

# Position Paper on the Proposal for a Regulation on Ecodesign for Sustainable Products

Ecommerce Europe welcomes the proposal for a new Regulation establishing a framework for setting eco-design requirements for sustainable products (Ecodesign for Sustainable Products Regulation or ESPR).

We believe that this proposal represents a unique opportunity to build on the successes of the Ecodesign Directive and widen the scope of action of the European Union in ensuring the sustainability of an increasing number of products. We encourage the European Parliament and the Council of the EU to address the remaining uncertainties in the proposal to create a sound legal framework for the general requirements and sharing of responsibilities, as well as for future product-specific delegated acts.

This Regulation represents a cornerstone of the EU's efforts to transition to a sustainable economy. As a defining part of the new legislation will materialise through the drafting of the future delegated acts, we strongly encourage the European Commission to move swiftly, and in coordination with industry and civil society, to draft the relevant delegated acts that will clarify the ambition and impact of the proposal.

## Key Recommendations

1. Ensure the coherence with EU legislation and the proportionality of economic operators' obligations
2. Address the proposal's shortcoming in the treatment of second-hand products to further promote repair and reuse
3. Facilitate the co-creation of the future Digital product passport to ensure more clarity and more flexibility in its implementation
4. Ensure information requirements focus on delivering relevant and reliable data that will benefit end-users
5. Provide further clarity on transparency requirements for discarding goods and accompany companies' efforts

### 1. Obligations of economic operators

#### ***Alignment of the economic operators' obligations with other pieces of EU legislation***

The Proposal suggests clarifying the role of economic operators, including the definition and the obligations of "dealers" (Article 2.56 and article 25). We believe that the addition of the concept of dealers to this proposal should be clarified, including how this concept differs from the concept of "trader" as defined and used in other related EU pieces of legislation. We are concerned about the diverging operators and obligations between connected pieces of legislation, including the proposal for a General Product Safety Regulation, the Market Surveillance Regulation and EU consumer legislations.

Additional clarification is also needed regarding the exemption of consumer-to-consumer (C2C) transactions. Indeed, the concept of "dealer" leaves open the possibility for C2C transactions to be included in this proposal. However, consumers exchanging and selling goods online would not be in a position to fulfil the requirements laid down in the text.

### ***Role of marketplaces***

We welcome the provisions on the obligations of online marketplaces, which ensure the alignment of the proposal with the Digital Services Act and the General Product Safety Regulation proposal. We would however like to highlight a few remaining concerns.

Regarding requirements on product information, we recommend that the proposal follows a more **flexible approach regarding the information that has to be displayed by sellers, notably on marketplaces**. As detailed further below, considering the differences in supply chains, especially for circular (second-hand, refurbished...) or bespoke products, the availability of information may vary for certain items. Therefore, while we support alignment with the DSA and the GPSR on marketplaces' interface design to ensure compliance, we encourage policymakers to consider flexibility in the information that is required from traders when listing a product on a marketplace (as referenced in Article 30.1). The level of flexibility granted to traders and marketplaces should be aligned with the specificities detailed in the paper below.

We would like to clarify that, without prejudice to Article 29.1, online marketplaces should not be required to proactively ensure compliance with all the products sold by third-party sellers on their marketplaces, nor should they introduce any general monitoring obligations. We, therefore, encourage the alignment of relevant recitals (notably 58 to 60) and articles to ensure that this remains the case.

We would also welcome further clarification on Article 29.1d and **the right of market surveillance authorities to access interfaces of online marketplaces**. In our view, this provision requires further clarification as to its scope, purpose, and practical implications to avoid unnecessary risks to users' privacy or business secrecy. We would recommend that the frequency and depth of information required to market surveillance authorities should be proportionate. A request and approval process could be introduced to ensure online marketplaces manage traffic appropriately. Finally, we are concerned with the wording of recital 60, evoking the power to require the removal of "*products presenting a less than serious risk*". We believe this approach is too far-reaching and could result in over-blocking legitimate goods.

### ***Cases in which obligations of manufacturers apply to other economic operators***

Regarding Article 28.1, we are **concerned that the provision whereby an importer or a distributor can be considered a manufacturer when placing a product on the market in their name could be particularly burdensome for micro and small enterprises** having to meet the obligations laid down in the proposal. This could also have important consequences if the ESPR fails to explicitly exclude C2C transactions from its scope.

We suggest removing or amending this provision, considering that manufacturers' responsibilities, in particular in terms of information requirements, are disproportionate and hardly feasible in practice for stakeholders who do not actually manufacture the product (or even place it on the market as second-hand).

