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NOTE

From:	Presidency
To:	Working Party on Technical Harmonisation (Construction Products)
Subject:	Proposal for a Regulation of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products, amending Regulation (EU) 2019/1020 and repealing Regulation (EU) 305/2011 - Issue paper – Articles related to the ESPR proposal

Swedish Presidency CPR Team



Issue paper – Articles related to the ESPR proposal

In the spirit of the ESPR proposal's ambition to achieve more sustainable products, the CPR proposal addresses a number of sustainability aspects throughout the text. Mainly through the possibility to adopt harmonised technical specifications covering environmental characteristics and specifying environmental requirements in Annexes 1-A and 1-BC respectively, but also through environmental aspects in the information requirements in Annex 1-D.

In addition to those aspects, the CPR proposal includes a number of articles which directly or indirectly are designed to mirror corresponding ESPR provisions, either in substance or in ambition. Most notably, there are mirroring provisions on “Member State incentives” (CPR Article 83) and “Green public procurement” (CPR Article 84). Additionally, there are provisions inspired by but not mirroring the ESPR due to structural differences, namely Article 22(5)(6) on traffic light labelling and the manufacturer's obligations on “spare parts” and “surplus products” currently in Article 5(2a).

As previously communicated, the Presidency has waited for the ESPR negotiations to progress sufficiently in order to enable a discussion on possible alignment based on the Council position on that dossier. It should however be noted that, alignment with the ESPR is a policy choice and not a necessity. From the Presidency point of view, Member states can choose to:

- a) Align the provisions, as far as possible, with the latest ESPR text (see document ST 8613/23).
- b) Adapt the provisions in the CPR more specifically towards constructions products.
- c) Remove the provisions from the CPR with the effect that any similar requirement targeting construction products would have to be developed within the ESPR structures.

To further the discussion, the Presidency has in this document drafted an illustration of what an alignment to the latest ESPR text might look like, taking into account the current structure of the compromise CPR text which establishes requirements through the gradual introduction of harmonised technical specifications.

Article 83 “Members states incentives” and Article 84 “Green public procurement”

Article 83 is quite strictly aligned to the latest version of the corresponding Article 57 ESPR.

Article 84 is aligned to the latest versions of the corresponding Article 58 ESPR. Based on previous comments from delegations, the text proposal introduces a clear delimitation not to include contracts for construction works offered by public entities.

It’s to be noted the ESPR at the moment empowers the Commission through implementing acts. The Presidency has therefore aligned to the usage of such acts, but the legality of this would need further assessment.

Article 22(5)(6) “Traffic light labelling” [moved to a new Article 84a]

In the ESPR proposal labelling is regulated more extensively compared to the provisions on traffic light labelling in the CPR proposal. The Presidency has therefore revised the provisions on traffic light labelling aiming to clarify them in line with the ESPR labelling requirements.

Given that labelling requirements in the ESPR are tools to drive consumers towards more sustainable choices, the Presidency has changed the wording from “users” to “consumers”. This limits the Commission empowerment to require labeling to products which are primarily targeting consumers.

Following earlier request from delegations to gather environmental provisions together in the text, a compromise on the text currently in Article 22(5) is put forward as a possible new Article 84(a). The remaining obligation on economic operators to affix the label has been aligned with previously agreed wording in the common charger negotiation (see Article 3a of the Radio Equipment Directive). Considering the move of the earlier paragraph, this provision would be included in Article 19 and referenced in Article 32.

Article 5(2a)(g) Obligations on manufacturers to supply spare parts

The CPR text contains an empowerment for the Commission to establish manufacturers' obligations to make spare parts for their products for a fixed period of time.

The ESPR proposal includes the possibility to introduce product ecodesign requirements in accordance with Article 5 ESPR, rather than manufacturer's obligations, using availability of and compatibility with commonly available spare parts as a product parameter (see ESPR Annex I point b) to be used for certain product groups.

Given the structure set in Annex I-BC, mainly covering product design requirements, the Presidency proposal would be to solely focus on the issue of compatibility as this can be incorporated into the current structure. See drafting in Annex I-BC point 3.1(i).

Article 5(2a)(j) Obligation on manufacturers to regain surplus and unsold products

The CPR text contains an empowerment for the Commission to establish manufacturers' obligations accept to regain ownership of surplus and unsold products.

The obligation to regain unsold or surplus products is not a part of the ESPR proposal and the Presidency is therefore proposing its deletion also from the CPR. Deleting the provision on surplus products would lead to additional deletions or amendments in article 12 and 21.

Article 83

Member State incentives

1. Where Member States provide incentives for a product ~~category~~ covered by a delegated act establishing ~~performance~~ classes ~~of performance~~ in accordance with Article 4~~a~~(42)(ii), ~~point (a)~~ or a “traffic-light-labelling” ~~requirements~~ in accordance with Article ~~22(5)~~ 84a, those incentives shall aim at the highest two ~~populated~~ classes ~~of performance or/~~ colour codes ~~that are populated at Union level~~, or at higher classes ~~or/~~ better colour codes ~~or, where relevant, products with an EU Ecolabel including products fulfilling equivalent requirements when that label is compliant with the harmonised zone established under Article 7.~~

~~Where a delegated act defines classes of performance in relation to more than one sustainability parameter, it shall be indicated therein in relation to which parameter this Article should be implemented.~~

[Moved to para 2(a)]

2. ~~Where no delegated act is adopted pursuant to Article 4(4), the Commission may specify in the delegated acts adopted pursuant to Article 4(3), which levels of performance related to product parameters the Member States incentives shall concern.~~

