Article 4 <b>or according to Article 34</b> has been demonstrated.                                                                                                                                                                                                                            |                                                                   |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                   |  |
| 2. The EU declaration of conformity shall have the model structure set out in Annex V, shall contain the elements specified in the applicable conformity assessment procedure and a reference to the applicable <del>delegated</del> <b>implementing delegated</b> acts adopted pursuant to Article 4. It shall be continuously updated. It shall be translated into the language or languages required by the Member State in which the product is placed or made available <b>on the market</b> . |                                                                   |  |





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| <p>3. Where a product covered by a <del>delegated</del> <b>implementing delegated</b> act adopted pursuant to Article 4 is subject to more than one Union act requiring an EU declaration of conformity, a single EU declaration of conformity shall be drawn up in respect of all such Union acts. That declaration shall state the Union acts concerned and their publication references. It <del>may be a dossier made up of relevant individual EU declarations of conformity.</del></p> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |  |
| <p>4. By drawing up the EU declaration of conformity, the manufacturer shall assume responsibility for the compliance of the product.</p>                                                                                                                                                                                                                                                                                                                                                    |  |  |
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| Article 38                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |  |
| General principles of the CE marking                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |  |
| The CE marking shall be subject to the general principles set out in Article 30 of Regulation (EC)No                                                                                                                                                                                                                                                                                                                                                                                         |  |  |



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| 765/2008.                                                                                                                                                                                                                                      |  |  |
|                                                                                                                                                                                                                                                |  |  |
| Article 39                                                                                                                                                                                                                                     |  |  |
| Rules and conditions for affixing the CE marking                                                                                                                                                                                               |  |  |
|                                                                                                                                                                                                                                                |  |  |
| 1. The CE marking shall be affixed visibly, legibly and indelibly to the product. Where that is not possible or not warranted on account of the nature of the product, it shall be affixed to the packaging and to the accompanying documents. |  |  |
|                                                                                                                                                                                                                                                |  |  |
| 2. The CE marking shall be affixed before the product is placed on the market <b>or put into service</b> .                                                                                                                                     |  |  |
|                                                                                                                                                                                                                                                |  |  |
| 3. For a product in the <del>conformity</del> <del>assessment</del> <b>production control phase</b> of which a notified body participates, the CE marking shall be followed by the identification number of that notified body.                |  |  |
|                                                                                                                                                                                                                                                |  |  |
| The identification number of the notified body shall be affixed by                                                                                                                                                                             |  |  |



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| the body itself or, under its instructions, by the manufacturer or its authorised representative.                                                                                                                      |   |  |
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| 4. The CE marking and, where applicable, the identification number of the notified body may be followed by a pictogram or other marking indicating a special risk or use.                                              |   |  |
|                                                                                                                                                                                                                        |   |  |
| 5. Member States shall build upon existing mechanisms to ensure correct application of the regime governing the CE marking and take appropriate action in the event of improper use of the marking.                    |   |  |
|                                                                                                                                                                                                                        |   |  |
| <b>Article 40</b>                                                                                                                                                                                                      |   |  |
| <del>Alternative</del> <del>conformity declarations and</del> <b>Specifying rules on markings</b>                                                                                                                      |   |  |
|                                                                                                                                                                                                                        |   |  |
| When specifying <del>alternative</del> rules on <del>the declaration of conformity</del> <del>or</del> markings, <b>for products without requirements for CE marking in Union law</b> , indicating conformity with the | - |  |



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| applicable requirements under Union law pursuant to Article 4, third subparagraph, point (fc), the Commission shall take into account the following criteria: |                                                                                                                                           |  |
| (a) the need to minimise administrative burden for economic operators;                                                                                        |                                                                                                                                           |  |
| (b) the need to ensure coherence with other <del>conformity declarations</del> and markings applicable to a specific product;                                 |                                                                                                                                           |  |
| (c) the need to prevent confusion about the meaning of <del>conformity declarations</del> and markings under other Union law.                                 |                                                                                                                                           |  |
| <b>Chapter IX - Notification of conformity assessment bodies</b>                                                                                              | In general, Italy welcomes the amendments made to Articles 41-56, which incorporates several drafting suggestions previously represented. |  |
| Article 41<br>Notification                                                                                                                                    |                                                                                                                                           |  |
| Member States shall notify the Commission and the other                                                                                                       |                                                                                                                                           |  |



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| Member States of bodies authorised to carry out the third-party conformity assessment tasks <b>when</b> provided for under the <b>delegated</b> <b>implementing</b> <b>delegated</b> acts adopted pursuant to Article 4.                                                                                     |  |  |
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| Article 42<br>Notifying authorities                                                                                                                                                                                                                                                                          |  |  |
|                                                                                                                                                                                                                                                                                                              |  |  |
| 1. Member States shall designate a notifying authority that shall be responsible for setting up and carrying out the necessary procedures for the assessment and notification of conformity assessment bodies and the monitoring of notified bodies, including compliance with the provisions of Article 47. |  |  |
|                                                                                                                                                                                                                                                                                                              |  |  |
| 2. Member States may decide that the assessment and monitoring referred to in paragraph 1 shall be carried out by a national accreditation body within the meaning of and in accordance with Regulation (EC) No 765/2008.                                                                                    |  |  |



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| 3. Where the notifying authority delegates or <b>otherwise</b> entrusts the assessment, notification or monitoring referred to in paragraph 1 to a body which is not a governmental entity, that body shall be a legal entity and shall comply mutatis mutandis with the requirements laid down in Article 43. In addition, it shall have arrangements to cover liabilities arising out of its activities. |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                            |  |  |
| 4. The notifying authority shall take full responsibility for the tasks performed by the body referred to in paragraph 3.                                                                                                                                                                                                                                                                                  |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                            |  |  |
| Article 43                                                                                                                                                                                                                                                                                                                                                                                                 |  |  |
| Requirements relating to notifying authorities                                                                                                                                                                                                                                                                                                                                                             |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                            |  |  |
| 1. A notifying authority shall be established in such a way that no conflict of interest with conformity assessment bodies <del>or notified bodies</del> occurs.                                                                                                                                                                                                                                           |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                            |  |  |
| 2. A notifying authority shall                                                                                                                                                                                                                                                                                                                                                                             |  |  |



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| be organised and operated so as to safeguard the objectivity and impartiality of its activities.                                                                                                                                                                                                                                              |  |  |
|                                                                                                                                                                                                                                                                                                                                               |  |  |
| 3. A notifying authority shall be organised in such a way that each decision relating to notification of a conformity assessment body is taken by competent persons different from those who carried out the assessment.                                                                                                                      |  |  |
|                                                                                                                                                                                                                                                                                                                                               |  |  |
| 4. A notifying authority shall not offer or provide any activities that conformity assessment bodies perform, or consultancy services on a commercial or competitive basis.                                                                                                                                                                   |  |  |
|                                                                                                                                                                                                                                                                                                                                               |  |  |
| 5. A notifying authority shall safeguard the confidentiality of the information it obtains. However, it shall, upon request, exchange information on notified bodies with the Commission, with notifying authorities of other Member States and with other relevant national authorities, <b>which shall safeguard confidentiality of the</b> |  |  |



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| <b>information received.</b>                                                                                                                                                                                                                                                                                                                             |  |  |
|                                                                                                                                                                                                                                                                                                                                                          |  |  |
| 6. A notifying authority shall take as a basis for notification only the specific conformity assessment body applying for notification and not take account of the capacities or personnel of parent or sister companies. The authority shall assess that body against all relevant requirements and conformity assessment tasks.                        |  |  |
|                                                                                                                                                                                                                                                                                                                                                          |  |  |
| 7. A notifying authority shall have a sufficient number of competent personnel and sufficient funding at its disposal for the proper performance of its tasks.                                                                                                                                                                                           |  |  |
|                                                                                                                                                                                                                                                                                                                                                          |  |  |
| <del>The Commission may adopt implementing acts laying down a minimum number of full-time equivalents considered sufficient for the proper monitoring of notified bodies, where appropriate in relation to specific conformity assessment tasks. Where monitoring is carried out by a national accreditation body or a body referred to in Article</del> |  |  |





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| 42(3), this minimum number shall apply to that body.                                                                                                                                                 |  |  |
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| <del>Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(3).</del>                                                                       |  |  |
|                                                                                                                                                                                                      |  |  |
|                                                                                                                                                                                                      |  |  |
| Article 44                                                                                                                                                                                           |  |  |
| Information obligation on notifying authorities                                                                                                                                                      |  |  |
|                                                                                                                                                                                                      |  |  |
| Member States shall inform the Commission of their procedures for the assessment and notification of conformity assessment bodies and the monitoring of notified bodies, and of any changes thereto. |  |  |
|                                                                                                                                                                                                      |  |  |
| The Commission shall make that information publicly available.                                                                                                                                       |  |  |
|                                                                                                                                                                                                      |  |  |
| Article 45                                                                                                                                                                                           |  |  |
| Requirements relating to notified bodies                                                                                                                                                             |  |  |
|                                                                                                                                                                                                      |  |  |
| 1. For the purposes of notification, a conformity                                                                                                                                                    |  |  |



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| assessment body shall meet the requirements laid down in paragraphs 2 to 11.                                                                                                                                                                                                                                                                      |  |  |
|                                                                                                                                                                                                                                                                                                                                                   |  |  |
| 2. A conformity assessment body shall be established under the national law of a Member State and have legal personality.                                                                                                                                                                                                                         |  |  |
|                                                                                                                                                                                                                                                                                                                                                   |  |  |
| 3. A conformity assessment body shall be a third-party body independent of the organisation or the product it assesses. It shall not have any business ties with organisations that have an interest in the products it assesses, in particular manufacturers, their trade partners and their shareholding investors.                             |  |  |
|                                                                                                                                                                                                                                                                                                                                                   |  |  |
| <b>However, a body belonging to a business association or professional federation representing undertakings involved in the design, manufacturing, provision, assembly, use or maintenance of products which it assesses, may, on condition that its independence and the absence of any conflict of interest are demonstrated, be considered</b> |  |  |



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| such a body.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |  |
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| This shall not preclude the conformity assessment body from carrying out conformity assessment activities for competing manufacturers.                                                                                                                                                                                                                                                                                                                                                                                                |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |  |
| 4. A conformity assessment body, its top-level management and the personnel responsible for carrying out the conformity assessment tasks shall not be the designer, manufacturer, supplier, importer, distributor, installer, purchaser, owner, user or maintainer of the products which they assess, nor the representative of any of those parties. This shall not preclude the use of assessed products that are necessary for the operations of the conformity assessment body or the use of such products for personal purposes. |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |  |
| A conformity assessment body, its top-level management and the personnel responsible for carrying out the conformity assessment tasks shall not be                                                                                                                                                                                                                                                                                                                                                                                    |  |  |



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| directly involved in the design, manufacture or construction, the marketing, installation, use or maintenance of those products, or represent the parties engaged in those activities. They shall not engage in any activity that may conflict with their independence of judgement or integrity in relation to conformity assessment activities for which they are notified. This shall apply in particular to consultancy services. |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |  |
| Conformity assessment bodies shall ensure that the activities of its parent or sister companies, subsidiaries or subcontractors do not affect the confidentiality, objectivity or impartiality of their conformity assessment activities.                                                                                                                                                                                             |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |  |
| <b>The—A conformity assessment body shall not delegate to a subcontractor or a subsidiary the establishment and the supervision of internal procedures, general policies, codes of conduct or other internal rules, the assignment of its personnel to specific tasks and the conformity assessment decisions</b>                                                                                                                     |  |  |



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| <del>may not be delegated to a subcontractor or a subsidiary.</del>                                                                                                                                                                                                                                                                                                                                                                                                                                             |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |  |
| 5. Conformity assessment bodies and their personnel shall carry out the conformity assessment activities with the highest degree of professional integrity and the requisite technical competence in the specific field. They shall be free from all pressures and inducements, particularly financial, which might influence their judgement or the results of their conformity assessment activities, especially as regards persons or groups of persons with an interest in the results of those activities. |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |  |
| 6. A conformity assessment body shall be capable of carrying out all the conformity assessment tasks assigned to it under the relevant <del>delegated</del> <b>implementing delegated</b> act adopted pursuant to Article 4 and in relation to which it has been notified, whether those tasks are carried out by the conformity assessment body itself or on its behalf and under its                                                                                                                          |  |  |



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| responsibility.                                                                                                                                                                                                        |  |  |
|                                                                                                                                                                                                                        |  |  |
| At all times and for each conformity assessment procedure, and for each kind or category of products in relation to which it has been notified, a conformity assessment body shall have at its disposal the necessary: |  |  |
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| <p>(a) personnel with technical knowledge, and sufficient and appropriate experience to perform the conformity assessment tasks. <del>Personnel responsible for taking assessment decisions shall be employed by the conformity assessment body under the national law of the notifying Member State, shall not have any other potential conflict of interest, shall be competent to verify the assessments made by other staff, external experts or subcontractors. The number of such personnel shall be sufficient to ensure business continuity and a consistent approach to conformity assessments;</del></p> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |  |
| <p>(b) descriptions of procedures in accordance with which conformity assessment is carried out, ensuring the <del>of these</del> <b>transparency and the ability of</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |  |



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| <p>reproduction of those procedures and the ability to reproduce them. This shall include a qualification matrix that matches <b>including a description of how</b> relevant personnel, their respective status and tasks within the conformity assessment body <b>with correspond to</b> the conformity assessment tasks in relation to which the body intends to be notified;</p> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                     |  |  |
| <p>(c) appropriate policies and procedures to distinguish the tasks it carries out as a notified body from other activities;</p>                                                                                                                                                                                                                                                    |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                     |  |  |
| <p>(d) procedures for the performance of activities, which take due account of the size of an undertaking, the sector in which it operates, its structure, the degree of complexity of the product technology in question and the mass or serial nature of the production process.</p>                                                                                              |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                     |  |  |
| <p>It shall have the means necessary to perform the technical and administrative tasks connected with the conformity assessment</p>                                                                                                                                                                                                                                                 |  |  |





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| activities in an appropriate manner and shall have access to all necessary equipment or facilities.                                                                                                                                                                                                                                                                                                                                               |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |  |
| 7. The personnel responsible for carrying out conformity assessment activities shall have the following:                                                                                                                                                                                                                                                                                                                                          |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |  |
| (a) sound technical and vocational training covering all the conformity assessment activities in relation to which the conformity assessment body has been notified;                                                                                                                                                                                                                                                                              |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |  |
| (b) satisfactory knowledge of the requirements of the assessments they carry out and adequate authority to carry out those assessments, including appropriate knowledge and understanding of the relevant legislation, test, measurement and calculation requirements, of the applicable harmonised standards or common specifications and of the relevant provisions of this Regulation, and of the delegated <b>implementing delegated</b> acts |  |  |



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| adopted pursuant to Article 4;                                                                                                                                                                                                                                                                                                                                                                                                                                                |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |  |  |
| (c) the ability to draw up certificates, records and reports demonstrating that assessments have been carried out.                                                                                                                                                                                                                                                                                                                                                            |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |  |  |
| <b>7a. Personnel responsible for taking assessment decisions shall be employed by the conformity assessment body under the national law of the notifying Member State, shall not have any other potential conflict of interest, shall be competent to verify the assessments made by other staff, external experts or subcontractors. The number of such personnel shall be sufficient to ensure business continuity and a consistent approach to conformity assessments.</b> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |  |  |
| 8. The impartiality of the conformity assessment bodies and their top-level management and of the assessment personnel shall be guaranteed.                                                                                                                                                                                                                                                                                                                                   |  |  |
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| The remuneration of the top-level management and assessment personnel of a conformity assessment body shall not depend on the number of assessments carried out or their results.                                                                                                                                                                                                                                                                                    |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |  |
| 9. Conformity assessment bodies shall take out liability insurance unless liability is assumed by the State in accordance with national law, or the Member State itself is directly responsible for the conformity assessment.                                                                                                                                                                                                                                       |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |  |
| 10. The personnel of a conformity assessment body shall observe professional secrecy regarding all information obtained in carrying out the conformity assessment tasks under the relevant <del>delegated</del> <b>implementing delegated</b> acts adopted pursuant to Article 4, except in relation to the notifying authorities and other national authorities of the Member State in which its activities are carried out. Proprietary rights shall be protected. |  |  |
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| 11. Conformity assessment bodies shall participate in, or ensure that their assessment personnel are informed <del>about of</del> , the relevant standardisation activities <del>and apply as general guidance the administrative decisions and documents produced as a result of the work of that group.</del> |  |  |
|                                                                                                                                                                                                                                                                                                                 |  |  |
|                                                                                                                                                                                                                                                                                                                 |  |  |
| Article 46                                                                                                                                                                                                                                                                                                      |  |  |
| Presumption of conformity of conformity assessment bodies                                                                                                                                                                                                                                                       |  |  |
|                                                                                                                                                                                                                                                                                                                 |  |  |
| Where a conformity assessment body demonstrates its conformity with the criteria laid down in the relevant harmonised standards or parts thereof the references of which have been published in                                                                                                                 |  |  |
| the Official Journal of the European Union it shall be presumed to comply with the requirements set out in Article 45 in so far as the applicable harmonised standards cover those requirements.                                                                                                                |  |  |
|                                                                                                                                                                                                                                                                                                                 |  |  |
| Article 47                                                                                                                                                                                                                                                                                                      |  |  |



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| Subsidiaries of and subcontracting by notified bodies                                                                                                                                                                                                                                                                                                                                                             |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                   |  |  |
| 1. Where a notified body subcontracts specific tasks connected with conformity assessment or has recourse to a subsidiary, it shall ensure that the subcontractor or the subsidiary meets therequirements set out in Article 45 and shall inform the notifying authority accordingly.                                                                                                                             |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                   |  |  |
| 2. Notified bodies shall take full responsibility for the tasks performed by subcontractors or subsidiaries wherever these are established. <del>The relevant notified bodies shall monitor</del> establish procedures for the on-going monitoring of the competence, activities and performance of its subcontractors or subsidiaries, taking into account the qualification matrixreferred to in Article 45(6). |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                   |  |  |
| 3. Activities may be subcontracted or carried out by a subsidiary only with the agreement of theclient.                                                                                                                                                                                                                                                                                                           |  |  |



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| 4. Notified bodies shall keep at the disposal of the notifying authority the relevant documents concerning the assessment and monitoring of the qualifications of the subcontractor or the subsidiary and the work carried out by them under the relevant delegated <b>implementing delegated</b> acts adopted pursuant to Article 4. |  |  |
|                                                                                                                                                                                                                                                                                                                                       |  |  |
|                                                                                                                                                                                                                                                                                                                                       |  |  |
| Article 48<br>Application for notification                                                                                                                                                                                                                                                                                            |  |  |
|                                                                                                                                                                                                                                                                                                                                       |  |  |
| 1. A conformity assessment body shall submit an application for notification to the notifying authority of the Member State in which it is established.                                                                                                                                                                               |  |  |
|                                                                                                                                                                                                                                                                                                                                       |  |  |
| 2. That application shall be accompanied by a description of the conformity assessment activities, the conformity assessment module or modules and the product or products for which that body claims to be competent, <del>the qualification matrix referred to in Article 45(6),</del>                                              |  |  |



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| as well as by an accreditation certificate, where one exists, issued by a national accreditation body attesting that the conformity assessment body fulfils the requirements laid down in Article 45. The accreditation certificate shall relate only to the precise legal body applying for notification and shall be based, in addition to relevant harmonised standards, on the specific requirements and conformity assessment tasks set out in the relevant <del>delegated</del> <b>implementing delegated</b> act adopted pursuant to Article 4. |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |  |
| 3. Where the conformity assessment body concerned cannot provide an accreditation certificate, it shall provide the notifying authority with all the documentary evidence necessary for the verification, recognition and regular monitoring of its compliance with the requirements laid down in Article 45.                                                                                                                                                                                                                                          |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |  |
| Article 49<br>Notification procedure                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |  |



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| 1. Notifying authorities only notify conformity assessment bodies which have satisfied the requirements laid down in Article 45.                                                                                                                                              |  |  |
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| 2. They shall notify the Commission and the other Member States using the electronic notification tool developed and managed by the Commission.                                                                                                                               |  |  |
|                                                                                                                                                                                                                                                                               |  |  |
| 3. The notification shall include full details of the conformity assessment activities, the conformity assessment module or modules and product or products concerned and the relevant attestation of competence.                                                             |  |  |
|                                                                                                                                                                                                                                                                               |  |  |
| 4. Where a notification is not based on an accreditation certificate as referred to in Article 48(2), the notifying authority shall provide the Commission and the other Member States with documentary evidence which attests to the conformity assessment body's competence |  |  |





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| and the arrangements in place to ensure that that body will be monitored regularly and will continue to satisfy the requirements laid down in Article 45.                                                                                                                                       |  |  |
|                                                                                                                                                                                                                                                                                                 |  |  |
| 5. The body concerned may perform the activities of a notified body if the Commission or the other Member States do not raise any objections within 2 weeks of a notification where an accreditation certificate is used, or within 2 months of a notification where accreditation is not used. |  |  |
|                                                                                                                                                                                                                                                                                                 |  |  |
| Only such a body shall be considered a notified body for the purposes of this Regulation.                                                                                                                                                                                                       |  |  |
|                                                                                                                                                                                                                                                                                                 |  |  |
| <del>6. The notification shall become valid the day after the body is included in the list of notified bodies referred to in Article 50(2) by the Commission. The body concerned may perform the activities of a notified body only after the notification has become valid.</del>              |  |  |



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| <del>The Commission shall not publish a notification if it is aware or becomes aware that the relevant notified body does not meet the requirements laid down in Article 45 and inform the relevant notifying authority of the reasons for not publishing that notification.</del> |  |    |
|                                                                                                                                                                                                                                                                                    |  |    |
| 7. The Commission and the other Member States shall be notified of any subsequent relevant changes to the notification.                                                                                                                                                            |  |    |
|                                                                                                                                                                                                                                                                                    |  |    |
| Article 50                                                                                                                                                                                                                                                                         |  |    |
| Identification numbers and lists of notified bodies                                                                                                                                                                                                                                |  |    |
|                                                                                                                                                                                                                                                                                    |  |    |
| 1. The Commission shall assign an identification number to a notified body.                                                                                                                                                                                                        |  |    |
|                                                                                                                                                                                                                                                                                    |  |    |
| It shall assign a single such number even where the body is notified under several Union acts.                                                                                                                                                                                     |  |    |
|                                                                                                                                                                                                                                                                                    |  |    |
| 2. The Commission shall make the list of the bodies                                                                                                                                                                                                                                |  | 3. |



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| notified under this Regulation publicly available, including the identification numbers that have been allocated to them and the activities for which they have been notified.                                                                                                                                                                                                                                                                                                       |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |  |
| The Commission shall ensure that that list is kept up to date.                                                                                                                                                                                                                                                                                                                                                                                                                       |  |  |
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| Article 51<br>Changes to notifications                                                                                                                                                                                                                                                                                                                                                                                                                                               |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |  |
| 1. Where a notifying authority has ascertained or has been informed that a notified body no longer meets the requirements laid down in Article 45, or that it is failing to fulfil its obligations, the notifying authority shall restrict, suspend or withdraw notification as appropriate, depending on the seriousness of the failure to meet those requirements or fulfil those obligations. It shall immediately inform the Commission and the other Member States accordingly. |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |  |
| 2. In the event of restriction, suspension or withdrawal of                                                                                                                                                                                                                                                                                                                                                                                                                          |  |  |



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| notification, or where the notified body has ceased its activity, the notifying Member State shall take appropriate steps to ensure that this body's files are either processed by another notified body or kept available for the responsible notifying and market surveillance authorities at their request. |  |  |
|                                                                                                                                                                                                                                                                                                                |  |  |
| Article 52                                                                                                                                                                                                                                                                                                     |  |  |
| Challenge of the competence of notified bodies                                                                                                                                                                                                                                                                 |  |  |
|                                                                                                                                                                                                                                                                                                                |  |  |
| 1. The Commission shall investigate all cases where it doubts, or doubt is brought to its attention regarding, the competence of a notified body or the continued fulfilment by a notified body of the requirements and responsibilities to which it is subject.                                               |  |  |
|                                                                                                                                                                                                                                                                                                                |  |  |
| 2. The notifying Member State shall provide the Commission, on request, with all information relating to the basis for the notification or the maintenance of the competence of                                                                                                                                |  |  |



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| the body concerned.                                                                                                                                                                                                                                                                                            |  |  |
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| 3. The Commission shall ensure that all sensitive information obtained in the course of its investigations is treated confidentially.                                                                                                                                                                          |  |  |
|                                                                                                                                                                                                                                                                                                                |  |  |
| 4. Where the Commission ascertains that a notified body does not meet or no longer meets the requirements for its notification, it shall <b>inform the notifying Member State accordingly and request it to take the necessary corrective measures, including withdrawal of the notification if necessary.</b> |  |  |
|                                                                                                                                                                                                                                                                                                                |  |  |
| <del>adopt an implementing act requiring the notifying Member State to take the necessary corrective action <b>measures</b>, including withdrawal of the notification if necessary. That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 67(2).</del>       |  |  |
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| <p><del>The Commission shall update the list of notified bodies referred to in Article 50(2) within 2 weeks of the implementing act being adopted</del> <b>corrective action being notified pursuant to Article 49(7).</b></p>                                                                                                                      |  |  |
|                                                                                                                                                                                                                                                                                                                                                     |  |  |
| Article 53                                                                                                                                                                                                                                                                                                                                          |  |  |
| Operational obligations of notified bodies                                                                                                                                                                                                                                                                                                          |  |  |
|                                                                                                                                                                                                                                                                                                                                                     |  |  |
| <p>1. Notified bodies shall carry out conformity assessments in accordance with the conformity assessment procedures provided for in the <del>delegated</del> <b>implementing—delegated</b> acts adopted pursuant to Article 4.</p>                                                                                                                 |  |  |
|                                                                                                                                                                                                                                                                                                                                                     |  |  |
| <p>2. Conformity assessments shall be carried out in a proportionate manner, avoiding unnecessary burdens for economic operators. <b>Notified bodies</b> <del>Conformity assessment bodies</del> shall perform their activities taking due account of the size of an undertaking, the sector in which it operates, its structure, the degree of</p> |  |  |



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| complexity of the product technology in question and the mass or serial nature of the production process.                                                                                                                                                                                                                                                                                                                                                              |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |  |
| In so doing they shall nevertheless respect the degree of rigour and the level of protection required for the compliance of the product with the relevant requirements.                                                                                                                                                                                                                                                                                                |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |  |
| 3. Where a notified body finds that a manufacturer does not meet the relevant requirements or corresponding harmonised standards, common specifications or other technical specifications, it shall require that manufacturer to take appropriate corrective measures <del>in view of a second and final conformity assessment, unless the deficiencies cannot be remedied, in which case</del> and it shall not issue a certificate <del>or approval decision</del> . |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |  |
| 4. Where, in the course of the monitoring of conformity following the issue of a certificate <del>or approval decision</del> in                                                                                                                                                                                                                                                                                                                                        |  |  |



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| <p>accordance with the conformity assessment procedures provided for in a delegated <del>implementing—delegated</del> act adopted pursuant to Article 4, a notified body finds that a product or the manufacturer does not comply or no longer complies, it shall require the manufacturer to take appropriate corrective measures and shall suspend or withdraw the certificate <del>or</del> approval decision if necessary.</p> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |  |
| <p>5. Where corrective measures are not taken or do not have the required effect, the notified body shall restrict, suspend or withdraw any certificates <del>or—approval decisions</del>, as appropriate.</p>                                                                                                                                                                                                                     |  |  |
| <p><del>6. When taking conformity assessment decisions, including when deciding on the need to suspend or withdraw a certificate or approval decisions in light of possible non-compliance, notified bodies shall apply clear and pre-determined criteria.</del></p>                                                                                                                                                               |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |  |
| <p>7. Notified bodies shall ensure</p>                                                                                                                                                                                                                                                                                                                                                                                             |  |  |





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| <del>rotation among the personnel carrying out different conformity assessment tasks.</del>                                               |  |  |
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|                                                                                                                                           |  |  |
| Article 54                                                                                                                                |  |  |
| Information obligation on notified bodies                                                                                                 |  |  |
|                                                                                                                                           |  |  |
| 1. Notified bodies shall inform the notifying authority of the following:                                                                 |  |  |
|                                                                                                                                           |  |  |
| (a) any refusal, restriction, suspension or withdrawal of a certificate;                                                                  |  |  |
|                                                                                                                                           |  |  |
| (b) any circumstances affecting the scope of and conditions for notification;                                                             |  |  |
|                                                                                                                                           |  |  |
| (c) any request for information which they have received from market surveillance authorities regarding conformity assessment activities; |  |  |
|                                                                                                                                           |  |  |
| (d) on request, conformity assessment activities performed within the scope of their notification and any other                           |  |  |



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| activity performed, including cross-border activities and subcontracting.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |  |
| 2. Notified bodies shall provide the other bodies notified under this Regulation which carry out similar conformity assessment activities that cover the same <del>products</del> <b>product group</b> with relevant information on issues relating to negative and, on request, positive conformity assessment results.                                                                                                                                                                                                                                               |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |  |
| 3. Where the Commission or a Member State's market surveillance authority submits a request to a notified body established on the territory of another Member State relating to a conformity assessment carried out by that notified body, it shall send a copy of that request to the notifying authority of that other Member State. The notified body concerned shall respond without delay and within 15 days at the latest to the request. The notifying authority shall ensure that such requests are resolved by the notified body <del>unless there is a</del> |  |  |



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| legitimate reason for not doing so.                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |
|                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |
| 4. Where notified bodies have or receive evidence that:                                                                                                                                                                   | <p>In Article 54(4), Italy suggests the following amendment. It reflects the fact that only market surveillance authorities can judge whether a product placed on the market is compliant or not. Notified bodies certify that a product is compliant before it is placed on the market to prevent non-compliant products from entering the Union market. Therefore, market surveillance authorities must always be informed when a notified body has evidence that a product already placed on the market is non-compliant.</p> <p>In addition, it should be explained how, under (b) and (c), a notified body has evidence that a product placed on the market is non-compliant, since notified bodies act on products before they are placed on the market.</p> |  |
|                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |
| (a) another notified body does not comply with the requirements laid down in Article 45 or its obligations; or                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |
|                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |
| (b) a product placed on the market does not comply with ecodesign requirements set out in delegated <del>acts</del> <b>implementing delegated</b> acts adopted pursuant to Article 4 by which that product is covered; or |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |
|                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |



