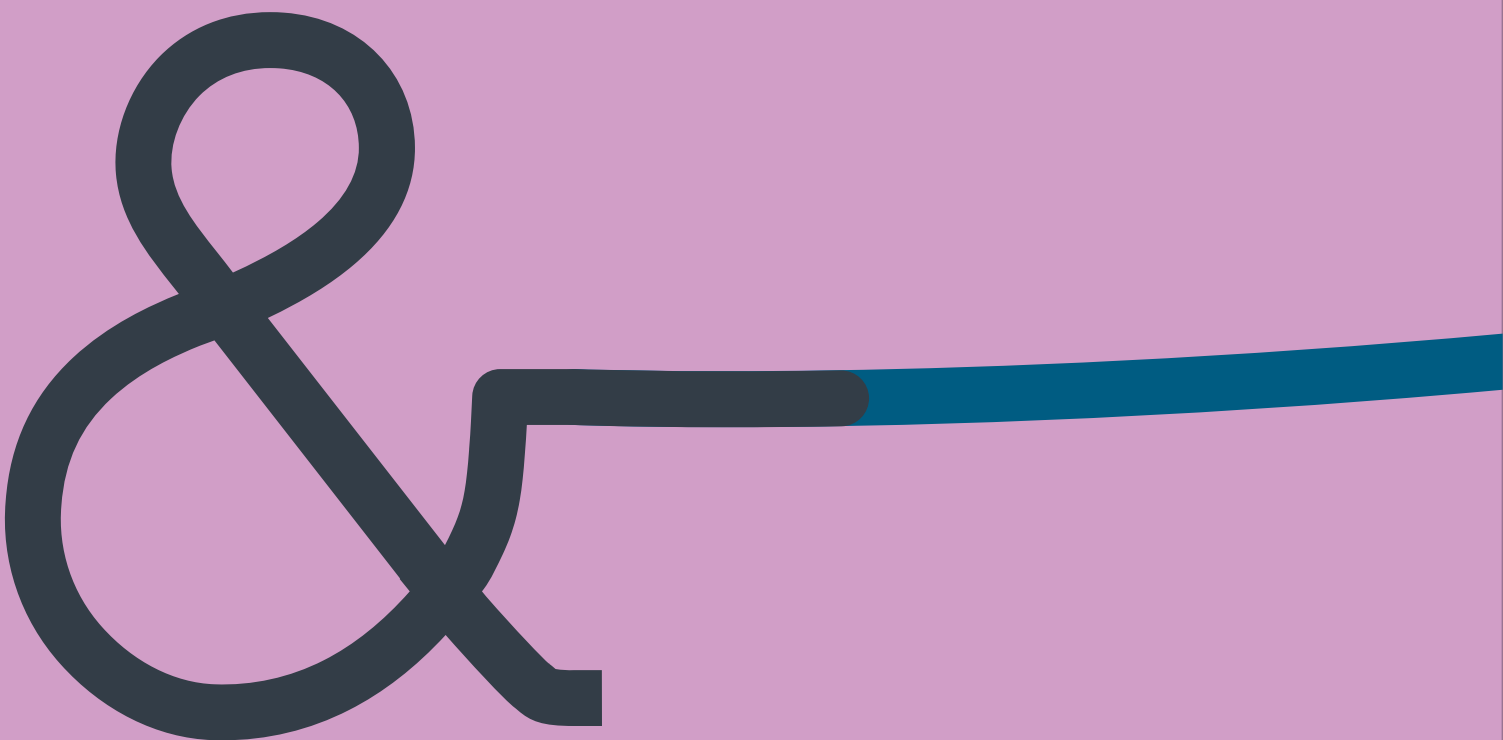


Bird & Bird

The new ecodesign framework in the European Union

22nd December 2023



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On 4 December 2023, the European Parliament and the Council of the European Union reached **provisional agreement on the text of the European Commission's proposal for Ecodesign for Sustainable Products Regulation** (hereafter the “Regulation”), which will replace the current Directive 2009/125/EC. The proposal was published by the Commission on 30 March 2022.

The new Regulation **is intended to enable the placing on the market and putting into service within the European Union of products designed and manufactured according to sustainability criteria**, in terms of durability, reliability, reusability, upgradeability, reparability, recyclability and ease of handling concerning maintenance.

This objective will be pursued through the provision of product design requirements, product labelling rules, prescriptions regarding the “destruction” of unsold products as well as the introduction of a digital product passport, together with penalties for infringements. The regulation will also contain rules on EU Declarations of Product Conformity and CE marking.

The European legislator is expected to formally vote on the reached agreement so that the Regulation can be definitively adopted and enter into force. The plenary of the European Parliament in which the vote on the text could take place is scheduled to be held in spring 2024.

The scope of the Regulation

The Regulation will apply to almost all product categories, including their components (*i.e.* products intended to be incorporated into other products) and intermediate products (*i.e.* products that require a further manufacturing or processing step, such as mixing, coating or assembling, to make them suitable for end users).

