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DIGITALEUROPE views on the Ecodesign for Sustainable Products Regulation proposal (ESPR)



Introduction

As an organisation representing over 35,000 businesses in the digital sector, DIGITALEUROPE and its members have been at the forefront of the transition of the digital industry towards more responsible and sustainable models for some years now. We have collectively been involved in the making of sustainable corporate and public policies at company, national, European, and worldwide level, especially in the ICT industry, allowing us to share our experience.

Ecodesign has historically been a very successful framework in improving the sustainability of energy related products. With the scope extended to non-energy related products, DIGITALEUROPE understands and recognizes the need to further expand the breath of requirements covered by the framework. At the same time, we wish to highlight a few aspects that require further consideration.

To help the policy-making process achieve the overarching goal of a sustainable growth, DIGITALEUROPE kindly invites the Commission (and the co-legislators) to:

- ▶ ensure that obligations and technical requirements will be implemented in a harmonised way across the EU Member States; we support the Commission's choice of legal instrument (Regulation) and encourage the use of maximum harmonization to prevent national barriers jeopardising EU competitiveness
- ▶ maintain a robust, legitimate, trustworthy, multi-stakeholders process based on expert involvement and Members States endorsement; among other examples Implementing Acts should be favored over

Delegated Acts whenever possible as the former allow for more stakeholder consultation and provide more predictability

- ▶▶ commit human resources commensurate to the ambition of the ESPR
- ▶▶ thoroughly assess and demonstrate any additional needs that are required within the regulatory framework for products, e.g. the added-value of including components and intermediates products in the scope of the ESPR
- ▶▶ ensure clarity and certainty of legal definitions and avoid the need for guidance after the publication of legislation. Definitions differing from those in other legislation and standards need to be adjusted accordingly; lacking definitions need to be integrated.

Please find below more detailed and concrete recommendations.



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1. Ensure a consistent approach with other EU legislation

The ESPR should provide a coherent framework, aligning existing and future EU legislation to avoid any double regulation and potential contradictory requirements.

1.1 Remove substance restrictions from the scope of the ESPR

DIGITALEUROPE wishes to highlight the need for regulatory coherence, in particular with regards to regulating the presence of substances of concern. While there are certainly benefits in setting information requirements on the presence of substances of concern under the ESPR, **chemical restrictions should be considered completely outside of the scope of this framework.**

Any chemical restriction should go through detailed risk assessments carried out by scientific committees, and unfortunately, **the secondary legislation adoption process envisioned under the ESPR does not involve required scientific expertise and stakeholder involvement necessary to assess and substantiate any chemical restrictions.** It is imperative that the simplified process of secondary legislation development under the ESPR framework does not end up being misused in order to bypass the due process for chemical restriction established under RoHS and REACH.

With ESPR not being the correct tool for substance restriction, the proposed text should be modified so that **only information on the presence of substances of concern shall be regulated under the ESPR framework (see below, point 3.1).**

1.2 Ensure that provisions on destruction of unsold goods are coherent with the Waste Electrical and Electronic Equipment Directive (WEEE directive)

DIGITALEUROPE supports making data on the destruction of unsold goods available, in line with annual reporting requirements. However, we would like to stress that manufacturers of electrical and electronic equipment are subject to **the Waste Electrical and Electronic Equipment Directive (WEEE) which requires manufacturers to dispose of waste equipment via Producer Responsibility Organisations (PROs)** under national implementation of the Directive.

Manufacturers of electrical and electronic equipment are therefore not able to destroy unsold goods, any unsold goods must be sent to a PRO for treatment in line with the Waste Framework Directive's waste hierarchy, thereby prioritising re-

use, remanufacturing, and recycling. **In most cases unsold electrical and electronic equipment will not be destroyed.**

In this context **the PRO is choosing how to treat the unsold electrical and electronic equipment and is discarding the unsold consumer products “on behalf of another economic operator” and should thus be subject to the disclosure requirement.**

1.3 Ensure coherence with consumer and safety legislation

Safety legislation acknowledges the possibility that modifications may be made outside of the manufacturer’s control that may affect conformity. In that case, it is stipulated that the person making such modifications effectively becomes the ‘manufacturer’ and assume all responsibilities for the safety and related guarantees of the product. The ESPR should include wording to **ensure that those who undertake a repair of an electrical product – whether in a commercial or personal capacity – are fully aware of the subsequent consequences and obligations upon themselves.** We also urge the Commission to ensure **full consistency between the ESPR and the upcoming “Right to Repair” legislation.** For more recommendations on effective and safe repairs, please see [our position](#) from April 2022.

