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DIGITALEUROPE position paper on ESPR Trialogues negotiations



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Introduction

On 30th August, the co-legislators convened for the first Triilogue on the Ecodesign for Sustainable Products Regulation, which aims to improve the environmental sustainability and circularity of all products placed on the EU market, including electric and electronics products.

DIGITALEUROPE welcomes the overall legislation's objectives and the importance of accelerating the green transition via more sustainable products. DIGITALEUROPE is pleased to see the positive improvements suggested by co-legislators, notably on Digital Product Passport's confidentiality, access rights and granularity. DIGITALEUROPE is also pleased to see suggestions by the European Parliament to mandate manufacturers to present information in a digital format (via Art. 21 paragraph 7 a (new)). DIGITALEUROPE reiterates strong support to the use of digital formats (e.g. QR codes) as the default option for instructions, compliance information, product information etc.¹

However, DIGITALEUROPE is concerned about the approach taken by co-legislators within some articles, notably on Ecodesign Forum, Performance & Information Requirements in the eco-design delegated acts, Substances of Concern, Digital Product Passport, Unsold Goods, Digital Label, Market Surveillance.

DIGITALEUROPE is particularly concerned about the direction of work taken by co-legislators on:

- **Substances of Concern**, which raises concerns due to its expansion compared to the original definition suggested by the European Commission.
- **Digital Product Passport**, where the suggestion of a central registry raises very practical questions on how to ensure the original decentralised approach suggested by the European Commission.
- **Unsold Goods**, where suggestions by the European Parliament have been, in our opinion, disproportionate given the complexity and diversity of the products that could be considered to fall under the consumer EEE market segment.

To conclude, DIGITALEUROPE reiterates that **the ESPR is a product-related legislation**, which should be aimed at improving products' environmental impact via better product eco-design, with a focused and precise mechanism for setting product specific and impact assessed environmental requirements.

¹ According to the [E-labelling initiative \(https://www.elabellinginitiative.org/waste.cfm\)](https://www.elabellinginitiative.org/waste.cfm), the printed compliance statement coming with smartphones cost every year in the EU 4.800 trees and 480 million liters of water.



Art. 2 (Definition)

- **Art. 2 (28) a): Support the Commission Position**
Justification: DIGITALEUROPE highlights the need to reference REACH Article 59 within the “substance of concern” definition, in line with the original Commission proposal. DIGITALEUROPE is concerned that the absence of a reference to Article 59 in the context of the ESPR definition for “substance of concern” would create legal uncertainty by incorporating an undefined list lacking any data collection and enforcement mechanisms. DIGITALEUROPE believes that the reference to REACH Art 59 is essential in order to maintain the coherence of ESPR with the REACH regulation, specifically regarding Article 33 imposing obligations to communicate information on substances in articles.
- **Art. 2 (28) b): Support the Commission Position**
Justification: DIGITALEUROPE highlights the need for any information requirement on substance disclosure to explicitly exclude the substance applications covered by derogations specified in Annex XVII, to ensure coherence with the approach adopted for the SCIP database. Furthermore, DIGITALEUROPE is concerned that introducing disclosure requirements for already prohibited substances under REACH Annex XVII is unreasonable and excessive, as tracing their presence at levels below the REACH restriction thresholds is often unfeasible and will substantially increase the burdens on manufacturers with regards to chemical testing and certification. Considering that the originally proposed definition for substances of concern is already disproportionately broad due to the inclusion of substances classified under the CLP regulation, further scope expansions should be avoided. DIGITALEUROPE therefore opposes the European Parliament’s addition of REACH Annex XVII to the definition of “substance of concern” and recommends limiting the scope of the definition to substances having negative impacts on circularity.
- **Art. 25a & Art. 31a: Support the Parliament Position**
Justification: DIGITALEUROPE supports European Parliament’s position to add Art. 25a and considers it as essential for generating valuable data sharing whilst ensuring data safety and protection of trade secrets. Considering the extremely broad scope of the “substance of concern” definition, and the difficulties manufacturers face in securing information on substances contained in articles from their suppliers, it is imperative to establish legal provisions aimed at enhancing the communication between suppliers and customers. DIGITALEUROPE does not see the Council’s amendment to Art. 31a as reaching the same objectives, for it can be used by suppliers to limit their obligations and cascade the burden to their customers.



