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Circular Economy Package

Making sustainable products the norm

Executive Summary

Ecodesign for Sustainable Products Regulation (ESPR)

- In this proposal, significant improvements have been made on the path towards sustainable product design. Since specific product features are still being defined, **a final evaluation is not yet possible.**
- Ensure that **products do not become significantly more expensive** because of environmental improvements.
- The **adaptation** of other EU directives, in particular on the sale of goods and representative actions **is necessary** for long-term success.
- Unfortunately, many optional provisions water down the ambitious draft. There is a need for significantly **more mandatory requirements.**
- We welcome the expansion of the regulation's scope, expecting an **increase in the need for financial and human resources.**
- There needs to be a **minimum level of mandatory performance AND information requirements.** Performance parameters, of which durability is the most important feature, take priority.
- We welcome the extension of information for consumers. **Information must be clearly visible before purchase** – including distance selling.
- **Social sustainability** should be taken into account in the **product passport.**
- **Prioritisation of product groups** must be implemented quickly.
- We are critical of self-regulatory measures; accordingly, it is essential that **binding regulatory rules be given priority.**
- The regulation needs to **ban destroying unsold goods**; a mere obligation to provide information is not enough.
- Market surveillance requires a **massive expansion of physical product inspections** and minimum requirements by the Commission.

Directive as regards empowering consumers for the green transition

- In order to extend the useful life of goods, a **more sustainable European warranty law** must be created in parallel with the innovations envisaged in the Circular Economy Package; that warranty law must provide for compulsory legal guarantee periods to be geared to **technically feasible minimum product lifetimes and longer software update obligations.**
- Commercial guarantees of durability of producers must be **free of charge throughout the EU.**
- The envisaged **negative information requirement** is the central element to create incentives for producers and consumers and should therefore **not be limited to energy-using goods.**
- Consumers need easy-to-understand information about the **minimum expected lifetime of a given product** and their related claims.
- The **new requirements and prohibitions in advertising involving environmental claims and sustainability seals**, and steps to address the problem of **early obsolescence**, are **necessary and indispensable** in the interest of consumers. It can be assumed that companies that act sustainably have an interest in ensuring that environmental statements do not lose credibility due to "greenwashing".
- The planned legislation needs to be supplemented to make protection against unfair business practices effective and enforceable in practice. This includes, for example, clarifying that **"generic environmental claims" do not only cover advertising in text form.** Similarly, generic statements about social impact ("fairly produced") must also be regulated. These are just as likely to deceive consumers as environmental claims.

AK's Position

About the Circular Economy Package in general

A major shift in consumption towards longer service lives, whilst maintaining high level of protection for European consumers, is indispensable for protection of the climate, environment and resources. The Austrian Chamber of Labour (AK) therefore welcomes the proposals under the Circular Economy Package published at the end of March 2022 and wishes to make some suggestions for improvement make this ambitious undertaking more effective.

Long service lives are fundamental to reducing CO₂ emission caused by consumption, as [studies](#) show repeatedly. Consumers are part of the solution through their actions, but do not bear the entire responsibility. Primarily, it is up to producers to offer sustainable products that, in particular, are durable and repairable. It is a subsequent step for transparent and simple information to be used to assist consumers in their choice of sustainable products. It is important that consumers are not misled by greenwashing.

The path to a circular economy must also be designed in a socially responsible and fair manner. Access to durable and repairable products should not be a social issue – low-income households in particular depend on being able to use and repair appliances for a long time. It must therefore be ensured that environmental improvements to products do not result in any economic disadvantages for consumers.

In order to avoid environmental rebound effects, e.g. in the form of a further increase in the level of consumption, a debate on consumption patterns and living standards and their social distribution must be conducted. The top income decile consumes [four times more CO₂](#) than the lowest income decile. Nevertheless, for many people, the lifestyle of wealthy households is considered socially desirable. In the interest of a “good life for all”, fair distribution of consumption must also be discussed and appropriate measures taken to achieve it. In addition to (national) measures (such as fairer distribution of wealth), further steps should be taken in the field of education,

for example. The media and the public sector play an important role in communicating environmentally friendly consumption patterns.

