

Our position

Proposal for Eco-design for Sustainable Products Regulation



AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €3 trillion in 2019, directly supports more than 4.8 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

Executive summary

The Ecodesign for Sustainable Products Regulation (ESPR) rightly aims to create a single market for sustainable products across Europe, while strengthening the competitiveness of European industry. In particular, the decision of the European Parliament and the Council of the European Union to maintain two key aspects of the European Commission proposal is a positive approach.

- **Harmonisation of ecodesign rules** (Art. 4). Harmonised rules across the whole EU are key to promote the economies of scale that enable European companies to engage in long-term investments in innovative products and technologies.
- **The product-specific approach**. As sustainability impacts vary across product categories, it is essential that the delegated acts under the ESPR set ecodesign and information requirements that are tailored to the unique characteristics of each product group.

The following recommendations for the trilogues aim at making the ESPR successful and leading to a win-win situation for both the environment and competitiveness.

- A. Ensure a **minimum transition time** of at least 18 months between the adoption of ecodesign requirements secondary legislation and their application, in line with the Council position (Art. 7a – Former Annex VI).
- B. On **substances of concern (SoC)**:
 - Clarify that restrictions under the ESPR can only occur for circularity reasons, in line with the Commission proposal and the Council position (Art 6 (3));
 - Focus the definition of SoC on those substances hindering recycling (Art. 2 [27]); and
 - Focus on tracking SoC that are relevant for each product group, in line with the Council position (Art. 7 [5]).
- C. On the **definition of environmental footprint**, provide the possibility to use scientific methodologies other than the Product Environmental Footprint (PEF) when setting ecodesign requirements, in line with the EU Parliament position (Art. 2 [23]).
- D. **Require supply chain actors** to provide information enabling manufacturers to integrate relevant data in the Digital Product Passport, while protecting confidential business information, in line with the Parliament and Council position (Art. 25 [a] (new)).
- E. On **unsold consumer products** (Art. 2 (35, 2 [37], Art. 20):
 - Include only those products fit for consumption or sale in the definition of ‘unsold consumer products’, in line with the EU Parliament position.
 - Exclude recycling from the definition of ‘destruction’.
 - Provide sufficient transition time for the provisions on reporting with the first report in the financial year starting in 2026 for the financial year starting in 2025.
 - Require each ban on destruction of unsold consumer products be preceded by an impact assessment, while avoiding direct bans affecting specific sectors (eg textiles and appliances), in line with the Commission proposal.
 - Allow for the destruction of unsold consumer products in the case of product non-compliance, damage or hygiene reasons, in line with the Council and Parliament position.

- F. On the **prioritisation of product groups in view of the Ecodesign Work Plan** (Art. 16), support the Commission proposal and Council position that prioritisation of product groups should be based on a thorough impact assessment, which is already underway by the Commission and the Joint Research Centre (JRC). As such, oppose the Parliament position to prioritise certain sectors based on political considerations. In addition, the Ecodesign Work Plan should not cover intermediate products, as these are already covered in existing legislation (eg the Registration, Evaluation, Authorisation and Restriction of Chemicals [REACH] Regulation for chemicals).
- G. On **obligations for online search engines** (Art. 29), support the Parliament’s proposal to remove requirements for search engines. Including search engines in the scope of the Regulation means the obligations would fall to non-monetised web results. Market surveillance regulators do not need special access to search engines, as they provide publicly available information that is accessible to anyone with a web browser and internet.
- H. On **software updates** (Art. 33 par. 4), exempt performance impacts related to operating system security updates, in line with the Council position. This would ensure alignment with the Ecodesign Regulation for Smartphones and Tablets (Lot X).

Introduction

The ESPR proposal seeks to create a single market for sustainable products, making sustainable products the norm in the EU and boosting Europe’s resource independence. The proposal, which is currently under discussion in the institutional trilogue negotiations, will only succeed if it ensures clarity and coherence with other pieces of legislation and drives competitiveness for European industry. To do so, EU lawmakers should consider the following recommendations.

A. Minimum transition time between ecodesign requirements and their applications

Commission proposal (Annex VI)	Council position (Art. 7a – Former Annex VI)	Parliament position (Annex VI)	AmCham recommendations	EU
<i>The delegated acts adopted pursuant to Article 4 are to specify the following technical elements:</i>	<i>The delegated acts adopted pursuant to Article 4 are to specify the following technical elements:</i> f) dates of application ensuring adequate appropriate time for implementation, ensuring at	<i>The delegated acts adopted pursuant to Article 4 are to specify the following technical elements:</i> (...) <i>(8) implementation dates, any staged or transitional measure or periods, in particular taking</i>	Support Council position	



(...)
(8)
implementation dates, any staged or transitional measure or periods, taking into account possible impacts on SMEs or on specific product groups manufactured primarily by SMEs

least 18 months after the entry into force of the delegated act, any staged or transitional measure or periods, taking into account possible impacts on market surveillance authorities, SMEs or on specific product groups manufactured primarily by SMEs (...)