We would caution against joint liability provisions that apply to all EU Economic Operators (e.g., for labelling requirements, or display of batch/serial numbers) as they create uncertainty and risk of joint liability amongst Economic Operators. Instead, we encourage policymakers to introduce clear obligations on individual Economic Operators to avoid a situation whereby the entire supply chain is carrying out similar due diligence.

### ***Adapting obligations to micro-businesses***

We encourage policymakers to introduce de-minimis thresholds to support micro-businesses. Under EU law, a micro-business is defined as an enterprise of fewer than 10 individuals, or under 2 million turnover. A vast majority of micro-businesses produce and sell bespoke, small-batch items, with de-facto very limited negative externalities of production. Considering the objective of the ESPR, we believe that imposing stringent and complex compliance requirements on micro-businesses would be disproportionate and would create an environment where small sellers could not thrive.

This threshold should be introduced as a general exemption in the ESPR and should not be left for clarification on a product-specific basis in the delegated acts. Delaying the clarification of the scope would create a lot of uncertainty for small sellers and could lead to further confusion in case of diverging scope

and exemptions. As described further below, a de-minimis threshold should also be considered for the digital product passport.

## 2. Impact on refurbished, second-hand and unique products

This regulation has the potential to significantly impact products' lifespan and increase their repairability, traceability, and overall sustainability. We do however fear that the current proposal misses an opportunity to promote refurbished and second-hand products.

### ***Definition of refurbishment***

Ecommerce Europe is **concerned with the current definition of “refurbishment” in the proposal** laid down in Article 2.18. The act of refurbishment corresponds to the testing of the functionalities of a product, and, if needed, the maintenance and repair of a good or waste by a professional before it is made available on the market once again. Refurbishment does not entail modifying a product, but simply consists in returning a product to a condition where it fulfils its intended use. It is important to clarify that a refurbished product does not lead to a new product being created.

In that sense, we believe that there should be a clear distinction between refurbishment and remanufacturing, where (re)manufacturing implies bringing a good back to a new condition when refurbishment does not.

### ***Adapting obligations to second-hand market actors***

Another point of concern in how the requirements drawn up in the Regulation and future delegated act would apply to products whose supply chains do not align with a traditional, linear system. The long-term objective of the ESPR is to tackle the problem at the roots and address the question of product design to ensure a consistent improvement of the quality and sustainability of new products being designed and placed on the European market.

Circular business models are trying to address the environmental impact of design and production by allowing products to be repaired, refurbished, or reused. These products very often have supply chains that are more complex than traditional batch production of new products, with economic operators having different tasks, but also different/lack of relationships with one another.

Considering the opportunity created to extend the life of existing products, we believe that the proposal should offer a clear differentiation between the market of brand-new products and the market of second-hand goods when designing new rules. Refurbishment or repair processes for second-hand goods are often performed by economic operators that are independent from the initial manufacturer. This raises a series of challenges, notably in terms of access to information on the product (e.g., the manufacturer might no longer exist; the original labelling might have disappeared...).

**Ecommerce Europe believes that the proposal should provide for specific obligations for refurbishers or importers and distributors of second-hand products, either through the creation of a new category of economic operators or by specifying obligations of existing operators.** We encourage policymakers to look specifically at the following obligations:

- **Refurbishers do not have control over the design or the manufacturing process of a product.** This means that refurbishers are not able to assess if a product has been designed or manufactured following existing ecodesign requirements (Article 21.1). Moreover, refurbishing does not entail any modification to the design of the product, which means that a refurbisher is not able to redesign a product to ensure compliance with applicable requirements. In case of suspected lack of conformity, refurbishers do not have the capacity to bring the product into conformity, because they cannot act on all the parameters of the product - such as the materials and components used in the manufacturing process (articles 23.6 and 24.3). It is important to consider that a product could be non-compliant with the ESPR but already placed on the EU market and both safe to use and fulfilling the consumer's needs. In that case, recycling would be premature, and refurbishing would be the most sustainable option.
- **Refurbishers are also not able to carry out conformity assessment or draw up a declaration of conformity** (article 21.2) or ensure that procedures are in place for series production to remain in

conformity with the applicable requirements (article 21.4). Because of the non-linear supply chains of circular products, which will most likely entail ownership by one or several consumers before the products reach refurbishment, refurbishers have little to no relationship with the manufacturers, and therefore cannot ensure the presence of technical documentation or the EU declaration of conformity (articles 21.3 and 21.9, as well as article 23.2. and article 24.2)