Furthermore, DIGITALEUROPE considers that **monitoring obligations imposed on online marketplaces and online search engines should not go further than existing EU framework legislation provides for.** Online marketplaces should not be required to proactively ensure compliance with all the products sold by third-party sellers on its marketplace. In this regard, we would welcome further clarity on the frequency and depth of information required for online marketplaces and search engines to provide market surveillance authorities according to the ESPR proposal.



2. Take products specificities into account through robust secondary legislation

2.1 Maintain a product-specific approach

Given that the scope of the ESPR framework has been expanded to non-energy related products, it is **very important to properly assess the characteristics as well as the different hierarchies of circular economy priorities for each of the product groups for which secondary legislation is being developed.** As an example, energy efficiency may continue to be the main focus area for energy-related products, while plastics or textiles may focus on reuse and recyclability.

Prioritizing the key focus areas per product group can be most effectively done **through the vertical regulatory approach**, as it avoids one-size-fits-all approaches and most importantly, eliminates the unreasonable burdens incurred by overlapping regulation. Secondary legislation should adapt to the nature of the product groups being targeted.

Most importantly, secondary legislation should **avoid duplication of regulatory requirements and/or inconsistencies** in requirements in other legislative instruments for product categories.

2.2 Define clear targets for secondary legislation

Further defining the elements to be considered when developing secondary legislation is essential in order to have a robust framework. These should **be clear, properly defined, actionable, and the targets easily quantifiable**.

In particular for the ICT industry, **functionality is a key aspect** that is generally significantly impacted by the proposed requirements. As a general principle, when setting minimum market access requirements targeting multiple product characteristics, **the EU Commission should carefully assess and consider the need to allow for tradeoffs in product design** in terms of prioritizing specific characteristics. For electronics, for instance, a focus on energy efficiency and modularity is often associated with an increased use of materials, resulting in additional resource consumption and increased waste generation. Product sustainability can be achieved through multiple means, and it is essential to avoid limiting these paths by being over-prescriptive or over-ambitious when developing secondary legislation.

The criteria of **affordability should also be clearly defined**. Customers with different income levels judge affordability differently. Therefore, rather than setting up subjective criteria, specific thresholds should be introduced. Furthermore, the **criteria of “proportionality” should be clearly defined** in an objective, quantifiable manner.

Finally, to further clarify the full scope of requirements covered by the new ESPR framework, there should be a **clear overview of the characteristics targeted under Resource Use and Resource Efficiency**. It is also necessary to specify **how waste materials are to be defined and their quantity measured**.



3. Balance additional value of new requirements to the environment and the consumers

Any further legal requirement should balance their additional value to the environment while at the same time maintaining and enabling manufacturers to conduct business and innovate.

3.1 Minimize the burdens associated with information provision and protect intellectual property

Given the extensive information expected to be required by secondary legislation to be adopted under ESPR, it is extremely important for the Commission to take into consideration the **usefulness of such data for intended parties as well as the administrative and financial burdens associated with the collection of such data**. To address this issue, it is important that the scope of any information requirements adopted under ESPR excludes intellectual property.

Information requirements about substances of concern should also be limited to what contributes to the objectives of the ESPR. It is estimated that even a slightly narrower definition of “substances of concern” can include up to 12,000 substances¹. The current proposal would come down to a significant extension of the Article 33(1) of REACH Regulation (EC) No 1907/2006 which already obliges manufacturers to provide information in the SCIP database.

DIGITALEUROPE considers that as a general principle it is **vital to clarify throughout the Ecodesign Regulation the respective access rights of data users/actors**, particularly for information that should be safeguarded in respect to personal data protection and confidential business information.

3.2 Assess costs/benefits and address the reliability and comparability of Carbon/Environmental Footprint requirements

New requirements such as Carbon or Environmental Footprinting should be introduced **only when other material efficiency requirements, which would normally be more readily applicable and verifiable, do not address product sustainability in a sufficient manner**.