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| (c) a product placed on the market, due to its physical condition, is likely to cause a serious risk;                                                                                                          |  |                                                                                                                                                         |
|                                                                                                                                                                                                                |  |                                                                                                                                                         |
| they shall alert and share such evidence with the relevant market surveillance or notifying authority, as appropriate.                                                                                         |  | they shall alert and share such evidence with the relevant market surveillance <del>or</del> <b>and</b> notifying authority, <del>as appropriate.</del> |
|                                                                                                                                                                                                                |  |                                                                                                                                                         |
| Article 55                                                                                                                                                                                                     |  |                                                                                                                                                         |
| Exchange of experience                                                                                                                                                                                         |  |                                                                                                                                                         |
|                                                                                                                                                                                                                |  |                                                                                                                                                         |
| The Commission shall provide for the organisation of exchange of experience between the Member States' authorities responsible for notification policy.                                                        |  |                                                                                                                                                         |
|                                                                                                                                                                                                                |  |                                                                                                                                                         |
| Article 56                                                                                                                                                                                                     |  |                                                                                                                                                         |
| Coordination of notified bodies                                                                                                                                                                                |  |                                                                                                                                                         |
|                                                                                                                                                                                                                |  |                                                                                                                                                         |
| 1. The Commission shall ensure that appropriate coordination and cooperation between bodies notified under this Regulation are put in place and properly operated in the form of a group or groups of notified |  |                                                                                                                                                         |



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| bodies, where appropriate including groups of bodies notified under the same delegated <del>implementing</del> <b>delegated</b> act adopted pursuant to Article 4 or in relation to similar conformity assessment tasks.                                                                                                                                                                                                                  |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                           |  |  |
| Notified bodies shall participate in the work of any relevant group, directly or by means of designated representatives.                                                                                                                                                                                                                                                                                                                  |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                           |  |  |
| 2. Notified bodies shall apply as general guidance any relevant documents produced as a result of the work of the groups referred to in paragraph 1.                                                                                                                                                                                                                                                                                      |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                           |  |  |
| 3. Coordination and cooperation in the groups referred to in paragraph 1 shall aim at ensuring the harmonised application of this Regulation and of the delegated <del>implementing</del> <b>delegated</b> acts adopted pursuant to Article 4. <del>In doing so, the groups shall follow as general guidance any relevant documents produced by the administrative cooperation group set up pursuant to Article 30(2) of Regulation</del> |  |  |



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| (EU) 2019/1020-                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |
| <b>Chapter X - Incentives</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |
| Article 57<br>Member State incentives                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <p>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.</p> <p>The granting of incentives by Member States should be 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.</p> |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |
| 1. Member States incentives relating to products covered by a <del>delegated</del> <b>implementing delegated</b> act adopted pursuant to Article 4 that determines classes of performance in accordance with Article 7(4), in relation to a product parameter referred to in Annex I, shall concern the highest two classes of performance that are populated at Union level or, where relevant, products with an EU Ecolabel <b>including products fulfilling equivalent requirements</b> <del>unless otherwise</del> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |



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| specified in that delegated act.                                                                                                                                                                                                                                                                                                                                                                                                            |   |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                             |   |   |
| <b>1a. The Commission is empowered to adopt implementing acts specifying the product parameters referred to in Annex I for the products covered by a delegated act adopted pursuant to Article 4 which can be subject to Member States incentives in order to boost demand of environmentally sustainable products. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 66(3).</b> |   |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                             |   |   |
| <b>2. The implementing acts referred to in paragraph 1a shall comply with the following criteria:</b>                                                                                                                                                                                                                                                                                                                                       |   |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                             |   |   |
| <b>2. a)</b> Where a delegated <del>implementing</del> <b>delegated</b> 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                                                                                                                                                                                                         | - | - |



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| <p>Annex I or where classes of performance are established both under Regulation (EU) 2017/1369 and under this Regulation, the Commission <del>may further</del> <b>may, in order to boost demand of environmentally sustainable products,</b> specify in the <del>delegated</del> <b>implementing</b> acts adopted pursuant to Article 4, <del>third subparagraph, point (g),</del> which product parameters the Member States incentives shall concern <b>and that the highest two classes of performance for each parameter can be incentivised.</b></p> |  |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |  |   |
| <p><del>When doing so, the Commission shall take into account the following criteria:</del></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                             |  |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |  |   |
| <p><del>(a) the number of products in each class of performance;</del></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |  |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |  |   |
| <p><del>(b) the relative need to ensure affordability of the products in each class of performance; to avoid significant negative impact on consumers;</del></p>                                                                                                                                                                                                                                                                                                                                                                                            |  | — |
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| <p>(e) <del>the need to ensure sufficient demand for more environmentally sustainable products.</del></p>                                                                                                                                                                                                                                                                                                                                  |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                            |  |  |
| <p>3. b) Where a delegated <del>implementing—delegated</del> act adopted pursuant to Article 4 does not determine classes of performance, the Commission may specify <b>in an implementing act that</b> <del>in the delegated acts adopted pursuant to Article 4, third subparagraph, point (g),</del> requirements <b>on performance</b> related to product parameters that products concerned by Member State incentives shall meet.</p> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                            |  |  |
| <p><b>When deciding which product parameter requirements regarding incentives shall concern, the Commission shall, as appropriate for the product group concerned, consider where there is potential in boosting demand of more well-performing products, and the likelihood that incentives would help achieve this goal.</b></p>                                                                                                         |  |  |
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| <b>3.</b> When preparing the implementing acts referred to in paragraph 2 <del>doing so</del> , the Commission shall take into account the following criteria<br>the following criteria: |  |  |
|                                                                                                                                                                                          |  |  |
| <b>(a)</b> the number of products in each class of performance;                                                                                                                          |  |  |
|                                                                                                                                                                                          |  |  |
| <del>(a)</del> <b>(b)</b> the need to ensure relative affordability of the products meeting those requirements, to avoid significant negative impacts on consumers.                      |  |  |
|                                                                                                                                                                                          |  |  |
| <b>(b)</b> <del>the need to ensure sufficient demand for more environmentally sustainable products.</del>                                                                                |  |  |
|                                                                                                                                                                                          |  |  |
| <b>4.</b> The implementing acts adopted under paragraphs 2 and 3 shall be adopted in accordance with the examination procedure referred to in Article 67(3).                             |  |  |
|                                                                                                                                                                                          |  |  |
| Article 58                                                                                                                                                                               |  |  |



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| Green public procurement                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <p>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.</p> <p>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.</p>                                                                                 |  |
| <p><b><del>1. — Requirements pursuant to Article 4, third subparagraph, point (h) for The Commission is empowered to adopt implementing acts shall in the implementing act pursuant to Article 4 a specifying 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 supply and demand for environmentally sustainable products falling in the scope of those implementing acts. Those implementing acts</del></b></p> | <p>A favorable opinion is expressed with respect to the insertion of the adjective "minimum" in the first sub-paragraph of Article 58 since the rule thus outlined that does not result in an obstacle to the free movement of goods, but rather allows for the definition of more restrictive GPP requirements at the national level aimed at facilitating access in public procurement in the internal market of products that perform better in environmental terms than the GPP requirements established at the European level.</p> |  |



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| shall be adopted in accordance with the examination procedure referred to in Article 67(3).                                                                                                                                                                                       |  |  |
|                                                                                                                                                                                                                                                                                   |  |  |
| 1a. The requirements referred to in paragraph 1 shall be set on products which are covered by delegated acts setting out ecodesign requirements as appropriate in view of the specificities of to the product group concerned:                                                    |  |  |
|                                                                                                                                                                                                                                                                                   |  |  |
| (a) <del>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 level,</del>                                                       |  |  |
|                                                                                                                                                                                                                                                                                   |  |  |
| (ab) Include requirements <del>shall on the product parameters for which ecodesign requirements have been set</del> referred to in Annex I considering in particular product groups' (i) lifetime extension, (ii) energy consumption, (iii) end of life management, (iv) criteria |  |  |



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| applicable to refurbished/remanufactured,                                                                                                                                                                                             |   |                                                                                                                                                                                                                             |
|                                                                                                                                                                                                                                       |   |                                                                                                                                                                                                                             |
| (ba) 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 level.,                    | - | (ba) 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., |
|                                                                                                                                                                                                                                       |   |                                                                                                                                                                                                                             |
| The requirements shall, as appropriate to the product group concerned, take the form of, <del>mandatory—technical specifications, selection criteria, award—criteria, contract performance clauses, or targets,</del> 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                                                                                                                                                                              |   |                                                                                                                                                                                                                             |



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| 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) [ <del>Where applicable,</del><br><del>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.</del> | We support this modification. |  |
|                                                                                                                                                                                                                                                                                                                                                                    |                               |  |
| 2. When establishing requirements pursuant to paragraph 1 requirements                                                                                                                                                                                                                                                                                             |                               |  |



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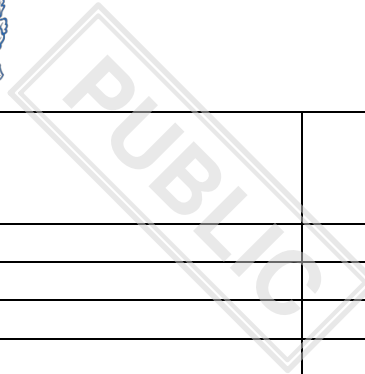
|                                                                                                                                                                               |                                                                                                                                                                                                                         |                                                                                                                                                                                                                            |
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| 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 buy more environmentally sustainable products, without entailing disproportionate costs.; |                                                                                                                                                                                                                         | (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.                                                                   | Italy does not support the deletion of the aside because it is considered essential to ensure that the adoption of green public procurement requirements do not result in disproportionate restrictions on competition. | (d) the market situation at Union level, including the competitive pressure, of therelevant product group.                                                                                                                 |
| (e) the effects of the requirements on competition.                                                                                                                           |                                                                                                                                                                                                                         |                                                                                                                                                                                                                            |



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| <p><b>3. Contracting authorities and contracting entities referred to in paragraph 1 may, in duly justified cases, derogate from the mandatory requirements specified in an implementing act referred to in paragraph 1 on the grounds of public security and public health.</b></p> <p><b>Contracting authorities may also, in duly justified cases, derogate from the mandatory requirements, when those would lead to disproportionate technical difficulties.</b></p> |                                                                                                                      |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                      |  |
| <b>Chapter XI - Market surveillance</b>                                                                                                                                                                                                                                                                                                                                                                                                                                   | Italy accepts and supports the amendments to Articles 59-62 that incorporates and reflects comments previously sent. |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                      |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                      |  |
| <b>Article 59a</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                      |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                      |  |
| <b>Market Surveillance Regulation</b>                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                      |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                      |  |
| <b>Regulation (EU) 2019/1020 should apply to products</b>                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                      |  |





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| subject to ecodesign requirements according to this Regulation.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |
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| Article 59                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |
| Market surveillance action plans                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |
| <p>1. <del>Without prejudice to Article 13 of Regulation (EU) 2019/1020,</del> Each Member State shall, <del>at least every 2-4 years,</del> as part of the overarching national market surveillance strategy according to Article 13 of Regulation (EU) 2019/1020, draw up an action plan outlining the market surveillance activities planned to ensure that appropriate checks are performed on an adequate scale in relation to this Regulation and the delegated <b>implementing—delegated</b> acts adopted pursuant to Article 4. Each Member State shall draw up the first such action plan by [16 July 2024 <b>6 months of entry into force of this Regulation</b>].</p> | <p>In relation to Art. 59(1), Italy has a request for clarification regarding the reference to the last sentence of that paragraph, where it mentions the obligation for Member States to adopt an action plan within 6 months of the entry into force of the Regulation. Since no secondary legislation setting design specifications for new products/product groups will be adopted within that time, one wonders what should be part of these national action plans? Are these action plans for energy-related products for which ecodesign regulations have been adopted under the current directive?</p> <p>The 6-months deadline may also prove to be insufficient for the adoption of national action plans.</p> |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |



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| The action plan referred to in paragraph 1 shall at least include:                                                                                                                                                                                                                                                                                                                                                                                                 |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |  |
| (a) the products or requirements identified by the <b>Member States</b> as priorities for market surveillance, taking into account <b>paragraph 3 of Article 11 of Regulation (EU) 2019/1020</b> , <b>and the potential environmental impacts of non-compliance</b> the common priorities identified by the administrative cooperation group pursuant to Article 62(1), point (a), <b>and in accordance with the implementing acts referred to in paragraph 5;</b> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |  |
| (b) the market surveillance activities planned in order to reduce non-compliance for those products or requirements identified as priorities, <del>including the nature and minimum number of checks</del> <b>planned</b> to be performed during the period covered by the action plan.                                                                                                                                                                            |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |  |
| 2. The priorities for market                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |  |



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| surveillance referred to in paragraph 1, point (a), shall be identified on the basis of objective criteria, including, <b>where such information is easily available:</b>                            |  |  |
|                                                                                                                                                                                                      |  |  |
| (a) the levels of non-compliance observed in the <b>national or Union</b> market;                                                                                                                    |  |  |
|                                                                                                                                                                                                      |  |  |
| (b) the environmental impacts of non-compliance;                                                                                                                                                     |  |  |
|                                                                                                                                                                                                      |  |  |
| (c) the number of relevant products made available on national markets; and                                                                                                                          |  |  |
|                                                                                                                                                                                                      |  |  |
| (d) the number of relevant economic operators active on those markets.                                                                                                                               |  |  |
|                                                                                                                                                                                                      |  |  |
| 3. <del>The nature and number of checks planned pursuant to paragraph 1, point (b), shall be proportionate to the objective criteria used to identify the priorities in line with paragraph 2.</del> |  |  |
|                                                                                                                                                                                                      |  |  |
| 4. <del>Member States shall communicate their action plans to</del>                                                                                                                                  |  |  |



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| <del>the Commission and other Member States through the information and communication system referred to in Article 34 of Regulation (EU) 2019/1020.</del>                                                                                                     |  |  |
|                                                                                                                                                                                                                                                                |  |  |
| <del>5. The Commission may adopt implementing acts listing the products or requirements that Member States shall at least consider as <b>take into consideration</b> when setting priorities for market surveillance pursuant to paragraph 1, point (a).</del> |  |  |
|                                                                                                                                                                                                                                                                |  |  |
| <del>Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 67(2).</del>                                                                                                                                    |  |  |
|                                                                                                                                                                                                                                                                |  |  |
| <del>Article 60 Minimum number of checks</del>                                                                                                                                                                                                                 |  |  |
|                                                                                                                                                                                                                                                                |  |  |
| <del>1. The Commission is empowered to adopt delegated acts in accordance with Article 66 to supplement this Regulation by laying down the minimum number of checks to be performed by the market surveillance</del>                                           |  |  |



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| <del>authorities of each Member State on specific products covered by delegated acts adopted pursuant to Article 4 or in relation to specific requirements set out in such delegated acts. The delegated act may, where relevant, specify the nature of the checks required and methods to be used.</del> |  |  |
|                                                                                                                                                                                                                                                                                                           |  |  |
| <del>The minimum number of checks shall be established on the basis of the following criteria:</del>                                                                                                                                                                                                      |  |  |
|                                                                                                                                                                                                                                                                                                           |  |  |
| <del>(a) the criteria listed in Article 59(2);</del>                                                                                                                                                                                                                                                      |  |  |
|                                                                                                                                                                                                                                                                                                           |  |  |
| <del>(b) the activities planned in Member States' action plans;</del>                                                                                                                                                                                                                                     |  |  |
|                                                                                                                                                                                                                                                                                                           |  |  |
| <del>(c) the common priorities identified by the administrative cooperation group pursuant to Article 62(1), point (a);</del>                                                                                                                                                                             |  |  |
|                                                                                                                                                                                                                                                                                                           |  |  |
| <del>(d) where relevant, the priorities included in the implementing acts referred to in Article 59(5).</del>                                                                                                                                                                                             |  |  |



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|                                                                                                                                                                                                                                                                                  |   |  |
| <del>2. Market surveillance authorities shall have the right to recover from the responsible economic operator the costs of document inspection and physical product testing in case of non-compliance with delegated acts adopted pursuant to Article 4.</del>                  | - |  |
|                                                                                                                                                                                                                                                                                  |   |  |
|                                                                                                                                                                                                                                                                                  |   |  |
| Article 61<br>Reporting and benchmarking                                                                                                                                                                                                                                         |   |  |
|                                                                                                                                                                                                                                                                                  |   |  |
| <del>1. Market surveillance authorities shall enter into the information and communication system referred to in Article 34 of Regulation (EU) 2019/1020 information on the nature and severity of any penalty imposed in relation to non-compliance with this Regulation.</del> |   |  |
|                                                                                                                                                                                                                                                                                  |   |  |
| 2. The Commission shall, every 2 4 years, draw up a report by 30 June based on the information entered by market surveillance authorities into the information and communication system referred to in Article 34 of                                                             |   |  |



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| Regulation (EU) 2019/1020. The first of these reports shall be published by [OP: Please add date: <del>two</del> <b>four</b> years after date of application of this Regulation].                                                                                             |  |  |
|                                                                                                                                                                                                                                                                               |  |  |
| The report shall include:                                                                                                                                                                                                                                                     |  |  |
|                                                                                                                                                                                                                                                                               |  |  |
| (a) information on the nature and number of checks performed by market surveillance authorities during the <del>two</del> <b>four</b> previous calendar years pursuant to Article 34(4) and (5) of Regulation (EU) 2019/1020;                                                 |  |  |
|                                                                                                                                                                                                                                                                               |  |  |
| (b) <del>information on the levels of non-compliance identified and on the nature and severity of penalties imposed for the two</del> <b>four</b> previous calendar years in relation to products covered by delegated acts adopted pursuant to Article 4 of this Regulation; |  |  |
|                                                                                                                                                                                                                                                                               |  |  |
| (c) <del>an evaluation a comparison of this information in relation to with</del> the activities planned in the context of the action plans drawn up pursuant to                                                                                                              |  |  |



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| Article 59(1);                                                                                                                                                                                                                                                                                        |  |  |
|                                                                                                                                                                                                                                                                                                       |  |  |
| (d) indicative benchmarks for market surveillance authorities in relation to the frequency of checks <del>and the nature and severity of penalties imposed.</del>                                                                                                                                     |  |  |
|                                                                                                                                                                                                                                                                                                       |  |  |
| 3. The Commission shall publish the report referred to in paragraph 2 of this Article in the information and communication system referred to in Article 34 of Regulation (EU) 2019/1020 and shall make public a summary of the report.                                                               |  |  |
|                                                                                                                                                                                                                                                                                                       |  |  |
| Article 62                                                                                                                                                                                                                                                                                            |  |  |
| Market surveillance coordination and support                                                                                                                                                                                                                                                          |  |  |
|                                                                                                                                                                                                                                                                                                       |  |  |
| 1. For the purposes of this Regulation, <del>the administrative cooperation group ('ADCO') set up pursuant to Article 30(2) of Regulation (EU) 2019/1020 shall meet at regular intervals and, where necessary, at the reasoned request of the Commission or of two or more participating market</del> |  |  |





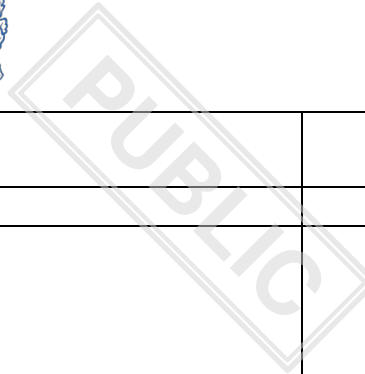
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| surveillance authorities.                                                                                                                                                                                                                                  |  |  |
| In the context of performing its tasks set out in Article 32 of Regulation (EU) 2019/1020, the ADCO shall support the implementation of the action plans drawn up pursuant to Article 59(1) and shall identify:                                            |  |  |
|                                                                                                                                                                                                                                                            |  |  |
| (a) common priorities for market surveillance as referred to in Article 59(1), point (a); based on objective criteria as referred to in Article 59(2);                                                                                                     |  |  |
|                                                                                                                                                                                                                                                            |  |  |
| (b) priorities for Union support pursuant to paragraph 2;                                                                                                                                                                                                  |  |  |
|                                                                                                                                                                                                                                                            |  |  |
| (c) requirements set out in delegated acts adopted pursuant to Article 4 that are applied or interpreted differently that should be priorities for the organisation of common trainings or adoption of guidelines pursuant to paragraph 2 of this Article. |  |  |
|                                                                                                                                                                                                                                                            |  |  |
| 2. Based on priorities identified by the ADCO, the Commission shall:                                                                                                                                                                                       |  |  |



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|                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |  |
| (a) organise joint market surveillance and testing projects in areas of common interest;                                                                                                                                                                                                                                                                                                                                                 |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |  |
| (b) organise joint investment in market surveillance capacities, including equipment and ITtools;                                                                                                                                                                                                                                                                                                                                        |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |  |
| (c) organise common trainings for the staff of market surveillance authorities, <b>customs authorities</b> , notifying authorities and notified bodies, including on the correct interpretation and application of requirements set out in delegated acts adopted pursuant to Article 4 and on methods and techniques relevant for applying or verifying compliance with such <b>conformity assessment and compliance verification</b> ; |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |  |
| (d) elaborate guidelines for the application and enforcement of requirements set out in delegated acts adopted pursuant to Article 4, including common practices and                                                                                                                                                                                                                                                                     |  |  |



|                                                                                                                                                                                                                            |                                                                                                                              |  |
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| methodologies for effective market surveillance.                                                                                                                                                                           |                                                                                                                              |  |
|                                                                                                                                                                                                                            |                                                                                                                              |  |
| The Union shall, where appropriate, finance the actions referred to in points (a), (b) and (c).                                                                                                                            |                                                                                                                              |  |
|                                                                                                                                                                                                                            |                                                                                                                              |  |
| 3. The Commission shall provide technical and logistic support to ensure the ADCO fulfils its tasks set out in Article 32 of Regulation (EU) 2019/1020 <b>where such tasks relate to this Regulation and this Article.</b> |                                                                                                                              |  |
|                                                                                                                                                                                                                            |                                                                                                                              |  |
| <b>Chapter XII - Safeguard procedures</b>                                                                                                                                                                                  | Italy welcomes the current wording of Articles 63-65. Nevertheless, we reiterate our previous comments on Article 64 and 65. |  |
|                                                                                                                                                                                                                            |                                                                                                                              |  |
| Article 63                                                                                                                                                                                                                 |                                                                                                                              |  |
| Procedure for dealing with products presenting a risk at national level                                                                                                                                                    |                                                                                                                              |  |
|                                                                                                                                                                                                                            |                                                                                                                              |  |
| 1. Where the market surveillance authorities of one Member State have sufficient reason to believe that a product covered by a <del>delegated</del>                                                                        |                                                                                                                              |  |



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| <p><del>implementing—delegated</del> act adopted pursuant to Article 4 presents a risk, they shall carry out an evaluation covering all requirements relevant to the risk and laid down in this Regulation or in the relevant <del>delegated</del> <del>implementing—delegated</del> act. The relevant economic operators shall cooperate as necessary with the —market surveillance authorities.</p>                                                                                                                                                                                                         |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |  |  |
| <p>Where, in the course of that evaluation, the market surveillance authorities find that the product does not comply with the requirements laid down in the applicable <del>delegated</del> <del>implementing—delegated</del> acts adopted pursuant to Article 4, they shall without delay require the relevant economic operator to take appropriate and proportionate corrective action, within a reasonable period prescribed by the market surveillance authorities and commensurate with the nature and where relevant the degree of the non-compliance, to bring the non-compliance to an end. The</p> |  |  |



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| corrective action required to be taken by the economic operator may include the actions listed in Article 16(3) of Regulation (EU) 2019/1020.                                                                                                                                                     |  |  |
|                                                                                                                                                                                                                                                                                                   |  |  |
| <b>The</b> Where appropriate, the market surveillance authorities shall inform the relevant notified body accordingly.                                                                                                                                                                            |  |  |
|                                                                                                                                                                                                                                                                                                   |  |  |
| 2. Where the market surveillance authorities consider that non-compliance is not restricted to their national territory, they shall inform the Commission and the other Member States of the results of the evaluation and of the actions which they have required the economic operator to take. |  |  |
|                                                                                                                                                                                                                                                                                                   |  |  |
|                                                                                                                                                                                                                                                                                                   |  |  |
| 3. The <b>relevant</b> economic operator shall ensure that all appropriate corrective action is taken in respect of all the products concerned that it has made available on the market throughout the Union.                                                                                     |  |  |
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| <p>4. Where the relevant economic operator does not take corrective action within the period referred to in the second subparagraph of paragraph 1 or the non-compliance persists, the market surveillance authorities shall take all appropriate provisional measures to prohibit or restrict the making available of the product concerned on their national market, to withdraw the product from that market or to recall it. <del>[To be aligned with the Machinery Regulation]</del></p> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |  |  |
| <p>They shall inform the Commission and the other Member States, without delay, of those measures.</p>                                                                                                                                                                                                                                                                                                                                                                                        |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |  |  |
| <p>5. The information to the Commission and the other Member States referred to in paragraph 4 shall be communicated through the information and communication system referred to in Article 34 of Regulation (EU) 2019/1020 and shall include all available details, in particular the data necessary for</p>                                                                                                                                                                                |  |  |



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| the identification of the non-compliant product, the origin of the product, the nature of the non-compliance alleged and the non-compliance involved, the nature and duration of the national measures taken and the arguments put forward by the relevant economic operator. The market surveillance authorities shall also indicate whether the non-compliance is due to either: |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                    |  |  |
| (a) failure of the product to meet requirements set out in the relevant <del>delegated</del> <b>implementing—delegated</b> act adopted pursuant to Article 4; or                                                                                                                                                                                                                   |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                    |  |  |
| (b) shortcomings in the harmonised standards or common specification referred to in Articles 34 and 35 conferring a presumption of conformity.                                                                                                                                                                                                                                     |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                    |  |  |
| 6. Member States other than the Member State initiating the procedure shall without delay inform the Commission and the other Member States of any measures adopted and of any                                                                                                                                                                                                     |  |  |



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| additional information at their disposal relating to the non-compliance of the product concerned, and, in the event of disagreement with the notified national measure, of their objections.                                                                                                                                                                                                                                    |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |  |
| 7. Where, within three months of receipt of the information referred to in paragraph 4, no objection has been raised by either a Member State or the Commission in respect of a provisional measure taken by a Member State, that measure shall be deemed justified. Measures may specify a period longer or shorter than three months in order to take account of the specificities of the products or requirements concerned. |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |  |
| 8. Member States shall ensure that appropriate restrictive measures are taken in respect of the product or — manufacturer concerned, such as withdrawal of the product from their market, without delay.                                                                                                                                                                                                                        |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |  |





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| Article 64                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Union safeguard procedure                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 1. Where, on completion of the procedure set out in Article 63(3) and (4), objections are raised against a measure taken by a Member State, or where the Commission considers a national measure to be contrary to Union legislation, the Commission shall without delay enter into consultation with the Member States and the relevant economic operator or operators and shall evaluate the national measure. On the basis of the results of that evaluation, the Commission shall decide by means of an implementing act whether the national measure is justified or not. | We believe that also formal non-compliance should be under the safeguard procedure as a way to appeal to the decision of a market surveillance authority when it can lead to restrict or prohibit the product being made available on the market or to ensure that it is recalled or withdrawn from the market. Indeed, a market surveillance authority may consider non-compliant a technical documentation that is instead compliant. | 1. Where, on completion of the procedure set out in Article 63(3) and (4) <b>and Article 65(2)</b> , objections are raised against a measure taken by a Member State, or where the Commission considers a national measure to be contrary to Union legislation, the Commission shall without delay enter into consultation with the Member States and the relevant economic operator or operators and shall evaluate the national measure. On the basis of the results of that evaluation, the Commission shall decide by means of an implementing act whether the national measure is justified or not. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 67(3). |
| That implementing act shall be adopted in accordance with the examination procedure referred to in Article 67(3).                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 2. The Commission shall address its decision to all Member                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |



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| States and shall immediately communicate it to them and the relevant economic operator or operators.                                                                                                                                                                                                                                                                                                                           |  |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                |  |   |
| If the national measure is considered justified, all Member States shall <b>ensure that appropriate restrictive measures, such as withdrawal, are taken in respect of</b> <del>take the measures, such as withdrawal, are taken in respect of</del> necessary to ensure that the non-compliant product <b>within the scope of this Regulation is withdrawn from their market,</b> and shall inform the Commission accordingly. |  | — |
|                                                                                                                                                                                                                                                                                                                                                                                                                                |  |   |
| If the national measure is considered unjustified, the Member State concerned shall withdraw the measure.                                                                                                                                                                                                                                                                                                                      |  |   |
|                                                                                                                                                                                                                                                                                                                                                                                                                                |  |   |
| 3. Where the national measure is considered justified and the non-compliance of the product is attributed to shortcomings in the harmonised standards referred to in Article 34 of this Regulation, the Commission shall apply the procedure provided for in Article 11 of Regulation (EU) No                                                                                                                                  |  |   |