In this paper, AK sets out its position on the following Commission initiatives included in the Circular Economy Package:

[Ecodesign for Sustainable Products Regulation](#) (COM (2022) 142)

[Directive as regards empowering consumers for the green transition](#) (COM (2022) 143)

Ecodesign for Sustainable Products Regulation (ESPR)

Sustainable product requirements are high on consumers' radar. A [study by AK](#) on the use of large household appliances shows, for example, that service life, reparability and quality are very important to the respondents. However, there are problems, e.g. with repairs, due to the non-reparability of appliances. Consumer policy measures such as information on the service life of the product, a five-year legal guarantee, availability of spare parts and information on reparability are considered by the consumers surveyed to be the most important measures in terms of sustainable product policy.

In AK's opinion, the present draft of the ESPR is an essential step towards sustainable product design. However, since this is a framework regulation and specific product features will only become clear in the delegated acts in some cases, it remains difficult to make a final assessment. In order for this regulation to be as effective as possible, it is necessary to adapt related directives and regulations. It is only in connection with corresponding legal claims – in particular under warranty law ([Sale of Goods Directive 2019/771](#)) – and the possibility for consumer organisations to take legal action ([Representative Actions Directive 2020/1828](#)) that the Ecodesign Regulation will be successful in the long term.

Expansion of the product groups (Article 1)

Not only energy-related products, but also some other products have a high environmental footprint. The economic system is designed for a high turnover of goods – many products are produced as short-lived seasonal items that quickly go out of fashion and are to be replaced. To increase service life, as many products as possible should therefore be designed to be durable and repairable. AK welcomes the potential extension of the regulation's scope to all physical goods.

Delegated acts (Article 4)

AK acknowledges that implementation by means of delegated acts allows for rapid implementation, but is critical of this instrument in democratic terms. Due to the delegation of power to the Commission to adopt delegated acts setting ecodesign requirements, the Commission has a decisive role to play. However, it remains unclear and vague as to what extent the Ecodesign Forum (Article 17) will be involved in all processes – especially the development of the requirements. It would therefore be worth considering the use of implementing acts instead of delegated acts.

Ecodesign requirements (Article 5)

AK welcomes the fact that the focus is now not only on energy efficiency, instead other requirements such as durability, reparability etc. have been accorded significantly greater importance compared to Directive 2009/125/EC. When developing the product-specific requirements, however, care must be taken to ensure that as many of these criteria as possible are taken into account. In any case, each product group specific delegated act should include a mandatory minimum level of performance AND information requirements; we consider the proposal of an optional provision (Article 5, paragraph 3) to be insufficient. There must also be no mutual exclusion of performance or information criteria (cf. recital 23).

- Performance criteria are a priority because they directly affect the environmental impact of the product. Durability takes precedence over reparability.
- Information ABOUT performance criteria is subsequently important so that consumers can make comparisons among the current offers on the market and reach an informed purchase decision.

Horizontal measures are an important step to put simple environmental measures in place as quickly as possible. Rapid implementation of horizontal measures is therefore necessary:

- AK considers one of the key horizontal measures to be a rapid incorporation of compulsory, free software updates. The increase in smart products threatens to shorten the duration of functionality massively. An [AK study on large household appliances](#) shows that a conventional vacuum cleaner is generally used for 15.1 years, whereas a robot vacuum cleaner is only used for 11.4 years. The functionality of smart products is heavily dependent on the availability of software updates.
- Another important measure would be an information obligation on consumers' durability claims in their entirety – consisting of compulsory legal guarantees, compulsory software updates and repair information as a minimum standard and additional information about the presence or absence of commercial guarantees of durability. In this regard, the options within the ESPR proposal should be exploited to also oblige producers (e.g. Article 7, Article 14). This measure would ensure transparent information for consumers as well as it would help emerge competition to encourage companies to design increasingly durable products.
- Other options for horizontal measures would be the obligation to open products with conventional tools and the general provision of repair instructions.