- **Finally, we are concerned over the potential impact of Article 28** under which obligations of the manufacturer apply to distributors when they modify such a product already placed on the market in a way that affects compliance with the requirements set out in future delegated acts. **This provision is likely to result in the obligation for refurbishers to use only original spare parts rather than compatible ones, and thus drastically limiting their activity.** Although the use of compatible parts does not affect the nature of the product, nor its functionalities, the part itself may not have exactly the same ecodesign characteristics as the original part (e.g., the proportion of recycled material in the part). The new spare part can therefore change, in this example, the overall recycled content of the product, even though the part meets the minimum threshold set out in the EU. Refurbishers mainly use compatible spare parts when they need to repair a product, as original parts are not made available by the manufacturers or are sold at disproportionate prices. It is therefore vital for refurbishers to be able to use compatible parts, that in any case will have to comply with their own ecodesign requirements. Refurbishers should thus be exempted from the provisions of Article 28 and recital 57.

Finally, we support exempting from the scope works of art, collectors' items and antiques (as defined in Annex IX of Directive 2006/112/EC as they cannot be expected to meet the requirement laid out in this Regulation.

### 3. Digital Product Passport

Ecommerce Europe welcomes the introduction of the framework for a digital product passport (DPP). In the longer term, a DPP could trigger important changes to the way we produce, consume and handle products throughout their lives.

Because of the scale of such a project, we encourage policymakers to maintain a certain level of flexibility in the timeline and application of the product passport to all products on the EU market. In the current proposal, Article 8 mandates the creation of a Digital Product Passport for any product group regulated under the ESPR's delegated acts. We believe that the text should maintain a certain level of flexibility and avoid pre-empting discussions at product-level. Amending Article 8 would allow for the DPP requirements to be added to delegated acts based on the feasibility or relevance for each category of products. We propose to amend the paragraph as follows: "The information requirements referred to in Article 7(1) **shall may** provide that products can only be placed on the market or put into service if a product passport is available in accordance with the applicable delegated act adopted pursuant to Article 4 and Articles 9 and 10". We would also expect that the delegated act takes into account the learnings from existing projects, such as the prototype projects led by DG CNECT.

#### **Structure of the Digital product passport**

Ecommerce Europe welcomes the European Commission's intention and would like to re-affirm the importance of relying on internationally recognised standards for sharing information (e.g., GS1), interoperability of data and decentralised information storage. **We would however welcome further clarity regarding how these objectives will be achieved in the proposal, or a commitment from policymakers to ensure that these questions will be discussed in cooperation with all concerned parties before the drafting of delegating acts.**

- *Content of the DPP*

The content of the product passport should prioritise information that is relevant to enable informed choices and when using products, and to meet established environmental and safety requirements. Product-specific requirements on content should also be considered (e.g., information on the "availability of spare parts" does not make sense in the textile sector). It is imperative that the content of the DPP is aligned and streamlined with existing reporting requirements to reduce the burden on companies (e.g., CSRD reporting

requirements). The data format could be designed to be applicable for different legislations, and could be interoperable with existing requirements, to avoid duplication of information and duplication of data itself.

- *Access to the DPP*

There are important considerations regarding access rights for the product passport. Each actor has different needs when it comes to the type of product information and the level of detail. The DPP should be designed to allow access on a “need-to-know” basis, allowing different actors to access the information that is most relevant to them.

Regarding consumer access to the DPP, we encourage the European Commission to consider user-friendliness when further defining its structure. Allowing the development of innovative services around the product passport should be encouraged, for example, solutions that could aggregate and compare various DPP to allow consumers to instantly compare similar products’ performances.

- *Trade secret*

We would encourage any forthcoming information requirements in Delegated Acts to have clear standards for information security and confidentiality, including clear limitations on what information is made public, who has access to what types of information, and a clear definition of “confidential business information” that will not be made available to the public. This should be done in consultation with industry to determine what information is relevant to consumers and what information should not be shared with competitors.

### ***Information flow and liability***

The requirements of the product passport are likely to create potential challenges in terms of accessing data throughout the supply chain and ensuring its reliability. The DPP should be able to take into account the complexity of some products’ journey, including when the product is repaired, refurbished or otherwise modified during its lifetime.

With regards to the obligation on the supply chain to provide upon request, manufacturers, notified bodies and competent national authorities with available information related to their supplies or services that is relevant in order to verify compliance with ecodesign requirements, it should be clarified that this obligation is limited to retrieving information from first Tier selling partners. Providing information at present beyond first Tier partners is practically impossible and would require significant resource investment throughout the supply chain in data gathering and in the protection of proprietary information.

While preserving the integrity of the information contained on an existing product passport, it should be made possible for an economic operator to easily update information with new entries throughout the product life-cycle (e.g., an independent repairer replacing an old battery with a new one on a device).