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| 1025/2012.                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                       |  |
|                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                       |  |
| <p>4. Where the national measure is considered justified and the non-compliance of the product is attributed to shortcomings in the common specifications referred to in Article 35, the Commission shall, without delay, adopt implementing acts amending or repealing the common specifications concerned.</p> |                                                                                                                                                                                                                                                                                       |  |
|                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                       |  |
| <p>The implementing acts referred to in the first subparagraph shall be adopted in accordance with the examination procedure referred to in Article 67(3).</p>                                                                                                                                                   |                                                                                                                                                                                                                                                                                       |  |
|                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                       |  |
| <p>Article 65</p> <p>Formal non-compliance</p>                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                       |  |
|                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                       |  |
| <p>1. Where a Member State makes one of the following findings, it shall require the relevant economic operator to put an end to the non-compliance concerned:</p>                                                                                                                                               | <p>Points (c) and (f) although apparently of formal/administrative nature can instead hide problems of technical nature or even fraud (point c). See comment in definition n. 58. Therefore, we believe that these non-compliances have to be dealt following Articles 63 and 64.</p> |  |
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| (a) the CE marking has been affixed in violation of Article 30 of Regulation (EC) No 765/2008 or of Article 39 of this Regulation;     |  |  |
|                                                                                                                                        |  |  |
| (b) the CE marking has not been affixed;                                                                                               |  |  |
|                                                                                                                                        |  |  |
| (c) the identification number of the notified body has been affixed in violation of Article 39 or has not been affixed where required; |  |  |
|                                                                                                                                        |  |  |
| (d) the EU declaration of conformity has not been drawn up;                                                                            |  |  |
|                                                                                                                                        |  |  |
| (e) the EU declaration of conformity has not been drawn up correctly;                                                                  |  |  |
|                                                                                                                                        |  |  |
| (f) the technical documentation is not available, not complete or contains errors;                                                     |  |  |
|                                                                                                                                        |  |  |
| (g) the information referred to in Article 21(6) or Article 23(3) is absent, false or incomplete;                                      |  |  |



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| (h) any other administrative requirement provided for in Article 21 or Article 23 or in the applicable delegated <b>implementing delegated</b> act adopted pursuant to Article 4, is not fulfilled.                                                               |  |  |
|                                                                                                                                                                                                                                                                   |  |  |
| 2. Where the non-compliance referred to in paragraph 1 persists, the Member State concerned shall take all appropriate measures to restrict or prohibit the product being made available on the market or ensure that it is recalled or withdrawn from the market |  |  |
|                                                                                                                                                                                                                                                                   |  |  |
| <b>Chapter XIII - Delegated powers and committee procedure</b>                                                                                                                                                                                                    |  |  |
| Article 66                                                                                                                                                                                                                                                        |  |  |
| Exercise of the delegation                                                                                                                                                                                                                                        |  |  |
|                                                                                                                                                                                                                                                                   |  |  |
| 1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.                                                                                                                                          |  |  |



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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |
| <p>2. The power to adopt delegated acts referred to in <del>Article 4,</del> <b>Article 4,</b> <b>Article 11a,</b> Article 9(1), second subparagraph <b>and</b> Article 11(4), <del>and Article 20(3), and Article 61(1)</del> shall be conferred on the Commission for a period of six years from [one month after the entry into force of this act]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the six-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.</p> | <p>In <i>Discussion note n. 7675/23</i> the Presidency proposed to change the duration of the empowerment of the Commission and the time given to the Council to Object. We welcome and support all the proposals: to shorten the duration of the empowerment and to extend the time for the Council and the EP to object to delegated acts. None of the above-mentioned amendments have been included in this third compromise text. We would like to know why.</p> |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |
| <p>3. The delegation of power referred to in <b>Article 11a,</b> <del>Article 4,</del> <b>Article 4,</b> Article 9(1), second subparagraph <b>and</b> Article 11(4) <del>Article 20(3), and Article 61(1)</del> may be revoked at any time by the European Parliament or by the Council. A decision to revoke</p>                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |



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| shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force. |  |  |
|                                                                                                                                                                                                                                                                                                                    |  |  |
| 4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State acting in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.                                                                             |  |  |
|                                                                                                                                                                                                                                                                                                                    |  |  |
| 5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.                                                                                                                                                                              |  |  |
|                                                                                                                                                                                                                                                                                                                    |  |  |
| 6. A delegated act adopted pursuant to <b>Article 11a</b> , <del>Article 4</del> , <b>Article 4</b> , Article 9(1), second subparagraph, <b>and</b> Article 11(4)–, <del>and Article 20(3), and Article 61(1)</del> shall enter into force only if                                                                 |  |  |



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| no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council. |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |  |
| Article 67                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |  |
| Committee procedure                                                                                                                                                                                                                                                                                                                                                                                                                             |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |  |
| 1. The Commission shall be assisted by a Committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.                                                                                                                                                                                                                                                                                                      |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |  |
| 2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.                                                                                                                                                                                                                                                                                                                                             |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |  |
| 3. Where reference is made to                                                                                                                                                                                                                                                                                                                                                                                                                   |  |  |





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| this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. |                                                                                       |  |
|                                                                       |                                                                                       |  |
| <b>Chapter XIV - Final provisions</b>                                 | Italy welcomes the current wording of Articles 68 71, as well as of recitals 101-104. |  |
|                                                                       |                                                                                       |  |
| Article 68                                                            |                                                                                       |  |
| Penalties                                                             |                                                                                       |  |
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| <p>Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive, <del>taking into account the extent of non-compliance and the number of units of non-complying products placed on the Union market.</del></p> <p>Member States shall notify the Commission of those provisions by <del>[one</del> <b>two</b> years after the date of <del>application</del> <b>entry into force</b> of this Regulation] at the latest and shall notify it without delay of any subsequent amendment affecting them.</p> |                                                                                                                                                                                                                                                        |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                        |  |
| Article 69                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                        |  |
| Evaluation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                        |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                        |  |
| <p>No <del>sooner</del> <b>later</b> than [8-<del>5</del> <b>8</b> years after the date of application of this Regulation] <b>and every</b> [8-<del>5</del> <b>8</b> years <b>thereafter</b>, the Commission shall carry out an evaluation of this Regulation and</p>                                                                                                                                                                                                                                                                                                                                                                                                                                 | <p>We can support the 8 years revision clause, unless our proposal for the use of implementing acts for the adoption of eco-design requirements under article 4 will be accepted. In this event, a 5 years revision clause seems more appropriate.</p> |  |



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| <p>of its contribution to the functioning of the internal market and the improvement of the environmental sustainability of products. The Commission shall present a report on the main findings to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions. Member States shall provide the Commission with the information necessary for the preparation of that report.</p> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                           |  |  |
| <p><b>The Commission shall however carry out its first evaluation of the prohibition to destroy consumer goods as laid down in Article 20.b and 20.c within 4 years after the date of application of this Regulation.</b></p>                                                                                                                                                                                                             |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                           |  |  |
| <p>Where the Commission finds it appropriate, the report shall be accompanied by a legislative proposal for amendment of the relevant provisions of this Regulation.</p>                                                                                                                                                                                                                                                                  |  |  |
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| Article 70                                                                                                                                                                                                                                                                                                                                                                                         |  |  |
| Repeal and transitional provisions                                                                                                                                                                                                                                                                                                                                                                 |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                    |  |  |
| 1. Directive 2009/125/EC is repealed.                                                                                                                                                                                                                                                                                                                                                              |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                    |  |  |
| 2. References to the repealed Directive shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex VIII.                                                                                                                                                                                                                              |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                    |  |  |
| 3. <b>Notwithstanding paragraph (1) of this Article,</b> Article 1(3), Article 2, Article 3(1), Articles 4, 5 and 8, Article 9(3), Article 10 and Annexes IV, V and VI of Directive 2009/125/EC, as applicable on [OP: please insert the day before the date of application of this Regulation] shall continue to apply to implementing measures adopted pursuant to Article 15 of that Directive. |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                    |  |  |
| 4. Articles 3, 33 and Articles 59 to 65 of this Regulation shall apply to implementing measures adopted pursuant to Article 15 of                                                                                                                                                                                                                                                                  |  |  |



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| Directive 2009/125/EC.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                    |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                    |  |
| <p>5. For products placed on the market or put into service in accordance with Directive 2009/125/EC before the date of application of a delegated act adopted pursuant to Article 4 of this Regulation covering the same products, the manufacturer shall, for a period of 10 years as from the date when the last of that product was manufactured, make an electronic version of documentation relating to the conformity assessment and the declaration of conformity available for inspection within 10 days of a request received from market surveillance authorities or the Commission.</p> |                                                                                                                                                    |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                    |  |
| <p>6. <b>Member States shall [OJ note: by 12 months after entry into force of this Regulation] adapt national legislation and take other necessary measures to make sure they comply with the provisions related to Market Surveillance.</b></p>                                                                                                                                                                                                                                                                                                                                                    | <p>We support the position of MS claiming that 12 months is short period for transposition at national level. It should be at least 24 months.</p> |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                    |  |



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| Article 71                                                                                                                                   |  |  |
| Entry into force <b>and application</b>                                                                                                      |  |  |
|                                                                                                                                              |  |  |
| This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. |  |  |
| <b>It shall apply from [the date of entry into force of this Regulation] unless otherwise provided.</b>                                      |  |  |
|                                                                                                                                              |  |  |
| <del><b>However, Article 20(1) and Article 20a shall apply from [6 months after the entry into force of this Regulation].</b></del>          |  |  |
|                                                                                                                                              |  |  |
|                                                                                                                                              |  |  |
| This Regulation shall be binding in its entirety and directly applicable in all Member States.<br>Done at Brussels,                          |  |  |
| <b>ANNEX I</b>                                                                                                                               |  |  |
|                                                                                                                                              |  |  |
| <b>Product parameters</b>                                                                                                                    |  |  |
|                                                                                                                                              |  |  |
| The following parameters <b>shall</b> <del>may</del> , as appropriate <b>to the</b>                                                          |  |  |



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| <b>relevant product groups,—and where necessary supplemented by others,</b> be used as a basis for improving the product aspects referred to in Article 5(1):                                                                                                                                                                                                                                                                                                                  |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  |  |
| (a) durability and reliability of the product or its components as expressed through the product's guaranteed lifetime, technical lifetime, mean time between failures, indication of real use information on the product, resistance to stresses or ageing mechanisms;                                                                                                                                                                                                        |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  |  |
| (b) ease of repair and maintenance as expressed through: characteristics, availability and delivery time of spare parts, modularity, compatibility with commonly available spare parts, availability of repair and maintenance instructions, number of materials and components used, use of standard components, use of component and material coding standards for the identification of components and materials, number and complexity of processes and tools needed, ease |  |  |



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| of non-destructive disassembly and re-assembly, conditions for access to product data, conditions for access to or use of hardware and software needed;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |  |  |
| (c) ease of upgrading, re-use, remanufacturing and refurbishment as expressed through: number of materials and components used, use of standard components, use of component and material coding standards for the identification of components and materials, number and complexity of processes and tools needed, ease of non-destructive disassembly and re-assembly, conditions for access to product data, conditions for access to or use of hardware and software needed, conditions of access to test protocols or not commonly available testing equipment, availability of guarantees specific to remanufactured or refurbished products, conditions for access to or use of technologies protected by intellectual property rights, modularity; |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |  |  |
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| (d) ease and quality of recycling as expressed through: use of easily recyclable materials, safe, easy and non-destructive access to recyclable components and materials or components and materials containing hazardous substances, material composition and homogeneity, possibility for high-purity sorting, number of materials and components used, use of standard components, use of component and material coding standards for the identification of components and materials, number and complexity of processes and tools needed, ease of non-destructive disassembly and re-assembly, conditions for access to product data, conditions for access to or use of hardware and software needed; |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |  |  |
| (e) avoidance of technical solutions detrimental to re-use, upgrading, repair, maintenance, refurbishment, remanufacturing and recycling of products and components;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |  |  |



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| (f) use of substances, on their own, as constituents of substances or in mixtures, during the production process of products, or leading to their presence in products, including once these products become waste;                                                                                     |  |  |
|                                                                                                                                                                                                                                                                                                         |  |  |
| (g) <b>use or</b> consumption of energy, water and other resources, <b>including critical raw materials</b> in one or more life cycle stages of the product, including the effect of physical factors or software and firmware updates on product efficiency and including the impact on deforestation; |  |  |
|                                                                                                                                                                                                                                                                                                         |  |  |
| (h) use or content of recycled materials <b>and recovery of materials, including critical raw materials;</b>                                                                                                                                                                                            |  |  |
|                                                                                                                                                                                                                                                                                                         |  |  |
| (i) weight and volume of the product and its packaging, and the product-to-packaging ratio;                                                                                                                                                                                                             |  |  |
|                                                                                                                                                                                                                                                                                                         |  |  |
| (j) incorporation of used components                                                                                                                                                                                                                                                                    |  |  |
|                                                                                                                                                                                                                                                                                                         |  |  |
| (k) quantity, characteristics and                                                                                                                                                                                                                                                                       |  |  |



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| availability of consumables needed for proper use and maintenance <b>as expressed through yield, technical lifetime, ability to reuse, repair, and manufacture, mass-resource efficiency, interoperability;</b>                                                                                                                         |  |  |
| (l) the environmental footprint of the product, expressed as a quantification, in accordance with the applicable <del>delegated</del> <b>implementing-delegated</b> act, of a product's life cycle environmental impacts, whether in relation to one or more environmental impact categories or an aggregated set of impact categories; |  |  |
|                                                                                                                                                                                                                                                                                                                                         |  |  |
| (m) the carbon <b>and environment</b> footprint of the product;                                                                                                                                                                                                                                                                         |  |  |
|                                                                                                                                                                                                                                                                                                                                         |  |  |
| (n) microplastic release <b>as expressed through the release during relevant product lifecycle stages including manufacturing, transport, end-use, and end of life stages;</b>                                                                                                                                                          |  |  |
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| (o) emissions to air, water or soil released in one or more life cycle stages of the product <b>as expressed through quantities and nature of emissions, including noise;</b>                                                                                    |  |  |
|                                                                                                                                                                                                                                                                  |  |  |
| (p) amounts of waste generated, including plastic waste and packaging waste and their ease of re-use, and amounts of hazardous waste generated;                                                                                                                  |  |  |
|                                                                                                                                                                                                                                                                  |  |  |
| (q) <b>functional performance and conditions for use including as expressed through inter alia ability in performing its intended use, precautions of use, skills required, compatibility with other products or systems, etc.;</b>                              |  |  |
|                                                                                                                                                                                                                                                                  |  |  |
| (r) lightweight design as expressed through reduction of material consumption, load- and stress-optimisation of structures, integration of functions within the material or into a single product component, use of lower density or high-strength materials and |  |  |



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| hybrid materials, and optimisation of manufacturing, production and assembly processes with respect to material savings, recycling and other circularity aspects, and waste reduction.                                                                                                                                                                                                                                                                                              |  |  |
| ANNEX II                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |  |
| Procedure for defining performance requirements                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |  |
| Performance requirements shall be set as follows:                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |  |
| (1) A technical, environmental and economic analysis shall select a number of representative models of the product or products in question on the market and identify the technical options for improving the product performance in relation to the parameters referred to in Annex I - in view of product-specific or horizontal requirements - taking into account the economic viability of the options and avoiding any significant increase of other life cycle environmental |  |  |



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| impacts, and significant loss of performance or of usefulness for consumers.                                                                                                                                                                                                                                  |  |  |
|                                                                                                                                                                                                                                                                                                               |  |  |
| The technical, environmental and economic analysis shall also identify, for the parameter under consideration, the best-performing products and technologies available on the market.                                                                                                                         |  |  |
|                                                                                                                                                                                                                                                                                                               |  |  |
| The performance of products available on international markets and benchmarks set in other countries' legislation shall be taken into consideration during the analysis referred to in the first subparagraph as well as when setting requirements.                                                           |  |  |
|                                                                                                                                                                                                                                                                                                               |  |  |
| <b>The Commission shall also take into consideration the net environmental balance between the environmental benefits and burdens; impact on innovation, aesthetics and design choices whether there is a method or metrics for expressing the product parameter for which the performance requirement is</b> |  |  |



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| <p><b>established, and whether the compliance with the product parameter, for which the performance requirement is established, is verifiable or measurable by Market surveillance authorities.</b> Based on this analysis, and taking into account economic and technical feasibility, including the availability of key resources and technologies, as well as the potential for improvement, levels or non- quantitative requirements shall be defined.</p>                                                                                            |  |  |
| <p>Any concentration limit for substances as referred to in Annex I, point (f), shall be based on a thorough analysis of the sustainability of the substances and their identified alternatives, and shall not have significant adverse effects on human health or the environment. Any performance requirement on substances as referred to in Annex I, point (f), shall take into consideration existing chemical safety assessments performed by the relevant Union bodies for the substances concerned, as well as safe and sustainable by design</p> |  |  |



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| criteria for chemicals and materials developed by the Commission. Proposed concentration limits shall also consider aspects of enforceability, such as analytical detection limits.                                                                                                                                  |  |  |
|                                                                                                                                                                                                                                                                                                                      |  |  |
| Where relevant, the analysis referred to in the first subparagraph shall take into account the likely impacts of climate change on the product during its prospective lifetime, and the product's potential to improve climate resilience throughout its life cycle.                                                 |  |  |
|                                                                                                                                                                                                                                                                                                                      |  |  |
| A sensitivity analysis covering the relevant factors, such as the price of energy or other resources, the cost of raw materials and necessary technologies, production costs, discount rates, and, where appropriate, external environmental costs, including avoided greenhouse gas emissions, must be carried out. |  |  |
|                                                                                                                                                                                                                                                                                                                      |  |  |
| (2) For the development of the technical, environmental and economic analyses, relevant                                                                                                                                                                                                                              |  |  |





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| information available in the framework of other Union activities shall be taken into account and shall include technical information used as a basis for or derived from Regulation (EC) No 66/2010, Directive 2010/75/EU and Green Public Procurement criteria. |  |  |
|                                                                                                                                                                                                                                                                  |  |  |
| That shall also apply for information available from existing programmes applied in other parts of the world for setting the specific ecodesign requirement of products traded with the Union's economic partners.                                               |  |  |
|                                                                                                                                                                                                                                                                  |  |  |
| (3) The date of entry into force of the performance requirements shall, where relevant, take into account the time needed to adapt the product design and production processes.                                                                                  |  |  |
|                                                                                                                                                                                                                                                                  |  |  |
| Elements to be taken into consideration for information requirements                                                                                                                                                                                             |  |  |
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| <p>When deciding which information requirements, other than requirements on the digital product passport and substances of concern, are appropriate for the product group concerned the Commission shall, apart from Article 5 and 7, take into consideration the following elements:</p> |  |  |
|                                                                                                                                                                                                                                                                                           |  |  |
| <p>a) the potential for improvement and relative effectiveness in delivering a better environmental sustainability</p>                                                                                                                                                                    |  |  |
| <p>b) the technical feasibility of such information requirements<br/>c) the needs of various economic operators, including SMEs<br/>d) the need for potential customers to make informed choices<br/>e) the need to verify compliance with the requirements</p>                           |  |  |
| <p>f) the legitimate need to protect confidential business information, intellectual property rights and trade secrets</p>                                                                                                                                                                |  |  |



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| g) the need to provide information on the performance of the products for each aspect covered by a performance requirement                                                                                                                                                                                                                                      |  |  |
| h) the added value in providing information on the performance of the products for aspects not covered by performance requirements.                                                                                                                                                                                                                             |  |  |
|                                                                                                                                                                                                                                                                                                                                                                 |  |  |
| The Commission will include information requirements in its analysis and impact assessment related to performance requirements referred to in Article 6 and this Annex. In particular, the Commission will assess the type of information and the manner in which it should be made available to ensure that it is relevant and understood by the target group. |  |  |
| ANNEX III                                                                                                                                                                                                                                                                                                                                                       |  |  |
|                                                                                                                                                                                                                                                                                                                                                                 |  |  |
| Digital Product Passport                                                                                                                                                                                                                                                                                                                                        |  |  |
|                                                                                                                                                                                                                                                                                                                                                                 |  |  |
| (referred to in ArticleArticles 8, 9,10 and 11)                                                                                                                                                                                                                                                                                                                 |  |  |
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| <p>The requirements related to the product passport laid down in the delegated <b>implementing delegated</b> acts adopted pursuant to Article 4 shall specify what information shall or may be included in the product passport from among the following elements:</p> |  |  |
|                                                                                                                                                                                                                                                                        |  |  |
| <p>(a) information required under Articles 7(2) <b>point (b)</b> and <del>8(2)</del><b>Article 7(5)</b> or by other Union law applicable to the relevant product group;</p>                                                                                            |  |  |
|                                                                                                                                                                                                                                                                        |  |  |
| <p>(b) the unique product identifier at the level indicated in the applicable delegated act adopted pursuant to Article 4;</p>                                                                                                                                         |  |  |
|                                                                                                                                                                                                                                                                        |  |  |
| <p>(c) the Global Trade Identification Number as provided for in standard ISO/IEC 15459-6 or equivalent of products or their parts;</p>                                                                                                                                |  |  |
|                                                                                                                                                                                                                                                                        |  |  |
| <p>(d) relevant commodity codes, such as a TARIC code as defined in Council Regulation (EEC) No 2658/87<sup>69</sup>;</p>                                                                                                                                              |  |  |



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|                                                                                                                                                                                                                      |  |  |
| (e) compliance documentation and information required under this Regulation or other Union law applicable to the product, such as the declaration of conformity, technical documentation or conformity certificates; |  |  |
|                                                                                                                                                                                                                      |  |  |
| (f) user manuals, instructions, warnings or safety information, as required by other Union legislation applicable to the product;                                                                                    |  |  |
|                                                                                                                                                                                                                      |  |  |
| (g) information related to the manufacturer, such as its unique operator identifier and the information referred to in Article 21(7);                                                                                |  |  |
|                                                                                                                                                                                                                      |  |  |
|                                                                                                                                                                                                                      |  |  |
| (h) unique operator identifiers other than that of the manufacturer;                                                                                                                                                 |  |  |
|                                                                                                                                                                                                                      |  |  |
| (i) unique facility identifiers;                                                                                                                                                                                     |  |  |
|                                                                                                                                                                                                                      |  |  |
| (j) information related to the importer, including the information referred to in Article                                                                                                                            |  |  |



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| 23(3) and its EORI number;                                                                                                                                                                                                                                                                                                                                                                                                                                            |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |  |
| (k) the name, contact details and unique operator identifier code of the economic operator established in the Union responsible for carrying out the tasks set out in Article 4 of Regulation (EU) 2019/1020, or Article 15 of Regulation (EU) [...] on general product safety, or similar tasks pursuant to other EU legislation applicable to the product.                                                                                                          |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |  |
| (l) The data carrier, the unique product identifier referred to in point (b), the unique operators identifiers referred to in points (g) and (h), and the unique facility identifiers referred to in point (i) shall, where relevant for the concerned products, comply with International Organization for Standardisation/International Electrotechnical Commission standard ('ISO/IEC') 15459-1:2014; International Organization for Standardisation/International |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |  |
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| <p>Electrotechnical Commission standard ('ISO/IEC') 15459-2:2015; International Organization for Standardisation/International Electrotechnical Commission standard ('ISO/IEC') 15459-3:2014; International Organization for Standardisation/International Electrotechnical Commission standard ('ISO/IEC') 15459-4:2014;International Organization for Standardisation/International Electrotechnical Commission standard ('ISO/IEC') 15459-5:2014; International Organization for Standardisation/International Electrotechnical Commission standard ('ISO/IEC') 15459-6:2014.</p> |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |  |
| <p>The <del>delegated</del> <b>implementing delegated</b> acts adopted pursuant to Article 4 shall identify information relevant to ecodesign requirements that manufacturers may include in the product passport in addition to the information required pursuant to</p>                                                                                                                                                                                                                                                                                                            |  |  |



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| Article 8(2), point (a), including information on specific voluntary labels applicable to the product. That shall include whether an EU Ecolabel has been awarded to the product in line with Regulation (EC) No 66/2010.                                                                                 |  |  |
| <b>ANNEX IV</b>                                                                                                                                                                                                                                                                                           |  |  |
|                                                                                                                                                                                                                                                                                                           |  |  |
| <b>Internal production control</b>                                                                                                                                                                                                                                                                        |  |  |
|                                                                                                                                                                                                                                                                                                           |  |  |
| <b>(Module A)</b>                                                                                                                                                                                                                                                                                         |  |  |
|                                                                                                                                                                                                                                                                                                           |  |  |
| 1. Internal production control is the conformity assessment procedure whereby the manufacturer fulfils the obligations laid down in points 2, 3 and 4, and ensures and declares on its sole responsibility that the product satisfies the requirements of the delegated act adopted pursuantto Article 4. |  |  |
|                                                                                                                                                                                                                                                                                                           |  |  |
| 2. Technical documentation                                                                                                                                                                                                                                                                                |  |  |
|                                                                                                                                                                                                                                                                                                           |  |  |
| The manufacturer shall establish the technical documentation. The documentation shall make it possible to assess the product's conformity to the requirements of                                                                                                                                          |  |  |





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| the delegated act adopted pursuant to Article 4. The technical documentation shall specify the applicable requirements and cover, as far as relevant for the assessment, the design, manufacture and operation of the product. The technical documentation shall, wherever applicable, contain at least the following elements: |  |  |
|                                                                                                                                                                                                                                                                                                                                 |  |  |
| – a general description of the product and of its intended use,                                                                                                                                                                                                                                                                 |  |  |
|                                                                                                                                                                                                                                                                                                                                 |  |  |
| – conceptual design and manufacturing drawings and schemes of components, sub-assemblies, circuits, etc.                                                                                                                                                                                                                        |  |  |
|                                                                                                                                                                                                                                                                                                                                 |  |  |
| – descriptions and explanations necessary for the understanding of those drawings and schemes and the operation of the product,                                                                                                                                                                                                 |  |  |
|                                                                                                                                                                                                                                                                                                                                 |  |  |
| – a list of the harmonised standards, common specification or other relevant technical specifications the                                                                                                                                                                                                                       |  |  |



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| references of which have been published in the Official Journal of the European Union, applied in full or in part, and descriptions of the solutions adopted to meet the requirements where those harmonised standards have not been applied. In the event of partly applied harmonised standards, the technical documentation shall specify the parts which have been applied, |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                 |  |  |
| – results of design calculations made, examinations carried out, etc.,                                                                                                                                                                                                                                                                                                          |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                 |  |  |
| – the results of measurements carried out in relation to ecodesign requirements, including details of the conformity of these measurements as compared with the ecodesign requirements set out in the delegated act adopted pursuant to Article 4,                                                                                                                              |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                 |  |  |
| – test reports, and                                                                                                                                                                                                                                                                                                                                                             |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                 |  |  |
| – a copy of the information provided in accordance with the information                                                                                                                                                                                                                                                                                                         |  |  |



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| requirements pursuant to Article 7,                                                                                                                                                                                                                                        |  |  |
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| 3. Manufacturing                                                                                                                                                                                                                                                           |  |  |
|                                                                                                                                                                                                                                                                            |  |  |
| The manufacturer shall take all measures necessary so that the manufacturing process and its monitoring ensure compliance of the product with the technical documentation referred to in point 2 and with requirements of the delegated act adopted pursuant to Article 4. |  |  |
|                                                                                                                                                                                                                                                                            |  |  |
| 4. CE marking and EU declaration of conformity                                                                                                                                                                                                                             |  |  |
|                                                                                                                                                                                                                                                                            |  |  |
| The manufacturer shall affix the required conformity marking to each individual product that satisfies requirements of the delegated act adopted pursuant to Article 4.                                                                                                    |  |  |
|                                                                                                                                                                                                                                                                            |  |  |
| The manufacturer shall draw up a written declaration of conformity for each product model in accordance with Article 37 and keep it, together with the technical documentation, at the                                                                                     |  |  |



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| disposal of the competent national authorities for ten years after the product has been placed on the market or put into service. The declaration of conformity shall identify the product for which it has been drawn up. |  |  |
|                                                                                                                                                                                                                            |  |  |
| A copy of the declaration of conformity shall be made available to the relevant authorities upon request.                                                                                                                  |  |  |
|                                                                                                                                                                                                                            |  |  |
| 5. Authorised representative                                                                                                                                                                                               |  |  |
|                                                                                                                                                                                                                            |  |  |
| The manufacturer's obligations set out in point 4 may be fulfilled by his or her authorised representative, on his or her behalf and under his or her responsibility, provided that they are specified in the mandate.     |  |  |
| <b>ANNEX V</b>                                                                                                                                                                                                             |  |  |
|                                                                                                                                                                                                                            |  |  |
| <b>EU declaration of conformity</b>                                                                                                                                                                                        |  |  |
|                                                                                                                                                                                                                            |  |  |
| <b>(referred to in Article 37)</b>                                                                                                                                                                                         |  |  |
|                                                                                                                                                                                                                            |  |  |
| The EU declaration of conformity shall contain the following elements:                                                                                                                                                     |  |  |



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|                                                                                                                                                                                                                                     |  |  |
| (1) No ... (unique identification of the product)                                                                                                                                                                                   |  |  |
|                                                                                                                                                                                                                                     |  |  |
| (2) Name and address of the manufacturer and, where applicable, its authorised representative;                                                                                                                                      |  |  |
|                                                                                                                                                                                                                                     |  |  |
| (3) This EU declaration of conformity is issued under the sole responsibility of the manufacturer.                                                                                                                                  |  |  |
|                                                                                                                                                                                                                                     |  |  |
| (4) Object of the declaration (description of the product sufficient for its unambiguous identification and allowing traceability; it may, where necessary for the identification of the EU fertilising product, include an image); |  |  |
|                                                                                                                                                                                                                                     |  |  |
| (5) The object of the declaration described above is in conformity with this Regulation, the delegated act adopted pursuant to Article 4 and, where applicable, other Union harmonisation legislation;                              |  |  |
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| (6) references to the relevant harmonised standards or to the common specifications used or references to the other technical specifications in relation to which conformity is declared; |  |  |
|                                                                                                                                                                                           |  |  |
| (7) where applicable, the notified body ... (name, number) performed ... (description of intervention) and issued the certificate or approval decision ... (number);                      |  |  |
|                                                                                                                                                                                           |  |  |
| (8) where appropriate, the reference to other Union legislation providing for the affixing of the CE mark that is applied; and                                                            |  |  |
|                                                                                                                                                                                           |  |  |
| (9) the identification and signature of the person empowered to bind the manufacturer or its authorised representative.                                                                   |  |  |
|                                                                                                                                                                                           |  |  |
| (10) Additional information:<br>Signed for and on behalf of:<br>(place and date of issue): (name, function) (signature):                                                                  |  |  |
| <b>ANNEX VI</b>                                                                                                                                                                           |  |  |