Sustainable consumption should not be a social issue (Article 5, paragraph 5) – every person has the right of access to high-quality products; these do not necessarily need to be more expensive than products of lower quality. We therefore emphasise environmental improvements must not lead to an upward price spiral. First, it is assumed that certain qualitative improvements, such as the use of higher quality individual components, do not necessarily lead to more expensive goods and that no general price increase will therefore result. Second, with more expensive devices in particular, cost transparency is essential, especially with regard to the entire lifetime. If an appliance costing EUR 200 lasts only 2 years, whilst a product in the same category costs EUR 500 but lasts 7 years, then the price-performance ratio of the latter is better. However, this requires corresponding, obligatory information to consumers about a guaranteed service life by the producer (see Article 7).

Performance requirements (Article 6)

Performance requirements are fundamental in making products more durable and sustainable overall. Producers have the greatest responsibility in this regard when it comes to product design. The regulation must therefore ensure that a minimum set of mandatory performance parameters is established in each delegated act.

Durable and repairable products ensure a long service life and are also a prerequisite for reuse. Durability of products is therefore to be seen as the characteristic of highest priority concerning the performance parameters defined in Annex I. For this purpose, specific minimum lifetimes should be defined according to product category – for effective compliance with these criteria, these minimum lifetimes should be brought in line with the compulsory warranty claims under the Sale of Goods Directive (2019/771), in order to provide consumers with a legal claim in the case of non-conformity.

With regards to repairability, which is considered another important criterion, it should be ensured that consumers are also able to open and repair the devices, i.e. repair and maintenance instructions should be made available to them, as well as to independent repair service providers.

In AK's opinion, an essential element of the product parameters (Annex I) is the standardisation of components. In recent years, it has become apparent that producers are relying more and more on branded components. This has made it difficult to replace individual components. Spare parts are often expensive and no longer available after a short period. This has also made the setting up of spare parts warehouses very costly and complex. Standardisation will make repairs easier and more affordable for consumers.

Information requirements (Article 7)

We consider information important to enable consumers to contribute to the social and environmental transformation and to make knowledge-based sustainable purchasing decisions. We therefore welcome the extensive possibilities for information requirements. Information must be comprehensible, understandable, transparent and easily accessible. Furthermore, it should be structured hierarchically. On the one hand, there is a need for immediately recognisable, reduced information that enables comparability between products. This may be, for example, the performance class or a label (Article 14). On the other hand, consumers (as well as other actors) need detailed information about the entire

value chain; the product passport is suitable for that purpose.

Reduced information should help consumers to assess the sustainable quality of products (especially durability and repairability) when purchasing. Prices can vary greatly within a product group – for example, the prices of washing machines range from around EUR 250 to EUR 1,500, but price is often not an indicator of performance. To prevent consumers from reaching for the cheapest products, they need mandatory information about performance criteria during the purchasing process. Only with this knowledge, consumers can make valid assessments of the price-performance ratio (e.g. a higher purchase price set against a long service life due to a guarantee of durability or high repairability) and this is the only way to ensure that other criteria besides the price are used in the decision-making process. In particular, consumers with limited financial resources benefit from a long service life and high reparability. However, they often have to resort to cheap (and often poor-quality) alternatives due to financial constraints.

AK therefore calls for the following: It must be mandatory for the criteria set out in paragraph 2 b (i) to accompany the products AND to be clearly visible and not hidden at the time of purchase (including in distance selling). The requirements specified in paragraph 6 should therefore be set out as a mandatory provision. Information that is visible in the operating instructions and/or website alone appears to be insufficient. In AK's opinion, the information should be displayed on a mandatory basis at least on the product and/or the packaging (including in distance selling). The definition of performance classes (paragraph 4) is welcome in the interest of comprehensible information and the comparability of sustainability performance and should be used as extensively as possible. In the Empowering Consumers Directive proposal, traders are obliged to pass on additional lifetime-related information (e.g. concerning the commercial guarantee of durability). In parallel, it must be ensured that this information is also provided by the producer – for this reason, mandatory provisions should be laid down in the ESPR to ensure consistency between the two proposals discussed in this Position Paper.

Product passport (Article 8)

We welcome the introduction of a product passport with target group-specific information. Care should be taken to ensure that the information is comprehensible, understandable and transparent (see Article 7).