DIGITALEUROPE calls on the Commission to prioritize sustainability measures based on a suite of already existing horizontal material efficiency standards and more detailed product specific standards whose preparation is under way, in developing secondary legislation for ICT products under ESPR.

If Carbon or Environmental Footprinting requirements are introduced for certain categories of products, it is absolutely essential that an **appropriate methodology is**

¹ See Cefic's "[Economic Analysis of the Impacts of the Chemicals Strategy for Sustainability](#)"

established through a standardization process beforehand. The methodology used to quantify Carbon and Environmental Footprints should be actionable, reliable, verifiable, and comparable.

Another point that warrants careful consideration is that currently, **the proposed definition of “environmental footprint” appears to be restricted to the use of the Commission's own Product Environmental Footprint (PEF) methodology**, therefore practically dismissing other life cycle assessment methods that had been elaborated in more detail, and in many ways can be considered more scientifically robust (e.g. ISO, ITU, GHG protocol, ETSI, etc.). While having merits of its own, the PEF methodology presents significant downsides when applied to complex articles such as ICT products. Furthermore, the PEF methodology still requires further development in the form of Product Environmental Footprint Category Rules (PEFCRs), without which, its applicability is limited.

Finally, we wish to also highlight the fact that the purpose of measuring the environmental footprint of products is not comparability of products, but rather to conduct internal assessments in view of identifying hotspots that require improvement. **While using LCAs and Carbon or Environmental Footprinting in support of other EU policies may indeed be relevant, we question the appropriateness of employing such complex methods for the purpose of consumer information or MEPS development.**

3.3 Consider indirect costs of monitoring and reporting of in-use performance

Indirect costs associated with the provision of monitoring and reporting functionality far exceed the upfront cost of the sensor componentry, internet connection and software. As such whilst DIGITALEUROPE welcomes Article 31(2)(c) requiring an assessment of “the technical feasibility of recording in-use data”, we would like to emphasise that such an assessment must also consider vital and significant elements related to the indirect costs, for example for data protection. However, predominantly these indirect costs are cybersecurity and data storage, the later of which would drive energy consumption in data centres that would have negative implications for the EU’s climate neutrality objective.

3.4 Ensure a transparent and trustworthy process for GPP criteria development and adoption of Member States incentives

Additional measures, such as Member States incentives and green public procurement criteria, should not compromise the integrity of the Single Market or hamper fair competition.

Regarding Member States incentives, it is not clear which characteristics a “populated” performance class would have. There are key questions that need to be answered and clarified in the legal text, such as:

- What percentage of the total number of models on the market should qualify for the highest 2 performance classes in order for these to be considered populated?
- How often should Member States re-asses which are the highest populated classes?

We are, furthermore, concerned that the process used for the adoption of Green Public Procurement targets is not always subject to a proper stakeholder consultation, hence resulting in unfeasible criteria that are not market-proof and can render public procurement authorities unable to source from the market. **We invite first a more careful consideration and revision of the consultation procedures applied to each of the GPP categories**, as we believe that some recent GPP product specific guidelines were not properly consulted with relevant stakeholders before approval.



4. Harness the potential of digital tools to enable the green transition

Digital solutions can be used as powerful tools to support an efficient and harmonized implementation of the ESPR. Today’s consumer is already a frequent user of technology, [we know that more than 80% of customers use a combination of online and offline research before making a purchase](#). Carefully designed digital tools will enable manufacturers to ramp up innovative ways to convey key product information.

4.1 Build the Digital Product Passport (DPP) as an integrated tool to convey targeted product information

The DPP should offer a single digital solution that is not an additional marking requirement, but rather the basis for an integrated system. The DPP can be as such an enabler of the transition towards a digital, more reliable and greener approach to information sharing as a driver for more efficient resource use in the context of the Circular Economy.

Access rights to the DPP should be differentiated for various categories of data-user, i.e. the customer, a professional repairer or a market surveillance authority. Their respective access should be determined on a **need-to-know basis** in order to protect confidential business information. It is paramount that, as provided for in the proposal, access rights are **delimited in product-specific**

ecodesign implementing acts and not in generic one-size-fits all horizontal implementing acts. From a horizontal perspective, **legal consistency between DPP access rights in product-specific ecodesign delegated acts and the Data Act** (when published in the Official Journal) should be guaranteed. Protocols and security measures should be put in place **to safeguard data privacy and confidentiality during the data sharing process** and ensure that data is verified.

