



**Independent
Retail Europe**

**PROPOSAL FOR A REGULATION ON
ESTABLISHING A FRAMEWORK FOR SETTING
ECODESIGN REQUIREMENTS**

COMMENTS OF INDEPENDENT RETAIL EUROPE

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INTRODUCTION

Independent Retail Europe members believe that the new process to determine ecodesign requirements truly has the potential to change the way products will be consumed in future and that retail will play a pivotal role in this transition to greener products. Retailers' in-store advisors and experts provide an essential added value to consumers, as they:

1. supply consumers with important information on the products, allowing them to make informed choices;
2. create the all-important link to manufacturers to identify problems and remediate to them as efficiently as possible;
3. provide additional services linked to the products, such as extended warranties and insurances;
4. supply innovative services such as repair services - including the printing of spare parts through 3D printing technologies - as well as renting services, the supply of second hand and refurbished products, etc.

There is room for improvement of the proposal for an Ecodesign Regulation for it to be more efficient and thereby better achieve its objectives. First of all, the Regulation should recognise the added value of retailers in the transition to more sustainable consumption patterns and ensure that through the delegated acts the role of retailers is systematically integrated in the design phase, to anticipate their role in repair, refurbishment, or reuse. This will require manufacturers to share more information with retailers (for example for repair and the availability/provision of spare parts). Secondly, the role of each actor in the supply chain should be clear and where possible in line with the EU acquis with regard to operators' responsibilities. Information requirements to the customer should remain the responsibility of manufacturers, who know their products best and can assess what is required for their safe and sustainable use. Retailers can only advise customers based on complete and accurate information provided by the manufacturer on the products. Finally, the right representation (labelling) of these information requirements will play a major role in nudging consumers towards opting for greener products and solutions: They will need to be transparent and concise, so as to give the customer the necessary information about the environmental performance of the product at first glance.

More detailed suggestions for the improvement of the proposal are contained in the sections below.

DEFINITIONS (ARTICLE 2)

The following terms are in our view still unclear at this stage, and will require clarification:

Article 2 (41) - "Putting into service": From the definition given it is not clear how exactly this differs from "making available". If this terminology applies to a situation where an economic operator rents the product to a dealer, who, in the absence of physical packaging, would have to display the required labels, then this needs to be clarified.

Article 2 (56) defines a “dealer” as 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”.

In this context, it would be important to further specify the following related terms:

- **Display:** Do only online shops and shelves in physical stores qualify as display or also for example the presentation of products by online influencers?
- **Commercial activity:** Does a commercial activity only involve the sale of goods in a professional context or also the private sale, from consumer to consumer?

COMMENTS ON ECO DESIGN REQUIREMENTS

1. General remark with respect to the process – Prioritisation and planning (article 16)

We welcome the fact that the Commission has chosen a Regulation as the instrument to address ecodesign, as it is essential that all requirements are applied uniformly across the EU’s internal market.

We also highly welcome the fact that the Commission wants to look at the potential for improving product features without creating disproportionate costs, and we support the approach of the Commission to proceed by product categories. This will allow to prioritise those product groups where progress is most needed. It is also very positive that the Commission intends to conduct an impact assessment for every new product category rule, as we believe that every new ecodesign requirement should rely on a sound scientific basis.

The success of the existing eco-design process is in particular based on its thorough and science-based assessment of product categories, the relevant market situation and potential for performance improvements. Such preparatory work is essential for ensuring advancements in sustainability, availability of products for consumers and continued competition on the EU market. We are therefore in favour of utilizing the successful existing eco-design process which prescribes an initial preparatory study on the products categories before commencing the impact assessment.

Finally, it is not clear to us why the “*volume of sales and trade of the product within the Union*” (Art.16 1.(b)) should be considered as a decisive factor for the prioritization, particularly since a product with an already high environmental efficiency could very well generate high sales volumes as a result. The Commission should rather prioritise those products where there is clear room for improvement in terms of their environmental performance.

2. Ecodesign requirements (article 5)

Article 5 (1): While the design of products mostly concerns manufacturers, we believe that retail, as the consumer-facing industry, should play a pivotal role in the Ecodesign Regulation and the transition to more sustainable products. When consumers face problems with their products they turn to retailers for solutions. Therefore, the retail sector needs to be included in the thinking and elaboration

process as the facilitator of this transition. We see an important role for retail with respect to most of the ecodesign requirements, such as:

- (a) Durability, energy use, energy efficiency: Retail will play an important advisory role for consumers, nudging them towards more resource-efficient models.
- (b) Reliability: Retail will be the link between consumers and manufacturers.
- (c) Reusability: Retailers are rolling out and will continue to roll out new business models such as ‘product sharing’ and ‘product as a service’ models.
- (d) Reparability: Retailers are creating important repair infrastructure across the EU, and are using new technologies such as 3D printing and IoT.