Art. 4 (Empowerments to adopt delegated acts) & Art. 17 (Ecodesign Forum)

- **Art. 17 a): Support the Commission Position**
Justification: DIGITALEUROPE believes that avoiding overlapping roles between the Ecodesign Forum and the newly created Ecodesign Experts Group is key and supports the Commission's initial proposal for the advisory role to be carried out by the Ecodesign Forum exclusively. Hence, DIGITALEUROPE asks the Council and European Parliament to reconsider their positions in order to maintain an efficient, balanced and evidence-based policy-making process. The newly created 'Ecodesign Expert Group' (Art. 17 a) would be composed of experts designated by Member States exclusively and would work in parallel to the Ecodesign Forum, whose composition is, on the other hand, clearly set out and includes industry experts as well as all other interested parties (including Member States' representatives).
- **Art. 4: Support the Commission Position**
Justification: DIGITALEUROPE believes that, as indicated in the Commission's initial proposal, strong input from industry experts is fundamental to delivering verifiable, implementable and enforceable implementing regulations. Therefore, DIGITALEUROPE believes that providing the new 'Ecodesign Expert Group' and the Ecodesign Forum with similar consultative roles in the drafting of implementing acts would not work well. The work on product-specific ecodesign implementing regulations is extremely technical and creating a new forum with competing powers but possibly lacking the technical expertise could jeopardise the whole law-making process.



Art. 5 (Ecodesign Requirements)

- **Art. 5 – paragraph 2: Support the Council position**
Justification: DIGITALEUROPE supports the Council position to potentially exempt products from some ecodesign requirements, via delegated acts, depending on those products' characteristics. Transparency and consistency of rules in this area is crucial to ensuring a robust legal framework and therefore the ability of business to implement rules effectively. DIGITALEUROPE believes that the process of setting new requirements must be based on a thorough analysis of the characteristics of each product group. This would allow for trade-offs in product design and guarantee an adequate transition period. It is paramount to take a product specific approach when it comes to determining the relevance of Substances of Concern with regard to circularity, looking at key elements such as state-of-the-art recycling technologies and assessing the impact of Substances of Concern on recycling and re-use in terms of costs, complicatedness, energy and resource demands etc.

- **Art. 5 – paragraph 9: Support the Council position**
Justification: DIGITALEUROPE supports the Council's amendment which asks the Commission to specify, for every new delegated act, which substances are classified under the SoC definition. DIGITALEUROPE highlights the absolute importance of the Commission providing a comprehensive and exhaustive list of specific substances that are deemed as 'of concern' under the ESPR regulation. It is not just a matter of clarity but also of ensuring consistency with other legislative acts across the EU.
- **Art. 5 – paragraph 9 (b): Support the Council position**
Justification: DIGITALEUROPE supports the Council position, which asks the Commission to assess the impact of Substances of Concern on recycled material taking into account technical properties or functionalities, the usefulness and value of the recycled material etc.
- **Art. 5 – paragraph 1: Support the Commission position**
Justification: DIGITALEUROPE is concerned about the Parliament's suggestion to 'not limit the durability of a product making it prematurely obsolete, in particular as a result of the design of a specific feature, the use of consumables, spare parts, or non-provision of software updates or accessories within an appropriate period of time'. DIGITALEUROPE remarks that the absence of a definition for 'feature' is leaving too much room for interpretation, as it seems to target components, spare parts and accessories that while aiming at extending the lifetime of a product are however not always developed by the product's manufacturer.