into **consideration the needs of micro-enterprises and SMEs** or on specific product groups manufactured primarily by **micro-enterprises and SMEs**;

Justification

Transition times provide essential legal certainty and adequate time to make the needed design changes, scale them up and adapt supply chains. As a safeguard, a minimum transition time of 18 months should be set to preserve:

- **The competitiveness of the European industry.** European plants generally have highly automated production lines compared to non-European plants, which tend to use more manual processes. As a result, adaptation to new design requirements takes significantly more time in Europe, as this requires the purchase, delivery and assembly of new manufacturing equipment. Nowadays, re-design takes even more time than in the past due to the uncertain geopolitical and energy situation as well as pressures on raw materials. Without an appropriate transition time, manufacturing facilities in the EU may relocate to non-EU countries.
- **Legal certainty.** It is important that the transition period starts from the moment when the final text has been adopted. Companies can only complete technological and product development and start mass production once they know the final regulatory requirements. Without this certainty, they risk making incorrect product design choices and investing in manufacturing equipment that they may then need to discard, leading to significant waste.

B. Substances of concern (SoC)

Definitions of substances of concern (Art. 2 [27])

Commission proposal	Council position	Parliament position	AmCham EU recommendations <i>(in bold Council/Parliament additions; highlighted in green AmCham EU additions)</i>
'substance of concern' means a substance that:	Same as Commission	'substance of concern' means a substance that:	'substance of concern' means a substance that:
a) meets the criteria laid down in Article 57 and is identified in		d) meets the criteria laid down in Article 57; or	g) meets the criteria laid down in Article 57 and is identified in



<p>accordance with Article 59(1) of Regulation (EC) No 1907/2006; or</p> <p>b) is classified in Part 3 of Annex VI to Regulation (EC) No 1272/2008 in one of the following hazard classes or hazard categories:</p> <ul style="list-style-type: none"> - carcinogenicity categories 1 and 2, - germ cell mutagenicity categories 1 and 2, - reproductive toxicity categories 1 and 2, [to be added in the course of the legislative procedure once Regulation (EC) No 1272/2008 contains these hazard classes: Persistent, Bioaccumulative, Toxic (PBTs), very Persistent very Bioaccumulative (vPvBs); Persistent, Mobile and Toxic (PMT), very Persistent very Mobile (vPvM); Endocrine disruption], - respiratory sensitisation category 1, - skin sensitisation category 1, - chronic hazard to the aquatic environment categories 1 to 4, - hazardous to the ozone layer, - specific target organ toxicity – repeated exposure categories 1 and 2, - specific target organ toxicity – single exposure categories 1 and 2; or <p>c) negatively affects the re-use and recycling of materials in</p>	<p>e) is classified in Part 3 of Annex VI to Regulation (EC) No 1272/2008 in one of the following hazard classes or hazard categories:</p> <ul style="list-style-type: none"> - carcinogenicity categories 1 and 2, - germ cell mutagenicity categories 1 and 2, - reproductive toxicity categories 1 and 2, [to be added in the course of the legislative procedure once Regulation (EC) No 1272/2008 contains these hazard classes: Persistent, Bioaccumulative, Toxic (PBTs), very Persistent very Bioaccumulative (vPvBs); Persistent, Mobile and Toxic (PMT), very Persistent very Mobile (vPvM); Endocrine disruption], - respiratory sensitisation category 1, - skin sensitisation category 1, - chronic hazard to the aquatic environment categories 1 to 4, - hazardous to the ozone layer, - specific target organ toxicity – repeated exposure categories 1 and 2, - specific target organ toxicity – single exposure categories 1 and 2; - substances regulated under Regulation (EU) No 2019/1021 of the 	<p>accordance with Article 59(1) of Regulation (EC) No 1907/2006; or</p> <p>h) is classified in Part 3 of Annex VI to Regulation (EC) No 1272/2008 in one of the following hazard classes or hazard categories:</p> <ul style="list-style-type: none"> - carcinogenicity categories 1 and 2, - germ cell mutagenicity categories 1 and 2, - reproductive toxicity categories 1 and 2, [to be added in the course of the legislative procedure once Regulation (EC) No 1272/2008 contains these hazard classes: Persistent, Bioaccumulative, Toxic (PBTs), very Persistent very Bioaccumulative (vPvBs); Persistent, Mobile and Toxic (PMT), very Persistent very Mobile (vPvM); Endocrine disruption], - respiratory sensitisation category 1, - skin sensitisation category 1, - chronic hazard to the aquatic environment categories 1 to 4, - hazardous to the ozone layer, - specific target organ toxicity – repeated exposure categories 1 and 2, - specific target organ toxicity – single exposure categories 1 and 2; and <p>i) negatively affects the re-use and recycling of materials in</p>
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<p>the product in which it is present;</p>	<p>European Parliament and of the Council; - specific restricted substances listed in Annex XVII of Regulation (EC) No 1907/2006; or f) negatively affects the re-use and recycling of materials in the product in which it is present;”</p>	<p>the product in which it is present based on available recycling technologies;</p>
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Justification