The obligation to upload the information, as well as the liability attached to the veracity of the information on the passport should be placed on the economic operator with direct knowledge and access to this information.

### ***Retroactivity***

Ecommerce Europe would welcome clarification on the application of the new requirements for products that are already on the market (in the event they get reused, repaired, or refurbished as well), or for products that would be in production or designed and produced before the entry into force of the Regulation.

### ***Application of the DPP to refurbished, second-hand and unique products***

Ecommerce Europe encourages policymakers to consider the differences between new products and second-hand products in relevant articles on the DPP, as well as in the drafting of product-specific delegated acts. For example, these differences are important when considering which economic operator can be allowed to read and update information present on a passport.

As detailed above, it is also important to consider that economic operators dealing with second-hand goods might not have access to all the required information. In that sense, exemptions included in Recital 29 to prevent unnecessary burdens on economic operators should be included in Article 8 when referring to second-hand, refurbished, repaired, unique or handmade goods. We would suggest adding the following

provision to Article 8: **“Article 8.5 The Commission may allow exemptions related to the product passport requirements in the delegated acts adopted pursuant to Article 4, as appropriate for products already placed on the market such as second-hand, refurbished, repaired, unique or handmade, in order to prevent unnecessary burden for economic operators.”**

Additionally, we encourage policymakers to complement the list of economic operators to which access and modification rights can be granted (e.g., refurbishers). Certain actors such as refurbishers or repairers must be allowed to add information to the digital product passport according to the tests and repairs they have performed or create said passport if necessary. The digital passport product must contain, whenever possible, a logbook listing all the maintenance and repair operations that have been previously carried out on the product.

Concerning small-batch handmade items, we strongly encourage policymakers to consider an exemption from the digital product passport. Handmade products in their essence are unique and generally produced in small quantities if not in units of 1. Expecting sellers to manually create a unique product passport for such goods will prove to be burdensome. This exemption should go hand-in-hand with the scale of production of the seller and apply to small-batch manufacturers of artisan and handmade products. Secondly, handmade goods are often made from repurposed or embellished old products, creating similar challenges as stated above for second-hand products.

We, therefore, encourage policymakers to amend the general requirements for the product passport and obligations of manufacturers included in Articles 9.1(e) and 21.5 respectively.

However, we do believe that the European Commission and Member States can play a role, together with other actors supporting small sellers (e.g. marketplaces) by providing educational resources or voluntary programmes to support these small sellers in gathering and displaying as much relevant information as possible, as well as experimenting with product passports.

#### 4. Information and labelling requirements

Ecommerce Europe welcomes the proposal's objective to set a framework for harmonised and relevant product information. We encourage the European Commission to consider the following recommendations when further detailing product information in delegated acts.

##### ***Relevance and reliability of data***

**Delegated acts should consider the availability of data and methodology to ensure that information is meaningful, accurate and comparable.** Indeed, some information requirements, such as the calculation of the climate footprint of products, will require extensive data sets and methodology that are not always available today for all products. We do however encourage alignment with the upcoming Substantiating Green Claims proposal and support the further development and uptake of the PEF/OEF methodology when available and where possible. More work is needed on defining a common framework for voluntary actions and supporting SMEs' transitions in order to ensure that the information presented is meaningful. In general, we support the development of EU guidance for voluntary product information to ensure a harmonised approach and improve comparability for consumers.

Requirements should have a clear scope and **should focus on information that creates concrete user benefits.** The Proposal opens the possibility for delegated acts to set up extensive requirements, with a wide range of information targeted at a variety of receivers. In order to mitigate the impact of these requirements on businesses, it is crucial to ensure the relevance and added value of such information.

Information requirements should also consider flexibility concerning when the information must be shared with consumers. Information should be delivered to the consumers when most relevant for making a decision (pre-purchase, during product ownership, end of life). For example, information on products' performance will offer initial guidance for a more sustainable purchasing choice during the research and selection time (in a physical location or online). During use, consumers seek knowledge and assistance in maintaining, repairing, and upgrading products. Often by this stage, labels, tags, and assembly booklets are removed, discarded, or misplaced. Therefore, information relevant for this stage of product ownership should be accessible independently from the product, most suitably through digital channels. Once the

product is no longer needed, consumers struggle to find the best solutions for passing products along, or discard the product if necessary.

We also support standardisation efforts regarding the sharing of ecodesign information between relevant stakeholders in the value chain to facilitate compliance and reduce the risk of fragmentation between Member States.