Art. 6 (Performance Requirements)

- **Art. 6 - paragraph 3: Support the Council position**
Justification: DIGITALEUROPE reiterates that the ESPR should regulate Substances of Concern in terms of restricting their use in products from the perspective of products' sustainability and circularity, not from the perspective of general environmental impact and health and safety impact. Other, more appropriate and dedicated regulatory tools already exist, which are known by product manufacturers and their global supply chains, as well as market surveillance and enforcement authorities in the EU member states. These include the REACH Regulation, the ROHS Directive, the Batteries Regulation etc. If the co-regulators decide to introduce eco-design requirements on Substances of Concern, DIGITALEUROPE strongly recommends that such requirements should be limited in scope, i.e. relate to the core objective of the ESPR, which is circularity.



Art. 7 (Information Requirements)

- Art. 7 – paragraph 5: Support the Council position**
Justification: DIGITALEUROPE supports an approach where the Commission sets information requirements covering the substances' concentration of the product as a whole, plus only relevant components and spare parts. DIGITALEUROPE highlights the importance of making information available, verifiable and enforceable. In this regard the Council recommends that the Commission “may, as appropriate” provide for thresholds as to when Substance of Concern related information requirements apply. Importantly, DIGITALEUROPE believes that this should not be a suggestion or recommendation only, but that the Commission shall set such thresholds.
- Art 7 – paragraphs 2a, 2b (new): Support the Council position.**
Justification: DIGITALEUROPE believes that the Council introduces important provisions (2a, 2b) which clarify that information requirements shall be tailored to the particular characteristics of the product groups concerned and the intended recipients of the information, such as customers, users or actors involved in value retaining operations.
 The information requirements referred to in Article 7(2), point b, shall encourage sustainable product choices for customers and economic actors downstream, ensure appropriate use, facilitate value retaining operations such as repair, refurbishment, remanufacturing, upgrade, recycling and maintenance, and ensure correct treatment at end-of-life.
 DIGITALEUROPE also supports the Council's recitals 13a, 15, 17a, 20
- Art. 7 - paragraph 2 – point b – paragraph 1 – point ii a (new): Support the Commission position**
Justification: DIGITALEUROPE is concerned about the Parliament's suggestion to open the door, via Art. 7 – paragraph 2 - to cybersecurity vulnerabilities, limited innovation and limited product's lifetime. DIGITALEUROPE notably stresses that installing third party operating systems might require disabling boot protection mechanisms to run unsigned software on a device. As a consequence, there is a high risk that end-users may inadvertently leave their device exposed and vulnerable to malicious actors. DIGITALEUROPE is also concerned about the Parliament's position asking manufacturers to support third party software. If applied, such provision would lead to manufacturers writing software to properly protect devices from unwarranted damage due to the third-party software. It is unreasonable to ask a company to write software for operating systems that are not owned nor maintained by the company.
- Art. 7 a) – point f: Support the Council position**
Justification: DIGITALEUROPE appreciates the Council suggestion to allow for more implementation time (at least 18 months for art. 7 a).



Art 9, 11, 21, Annex III (Digital Product Passport)

- **Art. 9 1 (c), Art. 11 1., Annex III (c) and (l): Align with NLF practices**
Justification: The ESPR should be technology neutral and strictly follow the NLF approach (i.e. General requirements listed in the legal text, technical specifications via harmonised European standards) to avoid vendor lock-ins and prevent innovative solutions to be adopted. **With this background, DIGITALEUROPE would recommend referencing standards in the delegated acts, which the Commission empowers to adopt under Art. 9(1).** The ESPR should only make a general reference to “relevant standards published in the OJEU”. This will further follow the approach of the ongoing Commission’s DPP standardisation request to the ESOs.
- **Art. 9 1 (a): Support Commission position**
Justification: The ESPR should be technology neutral. However, this parliamentary amendment excludes those technologies that use an internet domain name for unique product identifier purposes. In addition, from a legal perspective, it worryingly contradicts the definition of ‘unique product identifier’ (i.e. a unique string of characters for the identification of products that also enables a web link to the product passport’) commonly agreed across the three EU institutions.



