

**EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION
WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND
NORTHERN IRELAND PROTOCOL**

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PROPOSAL OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
ESTABLISHING A FRAMEWORK FOR SETTING ECODESIGN REQUIREMENTS
FOR SUSTAINABLE PRODUCTS AND REPEALING DIRECTIVE 2009/125/EC

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Submitted by the Department for Business, Energy and Industrial Strategy
18/07/2022

SUBJECT MATTER

1. The EU has proposed a new Regulation to reduce negative life cycle environmental impacts of products produced or sold in the EU. The proposed Ecodesign for Sustainable Products Regulation (ESPR) enables targeted product requirements to be set which address the most detrimental environmental impacts of a wide range of products with only a few exemptions such as food, feed and medicines.
2. The EU proposal aims to stimulate the production and consumption of sustainable products that are energy efficient in use, last longer, rely on recycled materials instead of primary raw materials and are marketed using circular business models. This is fundamental to drive Europe's market towards production and consumption of more sustainable products, reducing environmental and social pressures whilst retaining value and establishing a circular economy.

3. The proposed EU regulation builds on the existing Ecodesign Directive which establishes a framework under which manufacturers of energy-related products are obliged to reduce the energy consumption and other negative environmental impacts occurring throughout the product life cycle. The proposed EU regulation extends the scope of products which can be regulated from energy-related products to all physical products on the internal market (with a few exceptions) and includes new requirements which aim to contribute to the EU's overall climate, environmental and energy goals, while supporting economic growth, job creation and social inclusion.
4. Key regulatory elements of the EU proposal include allowing for the setting of a wide range of Ecodesign requirements based on sustainability and circularity aspects, such as product durability, reusability, upgradability and repairability, the presence of substances of concern in products, product energy and resource efficiency, product remanufacturing and high-quality recycling and for reducing products' carbon and environmental footprints.
5. The proposed EU Regulation will in general only be used to set requirements for products where existing legislation does not already apply, or when existing legislation does not sufficiently address the sustainability of those products. Product-specific requirements under the proposed EU regulation will be included in delegated acts and as such full details of requirements remain unknown at this time. 18 new delegated acts are expected between 2024 and 2027, with a further 12 adopted between 2028 and 2030.
6. The EU proposal will introduce a digital product passport ('product passport') for all products regulated under the ESPR. Products with digital passports will be tagged, identified, and linked to data relevant to their circularity and sustainability. The aim is to enable informed consumer choices, facilitate repairs and recycling, improve transparency about products' life cycle on the environment, help authorities in enforcement and surveillance work and improve circularity of the products along the value chain.
7. The precise information to be included in the product passport will be specified in the delegated acts adopted by the Commission pursuant to the Regulation. It may include information such as the environmental footprint of a product, information useful for recycling purposes, the recycled content of a certain material, information about the supply chain, and others. Moreover, access to information will be granted on a 'need-to-know' basis. Different people will have access to different sets of information, based on access rights defined for each product group regulated. It will be based on a decentralised data system, set up and maintained by economic operators.

8. The proposed EU Regulation includes measures to prevent and stop the destruction of unsold consumer goods by requiring businesses to disclose information of discarded products on a publicly accessible website. There are also requirements to state the reason for discarding products and the volumes which are discarded. Where the disposal of unsold goods is identified and assessed to have significant environmental impact, this activity can be banned on a product-by-product basis.
9. The EU proposal aims to leverage the weight of public spending to boost demand for more sustainable products. To achieve this, the Regulation empowers the Commission to adopt delegated acts requiring contracting authorities to use green procurement criteria to purchase specific groups of products.
10. The EU proposal aims to strengthen market surveillance of EU Member States and focuses on better enforcement with measures on market surveillance to ensure the effectiveness of all requirements set and ensure a level playing field for economic operators. Specific measures to enforce this would include: making relevant product information digitally available to market surveillance authorities (MSAs) and possibly to Customs authorities; providing structural technical support to improve cooperation between MSAs and ensure they have sufficient capacities; organising common training for staff of notified bodies, notifying authorities and MSAs; publishing MSA penalties decisions; creating a benchmark and a reporting obligation for Member States; and establishing requirements for market surveillance checks.
11. Many types of energy-related products in Great Britain and Northern Ireland are regulated by the Ecodesign for Energy-Related Products Regulations 2010 (which is based on the current Ecodesign Directive) to ensure they meet specific measures relating their energy usage. This reduces their environmental impact, improves their energy efficiency, and cuts greenhouse gas emissions. The Energy-related product policy framework published on 4 November 2021 sets out how Government intends to update product requirements and push products to use less energy, resources, and materials to save carbon, reduce energy demand and help households and businesses reduce their energy bills.

SCRUTINY HISTORY

12. This is the first time the Commission has published the Regulation, therefore there is no scrutiny history.

13. The ESPR will repeal the Ecodesign Directive 2009/125/EC and the final Ecodesign and Energy Labelling Working Plan covering 2022 to 2024 was published on 30 March 2022.

MINISTERIAL RESPONSIBILITY

14. The Secretary of State for the Department for Business, Energy and Industrial Strategy has overall responsibility for the existing Ecodesign Regulations and therefore the new ERSP, as well as policy responsibility for energy-efficiency.
15. The Secretary of State for the Department of Environment, Food and Rural Affairs is responsible for resource efficiency policy in as much as it contributes to the minimisation of waste and protection of the natural environment.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

16. The Existing Ecodesign Directive is listed in Annex 2 to the Northern Ireland Protocol. It therefore continues to apply in Northern Ireland and has been implemented through the Ecodesign for Energy-Related Products Regulations 2010.
17. Ecodesign is a reserved matter.

