

## EEB comments and amendments for Ecodesign for Sustainable Product Regulation (ESPR)

### 1. Introduction

The EEB is Europe's largest network of environmental citizens' organisations, bringing together 180 civil society organisations from more than 38 European countries. The EEB is a long standing member of the existing ecodesign consultation forum. It is also a steering group member of the Coolproducts and Right to Repair campaigns. For this reason, it is in a unique position to contribute to the definition of several parts of the present Regulation. The EEB welcomes the transformation of the current Ecodesign Framework Directive into a new Ecodesign for Sustainable Products Regulation.

### 2. Amendments to ESPR

#### Article 1

Ref.	Commission proposal	EEB proposed amendments
	<p>This Regulation establishes a framework to improve the environmental sustainability of products and to ensure free movement in the internal market by setting ecodesign requirements that products shall fulfil to be placed on the market or put into service. Those ecodesign requirements, which shall be further elaborated by the Commission in delegated acts, relate to:</p> <p>(a) product durability and reliability;</p> <p>(b) product reusability;</p> <p>(c) product upgradability, reparability, maintenance and refurbishment;</p> <p>(d) the presence of substances of concern in products;</p> <p>(e) product energy and resource efficiency;</p> <p>(f) recycled content in products;</p> <p>(g) product remanufacturing and recycling;</p> <p>(h) products' carbon and environmental footprints;</p> <p>(i) products' expected generation of waste materials.</p> <p>This Regulation also establishes a digital product passport ('product passport'), provides for the setting of mandatory green public procurement criteria and creates a framework to prevent</p>	<p>This Regulation establishes a framework <b>to make sustainable products the norm and to reduce their overall lifecycle environmental footprint, as well as ensuring</b> free movement in the internal market by setting ecodesign requirements that products shall fulfil to be placed on the market or put into service. Those ecodesign requirements, which shall be further elaborated by the Commission in delegated acts, relate to:</p> <p>(a) product durability and reliability;</p> <p>(b) product reusability;</p> <p>(c) product upgradability, reparability, maintenance and refurbishment;</p> <p>(d) the presence of substances of concern in products;</p> <p>(e) product energy and resource efficiency;</p> <p>(f) recycled content in products;</p> <p>(g) product remanufacturing and recycling;</p> <p>(h) products' carbon and environmental footprints;</p> <p>(i) products' expected generation of waste materials.</p> <p><b>(j) social sustainability and due diligence</b></p> <p>This Regulation also establishes a digital product passport ('product passport'),</p>

#### European Environmental Bureau

• Rue des Deux Églises 14-16, 1000 Brussels, Belgium • ☎ +32 228 91090 • eeb@eeb.org • www.eeb.org

International non-profit association • Association internationale sans but lucratif (AISBL) • EC register for interest representatives:  
ID number: 06798511314-27 • BCE ID number: 0415.814.848 • RPM Tribunal de l'entreprise francophone de Bruxelles

	unsold consumer products from being destroyed.	provides for the setting of mandatory green public procurement criteria and creates a framework to <del>prevent</del> <b>prohibit</b> unsold <del>consumer</del> products from being destroyed.
<b>Justification</b>		
<p>Justification:</p> <ul style="list-style-type: none"> <li>• The ambition of making sustainable products the norm should be emphasized as an objective of this Regulation</li> <li>• The regulation should also how the aspiration to reduce the footprint from Europe's products in absolute terms.</li> <li>• Social aspects and due diligence criteria along the value chains of products are fundamental to the sustainability of products, they should not be de facto excluded from the potential consideration on products covered by this regulation. As other dimension listed from a to i indents it is the role of preparatory investigations to highlight them as significant or not for the targeted product groups</li> <li>• The destruction of unsold goods should be prohibited under this Regulation, there is no justification to delay to a future legal act such a prohibition. The co-decision process related to this revision of Ecodesign policy is the best moment to decide on such prohibition. Additionally, there is no reason why such prohibition should only apply to consumer products. The boundaries between consumer and professional products are not tight and will further blur with circular business models/material ownership models. For all products, exemptions to this prohibition could be defined as referred to in art 20</li> </ul>		

### Articles 5 - Ecodesign requirements

Ref.	Commission proposal	EEB proposed amendments
	<p>The Commission shall, as appropriate to the relevant product groups and with due consideration for all stages of their life cycle, establish ecodesign requirements to improve the following product aspects:</p> <p>(a) durability;</p> <p>(b) reliability;</p> <p>(c) reusability;</p> <p>(d) upgradability;</p> <p>(e) reparability;</p> <p>(f) possibility of maintenance and refurbishment;</p> <p>(g) presence of substances of concern;</p> <p>(h) energy use or energy efficiency;</p> <p>(i) resource use or resource efficiency;</p> <p>(j) recycled content;</p> <p>(k) possibility of remanufacturing and recycling;</p> <p>(l) possibility of recovery of materials;</p>	<p>The Commission shall, as appropriate to the relevant product groups and with due consideration for all stages of their life cycle, establish ecodesign requirements to improve the following product aspects:</p> <p>(a) durability;</p> <p>(b) reliability;</p> <p>(c) reusability;</p> <p>(d) upgradability;</p> <p>(e) reparability;</p> <p>(f) possibility of maintenance and refurbishment;</p> <p>(g) presence of substances of concern;</p> <p>(h) energy use or energy efficiency;</p> <p>(i) resource use or resource efficiency;</p> <p>(j) recycled content;</p> <p>(k) possibility of remanufacturing and recycling;</p>

