



Position paper

Ecodesign for Sustainable Products Regulation

Priorities for trilogues

Brussels, Autumn 2023



The proposal for an Ecodesign for Sustainable Products Regulation (ESPR) was unprecedented – aiming to make all products sustainable by default. The upcoming trilogues can take this ambition further and accelerate the European transition to a sustainable, toxic-free, and circular economy.

ECOS welcomes the proposed regulation as a step forward in addressing the EU's material footprint as well as impacts on land, water and climate fuelled by Europe's unsustainable production and consumption patterns¹. As a framework regulation, the ESPR itself creates the rationale and method for establishing sustainability-related requirements for products through delegated acts. The sections below outline how co-legislators can further strengthen the ESPR and materialise their ambition to make sustainable products the norm.

Product requirements must be guided by the best available evidence on ecological thresholds so that the ESPR can contribute to the EU's climate and energy goals to become climate neutral in 2050 and the broader environmental goals of staying within planetary boundaries.

The ESPR will help create an energy-efficient, circular and toxic-free economy by using ecodesign - a proven success in several sectors.

Key asks:

- The presence of **substances of concern** is disclosed to all users throughout the value chain and minimised or restricted at the design stage.
- **ESPR should also ban the destruction of unsold goods**, the most wasteful scenario in any economy.
- The creation of an inclusive **ecodesign forum** that supports civil society participation.
- The ESPR framework applies to **all physical products traded on the European market**. ESPR can intervene should existing sector-specific legislation fail to sufficiently address the sector's environmental impact.
- ESPR includes the **material footprint as a key indicator**.
- **Online marketplaces are included in the scope** and held legally liable in case of non-compliance.
- **Market surveillance effectiveness and coordination** is strengthened across Member States.
- **Remove the possibility to establish voluntary industry agreements** that have failed to prove more effective than mandatory rules.

¹ A European Environmental Agency briefing on the circular economy recently reported on the need for a “fundamental shift in our production and consumption systems”. Meanwhile, the European Court of Auditors published a special report on the slow progress of that transition in July 2023.

Priority asks

1. Substances of Concern (articles 2(28), 6(3), 7(5))

Circularity and chemical safety cannot be separated. Some chemicals may be able to be physically recycled but still pose hazards if subsequently repaired and re-used or used partly in another product. The presence of these chemicals in reused and recycled content can therefore hamper the viability and safety of recyclates and perpetuate the toxic material cycles problem. To **ensure the futureproofing of toxic-free material cycles**, the Commission must be empowered to act against relevant substances of concern per product group, based on both chemical safety and circularity within the ESPR.

Transparency regarding the presence of these substances in products must be improved for all users within the value chain.

Recommendations:

- **Support** Parliament's position on the definition of Substances of Concern (article 2(28)).
- **Support** Parliament's position on performance requirements (article 6(3)).
- **Support** Parliament's position on information requirements (article 7(5)).
- **Ensure inclusion** in the product parameters in Annex I **on the use and presence of substances of concern in products**.

Justification

Relying solely on REACH for chemical safety is not sufficient when facing chemical pollution crises in our bodies and in the environment. **The planetary boundary** and safety limit were exceeded long ago. The Chemicals Strategy for Sustainability, endorsed by the European Parliament, commits to:

- the EU's transition towards a clean circular economy by phasing out substances that are harmful to human health or the environment and substances that prevent clean recycling.
- minimise the presence of substances of concern in products (in the context of ESPR), by introducing requirements and ensure availability of information on chemical content and safe use, by introducing information requirements.

The ESPR legislation will complement the main chemicals legislation frameworks. More information and additional civil society support can be found in a joint letter.²

2. Provisions on the destruction of unsold goods (articles 2(37), 20)

The EU cannot seriously talk about a circular economy if we continue to destroy perfectly good products (unsold, returns, deadstock, inventory). This wastes all the value generated and resources used in production - energy, materials, labour, craftsmanship - and skips the use phase entirely. **The destruction of unsold products represents the most wasteful scenario conceivable in any economy.** The EU has already identified this as a priority in the EU Strategy for Sustainable and Circular Textiles.

ECOS strongly supports the Parliament's position on the ban of destruction of unsold consumer goods in two important sectors, such as textiles and electronics, encourages a wide uptake of this measure and warns that possible exemptions are subject to interpretation and need strict definitions. To avoid loopholes, the definition of unsold goods should explicitly include returned items, deadstock and excessive inventory.

² ECOS et al. (2023) ESPR SoC Sign-On Letter ecostandard.org/publications/joint-letter-the-european-parliament-must-allow-transparency-and-control-of-substances-of-concern-in-everyday-products-through-espr/

We need a robust solution against the risk that many unsold products, which are reported to be sent for recycling, will ultimately be destroyed. This reality could undermine the objectives of this provision and divert usable products away from preferable solutions such as resale or refurbishment.

