

Proposal for a New Ecodesign for Sustainable Products Regulation (ESPR): A Circular Economy Revolution for Product Design

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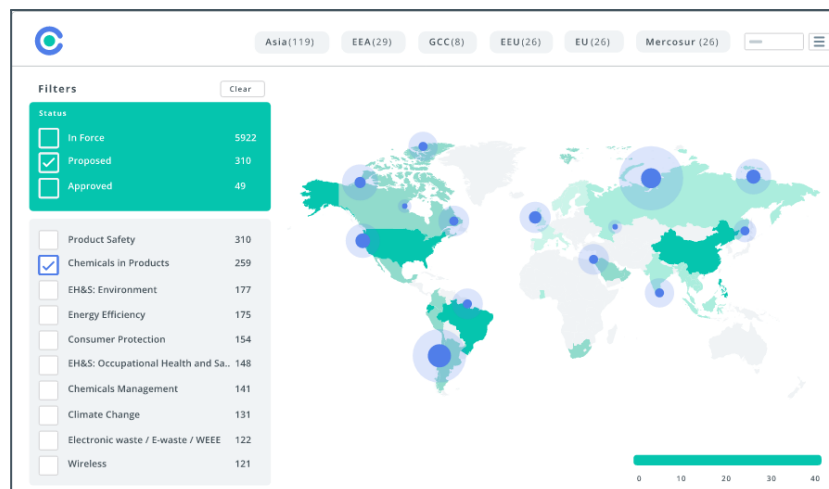
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1. Introduction

The Proposal for a New Ecodesign for Sustainable Products Regulation (ESPR) sets out the EU Commission's ambitious plan to create a framework for making all products placed on the EU market sustainable.

It aims to go far beyond the scope of the existing Ecodesign Directive¹ by applying sustainability and circular economy measures to the broadest range of products possible.

The new ecodesign measures are split between performance requirements and information requirements including the introduction of a new mandatory Digital Product Passport.

It plans to make information on substances of concern in products digitally available and make the destruction of certain unsold goods a practice of the past.

More than a year ago, the EU Commission put forward the proposed ESPR² on 30 March 2022.

On 22 May 2023, the EU Council agreed its 'general approach'³ to the draft proposal setting out its official position for negotiations with the EU Parliament.

On 14 June 2023, the EU Parliament Committee on the Environment, Public Health and Food Safety (ENVI) adopted its position⁴ and put forward their proposed amendments to the EU Commission proposal.

The ENVI position is scheduled to be adopted during the July 2023 plenary sitting and will constitute the EU Parliament's negotiating position.

¹ [EU Ecodesign Directive 2009/125/EC](#)

² [EU Commission ESPR proposal 30 March 2022](#)

³ [EU Council General Approach draft approved 22 May 2023](#)

⁴ [ENVI Position adopted 14 June 2023](#)

As the titans of the European Institutions prepare for battle, this whitepaper looks at some of the key requirements under the latest draft texts from EU Council general approach and the EU Parliament ENVI position.

It includes analysis of the proposed scope of products covered and exclusions, performance requirements, the new Digital Product Passport, provisions on substances of concern and the measures on the destruction of unsold goods.

2. Background: Why is the EU Commission Proposing the ESPR?

This ESPR is based on the EU Green Deal Communication⁵ and the Circular Economy Action Plan⁶.

As identified by the Circular Economy Action Plan⁷; one of the major problems in respect of circularity of products is that there is no *“comprehensive set of requirements for all products placed on the EU market to be sustainable and stand the test of circularity”*.

In reality this means that products break down too quickly, cannot be repaired, spare parts are not available to fix them, new software updates are constantly needed, and products are too expensive or difficult to recycle, etc.

Another headache is that consumers do not have enough information to make real sustainable choices about the products that they purchase. While most would prefer to buy sustainable products, the affordability of these products and lack of relevant information means they are often blocked from making informed sustainable choices.

⁵ [EU Green Deal Communication dated 11.12.2019](#)

⁶ [EU Circular Economy Action Plan dated 11.03.2020](#)

⁷ See footnote No. 3.