	<p>(m) environmental impacts, including carbon and environmental footprint;</p> <p>(n) expected generation of waste materials.</p>	<p>(l) possibility of recovery of materials;</p> <p>(m) environmental impacts, including carbon and environmental footprint;</p> <p>(n) expected generation of waste materials.</p> <p><b>(o) social aspects and working conditions along the value chain</b></p> <p><b>(p) due diligence criteria</b></p>
<b>Justification</b>		
<p>Justification:</p> <p>Social aspects and due diligence criteria along the value chains of products are fundamental to the sustainability of products, they should not be de facto excluded from the potential consideration on products covered by this regulation. As other dimension listed from a to i indents it is the role of preparatory investigations to highlight them as significant or not for the targeted product groups</p>		

#### Articles 5 - Ecodesign requirements

Ref.	Commission proposal	EEB proposed amendments
	<p>Ecodesign requirements shall be established for a specific product group.</p> <p>However, where two or more product groups display technical similarities allowing a product aspect referred to in paragraph 1 to be improved based on a common requirement, ecodesign requirements may be established horizontally for those product groups.</p> <p>A horizontal ecodesign requirement established pursuant to the second subparagraph may cover products falling in the scope of a self-regulation measure established as a valid alternative pursuant to Article 18(3), where the Commission considers that that self-regulation measure does not address the product aspect covered by that horizontal ecodesign requirement.</p>	<p>Ecodesign requirements shall be established for a specific product group.</p> <p>However, where two or more product groups display technical similarities allowing a product aspect referred to in paragraph 1 to be improved based on a common requirement, ecodesign requirements may be established horizontally for those product groups.</p> <p><b>Where two or more product groups display technical similarities allowing a product aspect referred to in paragraph 1 to be improved based on a common requirement, ecodesign requirements shall be established horizontally in priority for those product groups.</b></p> <p><b>These horizontal requirements may be further specified in quantitative or qualitative terms through ecodesign requirements established for a specific product covered by a horizontal ecodesign requirements.</b></p> <p>A horizontal ecodesign requirement established pursuant to the second subparagraph may cover products falling in the scope of an <b>already existing</b> self-regulation measure <del>established as a valid alternative pursuant to Article 18(3)</del>, where the Commission considers that that self-regulation measure does not address the</p>

	product aspect covered by that horizontal ecodesign requirement.
<p>Justification:</p> <p>In order to be as effective as possible, to make the most of each decision taking and to harmonize formulations of requirements amongst product groups presenting technical similarities for one aspect referred to in annex I, horizontal requirements should be given priority. It should however be possible to further refine those horizontally defined requirements when investigating one specific product group covered by horizontal requirements (e.g: if it is considered relevant to impose a 30% minimum recycled contents for plastics for a variety of products, this should be set horizontally, rather than specified in each implementation measure associated to a specific product group, but if for a specific product group, further details on which plastic type should be targeted by such a minimum recycled content appears relevant, it should be possible to define such details in a specific legal act ).</p> <p>As regards application of such horizontal requirements to existing self regulation, this should be possible, but in view of the poor achievements of current self regulations (one on CSTB being stalled for years with no further progress since 2017, one on Printers to be changed to a regulation in view of unfair consideration for rechargeable cartridges and one on Game Consoles, just stating business as usual performances), it should not be considered adding new self regulated implementing measures.</p>	

#### Articles 5 – Ecodesign requirements

Ref.	Commission proposal	EEB proposed amendments
	<p>4. When preparing ecodesign requirements, the Commission shall:</p> <p>(a) take into account the following elements:</p> <p>(i) Union climate, environmental and energy efficiency priorities and other related Union priorities;</p> <p>(ii) relevant Union legislation, including the extent to which it addresses the relevant product aspects listed in paragraph 1;</p> <p>(iii) self-regulation measures, as provided for in Article 18;</p> <p>(iv) relevant national environmental legislation;</p> <p>(v) relevant European and international standards;</p>	<p>4. When preparing ecodesign requirements, the Commission shall:</p> <p>(a) take into account the following elements:</p> <p>(i) Union climate, environmental and energy efficiency priorities and other related Union priorities;</p> <p>(ii) relevant Union legislation, including the extent to which it addresses the relevant product aspects listed in paragraph 1;</p> <p>(iii) <b>existing</b> self-regulation measures, <del>as provided for in Article 18;</del></p> <p>(iv) relevant national environmental legislation;</p> <p>(v) relevant European and international standards;</p>
<b>Justification</b>		
<p>Justification:</p> <p>It should only refer to existing self-regulations, and not provide for the possibility of new ones in view of their poor achievements and the lack of evidence they have performed better and faster (in fact quite the contrary).</p>		

#### Article 5 Ecodesign requirements point 4 (b)

Ref.	Commission proposal	EEB proposed amendments
------	---------------------	-------------------------

	<p>(b) carry out an impact assessment based on best available evidence and analyses, and as appropriate on additional studies and research results produced under European funding programmes. In doing so, the Commission shall ensure that the depth of analysis of the product aspects listed in paragraph 1 is proportionate to their significance. The establishment of ecodesign requirements on the most significant aspects of a product among those listed in paragraph 1 shall not be unduly delayed by uncertainties regarding the possibility to establish ecodesign requirements to improve other aspects of that product;</p>	<p>b) carry out an impact assessment based on best available evidence and analyses, and as appropriate on additional studies and research results produced under European funding programmes. In doing so, the Commission shall ensure that the depth of analysis of the product aspects listed in paragraph 1 is proportionate to their significance. <b>The impact assessment shall where appropriate also used to set GPP criteria and Ecolabel criteria, as well as other economic incentives criteria, notably a potential modulation of EPR fees, in order to enhance consistency between the different product policy instruments and to prevent the multiplication of methodologies to be mobilised to comply with those various instruments.</b> The establishment of ecodesign requirements on the most significant aspects of a product among those listed in paragraph 1 shall not be unduly delayed by uncertainties regarding the possibility to establish ecodesign requirements to improve other aspects of that product;</p>
<b>Justification</b>		
<p>Today there is no consistency being ensured between the different product policy instruments, leading to the use of different approaches for different instruments. In order to enhance the effectiveness of this Regulation, the efficiency of the allocated resources, and the ease of compliance for businesses, mutualisation of investigation on a specific product group shall be systematic. This does not mean that exactly the same product parameters as listed in annex I should be set under each product policy instrument, but if the same parameter is targeted under various instruments - with a specific performance level, a unique measurement and testing method shall be applied for this parameter. This will reduce burden for all: industry, market surveillance authorities, notified bodies.</p>		

