Council of the
European Union

Brussels, 16 June 2023
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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	16 June 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
Subject:	REGULATORY SCRUTINY BOARD OPINION COMMISSION REGULATION (EU) …/… laying down ecodesign requirements for smartphones, mobile phones other than smartphones, cordless phones and slate tablets pursuant to Directive 2009/125/EC of the European Parliament and of the Council and amending Commission Regulation (EU) 2023/826 and COMMISSION DELEGATED REGULATION (EU) …/… supplementing Regulation (EU) 2017/1369 of the European Parliament and of the Council with regard to the energy labelling of smartphones and slate tablets

Delegations will find attached document SEC(2021) 164 final.

Encl.: SEC(2021) 164 final

EUROPEAN COMMISSION

Brussels, 3.5.2022
SEC(2023) 164 final

REGULATORY SCRUTINY BOARD OPINION

COMMISSION REGULATION (EU) …/… laying down ecodesign requirements for smartphones, mobile phones other than smartphones, cordless phones and slate tablets pursuant to Directive 2009/125/EC of the European Parliament and of the Council and amending Commission Regulation (EU) 2023/826

and

COMMISSION DELEGATED REGULATION (EU) …/… supplementing Regulation (EU) 2017/1369 of the European Parliament and of the Council with regard to the energy labelling of smartphones and slate tablets

{C(2023) 1672 final} {C(2023) 3538 final}
{SWD(2023) 101 final} {SWD(2023) 102 final}

EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB

Opinion

Title: Impact assessment / Ecodesign and Energy labelling of smartphones and tablets

Overall 2nd opinion: POSITIVE

(A) Policy context

In 2020, around 150 million mobile phones and 24 million tablets were sold in the European Union (EU). Estimates show that there are around 450 million mobile phones and around 150 million tablets in use in the EU. They have a short lifespan and are not often repaired. Contrary to many other products, short-lived ICT products have a high energy use in upstream production processes compared with that during actual use. The production of mobile phones and tablets is resource-intensive and uses several critical raw materials. Old smartphones and tablets are often kept in a drawer ('in hibernation') and recycling remains limited. The estimated stock of hibernating mobile phones is almost 700 million in the EU.

The second Circular Economy Action Plan envisages regulatory Ecodesign and Energy labelling measures to address the sustainability issues raised by mobile phones and tablets. These should improve their energy efficiency and circularity.

(B) Summary of findings

The Board notes the significant improvements made to the report.

The Board gives a positive opinion. The Board also considers that the report should further improve with respect to the following aspect:

(1) The comparison of options is not sufficiently clear and the justification for the choice of the preferred option continues to be insufficient.

This opinion concerns a draft impact assessment which may differ from the final version.

(C) What to improve

(1) While the revised report provides a more fine-tuned scoring of options, it is still not a sufficient basis for comparing them. The weighing of the individual criteria should be set out clearly. For instance, while the assessment of economic impacts distinguishes impacts on EU businesses and citizens and impacts on businesses outside the EU, it is not clear how this is considered in the overall assessment of efficiency of the options. Because of this, the justification for the choice of the preferred option is also insufficient and should be strengthened.

(2) Despite the additional analysis presented on the impacts of specific measures included under various options, the assessment of impacts on consumer prices should be further strengthened. The report should justify the assumption that the increase in prices consumers would pay would equal, but not exceed, the increase in manufacturing costs, by providing, for instance, the information on the degree of competition in the smartphone/tablet market.

(3) While the report provides a more comprehensive and detailed analysis of impacts, it should be clearer about the conclusions from the analysis. It should explain how the largely negative economic impacts on non-EU manufacturers are set against the impacts on EU businesses that are largely positive for the SME repair sector when it comes to the overall assessment of economic impacts. The report should avoid conclusion ambiguities, for example, describing economic impacts as 'the lowest' without specifying whether such impacts are positive or negative and for whom. It should also further develop the analysis of the impact of different ownership models on consumers' choices and on different interoperability policies concerning the software embedded in devices.

(4) The report should include in the section on the preferred option a statement on the degree of consistency of the initiative with the European Climate Law, based on the analysis of environmental impacts.

The Board notes the estimated costs and benefits of the preferred option(s) in this initiative, as summarised in the attached quantification tables.

(D) Conclusion

DG GROW must take these recommendations into account before launching the interservice consultation.