This ESPR aims to fix these problems by introducing a harmonized regulatory framework to make sustainable products the norm across all products placed on the EU market. It will repeal the existing Ecodesign Directive⁸ and replace it with a framework to introduce mandatory sustainability and circular economy measures across all products.

The EU Commission recognizes that for products to be truly circular we need to start with the design phase of a product's life cycle.

The requirements will apply to manufacturers, importers, authorized representatives, economic operators, distributors, dealers, and fulfilment service providers (for example those involved in the warehousing, packaging, addressing and dispatching, without having ownership of the products involved) and provide customers with the sustainable information they need.

It is important to note that this Regulation is a framework piece of legislation and does not contain the specific product requirements which will be contained later in the implementing Delegated Acts.

These Delegated Acts themselves will set out the product definitions, ecodesign requirements, testing and conformity requirements, and compliance deadlines. It is expected that these Delegated Acts will not apply until at least 18 months after their date of entry into force to give the affected parties time to adopt the new changes and will be implemented in stages thereafter. It is hoped that the EU Commission will prepare and adopt up to 18 new Delegated Acts between 2024 and 2027 and a further 12 new delegated acts would also be adopted between 2028 and 2030.⁹

The main ecodesign requirements are split between performance requirements and information requirements. Different rules will be set for specific product groups, however, horizontal requirements across a number of product groups can also be set for groups that have technical similarities in common.

⁸ See footnote No. 1

⁹ [Page 10, explanatory memorandum](#)

3. What Products are Covered and What are Excluded From Scope?

The scope of products covered is extremely broad and applies to “*any physical good placed on the market or put into service, including components and intermediate products.*”

It has the potential to cover **all products** on the European market. There is no distinction made between household, commercial or professional products other than the requirements relating to the destruction of unsold consumer goods. This means the ecodesign requirements can apply to any type of product including both B2C and B2B products.

The list of products excluded from scope is limited to food¹⁰, feed¹¹, medicinal products for human use¹², veterinary medicinal products¹³, living plants, animals and micro-organisms; products of human origin; products of plants and animals relating directly to their future reproduction. The EU Council also proposes that vehicles¹⁴ and defence or national security products are excluded which makes sense as these sectors are heavily legislated in separate legislation.

Restrictions of substances based on chemical safety or food safety are not in scope although restrictions based on sustainability are permissible.

The ESPR will not set requirements for products where existing and sufficient legislation is already in place to address sustainability aspects. It aims instead to identify regulatory gaps where sustainability measures should be set that would benefit both the environment and the customer.

¹⁰ as defined in Article 2 of Regulation (EC) No 178/2002

¹¹ as defined in Article 3(4) of Regulation (EC) No 178/2002

¹² as defined in Article 1(2) of Directive 2001/83/EC

¹³ as defined in Article 4(1) of Regulation (EU) 2019/6

¹⁴ as referred to in Article 2(1) of Regulation (EU) 2018/858, Regulation (EU) No 167/2013, and Regulation (EU) No 168/2013.

This Regulation will not apply to products that are already on the market (i.e. second hand goods), however if these products are reworked or modified in a *substantial* way that they constitute new products, then the requirements will apply.

Products shown at a trade fair, exhibitions and similar events are not in scope 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.

Article 16(2) of ESPR requires the EU Commission to adopt a three year ESPR working plan setting out the priority list of product groups that will be considered for ecodesign requirements. It will also indicate which products may be considered for horizontal requirements. The EU Council proposes this plan should be adopted within 12 months after the date of entry into force of the ESPR. However, the ENVI position proposes that the working plan should be adopted within 3 months after the date of entry into force and if the following product groups are not selected as a priority group, the EU Commission must explain its justification:

- Iron, steel;
- Aluminium;
- Textiles, notably garments and footwear;
- Furniture, including mattresses;
- Tyres;
- Detergents;
- Paints;
- Lubricants;
- Chemicals;
- Energy-related products (*where implementing measures need to be revised or newly defined*);
- ICT products and other electronics;
- Cement (*if ecodesign requirements are not sufficiently covered under the new (proposed) Construction Products Regulation¹⁵ by 2027, cement should be included in the next ESPR plan*).