### ***Labelling requirements***

Ecommerce Europe would welcome further clarification on Article 14 on labels. The article suggests the possibility of mandating the creation of new product-specific labels to convey sustainability information. We strongly encourage the European Commission to carefully consider the need to create and mandate the display of sustainability labels to avoid a multiplication of sources of information which could confuse consumers. We would welcome clarification on the scope of this article and the priorities of the Commission as regards new labels.

We would also welcome further clarification on the potential impact of the delegated acts on existing labels, and whether, for example, a delegated act could mandate amendments to an existing label or labelling schemes used in the EU today. If that is the case, it is imperative to take into account the time and resources necessary for companies to adapt to potential new requirements under existing labelling schemes. The impact of such changes should be carefully assessed before being mandated in delegated acts.

## **5. Transparency and destruction of unsold consumer goods**

Ecommerce Europe welcomes the European Commission's proposal to address the discarding and destruction of unsold consumer goods. Regarding the disclosure of information on the discarding of unsold consumer goods, we believe that the current draft requires more clarification.

**We strongly encourage policymakers to clearly define the terms “discard”, “dispose” and “destroy”.** This is necessary to avoid uncertainty and diverging interpretations. As the current text fails to define “discarding”, the scope of Article 20 and of reporting obligations remain undefined as well.

### ***Disclosure requirements***

**We also encourage policymakers to consider the complexity of gathering the necessary data to meet the disclosure requirement,** in order to provide further clarification on its application. We also encourage proportionality in the application of these requirements, considering the potential burden they can represent for SMEs. For instance, economic operators currently do not have full transparency on the end-of-life activities of discarded products once they go into sorting and waste management facilities. Once a product has been passed on to waste management companies or municipalities, sellers would not be able to indicate for each product whether it has been recycled or sent for energy recovery without detailed information being passed down from these actors. Considering the role that the disclosing of information will play in drafting delegated acts (Article 20.3), we encourage policymakers to set a manageable information collection scope for the companies by focusing on relevant and useful data providing added value in making informed regulatory choices.

**Clear guidelines on the regularity and format of the reporting, but also on possible overlap with other disclosure requirements under EU law** (e.g., product safety; sustainability reporting), would be particularly beneficial for companies in order to ensure the smooth application of this requirement. We also encourage the EU to allow for a distinction to be made between new vs. used and/or damaged unsold goods when reporting on the reasons for discarding/destroying them. It should also be clarified that reporting on the destruction of counterfeit goods, or products posing risks (suppressed/recalled) or not compliant with applicable legislation should also be accounted for separately.

We would also welcome further details on the different reporting obligations between a company and marketplace as a whole, vs. reporting by different business segments and units manufacturing different products.

### ***Destruction of unsold goods***

Concerning the ban on the destruction of unsold goods, we believe that the EU has an opportunity to have a profound impact on practices and consumption and open new opportunities for sectors contributing to the growth of a circular economy. **We encourage policymakers to consider this ban in the wider context prioritising reuse and repair of products, exploring complementary leverage to curb the destruction of unsold goods and ensuring synergies with other pieces of legislation** (e.g. the revision of the Waste Framework Directive, or the initiative for the promotion of repair and reuse).

E-commerce can play a role in maximising the use of products and parts placed on the EU market. We, therefore, welcome the European Commission's intention to propose product-specific bans on the destruction of unsold goods.

For these delegated acts to be effective, we encourage the Commission to assess the different aspects and existing challenges that may lead actors to destroy products, as well as how to incentivise existing alternative channels. Indeed, the destruction of unsold goods, focusing notably on returned goods to sellers, happens in a small minority of cases, and usually happens for reasons out of the control of sellers (e.g. compliance of the product, hygiene, contractual agreements...)¹.

The discussion on curbing the destruction of unsold goods should focus – on the short term – on ensuring products and parts can have a second life to boost the circular economy. **We encourage the European Commission to work hand-in-hand with companies in parallel with the drafting of delegated acts to accompany and fast-track companies' efforts.** Considering the timeline of delegated acts, complementary actions could be beneficial, and already be implemented more rapidly.

Some of the avenues that could be explored include legal mechanisms available to facilitate the donation of unsold goods to social, charitable or community-based organisations (e.g., addressing the fact that recycling unsold goods can allow companies to claim back VAT in certain countries when donating these goods does not allow for the same mechanism, therefore disincentivising donations).

Moreover, synergies could be created with the revision of the Waste Framework Directive to ensure the priority of repair and reuse over recycling. The possibility of using unsold consumer goods (e.g. electronics) for parts that can then be used for repair before they are discarded (without these goods being considered "waste") should be explored, potentially in the longer term through the delegated acts.

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¹ For more information, see [Ecommerce Europe's Collaborative Report on Sustainability and E-commerce](#), p4-5