SoC should be redefined as those hazardous substances that hinder reuse or recycling of materials based on the available recycling technologies. This is key to:

- Ensure **coherence** between the ESPR and existing EU chemical legislation, including the REACH Regulation and other product-specific rules (eg the Restriction of Hazardous Substances Directive for electrical equipment). Because of safety concerns, chemical legislation, primarily REACH, should exclusively regulate substances of very high concern and hazardous substances. The ESPR proposal acknowledges this: ‘this Regulation should not enable the restriction of substances based on chemical safety, as done under other Union legislation’ (Recital 22). The ESPR should focus on regulating substances that hinder recycling and should define clear criteria for this category of substances.
- Encourage the evolution of recycling methods and technologies, by linking the list of SoC to state-of-the-art recycling technology. More advanced recycling technologies – both mechanical and chemical – would likely allow for more substances to be recycled in the future.

Restrictions of substances of concern (Art. 6 [3])

Commission proposal	Council position	Parliament position	AmCham recommendations	EU
<p>Performance requirements based on the product parameter set out in Annex I, point (f), shall not restrict the presence of substances in products for reasons relating primarily to chemical safety.</p>	<p><u>Performance requirements based on the product parameter set out in Annex I, point (f), shall, where relevant, restrict the presence of substances in products for reasons relating primarily to the improvement of environmental sustainability of the products.</u></p>	<p>Performance requirements based on the product parameter set out in Annex I, point (f), shall not restrict the presence of substances in products for reasons relating primarily to chemical safety, unless there is an unacceptable risk to human health or the environment, arising from the use of a substance present in the product or product component when it is placed on the market or</p>	<p>Support the Council position</p>	<p>Council</p>



<p><i>Performance requirements based on the product parameter set out in Annex I, point (f), shall not restrict the presence of substances in products for reasons relating primarily to chemical safety.</i></p>	<p>during the subsequent stages of its lifecycle.</p>
<p>Justification</p> <p><i>To avoid legal uncertainty, it is essential to avoid any overlap between the scope of the ESPR and the scope of EU chemical legislation. As also acknowledged by the Commission proposal,¹ REACH should be the primary framework for restrictions based on chemical safety concerns, while the ESPR should deal with restrictions primarily based on circularity concerns.</i></p>	

Information requirements on Substances of Concern (Art. 7 [5])

<u>Commission proposal</u>	<u>Council position</u>	<u>Parliament position</u>	<u>AmCham EU recommendation</u>
<p><i>(in bold Council/EU Parliament additions; highlighted in green AmCham EU additions)</i></p>			
<p>The information requirements referred to in paragraph 1 shall enable the tracking of all substances of concern throughout the life cycle of products, unless such tracking is already enabled by another delegated act adopted pursuant to Article 4 covering the products concerned, and shall include at least the following:</p> <p>(...)</p>	<p>Unless otherwise provided for under the second subparagraph of this paragraph, point c), the information requirements referred to in paragraph 1 shall enable the tracking of all substances of concern throughout the life cycle of products, unless such</p>	<p>The information requirements referred to in paragraph 1 shall enable the tracking of all substances of concern present in the product as placed on the market, in accordance with a threshold-based approach, throughout the life cycle of products, unless such tracking is already enabled by another delegated act adopted pursuant to Article 4 covering the products</p>	<p>Support a combination of the Parliament and Council position:</p> <p>“Unless otherwise provided for under the second subparagraph of this paragraph, point c), the information requirements referred to in paragraph 1 shall enable the tracking of relevant substances of</p>

¹ See Recital 22, ‘This Regulation should not enable the restriction of substances based on chemical safety, as done under other Union legislation’.

<p>Where the Commission sets out information requirements in a delegated act adopted pursuant to Article 4, it shall:</p> <p>(a) establish which substances fall under the definition in Article 2(28), point (c), for the purposes of the product groups covered;</p> <p>(b) lay down deadlines for the entry into application of the information requirements referred to in the first subparagraph, with possible differentiation between substances; and</p> <p>(c) provide exemptions for substances of concern or information elements from the information requirements referred to in the first subparagraph.</p> <p>Exemptions referred to in the second subparagraph, point (c), may be provided based on the technical feasibility or relevance of tracking substances of concern, the need to protect confidential business information and in other duly justified cases.</p> <p>Substances of concern falling under the definition in Article 2(28), point (a), shall not be exempted from the information requirement referred to in the first subparagraph if they are present in the relevant products, their main components or spare parts in a concentration above 0,1 % weight by weight.</p>	<p>tracking is already enabled by another delegated act adopted pursuant to Article 4 covering the products concerned and shall include at least the following:</p> <p>(...)</p> <p>The Commission may, as appropriate for the product group concerned, set thresholds for when the information requirement regarding substances of concern is to apply.</p> <p>Where the Commission sets out information requirements in a delegated act adopted pursuant to Article 4, it shall assess and where relevant:</p> <p>(a) establish which substances fall under the definition in Article 2(28), point (c), for the purposes of the product groups covered;</p> <p>(b) lay down deadlines for the entry into application of the information requirements referred to in the</p>	<p>concerned, and shall include at least the following:</p> <p>(... same as Commission text)</p> <p>The Commission may, as appropriate for the product group concerned, set thresholds for when the information requirement regarding substances of concern is to apply.</p> <p>Where the Commission sets out information requirements in a delegated act adopted pursuant to Article 4, it shall assess and where relevant:</p> <p>(a) establish which substances fall under the definition in Article 2(28), point (c), for the purposes of the product groups covered;</p> <p>(b) lay down deadlines for the entry into application of the information requirements referred to in the first</p>	<p>concern present in the product as placed on the market, in accordance with a threshold-based approach, throughout the life cycle of products, shall include at least the following:</p> <p>(...)</p> <p>The Commission may, as appropriate for the product group concerned, set thresholds for when the information requirement regarding substances of concern is to apply.</p> <p>Where the Commission sets out information requirements in a delegated act adopted pursuant to Article 4, it shall assess and where relevant:</p> <p>(a) establish which substances fall under the definition in Article 2(28), point (c), for the purposes of the product groups covered;</p> <p>(b) lay down deadlines for the entry into application of the information requirements referred to in the first subparagraph, with possible differentiation</p>
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first subparagraph, with possible differentiation between substances **and with specific consideration given to substances listed under Article 2(28), point b;** and

