Position paper

Ecodesign for Sustainable Products Regulation (ESPR)

Analysis of the final text

Brussels, April 2024

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ESPR in a nutshell

Negotiations on the EU Ecodesign for Sustainable Products Regulation (ESPR)[1] have concluded – activating a new era for sustainable products. More products will be covered by ambitious ecodesign rules, pushing the most polluting goods off the market and incentivising manufacturers to prioritise the environment.

The proposal for the ESPR was unprecedented – aiming to make all products sustainable by default. This new regulation establishes a comprehensive ecodesign framework, giving the European Commission the authority to implement stricter **sustainability requirements** across **various product categories.**

These requirements generally fall into two categories:

- **Performance requirements**, e.g. durability, reusability, repairability, energy and resource efficiency, recycled content, and the presence of substances of concern.
- **Information requirements,** the ESPR mandates transparency through the creation of an EU "**digital product passport**"(DPP) for products and the publication and disclosure of certain information.

The ESPR will cover a wide range of products. The European Commission will first focus on setting stricter sustainability requirements for categories with the biggest environmental impact, including:

- **Intermediate products**, e.g. iron, steel and aluminium, lubricants, and chemicals.
- **Products**, e.g. textiles (notably garments and footwear), furniture (including mattresses), tyres, detergents, paints, energy-related products, and ICT products/other electronics.

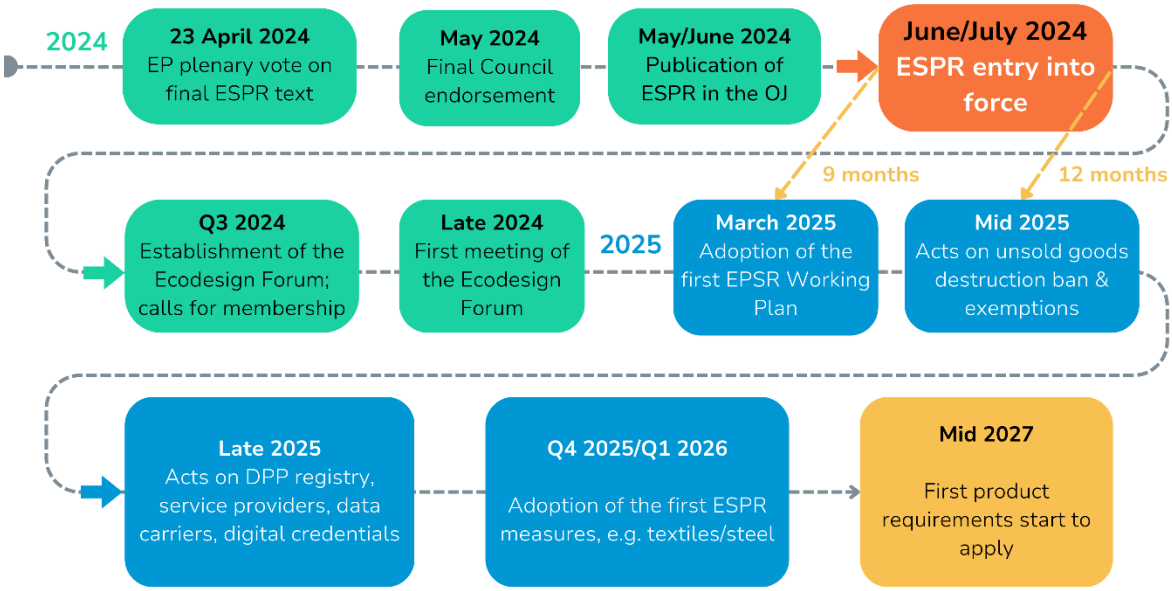
Only a few sectors are explicitly exempted - including food, animal feed, living organisms, motor vehicles, products with the sole purpose of serving defence or national security, and medicinal products.