Art. 12 (Product Passport Registry)

- **Art. 12 a (new): Support the Council position**
Justification: DIGITALEUROPE stresses that a centralised online tool/platform should not undermine the fundamental premise of having a decentralised DPP system, nor it must require additional administrative work for the operators placing products on the market. DIGITALEUROPE highlights that by including a new Article 12a on a DPP information portal the co-decisionmakers share a desire that stakeholders should be able to search for DPP information via the internet, i.e. an online tool/web portal. DIGITALEUROPE supports the objective of ensuring that stakeholders, based on their respective product-specific access rights, can access DPPs and the information that they contain via what should be considered as a centralised online user interface. However, DIGITALEUROPE believes that safeguarding decentralisation and avoiding a centralised duplication of the decentralised DPP system is key.

DIGITALEUROPE suggests that Article 12a’s online tool/platform should allow stakeholders to search for DPPs, in effect operating as a search engine, whereby the search engine generates a list of ‘results’, i.e. of relevant DPPs. When clicking on one of the listed results the stakeholder would then be directed to the decentralised data base of the economic operator. Such an approach would avoid both system centralisation and setting ranking requirements without a clear methodology. In essence, the online tool/platform needs to be a ‘public access’, pursuant to access right restrictions, equivalent of the Article 12:

Central registry, access to which would be restricted to the “Commission, competent national authorities and customs authorities”. DIGITALEUROPE particularly warns that a platform the aim ‘to compare information’, as suggested by the European Parliament, would require system centralisation because the Commission’s online tool/platform would need to generate and store unique results - extracted from decentralised DPP systems - of a potentially infinite number of comparison search requests. Although the Commission may not need to store these results indefinitely, the act of storing implies centralisation, thus leading to a significant increase in administrative costs incurred in deploying and maintaining the necessary infrastructure. From a methodological perspective, a platform aimed at comparing information would also open questions as to the criteria behind the ranking of ‘ecodesign’ performances across the various information requirements when presenting the information.

- **Recital 27: Support the Council position**
Justification: DIGITALEUROPE supports the Council position in recital 27, which reiterates the importance of impact assessing information requirements when determining the model, batch or item level of the Digital Product Passport when preparing delegated acts, and which is fully aligned with the Commission’s usual process on setting ecodesign requirements via delegated acts.



Art. 20 (Disclosure of information on unsold consumer products)

- **Art. 20 – paragraph 1(d): Support the Council position**
Justification: DIGITALEUROPE supports the Council General Approach including Article 20d which aims at preventing the destruction of unsold consumer products and sets a clear framework for the prioritisation of the categories of unsold consumer goods that should be impact assessed for destruction prohibitions. DIGITALEUROPE particularly considers that the European Parliament approach is disproportionate given the complexity and diversity of the products that could be considered to fall under the consumer EEE market segment. This diversity can be seen by referring to Annexes I to IV of the WEEE Directive which list EEE in scope, ranging from small EEE, e.g. pocket calculators, to larger EEE, e.g. heat pumps.² Further study is therefore necessary to ensure both proportionality and the granularity necessary to implement destruction prohibitions for unsold consumer EEE.

² A further complication is that there is no clear definition available in EU waste legislation that delineates clearly between Business-to-Consumer (B2C) EEE and Business-to-Business (B2B) EEE and full clarity does not result from the ESPR use of the definition of ‘consumer’ in the Sale of Goods Directive (‘consumer’ means any natural person who, in relation to contracts covered by this Directive, is acting for purposes which are outside that person’s trade, business, craft or profession).