(c) provide **duly justified** exemptions for substances of concern or information elements from the information requirements referred to in the first subparagraph, **based on the technical feasibility or relevance of tracking substances of concern, the need to protect confidential business information or in other duly justified cases. Substances of concern within the meaning of Article 2(28), point a), shall not be exempted if they are present in products, their relevant components or spare parts in a concentration above 0,1 % weight by weight.**

d) refer to existing information requirements under Union law, or if not

between substances **and with specific consideration given to substances listed under Article 2(28), point b;** and

(c) provide **duly justified** exemptions for substances of concern or information elements from the information requirements referred to in the first subparagraph, **based on the technical feasibility or relevance of tracking substances of concern, the need to protect confidential business information or in other duly justified cases. Substances of concern within the meaning of Article 2(28), point a), shall not be exempted if they are present in products, their relevant components or spare parts in a concentration above 0,1 % weight by weight.**

d) refer to existing information requirements under Union law, or if not possible, ensure consistency with those requirements.

When specifying the information

<p><i>possible, ensure consistency with those requirements.</i></p> <p><i>When specifying the information requirement on substances of concern, and in particular substances under Article 2(28), point b, the Commission shall primarily aim at promoting re-use, recycling, recovery and other value-retaining operations</i></p>	<p><i>requirement on substances of concern, and in particular substances under Article 2(28), point b, the Commission shall primarily aim at promoting re-use, recycling, recovery and other value-retaining operations</i></p>
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Justification

While recognising the importance of value chain transparency for SoC, policymakers must ensure that the tracking of SoC: can be implemented practically with reasonable effort; is focused on the key substances related to each product group; and is developed in cooperation with all stakeholders, including the European Chemicals Agency and industry. Tracking should therefore be focused on **relevant SoC** for each product group and defined via a multi-stakeholder platform, including minimally industry and value chain actors. Information requirements should apply to SoC that are present above a certain threshold (eg above 0.1% by weight or – where no analytical method exists – at a threshold determined by a delegated act). These requirements are the only way to implement a feasible system. For instance, more than 12,000 SoC may be identified in upcoming years while only a handful are relevant to track for a specific product group. It is not practical nor scientifically justified to check for all of these in each product or component.

C. Definition of environmental footprint

<u>Commission proposal</u>	<u>Council position</u>	<u>Parliament position</u>	<u>AmCham recommendations</u>	<u>EU</u>
<u>Art. 2 (23)</u>	<u>Art. 2 (23)</u>	<u>Art. 2 (23)</u>	<u>Art. 2 (23)</u>	
<i>‘environmental footprint’ means a quantification of a product’s environmental impacts, whether in relation to a single environmental</i>	<i>‘environmental footprint’ means a quantification of a product’s environmental impacts, whether in relation to a single environmental impact</i>	<i>‘environmental footprint’ means a quantification of product life cycle’s environmental impacts, whether in relation to a single environmental impact category or an aggregated set of impact categories based on the Product</i>	Support the Parliament position	



impact category or an aggregated set of impact categories based on the Product Environmental Footprint method category or an aggregated set of impact categories based on the Product Environmental Footprint method **which can be, where appropriate, complemented or supplemented by scientifically robust tools and methods with a level of detail that ensures comparability across product groups** Environmental Footprint method or **other scientific methods developed by international organisations and widely tested in collaboration with different industry sectors and recognised by the Commission**

Justification

The definition of environmental footprint should go beyond replicating the Product Environmental Footprint (PEF) method for the following reasons:

- PEF only covers 16 impact categories and leaves out several key environmental impact categories (eg biodiversity, circularity, etc) that may be relevant for the many complex products covered by ESPR.
- PEF methodology is not ready from a scientific point of view. According to a recent Eunomia report, ‘the EU Commission Joint Research Centre found, that out of the 16 impact categories, only three were considered “satisfactory” (climate change, ozone depletion and particulate matter)’. In addition, PEF has very limited use and cannot be used as a basis for comparing most product categories on the EU market, since PEF Category Rules have been developed only for around 25 product categories,
- PEF does not allow for products’ performance differentiation during the in-use phase and thus risks incentivising the manufacture of less sustainable products. For example, PEF penalises detergents that perform well at low temperatures, as these contain more sophisticated ingredients (eg enzymes) compared to poorer performing detergents. By pushing consumers to use poorer performing detergents, consumers would compensate by re-washing clothing, increasing the washing temperature or using more of the product. This would significantly increase the CO2 emissions associated with laundry and increase washing machines’ electricity consumption.