#### Articles 5 - Ecodesign requirements

Ref.	Commission proposal	EEB proposed amendments
	<p>4. When preparing ecodesign requirements, the Commission shall: (a) take into account the following elements: (i) Union climate, environmental and energy efficiency priorities and other related Union priorities; (ii) relevant Union legislation,</p>	<p>4.(a) (I) Union climate, environmental and energy efficiency priorities and other related Union priorities, <b>notably the objective to achieve climate neutrality by 2050 and to reduce our overall material and consumption footprint to within planetary boundaries.</b></p>
<b>Justification</b>		

#### Articles 5 Ecodesign requirements

Ref.	Commission proposal	EEB proposed amendments
	<p>5. (c) there shall be no significant negative impact on consumers in terms of the</p>	<p>5. (c) there shall be no significant negative impact on consumers in terms of the</p>

	affordability of relevant products, also taking into account access to secondhand products, durability and the life cycle cost of products;	affordability of relevant products, also taking into account access to secondhand products, durability and the <b>least</b> life cycle cost of products ( <b>including societal costs</b> );
<b>Justification</b>		

#### Articles 5 Ecodesign requirements

Ref.	Commission proposal	EEB proposed amendments
	5. (c) there shall be no significant negative impact on consumers in terms of the affordability of relevant products, also taking into account access to secondhand products, durability and the life cycle cost of products;	5. (c) there shall be no significant negative impact on consumers in terms of the affordability of relevant products, also taking into account access to secondhand products, durability and the <b>least</b> life cycle cost of products ( <b>including societal costs</b> );
<b>Justification</b>		

#### Article 6 Performance requirements (new)

Ref.	Commission proposal	EEB proposed amendments
		<p>(new):</p> <p>5. When establishing performance requirements in delegated acts adopted pursuant to art 4 and referred to in the first subparagraph, the Commission, supported by the Ecodesign forum referred to in art 17 shall set performance requirements taking into account:</p> <ul style="list-style-type: none"> <li>a. the EU CO2 emissions reduction objectives and scientifically established remaining carbon budget of the EU to respect the Paris agreement, including embodied emissions in materials;</li> <li>(b) the societal costs along the life cycle of the products, notably in relation to the use of resources, energy and other consumables and the related human health and environmental impacts</li> <li>(c) the overshoot of planet boundaries on the basis of the JRC Consumption Footprint methodology</li> <li>(d) the other Union climate, environmental and energy efficiency priorities and related Union objectives, notably as documented in the 8th EAP</li> </ul> <p>The level of performances should be set through several tiers, with the first tier corresponding to the minimum performance to align with the above a to d criteria without prejudice to the art 4 point 5 criteria .</p>

		The performances to meet along the multiple tiers shall be set according to a top performer approach, where the level of performances defined for each tier shall be progressively increased to the level of the best performing products and best available technologies identified at the time of defining the delegated act adopted pursuant to art 4.
<b>Justification</b>		
The level of performances to be established under EU legal acts should be guided with clear objectives to avoid being set at inadequate level (too low or too high). In addition, to ensure a long term visibility and a most efficient decision making process - which is today over 3 years per product group - a multiple tiers approach should be adopted when defining EU legal acts, setting the different milestones over time to progressively match the level of best performing products at the time of defining the EU legal act. This approach is qualified as the top performer approach. It will rely on the identification of best available technologies and best performing products in accordance with annex II point 1.		

#### Articles 6 Performance requirements

Ref.	Commission proposal	EEB proposed amendments
	3. Performance requirements based on the product parameter set out in Annex I, point (f), shall not restrict the presence of substances in products for reasons relating primarily to chemical safety.,	Delete
<b>Justification</b>		
The distinction between using product policy to support circularity vs product policy to address the hazardousness of chemicals is not clear. We suggest taking a hollistic approach which sees product policy as a tools to ensure product safety too.		

#### Articles 7 on Information requirements

Ref.	Commission proposal	EEB proposed amendments
	(e) information relevant for disassembly.	(e) information relevant for disassembly, <b>dismantling, recycling, other forms of recovery and final disposal</b> '.
<b>Justification</b>		
Different secondary applications for products may have different requirements.		

#### Articles 7 on Information requirements

Ref.	Commission proposal	EEB proposed amendments
	Substances of concern falling under the definition in Article 2(28), point (a), shall not be exempted from the information requirement referred to in the first subparagraph if they are present in the relevant products, their main components or spare parts in a concentration above 0,1 % weight by weight.	Substances of concern falling under the definition in Article 2(28), point (a), shall not be exempted from the information requirement referred to in the first subparagraph if they are present in the relevant products, their main components or spare parts in a concentration above <del>0,1 %</del> <b>0.01%</b> weight by weight.
<b>Justification</b>		
The 0.1% threshold may leave too many substances of concern unaddressed (e.g nanomaterials), in line with a letter by companies together with organisation Chemsec calling for a lower threshold to be set in Safety Data Sheet ( <a href="https://chemsec.org/open-letter-to-the-commission-regarding-transparency/">https://chemsec.org/open-letter-to-the-commission-regarding-transparency/</a> )		

