



European Tech Alliance

Position on Ecodesign for Sustainable Products Regulation (ESPR)

November 2022

Foreword

The European Tech Alliance (EUTA) supports sustainable environmental consumption and the establishment of harmonised and European rules to this end. We endorse the objectives of the Ecodesign for Sustainable Products Regulation (ESPR) which will set performance requirements for product groups, including on their durability, reusability, upgradeability, and reparability.

We want to encourage the consumption of sustainable and circular products. We believe that ESPR should acknowledge the role of each actor in the value chain, adopt tailored rules specific to the products' life cycle, and consult all involved parties to shape the Digital Product Passports. Further clarification would also be welcomed, as well as alignment with other EU rules.

As the co-legislators are defining their positions on the ESPR, EUTA would respectfully like to offer a set of recommendations.

Acknowledge the role of each actor in the value chain

To have a sustainable consumption pattern that lasts, all actors of the value chain must be involved according to their roles. As highlighted by the Digital Services Act (DSA, [Regulation 2022/2065](#)), traders and sellers are the best placed to provide relevant information to consumers, and online marketplaces should design online interfaces in a way that enable traders to comply with their obligations regarding pre-contractual information, compliance, and product safety information.

The ESPR should clarify that online marketplaces acting as mere intermediaries are not captured by the economic operators' definition. Simultaneously, the ESPR should avoid placing disproportionately demanding information requirements on such marketplaces. For example, it would be excessively burdensome for online marketplaces acting as mere intermediaries to ensure that traders provide the required information for each and every product sold online, and to systematically verify certain aspects of the information provided by sellers. It would also risk constituting a general monitoring obligation, which the DSA has ruled out in favour of other checks and robust notice and action systems.

The new rules should also specify that the rights and responsibilities regarding the Digital



Product Passport (DPP) should be based on the economic operator who has direct access to the respective information. The manufacturer should be required to provide the product information to the actors who process their products (e.g. traders' refurbished products).

Policymakers should also keep in mind that the physical access of fulfilment service providers is not comparable to the direct access that economic operators have to their products. In general, and in alignment with the Market Surveillance Regulation (Regulation (EU) 2019/1020), fulfilment service providers should only be responsible when there is no other economic operator in the EU.

Adopt tailored rules specific to products' life cycle (e.g., new, refurbished, or second-hand goods)

We welcome the ESPR's focus on regulating products which are placed on the EU Market for the first time. The regulation's goal is to promote the circularity of products, it is therefore important that it does not impede the trade of refurbished and second-hand products, which have already entered the market as new products before.

ESPR should take the specificities of refurbishment and second-hand sectors into account when specifying the rules applicable to these sectors. For instance, EU policymakers should acknowledge that the supply chains for used goods (e.g., refurbished goods) are more complex than traditional batch-productions for new products. The new rules should recognise the different contractual relationships with the manufacturer that each channel has. It would be disproportionate to apply the same obligations for new products to refurbished goods.

When it comes to second-hand goods, we welcome the Commission's proposal to not include consumer-to-consumer (C2C) transactions in the ESPR scope. Consumers are in no position to fulfil the requirements laid down in this text. If C2C were to be included, it would discourage individuals from giving a second life to their items and create barriers to the development of the re-use and the circular economy market.

However, we understand that in case a product is imported into the EU from a third country, thereby entering the Union market for the first time, certain requirements for information on economic operators could also be applicable to second-hand trade (Article 30). In this context, it would be important to provide more flexibility for second-hand products for which the seller may not have all the required information, in order to avoid the undesirable side-effect of losing out on a number of second-hand transactions.

To enable the transition to a circular Europe, it is important that incentives for new products do not hinder or unintentionally harm second-hand trade. While the EUTA acknowledges that intentionally disfavours second-hand goods is not the objective of the proposal, it is nonetheless important that consumers are not led to believe that new products are more sustainable than second-hand ones. Therefore, if Member States adopt incentives to reward products in line with Article 57, which targets the two most highly populated classes of performance, they should simultaneously make sure to avoid any negative impacts on the circular economy caused by stifling resale and reuse.



Adopt a multi-stakeholder and pragmatic approach to shape the Digital Product Passports

We support the Commission's suggestion to create a "Digital Product Passport" (DPP) to improve consumers' access to sustainable and circular products and boost their supply. We would recommend that the Commission consult with all concerned stakeholders including marketplaces and retailers for the issuance of specific delegated acts.

The consultations will allow the Commission to build upon the expertise and know-how of the industry, making the DPP effective and operational. It will ensure an understanding of supply chains and the (non)availability of information before issuing delegated acts on specific product groups. The Commission will be able to align what is expected of businesses and what is practically possible, allowing companies to act on their commitments within a realistic timeframe.