~~When doing so, the Commission shall take into account the following criteria:~~

- ~~(a) — the need to ensure relative affordability of the products depending on their level of performance to avoid significant negative impact on consumers;~~
- ~~(b) — the need to ensure sufficient demand for more environmentally sustainable products.~~

The Commission is empowered to adopt implementing acts to further guide the Member States' use of incentives. Such implementing acts shall comply with the following criteria:

- (a) Where a delegated act ~~defines~~ determines classes of performance in relation to more than one essential characteristic, sustainability parameter, it shall be indicated therein in relation to which parameter this Article should be implemented. the Commission may specify which essential characteristics Member States incentives shall concern and that the highest two classes of performance can be incentivised.
- (b) In cases where there is no delegated act determining classes of performance pursuant to Article 4a(2ii) nor traffic-light labelling requirements pursuant to Article 84a(1), the Commission may specify requirements on performance in relation to selected essential characteristics that products concerned by Member State incentives shall meet.

When deciding which essential characteristics incentives shall concern, the Commission shall, as appropriate for the product family or category 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, the Commission shall take into account the following criteria:

- (a) the number of products in each class of performance;
- b) the need to ensure affordability of the products meeting those requirements, to avoid significant negative impacts on consumers.

4. The implementing acts referred to in paragraph 2 shall be adopted in accordance with the examination procedure referred to in Article 88(2).

Article 84

Green public procurement

1. The Commission is empowered to adopt implementing acts ~~supplement this Regulation by delegated acts according to Article 87 by specifying minimum~~ establishing mandatory sustainability requirements applicable to for public contracts, including implementation, monitoring and reporting of those requirements by Member States procurement of construction products, in order to incentivise the supply and demand for environmentally sustainable products. The requirements shall be set on products covered by harmonised technical specifications and shall not apply to the procurement of construction works. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 88(2).
- 1a. The requirements referred to in paragraph 1 shall be set as appropriate in view of the specificities of to the product family or category concerned:
- (a) include requirements based on the essential characteristics specified in harmonised technical specifications.
 - (b) where classes of performance have been determined for products pursuant to 4a(2ii), require products to fulfil one of the highest two classes of performance that are populated at Union level.
 - (c) where traffic light labelling requirements have been established pursuant to Article 84a(1), require products to

fulfil the highest two colour codes that are populated at Union level.

2. Requirements adopted pursuant to paragraph 1 for public contracts awarded by contracting authorities, as defined in Article 2(1) of Directive 2014/24/EU or Article 3, point (1) of Directive 2014/25/EU, or contracting entities, as defined in Article 4(1) of Directive 2014/25/EU, ~~may~~ shall, as appropriate to the product family of category 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, or
 - (iv) targets.
3. When establishing requirements pursuant to paragraph 1 for public contracts, the Commission shall take into account the following criteria:
 - (a) the value and volume of public contracts awarded for ~~that the~~ relevant given product family or category ~~or for the services or works using the given product family or category;~~
 - ~~(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;
- (d) the market situation at Union level of the relevant product family or category;
- (e) the effects of the requirements on competition.

4. Without prejudice to the harmonised zone established under Article 7, contracting authorities and contracting entities referred to in paragraph 2 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.

Article 84a

Traffic light labelling requirements

1. In order to ensure transparency for ~~the users~~ consumers and to promote sustainable products, the Commission is empowered to supplement this Regulation by delegated acts adopted in accordance with Article 87 to establish, for one or more product families or for one or more product categories within a family, specific mandatory traffic-light environmental sustainability labelling requirements including “traffic light labelling” in relation to environmental obligations set out in paragraph 1, enabling potential consumers to choose the better-performing products, when those products are covered by harmonised technical specifications.

The classification leading to the traffic light labels shall be based on:

- (a) ~~applicable inherent~~ product ~~inherent~~ environmental requirements set out in Annex I-~~BC Part C~~ Point ~~2-3~~, in case they can be specified in the form of measurable values, ~~and~~
- (b) ~~declared performance in relation to predetermined environmental performance~~ characteristics listed in Annex 1-
~~A point 2~~, and
- (c) ~~environmental performance~~ classes ~~of performance~~ established ~~determined~~ in accordance with Article 4~~a(24)(ii)~~,
point (a)

For article 19(X):

The ~~An economic operator manufacturer~~ shall ~~ensure that affix the~~ any traffic light label ~~required pursuant to Article 84a is displayed~~ in a graphic form when products covered by such requirements are made available to consumers, ~~the way set out in the delegated acts adopted in accordance with paragraph 5.~~

Article 5

Product requirements

[...]

~~2a. Delegated acts referred to in the first paragraph may also supplement this Regulation by requiring manufacturers to:~~

- ~~(g) make available on the market themselves or by specially designated distributors or by manufacturers of spare parts, with reasonably short delivery time, spare parts for their products for 10 years after the last product of the respective type has been placed on the market or directly installed and inform proactively about this availability, or~~

~~(j) — accept to regain, directly or via their importers and distributors, ownership of surplus and unsold products that are in a state equivalent to the one in which they were placed on the market.~~

Annex I-BC

3. *Inherent product environmental requirements*

3.1. *Harmonised technical specifications adopted in accordance with Article 5(1) may, as appropriate for the products it covers, specify how products shall be designed, manufactured, and packaged in such a way that one or more of the following inherent product environmental aspects are addressed in accordance with the state of the art and to the extent not covered by other EU legislation:*

[...]

- (i) reparability during the expected life span, including compatibility with commonly available spare parts;