



Brussels, 25 September 2023

There cannot be a Green Deal without a strong enforcement framework

EU policymakers are now moving ahead with the legislative process and have entered trilogue negotiations on the **Ecodesign Sustainable Products Regulation (ESPR)**. NGOs and European industries are once again joining forces to **warn about the risk of overlooking the need for strong enforcement provisions**. Without an effective and efficient enforcement of the new requirements, both the competitiveness of the internal market as well as the overall credibility and impact of EU rules will be undermined. The online sale of non-compliant products to customers should also be addressed as part of the ESPR.

There are an increasing number¹ of non-compliant and dangerous products that end up on the EU market, and that consumers unknowingly end up buying. At the same time, too few compliance checks² are carried out in Europe compared to the number of products available.

The ESPR proposal, as [published by the European Commission last year](#), included strong provisions on enforcement. Member States were to be obliged to perform a minimum number of checks per product group and draw up a Market Surveillance Action Plan every two years. These measures were further reinforced by the position adopted in the European Parliament that called for sufficient resources for Market Surveillance authorities. All of this was in line with, and in support of, the quite recent Market Surveillance Regulation 2019/2010/EU.

¹ "Based on the results of the EU projects and additional data from Member States, the Commission estimated in 2019 that, overall, around 10-25 % of products sold on the market were non-compliant":

https://www.eca.europa.eu/Lists/ECADocuments/SR20_01/SR_Ecodesign_and_energy_labels_EN.pdf

² "According to reports submitted to the Commission, the number of products inspected each year ranges from fewer than 20 to more than 100 000 per year per Member State."

https://www.eca.europa.eu/Lists/ECADocuments/SR20_01/SR_Ecodesign_and_energy_labels_EN.pdf

We are, however, strongly concerned by the [General Approach adopted by the Council](#). Member States significantly weakened the requirements related to the market surveillance of the regulated products, with, for instance, the deletion of the abovementioned proposals on minimum checks.

The above-mentioned Market Surveillance Regulation can only be effective if specific Union legislation such as the ESPR sets out the concrete measures necessary to protect the consumers from non-compliant products.

We call on EU policymakers to ensure that a robust framework is put in place in the final text to ensure that the EU reaches its sustainability objectives and provides a level-playing field on the EU market.

Furthermore, we regret that the existing loophole related to the online sale of goods to consumers has not been addressed. The ESPR proposal fails to rectify situations where traders are located outside of the EU and do not have an EU-based economic operator that can be held liable for the traders' products and activities if they are non-compliant with design and information requirements.

To address these issues, we recommend³ that:

- for all avenues of online sales there should be EU- or EEA - based economic operators liable and responsible for the compliance of products sold in the EU under the scope of the ESPR;
- online marketplaces should have distinct obligations to ensure that traders selling on their platform either meet the ESPR requirements or they can demonstrate that they have a liable economic operator registered in the EU or EEA – these requirements should amount to a checking requirement and not a monitoring obligation, in line with the DSA (exploring examples from France and Germany);
- in cases where fulfilment service providers are the only EU- or EEA – based economic operator in contact with an imported product before it reaches consumers, they should only fulfil orders for products that comply with the delegated acts, matching the obligations of importers;
- the enforcement of non-EU retailers who sell directly to EU consumers is increased, with the potential to block parcels and/or their vendors' sites, which demonstrate non-compliance.
- the original proposal of ensuring a minimum number of physical tests returns to the final legal text to ensure that products actually perform as the ESPR stipulates, in particular with the aim of identifying and stopping non-compliant products from rogue traders established outside of the EU.

Our recommendations are also relevant for many other existing and future policies including but not limited to the delegated acts deriving from the ESPR, the Corporate Sustainability and Due Diligence Directive; the Empowering Consumers for the Green Transition Directive; the Packaging and Packaging Waste Regulation; the WEEE Directive, other extended producer responsibility legislation and Article 8 of the Waste Framework Directive.

³ [Joint statement – Green deal ambitions threatened by loopholes regarding online sales](#)