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|                                                                                                                                                 |  |  |
| <b>Contents of delegated acts</b>                                                                                                               |  |  |
|                                                                                                                                                 |  |  |
| <b>(referred to in Article 4)</b>                                                                                                               |  |  |
|                                                                                                                                                 |  |  |
| The delegated acts adopted pursuant to Article 4 are to specify the following technical elements:                                               |  |  |
|                                                                                                                                                 |  |  |
| (1) the definition of the product groups covered;                                                                                               |  |  |
|                                                                                                                                                 |  |  |
| (2) the ecodesign requirements for the product groups covered, in line with Article 4 and based on the parameters referred to in Annex I;       |  |  |
|                                                                                                                                                 |  |  |
| (3) where relevant, the parameters referred to in Annex I for which no ecodesign requirement is necessary;                                      |  |  |
|                                                                                                                                                 |  |  |
| (4) the test, measurement or calculation standards or methods to be used pursuant to Article 32(1); where relevant, requirements for the use of |  |  |



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| <b>online tools pursuant to Article 32(2);</b>                                                                                                                                                                                                                                                              |  |  |
|                                                                                                                                                                                                                                                                                                             |  |  |
| <del>(5) where relevant, the transitional methods, harmonised standards, the reference numbers of which have been published in the Official Journal of the European Union, or common specifications to be used;</del>                                                                                       |  |  |
|                                                                                                                                                                                                                                                                                                             |  |  |
| <del>(6) the conformity assessment module to be used pursuant to Article 4, second subparagraph, as set out under Annex II to Decision 768/2008/EC. Where the module to be applied is different from the module set out in Annex IV, the factors leading to the selection of that specific procedure.</del> |  |  |
|                                                                                                                                                                                                                                                                                                             |  |  |
| <del>Where different conformity assessment modules, referred to in Annex II to Decision 768/2008/EC, are to be used pursuant to other Union legislation for the same product, the module defined in the delegated act adopted pursuant to Article 4 shall prevail for the</del>                             |  |  |





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| <del>ecodesign</del> requirement concerned;                                                                                                                                                                                                                                                                           |  |  |
|                                                                                                                                                                                                                                                                                                                       |  |  |
| <del>(7) requirements on information to be provided by manufacturers, including on the elements of the technical documentation to enable the verification of compliance of the product with the ecodesign requirements. Where relevant, any additional information requirements pursuant to Articles 30 and 31;</del> |  |  |
|                                                                                                                                                                                                                                                                                                                       |  |  |
| <del>(8) implementation dates ensuring at least 18 months after the entry into force of the delegated act, any staged or transitional measure or periods, taking into account possible impacts on market surveillance authorities, SMEs or on specific product groups manufactured primarily by SMEs;</del>           |  |  |
|                                                                                                                                                                                                                                                                                                                       |  |  |
| <del>(9) the duration of the transitional period during which Member States are to permit the placing on the market or putting into service of products, which</del>                                                                                                                                                  |  |  |



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| <del>comply with the regulations in force in their territory on the date of adoption of the delegated acts adopted pursuant to Article 4;</del>                                                                                                                        |  |  |
|                                                                                                                                                                                                                                                                        |  |  |
| <del>(10) the date for the evaluation and possible revision of the delegated act, taking into account technological progress.</del>                                                                                                                                    |  |  |
|                                                                                                                                                                                                                                                                        |  |  |
| <del>(11) other environmental labels who are equivalent to the ecodesign requirements pursuant to Article 34.</del>                                                                                                                                                    |  |  |
|                                                                                                                                                                                                                                                                        |  |  |
| <b>ANNEX VII</b>                                                                                                                                                                                                                                                       |  |  |
|                                                                                                                                                                                                                                                                        |  |  |
| <b>Criteria for self-regulation measures</b>                                                                                                                                                                                                                           |  |  |
|                                                                                                                                                                                                                                                                        |  |  |
| <b>(referred to in Article 18)</b>                                                                                                                                                                                                                                     |  |  |
|                                                                                                                                                                                                                                                                        |  |  |
| The following non-exhaustive list of <del>indicative</del> criteria <del>shall</del> <b>may</b> be used to assess self-regulation measures <b>in accordance with Article 18 as an alternative to a delegated act adopted pursuant to Article 4 of this Regulation.</b> |  |  |
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| <b>1. Openness of participation</b>                                                                                                                                                                                                                                                                                                                                                                                                                          |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |  |
| Self-regulation measures must be open to the participation of any operators placing on the market a product covered by the self-regulation measure, including third country operators <b>and SMEs</b> , both in the preparatory and in the implementation phases. Economic operators intending to establish a self-regulation measure should make a public announcement of their intention to do so before the process of developing the measure is started. |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |  |
| <b>2. Sustainability and added value</b>                                                                                                                                                                                                                                                                                                                                                                                                                     |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |  |
| Self-regulation measures must respond to the policy objectives of this Regulation and must be consistent with the economic and social dimensions of sustainable development. Self-regulation measures must have an integrated approach to the protection of the interests of consumers, health, <b>environment</b> , quality of life and economic interests.                                                                                                 |  |  |



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| <b>3. Representativeness</b>                                                                                                                                                                                                                                                                                                                                                                                |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                             |  |  |
| Industry and their associations taking part in a self-regulation measure must represent a large majority of the relevant economic sector, in accordance with Article 18(3), first subparagraph, point (b). Care must be taken to ensure respect for Union competition legislation, in particular Article 101 of the Treaty on the Functioning of the European Union regarding anti- competitive agreements. |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                             |  |  |
| <b>4. Quantified and staged objectives</b>                                                                                                                                                                                                                                                                                                                                                                  |  |  |
|                                                                                                                                                                                                                                                                                                                                                                                                             |  |  |
| The objectives defined by the signatories in their self-regulation measures must be set in clear and unambiguous terms, starting from a well-defined baseline. If the self-regulation measure covers a long time-span, interim targets must be included. It must be possible to monitor compliance with objectives and interim targets in an affordable and                                                 |  |  |



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| credible way using clear and reliable indicators.                                                                                                                                                                                                            |  |  |
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| <b>5. Involvement of civil society</b>                                                                                                                                                                                                                       |  |  |
|                                                                                                                                                                                                                                                              |  |  |
| With a view to ensuring transparency, self-regulation measures must be publicised, including online and via other electronic means of disseminating information.                                                                                             |  |  |
|                                                                                                                                                                                                                                                              |  |  |
| Stakeholders including Member States, industry, environmental NGOs and consumers'                                                                                                                                                                            |  |  |
| associations must be invited to comment on a self-regulation measure.                                                                                                                                                                                        |  |  |
|                                                                                                                                                                                                                                                              |  |  |
| <b>6. Monitoring and reporting</b>                                                                                                                                                                                                                           |  |  |
|                                                                                                                                                                                                                                                              |  |  |
| An independent inspector must monitor compliance of signatories with the self-regulation measure. The self-regulation measure must empower the independent inspector to verify compliance with the requirements of the self-regulation measure. It must also |  |  |



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| lay down the procedure to select an independent inspector and how it will be ensured that the inspector is free of conflict of interest and has the necessary skills for verifying compliance with the requirements set out in the self-regulation measure. |  |  |
|                                                                                                                                                                                                                                                             |  |  |
| Every year, each signatory must report all the information and data necessary for the independent inspector to reliably verify the signatory's compliance with the self-regulation measure.                                                                 |  |  |
|                                                                                                                                                                                                                                                             |  |  |
| The independent inspector must draw up a compliance report at end of each one-year reporting period.                                                                                                                                                        |  |  |
|                                                                                                                                                                                                                                                             |  |  |
| Where a signatory has not complied with the requirements of the self-regulation measure, it must take corrective action.                                                                                                                                    |  |  |
| <b>The results of any market surveillance activity conducted by a market surveillance authority where non-compliance with the SRM requirements has been</b>                                                                                                 |  |  |



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| identified, should be taken into account by the independent inspector, in particular in the compliance report, and corrective action shall be taken.                                                                              |  |  |
|                                                                                                                                                                                                                                   |  |  |
| <b>7. Cost-effectiveness of administering a self-regulation measure</b>                                                                                                                                                           |  |  |
|                                                                                                                                                                                                                                   |  |  |
| The cost of administering the self-regulation measure, in particular as regards monitoring, must not lead to a disproportionate administrative burden, as compared to their objectives and to other available policy instruments. |  |  |

## ANNEX VIII

### Correlation table

| Directive 2009/125/EC | This Regulation |
|-----------------------|-----------------|
| Article 1             | Article 1       |
| Article 2             | Article 2       |
| Article 3             | -               |
| Article 4             | Article 23      |
| Article 5             | Articles 37-39  |



|                   |                          |
|-------------------|--------------------------|
| <b>Article 6</b>  | <b>Article 3</b>         |
| <b>Article 7</b>  | <b>Articles 63 to 65</b> |
| <b>Article 8</b>  | <b>Articles 21, 36</b>   |
| <b>Article 9</b>  | <b>Article 34</b>        |
| <b>Article 10</b> | -                        |
| <b>Article 11</b> | <b>Article 5(6)</b>      |
| <b>Article 12</b> | <b>Article 62</b>        |
| <b>Article 13</b> | <b>Article 19</b>        |
| <b>Article 14</b> | <b>Article 7</b>         |
| <b>Article 15</b> | <b>Articles 4 and 5</b>  |
| -                 | <b>Article 8-15</b>      |
| <b>Article 16</b> | <b>Article 16</b>        |
| <b>Article 17</b> | <b>Article 18</b>        |
| <b>Article 18</b> | <b>Articles 17</b>       |
| -                 | <b>Article 20</b>        |
|                   | <b>Article 22</b>        |
|                   | <b>Articles 24-33</b>    |
|                   | <b>Article 35</b>        |
|                   | <b>Article 40-61</b>     |
|                   | <b>Article 66</b>        |
| <b>Article 19</b> | <b>Article 67</b>        |





|                   |                   |
|-------------------|-------------------|
| <b>Article 20</b> | <b>Article 68</b> |
| <b>Article 21</b> | <b>Article 69</b> |
| <b>Article 22</b> | -                 |



| <b>Directive 2009/125/EC</b> | <b>This Regulation</b>        |
|------------------------------|-------------------------------|
| <b>Article 23</b>            | -                             |
| <b>Article 24</b>            | <b>Article 70</b>             |
| <b>Article 25</b>            | <b>Article 71</b>             |
| <b>Article 26</b>            | -                             |
| <b>ANNEX I</b>               | <b>Articles 5, 7, ANNEX I</b> |
| <b>ANNEX II</b>              | <b>ANNEX II</b>               |
| -                            | <b>ANNEX III</b>              |
| <b>ANNEX III</b>             | -                             |
| <b>ANNEX IV</b>              | <b>ANNEX IV</b>               |
| <b>ANNEX V</b>               | -                             |
| <b>ANNEX VI</b>              | <b>ANNEX V</b>                |
| <b>ANNEX VII</b>             | <b>ANNEX VI</b>               |
| <b>ANNEX VIII</b>            | <b>ANNEX VII</b>              |
| <b>ANNEX IX</b>              | -                             |
| <b>ANNEX X</b>               | <b>ANNEX VIII</b>             |

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**Proposal for clarification of horizontal information requirements in recital (23) and article 5 §2a of the ESPR**

The Commission proposes to establish a framework for setting ecodesign requirements via delegated acts, following a case-by-case and product-by-product approach. While this allows for very precise and specific information and/or performance requirements on targeted product groups, it is coupled with necessary but lengthy prioritisation and examination procedures, thereby delaying the potential positive impact of the ESPR on circular economy.

Yet, to enable circular economy, it is important to have a more horizontal approach where two or more product groups display one or more similarities allowing a product aspect in article 5 §1 to be improved based on a common ecodesign requirements. We therefore propose to further clarify and strengthen the PRES latest compromise proposal in article 5 §2a and recital (23)

**- Article 5 §2a**

The second sub-paragraph creates unnecessary confusion as to what should be the purpose of horizontal requirements. Indeed, it is already stated in the first sub-paragraph, that horizontal requirements may be established to improve a product aspect referred to in article 5 §1. Furthermore, the third sub-paragraph clearly states that the Commission shall also take into account the effectiveness of establishing horizontal requirements.

For legal certainty and for clarity, we would therefore like to amend article 5 §2a as follows:

- Deleting the second sub-paragraph;
- Transforming the last sub-paragraph into a standalone paragraph.

| Presidency third compromise text, doc. 8080/23                                                                                                                                                                                                                                       | Drafting suggestion                                                                                                                                                                                                                                                                  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>2a.</b> <del>However,</del> Where two or more product groups display <del>technical</del> <b>one or more</b> similarities allowing a product aspect referred to in paragraph 1 to be improved based on a common <b>ecodesign</b> requirements, <b>such ecodesign</b> requirements | <b>2a.</b> <del>However,</del> Where two or more product groups display <del>technical</del> <b>one or more</b> similarities allowing a product aspect referred to in paragraph 1 to be improved based on a common <b>ecodesign</b> requirements, <b>such ecodesign</b> requirements |

may be established horizontally for those product groups (**“horizontal requirements”**).

**Horizontal ecodesign requirements shall effectively improve environmental sustainability with respect to the product aspect concerned.**

**When establishing horizontal ecodesign requirements, the Commission shall also take into account the effectiveness of such an approach, in particular its ability to address a large number of products, including product groups that have not been prioritised individually in the working plan referred to in Article 16.**

**A horizontal ecodesign requirement might be further adapted to the specificities of the product groups covered.**

**An horizontal ecodesign requirement established pursuant to the third subparagraph may cover products falling in the scope of a self-regulation measure **listed pursuant to Article 18(3)** established as a valid alternative pursuant to Article 18(3), where the Commission considers **that in case** that self-regulation measure does not address the product aspect covered by that horizontal ecodesign requirement **or the ecodesign requirement addresses the same aspect in a more stringent manner.****

may be established horizontally for those product groups (**“horizontal requirements”**).

**Horizontal ecodesign requirements shall effectively improve environmental sustainability with respect to the product aspect concerned.**

**When establishing horizontal ecodesign requirements, the Commission shall also take into account the effectiveness of such an approach, in particular its ability to address a large number of products, including product groups that have not been prioritised individually in the working plan referred to in Article 16.**

**A horizontal ecodesign requirement might be further adapted to the specificities of the product groups covered.**

**2aa.** **An horizontal ecodesign requirement established pursuant to the third subparagraph may cover products falling in the scope of a self-regulation measure **listed pursuant to Article 18(3)** established as a valid alternative pursuant to Article 18(3), where the Commission considers **that in case** that self-regulation measure does not address the product aspect covered by that horizontal ecodesign requirement **or the ecodesign requirement addresses the same aspect in a more stringent manner.****

- **Recital (23)**

Secondly, we do not agree with prejudging, in recital (23), that reparability and product carbon footprint are the only important aspects that should be considered in the context of horizontal requirements. A more neutral approach, leaving it only to the working plan to prioritise aspects prioritised for horizontal requirements should be preferred. The ESPR should not establish a hierarchy between different aspects, which may be more or less relevant depending on the product group concerned. Therefore, we suggest deleting the specific reference to two aspects only as follows. Alternatively, all the aspects from article 5 §1 would have to be listed.

| Presidency third compromise text, doc. 8080/23                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Drafting suggestion                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>(23) 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. <b><u>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. [...]</u></b></p> | <p>(23) 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. <b><u>For relevant product groups horizontal requirements <del>on important aspects such as reparability and product carbon footprint</del> should be considered in order to speed up the transition to a circular economy. [...]</u></b></p> |

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## 1. MEMBER STATE EXPERT GROUP AND THE WORKING PLAN (ARTICLES 16-17A)

### 1.1 Enhancing the role of MS experts in the Ecodesign Expert Group

We support German suggestion about the possibility of member states' representatives for written comments to the Commission regarding the drafts of the product regulations. The proposals and opinions of member states should be considered by the Commission in its further work. Also, we support the proposal of the Presidency for the Commission to adopt a statement to be annexed to the regulation promising to ensure proper MS consultation within sufficient time and on all delegated acts and strongly request the Commission to follow this proposal.

### Proposals for definitions

#### Art. 2 (18)

'refurbishment' means ~~actions carried out to preparing , cleaning, testing and preparing or modifying and, where necessary repairing~~ an object that is waste or a ~~second-hand~~ product ~~in order~~ to restore ~~either~~ 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;~~

#### Art. 2 (23)

(23) 'environmental footprint' means a quantification of a product's environmental impacts, whether in relation to a single environmental impact category or an aggregated set of impact categories based on the Product Environmental Footprint method **or other scientifically robust and verifiable standards which are lifecycle based**

Other robust existing validated methodologies and standards to assess the environmental footprint of products such as ISO 14040 based LCA should be considered in addition to PEF methodology and rules. There are limitations with the current PEF approach. Additionally, the PEF databases and Category Rules (PEFCRs) are outdated and need further development. We maintain the previously proposal made – please see text in column two.

#### Art.2 (28) Substances of Concerns (SoC)

We support IT, we believe that the definition should be limited to substances in (a) and (c), and (b) should be deleted, because as can be seen, art 57 currently includes most of the substances mentioned in letter (b), respectively those in Annex VI to CLP (R 1272/2008). Art 57 of REACH refers to the possibility of including in Annex XIV (list of substances requiring authorization) carcinogenic substances 1A and 1B, mutagenic 1A and 1B, toxic for reproduction 1A and 1B, persistent, bioaccumulative and toxic, very persistent and very bioaccumulative and of those that affect the endocrine system. Annex XIV substances may not be placed on the market or used without authorization granted for a period of time. Annex VI of CLP includes hazardous substances with harmonized classification. What does not appear in Art 57 are the hazard categories "Persistent, Mobile and Toxic (PMT), very Persistent very Mobile (vPvM); Endocrine disruption]",

which were introduced in CLP by Regulation No 2023/707 and which apply to substances from 2026 and to mixtures from 2028 so if the need arises at that time the ESPR can be updated.

#### Art.2 (35)

‘destruction’ means the intentional damaging or discarding of a product as waste with the exception of discarding such product for the only purpose of ~~delivering a product for~~ preparing it for re-use or, remanufacturing, recycling or for other recovery operations (e.g.. energy recovery). (it is currently not consistent with the "waste hierarchy" as presented in Art. 4 of the Waste Framework Directive. To ensure alignment, the ESPR definition of "destruction" should not only mention "reuse and remanufacturing" as exceptions to destruction, but also "recycling and other recovery (e.g. energy recovery)")

#### Art.2 (37)

‘unsold consumer product’ means any consumer product ~~feet for consumption and sale~~ that has not been sold including products ~~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 or, where applicable, in view of the commercial guarantee for withdrawal provided by the retailer~~trader~~ regarding the product concerned.

#### Art. 6

New paragraph:

**Any concentration limits set out in accordance with paragraph 3 shall not override the concentration limits set out in (EO) Regulation № 1907/2006 (REACH) or in the product sectoral legislation for reasons relating to chemical safety."**

Annex XVII of REACH establishes the restrictions on the use of chemical substances classified as dangerous, so it is good that through ESPR the conditions established by REACH should not be exceeded (they should not be more severe).

**Article 13 – Customs controls relating to the product passport, we support the proposal of automatic validation of the unique product identifier through the EU Single Desk for customs – EU CSW-CERTEX. However, we consider it useful to detail the role of the customs authorities in terms of product compliance, we preferred the previous version, it contained a clearer wording. It must be taken into account that the controls carried out by the customs authorities will be carried out in accordance with the provisions of the Union customs legislation, but also in accordance with the provisions of Regulation (EU) 1020/2019 on market surveillance and product compliance and amending Directive 2004/42/EC and Regulations (EC) no. 765/2008 and (EU) no. 305/201, with subsequent amendments and additions, which establishes the role of the customs authority in terms of the controls that are carried out and the measures in case of non-conformity of the products (articles 25-28).**



## **Chapter VI - Destruction of unsold consumer products, SECTION II-TRANSPARENCY, Disclosure of information on unsold consumer products**

### **Art. 20 (1)**

An economic operator, which is not an SME, that discards unsold consumer products directly, or on behalf of another economic operator, shall disclose to the Commission, upon its request, the following information:

- (a) ~~the number and~~ **the weight amount** (in tons) of unsold consumer products discarded per year, differentiated per type or category of products;
- (b) the reasons for the discarding of products;
- (c) the proportion of the delivery of discarded products, whether directly or through a third party, to each of the following activities: preparing for re-use, remanufacturing, recycling, other recovery, for example, energy recovery and disposal operations in accordance with the waste hierarchy as defined by Article 4 of Directive 2008/98/EC.

Justification : We acknowledge the two-step approach to first mandate economic operators to disclose the quantity of unsold consumer products discarded and, afterwards, to prohibit the destruction of unsold consumer products in the sectors where this practice is more wide-spread and unjustified. However, given the sensitivity of this data from a business and competition point of view, the reporting requirements foreseen should aim to be meaningful for the regulatory framework and, hence, be exclusively tailored to the needs of the Commission for the implementation of sectoral bans in the future.

For this reason, information about unsold consumer products should only be made available to the Commission, upon its request, for this sole purpose. Transparency of companies' practices can be addressed in the context of the Commission delegated acts: this would ensure that the specificity of the wide diversity of products is considered. It is also important that economic operators are provided with adequate time necessary to comply with the reporting requirements. This time is essential for companies to adapt their systems to account for the appropriate requirements in line with the Regulation, so that better enforceability is ensured.

We propose the revision of this point as presented enclosed.

### **Art. 20b**

Any specific prohibitions against the destruction of unsold consumer products should be based on thorough impact assessments.

## **Annex VII (1) Right to repair campaign**

### **1. Openness of participation**

Self-regulation measures must be open to the participation of any operators placing on the market a product covered by the self-regulation measure, including third country operators, **and also any operators acting in product's lifespan, such as independent operators both in the preparatory and in the implementation phases.** Economic operators intending to establish a self-regulation measure should make a public announcement of their intention to do so before the process of developing the measure is started.

**Justification** Independent professionals represent the majority of the repair and refurbishment sectors, while manufacturers' networks represent a minority. The proposed definition acknowledges the critical role they play within the economic value chain by providing repair and refurbishment services.

## DKs written remarks to REV3 of the proposal for an ecodesign regulation

Date  
18-04-2023

We thank the Swedish Presidency for the dedicated work with the third compromised text. DK is overall positive towards the Presidency's changes. However, we have some proposals for adjustments, which we consider important to address ahead of the general approach in May.

We still have a parliamentary reservation, but our provisional remarks to the third compromise text are found in the following text (our proposed adjustments to text are coloured grey).

We emphasise that the parts of REV3 not commented should be considered as support for the compromise text.

### General provisions

#### Scope/relation to other Union law

Recital 42 and 103: We agree not to prioritise under the ESPR product groups under Union law that already are subject to sufficient specific environmental requirements. Therefore, we can accept the new wording on "means of transport" in recital 4. On the contrary, cannot accept the proposed change in recital 103, as it states that "means of transport" should not be taken into account under ESPR.

We have the following text proposal:

"(103) It is necessary that ecodesign requirements apply to the widest possible range of products, and not only energy-related products, and that the definition of ecodesign requirements is widened to encompass all aspects of circularity. **Products that are already sufficiently regulated under other Union legislation, e.g., means of transport, should not be taken into account.** It is also necessary to align this Regulation to the New Legislative Framework set out in Regulation (EC) No 765/2008 and Decision No 768/2008/EC, and to improve the provisions related to market surveillance. Directive 2009/125/EC should therefore be replaced. In order to ensure legal certainty for all economic operators from the date of entry into force of this Regulation and to guarantee a level playing-field for businesses operating on the internal market, the provisions setting out transparency obligations related to the

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discarding of unsold consumer products, circumvention, and market surveillance, should be of uniform application for all operators across the Union. Directive 2009/125/EC should therefore be replaced by a Regulation.”

#### Article 2(55) Definition of “online marketplace”

We propose to align the definition of online marketplaces with the definitions in the General Product Safety Regulation. We find it important to ensure consistency in definitions across different pieces of EU legislation. Thus, we propose defining a provider of an online marketplace as:

(55) **‘provider of an** ‘online marketplace’ means a provider of an intermediary service using ~~software, including a website, part of a website or an application~~ **an online interface, that which** allows consumers to conclude distance contracts with **dealer for the sale of products**;

This definition is related to the definition of “online interface” that is defined with a reference to Regulation (EU) 2019/1020 in the second last subparagraph of Article 2

#### Adding a definition of “Product system”

We propose adding a definition of “product system”. This shall be seen in conjunction with our proposal to adjust product parameter q) about functional performance, in Annex I by adding compatibility with “product systems” as an example for functional performance of more than a product. However, the term “systems” is not unambiguous and for “product system”, we propose a definition that emphasizes that product systems differ from products by the fact that they need to be assembled at the location, which implies more addressees than solely the manufacturer of the product.

**(3a) ‘product system’ means a functional unit that consists of two or more physical products which need to be assembled at the location where the product system is used;**

### **Ecodesign requirements**

#### Article 5 Ecodesign requirement

Overall, we support the adjustments in the Article. However, we find parts of the added text unclear and to some degree problematic with regards to the following paragraphs:

In paragraph 1, we consider there is a need to clarify that the wording also covers situations where both adverse environmental impacts and beneficial environmental impacts need to be improved.



Further, when addressing product aspects, the term “possibility” is used, cf. point f), k), ka) and l). Instead, we propose using the term “ability”. This will ensure that focus is on the product design, while “possibility” includes an unfortunate element of arbitrariness.

In paragraph 2, we support exempting subsets of products due to security, military, safety and medical purposes. However, we would instead suggest adding concerns about defence and national security in paragraph 5 as criteria that ecodesign requirements shall meet. We propose a wording that explicitly mention the exclusion of products with the sole purpose of which is to serve defence or national security, while requirements for dual-use products shall meet the criteria of not having negative impacts on security needs and activities of armed forces. This will be in line with the new text in recital 16 and clarify the scope of these concerns, including that they also apply to horizontal requirements. Alternatively the text could be split and the exception of products with the sole purpose of which is to serve defence or national security could be added to Article 1. As a source of interpretation not binding the scope for such products a reference could be added in a recital to the Common military list of the European Union, adopted by the Council on 17 February 2020 or later revisions thereof.

Moreover, we question the need for further exemptions as listed in the paragraph 2, including in which context it is foreseen they will be used. We expect to address this question at the upcoming Working Paris..

Further, in paragraph 2a about horizontal requirements, we propose that the text about targeting a large number of products is adjusted to a “wide variety of product groups”.

We have the following text proposal:

*“Article 5*

*Ecodesign requirements*

1. The Commission shall, ~~taking into consideration all the following product aspects as appropriate, to the relevant product groups in order to address relevant adverse environmental impacts which arise in any and with due consideration for all of the stages of the products’ life cycle, or to further improve already existing beneficial environmental impacts, or in the combined situation,~~ establish ecodesign requirements **based on the product parameters in Annex I** to improve **the following product aspects when relevant to the product group concerned** ~~the following product aspects:~~

...

(f) ~~possibility~~ **ability** of maintenance and refurbishment;



...

(k) ~~possibility~~ **ability** of remanufacturing and recycling;

(ka) ~~possibility of recycling~~ **recyclability**;

(l) ~~possibility of recovery~~ **recoverability** of materials;

...”

“2a. However, where two or more product groups display ~~technical~~ **one or more** similarities allowing a product aspect referred to in paragraph 1 to be improved based on a common **ecodesign** requirements, **such** **ecodesign** requirements may be established horizontally for those product groups (“**horizontal requirements**”).

**Horizontal ecodesign requirements shall effectively improve environmental sustainability with respect to the product aspect concerned.**

When establishing horizontal ecodesign requirements, the Commission shall also take into account the effectiveness of such an approach, in particular its ability to address a ~~large number of products~~ **wide variety of product groups**, including product groups that have not been prioritised individually in the working plan referred to in Article 16.

...”

“5. Ecodesign requirements shall meet the following criteria:

...

**(g) requirements shall not be set on products with the sole purpose of which is to serve defence or national security. For dual-use products, the requirements shall meet the criteria of not having negative impacts on security needs and activities of armed forces.**”

#### Article 6 Performance requirements

In paragraph 1, we find it unclear, whether the wording about improving the product group’s environmental sustainability also covers situations with both adverse environmental impacts and beneficial environmental impacts to be improved.

We consider that the words “where relevant” should be deleted in paragraph 3, because it weakens the requirement. In addition, the word “improve” should be deleted, as the presence of Substances of Concern that relates to environmental sustainability itself should be enough to restrict them.



We have the following text proposal:

*“Article 6*

*Performance requirements*

1. ~~Products shall comply with performance~~ **Performance** requirements **shall be set to improve** ~~relate~~ **related to the specific** product aspects listed in Article 5(1), ~~as laid down in the delegated acts adopted pursuant to Article 4.~~ **The performance requirements shall be tailored to the particular characteristics of the product group concerned. The performance requirements shall in order to improve the product group’s environmental sustainability effectively address adverse environmental impacts of products throughout their lifecycle, or further improve already existing beneficial environmental impacts in relation to environmental sustainability, or both.**

...

3. **Performance requirements based on the product parameter set out in Annex I, point (f), shall, where relevant, restrict the presence of substances in products for reasons relating primarily to improve the environmental sustainability of the products.** Performance requirements based on the product parameter set out in Annex I, point (f), shall not restrict the presence of substances in products for reasons relating primarily to chemical safety.”

## Digital Product Passport

### Article 8 Product passport

In paragraph 2, we would be positive towards adopting access’ requirements, to the digital product passport, cf. point f) and g) by implementing acts. This would align the adoption process with the Battery Regulation.

### Article 12a Web portal for information in the digital product passport

We find it is premature to conclude that the Commission is best suited to establish the web portal, as we currently foresee private actors are better suited to produce a user-friendly solution that will reach consumers. Inspiration can be found in the Commissions recent proposal for a platform in the right-to-repair directive proposal.