- **Art. 20 – paragraph 2: Support the Commission & Council positions**
Justification: DIGITALEUROPE also supports the approach in the Commission proposal and in the Council General Approach that empowers the Commission to adopt implementing legislation prohibiting the destruction of specific categories of unsold consumer goods, including justified exemptions, following thorough assessment of the impact, including stakeholder consultation with the Ecodesign Expert Group. More granularly, DIGITALEUROPE rejects the deletion in the European Parliament’s Plenary Text’s Amendment 164 of “fitness of the product for the purpose for which it is intended, taking into account, where applicable, Union and national law and technical standards” as grounds for an exemption from a prohibition on the destruction of unsold consumer goods.³
- **Art 20 – paragraph 1 (Reporting obligations): Support the Council position.**
Justification: DIGITALEUROPE supports the Council position that disclosure of unsold consumer products destroyed should occur on a financial year basis. This approach is in line with other EU legislation on reporting, including the Corporate Sustainability Reporting Directive (CSRD). As such, this approach will allow companies to consolidate their reporting activities in a way that minimizes unnecessary administrative burden. In addition, the ESPR should provide for an adequate transition time between the final publication of the Regulation and its application. This is also relevant for the obligations on reporting of destroyed unsold consumer products, where companies need to establish a reporting system to disclose such information. To provide legal certainty to companies having to set up this system, the reporting obligation should become applicable after the Commission has clarified the reporting format through implementing acts. That is why we recommend that the first report shall cover products discarded during the second full financial year from the entry into force of the Regulation (i.e. first report in Financial Year 2026 for the Financial year 2025). Assuming that the Commission will publish its implementing act on the reporting format in 2025 (1 year after the finalization of the ESPR), this will provide time for companies to adapt.

³ The Council General Approach maintains this as a ground for exemption. Whilst most changes in product legislation apply to ‘products placed on the market’ from a date of application, there are occasions where for duly justified safety, health, privacy, security and/or sustainability concerns restrictions are retroactively applied; OEMs may also decide voluntary to take ‘products placed on the market’ prior to the application of the change off the market. Whilst the European Parliament Plenary Text maintains “health, *hygiene*, and safety concerns” as a ground for exemption it does not take into account the aforementioned other EU policy objectives. Retaining the “fitness” exemption is therefore prudent. The potential alternative is that OEMs/PROs are forced to store such unsold consumer products indefinitely because they cannot be sold, nor can they be disposed of.



Art. 29 (Obligations of online marketplaces and search engines)

- **Art. 29 – paragraph 2 – subparagraph 3: Support the Parliament position**
Justification: DIGITALEUROPE supports the European Parliament’s proposal to remove requirements for Online search engines from the scope of the legislation. DIGITALEUROPE considers that monitoring obligation imposed on online marketplaces and search engines should not go further than existing EU framework legislation.



Art. 59 (Market Surveillance Action Plan) & Art. 60 (Minimum number of checks)

- **Art. 59 & 60: Support the Commission & Parliament positions**
Justification: DIGITALEUROPE is convinced that the approach to market surveillance taken by the Commission and the European Parliament is correct for the long-term success of the ESPR. The Commission’s ESPR proposal included strong provisions on enforcement, where Member States are obliged to perform a minimum number of checks per product group and draw up a Market Surveillance Action Plan every two years. These measures have been further reinforced by the European Parliament, which calls for sufficient resources for Market Surveillance authorities. DIGITALEUROPE is strongly concerned by the amendments made by the Council on Article 59 and Article 60, as requirements related to the market surveillance of the regulated products and applying to the Member States were significantly weakened, with, for instance, the deletion of the abovementioned provisions on minimum checks.
In the spirit of compromise that is the prevailing feature of Triilogue negotiations DIGITALEUROPE calls on the Council to work towards an approach to market surveillance that delivers for the EGD, and that gives effect to a level-playing field within the Internal Market so that economic operators investing in ESPR compliance, including those producing in the EU Member States, are not exposed to unfair competition.



Art. 69 (Evaluation)

- **Art. 69: Support the Commission position**
Justification: DIGITALEUROPE supports the Commission proposal to regularly evaluate the Regulation and its contribution to the functioning of the internal market and the improvement of the environmental sustainability of products. Such evaluation is necessary to verify that regulations meet their intended purpose. DIGITALEUROPE believes that both the Parliament’s and the Council’s proposals would be in breach of the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. The Council proposal, bypassing the regular law-making process

as established by the Regulation, would prevent not only the proper ex-post evaluation of the existing regulation but also the publication of impact analysis as well as any public and stakeholders' consultation. While DIGITALEUROPE supports the Parliament's aim to provide greater transparency on the environmental footprint of products, its proposal could however create an unnecessary burden on companies. Social sustainability and due diligence requirements in particular should be addressed via the relevant existing Directives (CSRD and CS3D) rather than through product-specific texts. Data collection regarding the environmental footprint of product should be specified via their respective Delegated Acts in order to take into consideration the inputs of stakeholders as well as the existence of calculation and reporting standards or the need to develop them. DIGITALEUROPE also stresses that alignment with NLF, e.g. in the context of the definitions (serious risk, remanufacturing, refurbishment and upgrading), period to maintain information available for authorities (10y), conformity assessment procedures is key.