Full title	Impact Assessment Report accompanying the documents (draft Commission Regulations): Commission Regulation implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to Ecodesign requirements for mobile phones and tablets, and Commission Regulation supplementing Regulation (EU) 2017/1369 of the European Parliament and of the Council with regard to Energy labelling of smartphones and tablets.
Reference number	PLAN/2020/9213 PLAN/2020/9217
Submitted to RSB on	8 April 2022

Date of RSB meeting	3 May 2022 (written procedure)

ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

I. Overview of Benefits (total for all provisions) – Preferred Option (5.2)		
Description	***Amount (yearly figures for 2030, all devices)***	***Comments***
Direct benefits		
New SMEs in repair/maintenance sector (n° firms)	(+++) Not only new repairers will appear in the sector but also existing ones will grow	Business
Promoting investment in the production of more energy efficient devices	Imposes requirements in terms of Ecodesign, energy efficiency and reparability, which implies investment (+++)	Business
Reduced GHG emissions (mt CO2 eq.)	-4	Society
Reduced energy consumption (PJ)	-49	Consumer
Reduced acidification (kt SO2 eq.)	-24	Society
Employment creation in repair/maintenance sector (n° jobs)	+3,200	Society
Reduced total annual consumer expenditure (million €)	-20,600	Consumer
Reduced societal external annual damages (million €)	-1,000	Society
Contribute to circular economy	Material reduction is expected (decrease of more than 40,300 tons of materials). In addition, it can promote the reuse of goods by providing more certainty regarding the remaining lifespan after first use.	Society
Indirect benefits		
Reduced other environmental impact related to the production, transport	Positive effect due to a significant reduction on sales (+++)	Society

and disposal of products		
Ensure user's health, compatibility across other devices and workers safety during production process	Reduces user and worker exposition to dangerous and toxic materials. Devices must follow the same production criteria that assures compatibility (+++)	Society
Positive impact on the deployment and diffusion of innovations	Encourages innovations to achieve new requirements that will be promoted through the supply chain. Promotion of repair skills among users (+++)	Business

(1) Estimates are relative to the baseline for the preferred option as a whole (i.e. the impact of individual actions/obligations of the preferred option are aggregated together); (2) Please indicate which stakeholder group is the main recipient of the benefit in the comment section;(3) For reductions in regulatory costs, please describe details as to how the saving arises (e.g. reductions in compliance costs, administrative costs, regulatory charges, enforcement costs, etc.; see section 6 of the attached guidance).
**Figures presented on these tables (I and II) are 2030 projections.*

II. Overview of costs – Preferred option (5.2), all devices							
		Citizens/Consumers		**Businesses**		**Administrations**	
		One-off	**Recurrent**	**One-off**	**Recurrent**	**One-off**	**Recurrent**
Higher compliance costs	Direct costs			(+++) Higher costs. Production and supply chain changes, equipment testing, and capital expenditure for adaption (manufacturing processes, logistics)	(+++) Higher costs. New personnel with Ecodesign competencies, to carry testing and verification, after-sales, maintenance activities, etc.	(+++) Higher costs. Setting up the enforcement process, government expenditure for conformity review, establishing minimum requirements	(+++) Higher costs. Monitoring compliance with the requirements
	Indirect costs			(+) Higher up-front cost of products due inter alia to more accurate assembly, better qualified manufacturing work force, etc.	(+) Increased cost of products due to higher costs of minimum requirement obligations		
Reduced business revenue for manufacturers (Mn €)	Direct costs				Business revenue will reduce annually up to –21,000		

					in 2030		
Reduced nº SMEs in manufacturing sector	Direct costs				(-) Negatively because of lower sales, although other factors must be considered		
Reduced nº SMEs in retail sector	Direct cost				(-) Negatively affected because of lower sales, although other factors must be considered		
Reduced employment in manufacturing sector	Direct costs		(-) Negatively affected because of lower sales, although other factors must be considered				
Higher repair costs (Mn €)	Direct costs		Repair costs will increase annually up to + 700 in 2030				

(1) Estimates to be provided with respect to the baseline; (2) costs are provided for each identifiable action/obligation of the preferred option otherwise for all retained options when no preferred option is specified; (3) If relevant and available, please present information on costs according to the standard typology of costs (compliance costs, regulatory charges, hassle costs, administrative costs, enforcement costs, indirect costs; see section 6 of the attached guidance).

EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB

Opinion

Title: Impact assessment / Ecodesign and Energy labelling of smartphones and tablets

Overall opinion: NEGATIVE

(A) Policy context

In 2020, around 150 million mobile phones and 24 million tablets were sold in the European Union (EU). Estimates show that there are around 450 million mobile phones and around 150 million tablets in use in the EU. They have a short lifespan and are not often repaired. Contrary to many other products, short-lived ICT products have a high energy use in upstream production processes compared with that during actual use. The production of mobile phones and tablets is resource-intensive and uses several critical raw materials. Old smartphones and tablets are often kept in a drawer ('in hibernation') and recycling remains limited. The estimated stock of hibernating mobile phones is almost 700 million in the EU.

The second Circular Economy Action Plan envisages regulatory Ecodesign and Energy labelling measures to address the sustainability issues raised by mobile phones and tablets. These should improve their energy efficiency and circularity.

(B) Summary of findings

The Board notes the additional information provided in advance of the meeting and commitments to make changes to the report.

However, the Board gives a negative opinion, because the report contains the following significant shortcomings:

(1) The report does not provide enough evidence to back up the proposed options and analysis.

(2) The report does not demonstrate that it is proportionate to consider introducing Ecodesign requirements or an Energy label for smartphones and tablets.

(3) The scope of the initiative is not sufficiently clear, in particular in relation to other product groups covered by existing Ecodesign regulation.

(4) The baseline does not sufficiently incorporate possible sustainability initiatives by market actors and the effects of technological developments on the use of energy and resources.

(5) The report does not analyse the impacts of the options completely and in enough

detail. It does not convincingly demonstrate that the preferred option performs significantly better than other options.

(C) What to improve

(1) The report should read as a standalone document. In particular, it should integrate relevant evidence from the preparatory study in an annex and summarise it in the main report. It should focus on presenting the relevant evidence to justify and structure the intervention and to assess its expected impacts.

(2) The report should provide evidence that the initiative meets the proportionality requirements of the Ecodesign and Energy labelling legislation, which are pre-conditions for action. It should demonstrate that there are significant environmental impacts within the EU and that there are wide disparities in environmental performance between products with equivalent functionality. The report should also demonstrate that there is no overlap between this initiative and the proposed Batteries Regulation.

(3) The scope of the initiative should be explained and justified. The report should explain the rationale of separating smartphones and tablets from computers and servers covered under Ecodesign Regulation 617/2013. The reasons for separating laptops from closely related products should be explained in greater detail.

(4) The baseline should better include current and likely developments put in place by private actors either at corporate or industry level. For example, it should include self-repair schemes and eco-ratings and how these would evolve. The baseline should also better incorporate how continued progress in miniaturisation and battery efficiency would affect the use of energy and resources.

(5) The report should explain how it determined the set of specific measures and defined the reparability index. It should justify why it does not consider alternatives and explain why these were discarded.

(6) Impacts should be analysed more comprehensively and presented in more detail. The report should analyse consumer behaviour under different ownership models for mobile phones. It should also discuss the expected reactions from third-country manufacturers in more depth, taking into account global market dynamics, including strategic innovation, obsolescence and 'versioning' strategies. It should assess the risk of regulatory retaliation and other unintended consequences. The environmental impacts of the proposed options should be analysed in greater detail; e.g. the material efficiency of mandating spare part inventories to be held available for a specific duration (and potentially unused). More generally, the report should be clearer whether the reported costs and benefits systematically relate only to those directly affecting the EU or globally.

(7) The report does not convincingly explain why the costs of smartphones and tablets would only marginally increase. Several of the proposed measures, such as increased inventory requirements and including protective cases, would seem expensive.

(8) The report should better justify why it considers that the preferred option performs best. It should link the scoring of options more closely to the differences in analysed impacts. In particular, it is not clear why the preferred option should contain an Energy label, as it reduces environmental impacts only marginally. The consumer's understanding and acceptance of a multi-dimensional Energy label, which combines energy and material efficiency indicators, should be clarified.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion **DG GROW must revise the report in accordance with the Board's findings and resubmit it for a final RSB opinion.**	
Full title	Impact Assessment Report accompanying the documents (draft Commission Regulations): Commission Regulation implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to Ecodesign requirements for mobile phones and tablets, and Commission Regulation supplementing Regulation (EU) 2017/1369 of the European Parliament and of the Council with regard to Energy labelling of smartphones and tablets.
Reference number	PLAN/2020/9213 PLAN/2020/9217
Submitted to RSB on	18 November 2021
Date of RSB meeting	15 December 2021