The regulation also **prohibits the wasteful destruction of unsold clothing and footwear**, with the regulation taking effect in 2026. This applies to all companies except for small and micro companies and paves the way for similar restrictions on other product categories, such as electronics. It also introduces a rule for large companies to report on wasted unsold products (number and weight) and to provide the reasons for discarding the products and their final destination.

This regulation will hopefully accelerate the European transition to a **sustainable, toxic-free, and circular economy**. It is important to remember that rules on product design are a good starting point, however, they will not automatically reduce the overall volume of products produced and then sold in the EU or reduce the industry's material footprint - a key missing step to bring us back within the planetary boundaries that we are overstepping every day.[2]

The publication of the regulation in the Official Journal of the European Union is expected in the summer of 2024. The European Commission will adopt an ESPR Working Plan in Spring 2025, and then Delegated Acts will be deliberated to set general requirements per specific product and/or product category.

ESPR: Tentative timeline



Adapted from European Commission presentation (12 March 2024)

ECOS journey towards ecodesign regulation in the EU

We need sustainable products to be the norm - a long-standing priority for ECOS. Production models based on short-lived, disposable, inefficient, toxic, and unrepairable items must become a thing of the past. We need to reduce wasted resources and limit these products' impact on the environment from their resource extraction, manufacture, use, and disposal. Most of the environmental impacts from products are determined in the design phase, it is therefore crucial to tackle these issues before they occur by designing products that are toxic-free, sustainable, and built to last.

For many years, we have been vocal in expanding the ecodesign framework to all products, advocating wider and better ecodesign rules based on the proven success of the 2009 Ecodesign Directive – the predecessor of the EU Ecodesign for Sustainable Products Regulation (ESPR). With our ecodesign expertise across many products and sectors, we will continue to push for ambitious secondary legislation and product requirements.

Ultimately, the success of the ESPR will depend on its implementation, including many upcoming activities, secondary legislation, and the role of standardisation. Prioritising products and horizontal measures will reduce potential delays and ensure that the most polluting products are dealt with first. Ambitious minimum requirements need to be combined with effective market surveillance and enforcement and be guided by the best available evidence on ecological thresholds. The ESPR can then contribute to the EU's climate-neutral by 2050 goal and the broader environmental goals of staying within planetary boundaries. We have work ahead of us in the development of the delegated acts for each product sector. We will continue to be there every step of the way.

Key highlights

Scope: the first list of priority products is already identified, to be finalised in the Working Plan, including key sectors and products. Cement is possibly included but not before 2030 following poor performance of the Construction Products Regulation (CPR). Motor vehicles, food, feed, medicinal products, and military products are explicitly out of the scope.

- Substances of concern: POPs are included in the definition of substances, and a (more limited) pathway to restrict chemicals based on their impact on human health is also included.
- Ban on destruction of unsold goods: The ban will start with clothing and shoes, 24 months after the ESPR entry into force.
- New ecodesign forum: aims to be an inclusive group that includes CSOs and other stakeholders.
- Performance requirements and product parameters: horizontal requirements are encouraged and material footprint as a key indicator.
- Transparency: The Digital Product Passport aims to unleash access to data and information across products' value chains. Information is key to sustainable design, more informed consumer choice, access to repair, and better recycling of products.
- Online marketplaces and other loopholes: weakened enforcement obligations for MS and limited additional obligation on online marketplaces.
- Market surveillance effectiveness and coordination: reporting of checks and penalties by Member States, as well as coordination provisions, but rejection of minimum number of checks.
- Voluntary industry agreements: still allowed, even if the signatories of the agreement have to provide justifications, e.g. benefits in terms of costs and time compared to mandatory requirements.
- GPP results: mandatory minimum requirements will be set for the purchase of products covered by ecodesign requirements, providing a much-needed boost in demand for truly green products.
- Social & due diligence: a pathway for inclusion in the review/revision.

Implementation: Scope, working plan, and product priorities

The implementation of the ESPR will be key to its success. The details of the delegated acts, which products will be considered, and how quickly the product requirements will come into force are all incredibly important facets of the legislation.