DIGITALEUROPE also considers it to be **essential that the DPP is not applied at item level**. DPPs at the item level would result in an enormous administrative, implementation and cost burden for manufacturers. Disproportionate costs to manufacturers notwithstanding, **DPPs at the item level would have indirect costs related to data storage, from energy consumption in data centres, that would have negative implications for the EU's climate neutrality objective and would outweigh any potential benefits for the Circular Economy**. Unlocking Circular Economy benefits for business and consumers is still possible if DPPs are applied at the model or batch level and would be consistent with the EU's well-established New Legislative Framework template for Union harmonisation legislation for products which requires declaration of conformity at the level of the product model.

4.2 Prefer digital solutions to physical labelling & instructions

Electronic labelling (e-labelling) via a data carrier (QR code) should be preferred over - and replace where possible - physical markings (on product, packaging and relevant data from inbox documentation), **as it is the more sustainable alternative**². It also offers a more convenient and reliable access to updated information pertinent to the device itself. DIGITALEUROPE therefore fully supports Article 9(2) and encourages the revisions of other Union product legislation, covering for example product safety, to make use of the possibility to store relevant information in the DPP.

DIGITALEUROPE recognises labelling's utility as a means of providing information to consumers to improve the sustainability of their product selection decisions. To be effective **labelling must be unambiguous and intelligible**. The quantity of information provided as well as its quality are the determinants of whether a label is an effective tool for improving consumers selection decisions. Labelling is effective when it clearly and unambiguously targets an improvement in a sustainability aspect in isolation, e.g. energy efficiency.

DIGITALEUROPE therefore urges caution and restraint on the proliferation of labels for 'classes of performance' provided for under Article 14. The Commission recognises this issue by shielding products covered by energy labels under the Energy Labelling Regulation from the possibility of a second label for other 'classes of performance'. However, DIGITALEUROPE notes that the

² Please see our DIGITALEUROPE study on e-labelling : [main study](#), [fact sheet](#), [additional study](#) (use cases outside of the EU)

proposal suggests that the information on other ‘classes of performance’ could be added as supplementary to the energy label. Making such additions is highly likely to undermine the intelligibility and effectiveness of the energy label and would likely be inconsistent with the Energy Labelling Regulation.

Regarding instructions, while we agree with the fact that necessary instructions need to accompany a product, we question the need for the proliferation as foreseen in ESPR. Art. 21.7 requires instructions to “safely assemble, install, operate, store, maintain, repair and dispose of the product”. We believe that such requirements are better dealt with in vertical regulations (product safety, WEEE, REACH) than individually in each single DA on ecodesign. **We also feel the time is ripe for digital instructions as well as for providing markings and further information (address)**³.



5. Respect the role of standards and ensure measurability and verifiability of the requirements

DIGITALEUROPE is concerned that Article 35 (empowering the Commission to adopt “common specifications” instead of standards in a broad range of circumstances) would undermine the current standardization process. **Standards remain essential tools to ensure fairness, consistency, transparency, and comparability.**

The ICT industry is already subject, under the current ecodesign implementing measures, to various design for sustainability requirements including circular economy/material efficiency requirements. These requirements have been possible to implement due to the development and adoption of a series of horizontal standards, which provide a means to measure and verify required data. We believe that **the possibility for the Commission to adopt “common specifications” should be limited to cases where the Standardization bodies reject a mandate.**

Current standards will require further work as new product groups are introduced. This work is essential for ensuring robust verification mechanisms, and should represent the first priority for ICT products, for which future focus should be on improving material efficiency. To further assure a reliable verification mechanism, **proper consideration of relevant thresholds and tolerances is essential.** Commission should take into account the limits of detection as well as the measurement deviations for all parameters regulated, as well as those parameters not regulated but directly measured and factored in the calculation of the regulated parameters.

³ See [our letter](#) submitted to Commissioner Breton



6. Ensure effective compliance and market surveillance mechanisms

When it comes to compliance and enforcement, we strongly believe any risk of disruption with the current framework should be avoided.