The definition of environmental footprint should be broadened to mirror other scientifically validated life-cycle methods (for example, those based on International Organisation for Standardisation 14040 series).

D. Information along the value-chain

<u>Commission proposal</u>	<u>Council position</u>	<u>Parliament position</u>	<u>AmCham EU recommendations</u>
	<u>Art. 31 (a)</u>	<u>Art. 25 (a) (new)</u>	



		<i>(in bold Council/EU Parliament additions)</i>
NA	<p><i>When specified in the delegated act adopted pursuant Article 4, supply chain actors shall:</i></p> <p><i>(a) provide, upon request, manufacturers, notified bodies and competent national authorities with available relevant information related to their supplies or services;</i></p> <p><i>(b) allow, in the absence of information referred to in point (a), manufacturers to assess their supplies or services and give access to relevant documents or facilities to those manufacturers;</i></p> <p><i>(c) enable notified bodies and competent national authorities to verify the correctness of relevant information related to their activities.</i></p> <p><i>The requirement under the first paragraph should be non-discriminatory, not give raise to disproportionate administrative burden and take into consideration economic</i></p>	<p><i>The supplier of a substance or a mixture or the supplier of an article shall provide free of charge all the relevant information to the economic operators to facilitate its compliance with the performance and information requirements set out in this Regulation.</i></p> <p>Support a mix of the Parliament and the Council position:</p> <p><i>The supplier of a substance or a mixture or the supplier of an article shall provide free of charge all the relevant information to the economic operators to facilitate its compliance with the performance and information requirements set out in this Regulation.</i></p> <p><i>The requirement under the first paragraph should be non-discriminatory, not give raise to disproportionate administrative burden and take into consideration economic actors legitimate needs to protect trade secrets.</i></p>

actors legitimate needs to protect trade secrets.

The Commission shall, when establishing requirements referred to in points (a) and (b) of paragraph 6, take into account the needs of SMEs including SME's difficulties in accessing information.

Justification

It is positive that the Council and Parliament obligate suppliers to give manufacturers enough information to comply with the ESPR's information requirements.

This decision recognises the length and complexity of today's value –chains, where manufacturers of final products depend on the information provided by their suppliers (suppliers of raw materials, ingredients, product components etc). For instance, manufacturers must rely on suppliers for information on recycled content, since there are often no analytical techniques to distinguish virgin material from recycled material. The same is true for the tracking of SoC, where manufacturers rely on information provided by the material suppliers.

As manufacturers depend on information provided by suppliers of all product categories, the obligation should be automatic (as implied by the Parliament text), while allowing for protection of confidential business information (as implied by the Council text).

E. Unsold consumer product

Definition of destruction (Art. 2 [35])

<u>Commission proposal</u>	<u>Council position</u>	<u>Parliament position</u>	<u>AmCham EU recommendations</u>
			<i>(in bold Council/EU Parliament additions; highlighted in green AmCham EU additions)</i>
'destruction' means the intentional damaging or discarding of a product as waste with the exception of	Same as Commission	destruction' means the intentional damaging or discarding of a product as waste with the exception of discarding for the only purpose of delivering	destruction' means the intentional damaging or discarding of a product as waste with the exception of discarding for the only



<p>discarding for the only purpose of delivering a product for preparing for re-use or remanufacturing operations;</p>	<p>a product for preparing for re-use, refurbishing or remanufacturing operations;</p>	<p>purpose of delivering a product for preparing for re-use, refurbishing, recycling or remanufacturing operations;</p>
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Justification

Since recycling allows for the creation of new products, it cannot be classified as destruction in the same way as incineration or landfilling. In addition, recycling is the preferred way to treat unsold consumer products that are not suitable for consumer use or donation due to quality defects affecting safety or performance.