The focus of the ESPR is on environmental improvements to products. Nevertheless, the social

aspect of the production of goods must not be completely disregarded. The product passport would be well suited to indicating overall sustainability – including social sustainability. We therefore propose the requirement for mandatory information on social sustainability to be made available to consumers at this point.

Labels (Article 14)

We welcome, in principle, labels that show reduced information, e.g. performance classes concerning product parameters. A label must be easy to grasp and not overloaded. The design of the labels remains unclear in the regulation. Easy-to-understand labels feature, for example, word/picture combinations or symbols along the lines of energy efficiency labels. The content and layout of the labels should be specified in the regulation and not in the delegated acts in order to ensure a uniform appearance and recognisability. In any case, it must be ensured that the label is visibly positioned for consumers during the purchasing process (including distance selling). As regards the way of informing consumers, it should be ensured that there is consistency between the two proposals discussed in this Position Paper.

Prioritisation (Article 16)

In view of the climate crisis and the high consumption of resources through consumer goods, rapid implementation of the regulation and the drafting of delegated acts is essential. To ensure this, adequate financial and human resources are needed at all levels – e.g. selection of priority product groups, drawing up of delegated acts, development of horizontal measures and market surveillance. The focus is on the immediate prioritisation of individual product groups. However, it remains unclear and thus vague which methods will be used to measure and compare the environmental impacts (paragraph 1 c).

Ecodesign Forum (Article 17)

The extent and manner of involvement of the Ecodesign Forum remains unclear. The Ecodesign Forum is intended to play a significant role in the elaboration, implementation and monitoring process. The role of the Forum therefore needs to be even more clearly defined. Furthermore, care should be taken to ensure that the Forum is used as early as possible in the processes (e.g. in self-regulatory measures).

Self-regulation (Article 18)

From a consumer perspective, we are critical of self-regulatory measures; experience with voluntary

measures shows that they do not provide any advantage. On the contrary, we perceive a risk of stricter ecodesign requirements being undermined by companies setting (weaker) criteria themselves. It is therefore essential that binding regulatory provisions be given priority.

We are sceptical of the independent inspection specified in Annex VII, paragraph 6. In any case, it must be ensured that an independent body that has also been independently nominated carries out the inspection. Consideration should be given to involving the Ecodesign Forum in this process.

Destruction of unsold goods (Article 20)

We are pleased that there are first steps aimed at reducing the destruction of unsold goods. However, we fear that the mere publication of the number (paragraph 1 a) and the reasons (paragraph 1 b) will not lead to a change in the behaviour of producers or distributors. On the contrary, it turns out that unsold goods are used for this purpose, for example, [to put a gloss on recycling rates](#). AK therefore demands that a ban on the destruction of unsold goods and the supply of these products to secondary markets is issued in the regulation and is not postponed (paragraph 3) to a later date. Violation of the ban must result in severe sanctions and be strictly monitored. However, these measures are missing from the regulation. Likewise, measures must be introduced to counteract the risk of circumvention (e.g. export of unsold goods from the Union). The definition of “significant environmental impact” also remains unclear because it is too vague. Furthermore, it is not comprehensible why SMEs are exempt from the ban.

Market surveillance (Article 59 ff)

Without ongoing and extensive monitoring, there is a risk of Ecodesign requirements being undermined. This would have a negative impact on consumers, who buy products in good faith believing that they are environmentally friendly. Misled consumers will lose confidence in sustainable products in the long term. The environment and climate are more polluted by non-compliant products. The 2015, 2017 and 2019 Austrian market surveillance programme on compliance with the Ecodesign requirement focused predominantly on compliance with administrative criteria; physical inspections were only carried out in suspicious cases. The [European Parliament](#) estimates that 10-25 % of all products do not comply with the directive requirements.

AK sees positive steps in the strengthening of market surveillance. Physical product verification for

compliance of conformity is of particular significance for effective market surveillance. However, it remains unclear in the Regulation whether the checks are purely administrative or physical. The latter need to be massively expanded, which is why AK is calling for minimum requirements regarding the number of checks (Article 60) to be set out in the Regulation (and not only by means of delegated acts). The number of products reviewed should be proportionate to the market supply (e.g. a certain percentage). Horizontal measures should also be spot-checked for compliance with the criteria. The procedures for products in distance selling concerning market surveillance are still unclear; this point should be specified. The level of penalties for violations should not be left to the Member States; the Commission should set minimum penalties here.