6.1 Harmonize and align the ESPR with the New Legislative Framework (NLF)

The ESPR should be maximally aligned with the NLF and with NLF Directives such as RED (Radio Equipment Directive, 2014/53/EU)⁴. Any deviation will cause disruption to placing products on the market and will lead to issues for economic operators and for market surveillance. We specifically reference the [supporting study](#) for the evaluation of certain aspects of the NLF, which emphasizes the need to safeguard the NLF to help prevent misalignment under the developing ESPR.

DIGITALEUROPE believes that the involvement of Notified Bodies (Article 36) should only be mandated where this is proportionate to the risks presented by the product and the attributes being assessed for conformity, as provided for in NLF Decision 768/2008/EC Article 4.1. Article 36 of the proposed ESPR lacks the balancing provisions of subclauses (b) and (d) of that Article 4.1. DIGITALEUROPE therefore urges the Commission to reinstate these two missing subclauses into Article 36 of the ESPR⁵. Given the long-standing record of effectiveness of Module A (Internal production control, “self-declaration”) under safety legislation such as the Low Voltage Directive (2014/35/EU), we believe that the use of Module A is to be preferred except where transparently and justifiably determined to be inadequate during impact assessment for the Delegated Act concerned under Article 4.

Furthermore, DIGITALEUROPE would like to highlight that many documents from the conformity assessment technical file are highly sensitive/proprietary, are subject to exacting central version control and are only externally disclosed in during Market Surveillance investigations. DIGITALEUROPE therefore considers that the adverse impacts of replicating and distributing such documentation in the

⁴ Especially the notions of “putting into service” (Art. 21.1), “dealer” (Art 25), notification body identification (Art. 39), contact of manufacturers (Art. 21.6) and the timeline for documents to be made available (Art. 21.9)

⁵ The missing items to be considered in selecting the conformity assessment procedures: are (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; (d) the need to avoid imposing modules which would be too burdensome in relation to the risks covered by the legislation concerned.

DPP considerably outweigh the occasional benefits that might accrue from so doing. **DIGITALEUROPE** accordingly urges that they should be excluded from being required content of the DPP.

Finally, we also question the reference to alternative rules to the declaration of conformity (DoC) or CE marking (see Articles. 4 (f) and Art. 21.2). and which benefit those alternatives would bring for consumers, operators or authorities. Such diluting proliferation would run counter to the specific NLF objective of ensuring a clear meaning and enhanced credibility of CE marking.

6.2 Limit the role of customs authorities in market surveillance activities

DIGITALEUROPE is concerned that the missions conferred to Customs authorities by Articles 13.3 (verification of the unique product identifier) and 13.4 (verification of consistency between information stored in registry and customs declaration) could create some issues and barriers.

We can foresee that customs authorities can have an “alert function” vis a vis market surveillance, but they should not be used for market surveillance and enforcement for several reasons:

- not all products placed on the market are imported
- customs authorities have limited understanding of compliance items, leading to long lead times during importation and additional burden in upskilling officials
- placing of the market usually takes place after a product has passed customs, hence any surveillance action before passing customs has weak legal ground

Effective market surveillance is paramount to the success of the ESPR. Only strong and well-coordinated market surveillance activities will put the Single Market at the forefront of the green transition.

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About DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies. DIGITALEUROPE ensures industry participation in the development and implementation of EU policies.

DIGITALEUROPE Membership

Corporate Members

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National Trade Associations

Austria: IOÖ

Belgium: AGORIA

Croatia: Croatian Chamber of Economy

Cyprus: CITEA

Czech Republic: AAVIT

Denmark: DI Digital, IT BRANCHEN, Dansk Erhverv

Estonia: ITL

Finland: TIF

France: AFNUM, SECIMAVI, numeum

Germany: bitkom, ZVEI

Greece: SEPE

Hungary: IVSZ

Ireland: Technology Ireland

Italy: Anitec-Assinform

Lithuania: Infobalt

Luxembourg: APSI

Moldova: ATIC

Netherlands: NLdigital, FIAR

Norway: Abelia

Poland: KIGEIT, PIIT, ZIPSEE

Portugal: AGEFE

Romania: ANIS

Slovakia: ITAS

Slovenia: ICT Association of Slovenia at CCIS

Spain: Adigital, AMETIC

Sweden: TechSverige, Teknikföretagen

Switzerland: SWICO

Turkey: Digital Turkey Platform, ECID

Ukraine: IT Ukraine

United Kingdom: techUK