Therefore, we propose the following amendment to the text:

*“Article 12a*

*[Webportal for information in the digital product passport]*

The Commission shall **ensure that digital solutions, such as a web portals, apps, etc., exist, set up and maintain a web portal that allowing stakeholders to search for information included in product passports. The web portal shall be designed to guarantee that stakeholders can search for the information in line with their**



respective access rights pursuant to Article 10.1. **If no such solutions exist, the Commission establish such a solution.**

### **Prioritisation, planning and consultation**

#### Article 16 Prioritisation and planning

As mentioned in our written remarks to REV2, to ensure that the ESPR sufficiently delivers to the “*Union climate, environmental and energy efficiency priorities*”, cf. 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 is in order to emphasise the level of ambition and importance these product groups continue to have in reaching these priorities.

We have the following text proposal:

“(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 are considered as priorities for it plans to adopt delegated implementing-delegated** acts setting out ecodesign requirements as well as the product aspects for which it intends to adopt **delegated implementing-delegated** acts **setting out horizontal requirements** of horizontal application. The Commission should base its prioritisation on a set of criteria pertaining in particular to the **delegated implementing delegated** 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.** 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 include an adequate share of actions related to energy-related products. ...”

#### Article 17a Ecodesign Expert Group

The text is in our view moving in the right direction. However, we do consider that there is a need to ensure that the Commission will explain how the view of member state experts has been taken into consideration and that sufficient time is provided to commenting on draft delegated acts and any other relevant documents . Providing Member State experts with 14 calendar days before submitting comments to draft regulation is in our experience *not* “sufficiently in advance”. We find that Member State experts should have at least 30 days or 4 weeks to prepare comments on draft regulation and other relevant documents, whether written or



orally during meetings. We expect to bring this question up at the upcoming Working Parties, asking if the Commission would be open to providing draft regulations and any other relevant documents minimum 30 calendar days or 4 weeks before the consultation deadline.

We have the following text proposal:

*"Article 17a  
Ecodesign Expert Group*

1...

**2. The consultation with the Ecodesign Expert Group under Article 17a shall take place after the consultation pursuant to Article 17. The consultation referred to in Article 66(4) shall at least include consultation with the Expert Group.**

**The Commission shall take into account the views of the Ecodesign Expert Group, explain how the views of the experts intends to be taken into account and how it is intended to proceed.**

**The Commission shall regularly, at least every 6 months, inform the Ecodesign Expert Group on its progress on actions presented in the working plans and on the work of the Ecodesign Forum.**

**The members of the Ecodesign Expert Group shall receive the invitation to the meeting and the draft agenda not less than 30 calendar days before the meeting. They shall receive the draft delegated acts and any other relevant documents sufficiently in advance of the meeting of the Expert Group and not less than 14 30 calendar days before the date of the meeting. In urgent or exceptional cases, this time limit may be reduced to 5 calendar days before the date of the meeting.**

**Destruction of unsold consumer products**

Article 20c Empowerment to the Commission to adopt implementing acts setting out prohibitions against destruction of unsold consumer products

In paragraph 5 about justifications for exemptions, we can support the listed reasons under the conditions that companies will be obliged to provide information on the applicability of the exemptions and the delivery of the products. However, we suggest that point (d), is amended in order to specify the understanding of "refusal".

**5. The exemptions shall not constitute a means of arbitrary discrimination and shall be based on one of the following justifications:**

**a) health and safety reasons;**





- b) the products are damaged as a result of their handling or detected after a product has been returned by a consumer, despite the measures taken in accordance with Article 20a;
- 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;
- e) products which are illegal under national or Union law including non-compliant products, counterfeit products, or products rendered unsellable due to infringement of intellectual property rights;
- f) products exceeding their expiry date;
- g) products for which destruction is the option with the least negative environmental impact.

When setting exemptions pursuant to point d of this paragraph, the Commission shall set a minimum effort threshold for companies to adhere to before destruction is allowed. This threshold shall take into consideration the costs of logistics, preparing for reuse and remanufacturing compared to the costs of the relevant alternative waste treatment according to the waste hierarchy.

### **Obligations of economic operators**

#### Article 29 Obligations of online marketplaces and online search engines

Since online marketplaces occupies a rapidly growing role in placing products on the European market, DK still finds it of paramount importance to introduce new obligations that prevents non-compliant products to be made available on the Union market. DK finds that providers of online marketplaces should be subject to a more proactive (and not only reactive) responsibility to ensure that the ecodesign requirements are fulfilled for the products whose sale they facilitate.

We suggest adding a new paragraph to article 29 with the following wording:

2a. Providers of online marketplaces shall ensure that they have internal processes for ensuring product compliance in place, allowing them to comply with this Regulation. The internal processes shall include at least:

- a) ensuring from the dealer a declaration of the compliance of the products offered.
- b) ensure that there is an economic operator established in the Union who is responsible for the product as pursuant of article 4 in Regulation (EU) 2019/1020, if the dealer is not located in the Union.

Where the product is subject to withdrawal, recall og ban measures providers of online marketplaces shall not make the offer available to consumers on their marketplace.

### **Incentives**

#### Article 58 Green Public Procurement



Overall, we are positive towards the new adjustments, particularly that it is clarified that the green public procurement requirements will be minimum requirements. However, in paragraph 1a, point a), that mentions some product parameters particularly relevant for green public procurement, we also propose adding carbon and environmental footprint. We consider carbon and environmental footprint as central when setting green public procurement requirements.

Regarding paragraph 3 about derogations from the green public procurement requirements, we agree that exemptions should be possible due to public security and health concerns. However, it should be clarified that defence and national security also are justified reason for derogation. Further, regarding derogations based on "disproportionate technical difficulties" we understand that a kind of "approval procedure" has been considered, although not reflected in the wording. We expect to bring a question up about this at the upcoming Working Parties.

For targets and in relation to recital 87, we question the reasoning for allowing to set targets for the number of contracts fulfilling the GPP criteria in the ESPR. We also expect to bring a question up about this at the upcoming Working Parties.

We have the following text proposals:

"Article 58

Green public procurement

....

**1a. The requirements referred to in paragraph 1 shall be set on products which are covered by delegated acts setting out ecodesign requirements as appropriate in view of the specificities of to the product group concerned:**

...

**(ab) Include requirements ~~shall on the product parameters for which ecodesign requirements have been set~~ 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, (v) carbon and environmental footprint,**

..."

**3. Contracting authorities and contracting entities referred to in paragraph 1 may, in duly justified cases, derogate from the mandatory requirements specified in an implementing act referred to in paragraph 1 on the grounds of public security, ~~and public health~~ or defence and national security. Contracting authorities may also, in duly justified cases, derogate from the mandatory requirements, when those would lead to disproportionate technical difficulties.**



“(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 **implementing** 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/EU<sup>59</sup> and 2014/25/EU<sup>60</sup> of the European Parliament and of the Council, to align their procurement with specific **minimum** green public procurement criteria or targets, to be set out in the **implementing** ~~delegated~~ acts adopted pursuant to this Regulation. **The Commission may require targets to be achieved by establishing, for instance, a percentage of all the tendering procedures concerning a particular product group to comply with public procurement requirements. The percentage may be expressed in the aggregate number or value of contracts for the purchase of relevant sustainable products, as compared to the overall number and value of relevant contracts for the sector or products at stake...**”

### **Market surveillance**

#### Article 60 Minimum number of checks

As mentioned before, we propose that the market surveillance authorities’ rights to recover the costs of document inspection and physical product testing in case of non-compliance should be added again in a relevant Article 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. It seems like a fair practice supporting market surveillance authorities when compliance in general is low, which will risk resulting in less resources for market surveillance and enforcement.

## **SI comments on the text of Chapter VI – Destruction of unsold products and linked definitions in Art.2**

### **General comments:**

#### **1. Ensuring coherence of the proposal with Union waste legislation**

Recitals of the proposal clearly pointed out need for coherence of the proposal with other Union Law. Nevertheless, the proposal is not in coherence with Union waste legislation. In accordance with Union waste legislation some of the operations defined in the definitions of the proposal (i.e. »repair«, »refurbishment«, »remanufacturing«) cannot be carried out on waste (products when they have been discarded as waste). The operation “preparation for re-use” is in accordance with Union waste legislation waste recovery operation and cannot be carried on product. It is essential to ensure coherence of the proposal with Waste Framework Directive 2008/98/EC and waste management operations defined in that Directive.

In accordance with that we propose deletion of part of the text in the case of the above-mentioned definitions, which defines that above mentioned operations can be carried out also on waste / waste products.

Also, the definition (13) »life cycle« of the proposal defines product life cycle stages »repair«, »refurbishment« and »re-use« as stages before the life cycle stage of »end of life« that begins when product is discarded. Also, in accordance with the definition of product life cycle operations “repair”, “refurbishment”, “remanufacturing” can be carried out just on (used) products and not on the waste.

#### **2. Ensuring consistency in the text**

It is not clear from the text of proposal the link between preparation for re-use as waste recovery operation and destruction of unsold products. In accordance with the recital (46) and Art. 2(35) the concept of destruction should not cover preparation for re-use. The article 20 1. (c) on the other hand, sets down an obligation to disclosure the proportion of the delivery of discarded products also to preparing for re-use. The article 20c 6. (c) sets down an obligation to disclosure the proportion of the delivery of destroyed products for each of the waste treatment operation: recycling, other recovery, e. g. energy recovery and disposal. Preparation for re-use is not explicitly stated in that article, but it must be pointed out that preparation for re-use can be considered as “other recovery” operation in accordance with Union waste legislation. So, the concept of destruction of unsold products must be clearly defined in line with waste treatment operations.

There is also not a consistent use of term “destruction of products” or “discarding of products” in the text. I. e. in the Article 20 1. (b) there is text “the reasons for discarding of products”, in the Article 20c 6. (b) there is text “the reasons for their destruction”. In the Article 20 1. (a) there is text “the number and weight of ...products discarded”, in the Article 20c 6. (a) there is text “the number and weight ... product units destroyed”.

There is not a consistent use of terms »type« / »category« / »group« of products in the text. In the Article 20 there is use of »type or category of products«, in the Article 20c there is use of »type of products« and in the Article 20d there is use of »product group«.

### **Comments:**

#### **Article 2:**

(13) »end-of-life“ means the life cycle stage that begins when a product is discarded and **ends when the product is returned to nature as a waste product or enters another product’s life cycle**;

The definition is unclear and is not understandable. The text is clear when explaining the beginning of »end of life cycle« stage of a product and completely unclear when explaining end of “end of life cycle” stage of a product. The wording *»when the product is returned to nature as waste product or enters another product life“* is not appropriate and correct. Product cannot be returned to the nature as waste product.... Also, when a product is discarded and become waste, we cannot speak any more about the product.

(16) ‘remanufacturing’ means an ~~industrial process~~ **operation** in which a **new** product is ~~produced~~ **manufactured** from **objects that are waste** products or components 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;

See general comment. We propose deleting of the text “objects that are waste”. When a product is discarded became a waste and it must be treated in accordance with waste legislation. A new product cannot be manufactured directly from waste product. In general, remanufacturing covers a wide range of technical operations that can be, from technical point of view carried out on product or on waste product. As regards waste / waste product, remanufacturing can be considered as preparing for re-use. For that reason, it is not necessary to provide in the proposal of the regulation a specific regime for the remanufacturing of waste product.

To ensuring better and clearer legislative environment it would be necessary that the definitions in Union legislation are the same, so that »remanufacturing« is defined in same way and not different in each piece of legislation. In the proposal of Regulation on batteries and waste batteries the operation of remanufacturing is limited to and can be carried out just on used batteries and not on waste batteries.

(18) ‘refurbishment’ means **preparing, cleaning,** testing ~~and preparing or modifying~~ **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 ~~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.~~

See general comment. We propose deleting of the text “an object that is waste”. As explained »refurbishment« can be carried out just on (used) products and not on waste. When a product is discarded as waste the operations covered by »refurbishment« (preparing, cleaning, testing and, where necessary repairing) can be carried out on waste product within waste treatment operation »preparing for re-use«.

(20) ‘repair’ means **an action that returns** ~~returning~~ a defective **object that is a waste or a** product ~~or waste~~ to a condition where it fulfils its intended use;

See general comment. We propose deleting of the text “object that is a waste”. Just with operation of »repair« a waste product cannot cease to be waste. As explained “repair” can be carried out just on (used) products and not on waste. When a product is discarded as waste the operations covered by “repair” can be carried out on waste product within waste treatment operation »preparing for re-use«.

(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;

The text of provisions about destruction in Chapter VI of the proposal does not content “intentional damaging”. In the case of any intentional damage of product the product must be discarded. So, we propose that in the text “intentional damage” is linked with “discarding of product”.

In accordance with waste legislation “preparing for re-use” is waste recovery operation and is always carried on waste / waste product. We also propose deleting operation “remanufacturing” in the text - ee comment regarding definition (18) “remanufacturing”.

We propose following text:

(35) “destruction” means the intentional damaging of the product and their discarding as a waste or discarding a product as a waste with the exception of discarding for the only purpose of delivering a discarded product for preparing for re-use.

## Article 5

Art 5 9. (a) »**based on the state-of-the-art technologies, the substances make the re-use, [remanufacturing, repairing] preparing for re-use** or recycling process substantially more complicated or energy-demanding, “

The provision is relevant also for preparing for re-use, we propose inclusion of that operation in the provision.

## Article 20

Art. 20. 1. (c) the proportion of the delivery of discarded products, whether directly or through a third party, to each of the following activities: preparing for re-use, ~~remanufacturing~~, recycling, other recovery, for example, energy recovery and disposal operations in accordance with the waste hierarchy as defined by Article 4 of Directive 2008/98/EC .

We propose deleting of the “remanufacturing” in the text - see comment regarding definition (18) “remanufacturing”.

Art. 20. 1. last subparagraph

**The economic operator shall, upon request from a competent national authority, provide all the information and documentation necessary to demonstrate the delivery and reception of the discarded products as disclosed pursuant to paragraph 1(c). Such information and documentation shall be provided in paper or electronic form within 30 days of receipt of the request.**

The paragraph 1(c) is dealing with the proportion of the delivery of discarded products not products.

## Article 20b

Art. 20b 4. **When unsold consumer products that are apparel or clothing accessories are destroyed under an exemption referred to in paragraph 2, the economic operator shall, upon request from a competent national authority, provide all the information and documentation necessary to demonstrate:**

- (i) the applicability of an exemption from the prohibition against destruction, and**
- (ii) the delivery and reception of the discarded products as disclosed pursuant to paragraph 3(c)**

Such information and documentation shall be provided within 30 days of receipt of a request by a competent national authority.<sup>5</sup> Paragraph 1 shall not apply to small or microenterprises.

There is wrong reference in point (ii). Paragraph 3(c) doesn't exist, probably it should be reference to paragraph 1(c) of Article 20? The paragraph 1(c) is dealing with the proportion of the delivery of discarded products not products.

#### Article 20c

Art. 20c 5. The exemptions shall not constitute a means of arbitrary discrimination and shall be based on one of the following justifications:

- a) ...
- b) the products are damaged as a result of their handling or detected after a product has been returned by a consumer, despite the measures taken in accordance with Article 20a;

The provisions of the Chapter VI are dealing with unsold products. The point (b) is dealing with product after a product has been returned by customer so it is not a case of unsold product?

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

We propose deleting the text "preparing for re-use". Preparing for re-use is waste recovery operation, waste product can be delivered to preparation for re-use. If waste product is not appropriate for preparation for re-use it will be delivered to other waste treatment operation (recycling, other recovery and disposal operations...).



Council of the  
European Union

Brussels, 24 March 2023  
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#### NOTE

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|-----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| From:           | Presidency                                                                                                                                                                                                 |
| To:             | Delegations                                                                                                                                                                                                |
| No. prev. doc.: | 12573/22                                                                                                                                                                                                   |
| Subject:        | Proposal for a Regulation of the European Parliament and of the Council establishing a Single Market emergency instrument and repealing Council Regulation No (EC) 2679/98<br>- Presidency compromise text |

In view of the upcoming Working Party for Competitiveness and Growth (Internal Market) on 31 March 2023, delegations will find in Annex to this note a Presidency compromise text.

Changes compared to the proposal (doc. 12573/22) are marked in **bold and underlined** for the new text and in ~~strikethrough~~ for deletions.



**PT COMMENTS**

**Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE  
COUNCIL establishing a Single Market emergency instrument and repealing Council  
Regulation No (EC) 2679/98**

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 114, 21 and ~~45~~46 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

Whereas:

- (1) Past crises, ~~especially the early days of the COVID-19 pandemic,~~ have shown that the **free movement on the** internal market (also referred to as the “Single Market”) and its supply chains can be severely affected by such crises, and, **This may have consequences on cross-border trade between Member States, thus creating obstacles to the proper functioning of the Single Market. Furthermore, during those crises** appropriate crisis management tools and coordination mechanisms ~~are~~**were** either lacking, ~~did~~**do** not cover all aspects of the Single market or ~~did~~**do** not allow for a timely response to such **barriers and** impacts.
- (2) **In the early phase of the COVID-19 pandemic Member States introduced barriers to free movement on the Single Market as well as diverging measures on the supply of goods and services that were of critical importance or were indispensable for responding to the crisis, which could not always be justified. Ad-hoc measures taken by the Commission in order to re-establish the functioning of the Single Market based on the existing rules were not sufficient.** The Union was not sufficiently prepared to ensure efficient **access,** manufacturing, procurement and distribution of crisis-relevant non-medical goods such as personal protective equipment, ~~especially in the early phase of the COVID-19 pandemic,~~ and the ad-hoc measures taken by the Commission in order to re-establish the functioning of the Single Market ~~and~~**were insufficient. Measures** to ensure the availability of crisis-relevant non-medical goods during the COVID-19 pandemic were necessarily reactive. The pandemic also revealed insufficient **information sharing and** overview of manufacturing capacities across the Union as well as vulnerabilities related to the **intra- EU and** global supply chains.

- (3) **The Council could through the integrated political crisis response (IPCR) quickly exchange information and coordinate certain actions in regard to the COVID-19 crisis, while Member States acted independently in other situations. However, actions** Actions by the Commission were delayed by several weeks due to the lack of any Union wide contingency planning measures and ~~of clarity~~ **of clarity** as to which part of the national administration to contact to find rapid solutions to the impact on the Single Market being caused ~~by~~ by the crisis. In addition it ~~became clear~~ **appeared** that uncoordinated restrictive actions **and measures** taken by the Member States **actually did or** would further aggravate the impacts of the crisis on the Single market. It emerged that there is a need for arrangements between the Member States and Union authorities as regards contingency planning, technical level coordination and cooperation and information exchange.

- (4) Representative organisations of economic operators have suggested that economic operators did not have sufficient information on the **restrictions to free movement introduced and** crisis response measures of the Member States during the ~~pandemics~~**pandemic. This was** partly due to **a lack of transparency from Member State authorities, partly due to economic operators** not knowing where to obtain such information, ~~partly due to~~**Other reasons were** language constraints and the administrative burden implied in making repeated inquiries in all the Member States, especially in a constantly changing regulatory environment. This prevented them from making informed business decisions as to what extent they ~~may rely on~~**could exercise** their free movement rights or continue cross-border business operations during the crisis. It is necessary to improve the availability of information on national and Union level **restrictions to free movement and** crisis response measures.
- (5) These recent events have also highlighted the need for the Union to be better prepared **and coordinated** for possible future crises, especially as we consider the continuing effects of climate change and resulting natural disasters as well as global economic and geopolitical instabilities. **Other crises, which could require a quicker response to prevent barriers to the free movement in the internal market and avoid severe disruptions of supply chains that are indispensable in the maintenance of activities in the Single Market, include for example forest fires, earthquakes or large-scale cyber attacks.** Given the fact that it is not known which kind of crises could come up next and produce severe impacts on the Single Market and its supply chains in the future, it is necessary to provide for an instrument that would apply with regards to impacts on the Single Market of a wide range of crises.

(6) The impact of a crisis on the Single Market can be two-fold. ~~On~~on the one hand, a crisis can lead to obstacles to free movement within the Single Market, thus disrupting its ~~normal~~proper functioning. On the other hand, a crisis which has caused such obstacles can amplify shortages of crisis-relevant goods and services on the Single Market. ~~The,~~ thus also disrupting its proper functioning and the emergence or likely emergence of diverging national measures to address those issues regarding the supply chains in the Single Market. This Regulation ~~should address both~~addresses these types of impacts on the Single Market.

(6a) In order to avoid unnecessary administrative burden on Member States, incidents reported under the ad hoc alert mechanism should be defined in such a manner that they exclude events of a negligible foreseeable consequence on the free movement of goods, services and persons, including workers, or on the supply chains of goods and services that are indispensable in the maintenance of vital societal or economic activities in the Single Market.

- (7) Since any specific aspects of future crises that would impact the Single Market and its supply chains are hard to predict, this Regulation should provide for a general framework for anticipating, preparing for, mitigating and minimising the negative impacts which any crisis may cause on the Single Market and its supply chains. –
- (8) The framework of measures set out under this Regulation should be deployed in a coherent, transparent, efficient, proportionate and timely manner, having due regard to the need to maintain vital societal functions, ~~meaning~~ including public security, safety, public order, or public health ~~respecting~~. **This Regulation should not affect the competences of Member States for example with respect to national policies of public health and should be without prejudice to** the responsibility of the Member States to safeguard national security and their power to safeguard other essential state functions, including ensuring the territorial integrity of the State and maintaining law and order.
- (9) To this end, this Regulation provides:
- the necessary means to ensure the continued functioning of the Single Market, the businesses that operate on the Single Market and its strategic supply chains, including the free ~~circulation~~ **movement** of goods, services and persons, **including workers** in times of crisis and the availability of crisis relevant goods and services to citizens, businesses and public authorities at the time of crisis;
  - a forum for adequate coordination, cooperation and exchange of information; and
  - the means for the timely accessibility and availability of the information which is needed for a targeted response and adequate market behaviour by businesses and citizens during a crisis.

- (10) Where possible, this Regulation should allow for anticipation of events and crises, building on on-going analysis concerning strategically important areas of the Single Market economy and the Union's continuous foresight work.
- (11) This Regulation should not duplicate the existing framework for medicinal products, medical devices or other medical counter-measures under the EU Health Security Framework, including Regulation (EU) .../... on serious cross-border health threats [SCBTH Regulation (COM/2020/727)], Council Regulation (EU) .../... on a framework of measures for ensuring the supply of crisis-relevant medical counter-measures [Emergency Framework Regulation (COM/2021/577)], Regulation (EU) .../... on the extended mandate of the ECDC [ECDC Regulation (COM/2020/726)] and Regulation (EU) 2022/123 on the extended mandate of the EMA [EMA Regulation]. Therefore, medicinal products, medical devices or other medical counter-measures, when they have been placed on the list referred to in Article 6(1) of the Emergency Framework Regulation, shall be excluded from the scope of this Regulation, except in relation to the provisions relating to free movement during the Single Market emergency, and in particular those designed to re-establish and facilitate free movement as well as the notification mechanism.
- (12) This Regulation should complement the Integrated Political Crisis Response mechanism operated by the Council under Council Implementing Decision (EU) 2018/1993 as regards its work on Single Market impacts of cross-sectoral crises that require political decision-making.
- (13) This Regulation should be without prejudice to the Union Civil Protection Mechanism ('UCPM'). This Regulation should be in complementarity with the UCPM and should support it, where necessary, as regards availability of critical goods and free movement of civil protection workers, including their equipment, for crises that fall into the remit of that mechanism.

- (14) This Regulation should be without prejudice to Articles 55 to 57 of Regulation (EC) No 178/2002 on the general plan on crisis management in the area of food and feed, implemented by Commission Decision (EU) 2019/300.
- (15) The Regulation should be without prejudice to the European Food Security Crisis preparedness and response Mechanism (EFSCM). Nevertheless, food products should be governed by the **free movement** provisions of this Regulation, including those concerning the notification mechanism and concerning restrictions to free movement rights-. The measures concerning food products notified under this Regulation may be also reviewed for their compliance with any other relevant provisions of ~~EU~~**Union** law.

**(15a) This Regulation is without prejudice to the Commission entering into consultations or cooperation, on behalf of the Union, with relevant authorities of third countries, in accordance with Union law, with particular attention paid to developing countries, with a view to seeking cooperative solutions to avoid supply chain disruptions, in compliance with international obligations. This may involve, where appropriate, coordination in relevant international fora.**

- (16) In order to account for the exceptional nature of and potential far-reaching consequences for the fundamental operation of the Single Market of a Single Market emergency **and for the sensitive political consequences which it triggers**, implementing powers should exceptionally be conferred on the Council for the activation of ~~the~~ Single Market emergency mode pursuant to Article 281(2) of the Treaty on the Functioning of the European Union. **291(2) of the Treaty on the Functioning of the European Union. Where the activation of the Single Market emergency mode also requires the adoption of a list of crisis-relevant goods and services, such a list should be adopted at the same time as the activation and is necessary for the assessment of the criteria for the activation of this mode. It is therefore intrinsically linked to the activation. For this reason, implementing powers should also be conferred on the Council for the adoption of the list of crisis-relevant goods and services and its update.**



- (17) ~~Article 21 TFEU lays down the right of EU citizens to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and the measures adopted to give them effect. The detailed conditions and limitations are laid down in Directive 2004/38/EC. This Directive sets out the general principles applicable to these limitations and the grounds that may be used to justify such measures. These grounds are public policy, public security or public health. In this context, restrictions to freedom of movement can be justified if they are proportionate and non-discriminatory. This Regulation is not intended to provide for additional grounds for the limitation of the right to free movement of persons beyond those provided for in Chapter VI of Directive 2004/38/EC.~~
- (18) ~~As regards the measures for re-establishing and facilitating free movement of persons and any other measures affecting the free movement of persons provided under this Regulation, they are based on Article 21 TFEU and complement Directive 2004/38/EC without affecting its application at the time of Single Market emergencies. Such measures should not result in authorising or justifying restrictions to free movement contrary to the Treaties or other provisions of Union law.~~
- (19) ~~Article 45 TFEU lays down the right to free movement of workers, subject to the limitations and conditions laid down in the Treaties and the measures adopted to give them effect. This Regulation contains provisions which complement the existing measures in order to reinforce free movement of persons, increase transparency and provide administrative assistance during Single Market emergencies. Such measures include setting up and making available of the single points of contact to workers and their representatives in the Member States and at Union level during the Single Market vigilance and emergency modes under this regulation.~~

- (20) ~~If Member States adopt~~ **For national measures which are not harmonised under this Regulation and affecting affect the** free movement of goods or persons, goods or the freedom to provide services in preparation for and during Single Market emergencies, ~~they~~ **Member States** should limit such measures to what is necessary and remove them as soon as the situation allows it. Such measures **ensure that they fully comply with the Treaty and other provisions of Union law. If Member States adopt such restrictions, they** should respect the principles of proportionality and non-discrimination, ~~and should take into consideration the particular situation of border regions.~~ **They should therefore limit such measures to what is necessary. In particular, Member States should remove such measures as soon as they are no longer necessary. Furthermore, in line with these principles, such measures should not create an unnecessary administrative burden.**
- (20a) Nothing in this Regulation should be construed as authorising or justifying restrictions to the free movement of goods, services and persons contrary to the Treaty or other provisions of Union law. For example, the fact that some types of restrictions are prohibited during a Single Market emergency should not be construed as justifying such restrictions outside a Single Market emergency.**
- (20b) Article 21 TFEU lays down the right of EU citizens to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and the measures adopted to give them effect. The detailed conditions and limitations are laid down in Directive 2004/38/EC. This Directive sets out the general principles applicable to these limitations and the grounds that may be used to justify such measures. These grounds are public policy, public security or public health. In this context, restrictions to the freedom of movement can be justified if they are proportionate and non-discriminatory. This Regulation is not intended to provide for additional grounds for the limitation of the right to free movement of persons beyond those provided for in Chapter VI of Directive 2004/38/EC.**

**(20c) As regards the measures for re-establishing and facilitating free movement of persons and any other measures affecting the free movement of persons provided under this Regulation, they are based on Article 21 TFEU and complement Directive 2004/38/EC at the time of Single Market emergencies. Such measures should not result in authorising or justifying restrictions to free movement contrary to the Treaties or other provisions of Union law.**

**(20d) Article 45 TFEU lays down the right to free movement of workers, subject to the limitations and conditions laid down in the Treaties and the measures adopted to give them effect. Article 46 TFEU is the legal basis for the adoption of measures required to bring about freedom of movement for workers as defined in Article 45. This Regulation contains provisions which complement the existing measures in order to reinforce free movement of persons, increase transparency and provide administrative assistance during Single Market emergencies. Such measures include setting up and making available of the single points of contact to workers and their representatives in the Member States and at Union level during the Single Market vigilance and emergency modes under this Regulation.**

**(20e) It is appropriate to prohibit certain national measures which restrict free movement or the freedom to provide services and which should not be imposed during, and in response to, a Single Market emergency, since they are manifestly disproportionate. Therefore, any measures taken by Member States relating thereto should be assessed in the light of those harmonising provisions and not the Treaty or other provisions of Union law.**

- (21) **To ensure full transparency of crisis-relevant free movement restrictions adopted by Member States during a Single Market emergency, it is appropriate that the** ~~The~~ activation of the Single Market emergency mode ~~should trigger~~ **triggers** an obligation for the Member States to notify ~~crisis-relevant free movement~~ **such** restrictions. **Also, to avoid additional efforts by Member States in the time of crisis, the notifications in accordance with this Regulation should be considered as fulfilling the notification obligations laid down in Directive (EU) 2015/1535, Directive 2006/123/EC, and Directive 2005/36/EC, Directive (EU) 2018/958, on condition that the information provided in this notification meets the requirement of those directives. Therefore, it is possible for Member States to notify the restrictions only once through the information system set up for notifications under Directive (EU) 2015/1535.**
- (22) When examining the compatibility of any notified draft or adopted measures with the principle of proportionality, the Commission should pay due regard to the evolving crisis situation and often limited information that is at the disposal of the Member States when they seek to reduce the emerging risks in the context of the crisis. Where justified and necessary in the circumstances, the Commission may consider based on any available information, including specialised or scientific information, the merits of Member State arguments relying on the precautionary principle as a reason for adoption of free movement of persons restrictions. It is the task of the Commission to ensure that such measures comply with Union law and do not create unjustified obstacles to the functioning of the Single Market. The Commission should react to the notifications of Member States as quickly as possible, taking into account the circumstances of the particular crisis, and at the latest within the time-limits set out by this Regulation.