Definition of unsold consumer products (Art. 2 [37])

<u>Commission proposal</u>	<u>Council position</u>	<u>Parliament position</u>	<u>AmCham EU recommendations</u> <i>(in bold Council/EU Parliament additions; highlighted in green AmCham EU additions)</i>
<p>‘unsold consumer product’ means any consumer product that has not been sold or that has been returned by a consumer in view of their right of withdrawal in accordance with Article 9 of Directive (EU) 2011/83/EU;</p>	<p>‘unsold consumer product’ means any consumer product that has not been sold or that has been returned by a consumer in view of their right of withdrawal in accordance with Article 9 of Directive (EU) 2011/83/EU or, where applicable, in view of the commercial guarantee for withdrawal provided by the retailer regarding the product concerned.</p>	<p>‘unsold consumer product’ means any consumer product fit for consumption or sale that has not been sold including surplus, excessive inventory, overstock and deadstock, including products returned by a consumer in view of their right of withdrawal in accordance with Article 9 of Directive (EU) 2011/83/EU;</p>	<p>‘unsold consumer product’ means any consumer product fit for consumption or sale that has not been sold or that has been returned by a consumer in view of their right of withdrawal in accordance with Article 9 of Directive (EU) 2011/83/EU;</p>



Justification

The term ‘unsold consumer products’ should be understood as ‘unused’ products. If the definition of unsold consumer products includes products that were already used by consumers and later returned, it may create safety and hygiene risks. Because used products may be damaged or contaminated, an obligation to donate them may be detrimental to recipients’ health and safety. This is particularly true for personal care products that have been in contact with other peoples’ skin.

Reporting obligations (Art. 20 [1])

<u>Commission proposal</u>	<u>Council position</u>	<u>Parliament position</u>	<u>AmCham EU recommendations</u> <i>(in bold Council/EU Parliament additions; highlighted in green AmCham EU additions)</i>
<p>(1)An economic operator that discards unsold consumer products directly, or on behalf of another economic operator, shall disclose:</p> <p>(...)</p>	<p>(1)An economic operator that discards unsold consumer products directly, or on behalf of another economic operator, shall disclose:</p> <p>(...)</p> <p>The information shall be disclosed on an annual basis and shall cover the unsold consumer products discarded during the previous financial year. The information for each year shall be publicly available for a period of 5 years. The first disclosure shall cover unsold consumer products discarded during the first full financial year of this</p>	<p>Same as Commission</p>	<ul style="list-style-type: none"> - Support the Council position that the disclosure should occur on a financial year basis. - Recommend that the first disclosure occurs the second financial year after the Regulation enters into force: <p>The first disclosure shall cover unsold consumer products discarded during the second full financial year of this regulation being in force.</p>

regulation being in force.

(...)

(2) The Commission shall adopt implementing acts setting out the details and format,

including the delimitation of product types or categories and how the information is to be verified, with consideration given to the need to protect sensitive information and trade secrets, for the disclosure of the information referred to in paragraph 1, points a, b and c by economic operators not disclosing them in their management report as referred to in paragraph 1, fourth subparagraph. including the type or category and how the information is to be verified.

The first implementing act shall be adopted no later than [OJ note: 12 months after entry into force of this Regulation].

Justification

*It is positive that the Council position provides that disclosure of unsold consumer products destroyed should occur on a **financial year basis**. This approach is in line with other pieces of EU legislation on reporting, including the Corporate Sustainability Reporting Directive. As such, this approach will allow companies to consolidate their reporting activities and minimise 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, for which companies need to establish a reporting system. To provide legal certainty to these companies, the reporting obligation should become applicable after the Commission has clarified the reporting format through implementing acts.*

That is why the first report should cover products discarded during the second full financial year from the entry into force of the Regulation (ie first report in financial year 2026 for the financial year 2025). Should the Commission publish its implementing act on the reporting format in 2025 (one year after the finalisation of the ESPR), this will provide time for companies to adapt.

Direct ban on destruction of unsold consumer products in certain sectors (Art. 20)

<u>Commission proposal</u>	<u>Council position</u> <u>Art. 20b</u>	<u>Parliament position</u> <u>Art. 20a (new)</u>	<u>AmCham recommendations</u>	<u>EU</u>
No direct ban on destruction unsold consumer products, but two-step approach:	<i>From [OJ note: 36 months after entry into force of this Regulation], destruction of unsold consumer products that are apparel or clothing accessories, listed in Chapters 61 and 62 of the TARIC established in Council Regulation (EEC) No 2658/8777, is prohibited</i>	<i>1. One year after ... [insert the date of the entry into force of this Regulation], the destruction of unsold consumer products by economic operators shall be prohibited for the following product categories: (a) textiles and footwear; (b) electrical and electronic equipment.</i>	Support position.	Commission
<u>Justification</u>				
<i>The Commission approach rightly minimises destruction of unsold consumer products through a two-step approach:</i>				
<ol style="list-style-type: none"> <i>1) Disclosure by economic operators of the quantity of unsold consumer products discarded each year; and</i> <i>2) Prohibition of destruction of unsold consumer products in the sectors where this practice is more widespread and unjustified through future implementing acts.</i> 				
<i>This approach would lead to better information on which sectors discard significant amounts of unsold consumer products, as well as the reasons for discarding them. It would also be the most cost-effective option for focusing on the destruction of unsold consumer products in the most relevant sectors without imposing an unnecessary burden on other sectors.</i>				

Exemptions to prohibition on destruction of unsold consumer products (Art. 20 [3])