¹⁵ [Proposal on the Construction Products Regulation](#)

This list gives us a clear indication of which products the ENVI have prioritized to be selected for potential ecodesign requirements.

In January 2023, the JRC of the EU Commission published a draft technical report¹⁶ listing potential priority products for consideration under the ESPR. This draft report short-listed 19 products (12 end-use and 7 intermediate products) that could be examined for deeper analysis by the EU Commission. Out of these short-listed products, the ENVI position has **not** included the following in their suggested list for prioritization: absorbent hygiene products, ceramics, cosmetics, fishing nets and gears, toys, glass, paper, pulp paper and boards, plastic and polymers, and non-ferrous metal products. This indicates that these products will not be a priority for the first set of ecodesign measures under the Delegated Acts.

4. Types of Proposed Ecodesign Requirements

The ESPR sets the framework to enable the EU Commission to set ecodesign requirements to improve the product aspects listed in Article 5(1).

Article 5(1) lists the following circular economy product aspects:

1. Durability;
2. Reliability;
3. Reusability;
4. Upgradability;
5. Repairability;
6. Possibility of maintenance and refurbishment;
7. Presence of substances of concern;
8. Energy use or/and energy efficiency;
9. Water use and water efficiency;
10. Resource use or/and resource efficiency;

¹⁶ [JRC Preliminary Study on New Product Priorities, Draft Report, January 2023](#)

11. Material use and material efficiency (*text added by EU Council draft*);
12. Recycled content;
13. Possibility of remanufacturing and recycling;
14. Possibility of recycling (*text added by EU Council and ENVI drafts*);
15. Possibility of recovery of materials;
16. Carbon and environmental footprint (*text added by EU Council*);
17. Environmental impacts, including carbon and environmental footprint contribution to climate change, pollution of water, air and soil, land use;
18. Expected generation of waste.

Ecodesign requirements are then split between performance requirements or information requirements.

4.1. Performance Requirements

Performance requirements are used to remove the worst performing products from the market.

Products must achieve a certain performance level in relation to a product parameter listed in Annex I in order to be placed on the market.

Annex I sets out the product parameters that may be covered as follows:

1. Durability and reliability of the product (guaranteed lifetime, technical lifetime, premature obsolescence, resistance to stress, etc.);
2. Ease of repair and maintenance (spare parts information, availability and access);
3. Ease of upgrading, re-use, remanufacturing and refurbishment;
4. Ease of upgrading, re-use, remanufacturing and refurbishment (number of components used, ease of non-destructive disassembly, access to product data, etc.);
5. Ease and quality of recycling;



6. Avoidance of technical solutions detrimental to re-use, upgrading, repair, maintenance, refurbishment, remanufacturing and recycling of products and components;
7. Avoidance of premature obsolescence (*this text is proposed by the ENVI position*);
8. Use of substances (during the production process, presence in the product or when waste);
9. Use or consumption of energy, water and other resources, including critical raw materials in one or more life cycle stages of the product (including software and firmware updates, impact on deforestation);
10. Use or content of recycled materials and recovery of materials, including critical raw materials;
11. Use or content of sustainably sourced renewable materials (*this text is proposed by the ENVI position*);
12. Use or content of critical raw materials (*this text is proposed by the ENVI position*);
13. Over-packaging of products (weight and volume of the product and its packaging, and the product-to-packaging ratio);
14. Incorporation of used components;
15. 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;
16. Product environmental footprint expressed as a quantification of a product's life cycle environmental impacts;
17. The carbon and environment footprint of the product;
18. The material footprint of the product (*this text is proposed by the ENVI position*);
19. Microplastic and non-material release;
20. Emissions to air, water or soil;
21. Amount of waste generated (including plastic, packaging, ease of reuse, etc.);
22. Functional performance and conditions for use;
23. Lightweight design (including reduction of material consumption, etc.);
24. Impacts on human health (*this text is proposed by the ENVI position*);