- (23) In order to ensure that the specific Single Market emergency measures provided for in this Regulation are used only where this is indispensable for responding to a particular Single Market emergency, such measures should require individual activation by means of Commission implementing acts, which indicate the reasons for such activation and the crisis-relevant goods or services that such measures apply to.
- (24) Furthermore, in order to ensure the proportionality of the implementing acts and due respect for the role of economic operators in crisis management, the Commission should only resort to the activation of the Single Market emergency mode, where economic operators are not able to provide a solution on a voluntary basis within a reasonable time. Why this is the case should be indicated in each such act, and in relation to all particular aspects of a crisis.

[(25) Information requests to economic operators should be used by the Commission only where the information which is necessary for responding adequately to the Single Market emergency, such as information necessary for procurement by the Commission on behalf of the Member States or estimating the production capacities of manufacturers of crisis-relevant goods the supply chains of which have been disrupted, cannot be obtained from publicly available sources or as a result of information provided voluntarily.]

**OR**

(25) Information requests to economic operators should be used by the Commission only where the information which is necessary for responding adequately to the Single Market emergency, such as information necessary for procurement by the Commission on behalf of the Member States or estimating the production capacities of manufacturers of crisis-relevant goods the supply chains of which have been disrupted, cannot be obtained from publicly available sources or as a result of information provided voluntarily. **When activating a mandatory structured information request, the Commission should ensure that the benefit for the public interest outweighs the possible inconveniences that the concerned economic operators may sustain. The Commission should take into consideration the burden that a mandatory information request may represent in particular for SMEs and should modulate the timelines for reply accordingly. When the processing of a mandatory information request by an economic operator has the potential to significantly disrupt its operations, the said economic operator may refuse to supply the requested information. The economic operator should provide to the Commission the reasons for any refusal to supply requested information. Such reasons may concern the risk of liability for breach of contractual non-disclosure obligations based on contracts governed by the law of a third country or the risk of disclosing information related to national security in the case of goods with possible uses in the context of national security.]**

(26) [The activation of the Single Market emergency mode, where needed, should also trigger the application of certain crisis-response procedures which introduce adjustments to the rules governing the design, manufacture, conformity assessment and the placing on the market of goods subject to Union harmonised rules. These crisis-response procedures should enable products, designated as crisis-relevant goods to be placed swiftly on the market in an emergency context. The conformity assessment bodies should prioritise the conformity assessment of crisis-relevant goods over any other ongoing applications for other products. On the other hand, in cases, where there are undue delays in the conformity assessment procedures, the ~~national~~ competent authorities **in the Member States** should be able to issue authorisations for products, which have not undergone the applicable conformity assessment procedures to be placed on their respective market, provided that they comply with the applicable safety requirements. Such authorisations shall be only valid on the territory of the issuing Member State and limited to the duration of the Single Market emergency. In addition, in order to facilitate the increase in supply of crisis-relevant products, certain flexibilities should be introduced with respect to the mechanism of presumption of conformity. In the context of a Single Market emergency, the manufacturers of crisis-relevant goods should be able to rely also on national and international standards, which provide an equivalent level of protection to the harmonised European standards. In cases where the latter do not exist or the compliance with them is rendered excessively difficult by the disruptions to the Single Market, the Commission should be able to issue common technical specifications of voluntary or of mandatory application in order to provide ready-to-use technical solutions to the manufacturers.]

- (27) [The introduction of these crisis-relevant adjustments to the relevant sectorial Union harmonised rules requires targeted adjustments to the following 19 sectorial frameworks: Directive 2000/14/EC, Directive 2006/42/EU, Directive 2010/35/EU, Directive 2013/29/EU, Directive 2014/28/EU, Directive 2014/29/EU, Directive 2014/30/EU, Directive 2014/31/EU, Directive 2014/32/EU, Directive 2014/33/EU, Directive 2014/34/EU, Directive 2014/35/EU, Directive 2014/53/EU, Directive 2014/68/EU, Regulation (EU) 2016/424, Regulation (EU) 2016/425, Regulation (EU) 2016/426, Regulation (EU) 2019/1009 and Regulation (EU) 305/2011. The activation of the emergency procedures should be conditional upon the activation of the Single Market emergency and should be limited to the products designated as crisis-relevant goods.]
- (28) In cases where there are substantial risks to the functioning of the Single Market or in cases of severe shortages or an exceptionally high demand of goods of ~~strategie~~ **critical** importance, measures at Union level aimed to ensure the availability of crisis-relevant products, ~~such as priority-rated orders,~~ may prove to be indispensable for the return to the normal functioning of the Single Market-
- (29) In order to leverage the purchasing power and negotiating position of the Commission during the Single Market vigilance mode and the Single Market emergency mode, Member States should be able to request the Commission to procure on their behalf.



- (30) Where there is a severe shortage of crisis-relevant products or services on the Single market during a Single Market emergency, and it is clear that the economic operators that operate on the Single market do not produce any such goods, but would in principle be able to repurpose their production lines or would have insufficient capacity to provide the goods or services needed, the Commission should be able to recommend to the Member States as a last resort to take measures to facilitate or request the ramping up or repurposing of production capacity of manufacturers or the capacity of the service providers to provide crisis-relevant services. In doing so the Commission would inform the Member States as to the severity of the shortage and the type of the crisis-relevant goods or services that are needed and would provide support and advice in relation to the flexibilities in the EU acquis for such purposes.
- (31) The measures ensuring regulatory flexibility would allow the Commission to recommend that Member States accelerate the procedures for granting permits that would be necessary for enhancement of the capacity to produce crisis-relevant goods or provide crisis-relevant services.
- ~~(32) Additionally, to ensure that crisis-relevant goods are available during the Single Market emergency, the Commission may invite the economic operators that operate in crisis-relevant supply chains to prioritise the orders of inputs necessary for the production of final goods that are crisis-relevant, or the orders of such final goods themselves. Should an economic operator refuse to accept and prioritise such orders, following objective evidence that the availability of crisis-relevant goods is indispensable, the Commission may decide to invite the economic operators concerned to accept and prioritise certain orders, the fulfilment of which will then take precedence over any other private or public law obligations. In the event of failure to accept, the operator in question should explain its legitimate reasons for declining the request. The Commission may make such reasoned explanation or parts of it public, with due regard to business confidentiality.~~

- (33) Furthermore, to ensure availability of crisis-relevant goods during the Single Market emergency, the Commission may recommend that Member States distribute ~~strategie reserves~~**those crisis-relevant goods and services**, having with due regard to the principles of solidarity, necessity and proportionality.
- (34) Where the activities to be carried out pursuant to this Regulation involve the processing of personal data, such processing should comply with the relevant Union legislation on personal data protection, namely Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>3</sup> and Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>4</sup>.
- (35) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission as regards the possibility to adopt supportive measures for facilitating free movement of persons, ~~for establishing a list of individual targets (quantities and deadlines) for those strategic reserves that the Member States should maintain, so that the objectives of the initiative are achieved.~~ Furthermore, implementing powers should be conferred on the Commission as regards activating the vigilance mode and vigilance measures in order to carefully monitor the strategic supply chains ~~and coordinate the building up of strategic reserves for goods and services of strategic importance.~~ Moreover, implementing powers should be conferred on the Commission as regards activation of specific emergency response measures at the time of a Single Market emergency, to allow for a rapid and coordinated response. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.

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<sup>3</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

<sup>4</sup> Regulation (EU) 2016/769 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).

(36) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union (the ‘Charter’). In particular, it respects the right to privacy of the economic operators enshrined in Article 7 of the Charter, right to data protection set out in Article 8 of the Charter, the freedom to conduct business and the freedom of contract, which are protected by Article 16 of the Charter, the right to property, protected by Article 17 of the Charter, right to collective bargaining and action protected by Article ~~26~~28 of the Charter and the right to an effective judicial remedy and to a fair trial as provided for in Article 47 of the Charter. Since the objective of this Regulation cannot be sufficiently achieved by the Member States and can rather, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective. The Regulation should not affect the autonomy of the social partners as recognised by the TFEU.

**(36a) This Regulation is without prejudice to the right of collective bargaining and action under Article 28 of the Charter of Fundamental Rights of the European Union, including the right of workers and employees to take collective action to defend their interests, including strike action, and the right or freedom to strike or to take other action covered by the specific industrial relation systems in Member States in accordance with national law or practice.**

**(36b) Other Union legal acts, such as those providing for obligations on economic operators to make data available to public sector bodies, do not affect this Regulation.**

(37) The Union remains fully committed to international solidarity and strongly supports the principle that any measures deemed necessary taken under this Regulation, including those necessary to prevent or relieve critical shortages, are implemented in a manner that is targeted, transparent, proportionate, temporary and consistent with WTO obligations.

- (38) The Union framework shall include interregional elements to establish coherent, multi-sectoral, cross-border Single Market vigilance and emergency response measures, in particular considering the resources, capacities and vulnerabilities across neighbouring regions, specifically border regions.
- ~~(39) The Commission shall also where appropriate enter into consultations or cooperation, on behalf of the Union, with relevant third countries, with particular attention paid to developing countries, with a view to seeking cooperative solutions to address supply chain disruptions, in compliance with international obligations. This shall involve, where appropriate, coordination in relevant international fora.~~
- (40) In order to put in place a **contingency** framework of crisis protocols the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to supplement the regulatory framework set out in this Regulation by further specifying the modalities of cooperation of the Member States and Union authorities during the Single Market vigilance and emergency modes, secure exchange of information and risk and crisis communication. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (41) Council Regulation (EC) 2679/98 which provides for a mechanism for bilateral discussions of obstacles to the functioning of the Single Market has been rarely used and is outdated. Its evaluation demonstrated that the solutions provided by that Regulation are not able to cater for the realities of complex crises, which are not limited to incidents happening at the borders of two neighbouring Member States. It should therefore be repealed.

HAVE ADOPTED THIS REGULATION:

# Part I

## General Provisions

### TITLE I

#### SCOPE

#### Article 1

##### *Subject matter and objectives*

1. This Regulation establishes a framework of approximating measures to anticipate, prepare for and respond to impacts of crises on the Single Market, ~~with the purpose of.~~

**1a. The framework referred to in paragraph 1 aims at:**

- ~~- safeguarding~~ **and facilitating** the free movement of goods, services and persons ~~and of,~~  
**including workers,**
- ~~- ensuring the availability of goods and services of strategic~~ **critical** importance and crisis-relevant goods and services in the Single Market; **where the Member States have adopted or are likely to adopt divergent measures which lead to cross-border restrictions, and**
- preventing the creation of obstacles to the proper functioning of the Single Market.**

2. The ~~measures~~ **framework** referred to in paragraph 1 ~~include~~ **includes, in particular the following:**

- (a) ~~an advisory group to~~ **the establishment of a Single Market Emergency Board to assist and** advise the Commission ~~on the appropriate measures for~~ **in** anticipating, preventing or responding to the impact of a crisis on the Single Market;
- (b) ~~measures for obtaining, sharing and exchanging the relevant information;~~ **\_\_\_\_\_**

- (c) contingency measures ~~aiming at~~ **for the** anticipation and planning; **(Single Market contingency planning)**;
- (d) **vigilance** measures for addressing Single Market ~~the~~ impacts of significant incidents ~~a crisis~~ that have not yet resulted in a **has the potential to escalate into a** Single Market emergency (Single Market vigilance), ~~including a set of vigilance measures and~~ **within the next six months;**
- (e) measures for addressing Single Market emergencies, including a set of emergency response measures **(Single Market Emergency), including re-establishing and facilitating the free movement of goods, services and persons, including workers, during Single Market Emergency mode;-**
- (ea) procurement of goods and services of critical importance and crisis-relevant goods by the Commission on behalf of Member States during vigilance and emergency modes.**

3. ~~Member States shall regularly exchange information on all matters falling within the scope of this Regulation among themselves and with the Commission.~~
4. ~~The Commission may obtain any relevant specialised and/or scientific knowledge, which is necessary for the application of this Regulation.~~

*Article 2*  
*Scope of application*

1. The measures set out in this Regulation apply in relation to ~~significant impacts of a crisis on the functioning of the Single Market and its supply chains.~~ **goods, services and persons, including workers.**
2. This Regulation shall not apply to the following:
  - (a) medicinal products as defined in Article ~~21~~, paragraph **1 point** 2 of Directive 2001/83/EC;
  - (b) medical devices as defined in Article 2, point (e), of Regulation (EU) 2022/123 of the European Parliament and of the Council<sup>5</sup>;
  - (c) other medical countermeasures as defined in Article 3, point (8), of Regulation (EU) .../... on Serious Cross-Border Threats to Health [the SCBTH Regulation]<sup>6</sup> and included in the list established in accordance with Article 6(1) of the proposal for] Council Regulation (EU) .../... on a framework of measures for ensuring the supply of crisis-relevant medical countermeasures<sup>7</sup>;
  - (d) semiconductors as defined in Article 2(1) of the Regulation of the Council and of the European Parliament establishing a framework of measures for strengthening Europe's semiconductor ecosystem (Chips Act)<sup>8</sup>;
  - (e) energy products as defined in Article 2, paragraph 1, of Directive 2003/96/EC<sup>9</sup>, electricity as defined in Article 2, paragraph 2 of that Directive and other products as referred to in Article 2, paragraph 3, of that Directive<sup>2</sup>;

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<sup>5</sup> Regulation (EU) 2022/123 of the European Parliament and of the Council of 25 January 2022 on a reinforced role for the European Medicines Agency in crisis preparedness and management for medicinal products and medical devices, *OJ L 20*, 31.1.2022, p. 12.

<sup>6</sup> [reference to adopted Act to be inserted once available]

<sup>7</sup> [reference to adopted Act to be inserted once available]

<sup>8</sup> [reference to adopted Act to be inserted once available]

<sup>9</sup> OJ L 283, 31.10.2003, p. 51.

(f) financial services, such as banking, credit, insurance and re-insurance, occupational or personal pensions, securities, investment funds, payment and investment advice, including the services listed in Annex I to Directive 2013/36, as well as settlement and clearing activities and advisory, intermediation and other auxiliary financial services-;

**(g) defence-related products as defined in Article 3 paragraph 1 of Directive 2009/43/EC of the European parliament and the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community, or as defined by national legislation in the Member States.**

3. By way of derogation from paragraph 2, points (a), (b) and (c), Articles 16 to 20 and Article 41 of this Regulation shall apply to the products referred to in those points-;

4. This Regulation is without prejudice to **other Union legal acts regulating other aspects than the subject-matter of this Regulation or specifying and complementing this Regulation, in particular the following:**

**(a) the overall coordination role of the Emergency Response Coordination Center under the Union Civil Protection Mechanism and other elements of** the Union Civil Protection Mechanism set out in Decision 1313/43~~2013~~/EU; and

**(b)** the general plan on crisis management in the area of food and feed in accordance with Regulation (EC) No 178/2002-;

**(c) Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) and its notification system for draft measures for reintroduction of internal border controls under that Regulation;**



**(d) the possibility of the Commission to assess whether it is appropriate to impose restrictions to exports of goods in line with the international rights and obligations of the Union under Regulation (EU) 2015/479 of the European Parliament and of the Council<sup>10</sup>.**

5. This Regulation is without prejudice to Union competition rules (Articles 101 to 109 TFEU and implementing regulations), including antitrust, merger and State aid rules.

**5a. This Regulation is without prejudice to the Council Decision 2014/415/EU establishing the Integrated Political Crisis Response Arrangements (IPCR), including the political coordination role of the IPCR.**

~~6.—This Regulation is without prejudice to the Commission:~~

- ~~(a) entering into consultations or cooperation, on behalf of the Union, with relevant third countries, with particular attention paid to developing countries, with a view to seeking cooperative solutions to avoid supply chain disruptions, in compliance with international obligations. This may involve, where appropriate, coordination in relevant international fora; or~~
- ~~(b) assessing whether it is appropriate to impose restrictions to exports of goods in line with the international rights and obligations of the Union under Regulation (EU) 2015/479 of the European Parliament and of the Council<sup>11</sup>.~~

7. Any actions under this Regulation shall be consistent with Union's obligations under international law.

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<sup>10</sup> OJ L 83, 27.3.2015, p. 34.

<sup>11</sup> OJ L 83, 27.3.2015, p. 34.

8. This Regulation is without prejudice to the responsibility of the Member States to safeguard national security or their power to safeguard essential state functions, including ensuring the territorial integrity of the State and maintaining law and order. **In particular, national security remains the sole responsibility of each Member State.**
- 8a. Any actions under this Regulation shall not affect the exercise of fundamental rights as recognized by the Charter of Fundamental Rights of the European Union (the ‘Charter’).**
- 8b. This Regulation complements the Union Civil Protection Mechanism, supporting it, where necessary, as regards availability of critical goods and free movement of civil protection workers, including their equipment, for the crisis that fall into the remit of that mechanism.**
- 8c. This Regulation complements the Integrated Political Crisis Response mechanism operated by the Council under Council decision 2014/415/EU of 24 June 2014 as regards its work on Single Market impacts of cross-sectoral crisis that require political decision making with technical level expertise, contingency planning and implementation of vigilance and emergency measures.**
- 8d. Articles 16-20 of this Regulation apply as regards food products. The measures concerning food products notified under this Regulation may also be reviewed for their compliance with any other relevant provisions of Union law.**
- 8e. [Critical Raw Materials Act]**

*Article 3*  
*Definitions*

For the purposes of this Regulation, the following definitions apply:

- (1) ‘crisis’ means an exceptional, unexpected and sudden, natural or man-made event of extraordinary nature and scale that takes place inside or outside of the Union; **which has or may have a severe negative impact on the functioning of the Single Market;**
- (2) ‘Single Market ~~vigilance mode~~’ means **‘vigilance’ refers to situation where there is a possible framework for addressing a threat of significant disruption or caused by a crisis with respect to** the supply of goods and services of strategic **critical** importance and which has the potential to escalate into a Single Market emergency within the next six months;
- (3) ‘Single Market emergency’ means a wide-ranging **negative** impact of a crisis on the Single Market that severely disrupts the free movement on the Single Market or the functioning of the supply chains ~~that are indispensable in the maintenance of vital societal or economic activities in the Single Market;~~ **of crisis-relevant goods and services where such a severe disruption has been or is likely to be subject to divergent national measures;**
- (4) ‘strategically important areas’ means those areas with critical importance to the Union and its Member States, in that they are of systemic and vital importance for public security, public safety, public order or public health, and the disruption, failure, loss or destruction of which would have a significant impact on the functioning of the Single Market;

- (5) 'goods and services of ~~strategic~~**critical** importance' means goods and services that are indispensable for ensuring the functioning of the Single Market in strategically important areas and which cannot be substituted or diversified;
- (6) 'crisis-relevant goods and services' means goods and services that are indispensable for responding to the crisis or for addressing the impacts of the crisis on the Single Market during a Single Market emergency ;
- ~~(7) 'strategic reserves' means a stock of goods of strategic importance for which building a reserve may be necessary to prepare for a Single Market emergency, under the control of a Member State.~~

## TITLE II GOVERNANCE

### Article 4

#### ~~Advisory group~~ **Single Market Emergency Board**

1. ~~An advisory group~~ **A Single Market Emergency Board** is established, ~~hereinafter the Board.~~
  2. The ~~advisory group~~ **Board** shall be composed of one representative from each Member State ~~and one representative from the Commission.~~ Each Member State shall ~~nominate~~ **appoint** a representative and an alternate representative.
  3. The Commission **representative** shall chair the ~~advisory group~~ **Board** and ensure its secretariat. The Commission **representative** may invite a representative of the European Parliament, representatives of EFTA States that are contracting parties to the Agreement on the European Economic Area<sup>12</sup>, representatives of economic operators, stakeholder organisations, social partners and experts, to attend **specific** meetings of the ~~advisory group~~ **Board** as observers, **where such attendance is relevant considering the agenda of the meeting**. It shall invite the representatives of other crisis-relevant bodies at Union level as observers to the relevant meetings of the ~~advisory group~~ **Board**.
- 3a. The Board shall meet at least three times a year. At its first meeting, on a proposal by and in agreement with the Commission, the Board shall adopt its rules of procedure.**
- 3b. The Board may adopt opinions, recommendations or reports in the context of its tasks set out in Article 4a. The Commission shall in a transparent manner take the utmost account of opinions, recommendations or reports by the Board.**

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<sup>12</sup> OJ L 1, 3.1.1994, p. 3.

Article 4a

Tasks of the Board

- 14.** For the purpose of contingency planning under Articles 6 to 8, the ~~advisory group~~ **Board** shall assist and advise the Commission as regards the following tasks:
- (a) proposing arrangements for administrative cooperation to facilitate the exchange of information between the Commission and the Member States at the time of the Single Market vigilance and emergency modes that would be contained in the ~~crisis protocols~~ contingency framework;
  - (b) ~~assessment of significant~~ assessing incidents that the Member States have alerted the Commission ~~to~~ pursuant to Article 8.
- 52.** For the purpose of ~~of the~~ Single Market vigilance mode as referred to in Article 9, the ~~advisory group~~ **Board** shall assist and advise the Commission in the following tasks:
- (a) establishing whether the crisis threat referred to in Article 3(2) is present, and the scope of such threat;
  - (b) gathering foresight, data analysis and market intelligence;
  - (c) consulting the representatives of economic operators, including SMEs, social partners and industry to collect market intelligence in line with Article 40a;
  - (d) analysing aggregated data received by other crisis-relevant bodies at Union and international level;
  - (e) facilitating exchanges and sharing of information, including with other relevant bodies and other crisis-relevant bodies at Union level and in Member States, as well as third countries, as appropriate, with particular attention paid to developing countries, and international organisations;

(f) maintaining a repository of national and Union crisis measures that have been used in previous crises that have had an impact on the Single Market and its supply chains;

**(g) analysing and discussing the effect of the crisis on the Single Market, with due regard to the situation in border regions, with a view to finding possible solutions.**

**63.** For the purposes of the Single Market emergency mode as referred to in Article 14, the ~~advisory group~~ **Board** shall assist **and advise** the Commission in the following tasks:

(a) analysing crisis-relevant information gathered by Member States or the Commission;

(b) establishing whether the criteria for activation or deactivation of the emergency mode have been fulfilled;

(c) advising on the **identification and** implementation of the measures chosen to respond to Single Market emergency at Union level;

(d) performing a review of national crisis measures;

(e) facilitating exchanges and sharing of information, including with other crisis-relevant bodies at Union level, as well as, as appropriate, third countries, with particular attention paid to developing countries, and international organisations.

**(f) analysing and discussing the effect of the crisis on the Single Market, with due regard to the situation in border regions, with a view to finding possible solutions.**

- ~~74.~~ The Commission shall ensure the participation of all bodies at Union level that are relevant to the respective crisis. The ~~advisory group~~**Board** shall cooperate and coordinate closely, where appropriate, with other relevant crisis-related bodies at Union level. The Commission shall ensure coordination with the measures implemented through other Union mechanisms, such as the Union Civil Protection Mechanism (UCPM) or the EU Health Security Framework. The ~~advisory group~~**Board** shall ensure information exchange with the Emergency Response Coordination Centre under the UCPM.
- ~~8. The advisory group shall meet at least three times a year. At its first meeting, on a proposal by and in agreement with the Commission, the advisory group shall adopt its rules of procedure.~~
- ~~9. The advisory group may adopt opinions, recommendations or reports in the context of its tasks set out in paragraphs 4 to 6.~~



*Article 5*  
*Central liaison offices*

1. **Each** Member States~~State~~ shall ~~designate~~**appoint a** central liaison offices~~office~~.
- 1a. **The central liaison office shall be** responsible for contacts, coordination and information exchange with the central liaison offices of other Member States and ~~the~~ Union level central liaison office under this Regulation. ~~Such liaison offices shall coordinate and compile the inputs from relevant national competent authorities.~~
  - 1b. **The central liaison office shall be responsible for contacts, coordination and information exchange with the relevant competent authorities in the Member State. In order to perform its tasks under this Regulation, the central liaison office shall compile input from the relevant competent authorities in the Member State.**
2. The Commission shall designate a Union level central liaison office.
- 2a. **The Union level central liaison office shall be responsible** for contacts with the central liaison offices of the Member States ~~during the Single Market vigilance and emergency modes~~ under this Regulation.
  - 2b. **The Union level central liaison office shall ensure the coordination and information exchange** with the central liaison offices of the Member States **under this Regulation** for the management of the Single Market vigilance and emergency modes.

## Part II

### Single Market contingency planning

#### Article 6 ~~Crisis protocols~~ Contingency framework

1. The Commission taking into consideration the opinion and the expertise of the advisory ~~group~~ **Board** and the input of relevant Union level bodies, is empowered ~~after consulting the Member States,~~ to adopt a delegated act to supplement this Regulation with a general contingency framework ~~setting out crisis protocols~~ regarding crisis preparedness cooperation, exchange of information and ~~crisis~~-communication for the Single Market vigilance and emergency modes, ~~in particular.~~ This contingency framework shall include:
  - (a) means of cooperation ~~between national~~ Member States and Union level competent authorities ~~for the management of~~ in the Single Market vigilance and emergency modes ~~in vigilance and emergency modes across the sectors of the Single Market;~~
  - (b) general modalities for secure exchange of information; and
  - (c) a coordinated approach to risk and crisis communication also vis-à-vis the public with a coordinating role for the Commission;
  - (d) ~~the management of the framework.~~

2. The Commission and the Member States shall ~~put in place detailed administrative~~ **ensure** arrangements for ~~ensuring~~ timely cooperation and secure exchange of information between the Commission, the relevant Union-level bodies and the Member States concerning:
- (a) an inventory of relevant ~~national~~ competent authorities **of the Member States**, the central liaison offices designated in accordance with Article 5 and single points of contact referred to in Article 21, their contact details, assigned roles and responsibilities during the vigilance and emergency modes of this Regulation under national law;
  - (b) consultation of the representatives of economic operators and social partners, including SMEs, on their initiatives and actions to mitigate and respond to potential supply chain disruptions and overcome potential shortages of goods and services in the Single Market;
  - (c) technical level cooperation in the vigilance and emergency modes ~~across the sectors of the Single Market~~;
  - (d) risk and emergency communication, with a coordinating role for the Commission, adequately taking into account already existing structures;
3. In order to ensure the operation of the framework ~~referred to in~~ **established in accordance with** paragraph 1, the Commission may conduct stress tests, simulations and in-action and after-action reviews with Member States, and propose the relevant Union-level bodies and the Member States to update the framework as necessary.

## Article 7

### *Trainings and simulations*

The Commission shall **regularly** organise the training on crisis coordination, cooperation and information exchange referred to in Article 6 for the staff of the designated central liaison offices. It shall organise simulations involving the staff of the central liaison offices from all Member States based on potential scenarios of Single Market emergencies.

## Article 8

### *Ad hoc alerts for early warning*

1. The central liaison office of a Member State shall notify the Commission and the central liaison offices of other Member States without undue delay of any incidents that significantly disrupt or have the potential to significantly disrupt the functioning of the Single Market and its supply chains (significant incidents).
2. The central liaison offices and any relevant ~~national~~ competent authorities **of the Member States** shall, in accordance with Union law and national legislation that complies with Union law, treat the information referred to in paragraph 1 in a way that respects its confidentiality, protects the security and public order of the European Union or its Member States, and protects the security and commercial interests of the economic operators concerned.
3. In order to determine whether the disruption or potential disruption of the functioning of the Single Market and its supply chains ~~of goods and services~~ is significant and should be the object of an alert, the central liaison office of a Member State shall take the following into account:
  - (a) the **market position or** number of economic operators affected by the disruption or potential disruption; **or**
  - (b) the duration or anticipated duration of a disruption or potential disruption; **or**

- (c) the geographical area; the proportion of the Single Market affected by the disruption or potential disruption; the impact on specific geographical areas particularly vulnerable or exposed to supply chain disruptions including the EU outermost regions; **or**
- (d) **the existence of non-diversifiable and non-substitutable inputs in relation to the disruption or potential disruption and, if relevant,** the effect of the disruption or potential disruption on non-diversifiable and non-substitutable inputs.

## Part III Single Market Vigilance

### TITLE I VIGILANCE MODE

#### *Article 9 Activation*

1. Where the Commission, taking into consideration the opinion provided by the ~~advisory group~~ **Board**, considers that the ~~threat referred to~~ **conditions laid down** in Article 3(2) is ~~present~~ **are fulfilled**, it shall activate the vigilance mode for a maximum duration of six months by means of an implementing act. Such ~~an~~ implementing act shall contain the following:
  - (a) an assessment of the potential impact of the crisis **on the Single Market and its value chains**;
  - (b) **a list of the goods and services of strategic critical importance concerned which are indispensable in the maintenance of vital societal or economic activities in the Single Market**, and
  - (c) the vigilance measures to be taken.

- 1a. When assessing whether the conditions laid down in Article 3(2) are fulfilled, the Commission shall, based on concrete and reliable evidence, take into account at least the following criteria:**
- (a) the anticipated time before the threat escalates into a Single Market Emergency;**
  - (b) the number or market position of the economic operators expected to be affected considering the nature of the threat; and**
  - (c) the extent of goods and services of critical importance expected to be impacted considering the nature of the threat.**
2. The implementing act referred to in paragraph 1 shall be adopted in accordance with the examination procedure referred to in Article ~~41~~**42**(2).