## Article 16 Prioritisation and planning point 2

Ref.	Commission proposal	EEB proposed amendments
	<p>The Commission shall adopt and regularly update a working plan, covering a period of at least 3 years, setting out a list of product groups for which it intends to establish ecodesign requirements in accordance with this Regulation. That list shall include products aspects referred to in Article 5(1) for which the Commission intends to adopt horizontal ecodesign requirements established pursuant to Article 5(2), second subparagraph.</p> <p>When adopting or updating the working plan referred to in the first subparagraph, the Commission shall take into account the criteria set out in paragraph 1 of this Article and shall consult the Ecodesign Forum referred to in Article 17</p>	<p>The Commission shall adopt and regularly update a working plan, covering a period of at least 3 years, setting out a list of product groups for which it intends to establish ecodesign requirements in accordance with this Regulation. That list shall include products aspects referred to in Article 5(1) for which the Commission intends to adopt horizontal ecodesign requirements established pursuant to Article 5(2), second subparagraph. <b>For each product group or aspects of products to be covered by horizontal ecodesign requirements, start date, final date and key milestones of the decision taking process should be defined, and communicated to the Ecodesign Forum referred to in article 17.</b></p> <p>When adopting or updating the working plan referred to in the first subparagraph, the Commission shall take into account the criteria set out in paragraph 1 of this Article and shall consult the Ecodesign Forum referred to in Article 17. <b>For the period 2024-2027, a first Working Plan shall be defined prioritising at least the following product groups/aspects:</b></p> <ul style="list-style-type: none"> <li>- <b>Iron, steel</b></li> <li>- <b>Cement</b></li> <li>- <b>Aluminium</b></li> <li>- <b>Textiles, notably garments and footwear</b></li> <li>- <b>Furniture (including mattresses)</b></li> <li>- <b>Horizontal measures on consumer electronics (connected devices and home audio, kitchen appliances)</b></li> <li>- <b>Tyres</b></li> <li>- <b>Detergents</b></li> <li>- <b>Paints</b></li> <li>- <b>Lubricants</b></li> <li>- <b>Plastic materials (or Base chemicals?)</b></li> <li>- <b>Energy related products, whose implementing measures need to be revised or newly defined</b></li> </ul>
<b>Justification</b>		
<p>Justification: The Work plan should not merely list products or horizontal aspects, but set clear timelines for each future potential legal EU act, so as to provide a sound visibility for concerned actors and national experts, notably in view of better informing SMEs. In the past absence of timelines have created major uncertainties.</p>		



On a first Working Plan to be defined for 2024-2027 period, it should be seized the opportunity of this co-decision process to orient priorities. There are enough evidence to list some product groups or aspects, and this reflect also the priorities mentioned in the EC Communication COM(2022) 140 on making sustainable products the norm.

### Article 17 Ecodesign Forum

Ref.	Commission proposal	EEB proposed amendments
	<p>The Commission shall ensure that when it conducts its activities, it observes a balanced participation of Member States' representatives and all interested parties involved with the product or product group in question, such as industry, including SMEs and craft industry, trade unions, traders, retailers, importers, environmental protection groups and consumer organisations. These parties shall contribute in particular to preparing ecodesign requirements, examining the effectiveness of the established market surveillance mechanisms and assessing self-regulation measures. To that end, the Commission shall establish an expert group, in which those parties shall meet, referred to as the 'Ecodesign Forum'.</p>	<p>The Commission shall ensure that when it conducts its activities, it observes a balanced participation of Member States' representatives and all interested parties involved with the product or product group in question, such as industry, including SMEs and craft industry, trade unions, traders, retailers, importers, environmental protection groups and consumer organisations. These parties shall contribute in particular to preparing ecodesign requirements, examining the effectiveness of the established market surveillance mechanisms and assessing self-regulation measures. To that end, the Commission shall establish an expert group, in which those parties shall meet, referred to as the 'Ecodesign Forum'.</p> <p><b>The Ecodesign Forum shall be informed on a semester basis of the calendar deadlines related to the process of defining EU delegated acts and implementing acts, with detailed explanations in case of delays beyond two calendar months.</b></p> <p><b>In case of delays exceeding 8 calendar months, members of the Ecodesign Forum should be entitled to propose a draft implementing measure proposal to be submitted to the national experts of the Ecodesign Forum for their scrutiny and vote.</b></p> <p><b>Should such a proposal be voted in favor, it should be considered the equivalent of a delegated act as established pursuant article 4 and be submitted to the scrutiny of the EU Parliament and the Council.</b></p>
<b>Justification</b>		
<p>Ecodesign has suffered from delays in the past costing money for EU citizens and missing energy, resources and emissions saving opportunities without being clearly justified. Some measures have also been stalled for no justified reasons, without any possibility for the Ecodesign Forum to remediate such delays by proposing alternative formulations for regulations in case of failure by the EU Commission. It is to be remembered that in the US, past the deadline set by the DOE to adopt energy performances standards, the concerned actors are entitled to sue the DOE. While this may not be desirable at EU level,</p>		

it is necessary to mitigate and remediate to the risks of major delays by more constraining deadlines and the possibility for the Ecodesign Forum to propose alternative regulatory text to be voted by national experts before the scrutiny process by the EU institutions.

### Articles 18 Self-regulation measures

Ref.	Commission proposal	EEB proposed amendments
	1. Two or more economic operators may submit a self-regulation measure establishing ecodesign requirements for products to the Commission as an alternative to a delegated act adopted pursuant to Article 4. Those operators shall provide evidence that the criteria referred to in paragraph 3, points (a) to (e), are fulfilled. With respect to paragraph 3, point (a), that evidence shall consist of a structured technical, environmental and economic analysis, justifying the ecodesign requirements and objectives of the self-regulation measure, and assessing the impacts of the ecodesign requirements set in that self-regulation measure.	<b>Delete</b>

#### Justification

Justification:

The experience with three self regulations under Ecodesign and Energy Labelling policy is a poor track record of efficiency or achievements: not only the process was neither better and quicker, but the level of ambition was not higher; quite the contrary, it tends to propose merely business as usual improvements. The situation is now that one of the self-regulation is in the oblivion (CSTB), one is to be turned into a regulation (imaging equipment) and one is continued without a proper discussion on the ambition and type of requirements ( Game Consoles), due to efforts to catch up with Ecodesign Working Plan backlog. It is also to be noted that enforcement and market surveillance efforts have been reported as even much lower for self regulations versus EU legal acts.