We welcome that the Commission is recognising the role of retail, by including retailers into the Ecodesign Forum. We find it very important that the cooperation between manufacturers and retailers is enhanced, and that this cooperation is enshrined into the working logic when determining future ecodesign requirements through Commission delegated acts. Some concrete examples of actions would be to require manufacturers to provide retailers with transparent access to information on products, certified repair structures and spare parts manufacturing, in order to offer consumers solutions that are close to the customer. The importance of the role of retail, including in advising the consumer, should be recognised in article 5 4. (a) as part of the elements to be considered when preparing ecodesign requirements.

Article 5 (5): We welcome that the Commission requires to keep products affordable (art. 5 5. (c)), to ensure that there are no disproportionate effects on SMEs (art 55. (d)), and to ensure that the functionality of the product is maintained (art 5 5. (a)).

Article 5 (6) provides the following formulation: *“The Commission shall require supply chain actors to:*

- (a) 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;*
- (b) allow, in the absence of information referred to in point (a), manufacturers to assess their supplies or services in order to verify compliance with ecodesign requirements and give access to relevant documents or facilities to those manufacturers;*
- (c) enable notified bodies and competent national authorities to verify the correctness of information related to their activities and relevant for verifying compliance with ecodesign requirements.”*

We consider it necessary to clarify in the text that in this case, this information concerns technical compliance requirements that suppliers need to provide to the manufacturers, to enable the latter to comply with their ecodesign requirements. It should not be interpreted as a verification of information requirements of distributors or dealers, such as retailers, to manufacturers or authorities, as this would make no sense in this case. Distributors and dealers cannot provide this kind of technical information with regard to products if it is not beforehand provided by the manufacturer of the product.

- We welcome the Commission’s overall approach to use a Regulation as legislative tool in order to have a harmonised approach. We also welcome the approach by product group but would favour an approach that targets products most in need for improvement.
- The determination of ecodesign requirements should always follow a logic that includes retail, as the consumer-facing industry, into the process. Retailers have the important role of advising the consumer, but also of providing services such as repair, spare parts, and of offering innovative models such as ‘product as a service’.
- In article 5 (6) it is important to clarify that the information requirements are directed at suppliers and not retailers, as the formulation is not clear in that sense.

COMMENTS ON INFORMATION REQUIREMENTS

1. Information requirements (article 7)

Article 7 (6): We welcome the fact that the Commission allows for new ways to provide the consumer with clear and recognisable information, such as the “digital product passport” on the sustainability features of the product. Large amounts of information on the product or its packaging should be avoided and limited to graphic information and logos (whilst avoiding a proliferation of logos). More ample information should be included either in a digital product passport, a user manual or on a freely available website. Furthermore, it is important that manufacturers clearly and consistently indicate where this information can be found with respect to a particular product.

2. Product passport (article 8)

We welcome the introduction of a (digital) product passport. We believe that it will simplify compliance checks, provide for a harmonised approach to transmit information and transparency for consumers. We believe that the product passport should be a digital tool and a flexible tool: It is important that data can be updated rapidly, that it is interoperable with other platforms and other systems in 3rd countries, so that manufacturers from those countries can make use of it. Furthermore, the product passport should not enable manufacturers to shift responsibilities to retailers: Essential consumer information can additionally be uploaded to the digital product passport. Manufacturers need to ensure that essential consumer information always remains accessible to all consumers. The digital product passport should not replace mandatory physical consumer information as long as there is no workable solution on how to make digital information accessible to non-connected consumers. Lastly, the digital product passport should also provide access to the already existing EU databases such as ECHA, EPREL and Access2Markets. This would improve the visibility of existing databases and avoid creation of new databases that would contain the same information.

3. General requirements for the product passport (article 9)

Article 9 (3) includes a formulation that *“the economic operator placing the product on the market shall provide dealers with a digital copy of the data carrier to allow the dealer to make it accessible to customers where they cannot physically access the product”*. In the case where customers cannot access the product, as a result of it being sold through an online shop, we agree that the manufacturer

should provide the retailer with a digital copy of the data carrier (e.g. a QR code) in a format that is convenient for the retailer to display the information concisely on a website.

Moreover, in the case of lack of access to the information for the consumer in a physical store (for example in the case of showrooms for large electronic appliances or furniture, where no packaging is present), the data carrier could be made easily accessible by the dealer (e.g. through a printed sign positioned on or close to the product), which has to be provided by the manufacturer.