FOR MORE INFORMATION, PLEASE
CONTACT:



Giorgia Murgia

Manager for Sustainability Policy

giorgia.murgia@digitaleurope.org / +32 493 25 89 46



Raphaëlle Hennekinne

Director for Sustainability Policy

raphaelle.hennekinne@digitaleurope.org / +32 490 44 85 96

About DIGITALEUROPE

DIGITALEUROPE is the leading trade association representing digitally transforming industries in Europe. We stand for a regulatory environment that enables European businesses and citizens to prosper from digital technologies. We wish Europe to grow, attract, and sustain the world's best digital talents and technology companies. Together with our members, we shape the industry policy positions on all relevant legislative matters and contribute to the development and implementation of relevant EU policies, as well as international policies that have an impact on Europe's digital economy. Our membership represents over 45,000 businesses who operate and invest in Europe. It includes 102 corporations which are global leaders in their field of activity, as well as 41 national trade associations from across Europe.

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Membership

Corporate Members

Accenture, Airbus, Applied Materials, Amazon, AMD, Apple, Arçelik, Arm, Assent, Autodesk, Avery Dennison, Banco Santander, Bayer, Bosch, Bose, Bristol-Myers Squibb, Brother, Canon, CaixaBank, Cisco, CyberArk, Danfoss, Dassault Systèmes, DATEV, Dell, Eaton, Epson, Ericsson, ESET, EY, Fujitsu, GlaxoSmithKline, Google, Graphcore, Hewlett Packard Enterprise, Hitachi, Honeywell, HP Inc., Huawei, ING, Intel, Johnson & Johnson, Johnson Controls International, Konica Minolta, Kry, Kyocera, Lenovo, Lexmark, LG Electronics, Mastercard, Meta, Microsoft, Mitsubishi Electric Europe, Motorola Solutions, MSD Europe, NEC, Nemetschek, NetApp, Nintendo, Nokia, Nvidia Ltd., Oki, OPPO, Oracle, Palo Alto Networks, Panasonic Europe, Pearson, Philips, Pioneer, Qualcomm, Red Hat, RELX, ResMed, Ricoh, Roche, Rockwell Automation, Samsung, SAP, SAS, Schneider Electric, Sharp Electronics, Siemens, Siemens Healthineers, Skillsoft, Sky CP, Sony, Sopra Steria, Swatch Group, Technicolor, Texas Instruments, TikTok, Toshiba, TP Vision, UnitedHealth Group, Visa, Vivo, VMware, Waymo, Workday, Xerox, Xiaomi, Zoom.

National Trade Associations

Austria: IOÖ	Germany: bitkom, ZVEI	Romania: ANIS
Belgium: AGORIA	Greece: SEPE	Slovakia: ITAS
Croatia: Croatian Chamber of Economy	Hungary: IVSZ	Slovenia: ICT Association of Slovenia at CCIS
Cyprus: CITEA	Ireland: Technology Ireland	Spain: Adigital, AMETIC
Czech Republic: AAVIT	Italy: Anitec-Assinform	Sweden: TechSverige, Teknikföretagen
Denmark: DI Digital, IT BRANCHEN, Dansk Erhverv	Lithuania: Infobalt	Switzerland: SWICO
Estonia: ITL	Luxembourg: APSI	Turkey: Digital Turkey Platform, ECID
Finland: TIF	Moldova: ATIC	Ukraine: IT Ukraine
France: AFNUM, SECIMAVI, numeum	Netherlands: NLdigital, FIAR	United Kingdom: techUK
	Norway: Abelia	
	Poland: KIGEIT, PIIT, ZIPSEE	
	Portugal: AGEFE	