The first working plan covering at least three years will come out in the Spring of 2025 (see timeline above), but the text already includes an initial list of sectors and products. This improves transparency, allows the process to start as soon as possible and avoids initial delays, especially considering that the Commission has already carried out some preliminary work.[3]

The first working plan is to be adopted no later than nine months after the entry into force, and the following product groups should be prioritised:

- Intermediate products: iron, steel, aluminium, lubricants, and chemicals.
- Products: textiles (notably garments and footwear), furniture (including mattresses), tyres, detergents, paints, energy-related products[i], and ICT products/other electronics.

The European Commission is required to provide a justification if the list is changed via omission or addition. Questions remain about the next steps for implementation of products not included in the first working plan, such as plastics and polymers, and other sectors which were included in the initial JRC study. The regulation also includes the possibility to address cement under the ESPR, but only if the results achieved under the Construction Products Regulation are unsatisfactory.

i the implementing measures for which need to be revised or newly defined.

Timeline

Delegated Acts development process - Under the Ecodesign Directive legislation, the implementing acts for the energy-related products takes about **3.5 years before adoption of the act**, and sometimes even longer. According to the timeline above, the first delegated acts will be adopted in late 2025 or early 2026 for steel and textiles; these discussions have already started.

An 18-month **transition period** is in place before application of ecodesign requirements; the Commission may set an earlier application in duly justified cases.

Process: Civil society involvement and transparency

ECOS strongly supports the creation of the **Ecodesign Forum**, which will complement the work of the existing Ecodesign and Energy Labelling Consultation Forum.

The European Commission must secure **inclusiveness, transparency, and sufficient resources** for the Ecodesign Forum, and ensure that **funding** is in place for substantial, long-term, and stable support for the effective involvement of civil society.[ii]

The process established to develop product-specific regulation under the current Ecodesign Directive has shown its value. This includes a broad consultation of stakeholders in the Consultation Forum and multi-year working plans. Involving civil society organisations, which have strongly contributed to the process, is essential and will depend on public funding from the European Commission.

We hope that the parallel consultative body made of Member States only – the 'Ecodesign Expert Group' will not cause delay and duplication of discussion and that it will offer transparency and ensure civil society participation.

Product parameters and material footprint

The ecodesign requirements will come in the form of delegated acts, and they will set the ecodesign and information requirements for a specific product category. Products concerned shall only be placed on the EU market if they comply with those requirements.

The European Commission will establish **Ecodesign requirements** to improve:

- Durability.
- Reliability.
- Reusability.
- Upgradability.
- Reparability.
- Possibility of maintenance and refurbishment.
- Presence of substances of concern.
- Energy use and energy efficiency.
- Water use and water efficiency.
- Resource use and resource efficiency.
- Recycled content.
- Possibility of remanufacturing.
- Possibility of recycling.
- Possibility of recovery of materials.
- Environmental impacts, including carbon and environmental footprint.
- Expected generation of waste.

[ii] For a deeper dive on the potential structure and functioning of the Ecodesign Forum, please see our paper: Recommendations for Ecodesign Forum https://ecostandard.org/publications/ecodesign-forum-recommendations-ecos-2024/

Performance requirements will be based on relevant **products parameters** in Annex I. Those include:

- Durability.
- Ease of repair and maintenance.
- Ease of upgrading.
- Design for recycling.
- Avoidance of technical solution detrimental to reuse, upgrading, repair, maintenance, refurbishment, and recycling.
- Use of substances during the production processes and their impact on human health and the environment.
- Use or consumption of energy, water and other resources.
- Use or content of recycled materials.
- Use or content of sustainable renewable materials.
- Weight and volume of product and its packaging, and product to packaging ratio.
- Incorporation of used components.
- Quantity, characteristics and availability of consumables needed for proper use and maintenance.
- The environmental, carbon, and material footprint of the product.
- Microplastic and nanoplastics release (in manufacturing, transport, use and end of life).
- Emission to air, waste, or soil – including noise.
- Amounts of waste generated.
- Functional performance and condition for use.
- Lightweight design.