25. Secure and sustainable supply of raw materials (*this text is proposed by the ENVI position*).

The performance requirements may take the form of:

1. A minimum or maximum level (for example energy or water consumption limits, limit on type of material you can use in a product, requirement to use a specific amount of a recycled content in the product) Or
2. A non-quantitative requirement that aims to improve performance in relation to one or more product parameters (for example it may be a prohibition of a specific technical solution that is detrimental to product reparability)
3. Or both

4.2. Information Requirements - Digital Product Passport

The information requirements will outline how information on the product aspects in Article 5(1) is communicated to customers and other economic actors downstream.

One of the big talking points of the ESPR is the introduction of a new mandatory Digital Product Passport (DPP) which will be used to provide information on a product's environmental sustainability.

The DPP itself is contained in a data carrier on or in the product, its packaging or on documentation accompanying the product.

The DPP can contain information specified in Annex III and also information on substances of concern.

Annex III lists the type of information that may be included in the DPP. This includes:

1. Product performance information (i.e. in the form of a score or class for a particular product);

2. Product identification information (unique product identifier, Global Trade Identification Number (based on standard ISO/IEC 15459-6¹⁷ or equivalent) and commodity codes, such as a TARIC code);
3. Compliance documentation and information (i.e. declaration of conformity, technical documentation or conformity certificates);
4. User manuals, instructions, warnings or safety information;
5. Manufacturer/importer information, (i.e. unique operator identifier, name, registered trade name or registered trademark, and the postal address and email). [Other than the unique operator identifier the manufacturer/importer information may also be required to appear on the product or, on its packaging (if this is not possible), or in a document accompanying the product. The address must show a single point of contact for the manufacturer and these details must be clear, understandable and legible];
6. Unique operator identifiers other than that of the manufacturer;
7. Unique facility identifiers;
8. Importer EORI number;
9. Economic operator name, contact details and unique operator identifier code of the economic operator;
10. Other information (i.e. award of a voluntary EU Ecolabel).

It also may specify information on installation, maintenance and repair information for consumers and other actors, information for treatment facilities, information on how to handle the product (other than manufacturer) and the product's carbon footprint and environmental footprint.

The information must appear in a language that is easily understood by the customer (as determined by each Member State) in which the product is made available on the market or put into service.

There will be different rights of access to the information in the DPP for different actors such as customers, manufacturers, importers and distributors, dealers,

¹⁷ ISO/IEC 15459-6:2014 Information technology — Automatic identification and data capture techniques — Unique identification — Part 6: Groupings

repairers, refurbishers, remanufacturers, recyclers, competent national authorities, public interest organizations and the Commission, or any organization acting on their behalf.

The plan is that the DPP will allow access to relevant sustainability information for actors along the value chain, in particular consumers, economic operators and competent national authorities.

It will facilitate the competent national authorities to carry out product compliance checks which is often seen as one of the weaknesses of ecodesign legislation and will improve traceability of products along the value chain.

One of the worries voiced by manufacturers to the draft was the danger of the security and confidentiality of this level of information in one database. We see in the EU Council draft that the DPP specifically will “respect trade secrets in the meaning of Article 2 (1) Directive (EU) 2016/943¹⁸” which should give some level of assurance to manufacturers that confidential information on their products is protected.

The EU Council requires that within two years after the entry into force of the ESPR the EU Commission must set up a registry to securely store at least the unique product identifiers, the unique operator identifiers and the unique facility identifiers.

The ENVI proposes to add a new Article 12a to the text that would require the Commission to set up and maintain a publicly accessible online tool to allow stakeholders to compare information included in the DPP stored by the economic operator. The tool would be designed to guarantee stakeholders can search for the information with their respective access rights.

¹⁸ [Directive \(EU\) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information \(trade secrets\) against their unlawful acquisition, use and disclosure](#)

Finally, separate to the DPP, the ESPR may also be used to require information to be placed:

1. On the product itself;
2. On the product packaging;
3. On a label;
4. In a user manual;
5. On a website or application.

