



Council of the
European Union

146648/EU XXVII. GP
Eingelangt am 26/06/23

Brussels, 26 June 2023
(OR. en)

9648/23
PV CONS 23
COMPET 466
IND 257
MI 437
RECH 192
ESPACE 22

DRAFT MINUTES

COUNCIL OF THE EUROPEAN UNION

(Competitiveness (Internal Market, Industry, Research and Space))

22 and 23 May 2023

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MEETING ON MONDAY 22 MAY 2023

1. Adoption of the agenda

The Council adopted the agenda set out in 9191/23.

2. Approval of 'A' items

(a) Non-legislative list

9332/23

The Council adopted all "A" items listed in the document above including all linguistic COR and REV documents presented for adoption. Statements to these items are set out in the Addendum.

b) Legislative list (Public deliberation in accordance with Article 16(8) of the Treaty on European Union)

9333/23

Internal Market and Industry

Regulation on machinery products



8698/23 + ADD 1
PE-CONS 6/23
MI

Adoption of the legislative act

approved by Coreper, Part 1, on 17.05.2023

The Council approved the European Parliament's position at first reading and the proposed act has been adopted pursuant to Article 294(4) of the Treaty on the Functioning of the European Union, with Austria, Bulgaria and Germany voting against (legal basis: Article 114 TFEU). A statement to this item is set out in the Annex.

Any other business

6. a) **Current legislative proposals**

(Public deliberation in accordance with Article 16(8) of the Treaty on European Union)

Net-Zero Industry Act

Presentation by the Commission



7613/23 + ADD 1

9482/1/23 REV 1

The Council took note of the information provided by the Commission and of the comments made by several delegations (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovenia and Spain).

b) **Celebration of the Unitary Patent System and the Single Market at 30¹**

Information from the Presidency



9361/23

The Council acknowledged the great importance of the single market and the entry into force of the unitary patent system.

¹ In the presence of

- President of the EPO
- Registrar of the UPC and former chairman of the Preparatory Committee of the UPC and chairman of the Administrative Committee of the UPC
- Director general and chairman of the Select Committee of the Administrative Council
- Head of Division for Patent Law, German Ministry of Justice, and chairman of the Administrative Committee of the UPC
- Legal Affairs at the General Secretariat for European Affairs, French Prime Minister's Office
- former Principal Director for Patent Law and Multilateral Affairs, EPO
- Senator and Professor and former Prime Minister and Commissioner for Internal Market.

c) **Current legislative proposals**

(Public deliberation in accordance with Article 16(8) of the Treaty on European Union)

Review of the EU legislation on design protection
(recast of Directive 98/71/EC on the legal protection of
designs and amendment of Council Regulation (EC) No
6/2002 on Community designs)



15390/22 + ADD 1

15400/22 + ADD 1

Information from the Presidency

The Council took note of the information provided by the Presidency.

d) **Making the upcoming reporting standards a
competitive advantage in the green transition**



9469/23

Information from the Danish and the Estonian delegations

The Council took note of the information provided by the Danish and Estonian delegations.

e) **Work programme of the incoming Presidency**

Information from the Spanish delegation

MEETING ON TUESDAY 23 MAY 2023

Non-legislative activities

RESEARCH

7. **Conclusions on high-quality, transparent, open, trustworthy and equitable scholarly publishing**  8827/23

Approval

The Council approved the text of conclusions as set out in the document above.

8. **Knowledge security and responsible internationalisation**  8824/1/23 REV 1

Exchange of views

The Council held an exchange of views based on questions as set out in the document above.

SPACE

9. **Conclusions on Fair and sustainable use of space**  8962/23

Approval

The Council approved the text of conclusions as set out in the document above.

10. **EU Space Policy in a new geopolitical landscape** 8960/1/23 REV 1

Exchange of views

Any other business

Research

11. a) **Seal of Excellence**  9275/23 + COR 1

Information from the Commission

The Council took note of the information provided by the Commission.

- b) **Candidature of Rome to host the EXPO 2030**  9546/23

Information from the Italian delegation

The Council took note of the information provided by the Italian delegation.

- c) **Work programme of the incoming Presidency**

Information from the Spanish delegation

Space

- d) Work programme of the incoming Presidency
Information from the Spanish delegation



First reading



Public debate proposed by the Presidency (Article 8(2) of the Council's Rules of Procedure)



Item based on a Commission proposal

Statements to the legislative "A" items set out in 9333/23

Ad "A" item:

Regulation on machinery products
Adoption of the legislative act

STATEMENT BY THE COMMISSION

“When assessing the criteria in Article 6(4), the Commission will pay particular attention to categories of products for which a significant number of accidents and fatalities occurs.”