Possibilities should be created for consumers and consumer organisations to report suspected violations on an EU-wide platform, such as the “[Trop vite usé](#)” platform. Consumer protection organisations and market surveillance authorities can obtain multiple indications of non-conforming products through such a platform and check them.

Directive as regards empowering consumers for the green transition

Longer periods for compulsory legal guarantees

The intended creation of incentives for voluntary producer’s commercial guarantees of durability through extended pre-contractual information obligations makes a lot of sense, but can still only serve to supplement statutory minimum requirements. A highly effective instrument for longer durability and thus longer service lives, which has also been called for by the European Parliament, would be longer compulsory legal guarantee periods for certain product groups that can be designed with a long service life (e.g. large household appliances). Although durability is already defined as an objective contractual criterion in the Sale of Goods Directive (2019/771), it is currently subject to the restriction that only the two-year minimum periods are available for making a claim in many Member States. Typically, however, durability defects in products with longer lifetimes only become apparent after this period.

An obvious point of reference in this context would be the Ecodesign Regulation, where minimum or maximum requirements for a product are to be specified in the delegated acts depending on the specific product category (Article 6). Therefore,

product-specific minimum service lives (in relation to technically feasible service lives) could also be regulated here, for example. These could serve as the basis for the length of the respective compulsory legal guarantee. In addition, longer periods during which the burden of proof is shifted in favour of consumers would have to ensure the practical enforceability of claims.

Product durability (which also includes the availability of software updates) is primarily based on the product design or the production method of the product and can therefore be best controlled and assessed at this point (e.g. in connection with guarantees of durability). This idea also makes sense in warranty law – an additional direct claim against producers would thus channel durability defects to their point of origin and lead to significant relief for retailers.

Free-of-charge commercial guarantees of durability (Article 2 (14a))

The proposed directive refers to the commercial guarantees regulated in Article 17 of the Sale of Goods Directive (2019/771) for the definition of the commercial guarantees of durability issued by the producer. Paragraph 1 provides for the minimum content of a commercial guarantee of durability, according to which producers must always offer consumers free repair or replacement of the goods within the guarantee period. It is not regulated whether the granting of a commercial guarantee of durability as such has to be free of charge – such a regulation is the responsibility of the Member States (recital 62).

However, in order to ensure real, Union-wide comparability of existing producer’s commercial guarantees of durability, it would be essential to provide that these – and not only the subsequent use of the remedies – must always be free of charge.

Information about the availability of free software updates (Article 5, paragraph 1 ec, ed, Article 6, paragraph 1 mc, md)

Due to the high significance of the topic in the context of sustainability, the focus should primarily lie on software update obligations (function maintenance/security) for producers and traders (orientated towards technically feasible service lives) addressing interlinked fields of law. Subsequently, information obligations should be required there as well. A possible information obligation on voluntary producer’s software updates without reference to compulsory updating obligations creates demarcation difficulties and appears insufficient from AK’s point of view.

Extension of negative information requirements (Article 5, paragraph 1 eb, Article 6, paragraph 1 mb)

The dual nature of the information requirements (including information about the fact that the producer has not provided information about the existence of a commercial guarantee of durability of more than two years) offers considerable incentives to provide guarantees of durability and for those producers who already provide them to ensure clearer visibility. For consumers, dual information of this kind means raised awareness and genuine opportunities for comparison.

Accordingly, we are critical of restricting the negative information requirements to energy-using devices and regard such a step as inappropriate. First, it is not only energy-using product groups that contribute significantly to problematic environmental developments. Second, it is not clear why there should be no need for corresponding consumer information or an incentive effect for producers in the case of products that are actually long-lived and/or high-priced and whose durability can be reliably estimated (e.g. building materials, furniture and sports equipment/articles). Repair information should be obligatory and issued in the form of a repair indicator that has yet to be created (which – based on the [French example](#) – is very welcome as a low-threshold, harmonised comparison instrument).