*Article 10*  
*Extension and deactivation*

1. The Commission, if it considers that the reasons for activating the vigilance mode pursuant to Article 9(1) remain valid, and taking into consideration the opinion provided by the ~~advisory group~~ **Board**, may extend the vigilance mode for a maximum duration of six months by means of an implementing act.
2. Where the Commission, taking into consideration the opinion provided by the ~~advisory group~~ **Board**, finds that the ~~threat referred to~~ **conditions laid down** in Article 3(2) ~~is~~ **are** no longer ~~present~~ **fulfilled**, with respect to some or all vigilance measures or for some or all of the goods and services, it shall deactivate the vigilance mode in full or in part by means of an implementing act.
3. Implementing acts referred to in paragraphs 1 and 2 shall be adopted in accordance with the examination procedure referred to in Article 42(2).

**TITLE II**  
**VIGILANCE MEASURES**

*Article 11*  
*Monitoring*

1. When the vigilance mode has been activated in accordance with Article 9, ~~national~~-competent authorities **in the Member States** shall monitor the supply chains of goods and services of ~~strategic~~ **critical** importance that have been identified in the implementing act activating the vigilance mode.

2. The Commission shall provide for standardised and secure means for the collection and processing of **aggregated** information for the purpose of paragraph 1, using electronic means. Without prejudice to national legislation **in compliance with Union law**, requiring collected information including business secrets to be kept confidential, confidentiality with regard to the commercially sensitive information and information affecting the security and public order of the Union or its Member States shall be ensured.
3. Member States shall set up and maintain an inventory of the most relevant economic operators established on their respective national territory that operate along the supply chains of goods and services of ~~strategie~~ **critical** importance that have been identified in the implementing act activating the vigilance mode.
4. On the basis of the inventory set up pursuant to **paragraph 3 of this** Article ~~6~~, ~~national~~, competent authorities **in the Member States** shall address requests for voluntary provision of information to the most relevant operators along the supply chains of goods and services identified in the implementing act adopted pursuant to Article 9 and other relevant stakeholders established in their respective national territory. Such requests shall in particular ~~states~~ **state** which information about factors impacting the availability of the identified goods and services of ~~strategie~~ **critical** importance is requested. Each economic operator/stakeholder that voluntarily provides information shall do so on an individual basis in line with the Union rules on competition governing the exchange of information. The ~~national~~-competent authorities **in the Member States** shall transmit the relevant findings to the Commission and ~~the advisory group~~ **Board** without undue delay via the respective central liaison office.
5. ~~National competent~~ **Competent** authorities **in the Member States** shall have due regard to the administrative burden on economic operators and in particular SMEs, which may be associated with requests for information and ensure it is kept to a minimum.



6. The Commission may ask the ~~advisory group~~**Board** to discuss the **aggregated** findings and prospects of evolution based on **a Commission aggregation of the information obtained by Member States pursuant to paragraph 1 and 4 regarding their monitoring of supply chains of goods and services of strategiccritical importance, duly ensuring confidentiality and observing the commercial sensitivity of the information concerned.**
7. On the basis of the information collected through the activities carried out in accordance with paragraph 1, the Commission may provide a report of the aggregated findings.

*Article 12*  
*Strategic reserves*

- ~~1. The Commission may, among the goods of strategic importance listed in an implementing act adopted pursuant to Article 9(1),, identify those for which it may be necessary to build a reserve in order to prepare for a Single Market emergency, taking into account the probability and impact of shortages. The Commission shall inform the Member States thereof.~~

~~Capacities which are a part of the rescEU reserve in accordance with Article 12 of Decision No 1313/2013/EU are excluded from the application of this Article.~~

- ~~2. The Commission may require, by means of implementing acts, that the Member States provide information on the goods listed in an implementing act adopted pursuant to Article 9(1), as regards all of the following:~~

- ~~(a) the current stock in their territory;~~
- ~~(b) any potential for further purchase;~~
- ~~(c) any options for alternative supply;~~
- ~~(d) further information that could ensure the availability of such goods.~~

~~The implementing act shall specify the goods for which information is to be given.~~

~~Member States shall report to the Commission the levels of strategic reserves of goods of strategic importance held by them, and the levels of other stocks of such goods held on their territory.~~

~~3. Taking due account of stocks held or being built up by economic operators on their territory, Member States shall deploy their best efforts to build up strategic reserves of the goods of strategic importance identified in accordance with paragraph 1. The Commission shall provide support to Member States to coordinate and streamline their efforts.~~

~~4. Where the building of strategic reserves of goods of strategic importance identified pursuant to paragraph 1 can be rendered more effective by streamlining among Member States, the Commission may draw up and regularly update, by means of implementing acts, a list of individual targets regarding the quantities and the deadlines for those strategic reserves that the Member States should maintain. When setting the individual targets for each Member State, the Commission shall take into account:~~

~~(a) the probability and impact of shortages referred in paragraph 1;~~

~~(b) the level of existing stocks of the economic operators and strategic reserves across the Union, and any information on economic operators' ongoing activities to increase their stocks;~~

~~(c) the costs for building and maintaining such strategic reserves.~~

- ~~5. The Member States shall regularly inform the Commission about the current state of their strategic reserves. Where a Member State has reached the individual targets referred to in paragraph 4, it shall inform the Commission if it has at its disposal any stocks of the goods in question in excess of their target. The Member States whose reserves have not reached the individual targets shall explain to the Commission the reasons for this situation. The Commission shall facilitate cooperation between the Member States which have already reached their targets and the other Member States.~~
- ~~6. Where the strategic reserves of a Member State continuously fall significantly short of the individual targets referred to in paragraph 4 and economic operators on its territory are not able to compensate that shortfall, the Commission may, at its own initiative or at the request of 14 Member States, assess the need to take further measures to build up strategic reserves of goods of strategic importance identified pursuant to paragraph 1.~~

~~Following such an assessment, where the Commission establishes, supported by objective data, that~~

- ~~(a) the needs for the good in question remain unchanged or have increased compared to the situation at the time the target referred to in paragraph 4 was first set or last amended pursuant to paragraph 4,~~
- ~~(b) access to the concerned good is indispensable to ensure preparedness for a Single Market emergency~~
- ~~(c) the Member State concerned has not provided sufficient evidence to explain the failure to meet the individual target, and~~

~~(d) exceptional circumstances exist, in that the failure by that Member State, considering its importance to the supply chain concerned, to build up such strategic reserves gravely imperils the Union's preparedness in the face of an impending threat of a Single Market emergency;~~

~~the Commission may adopt an implementing act, requiring the Member State in question to build up its strategic reserves of the goods concerned by a set deadline.~~

~~7. When acting under this Article, the Commission shall seek to ensure that the building up of strategic reserves does not create a disproportionate strain on the supply chains of the goods identified in accordance to paragraph 1, or on the fiscal capacity of the Member State concerned.~~

~~The Commission shall take fully into account any national security concerns raised by Member States.~~

~~8. The implementing acts referred to in this Article shall be adopted in accordance with the examination procedure referred to in Article 42(2).~~

## **Part IV**

### **Single Market Emergency**

#### **TITLE I**

#### **EMERGENCY MODE**

##### *Article 13*

##### *Criteria for activation*

1. When assessing the ~~severity of a disruption~~ **need** for the purposes of ascertaining whether the ~~impact of a crisis on the Single Market~~ qualifies as a Single Market emergency **activation**, the Commission **and the Council** shall, based on concrete and reliable evidence, ~~taking~~ **apply** **following criteria** :
- (a) **the crisis creates one or more obstacles to the free movement of goods, services or persons that has an impact on at least one sector of vital societal or economic activities in the Single Market, and**
- (b) **in case of disruption to the functioning of the supply chains, the goods, services or workers concerned cannot be diversified or substituted.**
- 1a. The Commission and Council shall take** into account at least the following indicators:
- (a-a) **crisis relevant goods and service which have caused a number of notifications of significant incidents pursuant to Article 8(1);**

- (a) the crisis has caused activation of any relevant Council crisis response mechanism, **such as the Integrated Political Crisis Response mechanism operated by the Council under Council Implementing Decision (EU) 2018/1993**, Union Civil Protection Mechanism or the mechanisms set up within the EU Health Security Framework, including [the proposal for] Regulation (EU) .../... on serious cross-border health threats and [the proposal for] Council Regulation (EU) .../... on a framework of measures for ensuring the supply of crisis-relevant medical countermeasures;
- (b) an estimation of the **market position and** number of economic operations or users relying on the disrupted sector or sectors of the Single Market for the provision of the goods or services concerned;
- ~~(c) the importance of the goods or services concerned for other sectors;~~
- ~~(d) the impacts in terms of degree and duration on economic and societal activities, the environment and public safety;~~
- (e) the economic operators affected have not been able to provide a solution in a reasonable time to the particular aspects of the crisis on a voluntary basis.
- ~~(f) the market position of affected economic operators in the concerned sector or sectors;~~
- (g) the geographic area that is and could be affected, including any cross-border impacts on the functioning of supply chains that are indispensable in the maintenance of vital societal or economic activities in the Single Market;
- (h) the importance of the affected economic operator in maintaining a sufficient level of supply of the goods or services, taking into account the availability of alternative means for the provision of those goods or services; and
- (i) the absence of substitute goods, ~~inputs~~ or services.

**-1. The Single Market emergency mode shall be activated in accordance with Article 13.**

1. The Single Market Emergency mode may be activated without the Single Market vigilance mode having previously been activated with regard to the same goods or services. Where the vigilance mode has previously been activated, the emergency mode may replace it partially or entirely.
2. Where the Commission, taking into consideration the opinion provided by the ~~advisory group~~**Board**, considers there is a Single Market emergency, it shall propose to the Council to activate the Single Market emergency mode **and, where applicable, a list of crisis-relevant goods and services.**
3. The Council may activate the Single Market emergency mode, **and where applicable, adopt a list of crisis-relevant goods and services** by means of a Council implementing act **on a proposal from the Commission**. The duration of the activation, shall be specified in the implementing act, and shall be a maximum of six months. **The list may be amended by means of Council implementing act on proposal from the Commission.**
4. The activation of the Single Market emergency mode regarding certain goods and services does not prevent the activation or continued application of the vigilance mode and deployment of the measures laid down in Article 11 ~~and 12~~ regarding the same goods and services.
- ~~5. As soon as the Single Market emergency mode is activated, the Commission shall, without delay, adopt a list of crisis-relevant goods and services by means of an implementing act. The list may be amended by means of implementing acts.~~

~~6. The Commission implementing act referred to in paragraph 5 shall be adopted in accordance with the examination procedure referred to in Article 42(2). On duly justified imperative grounds of urgency relating to the impacts of the crisis on the Single Market, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 42(3).~~

*Article 15*  
*Extension and deactivation*

1. Where the Commission considers, taking into consideration the opinion provided by the ~~advisory group~~**Board**, that an extension of the Single Market emergency mode is necessary, it shall propose to the Council to extend the Single Market emergency mode. Subject to urgent and exceptional changes in circumstances, the Commission shall endeavour to do so no later than 30 days before the expiry of the period for which the Single Market emergency mode has been activated. The Council may extend the Single Market emergency mode by no more than six months at a time by means of an implementing act.
2. Where the ~~advisory group~~**Board** has concrete and reliable evidence that the Single Market emergency should be deactivated, it may formulate an opinion to that effect and transmit it to the Commission. Where the Commission, taking into consideration the opinion provided by the ~~advisory group~~**Board**, considers a Single Market emergency no longer exists, it shall propose to the Council without delay the deactivation of the Single Market emergency mode.



3. The measures taken in accordance with Articles 24 to 33 and pursuant to the emergency procedures introduced in the respective Union legal frameworks by means of the amendments to sectorial product legislation set out in Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/424, Regulation (EU) 2016/425, Regulation (EU) 2016/426, Regulation (EU) 2019/1009 and Regulation (EU) No 305/2011 and introducing emergency procedures for the conformity assessment, adoption of common specifications and market surveillance in the context of a Single Market emergency and Directive of the European Parliament and of the Council amending Directives 2000/14/EC, 2006/42/EC, 2010/35/EU, 2013/29/EU, 2014/28/EU, 2014/29/EU, 2014/30/EU, 2014/31/EU, 2014/32/EU, 2014/33/EU, 2014/34/EU, 2014/35/EU, 2014/53/EU, and 2014/68/EU and introducing as regard emergency procedures for the conformity assessment, adoption of common specifications and market surveillance in the context of due to a Single Market shall cease to apply upon deactivation of the duration of the Single Market emergency mode.
- 4.** The Commission shall submit to the Council an assessment on the effectiveness of the measures taken in addressing the Single Market emergency no later than three months after the expiry of the measures, **including where applicable,** on the basis of the information gathered via the monitoring mechanism foreseen by Article 11.

## TITLE II

### FREE MOVEMENT DURING THE SINGLE MARKET EMERGENCY

#### Chapter I

#### Measures for re-establishing and facilitating free movement

##### Article 16

*General requirements for measures restricting free movement to address a Single Market emergency*

1. **Without prejudice to Article 17, when** ~~When~~ adopting and applying national measures in response to a Single Market emergency and the underlying crisis, Member States shall ensure that their actions fully comply with the Treaty and Union law and, **including as regards non-discrimination, justification and proportionality**, ~~in particular, with the requirements laid down in this Article.~~
2. **Member States shall ensure in particular that any measures referred to in paragraph 1 are removed when they are no longer necessary.** ~~Any restriction shall be limited in time and removed as soon as the situation allows it. Additionally, any restriction should take into account the situation of border regions.~~
3. ~~Any requirement imposed on citizens and businesses shall not create an undue or unnecessary administrative burden.~~
4. ~~Member States shall inform citizens, consumers, businesses, workers and their representatives about measures that affect their free movement rights in a clear and unambiguous manner.~~
5. Member States shall ensure that all affected stakeholders are informed of measures restricting free movement of goods, services and persons, including workers and service providers, before their entry into force. Member States shall ensure a continuous dialogue with stakeholders, including communication with social partners and international partners.

Article 17

*Prohibited restrictions of free movement rights during a Single Market emergency*

1. During the Single Market emergency mode and when responding to a Single Market emergency, Member States shall refrain from introducing any of the following:

(a-a) **any measures which are not limited in time;**

(a) **bans on intra-Union** ~~intra-Union export bans~~ or other measures having equivalent effect on crisis-relevant goods or services listed in an implementing act adopted pursuant to Article 14, paragraph ~~35~~; **or on the transit of crisis-relevant goods listed in an implementing act adopted pursuant to Article 14, paragraph 3 or measures having equivalent effect;**

(b) ~~restrictions on the~~ **restricting the** ~~intra-Union~~ **EU**-export of goods or **the cross-border** provision or receipt of services, or measures having equivalent effect, where those restrictions do any of the following

(i) disrupt supply chains of crisis-relevant goods and services that are listed in an implementing act adopted pursuant to Article 14, paragraph ~~35~~, or

(ii) create or increase shortages of such goods and services in the single market;

(c) ~~discrimination between Member States or between citizens, including in their role as service providers or workers,~~ **discriminating against beneficiaries of the right to free movement under Union** based directly on nationality or, in the case of companies, the location of the registered office, central administration or principal place of business;

~~(d) — restrictions on the free movement of persons involved in the production of crisis-relevant goods that are listed in an implementing act adopted pursuant to Article 14, paragraph 5 and their parts or in provision of crisis-relevant services that are listed in an implementing act adopted pursuant to Article 14 paragraph 5, or other measures having equivalent effect, that:~~

~~(i) — cause shortages of necessary workforce on the Single Market and thus disrupt supply chains of crisis-relevant goods and services or create or increase shortages of such goods and services in the Single market or~~

~~(ii) — are directly discriminatory based on nationality of the person.~~

~~2. — During the Single Market emergency mode and when responding to the Single Market emergency, Member States shall refrain from any of the following, unless to do so is inherent to the nature of the crisis:~~

~~(a) — applying more generous rules to goods originating from a neighbouring Member State, any other Member State or a group of Member States, as compared to goods originating from other Member States;~~

~~(b) — selectively refusing the entry of goods originating from specific other Member States to their territory;~~

~~(c) — introducing prohibitions of the operation of freight transport;~~

~~3. — During the Single Market emergency mode and when responding to a Single Market emergency, Member States shall refrain from any of the following unless to do so is inherent to the nature of the crisis/Single Market emergency:~~

~~(a) — banning types of services or modes of service provision;~~

~~(b) — blocking flows of passenger transport;~~

4. ~~During the Single Market emergency mode and when responding to the Single Market emergency, Member States shall refrain from any of the following:~~

- ~~(a) applying of more generous rules to travel to or from one Member State to or from another Member State or group of Member States, as compared to travel to and from other Member States unless to do so is inherent to the nature of the crisis/Single Market emergency;~~
- ~~(b)~~ **(d)** denying, to beneficiaries of the right of free movement under Union law, of the right to enter the territory of their Member State of nationality or residence, the right to exit the territory of Member States to travel to the Member State of nationality or residence, or the right to transit through a Member State in order to reach the Member State of nationality or residence;
- ~~(ee)~~ prohibiting of business travel linked to the research and development, to production, **to placing on the market or to the related inspections** of crisis-related goods that are listed in an implementing act adopted pursuant to Article 14, paragraph ~~35~~ **or their placing on the market or to the related inspections**;
- ~~(df)~~ **prohibiting** ~~imposing prohibitions on~~ travel, including travel for imperative family reasons, **between Member States when such travel is permitted within the Member State in question** ~~which are not appropriate for the achievement of any legitimate public interest purportedly pursued by such measures or which manifestly go beyond what is necessary to achieve that aim;~~
- ~~(e) imposing restrictions on workers and service providers and their representatives, unless to do so is inherent to the nature of the crisis/Single Market emergency and it does not manifestly go beyond what is necessary for that purpose.~~

**(g) imposing, when safe travel is possible despite the crisis, travel restrictions on service providers, business representatives and workers, preventing them from travelling between Member States to have access to their place of activity or workplace when there are no such restrictions on travel within the Member State in question;**

5. ~~When a Single Market emergency has been activated in accordance with Article 14 and the activities exercised by the service providers, business representatives and workers are not affected by the crisis in the Member State and safe travel is possible despite the crisis, that Member State shall not impose travel restrictions on such categories of persons from other Member States that would prevent them from having access to their place of activity or workplace.~~
6. ~~When a Single Market emergency has been activated in accordance with Article 14 and exceptional circumstances resulting from the crisis do not allow all service providers, business representatives and workers from other Member States to travel and to have unhindered access to their place of activity or workplace, but travelling is still possible, Member States shall not impose travel restrictions on:~~

**(ah) Those service providers that provide of crisis-relevant services that are listed in an implementing act adopted pursuant to Article 14 paragraph 3 (5), or, business representatives and workers that are involved in the production of crisis-relevant goods, or in the provision of crisis-relevant services that are listed in an implementing act adopted pursuant to Article 14 paragraph 3 (5) to allow them to have access to the place of their activities, if activities in the sector concerned are still allowed in the Member State; (b), or civil protection workers to allow them to have unhindered access to their place of activity with or their equipment in any to the place of the Member States. their activities.**

7. ~~When taking the measures referred to in this provision, the Member States shall ensure full compliance with the Treaties and Union law. Nothing in this provision shall be construed as authorising or justifying restrictions to free movement contrary to the Treaties or other provisions of Union law.~~

## Article 18

### Supportive measures for free movement of persons

1. During the Single Market emergency mode, **and for the purpose of reinforcing free movement of persons under points e, f, g and h of Article 17(2)**, the Commission may provide for supportive measures to reinforce free movement of persons referred to in Article 17(6) and 17(7), by means of implementing acts. ~~Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 422(2). On duly justified imperative grounds of urgency relating to the impacts~~ **adopt administrative arrangements or put at the disposal of the Member States digital tools to facilitate the identification of the categories of persons and verification** of the crisis on the Single Market, ~~facts referred to in those provisions by the Member States in cooperation with the other relevant Member States and~~ the Commission shall adopt immediately applicable implementing acts in accordance with the procedure **to reinforce free movement of persons points e, f, g and h of** referred to in Article ~~42(3)~~ **17(2)**.
2. During the Single Market emergency mode, where the Commission establishes that Member States have put in place templates for attesting that the individual or economic operator ~~is a service provider that provides crisis-relevant services, a business representative or worker that is involved in production of crisis-relevant goods or provision of crisis-relevant services or a civil protection worker and~~ **belongs to a category of persons referred to in points e, f, g and h of Article 17(2)** it considers that the use of different templates by each Member States is an obstacle to the free movement at the time of a Single Market emergency, ~~the Commission may issue, if it considers it necessary for supporting the free movement of such categories of those persons and their equipment during the ongoing Single Market emergency,~~ **the Commission may issue, by means of implementing acts, adopts** templates for attesting that they fulfil the relevant criteria for the application Article 17(6) ~~in use by~~ all Member States by means of implementing acts.

3. The implementing acts referred to in paragraphs 1 and 2 shall be adopted in accordance with the examination procedure referred to in Article 42(2). On duly justified imperative grounds of urgency relating to the impacts of the crisis on the Single Market, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 42(3).

## **Chapter II**

### **Transparency and administrative assistance**

#### *Article 19* *Notifications*

1. During the Single Market emergency, Member States shall notify to the Commission any crisis-relevant draft measures restricting free movement of goods and the freedom to provide services as well as crisis-relevant restrictions of free movement of persons, including workers together with the reasons for those measures.

Such notification shall not prevent Member States from adopting the measures in question in case immediate action is needed due to reasons occasioned by serious and unforeseeable circumstances. Member States shall notify the adopted measure immediately together with a justification for the need to immediately adopt the measure.

2. Member States shall provide to the Commission a statement of the reasons which make the enactment of such measure justified and proportionate, where those reasons have not already been made clear in the notified measure. Member States shall communicate to the Commission the full text of the national legislative or regulatory provisions which contain or are modified by the measure.



3. Member States shall use the information system set up for notifications under Directive (EU) 2015/1535 of the European Parliament and of the Council<sup>13</sup> for notifications under this Article.
4. The Commission shall communicate the notified measures to the other Member States without delay and shall share them at the same time with the ~~advisory group~~ **Board**.
5. If the ~~advisory group~~ **Board** chooses to deliver an opinion on a notified measure, it shall do so within four working days from the date of receipt by the Commission of the notification concerning that measure.
6. The Commission shall ensure that citizens and businesses are informed of the notified measures, unless Member States request that the measures remain confidential, or the Commission deems disclosure of those measures would affect the security and public order of the European Union or its Member States, as well as of the decisions and Member States' comments adopted in accordance with this Article.
7. Member States shall postpone the adoption of a notified draft measure for 10 days from the date of receipt by the Commission of the notification referred to in this Article.
8. Within 10 days from the date of receipt of the notification, the Commission shall examine the compatibility of any draft or adopted measure with Union law, including **with** Articles 16 and 17 of this Regulation as well as the principles of proportionality and non-discrimination, and may provide comments on the notified measure when there are immediately obvious and serious grounds to believe that it does not comply with Union law. Such comments shall be taken into account by the notifying Member State. In exceptional circumstances, in particular to receive scientific advice, evidence or technical expertise in the context of an evolving situation, the period of 10 days may be extended by the Commission. The Commission shall set out the reasons justifying any such extension, shall set a new deadline and shall inform the Member States about the new deadline and the reasons for the extension without delay.

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<sup>13</sup> OJ L 241, 17.9.2015, p. 1.

9. Member States may also provide comments to the Member State which has notified a measure; that Member State shall take such comments into account.
10. The notifying Member State shall communicate the measures it intends to adopt in order to comply with the comments delivered in accordance with paragraph 8 to the Commission within 10 days after receiving them.
11. If the Commission finds that the measures communicated by the notifying Member State are still not in accordance with Union law, it may issue within 30 days of that communication, a decision ~~requiring~~ **requesting** that Member State to refrain from adopting the notified draft measure. The notifying Member State shall communicate the adopted text of a notified draft measure to the Commission without delay.
12. If the Commission finds that an already adopted measure that has been notified to it, is not in accordance with Union law, it may issue within 30 days of that notification a decision ~~requiring~~ **requesting** the Member State to abolish it. The notifying Member State shall communicate the text of a revised measure in case it modifies the notified adopted measure without delay.
13. The period of 30 days referred to in paragraphs 11 and 12 may be exceptionally extended by the Commission in order to take account of a change of circumstances, in particular to receive scientific advice, evidence or technical expertise in the context of an evolving situation. The Commission shall set out the reasons justifying any such extension and shall set a new deadline and shall inform the Member States about the new deadline and the reasons for the extension without delay.
14. The Commission decisions referred to in paragraphs 11 and 12 shall be based on available information and may be issued when there are immediately obvious and serious grounds to believe that the notified measures do not comply with Union law, including Article 16 or 17 of this Regulation, the principle of proportionality or the principle of non-discrimination. The adoption of those decisions shall be without prejudice to the possibility for the Commission to adopt measures at a later stage, including the launching of an infringement procedure on the basis of Article 258 TFEU.

15. Information supplied under this Article shall not be confidential except at the express request of the notifying Member State. Any such request shall relate to draft measures and shall be justified.
16. The Commission shall publish the text of the measures adopted by the Member States in the context of the Single market emergency that restrict free movement of goods, services and the persons, including workers, which have been communicated by means of the notifications referred to in this Article as well as via other sources. The text of the measures shall be published within one working day of its receipt by means of an electronic platform managed by the Commission.

#### *Article 20*

##### *Link to other notification mechanisms*

1. Where a Member State is required to notify a measure under Article 19 of this Regulation and under Article 5(1) of Directive (EU) 2015/1535<sup>14</sup>, a notification made under this Regulation shall be deemed to have satisfied also the notification obligation set out in Article 5(1) of Directive (EU) 2015/1535.
2. Where a Member State is required to notify a measure under Article 19 of this Regulation and under Articles 15(7) or 39(5) of Directive 2006/123/EC of the European Parliament and of the Council<sup>15</sup>, **and on condition that the information provided in this notification meets the requirements of Articles 15(7) or 39(5) of Directive 2006/123/EC**, a notification made under this Regulation shall be deemed to have satisfied also the notification obligations set out in **Articles 15(7) or 39(5) of Directive 2006/123/EC**. Similarly the Commission Decisions referred to in Article 19(11) and 19(12) of this Regulation are deemed to be a Decision taken under Article 15(7) of Directive 2006/123/EC for the purposes of that Directive.

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<sup>14</sup> OJ L 241, 17.9.2015, p. 1

<sup>15</sup> OJ L 376, 27.12.2006, p. 36.

3. Where a Member State is required to notify a measure under Article 19 of this Regulation and to inform the Commission in accordance with Article 59(5) of Directive 2005/36/EC of the European Parliament and of the Council<sup>16</sup>, **and Article 11(1) of Directive EU/2018/958 and on condition that the information provided in this notification meets the requirements of Article 59(5) of Directive 2005/36/EC and of Article 11(1) of Directive EU/2018/958**, that notification shall be deemed to have satisfied also the information obligation set out in Article 59(5) of Directive 2005/36/EC **and in Article 11(1) of Directive EU/2018/958**.

*Article 21*  
*Single points of contact in the Member States*

1. Member States shall operate national single points of contact that shall provide citizens, consumers, economic operators and workers and their representatives with the following assistance:
  - (a) assistance in requesting and obtaining information about national restrictions of the free movement of goods, services, persons and workers that are related to an activated Single Market emergency;
  - (b) assistance in the performance of any national level crisis procedures and formalities that have been put in place due to the activated Single Market emergency.
2. Member States shall ensure that it is possible for citizens, consumers, economic operators and workers and their representatives to receive, at their request and via the respective single points of contact, information from the competent authorities on the way in which the respective national crisis response measures are generally interpreted and applied. Where appropriate, such information shall include a step-by-step guide. The information shall be provided in clear, understandable and intelligible language. **Member States shall make the information referred to in paragraph 1 of this Article also accessible in an official language of the Union that is broadly understood by the largest possible number of cross-border users.** It shall be easily accessible at a distance and by electronic means and shall be kept up to date.

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<sup>16</sup> OJ L 255, 30.9.2005, p. 22.

*Article 22*  
*Union level single point of contact*

1. The Commission shall set up and operate a Union level single point of contact.
2. The Union level single point of contact shall provide citizens, consumers, economic operators, workers and their representatives with the following assistance:
  - (a) assistance in requesting and obtaining information as regards Union level crisis response measures that are relevant to the activated Single Market emergency or which affect the exercise of the free movement of goods, services, persons and workers;
  - (b) assistance in the performance of any crisis procedures and formalities that have been put in place at the Union level due to the activated Single Market emergency;
  - (c) putting together **and publishing** a list with all national crisis measures and national contact points.

**TITLE III**  
**SINGLE MARKET EMERGENCY RESPONSE MEASURES**

**Chapter I**

**Targeted information requests and availability of crisis-relevant goods and services**

*Article 23*  
*Requirement of dual activation*

1. Binding measures included in this Chapter may be adopted by the Commission by means of implementing acts in accordance with ~~Articles 24(2),~~ **and the** first subparagraph of Article 26 ~~and Article 27(2)~~ may be adopted only after a Single Market Emergency has been activated by means of a Council implementing act in accordance with Article 14.
2. An implementing act introducing a measure included in this Chapter shall clearly and specifically list the crisis-relevant goods and services to which such measure applies. That measure shall apply only for the duration of the emergency mode.

**OPTION 1:**

*Article 24*  
*Information requests to economic operators*

1. Where there is a severe crisis-related shortages or an immediate threat thereof, the Commission may invite representative organisations or economic operators in crisis-relevant supply chains to transmit on a voluntary basis, within a set time limit, specific information to the Commission on the production capacities and possible existing stocks of crisis-relevant goods and components thereof in Union production facilities and third country facilities which it operates, contracts or purchases supply from, as well as information on any relevant supply chain disruptions within a given deadline **that shall not exceed 10 working days.** **This information shall only be collected for the purpose of supporting Articles 26, 34, 35 and 38 of this Regulation. Any sharing and exchange of information shall be proportionate and manipulated taking into account the commercial sensitivity of its content.**
2. If the addressees do not transmit the information requested in accordance with paragraph 1 within the time-limit ~~and do not provide a valid justification for not doing so~~, the Commission may, ~~by means of an implementing act, require that they~~ **request them to** transmit the information **on a voluntary basis**, ~~indicating in the implementing act why it is proportionate and necessary to do so~~, specifying the crisis-relevant goods and services and addressees concerned by the information request, and the information that is sought, providing where necessary a template with the questions that may be addressed to the economic operators.