Set clear concepts

The ESPR would benefit from clarifying several concepts that are left too broad or open to interpretation.

Further clarification would be welcomed regarding the cooperation between online marketplaces and market surveillance authorities. The co-legislators should clarify the ability of market surveillance authorities to access the interfaces of online marketplaces, as well as the conditions of access (e.g., scope and purpose). The current text does not reflect on the practical implications it would have on businesses, such as significantly slowing down the reactivity of websites.

When it comes to specific concepts, the co-legislators should particularly clarify the concepts of:

- "Refurbishment" (Article 2 (18)): The proposed definition suggests that it may include a modification of the product. The co-legislators should clearly differentiate refurbishment from remanufacturing, and acknowledge that refurbishment does not involve changes influencing safety, original performance, purpose or type of product.
- "Unsold consumer products" (Article 2 (37)): In its current formulation, it could be interpreted as full-value products that have either not rotated or are no longer profitable to sell. The co-legislators should provide clear guidelines on who should make the decision to dispose of an unsold consumer product, as well as on the disclosure requirements in Article 20, for example, with regards to the format and frequency of reporting.
- "Dealer" (Article 2 (56)): The concept of "dealer" is confusing, especially in relation to the concept of "trader" used under the Digital Services Act and General Product Safety Directive. We are also concerned that the concept of "dealer" would leave open the possibility to include C2C transactions in the scope. Such an interpretation, however, would not align with ESPR's definition of "online marketplaces" under Article 2(55), which focuses on commercial activities, meaning transactions from business traders to consumers. To avoid any confusion, the co-legislators should replace the concept of



“dealer” with the concept of “trader” as defined in Art. 2 (f) of the DSA, which would further clarify that C2C transactions are not covered under the ESPR.

Align and be consistent with other EU rules

To avoid doubled responsibilities and confusion for consumers and authorities as well as unnecessary costs for businesses, it is key to ensure consistency between the ESPR and other EU legislative instruments, including the Digital Services Act (DSA, [Regulation 2022/2065](#)), the General Product Safety Regulation (GPSR, [COM\(2021\)0346](#)) or Market Surveillance Regulation ([Regulation \(EU\) 2019/1020](#)).

For instance, the DSA is very clear in its ban of a general monitoring obligation for intermediary service providers. Policymakers should reaffirm this principle and acknowledge the role of each actor in the value chain. Intermediaries should not be required to run sample testing or random checks, nor be made liable for traders’ information.

ESPR should also align with the GPSR. To enable a swift removal, authorities must flag precisely non-compliant products by providing a URL and other identifiers. The current proposal on market surveillance authorities’ power to require the removal of non-compliant products is too broad and could lead to the removal of legitimate goods (Recital 60).

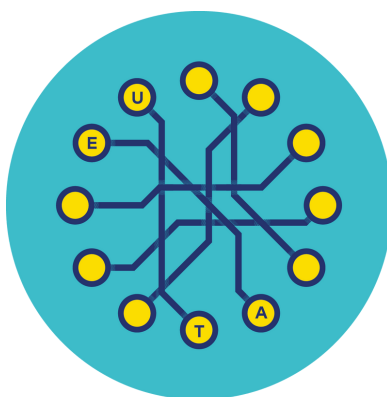
Don’t start from scratch and build on existing national good practices

The EUTA welcomes a harmonised and EU approach to define standards on the environmental performance of products. All companies, whether SMEs, scale-ups, or large enterprises, prefer to have one legislative framework rather than 27. However, we would recommend building on the success of existing national standards, rather than creating new ones from scratch.

For instance, in France, on energy consumption, repairability, or environmental footprint, methodologies have been designed for a number of categories of products through collaborative work between experts and stakeholders, and applied by manufacturers all over the globe, not without cost of time and financial resources. This work is ongoing to expand this approach on other categories of products.

The European Tech Alliance truly believes that, to achieve the EU’s sustainability objectives, both industry and consumers need to be onboard. With this paper, we wish to contribute meaningfully and constructively to the discussions on the ESPR proposal to ensure that the final legislation contributes to Europe’s transition to a sustainable and circular economy.





European Tech Alliance

About the EUTA

The EUTA gathers major European digital champions and scaleups successfully built across Europe, with a total of 36 companies from 16 European countries.

Our objective is to create a better future for Europe through technology and based on shared EU values: we aim to contribute to our local economies and build a sustainable, greener, innovative and inclusive Europe for future generations.

With the right legal framework and policies that enable innovation and fair competition for all players, Europe can continue to prosper and produce more global European digital champions in the future.

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