### Article 20 Destruction of unsold consumer products (title)

Ref.	Commission proposal	EEB proposed amendments
	Destruction of unsold consumer products	Destruction of unsold <del>consumer</del> products

#### Justification

Justification:

It should not be restricted to consumer goods. First the distinction between consumer & professional goods is not tight, second it does not make sense to allow the destruction of functional and compliant professional products.

### Article 20 Destruction of unsold consumer products point 1

Ref.	Commission proposal	EEB proposed amendments
	An economic operator that discards unsold consumer products directly, or on behalf of another economic operator, shall disclose: (a) the number of unsold consumer products discarded per year, differentiated per type or category of products; (b) the reasons for the discarding of products;	An economic operator that discards unsold <del>consumer</del> products directly, or on behalf of another economic operator, shall disclose: (a) the number of unsold <del>consumer</del> products discarded per year, differentiated per type or category of products; (b) the reasons for the discarding of products;

<p>(c) the delivery of discarded products to preparing for re-use, remanufacturing, recycling, energy recovery and disposal operations in accordance with the waste hierarchy as defined by Article 4 of Directive 2008/98/EC.</p> <p>The economic operator shall disclose that information on a freely accessible website or otherwise make it publicly available, until a delegated act adopted pursuant to paragraph 3 starts applying to the category of unsold consumer products discarded by the operator in question.</p>	<p>(c) the delivery of discarded products to preparing for re-use, remanufacturing, recycling, energy recovery and disposal operations in accordance with the waste hierarchy as defined by Article 4 of Directive 2008/98/EC.</p> <p>The economic operator shall disclose that information on a freely accessible website or otherwise make it publicly available, <del>until a delegated act adopted pursuant to paragraph 3 starts applying to the category of unsold consumer products discarded by the operator in question.</del></p>
<b>Justification</b>	
<p>Justification: It should not be restricted to consumer goods. First the distinction between consumer &amp; professional goods is not tight, second it does not make sense to allow the destruction of functional and compliant professional products.</p>	

### Article 20 Destruction of unsold consumer products point 3

Ref.	Commission proposal	EEB proposed amendments
	<p>The Commission shall be empowered to adopt delegated acts in accordance with Article 66 to supplement this Regulation by prohibiting economic operators to destroy unsold consumer products in the Union, where the destruction of unsold consumer products falling within a certain product group has significant environmental impact. In the delegated acts adopted pursuant to the first subparagraph, the Commission shall set out certain exemptions to those prohibitions where it is appropriate in view of:</p> <p>(a) health and safety concerns;</p> <p>(b) damage to products as a result of their handling or detected after a product has been returned by a consumer;</p> <p>(c) fitness of the product for the purpose for which it is intended, taking into account, where applicable, Union and national law and technical standards;</p> <p>(d) refusal of products for donation, preparing for re-use or remanufacturing.</p>	<p><del>The Commission shall be empowered to adopt delegated acts in accordance with Article 66 to supplement this Regulation by prohibiting economic operators to destroy unsold consumer products in the Union, where the destruction of unsold consumer products falling within a certain product group has significant environmental impact. In the delegated acts adopted pursuant to the first subparagraph, the Commission shall set out certain exemptions to those prohibitions shall apply where it is appropriate in view of:</del></p> <p><b>One year after the entry into force of this Regulation, the destruction of unsold goods shall be prohibited, including after export outside EU.</b> This prohibition shall set out certain exemptions to those prohibitions shall apply where it is appropriate in view of:</p> <p>(a) health and safety concerns;</p> <p>(b) damage to products as a result of their handling or detected after a product has been returned by a consumer;</p> <p>(c) fitness of the product for the purpose for which it is intended, taking into account, where applicable, Union and national law and technical standards;</p> <p>(d) refusal of products for donation, preparing for re-use or remanufacturing.</p>
<b>Justification</b>		

The prohibition of destruction of unsold goods should not be subordinated to a future delegated act that will simply delay a common sense decision and use precious resources better used for other developments under this policy. The current co-decision process is the best moment to discuss such a prohibition and the possible exemptions.

It is nonsense to restrict the non destruction of goods to consumer products. First the distinction between consumer & professional goods is not tight, second it does not make sense to allow the destruction of functional and compliant professional products.

Export of goods to ease their destruction should also be covered by the prohibition.

#### Article 20 Destruction of unsold consumer products point 4

Ref.	Commission proposal	EEB proposed amendments
	<p>When preparing a delegated act adopted pursuant to paragraph 3, the Commission shall:</p> <p>(a) assess the prevalence and environmental impact of the destruction of specific consumer products;</p> <p>(b) take into account the information disclosed by economic operators pursuant to paragraph 1;</p> <p>(c) carry out an impact assessment based on best available evidence and analyses, and on additional studies as necessary.</p> <p>The Commission shall consult the Ecodesign Forum referred to in Article 17, and take account of its views on possible prohibitions of destruction of unsold consumer products referred to in paragraph 3, prior to the preparation of the delegated acts setting out those prohibitions.</p>	<b>delete</b>
<b>Justification</b>		
<p>It seems a waste of time and resources to delay the ban on destruction of unsold goods and subordinate it to a future decision process requiring several years. There is no justification on destroying perfectly functional and compliant goods, apart the exemptions already mentioned in point 3</p>		