3. The information requests referred to in paragraph 1 may concern ~~the following:~~ (a) targeted information to the Commission in relation to the production capacities and possible existing stocks of the crisis-relevant goods and components thereof in production facilities located in the Union and production facilities located in a third country which the organisation or the operator referred to in paragraph 1 operates, contracts or purchases supply from, while fully respecting trade and business secrets and ~~requiring~~ **requesting** them to transmit to the Commission **on a voluntary basis** a schedule of the expected production output for the following 3 months for production facility located in the Union as well as any relevant supply chain disruptions;
- (b) ~~other information necessary for assessing the nature or magnitude of a given supply chain disruption or shortage.~~
4. ~~Following the activation of the mandatory information requests to economic operators by means of an implementing act, the Commission shall address a formal decision to each of those representative organisations or economic operators in crisis-relevant supply chains that have been identified in the implementing act, requesting them to provide the information specified in the implementing act. The Commission shall rely, where possible, on the relevant and available contact lists of the economic operators active in the selected supply chains of crisis-relevant goods and services, compiled by the Member States. The Commission may obtain the necessary information on the relevant economic operators from the Member States.~~



- ~~5. The Commission Decisions containing individual information requests shall contain a reference to the implementing act referred to in paragraph 2 on which they are based and to the situations of severe crisis-related shortages or an immediate threat thereof which has given rise to them. Any information request shall be duly justified and proportionate in terms of the volume, nature and granularity of the data, as well as the frequency of access to the data requested, and shall be necessary for the management of the emergency or for compiling relevant official statistics. A request shall set out a reasonable time limit within which the information is to be provided. It shall take into account the effort required to collect and make the data available by the economic operator or representative organisation. The formal decision shall also contain safeguards for protection of data in accordance with Article 39 of this Regulation, safeguards for non-disclosure of sensitive business information contained in the reply in accordance with Article 25, and information on the possibility of contesting it before the Court of Justice of the European Union in line with relevant Union law and the fines provided for in Article 28 for failure to comply and the timeline for a reply.~~
- ~~6. The owners of the economic operators or their representatives and, in the case of legal persons, companies or firms, or associations having no legal personality, the persons authorised to represent them by law or by their constitution may supply the information requested on behalf of the economic operator or the association of economic operators concerned. Each economic operator or association of economic operators shall provide the requested information on an individual basis in line with the Union rules on competition governing the exchange of information. Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.~~

~~7. The Court of Justice of the European Union shall have unlimited jurisdiction to review decisions whereby the Commission has imposed a mandatory information request to an economic operator.~~

**7a. The Commission may present to the Board referred to in Article 4 aggregate information based on any information collected pursuant to Article 24.**

~~8. The implementing acts referred to in paragraph 2 shall be adopted in accordance with the committee procedure referred to in Article 42(2). On duly justified imperative grounds of urgency relating to the impacts of the crisis on the Single Market, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 42(3).~~

**OR OPTION 2:**

*Article 24*

*Information requests to economic operators*

1. Where there ~~is~~**are** a severe crisis-related shortages or an immediate threat thereof, the Commission may invite ~~representative organisations or~~ economic operators in crisis-relevant supply chains to transmit on a voluntary basis, within a set time limit, specific information to the Commission on the production capacities and possible existing stocks of crisis-relevant goods and components thereof in Union production facilities and third country facilities which it operates, contracts or purchases supply from, as well as information on any relevant supply chain disruptions ~~within a given deadline~~**where such information is necessary for assessing whether any of the measures laid down in Article 26, or Articles 32 to 37 would be capable of reducing such shortages or the threat thereof and the Commission not able to obtain such information from other sources.**

2. If the addressees do not transmit the information requested in accordance with gathered by the Commission, via the requests for information on a voluntary basis pursuant to paragraph 1 within the time limit, as well as from any other sources remains insufficient for assessing, whether the deployment of the measures laid down in Article 26, or Articles 32 to 37 would allow reducing the severe shortages of crisis-relevant goods or services or the threat thereof and do not provide a valid justification for not doing so whether any such measures should be taken, the Commission may activate a mandatory structured request for information, by means of an implementing act, require that they transmit the information, indicating in the. Before adopting such an implementing act why it is proportionate, the Commission shall assess the necessity and necessary to do so, specifying the crisis-relevant goods the proportionality of such a mandatory information request for the achievement of the envisaged public interest objectives pursued by this Regulation. The Commission shall take due account of the administrative burden, which such a request may entail for the concerned economic operators and services and in particular SMEs. The Board shall be informed of the outcome of this assessment. Any implementing act laying down a mandatory structured request for information shall specify the crisis-relevant goods and services, the types of addressees concerned by the information request, and the information that is sought, providing where necessary a template with the questions that may be addressed to the individual economic operators.

3. The information requests referred to in ~~paragraph~~**paragraphs 1 and 2** may only concern the following **information about**:
- (a) ~~targeted information to the Commission in relation to the production capacities and possible existing stocks of the crisis-relevant goods and components thereof in production facilities located in the Union and production facilities located in a third country which the organisation or the operator referred to in paragraph 1 operates, contracts or purchases supply from, while fully respecting trade and business secrets and requiring them to transmit to the Commission a schedule of the expected production output for the following 3 months for production facility located in the Union as well as any relevant supply chain disruptions;~~
  - (b) ~~other information necessary for assessing the nature or magnitude of a given~~ **any relevant** supply chain ~~disruption~~**disruptions** or shortage.

**In an information request concerning information specified in point (a), the Commission may request an economic operator to transmit a schedule of the expected production output for the following 3 months for production facility located in the Union.**

**Such information requests should be carried out while fully respecting trade and business secrets.**

4. Following the activation of the mandatory **structured** information requests to economic operators by means of an implementing act, **pursuant to paragraph 2**, the Commission shall address a formal decision to each of those representative organisations or economic operators in crisis-relevant supply chains that have been identified in the implementing act, requesting them to **either** provide the information specified in the implementing act **or to explain why they cannot provide such information**. The Commission shall rely, where possible, on the relevant and available contact lists of the economic operators active in the selected supply chains of crisis-relevant goods and services, compiled by the Member States. The Commission may obtain the necessary information on the relevant economic operators from the Member States.

5. The Commission Decisions containing individual information requests **adopted pursuant to paragraph 4** shall contain a reference to the implementing act referred to in paragraph 2 on which they are based and to the situations of severe crisis-related shortages or an immediate threat thereof which has given rise to them. Any information request shall be duly justified and proportionate in terms of the volume, nature and granularity of the data, as well as the frequency of access to the data requested, and shall be necessary for the management of the emergency ~~or for compiling relevant official statistics.~~ A request shall set out a reasonable time limit **not exceeding 10 working days** within which the information ~~is~~ **or the justification for the refusal to supply such information are** to be provided. ~~It~~ **When setting this time limit the Commission shall in particular take into consideration the size of the undertaking concerned in terms of employees. The Commission shall also** take into account the effort required to collect and make the data available by the economic operator ~~or representative organisation.~~ The formal decision shall also contain safeguards for protection of data in accordance with Article 39 of this Regulation, safeguards for non-disclosure of sensitive business information contained in the reply in accordance with Article 25, and information on the possibility of contesting it before the Court of Justice of the European Union in line with relevant Union law and the fines provided for in Article 28 for failure to comply and the timeline for a reply.

6. The owners of the economic operators or their representatives and, in the case of legal persons, companies or firms, or associations having no legal personality, the persons authorised to represent them by law or by their constitution may supply the information requested on behalf of the economic operator ~~or the association of economic operators~~ concerned. Each economic operator ~~or association of economic operators~~ shall provide the requested information on an individual basis in line with the Union rules on competition governing the exchange of information. Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.
7. The Court of Justice of the European Union shall have unlimited jurisdiction to review decisions whereby the Commission has imposed a mandatory information request to an economic operator.
8. The implementing acts referred to in paragraph 2 shall be adopted in accordance with the committee procedure referred to in Article 42(2). On duly justified imperative grounds of urgency relating to the impacts of the crisis on the Single Market, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 42(3).

*Article 25*  
*Confidentiality and processing of the information*

1. Information received as a result of the application of this Regulation shall be used only for the purpose for which it was requested.
2. Member States and the Commission shall ensure the protection of trade and business secrets and other sensitive and confidential information acquired and generated in application of this Regulation, including recommendations and measures to be taken, in accordance with Union and the respective national law.
3. Member States and the Commission shall ensure that classified information provided or exchanged under this Regulation is not downgraded or declassified without the prior written consent of the originator.
4. The Commission may present to the advisory group referred to in Article 4 aggregate information based on any information collected pursuant to Article 24.
5. The Commission shall not share any information in a way that can lead to the identification of an individual operator when the sharing of the information results in potential commercial or reputational damage to this operator or in divulging any trade secrets.



*Article 26*  
*[Targeted amendments to harmonised product legislation]*

When the Single Market emergency mode has been activated by means of a Council implementing act adopted pursuant to Article 14, and there is a shortage of crisis relevant goods the Commission may activate by means of implementing acts the emergency procedures included in the Union legal frameworks amended by [Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/424, Regulation (EU) 2016/425, Regulation (EU) 2016/426, Regulation (EU) 2019/1009 and Regulation (EU) No 305/2011 and introducing emergency procedures for the conformity assessment, adoption of common specifications and market surveillance in the context of a Single Market emergency and Directive of the European Parliament and of the Council amending Directives 2000/14/EC, 2006/42/EC, 2010/35/EU, 2013/29/EU, 2014/28/EU, 2014/29/EU, 2014/30/EU, 2014/31/EU, 2014/32/EU, 2014/33/EU, 2014/34/EU, 2014/35/EU, 2014/53/EU, and 2014/68/EU and introducing as regard emergency procedures for the conformity assessment, adoption of common specifications and market surveillance in the context of due to a Single Market] as regards crisis-relevant goods, indicating which crisis-relevant goods and emergency procedures are subject to the activation, providing reasons for such activation and its proportionality, and indicating the duration of such activation.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 42(2). On duly justified imperative grounds of urgency relating to the impacts of the crisis on the Single Market, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 42(3).

*Article 27*  
*Priority rated orders*

1. ~~The Commission may invite one or more economic operators in crisis-relevant supply chains established in the Union to accept and prioritise certain orders for the production or supply of crisis-relevant goods ('priority rated order').~~
2. ~~If an economic operator does not accept and prioritise priority rated orders, the Commission may, at its own initiative or at the request of 14 Member States, assess the necessity and proportionality of resorting to priority rated orders in such cases, the Commission shall give the economic operator concerned as well as any parties demonstrably affected by the potential priority rated order, the opportunity to state their position within a reasonable time limit set by the Commission in light of the circumstances of the case. In exceptional circumstances, following such an assessment, the Commission may address an implementing act to the economic operator concerned, requiring it to either accept and prioritise the priority rated orders specified in the implementing act or explain why it is not possible or appropriate for that operator to do so. The Commission's decision shall be based on objective data showing that such prioritisation is indispensable to ensure the maintenance of vital societal economic activities in the Single Market~~
3. ~~Where the economic operator to which the decision referred to in paragraph 2 is addressed accepts the requirement to accept and prioritise the orders specified in the decision, that obligation shall take precedence over any performance obligation under private or public law.~~

4. ~~Where the economic operator to which the decision referred to in paragraph 2 is addressed declines to accept the requirement to accept and prioritise the orders specified in the decision, it shall provide to the Commission, within 10 days from the notification of the decision, a reasoned explanation setting out duly justified reasons why it is not possible or appropriate, in light of the objectives of this provision, for it to comply with the requirement. Such reasons include the inability of the operator to perform the priority rated order on account of insufficient production capacity or a serious risk that accepting the order would entail particular hardship or economic burden for the operator, or other considerations of comparable gravity.~~

~~The Commission may make such reasoned explanation or parts of it public, with due regard to business confidentiality.~~

5. ~~When an economic operator established in the Union is subject to a measure of a third country which entails a priority rated order, it shall inform the Commission thereof.~~

6. ~~The Commission shall take the decision referred to in paragraph 2 in accordance with applicable Union law, including the principles of necessity and proportionality, and the Union's obligations under international law. The decision shall in particular take into account the legitimate interests of the economic operator concerned and any available information concerning the cost and effort required for any change in production sequence. It shall state the legal basis for its adoption, fix the time limits within which the priority rated order is to be performed and, where applicable, specify the product and quantity. It shall state the fines provided for in Article 28 for failure to comply with the decision. The priority rated order shall be placed at a fair and reasonable price.~~

- ~~7. Where an economic operator accepts and prioritises a priority rated order, it shall not be liable for any breach of contractual obligations governed by the law of a Member State that is required to comply with the priority rated order. Liability shall be excluded only to the extent the violation of contractual obligations is necessary for compliance with the required prioritisation.~~
- ~~8. The implementing acts referred to in paragraph 2 shall be adopted in accordance with the examination procedure referred to in Article 42(2). On duly justified imperative grounds of urgency relating to the impacts of the crisis on the Single Market, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 42(3).~~

**OPTION 1:**

**Delete Articles 28-31 to align with the deletion of the mandatory element of information requests in Article 24.4, 24.5, 24.6, 24.7 and 24.8 and to the deletion of Article 27 (Priority rated orders)**

**OR OPTION 2:**

**Redraft Articles 28-31 as here below to align with the redrafting of the mandatory information requests in Article 24.**

*Article 28*

*Fines to operators for failure to comply with the obligation to reply to mandatory information requests ~~or to comply with priority rated orders~~*

1. The Commission may, by means of a decision, where deemed necessary and proportionate, impose fines:
  - (a) where ~~a representative organisation of economic operators or an economic operator,~~ intentionally or through gross negligence, supplies incorrect, incomplete or misleading information in response to a **mandatory** request made pursuant to Article 24 **(4)**, or does not supply the information **or a justification for not providing the requested information** within the **time limit** prescribed ~~time limit~~ **therein**;
  - ~~(b) where an economic operator, intentionally or through gross negligence, does not comply with the obligation to inform the Commission of a third country obligation pursuant to Article 27 or fails to explain why it has not accepted a priority rated order;~~
  - ~~(c) where an economic operator, intentionally or through gross negligence, does not comply with an obligation which it has accepted to prioritise certain orders of crisis relevant goods ('priority rated order') pursuant to Article 27;~~

2. Fines imposed in the cases referred to in paragraph 1 (a) ~~and (b)~~ shall not exceed 200 000 EUR.
- ~~3. Fines imposed in the cases referred to in paragraph 1 (c) shall not exceed 1 % of the average daily turnover in the preceding business year for each working day of non-compliance with the obligation pursuant to Article 27 (priority rated orders) calculated from the date established in the decision not exceeding 1% of total turnover in the preceding business year.~~
4. In fixing the amount of the fine, regard shall be had to the size and economic resources of the economic operator concerned, to the nature, gravity and duration of the infringement, taking due account of the principles of proportionality and appropriateness.
5. The Court of Justice of the European Union shall have unlimited jurisdiction to review decisions whereby the Commission has fixed a fine. It may cancel, reduce or increase the fine imposed.

*Article 29*  
*Limitation period for the imposition of fines*

1. The Commission power to impose fines in accordance with Article 30~~28~~ shall be subject to the following limitation periods:
  - (a) two years in the case of infringements of provisions concerning requests of information pursuant to Article 24;
  - ~~(b) three years in the case of infringements of provisions concerning the obligation to prioritise the production of crisis-relevant goods pursuant to Article 26(2).~~
2. The time shall begin to run on the day on which the Commission becomes aware of the infringement. However, in case of continuous or repeated infringements, time shall begin to run on the day on which the infringement ceases
3. Any action taken by the Commission or the competent authorities of the Member States for the purposes of ensuring compliance with the provisions of this Regulation shall interrupt the limitation period.
4. The interruption of the limitation period shall apply for all the parties which are held responsible for the participation in the infringement.
5. Each interruption shall start the time running afresh. However, the limitation period shall expire at the latest on the day in which a period equal to twice the limitation period has elapsed without the Commission having imposed a fine. That period shall be extended by the time during which the limitation period is suspended because the decision of the Commission is the subject of proceedings pending before the Court of Justice of the European Union.

*Article 30*  
*Limitation periods for enforcement of fines*

1. The power of the Commission to enforce decisions taken pursuant to Article 28 shall be subject to a limitation period of five years.
2. Time shall begin to run on the day on which the decision becomes final.
3. The limitation period for the enforcement of fines shall be interrupted:
  - (a) by notification of a decision varying the original amount of the fine or refusing an application for variation;
  - (b) by any action of the Commission or of a Member State, acting at the request of the Commission, designed to enforce payment of the fine.
- ~~(4.)~~ Each interruption shall start time running afresh.
- ~~(5.)~~ The limitation period for the enforcement of fines shall be suspended for so long as:
  - (a) time to pay is allowed;
  - (b) enforcement of payment is suspended pursuant to a decision of the Court of Justice of the European Union.



*Article 31*  
*Right to be heard for the imposition of fines*

1. Before adopting a decision pursuant to Article 28, the Commission shall give the economic operator or representative organisations of economic operators concerned the opportunity of being heard on:
  - (a) preliminary findings of the Commission, including any matter to which the Commission has taken objections;
  - (b) measures that the Commission may intend to take in view of the preliminary findings pursuant to point (a) of this paragraph.
2. Undertakings and representative organisations of economic operators concerned may submit their observations to the Commission's preliminary findings within a time limit which shall be fixed by the Commission in its preliminary findings and which may not be less than 21 days.
3. The Commission shall base its decisions only on objections on which economic operators and representative organisations of economic operators concerned have been able to comment.
4. The rights of defence of the economic operator or representative organisations of economic operators concerned shall be fully respected in any proceedings. The economic operator or representative organisations of economic operators concerned shall be entitled to have access to the Commission's file under the terms of a negotiated disclosure, subject to the legitimate interest of economic operators in the protection of their business secrets. The right of access to the file shall not extend to confidential information and internal documents of the Commission or the authorities of the Member States. In particular, the right of access shall not extend to correspondence between the Commission and the authorities of the Member States. Nothing in this paragraph shall prevent the Commission from disclosing and using information necessary to prove an infringement.

## Chapter II

### Other measures for ensuring availability of crisis-relevant goods and services

#### Article 32

#### *Coordinated distribution of ~~strategic reserves~~ crisis-relevant goods and services*

Where the ~~strategic reserves constituted by the~~ **Commission is informed that crisis-relevant goods and services are insufficient in a** Member States in accordance with Article 12 prove to be ~~insufficient~~ **State** to meet the needs related to the Single Market emergency, the Commission, taking into consideration the opinion provided by the ~~advisory group~~ **Board**, may recommend to the **other** Member States to distribute ~~the strategic reserves~~ **these crisis-relevant goods or services** in a targeted way, where possible, having regard to the need not to further aggravate disruptions on the Single Market, including in geographical areas particularly affected by such disruptions and in accordance with the principles of necessity, proportionality and solidarity and establishing the most efficient use of ~~reserves~~ **crisis-relevant goods and services** with a view to ending the Single Market emergency.

Article 33

*Measures to ensure the availability and supply of crisis-relevant goods and services*

1. **Where the** ~~The Commission may, when it considers~~ **is informed** that there is a risk of a shortage of crisis-relevant goods **and services in a Member State to meet the needs related to the Single Market emergency, it may, taking into consideration the opinion by the Board,** recommend that Member States ~~implement~~ **take** specific measures ~~to~~. **Those measures shall** ensure the efficient re-organisation of supply chains and production lines and to use existing stocks to increase the availability and supply of crisis-relevant goods and services, as quickly as possible.
2. In particular, the measures referred to in paragraph 1 may include measures:
  - (a) facilitating the expansion or repurposing of existing or the establishment of new production capacities for crisis-relevant goods;
  - (b) facilitating the expansion of existing or the establishment of new capacities related to service activities;
  - (c) aiming at accelerating ~~permitting~~ **relevant approval and authorisation procedures, including environmental perits, regarding or affecting the production and distribution** of crisis-relevant goods;
  - (d) **aiming at acceleratating relevant relevant product approval procedures in view of placing on the market crisis-relevant goods that are not subject to Union harmonisation legislation.**

**Part V**  
**ProcurementPublic procurement**

**CHAPTER I**  
**ProcurementPublic procurement of goods and services of strategic critical importance and crisis-relevant goods by the Commission on behalf of Member States during vigilance and emergency modes**

*Article 34*

*Request of Member States to the Commission to procure goods and services on their behalf*

1. Two or more Member States may request that the Commission launch a procurement on behalf of the Member States that wish to be represented by the Commission ('participating Member States'), for the purchasing of goods and services of ~~strategic~~ **critical** importance listed in an implementing act adopted pursuant to Article 9(1) or crisis-relevant goods and services listed in an implementing act adopted pursuant to Article 14(~~35~~).
2. The Commission shall assess **without delay**, the utility, necessity and proportionality of the request. **If the Commission decides to launch a procurement on behalf of the Member States, it shall inform all Member States and the Board of its intention to carry out the procurement and invite the interested Member States to participate.** Where the Commission intends not to follow the request, it shall inform the Member States ~~concerned~~ and the ~~advisory group~~ **Board** referred to in Article 4 and give reasons for its refusal.  
**The Commission shall launch a call for other Member States to participate in the request.**
3. Where the Commission agrees to procure on behalf of the Member States, it shall draw up a proposal for ~~an framework~~ agreement to be concluded with the participating Member States allowing the Commission to procure on their behalf. This agreement shall lay down the detailed conditions, **including the proposed quantities** for the procurement on behalf of the participating Member States referred to in paragraph 1.

**3a. If the Commission is not able to award the contract to a suitable economic operator, the Commission shall immediately inform the Member State of the case that Member States can initiate their own procurement procedure without delay.**

*Article 35*

*Establishment and implementation of the negotiating mandate of the Commission*

1. The agreement {referred to in Article 34(3) shall establish a negotiating mandate for the Commission to ~~act as a central purchasing body~~**contract on behalf of the participating Member States** for relevant goods and services of ~~strategie~~ **critical** importance or crisis-relevant goods and services on behalf of the participating Member States through the conclusion of new contracts.
2. In ~~accordance~~**line** with ~~the~~**this** agreement, the Commission ~~may~~**shall** be entitled, on behalf of the participating Member States, to enter into contracts with economic operators, including individual producers of goods and services of ~~strategie~~ **critical** importance or crisis-relevant goods and services, concerning the purchase of such goods or services.
3. ~~Representatives of the Commission or experts nominated by the Commission may carry out on-site visits at the locations of production facilities of relevant goods of strategic importance or crisis-relevant goods.~~
4. **Without prejudice to Article 171 of the Financial Regulation, the** ~~The~~ Commission shall carry out the procurement procedures and **award and** conclude the resulting contracts ~~with~~**to** economic operators on behalf of the participating Member States.

**4a. The Commission shall invite participating Member States to nominate representatives to take part in the preparation of the public procurement procedures as well as the negotiation of the Commission's mandate.**

**4b. All participating Member States shall be associated to the procurement procedure via their representatives.**

**Where the Commission intends to conclude a contract concerning the purchase of goods and services of critical importance or crisis-relevant goods and services, it shall inform the participating Member States of such intention and the detailed terms. The participating Member States shall have the opportunity to express their comments on the draft contract.**

**4c. The Commission shall ensure that participating Member States are treated in a non-discriminatory manner when carrying out the procurement procedures and when implementing the resulting agreements.**

*Article 36*  
*Modalities of procurement by the Commission on behalf of the Member States*

1. Procurement under this Regulation shall be carried out by the Commission in accordance with the rules set out in Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council<sup>17</sup> for its own procurement.
2. ~~The contracts may include a clause stating that a Member State which has not participated in the procurement procedure may become a party to the contract after it has been signed, laying out in detail the procedure for doing so and its effects.~~ **When duly justified by the extreme urgency or when strictly necessary in order to adapt to unforeseen circumstances in the evolution of the Single Market emergency, and provided the modification does not alter the subject matter of the contract or agreement, the Commission may:**
  - (a) **in agreement with the contractor, modify the contract which has been signed, beyond the threshold of 50% and up to 100% of the initial contract value, provided that this is justified as strictly necessary to respond to the evolution of the Single Market emergency,**
  - (b) **in common agreement with the participating Member States, allow other Member States to join a signed contract for procurement by the Commission on behalf of the Member States provided that this is justified as strictly necessary to respond to the evolution of the Single Market emergency.**

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<sup>17</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (*OJ L 193, 30.7.2018, p. 1*).

A modification shall be considered to be altering the subject matter of the contract or agreement, where it renders the contract or agreement materially different in substance from the one initially concluded. A modification shall be considered to be altering the subject matter of the contract or agreement where one or more of the following conditions are met:

- (a) the modification introduces or supresses significant conditions which, had they been part of the initial procurement procedure, would have allowed for the admission of other tenderers than those initially selected or for the acceptance of a tender other than that originally accepted, or would have attracted additional participants in the procurement procedure, or would not have led to the selection of the winning tenderer;
- (b) the modification significantly changes the economic balance of the contract or the agreement in favour of the contractor in a manner which was not provided for in the initial contract or agreement;
- (c) the modification significantly extends the scope of the contract or agreement.



## CHAPTER II

### Joint Procurement during vigilance and emergency modes

#### *Article 37* *Joint procurement procedure*

Where it is necessary to carry out a joint procurement between the Commission and one or more contracting authorities from **the participating** Member States in accordance with the rules set out in Article 165(2) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council, the Member States may acquire, rent or lease fully the capacities jointly procured.

## Chapter III

### Procurement by the Member States during the emergency mode

#### *Article 38* *Consultation and coordination regarding individual procurement by the Member States*

When the Single Market emergency mode has been activated pursuant to Article 14, Member States shall **make best efforts to** consult each other and the Commission and coordinate their actions with the Commission and the representatives of the other Member States in the ~~advisory group~~ **Board** prior to launching procurement of crisis-relevant goods and services listed in an implementing act adopted pursuant to Article 14(~~35~~) in accordance with Directive 2014/24/EU of the European Parliament and of the Council<sup>18</sup>. **The Commission shall make best efforts to inform the Board of any information it obtains to support this coordination.**

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<sup>18</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (*OJ L 94, 28.3.2014, p. 65*)..

*Article 39*  
*Ban of individual procurement action by participating Member States*

Where the Single Market emergency mode has been activated pursuant to Article ~~16~~**14** and procurement by the Commission on behalf of Member States has been launched in accordance with Articles 34 to 36, the contracting authorities of the participating Member States shall not procure goods or services covered by such procurement by other means.

**In cases referred to in Article 34(3a), participating Member States may launch their own procurement procedure.**

**Part VI**  
**Final provisions**

*Article 40*  
*Personal data protection*

1. This Regulation shall be without prejudice to the obligations of Member States relating to their processing of personal data under Regulation (EU) No 2016/679 and Directive 2002/58/EC on privacy and electronic communications, or the obligations of the Commission and, where appropriate, other Union institutions and bodies, relating to their processing of personal data under Regulation (EU) No 2018/1725, when fulfilling their responsibilities.
2. Personal data shall not be processed or communicated except in cases where this is strictly necessary to the purposes of this Regulation. In such cases, the conditions of Regulation (EU) No 2016/679 and Regulation (EU) No 2018/1725 shall apply as appropriate.
3. Where processing of personal data is not strictly necessary to the fulfilment of the mechanisms established in this Regulation, personal data shall be rendered anonymous in such a manner that the data subject is not identifiable.

*Article 40a*  
**Confidentiality and processing of the information**

- 1. Information received as a result of the application of this Regulation shall be used only for the purpose for which it was requested.**
- 2. Member States and the Commission shall ensure the protection of trade and business secrets and other sensitive and confidential information acquired and generated in application of this Regulation, including recommendations and measures to be taken, in accordance with Union and the respective national law.**
- 3. Member States and the Commission shall ensure that classified information provided or exchanged under this Regulation is not downgraded or declassified without the prior written consent of the originator.**
- 4. The Commission shall not share any information in a way that can lead to the identification of an individual operator when the sharing of the information results in potential commercial or reputational damage to this operator or in divulging any trade secrets.**

*Article 41*  
*Digital tools*

**Where the existing tools or IT infrastructures are not fit for purpose, the** The Commission and the Member States may **enhance or** set up interoperable digital tools or IT infrastructures supporting the objectives of this Regulation. Such tools or infrastructures may **also be enhanced or** developed ~~outside the duration of the~~ **during a** Single Market Emergency.

The Commission shall, by means of implementing acts, set out the technical aspects of such tools or infrastructures. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 42(2).

#### Article 41a

#### Scientific information collection for the application of the regulation

**Where necessary for the application of this Regulation, the Commission shall ask and obtain from relevant Union bodies, agencies and Committees any relevant specialised or scientific knowledge.**

#### *Article 42* *Committee*

1. The Commission shall be assisted by a Single Market Emergency Instrument Committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

#### *Article 43* *Delegated acts*

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 6 shall be conferred on the Commission for a period of five years from date of entry into force of this ~~Directive~~**Regulation** or any other date set by the co-legislators.
3. The delegation of power referred to in Article 6 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

*Article ~~44~~  
Report and review*

1. By [*OP: please insert date =* ~~five~~] years from the entry into force of this Regulation] and every [~~five~~] years thereafter, the Commission shall present a report to the European Parliament and the Council on the functioning of the contingency planning, vigilance and Single Market emergency response system suggesting any improvements if necessary, accompanied, where appropriate, by relevant legislative proposals.
2. This report shall include an evaluation of the work **functioning** of the ~~advisory group~~ **this Regulation** under the **contingency, vigilance and** emergency framework established by this Regulation **modes. It shall also include an assessment of the operation of the Board**, and its relation to the work of other relevant Union level crisis management bodies.

*Article 45*  
*Repeal*

Council Regulation (EC) 2679/98 is repealed with effect from [date].

*Article 46*  
*Entry into force*

This Regulation shall enter into force on the [twentieth day] following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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