5. Chemicals and Substances of Concern

Article 5(1)(g) ESPR allows for the introduction of ecodesign requirements that address the presence of substances of concern.

As mentioned earlier, firstly performance requirements may be introduced that can take the form of a restriction/limit or a non-quantitative measure. For example, we have seen restrictions on chemicals in the Ecodesign Regulation for Electronic Displays¹⁹ which banned the use of halogenated flame retardants in the enclosure and stand of electronic displays.

Restrictions of substances based on chemical safety or food safety are not in scope although restrictions based on sustainability are permissible. The idea behind this is to allow the EU Commission the power to prevent substances that “hinder circularity” from being included in a product.

Secondly, information requirements may also be introduced based on the presence of substances of concern which will essentially allow their tracking throughout the life cycle of products.

¹⁹ [Regulation \(EU\) 2019/2021 on ecodesign requirements for electronic displays](#)

This information will contain at least the following information:

- A. The name of the substances of concern present in the product;
- B. 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.

Information to allow the tracking of the substance of concern will be provided either on the product or in the DPP and must be in a language easily understood by the customer.

Chemicals are currently heavily legislated in the EU under laws such as the EU REACH Regulation²⁰, CLP Regulation²¹ and EU RoHS Directive²². Suppliers are also required to notify information on substances of very high concern (SVHC) to the Substances of Concern in Products (SCIP) database.

It seems strange that the EU will introduce further chemical obligations outside of this well established framework of chemical legislation, especially in light of the fact that digital information on chemical safety is already under discussion in the new CLP proposal which proposes the introduction of digital labeling for substances and mixtures. As discussed later, this could result in potential misses by manufacturers.

One thing to note is that the proposed definition in the ESPR of “substance of concern” (SoC) in Article 2(28) is extremely broad.

²⁰ [EU REACH Regulation No 1907/2006](#)

²¹ [EU CLP Regulation \(EC\) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labeling and packaging of substances and mixtures](#)

²² [EU RoHS 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](#)

It includes substances that:

1. Have been identified under the EU REACH Regulation²³ as a substance of very high concern, or
2. Meet specific hazard classification in accordance with Annex VI of CLP Regulation²⁴, or
3. *Negatively affect the re-use and recycling of materials in the product in which it is present.*

This definition goes beyond the definition of a Substance of Very High Concern which we see in the EU REACH Regulation²⁵ and potentially has the ability to affect *any chemical* placed on the EU market.

This uncertainty for manufacturers is worrisome as they could be using chemicals for their products that are not traditionally substances of concern under the REACH Regulation²⁶ but are deemed to be substances of concern that negatively affect recycling or reuse under this legislation.

6. Unsold Consumer Products - Disclosure and Destruction

Chapter VI sets out the requirements on the destruction of unsold consumer goods. Originally the EU Commission proposed a transparency requirement for companies to disclose how many products they have discarded per year. Both the EU Council's draft and ENVI position have strengthened this Chapter by including a ban on the destruction of certain goods.

²³ Substance that meets Authorization list requirement under Article 57 and is identified in accordance with Article 59(1) as SVHC in EU REACH Regulation (EC) No 1907/2006

²⁴ See Footnote No. 19

²⁵ See Footnote No. 19

²⁶ See Footnote No. 19

In the EU Council draft, Article 20 requires economic operators that discard unsold consumer products directly, or have unsold consumer products discarded on their behalf, to annually disclose the following information (for the previous financial year):

- A. The number and weight of unsold consumer products discarded per year (by product category);
- B. The reasons for their discarding;
- C. The proportion of discarded products, whether directly or through a third party, delivered for: preparation for re-use, remanufacturing, recycling, other recovery operation;
- D. Preventative measures.