4. Labels (article 14)

Article 14 (3): The proposal states that *“for energy-related products, where information on a relevant product parameter, including on classes of performance referred to in Article 7(4), cannot be incorporated in the energy label established pursuant to Regulation (EU) 2017/1369, the Commission, after assessing the best way to communicate about this particular information, may, if appropriate, require the establishment of a label in accordance with this Regulation.”* While we understand the need for clearly distinguishable labels, we believe that it is important to limit the proliferation of too much consumer information on the packaging, including labels. A way should be found to integrate the energy label with other criteria, either by merging certain aspects into more simplified sustainability information, or through a visual integration of these elements (for example, into the existing energy label) that keeps the amount of information provided to the consumer limited to the absolutely necessary. It is very important that the product does not end up with too many labels, as this will lead to the consumer not being able to process the information at all.

- ➔ **The information requirements should be clear and concise: Ecodesign information on the product or its packaging should be limited to graphic information and logos. The proliferation of logos on the packaging will confuse consumers and needs to be avoided.**
- ➔ **We welcome the idea of a digital product passport: It should be a flexible tool that can be updated rapidly and is interoperable with other platforms.**
- ➔ **The information of a digital product passport should not shift responsibilities: The responsibility to provide the information necessary for the consumer to understand the performance should be assumed by the manufacturer together with the product.**

5. Obligations of the distributor (article 24)

We agree that distributors have a role to play, commensurate to their role in the chain, in the verification of conformity to remove non-compliant products from the market and inform authorities about this non-conformity – just as is the case under product safety legislation.

It would be confusing and inefficient for distributors and dealers to have to operate in a different manner with regard to product safety and eco-design information. Applying the same rules in this proposal as for any other product safety legislation will strongly enhance efficiency of the reporting processes for retailers, and enhance compliance by manufacturers. We therefore welcome that the Commission – rightly – builds distributors’ obligations on the model used for product safety legislation. However, distributors’ obligations under this proposal are not fully coherent with the same obligations under the recent [General Product Safety Regulation \(GPSR\)](#). **We therefore call on EU policy makers to ensure legal coherence, through a full alignment of these distributors’ obligations (article 24) on the model provided by the GPSR proposal (article 11).**

For example:

- It is not clear what is meant by the distributor has “*reason to believe*” that a product is incompliant in article 24 (3) and 24 (4). Here, the GPSR (article 11) offers a much clearer formulation that should be used as a model in this proposal (though the addition of the words “*on the basis of the information in their possession*”).
- Article 24 (1) should be removed, as the formulation of “*due care*” is not clear, and opens a door to diverging interpretations. Article 24 (3) (second sentence) already clearly defines what the ‘due care’ obligations of the distributor are (as in article 11(2) of the GPSR).
- The reporting obligation (article 24 (3) and (4)) should be harmonized with the same reporting obligations under the GPSR (article 11 (3) and (4)). In case distributors have concerns about the conformity of a product, they should also inform the manufacturers/importers and the market surveillance authorities, as foreseen by the GPSR.
- In Article 24 (3) the distributor shall not make non-compliant product “*available on the market until the product has been brought into conformity or the manufacturer complies.*” This formulation is not legally clear as it could be interpreted as making the distributor primarily responsible for bringing the product into conformity, while the main responsibility actually lies with the manufacturer. The responsibility to produce safe products should not be shifted from the manufacturer to the retailer. We therefore consider that article 24(3) should use the same wording as the one used in article 11(3) of the GPSR.

- ➔ **The proposal should provide legal coherence on manufacturers’ and distributors’/dealers’ obligations: it should fully align the wording of distributors obligations (article 24) with the one used for distributors obligations (article 11) of the GPSR.**
- ➔ **The proposal should not shift the responsibilities of the manufacturers on the distributors/dealers.**

6. Obligation of the dealers (article 25)

Article 25 (3) (a): The Regulation will require dealers to “*display to customers, in a visible manner, including for online distance selling, labels provided in accordance with article 26 (2) or (3)*”. It is important to remember that –except when products have to be relabelled due to introduction of new legislation- labels are fixed on the product by the manufacturer and that retailers do not fix any labels on products. Retailers can display labels in their shops and online. It is however extremely important that in those cases manufacturers are required to transmit these labels to retailers, provide clear guidance as to their use, and that they do so in a timely fashion.

Article 25 (3) (c): As mentioned above, the labelling of a product is the exclusive responsibility of the manufacturer. Retailers will never modify labelling features of the product. As retailers may use their own information, inscription and logos as part of their store concepts, it should be clarified what would be considered as “misleading or confusing” the consumer.

7. Obligations related to labels (article 26)

Article 26 (2): The Commission requires that “*the economic operator placing the product on the market or putting it into service shall deliver printed labels or digital copies of the label to the dealer free of charge, promptly and in any event within 5 working days of the dealer’s request.*” Giving this option to the manufacturers will certainly cause considerable prejudice to retailers and has to be remediated. As a result of this rule, the retailer may have to relabel an entire batch of articles, at their own cost and through no fault of their own. Given that this Regulation will apply to a wide range of products, retailers should always be given a choice of requiring manufacturers to rapidly provide the retailer with the lacking or right label, asking manufacturers to come and exchange the products for compliant products, or being able to return the products to the manufacturer against an exchange for compliant goods or refund.