#### Article 20 Destruction of unsold consumer products point 5

Ref.	Commission proposal	EEB proposed amendments
	<p>Where unsold consumer products are destroyed under an exemption referred to in paragraph 3, second subparagraph, the responsible economic operator shall disclose on a freely accessible website or otherwise make publicly available:</p> <p>(a) the number of unsold consumer products destroyed;</p> <p>(b) the reasons for their destruction, referring to the applicable exemption;</p> <p>(c) the delivery of the products destroyed to recycling, energy recovery and disposal operations in accordance with the waste</p>	<p>Where unsold <del>consumer</del> products are destroyed under an exemption referred to in paragraph 3, second subparagraph, the responsible economic operator shall disclose on a freely accessible website or otherwise make publicly available:</p> <p>(a) the number of unsold <del>consumer</del> products destroyed;</p> <p>(b) the reasons for their destruction, referring to the applicable exemption;</p> <p>(c) the delivery of the products destroyed to recycling, energy recovery and disposal operations in accordance with the waste</p>

	<p>hierarchy as defined by Article 4 of Directive 2008/98/EC.</p> <p>The details and format for the disclosure of information provided in the implementing act adopted pursuant to paragraph 2 shall apply to the information to be disclosed pursuant to this paragraph, unless the delegated act adopted pursuant to paragraph 3 provides otherwise.</p>	<p>hierarchy as defined by Article 4 of Directive 2008/98/EC.</p> <p>The details and format for the disclosure of information provided in the implementing act adopted pursuant to paragraph 2 shall apply to the information to be disclosed pursuant to this paragraph, <del>unless the delegated act adopted pursuant to paragraph 3 provides otherwise.</del></p>
<b>Justification</b>		
<p>Justification:</p> <p>The prohibition to destroy functional products should not be limited to consumer goods only: there is no reason why a different status is to be set for professional goods.</p> <p>There is no need to refer to a future delegated act to take such a common sense measure to prohibit the destruction of functional and compliant goods.</p>		

#### Article 20 Destruction of unsold consumer products point 6

Ref.	Commission proposal	EEB proposed amendments
	<p>This Article shall not apply to SMEs.</p> <p>However, the Commission may, in the delegated acts adopted pursuant to paragraph 3, provide that the prohibition to destroy unsold consumer products referred to in paragraph 3 or the disclosure obligation referred to in paragraph 4 shall apply to:</p> <p>(a) medium-sized enterprises, where there is sufficient evidence that they account for a substantial proportion of unsold consumer products being destroyed;</p> <p>(b) microenterprises, small enterprises or medium-sized enterprises, where there is sufficient evidence that they may be used to circumvent the prohibition to destroy unsold consumer products referred to in paragraph 3 or the disclosure obligation referred to in paragraph 4.</p>	<p><b>Delete</b></p>
<b>Justification</b>		
<p>Justification:</p> <p>There is no reason why SMEs should be exempted from the prohibition to destroy functional and compliant products. It should be part of the assistance by national authorities to SMEs to help them find a solution, as referred to in art 19.</p> <p>In addition, exempting SMEs create major loophole risks if transactions are made with SMEs in order to derogate to the prohibition.</p>		

#### Article 69 Evaluation

Ref.	Commission proposal	EEB proposed amendments
	<p>No sooner than [8 years after the date of application of this Regulation], the Commission shall carry out an evaluation of</p>	<p>No <del>sooner</del> later than [8 6 years after the date of application of this Regulation], the Commission shall carry out an evaluation of</p>

	<p>this Regulation and of its contribution to the functioning of the internal market and the improvement of the environmental sustainability of products. The Commission shall present a report on the main findings to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions. Member States shall provide the Commission with the information necessary for the preparation of that report. Where the Commission finds it appropriate, the report shall be accompanied by a legislative proposal for amendment of the relevant provisions of this Regulation.</p>	<p>this Regulation and of its contribution to the functioning of the internal market and the improvement of the environmental sustainability of products. The Commission shall present a report on the main findings to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions. Member States shall provide the Commission with the information necessary for the preparation of that report. Where the Commission finds it appropriate, the report shall be accompanied by a legislative proposal for amendment of the relevant provisions of this Regulation.</p>
<b>Justification</b>		
<p>A no sooner formulation does not provide any visibility with regards timelines, it seems safer to start with no later than. In addition, 8 years of functioning may be too long to get a first evaluation of this new regulation, notably to check its effectiveness and efficiency. We suggest reducing it to 6 years - that is two Working Plans periods.</p>		

#### ANNEX I Product parameters new

Ref.	Commission proposal	EEB proposed amendments
		(r) the life cycle costs of the product, including societal costs, notably the impacts on human health, the environment and the risks of material supply shortages
<b>Justification</b>		
<p>It's important to include the life cycle societal costs of the products among the parameters to be taken into account to define the potential requirements under an EU legal act. This can notably guide the level of ambition of the requirements. Calculating societal costs has been discussed in the framework of the revision of the Ecodesign methodology (MEErP) to define improvement requirements of energy products, notably to capture material efficiency improvement potentials beyond energy bill savings</p>		

#### ANNEX II Procedure for defining performance requirements point 1

Ref.	Commission proposal	EEB proposed amendments
	<p>A technical, environmental and economic analysis shall select a number of representative models of the product or products in question on the market and identify the technical options for improving the product performance in relation to the parameters referred to in Annex I - in view of product-specific or horizontal requirements - taking into account the economic viability of the options and avoiding any significant increase of other life cycle environmental impacts, and significant loss of performance or of usefulness for consumers.</p> <p>The technical, environmental and economic analysis shall also identify, for the parameter under consideration, the best-performing</p>	<p>A technical, environmental and economic analysis shall select a number of representative models of the product or products in question on the market and identify the technical options for improving the product performance in relation to the parameters referred to in Annex I - in view of product-specific or horizontal requirements - taking into account the economic <del>viability</del> <b>cost</b> of the options <b>compared to the societal cost of the product in terms of human health, environmental damages and risk of supply shortages</b> and avoiding any significant increase of other life cycle environmental impacts, and significant loss of performance or of usefulness for consumers.</p>