The ENVI position also requires that this disclosure will include information on the delivery of goods for “donation”. On the basis of this information the EU Commission will have the power to adopt a delegated act to ban the destruction of unsold consumer products. A list of exclusions to such a ban would also need to be set out in the Delegated Act (where appropriate). There are no immediate consequences or penalties for an economic operator from the disclosure of discarded unsold consumer goods. It may be years before this practice is actually prohibited in a future Delegated Act.

One of the first stumbling blocks of this requirement is the fact that the term “discard” has still not been defined. The EU Council draft states that guidance may be taken from the definition of “waste” in Article 3(1) of Waste Framework Directive 2008/98/EC²⁷. This implies that the product must be actual waste to be discarded however these products are not waste but are in fact just unsold new products. Products are normally “discarded” when a new version or production series is brought out by a manufacturer and not necessarily when they become waste. The practice is used to “up the price” particularly of luxury goods by falsely creating the appearance of exclusivity. This definition is essential to establish the moment when these transparency requirements actually apply to economic operators.

²⁷ [Waste Framework Directive 2008/98/EC](#)

An economic operator is defined as “the manufacturer, the authorized representative, the importer, the distributor, the dealer and the fulfilment service provider”. Strangely the EU Council draft has changed the definition of a dealer to remove “retailer” and replaced it with reference to a “distributor” which is confusing. The EU Commission and ENVI proposals do not make this change and include retailer in the definition of dealer.

A ban on the destruction of unsold consumer goods is included in both the EU Council’s position and the ENVI draft version. The EU Council proposes (from three years after the date of entry into force of the ESPR) a ban on the destruction of consumer apparel or consumer clothing accessories. The list of products is contained in Chapters 61 and 62 of the TARIC established in Customs Tariff Council Regulation.²⁸

The ENVI on the other hand, proposes from one year after the date of entry into force a ban on the destruction of textiles and footwear; and electrical and electronic equipment²⁹ (subject to appropriate exemptions).

The EU Commission has 18 months from the date of entry into force to set out exempted products.

The ban on destruction of unsold goods does not apply to SMEs for “undue administrative burden”. This does not really make a lot of sense as in effect it allows SMEs to legally destroy these types of products.

7. Conclusions and Thoughts on the Proposal

The text itself is excessively long and there is a tendency to refer to definitions and terms set out in numerous other pieces of legislation. This makes this proposal cumbersome to read and over-complicated. For example, the EU Council draft proposes to ban the destruction of goods referred to Chapters 61 and 62 of the

²⁸ [Customs Tariff Council Regulation \(EEC\) No 2658/87](#)

²⁹ [As defined in Article 3\(1\)\(a\) of EU WEEE Directive 2012/19/EU](#)

Customs Tariff Council Regulation.³⁰ Without reading these Chapters in detail it is unclear what products are banned and what are not. These products should be clearly listed in an Annex to the text. Similarly the term “discard” is not defined so it is unclear when the disclosure requirements actually apply to economic operators.

Some of the definitions are confusing. For example, the definition of a “dealer” in the EU Council draft refers to a “distributor” rather than a retailer. Both the terms “customer” and “consumer” are used throughout the draft which makes it difficult to understand whether the specific requirement applies to consumer products or professional products or both.

There is overlap and confusion in respect of chemical legislation. Chemicals are already heavily legislated in the EU under laws such as the EU REACH Regulation³¹ and the EU RoHS Directive³². The ESPR will not restrict the use of chemicals for reasons that relate to chemical safety or food safety, however it does empower the EU Commission to restrict chemicals based on reasons of sustainability. The net effect for a manufacturer is the same. The DPP will provide information on the presence of substances of concern, however the new CLP proposal will also include digital labeling on substances and materials. The scope of chemicals covered is extremely broad and can apply to any substance of concern, this makes it impossible for manufacturers to plan ahead.

There is a real feeling that manufacturers will be hit by double legislation, and may be left open to potential misses.

