



## Deloitte Legal Newsflash Climate & Sustainability

### Making sustainable products the norm in the EU

In our society today, we use a variety of products often without reflecting on their impact on the environment. Products can use up a significant amount of materials, energy and other resources and can cause significant environmental impacts throughout their lifecycle, from the extraction of raw materials, to manufacture, transport, use and end of life.

To both reduce products' environmental and climate impact and make sustainable products the norm on the EU market, the Commission unveiled its Proposal for a Regulation establishing ecodesign requirements for sustainable products on 30 March 2022 (the "ESPR"). It was first referred to in March 2020 as part of the wider EU Circular Economy Action Plan and the European Sustainability Initiative (or "SPI"), a package which also comprises a communication on product sustainability, on sustainable textiles, a proposal for a Directive on consumer empowerment and a proposal for the revision of the Regulation on construction products.

The ESPR builds further on the existing Ecodesign Directive, which sets ecodesign requirements at EU level for energy-related products. The proposal wants to tackle the 'take-make-use-dispose' model and shift towards a circular economy model by, inter alia, (further) regulating a product's design stage.

Circular economy policies are not new in the EU, however the existing rules are mainly focused on a product's end-of-life phase. The Commission wants to shift this focus to the entire lifecycle of a product.

While there are already sectoral rules in place to make products greener and more energy efficient, according to the Commission, a broader framework for setting harmonised rules on environmental sustainability is needed to accelerate the transition to a climate neutral, resource-efficient and circular economy. That is why the ESPR intends to set a framework for product-level

rules to be adopted in a second stage, through delegated acts, per product or for product groups where appropriate.

The ESPR covers almost any physical good placed on the market, or put into service. Only a few sectors, including food, feed and medicinal products, are exempt. Once the rules are adopted, by way of delegated acts, they will apply equally to all products placed on the EU market, regardless of whether they are produced in the EU or imported.

### **Making products greener, circular and energy efficient through ecodesign requirements**

First, the delegated acts to be adopted should include rules to make products more durable, reliable, reusable, upgradable, repairable, easier to maintain and refurbish, and energy and resource efficient. This might e.g. entail a duty to comply with rules on minimum recycling content or a shift towards a product-as-a-service business model.

### **Information requirements – Digital Product Passports**

Second, the ESPR will enable information requirements to be set for products to learn more about their impact and to allow for more sustainable choices along the whole value chain. This information will reach the consumer via the product itself, the product's packaging, the product label, the user manual, etc. Importantly, Digital Product Passports will be rolled out for all regulated products. The information to be included will be determined when preparing product-specific rules. It may include information such as a product's environmental footprint and its recycled content. The information can take the form of 'classes of performance', e.g. ranging from 'A to G' – to facilitate comparison between products, possibly in the form of a label, similar to the current EU Energy Label. Access will be granted on a 'need-to-know' basis, meaning that different persons will have access to different sets of information on the basis of a decentralised data system set up and maintained by economic operators.

### **Preventing destruction of unsold consumer products**

Third, the ESPR introduces transparency requirements related to the destruction of unsold goods. These requirements entail being upfront about the quantity of products disposed of and the reason for disposal. The requirements apply at every stage of the value chain: from manufacturers to online marketplaces. The Commission may adopt delegated acts banning the destruction of unsold goods altogether. The aim is to reduce waste generation, disincentivise overproduction and provide a harmonised set of rules to replace those which some Member States have adopted in this area.

### **Set mandatory green public procurement criteria**

Finally, the ESPR enables mandatory green public procurement criteria to be set, making use of contracting authorities' economic power. When establishing these requirements for public contracts, the Commission will take into account, inter alia, the need to ensure sufficient demand for more environmentally sustainable products and the economic feasibility for contracting authorities to buy more environmentally sustainable products, without entailing disproportionate costs.

### **Impact on industries and consumers**

The ESPR explicitly leaves many details to be defined in future delegated acts. The shape of these acts has the potential to become a game-changer for many businesses. While selected product categories have been prioritised, and only a few are currently excluded (e.g. food), the scope of the requirements is expected to expand over time.

Businesses may need to dramatically reform information management systems in their supply networks. They may need to gather data which was previously

overlooked or untracked. Depending on the supply network, businesses may face difficulties in securing compliance from suppliers.

According to the Commission, the Proposal will provide a level playing field for businesses aiming to sell their products on the EU market. Harmonised rules should ensure that diverging national sustainability requirements do not result in market fragmentation, reducing compliance costs and administrative burdens for those companies operating across the EU. Finally, strengthened enforcement should protect compliant businesses while ensuring that environmental aims are met.

At the heart of the new package, lies the consumer and a motivation of empowering and enabling sustainable purchasing through improved information and transparency. The costs for manufacturing regulated products are expected to increase and some may be passed on to consumers. The Commission estimates, however, that these increased costs will be offset by financial savings over the longer term due to improved product performance and longer functionality, as well as higher value at the end of life. In any event, consumers will be encouraged to better distinguish between businesses that are truly sustainable and those who are not. Businesses may therefore see the changes in consumer demands accelerate and may find a need to adjust value propositions to cater accordingly.

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