<u>Commission proposal</u>	<u>Council position</u>	<u>Parliament position</u>	<u>AmCham EU recommendations</u> (in bold Council/EU Parliament additions; highlighted in green AmCham EU additions)
<p><i>In the delegated acts adopted pursuant to the first subparagraph, the Commission shall set out certain exemptions to those prohibitions where it is appropriate in view of:</i></p> <p><i>(a)health and safety concerns;</i></p> <p><i>(b)damage to products as a result of their handling or detected after a product has been returned by a consumer;</i></p> <p><i>(c)fitness of the product for the purpose for which it is intended, taking into account, where applicable, Union and national law and technical standards;</i></p> <p><i>(d)refusal of products for donation, preparing for re-use or remanufacturing.</i></p>	<p><i>The exemptions shall not constitute a means of arbitrary discrimination and shall be based on one of the following justifications:</i></p> <p><i>a) health and safety reasons;</i></p> <p><i>b) the products are damaged as a result of their handling or detected after a product has been returned by a consumer, despite the measures taken in accordance with Article 20aa;</i></p> <p><i>c) fitness of the product for the purpose for which it is intended, taking into account, where applicable, Union and national law and technical standards;</i></p> <p><i>d) refusal of products for donation, preparing for re-use or remanufacturing;</i></p> <p><i>e) products which are illegal under national or Union law including non-compliant</i></p>	<p><i>In the delegated acts adopted pursuant to the first subparagraph, the Commission shall set out certain exemptions to those prohibitions where it is appropriate in view of:</i></p> <p><i>(a) health, hygiene and safety concerns;</i></p> <p><i>(b) damage to products that cannot be repaired in a cost-effective manner as a result of their handling or detected after a product has been returned;</i></p> <p><i>(c) refusal of products for donation, preparing for re-use or remanufacturing;</i></p> <p><i>(d) counterfeit products.</i></p>	<p>Support the Council position and add the possibility of exemptions for hygiene reasons in line with the Parliament position:</p> <p>The exemptions shall not constitute a means of arbitrary discrimination and shall be based on one of the following justifications:</p> <p><i>a) health, hygiene and safety reasons;</i></p> <p><i>(b)damage to products as a result of their handling or detected after a product has been returned by a consumer;</i></p> <p><i>c) fitness of the product for the purpose for which it is intended, taking into account, where applicable, Union and national law and technical standards;</i></p> <p><i>d) refusal of products for donation, preparing for re-use or remanufacturing;</i></p>

<p><i>products, counterfeit products, or products rendered unsellable due to infringement of intellectual property rights;</i></p> <p><i>f) products exceeding their expiry date;</i></p> <p><i>g) products for which destruction is the option with the least negative environmental impact.</i></p>	<p><i>e) products which are illegal under national or Union law including non-compliant products, counterfeit products, or products rendered unsellable due to infringement of intellectual property rights;</i></p> <p><i>f) products exceeding their expiry date;</i></p> <p><i>g) products for which destruction is the option with the least negative environmental impact.</i></p>
<p>Justification</p> <p><i>Whilst destroying unsold consumer products should only be the last resort, under some circumstances, destruction is needed to protect consumers from safety hygiene or health risks. As a result, potential exemptions to the prohibition to destroy unsold consumer products should also include other potential exemptions linked to noncompliance with existing regulations, including for counterfeits, as well as exemptions for products exceeding their expiry date or shelf life.</i></p>	

F. Commission Ecodesign Work Plan

Commission proposal	Council position	Parliament position (Art. 16 [2] [2b new])	AmCham recommendations	EU
		<p><i>For the period 2024-2027, the Commission shall consider prioritising the following product groups in the first working plan that is to be adopted no later than ... [insert the date 3 months after the entry into force of this Regulation]. If any of the following product groups is not included in the working plan, the Commission shall provide a</i></p>	<p>- Oppose the prioritisation of certain product groups based on political reasons.</p> <p>Support the Commission and Council position that the prioritisation of product groups should be evidence-based and</p>	<p>the</p> <p>of</p> <p>product</p> <p>groups based on</p> <p>political reasons.</p> <p>and</p>

	<p><i>justification for its decision in the working plan:</i></p> <ul style="list-style-type: none"> - <i>iron, steel</i> - <i>aluminium</i> - <i>textiles, notably garments and footwear</i> - <i>furniture, including mattresses</i> - <i>tyres</i> - <i>detergents</i> - <i>paints</i> - <i>lubricants</i> - <i>chemicals</i> - <i>energy related products, the implementing measures for which need to be revised or newly defined</i> - <i>ICT products and other electronics</i>
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preceded by thorough impact assessment.

Justification

In line with the Commission proposal and the current ecodesign directive, prioritisation of product groups for the upcoming Ecodesign Work Plan should be based on a thorough impact assessment that is already underway by the Commission and the Joint Research Centre (JRC). Prioritisation should account for, amongst other factors:

- *Economic relevance.*
- *Environmental impacts and potential for significant environmental impacts.*
- *The extent to which a product is already regulated by other legislation.*

A defined list of products should not be prioritised for political reasons. Should that happen, the JRC’s current prioritisation process would become redundant.