Civil society advocacy led to the inclusion or improvement of several of these parameters, namely the impact of substances on human health and environment, the use or consumption of energy and water, emissions to air, water and soil, and the release of micro/nanoplastics as well as the material footprint of products.

Material footprint refers to the amount of raw material extracted to produce goods consumed in the EU. Reducing this footprint is key to achieving the EU Green Deal[4]. The material footprint is declared as part of the Ecodesign Impact Accounting mechanism that exists in the current ecodesign framework.

In 2019, the EU's material footprint was 18.7 tonnes per capita, the second highest in the world after North America. The EU, (6% of the world's population), consumed 17% of all raw materials extracted in 2019.[5] The ESPR's objective is to improve the **sustainability of products**, which ultimately means to **reduce raw material extraction** for products consumed in the EU. The ESPR's success can therefore be measured on how it decreases the EU's material footprint. This parameter is a logical indicator of performance for the ESPR's contributions towards meeting the EU's circular economy goals.

For the ESPR to succeed in bringing sectors within planetary boundaries, the material footprint and resource use of targeted sectors must be dramatically reduced. As highlighted in the 8th EU Environmental Action Programme[6], we urgently need EU legislation on sustainable resource management, with clear binding EU targets for 2050, as well as intermediate targets for 2030 and 2040, to significantly reduce the EU's material footprint for the textile sector.

Horizontal ecodesign requirements

Within the Ecodesign Directive, the European Commission applies a vertical approach, developing requirements product by product. This approach has proven to be time-consuming and fails to sufficiently address urgent environmental problems.

To avoid lengthy discussions around the granularity of minimum requirements for different end-use products based on their application, the ESPR allows for horizontal requirements- both *information or performance requirements,* which can be complemented, when necessary, by requirements for specific product categories.

Setting product requirements: Comparison with the Ecodesign Directive (2009)

The major criterion for setting energy efficiency requirements under the Ecodesign Directive is the **'least-life cycle cost' (LLCC) point**. This means that only energy efficiency improvements that can pay back quickly are considered.

This criterion has led to overly conservative estimates that are then used to develop requirements, which quickly become obsolete. The LLCC point has held back some Member States from setting more stringent requirements due to the low level of ambition at the EU level.

Article 5(5) of the ESPR address criteria to be followed in setting requirements:
"*Ecodesign requirements shall meet the following criteria:*
(c) there shall be no ***significant*** *negative impact on consumers in terms of the affordability of relevant products, also taking into account access to second-hand products, durability and the life cycle cost of products.*
(d) there shall be no ***disproportionat****e negative impact on the competitiveness of economic operators and other actors in the value chain, including SMEs, in particular micro-enterprises. [...]*
(f) there shall be no ***disproportionat****e administrative burden on manufacturers or other actors in the value chain, including SMEs, in particular micro-enterprise."*

Negative impacts to the environment or human health from products are externalised from the value chain and legislation like the ESPR is intended to minimise these impacts. As environmental concerns are integrated, there will be some impact upon costs, administration, and other indicators which should not be used as justifications for decreased ambition.

For sustainable products to genuinely become the norm, new requirements must reference the best available technologies. Instead of LLCC, we propose instead the **Life Cycle Cost 'Break Even Point'** – a point where environmental savings are maximised while the life cycle cost of the product remains stable for consumers. The methodology should integrate technology learning curves to ensure that regulations, upon entry into force, are up to date by reflecting anticipated technology improvements.

Product Life Span and Right to Repair

ESPR includes definitions that will support the durability and repairability of products and facilitate access to relevant information to a wider range of actors.