A large majority of EU companies are SMEs. Removing the foreseen exemptions for SMEs relating to the destruction of unsold goods will therefore be essential to achieve an effective ban and avoid loopholes.

Recommendations:

- **Support** Parliament's Article 2(37) Definition of Unsold Consumer Product.
- **Support** Parliament's position on Article 20 and new Article 20(a), Destruction of unsold consumer products.

Justification

The wasted resources associated with the destruction of consumer goods and the energy needed to manufacture these products are not yet estimated at the EU level, but they are undeniably significant³. Some EU countries have introduced national-level laws preventing the destruction of unsold consumer products and failing to introduce something similar at the EU level risks distorting the market.

Civil society support for the ban on destroying consumer products is strong⁴.

3. Process: civil society involvement and transparency (Art. 17)

ECOS strongly supports the creation of the **inclusive Ecodesign Forum** proposed by the Commission, which will reconfirm the existing Ecodesign and Energy Labelling Consultation Forum. The Council also suggested creating a second consultative body made of Member States only – the 'Ecodesign Expert Group'. There is a risk that this Member States group will duplicate discussions already taking place in the Consultation Forum and will not offer transparency nor include civil society organisations.

Recommendations:

- **Improve Commission and Parliament's Article 17 "Ecodesign Forum"**: negotiators should ensure inclusiveness and financial support for civil society participation in Ecodesign Forum. The Commission must secure sufficient resources and ensure that funding is in place for substantial, long-term and stable support for the effective involvement of civil society in the Ecodesign forum.
- **Delete Council's Article 17a "Ecodesign Expert Group"**.

Justification

The process established to develop product-specific regulation under the current Ecodesign Directive has shown its value. This includes a broad consultation of stakeholders in the Consultation Forum and multi-year working plans. The involvement of civil society organisations, which have so far strongly contributed to the process, is essential and will depend on public funding from the European Commission.

³ No EU figures exist for the annual volume of consumer goods destruction, however, both France and Germany have reported concerning estimates. In 2014, an estimated value of €630 million was destroyed in France. In Germany, the 2010 estimate was significantly higher - €7 billion. Deutsche Welle (2020): *Online retailers are destroying goods but won't say how much ends up as trash* | DW | 07.02.2020.

⁴ <https://eeb.org/wp-content/uploads/2023/05/letter-on-the-destruction-of-unsold-goods-May-2023.pdf>

4. Implementation: Working Plan and Product Priorities (Art. 16)

The inclusion of a preliminary product list for the first working plan would allow the process to start as soon as possible and avoid initial delays. Considering that the Commission has already carried out preliminary work⁵, further delays, as suggested by the Council's General Approach, would be counterproductive. Several additional sectors must be included in this working plan, based on climate impact: **cement, vehicles, and ICT products**.

Along with concrete, **cement** is the most consumed material on the EU internal market, responsible for 8% of global emissions, and 4% of EU CO₂ emissions. It is therefore vital that cement has an ambitious, stable, and predictable framework for decarbonisation. The inclusion of cement in this list provides a backstop to the ongoing work under the Construction Products Regulation (CPR).

Transport related products, such as **vehicles**, are excluded from the current Ecodesign Directive. Unfortunately, the Council has proposed yet another exemption for this product group, thus perpetuating the legal gap for transport related products, whose design aspects are not yet regulated.

Consumer electronic and ICT products that are not covered under the Ecodesign and Energy labelling Working Plan 2022-2024 must also be included. Systematic consideration of the durability, firmware, and software of these products will save energy, improve the material footprint and decrease waste.⁶

Recommendations:

- Support European Parliament's Article 16 "Prioritisation and planning".
- Delete the Council's exemption on vehicles in Article 1.2(h).

Justification

Prioritising products and measures as part of a three-year working plan can reduce the risk of delays in implementing legislation. It provides visibility for upcoming requirements and sets a given timeframe for adoption. In that respect, securing sufficient Commission resources to roll out the series of product and horizontal legislation will be a key success factor.

5. Material Efficiency Ecodesign Requirement (Article 5)

ECOS strongly supports including a **material footprint requirement**. Material footprint refers to the amount of raw material extracted to produce goods consumed in the EU. Reducing this footprint is a key to achieving the EU Green Deal.

The ESPR should measure its success based on its ability to contribute to decreasing the EU's material footprint. This parameter is a logical indicator of performance for the ESPR to track its contributions towards meeting the EU's circular economy goals.

Recommendations:

- Support the Council position on Article 5(1)(ia) to include "material use and material efficiency" as an ecodesign requirement.
- Support the Parliament's position on Article 5(4) on the preparation of ecodesign requirements and the mention of an assessment of the expected reduction of the environmental, carbon and material footprints by the new ecodesign requirements.
- Ensure material footprint is a key product parameter in Annex I.