G. Obligations for online marketplaces and search engines

Art. 29 Obligations of online marketplaces and online search engines

Article 29 – paragraph 2 – subparagraph 3

Commission proposal	Council position	Parliament position	AmCham recommendations	EU
Art. 29 Title Obligations of online	Art. 29 Title	Art. 29 Title	Support the Parliament’s proposal to remove the	



<p>marketplaces and online search engines</p>	<p>Obligations of online marketplaces and online search engines</p> <p>(same as Commission)</p>	<p>Obligations of online marketplaces provisions for search engines.</p>
<p>Article 29 – paragraph 2 – subparagraph 3</p> <p>In particular, where delegated acts adopted pursuant to Article 4 require online visual advertising for certain products to be accompanied by online electronic information to be displayed on the display mechanism, online marketplaces shall enable dealers to show it. This obligation shall also apply to online search engines and other online platforms that provide online visual advertising for the products concerned.</p>	<p>Article 29 – paragraph 2 – subparagraph 3</p> <p>In particular, where delegated acts adopted pursuant to Article 4 require online visual advertising for certain products to be accompanied by online electronic information to be displayed on the display mechanism, online marketplaces shall enable dealers to show it. This obligation shall also apply to online search engines and other online platforms that provide online <i>visual</i> advertising for the products concerned.</p>	<p>Article 29 – paragraph 2 – subparagraph 3</p> <p>Deleted</p>
<p><u>Justification</u></p> <p><i>Including search engines in the Regulations’ scope means that the obligations would fall to non-monetised web results. Market surveillance regulators do not need special access to search engines as they provide publicly available information that is open to anyone with access to the internet and a web browser. In addition, Art. 29.3 requires ‘online marketplace[s] to remove specific illegal content referring to a non-compliant product from its online interface’. If applied to search results the following issues would arise:</i></p> <ul style="list-style-type: none"> <i>Search engines would not be allowed to display results that do not carry the required information. This would lead to far-reaching censorship, which seems to be an unintended consequence. For example, European users searching for non-European products would not be able to find information about these products if the providers located outside the EU do not provide the required information online. Consequently, this regulation could significantly limit European consumers’ access to information. Similarly, pages that have 100 products listed including one that is ‘covered by a relevant delegated act’ would need to be delisted from the search engine entirely.</i> <i>It is unclear whether this requirement would amount to a general monitoring provision; if so, this would create a conflict of law with the EU Digital Services Act. If general monitoring is not envisioned, then this would</i> 		

simply be a notice-and-takedown obligation, which search engines already abide by via their legal removals process.

- *Manufacturers subject to labelling requirements under Article 29, paragraph 2, subparagraph 3 would potentially no longer be able to promote their products using search text-based ads, which tend to be highly valuable marketing tools to drive sales and growth. Because the ESPR proposal does not define ‘online visual advertising’, the legislation could be interpreted broadly to include text-based and other ad formats where it is infeasible to include a label within an ad. This would harm marketers by limiting their ability to reach new customers with online advertising.*

Finally, search engines lack direct access to all owners of online content publicly available on the internet, making it impossible to enforce the provision restricting noncompliant products from appearing in search results.

H. Software updates

Art. 33, paragraph 4

Commission proposal	Council position	Parliament position	AmCham recommendations	EU
<i>Software or firmware updates shall not worsen product performance in relation to any of the product parameters regulated in delegated acts adopted pursuant to Article 4 by which the products are covered or the functional performance from the perspective of the user when measured with the test method used for the conformity assessment, except with explicit consent of the end-user prior to the update. No performance change shall occur as a result of rejecting the update.</i>	<i>Software or firmware updates shall not worsen product performance in relation to any of the product parameters regulated in delegated acts adopted pursuant to Article 4 by which the products are covered or the functional performance from the perspective of the user when measured with the test method used for the conformity assessment, except with explicit consent of the end-user customer prior to the update. No performance change shall occur as a result of rejecting the update</i>	<i>Software or firmware updates shall not significantly worsen product performance in relation to any of the product parameters regulated in delegated acts adopted pursuant to Article 4 by which the products are covered or the functional performance from the perspective of the user when measured with the test method used for the conformity assessment, except with explicit consent of the end-user prior to the update. No performance change shall occur as a result of rejecting the update.</i>	Support position.	Council



Justification

Operating system updates improve user experience and extend a device's lifetime by maintaining a safe, stable and seamless environment. They aim to support compatibility with new devices and applications, address unintended functional issues and protect society against threats by mitigating security vulnerabilities. Software and operating system support is thus a key factor in ensuring a device's longevity. Manufacturers often face difficult trade-offs, where a device's vital updates may come at the expense of software performance. Manufacturers must have the ability to prioritise device security updates where appropriate and proportionate. The regulation should exempt performance impacts related to operating system security updates. This would also ensure alignment with the Ecodesign Regulation for Smartphones and Tablets (Lot X).

Conclusion

By considering these key recommendations, EU decision-makers can ensure the ESPR achieves its full potential and creates a single market for sustainable products while safeguarding legal certainty and European industry's future competitiveness.