The definition of **premature obsolescence** indicates that the European Commission seriously intends to prevent this phenomenon. It is also clearly stated that ecodesign requirements shall aim to prevent premature obsolescence. ECOS will ensure that this is not omitted when the said ecodesign requirements are developed.

The definition of **independent operators** and **professional repairers** will help clarify the rights of second-hand actors, refurbishers, and repairers. This will facilitate their access to repair, reuse, and maintenance information. Hopefully, this will limit manufacturers' current influence in deciding who can repair their products and therefore prevent repair monopolies.

Between the ESPR and the Right to Repair initiative that introduces rules promoting independent repair, EU legislation will hopefully improve the repairability of our everyday products.[7]

Digital Product Passport

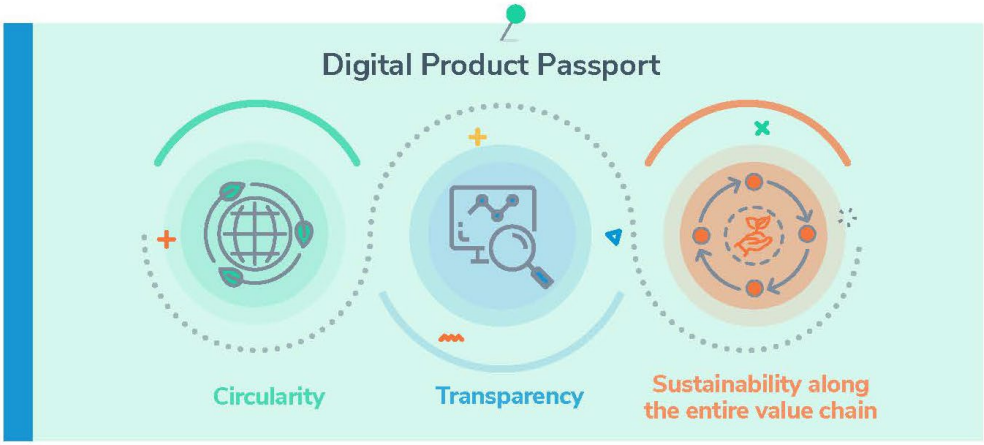
The ESPR includes the broad application of Digital Product Passports (DPP), which will be made mandatory through each product category's delegated act.

Companies placing products on the market must ensure each product has a DPP to store mandatory information requirements. The information included in the DPP will be decentralised, created, and stored by private operators, e.g. manufacturers or service providers. The DPP will be easily accessible through data carriers such as QR codes.

The DPP will improve access to information for a range of actors across the lifecycle, notably consumers, repairers or recyclers, waste handlers, and others. Ideally, this should help improve resource management, from product purchasing to easier repair and safer, more effective end-of-life processing. DPPs should also streamline the work of customs and other regulatory authorities.

In the future, we also hope that DPPs will help manufacturers improve their procurement strategies to design better products. We hope this tool will increase transparency and traceability, gaining full visibility of complex value chain, identify suppliers and actors up to raw material providers, and proactively engage with them to prevent and mitigate environmental and social risks and impacts. It might allow producers, brands, consumers, governments, and regulators to have the full range of information and to tackle the complexity of current supply chains.

Information requirements can encourage manufacturers to develop more sustainable products, but they will not suffice unless they are coupled with sustainable performance requirements. In addition, data accessibility needs to be guaranteed:



ECOS (2022)

The DPP is a new tool, however, and there are a lot of uncertainties, notably on market capacity to operate fully functioning and complete DPPs when the legislation comes into force. It will be the first time that DPP services will be deployed at scale, requiring standardisation (work started in 2023), but also most likely DPP service providers for companies that cannot or choose not to run their own DPP.

It is also uncertain if companies will manage to gather and share all the information required, and what the level of data accuracy will be. While the DPP aims to solve the issue of accessing data, we still need operators to have the capacity (time, expertise, workforce, equipment) to make use of the data. The level of uptake might differ from one type of actor to another. While consumers will immediately benefit from better information, recyclers might need significant changes in their processes to fully exploit the DPP.