LEGAL AND PROCEDURAL ISSUES

- i. Legal Base
 18. The EU proposal is based on Article 114 of the Treaty on the Functioning of the European Union (TFEU), which is to be used for measures aiming at the establishment and functioning of the internal market. The Ecodesign Directive (which the Commission proposes to repeal by this regulation) was itself based on Article 95 of the Treaty establishing the European Community (now Article 114 TFEU).
- iii. Timetable for adoption and implementation
 19. The European Commission expect the EU regulation to be adopted in 2024. Until the broadened framework is in place, the Commission will continue its work under the existing Ecodesign Directive. The new Ecodesign and Energy Labelling Working Plan for 2022–2024 will include new energy-related products, and update and increase the ambition of those already regulated.
 20. The European Commission invited feedback on the proposal until 3 June 2022. Following this, the European Commission plans to launch a public consultation on the categories of products for the first ESPR Working Plan by the end of 2022.

POLICY IMPLICATIONS

Intent and focus

21. According to the Impact Assessment, the main problem that the proposed Regulation seeks to address is that consumption and production are not sustainable or adequately addressed by existing EU product and internal market rules – a situation that leads to increasingly divergent national rules on the sustainability of products.
22. The proposed regulation aims to reduce the negative life cycle environmental impacts of products and improve the functioning of the internal market. The EU's intent is to apply the Ecodesign approach to a very broad range of products and enable the EU to set a wide range of targeted product requirements, allowing them to address the most detrimental environmental impacts of products.
23. This proposal provides the framework for setting Ecodesign requirements based on the sustainability and circularity aspects listed in the Circular Economy Action Plan, such as durability, reusability, upgradability and repairability, the presence of substances of concern in products, product energy and resource efficiency, recycled content or products, product remanufacturing and high-quality recycling, and for reducing products' carbon and environmental footprints.

Links to the Northern Ireland Protocol

24. The existing Ecodesign Directive is listed in Annex 2 of the Northern Ireland Protocol and has therefore applied (and continues to apply until it is repealed) in Northern Ireland since the end of the transition period on 1 January 2021.
25. The Government's initial analysis of the EU's new proposed regulation has identified a number of important differences to the existing Ecodesign Directive. We are therefore considering whether the proposed regulation falls under Article 13(3) of the Northern Ireland Protocol, and therefore will automatically apply in Northern Ireland, or whether it falls under Article 13(4), and should be subject to the Joint Committee process set out under that Article. Initial analysis shows it is broader in scope (applying to almost all products rather than just energy-related products) and it introduces new obligations (such as digital passports). Further analysis is required before concluding whether the differences between the Ecodesign Directive and the proposed EU regulation are sufficiently significant for the Regulation to be

treated as a new measure. We will keep the EU Select Committees updated as this consideration develops.

26. It should be noted that the Government intends to address the issues being faced by businesses when engaging with the Northern Ireland market through the introduction of legislation. The Northern Ireland Protocol Bill will restore the balance inherent in the objectives of the Northern Ireland Protocol; protecting the integrity of the UK, avoiding a hard border and safeguarding the EU Single Market. We remain open to continuing discussions with the EU and, while these continue, we will take steps to stabilise the situation in Northern Ireland.

CONSULTATION

27. No consultation is planned with outside organisations on this regulation by the UK Government. The EU has provided its own impact assessment (IA) for this legislation.

28. The European Commission will launch a public consultation on the categories of products to be selected under the first Ecodesign for Sustainable Products Regulation working plan by the end of 2022.

29. A preliminary assessment by the European Commission has identified that product categories such as textiles, furniture, mattresses, tyres, detergents, paints, lubricants, as well as intermediate products like iron, steel and aluminium, have high environmental impact and potential for improvement, and may thus be suitable candidates for the first workplan.

FINANCIAL IMPLICATIONS

30. The Commission's Impact Assessment explains, at this point of time, it is not possible to provide fully meaningful quantitative assessment of impacts but it discusses administrative costs for the Commission and the Member States, compliance costs for business and costs/savings for consumers. Among the few costs quantified in the IA, the one-off costs for the Commission to set up the European digital product passport are estimated at around €8 million, while annual maintenance costs would amount to at least €1 million

31. The impact of the ESPR will be reflected beyond Europe, given today's supply chains are inherently global. To enforce this, minimum requirements will apply to all products entering the EU market, which means GB manufacturers wishing to trade in the EU including via online sales will need to ensure their products comply with the regulations.

32. The costs for manufacturing the products that will be regulated are expected to increase, with the possibility that some may be passed on to consumers. The experience under the current Ecodesign Directive, however, is that increased manufacturing costs are more than offset by financial savings for consumers over the long term. Improved product performance and longer functionality will reduce the need to replace products, and lead to overall cost savings, including through lower energy and resource consumption, better performance, durability, upgradability and reparability, as well as higher value at the end of life.

MINISTERIAL NAME AND SIGNATURE

A handwritten signature in blue ink, appearing to read "Martin Callan". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Lord Callanan

Parliamentary Under Secretary of State (Minister for Business, Energy and
Corporate Responsibility)

Department for Business, Energy and Industrial Strategy