Ad "B" item 3: **Regulation establishing a framework for setting ecodesign requirements for sustainable products and repealing Directive 2009/125/EC**
General approach

STATEMENT BY GERMANY

“The ESPR is a central building block of the Green Deal, located at the intersection of business, environmental and consumer protection, and in particular resource conservation. Its holistic approach - from design phase to operation, repair/remanufacture and recycling - enables climate-friendly circular economies and the emergence of green lead markets.

DEU has therefore always advocated ambitious targets as well as a speedy conclusion of the negotiations and in this spirit also supports the General Approach. Nevertheless, DEU sees further need for improvement in the context of the upcoming negotiations with the Parliament:

[Art. 13]

The ESPR contains regulations for the introduction of a digital product passport (DPP), which contains essential information about the environmental sustainability of products. It is intended to help consumers and companies make informed decisions when purchasing products, simplify repairs and recycling, and increase transparency regarding the environmental impact of products. The DPP is also intended to assist authorities in conducting audits and inspections. It is planned to connect national customs systems to the product passport register for automated controls within the framework of the EU Single Window via the EU CSW-CERTEX interface (Art. 13 ESPR draft).

The German government is of the opinion that the complete automated control of the DPP in the customs declaration with the product passport register on the import side will cause a not inconsiderable and permanent administrative burden in the event that discrepancies arise in the course of the control. This is expected to result in administrative follow-up measures outside of the automated control process, which will be in addition to the original tasks of the customs authorities in monitoring prohibitions and restrictions, and which will greatly expand the workload of the customs administration in view of the broad scope of the regulation.

However, in view of the importance of the ESPR and the associated sustainable orientation in Europe, Germany is prepared to put aside its reservations. In the technical design, attention will have to be paid to a low-effort procedure for the customs administration, within the framework of which it can properly perform its original tasks under Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and conformity of products.

[Art. 58]

With its large market volume, public procurement has a significant share in the procurement of products and services. The public sector generally serves as a role model for sustainable consumption and can at the same time significantly influence the market for environmentally friendly products and thus for innovations. The German government therefore sees ambitious and effective targets for green public procurement as an important lever in the direction of climate neutrality and resource efficiency. That is why it has anticipated ambitious and sustainable procurement legislation in the ESPR that sets requirements for climate protection, sustainability and the circular economy, including through the highest label class and reference to Type 1 environmental labels. In addition, there are also requirements from commitments at the international level regarding ambitious and transformative sustainable public procurement policies, which should also be reflected in the ESPR.

With regard to the specificity of construction products, the German government believes there is a need for an additional exemption in Art. 58 of the draft ESPR, which allows a derogation from the requirements in the construction sector if Member States have introduced appropriate sustainability standards for the construction project as a whole. Construction products are intermediate products, therefore, for the assessment of environmental sustainability, a holistic view must take place that includes the construction level as a whole.

[Art. 69]

The implementation of previous ecodesign product requirements did not exploit the full savings potential for many product groups. In some cases, the revisions of product regulations were completed after the product requirements had already been met by almost all products available on the market - and therefore had only a very limited impact on the market. The German government therefore expects that the European Commission will also examine the implementation of modern concepts such as the Frontrunner approach as part of the evaluation of the ESPR. This approach allows for an automatic adjustment of ecodesign requirements triggered by improvements in the performance of products placed on the market to ensure that ecodesign requirements remain relevant and appropriate to the market situation.

In view of the upcoming negotiations with the European Parliament, we trust that these aspects will be carefully considered and incorporated into the negotiations.”

STATEMENT BY ITALY

“The Commission’s proposal for a Regulation on ecodesign requirements for products is fully consistent with the principles and objectives of the circular economy. It represents an opportunity for the European market, while at the same time providing a strong innovative push towards more sustainable production models and the creation of new green job opportunities.

Italy welcomed this initiative and has actively contributed to negotiations on the text. We supported the need to achieve an ambitious but also balanced general approach – both in terms of its objectives and the interests being protected – while also recognizing the limits of a framework regulation.

The proposed general approach being examined by the Member States does not, however, seem to fully reflect the balance between the different interests at stake.