It won't apply to products whose sectoral regulations already provide for eco-design rules (e.g. veterinary and human medicines, plants, animals and foodstuffs).

Design requirements and the delegation to the European Commission

The Regulation will introduce a **harmonised framework for setting eco-design requirements, consisting of requirements aimed at making the product more environmentally sustainable**.

Such eco-design requirements include, as appropriate:

- i the **product performance requirements**, *i.e.* the quantitative or non-quantitative as well as functional requirements of the product or related to it aimed at achieving a certain level of performance with respect to a product parameter (for example, durability, recyclability, ease of maintenance, etc.); and
- ii the **information obligations** of economic operators, who will therefore be required to provide a digital product passport as well as, as appropriate, further information elements, such as the method of installation and use of the product and the treatment facilities regarding its end-of-life disposal.

The Commission will be delegated to adopt binding acts to supplement the Regulation, establishing eco-design requirements for each product category. It was also stipulated in the agreement of 4 December 2023 that, following their adoption, Member States will have 18 months (or less, depending on the specific case and at the discretion of the Commission) to comply with these delegated acts.

The Digital Product Passport

Before being placed on the market or put into service in the European Union, products included in the Regulation scope of application must be equipped with a **digital passport** containing information on the environmental sustainability of the single product.

The information contained in each passport will be stored in a special “**Product Passports Register**” established and maintained by the Commission, which will indicate, by means of delegated acts, the specific passport requirements per product category (information to be included, access modalities, authorised parties, etc.).

In addition, the **digital passport will be linked via a data vector** (physically affixed to the product, packaging or other documentation accompanying the product) **to a product unique identification code**, which consists of a unique string of characters for the identification of the product that also enables a web link to the product passport.

The passport will also be **freely accessible**, according to their rights, by all consumers, economic operators and, more generally, stakeholders.

The new system will therefore allow for a prompt and more efficient accessibility of product requirements as well as a check on the conformity of the product with the new framework requirements, to promote a full digitalisation and transparency on the part of the economic operators involved, who will have to pay constant attention to preserve and update the data contained in the digital passports of their products.

Destruction of Unsold Products

The “**destruction**” of **unsold consumer products** (also meaning the disposal of the products as waste) is a further topic regulated by the Regulation, which lays down **information burdens on the economic operator**, in order to avoid procedures with an excessive impact on the environment.

In particular, the economic operator who disposes unsold products shall disclose the following information on an open-access website (or other publicly accessible medium):

- i the number of unsold consumer products he disposes each year, divided by product type or category;
- ii the reasons for disposing the products;
- iii the delivery of disposed products for preparation for re-use, remanufacturing, recycling, energy recovery and disposal operations (...).

Furthermore, the current text of the Regulation, as a result of the agreement recently reached, provides – with some exceptions - for **two prohibitions on the destruction of unsold products**: (i) where such an operation would have a **significant impact on the environment**; and (ii) in general in relation to **textile products** and **footwear**.

The provisions of the Regulation related to the destruction of unsold products **do not apply to small and medium-sized companies** (in some specific cases, however, destruction prohibitions also apply to such companies).

In any case, the Commission is allowed to introduce further prohibitions and exemptions through delegated acts.

Obligations for economic operators

The Regulation lays down further obligations for all those involved in the commercialisation in the European Union of a product falling within its scope.

These obligations are distinguished according to the role of the individual economic operator in the context of the commercialisation of a product. In particular, the regulation imposes:

- i on manufacturers, to comply with the provisions concerning the design of the products included in the Regulation and its delegated acts, the EU conformity certification (which must be kept together

with the technical documentation relating to the product for at least 10 years from the beginning of the commercialisation of the same), the preparation of the digital passport, the indication of a series of information on their products or on their packaging or accompanying documents (product identification codes; manufacturer's reference data, instructions for use, etc.);

- ii to importers, the control of the manufacturer's compliance with his obligations, the control of the presence of the mandatory information required by the Regulation (including the digital passport and the necessary CE marking), the abstention from placing the product on the market if the product does not comply with the provisions of the Regulation, the indication of his own references on the product, as well as the obligation to provide information on the conformity of the imported product with the design specifications following a motivated request by the competent national authority;
- iii to distributors, the monitoring of compliance by the importer or manufacturer of the product with the relevant obligations under the Regulation (including those relating to information requirements and CE marking), as well as the obligation to provide information in response to a motivated request for documentation and information from the competent national authority;
- iv to retailers, to ensure that consumers have clear and non-misleading access to all information required by the Regulation and its delegated acts (including the digital product passport), including in the context of distance selling.

The regulation also provides for general obligations for all economic operators with regard to product labelling, as well as uniform regulation of online marketplaces and search engines.

To complete this framework, the Regulation also introduces a monitoring system on compliance with the aforementioned requirements, based on a control power granted to the Commission (in cooperation with bodies set up at national level), and certain reporting obligations provided for economic operators, in order to ensure the conformity of the product with the requirements set out in the delegated acts.

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