⁵ European Commission Joint Research Centre, Ecodesign for Sustainable Products Regulation - preliminary study on new product priorities, 2023

⁶ JRC research supports the inclusion of these products (JRC, ICT Task Force study: Final Report).

Justification

The material footprint is declared as part of the Ecodesign Impact Accounting mechanism that already exists in the current ecodesign framework. The material footprint of sectors regulated by the ESPR is taken into account when prioritising sectors and measures. The ESPR is key to set the stage for an EU-wide target for material footprint reduction.

In 2019, the EU's material footprint was 18.7 tonnes per capita, the second highest in the world after North America. The EU, which represents 6% of the world's population, consumed 17% of all the raw materials that were extracted in 2019⁷. The ESPR's objective is to improve the sustainability of products, which ultimately means to reduce raw material extraction for products consumed in the EU.

Strengthen – additional points for improvement

6. Market surveillance and enforcement (art. 59 – 62)

Market surveillance includes the monitoring, verification and enforcement of national and EU legislation. Without market surveillance controls, non-compliant products could be sold on the EU Single Market without consequences. This would only contribute to hindering the environmental benefits of ecodesign.

While the EU regulation on market surveillance and compliance of products has started to apply from 2021, its provisions are generic and do not specifically address ecodesign requirements. The European Commission has therefore proposed to improve the effectiveness of market surveillance controls and the coordination throughout Member States through additional provisions (minimum number of checks and coordination). While the European Parliament has backed most of these proposals, the Council unfortunately deleted most of the articles.

Recommendations:

- **Support Article 59 on “Market surveillance action plans”** as proposed by the Commission and the European Parliament.
- **Support Article 60 on “Minimum number of checks”** as proposed by the Commission. The deletion of this article as proposed by the Council is unacceptable.
- **Support Article 61 on “Reporting and benchmarking”** as proposed by the Commission and EP.
- **Support Article 62 on “Market surveillance coordination and support”** as proposed by the Commission and EP.

Justification

The current market surveillance regime underpinning the Ecodesign Directive has demonstrated its shortcomings – an estimated 10-25% of products regulated under the framework are non-compliant with the existing requirements and approximately 10% of anticipated energy savings have been lost as a result⁸. The proposal of the Commission addresses some of these flaws by expanding the provisions on market surveillance and establishing an administrative cooperation group ("ADCO"), composed of national market surveillance authorities, in line with the Market Surveillance Regulation. The proposal contains provisions that would empower the European Commission to set a minimum number of checks on products to be performed by the market surveillance authorities and addresses measures to avoid circumvention.

⁷ WU Vienna (2022): Comparing countries/regions by different indicators.

⁸ ec.europa.eu/commission/presscorner/detail/en/MEMO_19_1596

The Council has lowered the bar set by the Commission's proposal to the level of the Market Surveillance Regulation. This is not enough. Considering the detrimental effects of non-compliance in the current ecodesign framework, we can expect the situation to become even worse with a much broader scope in requirements and product groups. Provisions setting clear national action plans on ecodesign, minimum number of checks and effective coordination are therefore needed to overcome this difficulty. Ecodesign-specific requirements for Market Surveillance Authorities could justify EU funding to support product controls, such as the very successful EEPLIANT projects.

Remove – must not adopt – it is not too late!

1. Industry self-regulation (art. 18)

Industry voluntary agreements have consistently failed to prove effective. Printers are the last example of how the European Commission is intervening to solve ineffective self-regulation by setting minimum requirements.⁹ Yet the ESPR leaves the possibility for some products to be self-regulated with voluntary agreements drawn up by the industry. Unfortunately, the Commission proposal is backed up by both the Parliament and the Council - but it is not too late to reverse this regrettable direction!

Recommendation:

Delete Article 18 "Self-regulation measures" from the text.

Justification

As long as it can be argued that policy objectives can be delivered faster or in a less costly manner, the door is open for industry players to come up with their own set of commitments. Voluntary agreements have consistently failed to prove more effective than mandatory rules.¹⁰ The four existing agreements under the previous Ecodesign framework have delivered meagre results: poor market coverage, weak requirements and delays in adapting to technological developments.

ECOS therefore urges co-legislators to review the role of industry agreements in driving sustainability. Rather than serving as minimum requirements, industry-led efforts should be used to establish themselves as sustainability front-runners, showcasing the sector's consolidated willingness to go beyond regulation or minimum requirements.

⁹ ECOS (2022) ecostandard.org/news_events/after-much-ink-spilt-the-eu-is-about-to-crack-down-on-made-to-break-printers/

¹⁰ Cool products (2019) coolproducts.eu/uncategorized/all-we-want-for-christmas-is-for-the-eu-to-finally-give-up-on-voluntary-agreements/