In particular, Italy trusts that, during the forthcoming negotiations with the European Parliament, it will be possible to improve the text of the general approach, namely in the following areas:

1. Delegation of power to the European Commission (Article 4)

Italy considers that Member States should be involved to a sufficient extent in the drafting of secondary legislation implementing the framework Regulation, in particular as regards the setting of ecodesign requirements. Indeed, we consider it essential to ensure the involvement and maximum active participation of national governments in legislative processes that are so critical and sensitive for production systems and the environment.

Italy therefore continues to attach importance to the use of implementing acts for the adoption of ecodesign requirements, under Article 4 of the Regulation.

2. Frontrunner approach (Article 69)

The proposed approach provides for the automatic adaptation of ecodesign requirements triggered by the improvement of performance of the products being placed on the market. This would create an undesirable element of uncertainty in the timing of EU targets, which would inevitably result in greater difficulties for companies in terms of planning investments, and thus in higher costs. This uncertainty would affect in particular small and medium-sized enterprises. The real risk is that SMEs would be placed at an arbitrary competitive disadvantage vis-à-vis large companies. The latter benefit from wider and easier access to public and private funding for investment in research and development, irrespective of their location within the EU (to the detriment of the principle of a level playing field) or outside the internal market (European companies may be forced to adapt to ecodesign standards set by companies from third countries that perform better and are more efficient in these respects). Italy objected to the inclusion – in the final stage of the negotiations, and in the absence of an impact assessment and the necessary examination at technical level – of the frontrunner approach.

We consider that this point should be examined properly and should possibly be removed, given the potential negative impact on the European production system and small and medium-sized enterprises.

3. Destruction of unsold consumer goods (Chapter VI)

Italy supported the European Commission's initial proposal, and objected to the inclusion in the Regulation of a direct prohibition against the destruction of unsold consumer goods, both in general terms and specifically in relation to individual product groups. In addition, and again in line with the Commission's original proposal, we have consistently advocated the need to exempt SMEs from the obligations arising from Chapter VI.

The decision to introduce a direct prohibition against the destruction of unsold consumer products in the apparel and clothing accessories sector from 36 months after the entry into force of the Regulation (48 months for medium-sized enterprises), and to restrict exemptions from the obligations under Chapter VI to micro and small enterprises only, is highly problematic. This decision seems discriminatory against the specific product groups affected insofar as it is not based on robust data, in the absence of any impact assessment. Furthermore, it contradicts the mechanism under Article 20c, which establishes the framework according to which the Commission can introduce prohibitions against the destruction of unsold consumer products by economic operators. In this regard, it is worth noting that the research commissioned by the European Commission on this matter reached the same conclusion².

Furthermore, introducing a prohibition against destruction does not address the potential risk of that prohibition being circumvented by transferring unsold consumer goods to third countries with less restrictive environmental regulations.

Lastly, Italy considers that it is essential to ensure legal certainty for economic operators with regard to the priorities set by the European Commission under the Regulation. To that end, it is important that product groups for which an impact assessment is to be carried out, with a view to potentially introducing a prohibition against destruction (Article 20d), should also be included in the Commission working plan adopted under Article 16 of the proposed Regulation.

4. Substances of concern (Article 2(28), Article 6, Article 7)

The introduction of information requirements in relation to substances of concern, as well as the possibility of introducing restrictions on substances under Article 6, raises the matter of the relationship between this Regulation and European chemicals legislation.

We consider that the definition of substances of concern in Article 2(28) should be amended to narrow its scope, given that this definition currently serves as a reference for other legislation, such as the Directive on packaging and packaging waste (PPWD).

In light of the changes made in the general approach, we consider it necessary to make some amendments to Article 2(28) so as to remove 'chronic hazard to the aquatic environment' categories 3 and 4 and 'specific target organ toxicity – single exposure' categories 1 and 2. 'Chronic hazard to the aquatic environment' categories 3 and 4 cover less serious hazards and would not seem to be relevant for the purposes of the ESPR. In addition, the Chemicals Strategy for Sustainability considers substances that have a chronic effect with continuous exposure (i.e. they have an effect after repeated and continuous exposure) to be substances of concern. Therefore, it would seem inconsistent with the Chemicals Strategy for Sustainability to take substances falling under the category of 'specific target organ toxicity – single exposure' (STOT) into consideration in the ESPR."

² Data on destruction of unsold consumer products, October 2022.