The EU Council in Recital 27(a) requires that where feasible the EU Commission should link existing databases such as the European Product Registry for Energy Labeling (EPREL) database or the Substances of Concern in Products (SCIP) database³³. The ENVI position equally calls this out and proposes to amend the text of Article 10 to require the DPP to be interoperable with these existing product databases “whenever

³⁰ See Footnote No. 27

³¹ See Footnote No. 19

³² See Footnote No. 21

³³ [Article 9 of the Waste Framework Directive 2008/98/EC](#)

feasible and relevant”. It is important to build on existing information and databases to ensure proper harmonization of requirements in the EU rather than increasing requirements once the proper security and protection of intellectual property rights is ensured.

Energy efficiency labeling is still contained in a separate regulation. Ecodesign and energy efficiency labeling have always been seen as sister legislation and this could have been an opportunity to merge the legislation together and introduce a Sustainability Label. The EU Council draft in Recital 14(3) allows the EU Commission to require (if appropriate) the establishment of a label under the ESPR to be used instead of the energy label where the information would be more relevant and more comprehensive. Better clarity is needed here. Consumers respond to a physical label on the product. If all products have a QR code or DPP, then consumers could become immune to its impact. A physical color-coded label on the product containing its overall sustainability performance score is also needed to allow consumers to make a quick informed decision on the product they intend to purchase.

Requirements on the description of unsold goods still need more work. It is unclear why this only applies to unsold *consumer* products? There is no justification for excluding professionals and B2B products. As mentioned above, these requirements are lost as part of this legislation and should be clearly set out in a separate regulation (under this framework) where key terms such as “discard” are properly defined. The list of products banned from destruction should be set out in an Annex without the need to refer to definitions in other legislation. There are no clear penalties for non-compliance. SMEs should not be excluded. The definition of a “dealer” of goods should include reference to a “retailer”. There should be requirements to hand these types of goods over to charities. An unsold good is not waste, it does not need to be recycled, refurbished or recovered as these are perfectly functioning new unsold products. Any company that destroys or discards perfectly working products should be “named and shamed” and penalized in the form of fines or there is no economic incentive to stop this practice.

Market surveillance and enforcement has always been seen as a weak spot for ecodesign legislation. It is hoped the introduction of the DPP will enable them to carry out product compliance checks. However in both the EU Commission draft and EU Council draft there are no penalties for infringement of the ESPR. It is up to each Member State to lay down the rules on penalties and inform the EU Commission. These penalties must be “effective, proportionate and dissuasive”. This is the same approach which was used in the existing Ecodesign Directive³⁴ which has meant little or no power for enforcement agencies. The ENVI draft on the other hand includes some guidance for Member States on how to determine penalties which is welcomed. As a minimum Member States shall at least be able to impose: (a) fines; (b) confiscation of revenues; (c) exclusion from public procurement procedures. In order for the ESPR to work there needs to be a harmonized approach to enforcement across the Member States for non-compliance.

Both the EU Council draft and ENVI position have added improvements to the original proposal put forward by the EU Commission last year, however there are still a lot of details in the proposal that need to be ironed out.

The ESPR is too ambitious in too many areas which is why it falls short. It should focus on setting ecodesign requirements that will improve the sustainability of products for the better in terms of circular thinking. Both the new performance requirements and the information requirements in the form of the DPP are some of the ways to achieve this. The DPP must link with existing databases such as the EPREL and SCIP and ensure confidential products information, IP and security.

As explained above, one of the main issues with the draft is that it does not make sense to include requirements on chemicals and the destruction of unsold goods. These types of requirements should be included in existing and new chemical legislation and also a separate implementing regulation on how to deal with unsold products.

³⁴ See Footnote No. 1

We need to get the foundation correct on setting requirements for sustainable products before attempting to solve every problem. Horizontal measures are key to this and this should be the major focus of this proposal. By being overly ambitious, the finer details such as clear definitions, scope, and consequences may be overlooked.

The expansion of the Ecodesign Directive³⁵ into the digital and circular economy era is meant to be a win for the planet and we are eagerly watching as the European institutions ready their swords for battle. Whether the ESPR will revolutionize the approach taken by the EU for product design or whether its over-ambition will lead to a miss remains to be seen.

³⁵ See Footnote No. 1