8. Obligation to provide the batch number for online sales (article 30).

Article 30 (1) (c): The obligation under article 30 (c) to provide for online sales the batch numbers, serial number or any other product identification at the moment of the offer is in practice unworkable for economic operators due to the way the supply chain works and could mislead consumers.

Indeed, such an obligation:

- constitutes an unjustified burden for online/distance sales – as there is no similar obligation for offline sales, as offline retailers are not obliged to indicate the batch or serial number of the product in store.
- ignores the way supply chains are organised: Online retailers have limited stocks. Many products on offer online are actually not available in the warehouses/shops of the retailers. Online retailers therefore cannot know the batch or other identification numbers of the products before receiving them.
- is technically burdensome: for online stores, indicating the batch or other identification number would require a new offer to be placed online every time a new batch or series is sold, requiring a separate pop-up window for every single consumer browsing online. Moreover, it cannot be determined before shipping the sale from which batch or series the product bought by the consumer originates.
- will create barriers to innovation, preventing new market entrants or smaller players from launching new retail systems. For instance, in the case of drop-shipping, the product is directly shipped by the manufacturer to the consumer. Hence, the retailer does not have access to the batch or other identification number.

A similar obligation was proposed as part of the General Product Safety Regulation. The EU retail sector, namely [Ecommerce Europe](#), [EuroCommerce](#), [Independent Retail Europe](#) and [SMEunited](#) issued a joint industry statement clearly explaining that such an obligation is impractical and unduly burdens economic operators.

➔ **Manufacturers should be required to remediate to situations of incompliant products rapidly.**

- ➔ **The proposal should be clearer in pointing out that the display of logos is the exclusive responsibility of the manufacturer. Where a product is incompliant, the manufacturer should give the retailer the choice of receiving the missing information, getting the manufacturer to come and replace the products by compliant products, or returning the incompliant batch.**
- ➔ **The obligation to indicate the batch/serial number or any other product identifier for online sales should be removed as it is unworkable in practice.**

9. Destruction of unsold consumer goods (article 20)

Article 20 (3): We welcome the exemptions foreseen for the destruction of unsold goods, such as for health and safety concerns, but also the refusal of products for donations, as they ensure that retailers are not punished for situations that are of no fault of their own. We believe that the Regulation should also account for situations where the tax for donation is disproportionate, as it is the case in the EU, such as in Germany where VAT is still charged for donations in many cases. The destruction of goods should not be more economically attractive than donations.

Article 20 (5): While we do agree that companies should inform authorities on how they complied with the requirements of exemption they fall into, and that displaying this information on a public website serves no purpose. No company wants to destroy unsold goods as this leads to economic loss.

Article 20 (6): We welcome the exemption for SMEs from the provisions on the destruction of unsold goods. Administrative burden via additional reporting requirements should be limited to what is necessary. Reporting requirements for larger operators should be sufficient in order to identify whether there is a structural occurrence of destruction in a specific product category.

10. Timeline

We believe that it is absolutely essential to provide for sufficient transition time (2 years) for every new ecodesign requirement that the Commission implements by delegated act. Experiences from other legislations such as, for example, the Single Use Plastic Directive, have shown that insufficient transition periods can be counter-productive because importers, distributors or retailers do not have sufficient time to clear their stocks. This is likely to lead to the destruction of unsold goods if no longer compliant and thereby ending up causing more environmental damage than if the products were sold.

- ➔ **The Regulation should account for the situation where unsold goods are destroyed as a result of high tax levels for donations, as we consider this as unjustified.**
- ➔ **We believe that companies should track the destruction of their unsold goods. However, we do not see the utility of posting this information online, publically.**
- ➔ **We believe that companies should be given sufficient time, at least a period of two years, to comply with new delegated acts, to avoid having to destroy incompliant products for no reason.**

*Established in 1963, **Independent Retail Europe** (formerly UGAL – the Union of groups of independent retailers of Europe) is the European association that acts as an umbrella organisation for groups of independent retailers in the food and non-food sectors.*

Independent Retail Europe represents retail groups characterised by the provision of a support network to independent SME retail entrepreneurs; joint purchasing of goods and services to attain efficiencies and economies of scale, as well as respect for the independent character of the individual retailer. Our members are groups of independent retailers, associations representing them as well as wider service organizations built to support independent retailers.

Independent Retail Europe represents 23 groups and their over 403.900 independent retailers, who manage more than 759.000 sales outlets, with a combined retail turnover of more than 1,314 billion euros and generating a combined wholesale turnover of 484 billion euros. This represents a total employment of more than 6.620.000 persons.

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