

ACT | The App Association

Rue de la Loi 23,
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Belgium

European Parliament
Rue Weertz 60 1047
Brussels Belgium

June 8, 2023

Re: The need for a focused approach in defining the Regulation for setting Ecodesign requirements for sustainable products—the new Ecodesign regulation—without unnecessary software provisions that only create burdens for SMEs while providing virtually no benefit to the environment.

Honourable Members of the European Parliament,

ACT | The App Association, represents small and medium-sized enterprises (SMEs) that create new and innovative technologies across the European Union's (EU) digital economy (the app economy). As business and technology leaders in the EU, we and our members have a vested interest in ensuring new legal and policy landscapes continue to support SMEs engaging in the app economy.

We fully support the European effort to reduce energy inefficiencies and improve the sustainability of goods and life cycles of products, as well as harmonise such initiatives across the EU, to better help SMEs, consumers, and the environment. We agree with the Commission that the unsustainable consumption of goods and growing amount of waste harms the global environment. We believe that overall, the European Commission's proposal for a regulation setting Ecodesign requirements for sustainable products, and the currently discussed Draft Report, are timely and important.

However, it is critical that the European Parliament considers the potential socio-economic impact of uncompetitive provisions on SMEs and consumers in the digital market. It remains extremely important to consider the different sizes and financial capacities of SMEs and how hardware and software differ in terms of environmental impacts while avoiding overlapping, unnecessary duplicative, or contradictory legislation, as currently laid out in the European Commission's proposal.

We welcome the efforts put forward by several MEPs, especially in the Internal Market and Consumer Protection Committee (IMCO) with its Draft Opinion, and by the Rapporteur on the text in the Environment, Public Health and Food Safety Committee (ENVI), Ms. Alessandra Moretti who has presented a balanced Draft.

However, we urge MEPs to take into consideration the potential harm to small businesses and consumers of provisions aimed at restoring previous software updates contained in a few amendments to Articles 5 and 33 of the Regulation ahead of the final vote in ENVI. In our opinion, this approach would likely harm or stall innovation rather than lead small businesses like our members to a better and more sustainable future.

1. Promote innovation and not undermine it. A twin transition, green and digital, could only happen if businesses, especially smaller ones, have the incentive to innovate, offer better services, and create new technologies. Introducing obligations for businesses to downgrade or reinstall older updates and upgrades of software, apps, or operating systems (OS) upon consumers' request will not help our members provide better, more advanced, and sustainable services or technologies. SMEs would then face the difficult choice of either refraining from providing an app on previous OS versions, or providing the app as required by this Regulation, and thereby diminishing the quality of the software. This practice would harm our members' ability to thrive in the European market and compete globally, while also hindering the overall success of the ambitious goals set by Europe's Digital Decade Strategy.

2. Updates and upgrades are essential to maintain secure software and prevent cyber threats for SMEs and users. Software updates, both functionality updates and security updates, keep our devices secure and efficient. If the user has the option to reject a newer version of an OS as part of the Sustainable Products Initiative, their device will become more vulnerable to cyber threats, and significantly increase the risks of being hacked, as well as the costs for the consumer and the business user. Any European regulation promoting the ‘retrograding’ or allowing users to reject upgrades that would make their device more secure, endangers the cybersecurity of electronic devices and puts consumers at risk. These provisions also greatly increase costs for SMEs, not only in terms of actual development costs, but the likely harm to overall consumer trust in digital products and services, limiting our members’ ability to compete in the global app economy.
3. We understand the reasoning behind the addition of premature obsolescence, and we could agree with its application when it comes to manufacturers of hardware. However, we believe that the extension of this notion to software is concerning and probably out of the scope of the main aim of the regulation; therefore, we urge the European Parliament to better define this section in order to ensure legislative clarity. We agree that software or firmware updates should not significantly worsen product performance in relation to any of the product parameters regulated in the regulation and relative delegated acts, except with a technical assessment on the alleged worsened performance due to a software update. It is fundamental to protect consumers from any circumventive behaviour, but also our small and micro app developers from the potential unintended consequences of this provision.
4. Given that many aspects of Ecodesign are already addressed in other proposals being considered by the Commission, adding additional rules with which SMEs will be expected to comply merely increases the financial burdens for SMEs and slows their path to compliance. If the European Parliament wants to improve this regulation, we suggest being more ambitious regarding the incentives for compliance as well as the financial support for implementation (especially for SMEs), in addition to better enforcing effective market compliance and oversight among Member States. Furthermore, while we support the proposal to give to the European Commission powers to adopt delegated acts to add new products categories and new Ecodesign requirements, we strongly recommend for the European Parliament to ensure sufficient time for SMEs to adjust to the new rules and make sure that they will be publicly consulted by the European Commission before it puts forward any delegated acts regarding these aspects of the regulation.

As technology companies play a role in efforts to make the green and digital transition a reality, it is evident that SMEs like our members are leading the charge. However, it is critical that Parliament carefully consider how to make this regulation a success without causing unfair and unreasonable imbalances for SMEs and consumers. SMEs are the social and economic foundations of the European Single Market, and we appreciate the opportunity to share our perspective.

Thank you for your consideration. We look forward to future discussions with the European Parliament on this issue and remain at your disposal to provide additional information or answer any questions you might have.

Sincerely,



Mike Sax
 Founder and Chairperson
 ACT | The App Association