The DPP will only be a success if the gain in information use surpasses the cost of hosting the vast amount of data created. The DPP may bring benefits, but it should not come at the expense of product requirements.

Substances of concern

Circularity and chemical safety cannot be separated. Some chemicals may be able to be physically recycled but they can still pose hazards if subsequently repaired and re-used or used partly in another product. The presence of these chemicals in reused and recycled content can therefore hamper the viability and safety of recyclates and perpetuate the toxic material cycles problem.

The planetary boundaries of chemical pollution were exceeded long ago.[8] It is important that the ESPR sets a precedent for the European Commission to potentially restrict substances of concern (within products) that carry significant risks to human health or the environment.

The EU's transition towards a clean circular economy by phasing out substances that are harmful to human health or the environment and substances that prevent clean recycling. Minimise the presence of substances of concern in products (in the context of ESPR), by introducing product requirements and ensure availability of information on chemical content and safe use, by introducing information requirements.

With this vision in mind, the ESPR includes provisions on chemicals that go in the right direction:

- Concerns about human health and the environment are included as justifications for the restrictions of substances under ESPR, in cases which "reduce significant risk".
- A broad definition of 'substance of concern' that includes substances recognised as **Persistent Organic Pollutants (POPs).**
- **Transparency** on the presence of these substances in products will be improved for all users within the value chain, through information requirements which will require disclosures in the forthcoming **Digital Product Passports**.[9] Article 7 includes specifications regarding transparency and tracking of substances of concerns in products, which includes a list of exemptions. We will need to ensure in upcoming delegated act that confidential business information justifications must not be used to prevent transparency in cases where the substance is hazardous to health or environment.

Provisions on the destruction of unsold goods

The destruction of unsold products represents the most wasteful scenario conceivable in any economy. This wastes all the value generated and resources used in production - energy, materials, labour, craftmanship - and skips the use phase entirely.

Civil society strongly supported the ban on destroying consumer products[10] and the **ESPR prohibits the wasteful destruction of unsold clothing and footwear**, with the regulation taking effect in 24 months after the entry into force. This applies to all companies except for small and micro businesses and paves the way for **similar restrictions on other product categories**, such as electronics. It also introduces a rule for medium and large companies to report on the number and weight of wasted unsold products, including reasons behind the discards and their destination.

The definition of unsold goods explicitly includes returned items, deadstock, and excessive inventory. With this definition, the EU decreases the risk that companies would ultimately destroy unsold products that were initially reported and prepared for re-use, remanufacturing, or recycling.

The ban will apply to the destruction of unsold apparel, clothing accessories and footwear. European Environmental Agency report[11] shows that "the volume of unsold items going to external outlets and/or jobbers varies between 65% in France and 17% in Norway". If these unsold consumer products are not accounted for and included in the EU definition, there is a serious risk of creating a loophole that companies will exploit to get rid of their overproduction. This reality could undermine the objectives of this provision and divert usable products away from preferable solutions such as resale or refurbishment.

The provisions on unsold goods will eventually apply to medium-sized companies, but small companies are regrettably not included in the scope, considering that the vast majority of EU companies are micro and small enterprises.[iii] We encourage policymakers to include micro and small enterprises in the scope of the unsold goods provision in the future for a more wide-reaching impact. Delegated acts will be used to set the exemptions required to make the ban operational and to introduce potential destruction bans in other sectors.

The wasted resources associated with the destruction of consumer goods and the energy needed to manufacture these products are not yet estimated at the EU level, but they are undeniably significant.[iv] Based on available studies, the European Environmental Agency estimates 4-9% of all textile products put on the market in Europe are destroyed before use: 264,000-594,000 tonnes of textiles destroyed each year.[12] Some EU countries have already introduced national laws that prevent the destruction of unsold consumer products and the EU is setting the bar for everyone with a EU-level ban starting with textiles and footwear.