Pre-contractual information format (Articles 5, 6, 8)

The envisaged inclusion of the two-sided information on the producer's commercial guarantees of durability in the special information requirements immediately before placing the order in distance selling (first subparagraph of Article 8, paragraph 2) is welcomed, as it ensures that consumers are immediately aware of the information.

However, the commercial guarantee of durability is only one relevant aspect of consumers' durability claims – the statutory warranty also stipulates the expected durability of a product as objective contractual content. In this context, consumers should be aware of the scope of (durability) claims that exist by law and additionally granted voluntarily.

In order to represent the expectable life-span in a complete, yet compact and low-threshold manner, we therefore propose that a uniform labelling system be introduced in the form of a scale, e.g. graduated in colour ("durability index/label"). This would in any case contain the term of the legal guarantee of conformity (based on product-specific minimum service lives) and, if applicable, that of any additional commercial guarantee of durability (or negative information in this regard) statutory update periods, as well as repair options (repair code), and would have

a high recognition value. In addition, the provision of pre-contractual information would be considerably facilitated for traders (see also Article 7 and 14 of the Ecodesign Regulation).

Unfair Commercial Practices Directive

The Unfair Commercial Practices Directive (Directive 2005/29/EC) protects consumers against unfair commercial practices.

The proposed amendments to the Unfair Commercial Practices Directive are in the interest of consumers and are essential. However, in AK's opinion, some additions and clarifications are still required for the effective enforcement of these protective provisions in practice.

- The Directive provides for a ban on generic environmental claims ("environmentally friendly", "ecological" etc). We welcome this; however, the definition of "generic environmental claim" in Article 1 (1), lit q must be developed comprehensively (graphic elements, pictures, symbols etc). Only statements in text form are currently covered – by reference to the definition in lit p. Television commercials, for example, will not be covered.
- Environmental claims about future environmental performance without an independent monitoring system constitute a misleading business practice (Directive 2005/29/EC, Article 2, paragraph 2 d NEW). Here, the term "independent monitoring system" needs to be defined more closely by means of specifications in the directive.
- If the directive requires proof from the trader in connection with the advertising claim (e.g. Annex I, paragraph 2, lit 4a), legal conditions must also be created for the corresponding legal enforcement in practice, so that this proof can be easily found and retrieved by consumers (transparency).
- For sustainability seals, requirements for the quality of the content should be defined in addition in order to improve trustworthiness (e.g. through minimum criteria).
- Since it is difficult to prove that a trader intends to limit durability by introducing a certain feature of a product, the prohibitions and requirements on obsolescence should be formulated in such a way that they do not refer to "intentional obsolescence" by a company (Annex I, paragraph 4, lit 23e).
- In addition to the prohibition on "generic environmental claims" (cf. Annex I, paragraph 2, lit 4a), "generic social claims" (e.g. "fair", "sustainably produced", "good working conditions", "produced

without child labour”, “charitable contributions”, “animal welfare”) must also be regulated. These are just as likely to deceive consumers as environmental claims.

- Taking further action against greenwashing: Stronger regulation of greenwashing is welcome, but combating greenwashing must be addressed at multiple levels. Facilitating legal action is a positive step, but prevention is also needed. There is a need for pre-testing of green advertising claims at the European level, along the lines of “health claims” that must be approved in advance by the European Food Safety Authority (EFSA). Consumers would then only come across green claims that have already been authorised.



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About Us

The Austrian Federal Chamber of Labour (AK) represents by law the interests of about 3.8 million employees and consumers in Austria. It acts on behalf of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore, the Austrian Federal Chamber of Labour is a part of the Austrian social partnership. The Austrian Federal Chamber of Labour is registered at the EU Transparency Register under the number 23869471911-54.

The main objectives of the AK EUROPA Office established in 1991 in Brussels are the representation of AK towards the European Institutions and interest groups. Other objectives are the monitoring of EU policies and transferring relevant information from Brussels to Austria, as well as to lobbying the expertise developed in Austria and positions of the Austrian Federal Chamber of Labour in Brussels.