<p>products and technologies available on the market.</p> <p>The performance of products available on international markets and benchmarks set in other countries' legislation shall be taken into consideration during the analysis referred to in the first subparagraph as well as when setting requirements.</p> <p>Based on this analysis, and taking into account economic and technical feasibility, including the availability of key resources and technologies, as well as the potential for improvement, levels or non-quantitative requirements shall be defined.</p> <p>Any concentration limit for substances as referred to in Annex I, point (f), shall be based on a thorough analysis of the sustainability of the substances and their identified alternatives, and shall not have significant adverse effects on human health or the environment. Any performance requirement on substances as referred to in Annex I, point (f), shall take into consideration existing chemical safety assessments performed by the relevant Union bodies for the substances concerned, as well as safe and sustainable by design criteria for chemicals and materials developed by the Commission. Proposed concentration limits shall also consider aspects of enforceability, such as analytical detection limits.</p> <p>Where relevant, the analysis referred to in the first subparagraph shall take into account the likely impacts of climate change on the product during its prospective lifetime, and the product's potential to improve climate resilience throughout its life cycle.</p> <p>A sensitivity analysis covering the relevant factors, such as the price of energy or other resources, the cost of raw materials and necessary technologies, production costs, discount rates, and, where appropriate, external environmental costs, including avoided greenhouse gas emissions, must be carried out.</p>	<p>The technical, environmental and economic analysis shall also identify, for the parameter under consideration, the best-performing products and technologies available on the market.</p> <p>The performance of products available on international markets and benchmarks set in other countries' legislation shall be taken into consideration during the analysis referred to in the first subparagraph as well as when setting requirements.</p> <p>Based on this analysis, and taking into account <b>the human health, environment and other societal costs of the product along its whole life cycle</b>, the economic and technical feasibility, including the availability of key resources and technologies, as well as the potential for improvement, <b>levels of performance</b> or non-quantitative requirements shall be defined. <b>The best performing products and technologies shall be reflected in the minimum requirements set for the ultimate ecodesign tiers according to a best performer approach</b></p> <p>Any concentration limit for substances as referred to in Annex I, point (f), shall be based on a thorough analysis of the sustainability of the substances and their identified alternatives, and shall not have significant adverse effects on human health or the environment. Any performance requirement on substances as referred to in Annex I, point (f), shall take into consideration existing chemical safety assessments performed by the relevant Union bodies for the substances concerned, as well as safe and sustainable by design criteria for chemicals and materials developed by the Commission. Proposed concentration limits shall also consider aspects of enforceability, such as analytical detection limits.</p> <p>Where relevant, the analysis referred to in the first subparagraph shall take into account the likely impacts of climate change on the product during its prospective lifetime, and the product's potential to improve climate resilience throughout its life cycle.</p> <p>A sensitivity analysis covering the relevant factors, such as the price of energy or other resources, the cost of raw materials and necessary technologies, production costs, discount rates, and, where appropriate, external environmental <b>and societal</b> costs,</p>
---	--

	including avoided greenhouse gas emissions, must be carried out.
<b>Justification</b>	
It's important to include the life cycle societal costs of the products among the parameters to be taken into account to define the potential requirements under a EU legal act. This can notably guide the level of ambition of the requirements. Calculating societal costs has been discussed in the framework of the revision of the Ecodesign methodology (MEErP) to define improvement requirements of energy products, notably to capture material efficiency improvement potentials beyond energy bill savings	

## Specific requirements on online marketplaces.

### Article 2 Definitions

Ref.	Commission proposal	EEB proposed amendments
	(39) 'making available on the market' means any supply of a product for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge;	(39) 'making available on the market' means any supply of a product for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge, <b>including through online marketplaces;</b>
<b>Justification</b>		
It is important that online marketplaces are clearly covered by the same responsibilities of bricks-and-mortar marketplaces. More and more consumers purchase products online with the expectation that products bought online comply with the same level of compliance of existing sustainability rules and that the actors involved in the sale of goods online are bound by the same responsibilities.		

### Article 2 Definitions

Ref.	Commission proposal	EEB proposed amendments
	(40) 'placing on the market' means the first making available of a product on the Union market	(40) 'placing on the market' means the first making available of a product on the Union market, <b>including through online marketplaces;</b>
<b>Justification</b>		
It is important that online marketplaces are clearly covered by the same responsibilities of bricks-and-mortar marketplaces. More and more consumers purchase products online with the expectation that products bought online comply with the same level of compliance of existing sustainability rules and that the actors involved in the sale of goods online are bound by the same responsibilities.		

### Articles 2 - Definitions

Ref.	Commission proposal	EEB proposed amendments
	(45) distributor' means any natural or legal person in the supply chain, other than the manufacturer or the importer, who makes a product available on the market;	(45) distributor' means any natural or legal person in the supply chain, other than the manufacturer or the importer, who makes a product available on the market, <b>including through online platform;</b>
<b>Justification</b>		
Justification:  With growing online sales and offer, it should be made clear that all forms of distribution are covered in the definition of distributor		



### Article 2 Definitions

Ref.	Commission proposal	EEB proposed amendments
	(44) 'importer' means any natural or legal person established in the Union who places a product from a third country on the Union market;	(44) 'importer' means any natural or legal, <b>including online marketplaces</b> , person established in the Union who places a product from a third country on the Union market;
<b>Justification</b>		
Online marketplaces perform many of the same functions as importers. To ensure that market surveillance authorities can carry out their responsibilities effectively and to avoid a gap in the enforcement system, it is important to include online marketplaces within the category of importer and definition for 'economic operator' against whom it is possible for market surveillance authorities to take enforcement measures. The definition must cover all products subject to sustainability requirements and not only those which go through fulfilment in the EU.		