Green Public Procurement

The ESPR empowers the Commission to adopt implementing acts to set mandatory minimum requirements for the purchase of products under the new the new Green Public Procurement (GPP).

These requirements will apply both in direct procurement and to public works or services contracts. Unlike the existing voluntary approach, this new mandatory framework can **maximise the potential of public spending** (currently 15% of EU's GDP) to boost demand for sustainable products.

The minimum requirements will include technical specifications, award criteria, contract performance conditions, and targets. They will **provide clear goals for public authorities.** They include:

- More prominence for environmental sustainability, with awarding criteria weighted at 15-30%.
- Annual targets mandating authorities to buy at least 50% of their products labelled as "green".

The mandatory framing comes nevertheless at the expense of some financial derogations. This poses a risk, as it allows procuring authorities to avoid purchasing more environmentally sustainable products if deemed "economically unviable". Officials must provide a clear definition of what constitutes "economic feasibility" and provide strict oversight to ensure that this clause isn't used as a loophole. Complementary, robust mechanisms for monitoring and evaluating compliance with the GPP requirements should be developed along with appropriate penalties to deter non-compliance.

[iii] Eurostat reports that in 2021, the EU had 31 million enterprises, employing 156 million persons.
Of that total, 98% (30.3 million) were micro and small enterprises, representing 35% of the total value added (€9.3 trillion).
Source: https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20231109-2 (2024).

[iv] No EU figures exist for the annual volume of consumer goods destruction, however, both France and Germany have reported concerning estimates. In 2014, an estimated value of €630 million was destroyed in France. In Germany, the 2010 estimate was significantly higher, €7 billion.
Source: Deutsche Welle (2020) https://www.dw.com/en/destroy-packages-online-shopping/a-52281567

Market surveillance and enforcement

Market surveillance includes the monitoring, verification, and enforcement of national and EU legislation. Without market surveillance controls, non-compliant products could be sold on the EU Single Market without consequences and the whole legislation would lose its effectiveness.

- The legislation strengthens market surveillance coordination throughout Member States and via the administrative coordination group (ADCO), composed of national market surveillance authorities.
- Member States will be obliged to report on important information such as nature and number of checks, types of non-compliance and penalties, as well as a list of priorities in terms of products and requirements across products.
- The ESPR foresees measures to prevent circumvention (cheating) and any behaviour that undermines compliance with the ESPR.

Unfortunately, the requirement that would have set a minimum number of checks to be performed by Member States was dropped. This would have improved the effectiveness of market surveillance controls.

While the EU regulation on market surveillance and compliance of products has started to apply from 2021, its provisions are generic and do not specifically address ecodesign requirements. The current market surveillance regime underpinning the Ecodesign Directive has demonstrated its shortcomings – an estimated 10-25% of products regulated under the framework are non-compliant with the existing requirements and approximately 10% of anticipated energy savings have been lost as a result. Considering the detrimental effects of non-compliance in the current ecodesign framework, we expect to see a comparable or higher level of non-compliance with a much broader scope in requirements and product groups. This needs to be addressed.

Industry self-regulation

Industry voluntary agreements have consistently failed to prove effective. Printers are the most recent example of the European Commission intervening to solve ineffective self-regulation by setting minimum requirements.[13] Yet regrettably, the ESPR allows the possibility for some products to be self-regulated with voluntary agreements drawn up by the industry.

As long as it can be argued that policy objectives can be delivered faster or in a less costly manner, the door is open for industry players (representing at least 80% of the market) to come up with their own set of commitments. Voluntary agreements have consistently failed to prove more effective than mandatory rules.[14] The four existing agreements under the previous Ecodesign framework have delivered meagre results: poor market coverage, weak requirements, and delays in adapting to technological developments.

Rather than serving as minimum requirements, industry-led efforts should be used to establish themselves as sustainability front-runners, showcasing the sector's consolidated willingness to go beyond regulation or minimum requirements.

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