### Article 2 Definitions

Ref.	Commission proposal	EEB proposed amendments
	(46) 'economic operator' means the manufacturer, the authorised representative, the importer, the distributor, the dealer and the fulfilment service provider;	(46) 'economic operator' means the manufacturer, the authorised representative, the importer, the distributor, the dealer, <b>and the fulfilment service provider and the online marketplace or any other natural or legal person who is subject to obligations in relation to the manufacture of products, making them available on the market in accordance with this Regulation;</b>
<b>Justification</b>		
Today's supply chains encompass a wide variety of economic operators who must all be subject to enforcement of EU sustainability legislation. Online marketplaces play an essential role in the supply chain: without their digital platform through which consumers find, compare, choose, pay and get delivered products, many products stemming from outside the EU would not get market access. It is therefore important to include them into this definition. Online marketplaces perform many of the same functions as importers and it is therefore important that market surveillance authorities can address enforcement measures against them.		

### Article 2 Definitions

Ref.	Commission proposal	EEB proposed amendments
	(55) 'online marketplace' means a provider of an intermediary service using software, including a website, part of a website or an application, that allows customers to conclude distance contracts with economic operators for the sale of products covered by delegated acts adopted pursuant to Article 4;	(55) 'online marketplace' means a provider of an intermediary service using software, including a website, part of a website or an application, <b>operated by or on behalf of a trader which that</b> allows customers to conclude distance contracts with <b>other traders economic operators for the sale of products covered</b> <del>by delegated acts adopted pursuant to Article 4;</del>
<b>Justification</b>		

The above-mentioned definition is too restrictive as it only focuses on the conclusion of distance contracts with 'economic operators'. However, the biggest part of non-compliant sales with EU legislation are related to third-party traders on online marketplaces. There are practices where someone sets up a web shop in the EU and purchases products only from other online marketplaces before sending them on to consumers (drop shipping). As online marketplaces are not defined as 'economic operators' this would be a legal loophole.

Moreover, it is important to include a broad definition for online marketplaces, including for platforms which do not directly facilitate the selling of goods, but platforms where suppliers can place advertisement social media services, (e.g., Instagram, TikTok) and platforms which offer comparison, advisory or reputational services. It is important as consumers could there be confronted with misleading advertisement for products in the scope of this Regulation and market surveillance authorities need adequate tools to intervene

### Articles 2 - Definitions

Ref.	Commission proposal	EEB proposed amendments
	(56) 'dealer' means a retailer or any other natural or legal person who offers products for sale, hire or hire purchase, or displays products to customers in the course of a commercial activity, whether or not in return for payment;	(56) 'dealer' means a retailer or any other natural or legal person who offers products for sale, hire or hire purchase, or displays products to customers in the course of a commercial activity, whether or not in return for payment; <b>including through online platform;</b>
<b>Justification</b>		
Justification: With growing online sales and offer, it should be made clear that all forms of distribution are covered in the definition of distributor		

### Article 29 Obligations of online marketplaces and online search engines point 1

Ref.	Commission proposal	EEB proposed amendments
	The cooperation referred to in Article 7(2) of Regulation (EU) 2019/1020 shall, with regard to online marketplaces and for the purposes of this Regulation, include in particular: (a) cooperating to ensure effective market surveillance measures, including by abstaining from putting in place obstacles to such measures; (b) informing the market surveillance authorities of any action taken; (c) establishing a regular and structured exchange of information on offers that have been removed on the basis of this Article by online marketplaces; (d) allowing online tools operated by market surveillance authorities to access their interfaces in order to identify non-compliant products;	The cooperation referred to in Article 7(2) of Regulation (EU) 2019/1020 shall, with regard to online marketplaces and for the purposes of this Regulation, include in particular: (a) cooperating to ensure effective market surveillance measures, including by abstaining from putting in place obstacles to such measures; (b) informing the market surveillance authorities of any action taken; (c) establishing a regular and structured exchange of information on offers that have been removed on the basis of this Article by online marketplaces; (d) allowing online tools operated by market surveillance authorities to access their

	<p>(e) upon request of the market surveillance authorities, when online marketplaces or online sellers have put in place technical obstacles to the extraction of data from their online interfaces, allowing those authorities to scrape such data for product compliance purposes based on the identification parameters provided by the requesting market surveillance authorities.</p>	<p>interfaces in order to identify non-compliant products; (e) upon request of the market surveillance authorities, when online marketplaces or online sellers have put in place technical obstacles to the extraction of data from their online interfaces, allowing those authorities to scrape such data for product compliance purposes based on the identification parameters provided by the requesting market surveillance authorities.</p> <p><b>(f) If no manufacturer or importer is established in the Union, online marketplaces shall comply with the obligation set out in this framework for products and commodities for which they facilitate the sale. This does not prevent the online marketplace from seeking redress with the seller for any loss that the online marketplace suffers if the product from that seller is non-compliant according to this regulation</b></p>
<b>Justification</b>		
<p>In view of growing online sales and advertising, online market places should get the same responsibility as other economic actors, being clearly an economic actor themselves. Online market places should make sure that what they offer or advertise is compliant with Union laws. They should not get a special regime and be less liable and responsible than other economic actors. This would not only represent an unfair competition, but also creating a clear risk of loophole for placing more easily not compliant products on the market.</p>		

## 4. Contacts

Jean Pierre Schweitzer: [jean-pierre.schweitzer@eeb.org](mailto:jean-pierre.schweitzer@eeb.org)

Stephane Arditi: [stephane.arditi@eeb.org](mailto:stephane.arditi@eeb.org)



**European Environmental Bureau**

• Rue des Deux Églises 14-16, 1000 Brussels, Belgium • ☎ +32 228 91090 • [eeb@eeb.org](mailto:eeb@eeb.org) • [www.eeb.org](http://www.eeb.org)

*International non-profit association • Association internationale sans but lucratif (AISBL) • EC register for interest representatives:  
ID number: 06798511314-27 • BCE ID number: 0415.814.848 • RPM Tribunal de l'entreprise francophone de Bruxelles*