



Sustainable products in a digital age – E-commerce compliance in the ESPR and the Green Deal



Tuesday 23 May 2023, 12:15 – 13:30 CEST

Hybrid Event (Brussels, Belgium & Online)

Hosted by MEP Alessandra Moretti

ENVI Rapporteur for the “Ecodesign for Sustainable Products’ Regulation

Speakers:

MEP Ms. Alessandra Moretti, ENVI Rapporteur for the ‘Ecodesign for Sustainable Products’ Regulation

Ms. Lucie Long, Senior Environmental Consultant, Eunomia Research & Consulting

MEP Paola Zanetti, Senior Expert – Legal Officer, DG GROW

MEP Sylvia Maurer, Director of “Sustainability, Food, Health, Energy & Safety Department”, BEUC

Ms. Juliette Beaulaton, Public Affairs Advisor, Ecommerce Europe

Ms. Ourania Georgoutsakou, Secretary general, LightingEurope

Ms. Linda Leffler-Olsson, Head of Brussels Office, Svensk Handel

Welcome Remarks

MEP Ms. Alessandra Moretti

“Online sellers should get the same responsibility as other economic actors in EU markets.”

To begin the event, **MEP Ms. Alessandra Moretti** mentioned that the **ESPR** is a corner stone of the **European Commission’s** approach to more sustainable and circular products. Moreover, **MEP Ms. Moretti** mentioned how more products will be subject to **ecodesign requirements** online, especially those not sold through an EU importer. She also highlighted that a level-playing field and enforcement will identify enterprises that need to comply with the ESPR. As the rapporteur on the regulation, **MEP Ms. Moretti** expressed her concerns about e-commerce benefiting from **regulatory gaps** for economic advantages over traditional sale routes, but assured that other legislations such as the **Digital Services Act (DSA)** and the **EU Market Surveillance Regulation** have started to set rules for online platforms. Nonetheless, **high-levels of non-compliance** can still be found in terms of **product safety and extended producer responsibility fees**. **MEP Ms. Moretti** re-affirmed the opportunity to use this Regulation to strengthen the online market, especially when several online sectors are becoming **increasingly complex**. These online platforms should fulfil the same responsibility and liability as other economic actors. She also stated that e-commerce non-compliance represents an **unfair competition** and a clear space for loopholes that allow further non-compliance. **MEP Ms. Moretti** concluded by mentioning a vote on the Regulation taking place soon in ENVI Committee and assured that concerns will be considered in the final discussions.

Presentation: Risks & recommendations for the ESPR

Lucie Long, Senior Environmental Consultant, Eunomia Research & Consulting

“It is essential that there is an economic actor in the EU with clear liability for complying with ESPR requirements for all avenues of online sales. And, in that same vein, we would like to see greater clarity from the Commission regarding which ecommerce actors in which scenarios should take on the obligations of the importer or the distributor in order to comply with the ESPR.”

Ms. Long presented a project by **Eunomia**, sponsored by the **European Environmental Bureau**, on the **risks related to e-commerce and ESPR and relevant recommendations**. The **first challenge** in the reliability on the e-commerce sector to comply with the ESPR is the **difficulty in identifying and categorise e-commerce actors** to begin with, making it hard to also fit them into **existing legal categories** and expect them to fulfil the **appropriate legal obligations**. The **second challenge** is **identifying e-commerce sales routes**; Ms. Long explained how there is an extensive difficulty and complexity in understanding **non-EU manufacturers selling to EU consumers**, and a struggle in **identifying** which e-commerce actors and scenarios should **take on the obligations of the ESPR**. Ms. Long then moved on to **discussing previous EU legislations not necessarily creating the right direction** for the ESPR. Though the **Digital Services Act** had more of a **positive effect of increasing traceability** of traders using online platforms, online marketplaces were not being subject to **“General monitoring obligations”** limiting the efficiency of the DSA. Ms. Long also clarified how the DSA has been criticized for being **weak in regulating illegal content online and applying it to actual products**. With the ESPR proposal, she identifies some **legislative gaps**, such as the **inadequate provision** for products manufactured outside the EU and sold through online marketplaces, **limited requirements** on fulfilment service providers, the **lack of clarity** in text on destruction of unsold goods, and the **exemptions** for SMEs. **Wider risks** stemming from the proposal include **insufficient deterrent** to ensure compliance, **possibly misleading product information** for consumers, and **the lack of communication** around legal roles. Ms. Long ended her presentation by offering **key recommendations**, such as **the presence of a liable economic**

actor in the EU to comply with ESPR requirements online, **the presence of Fulfilment Service Providers** (FSPs) with stronger obligations, **online marketplaces** only allowing **compliant products** and **essentially, effective enforcement**.

Panel Discussion

Paola Zanetti, Senior Expert – Legal Officer, DG GROW, European Commission

“We don’t want the ESPR to become a battlefield for battles already fought.”

On behalf of the **European Commission**, **Ms. Paola Zanetti** appreciated the good work made by the European Parliament that will allow for a swift start of the dialogues on the proposal and affirmed that **the lack of enforcement** will lead to no business case for the industry and no level-playing field. She acknowledged current issues and suggested stepping up the market surveillance, making the best use of the **digital product passport** and ensuring **interaction** between market surveillance authorities and customs. **Ms. Zanetti** also brought up **the Council’s** unfortunate **deletion of** the market surveillance chapter and of Article 13(4). She discussed Article 29 of the proposal, and how online market places can play an important role in **allowing economic operators to comply** with obligations and in cooperating with market surveillance authorities. **Ms. Paola Zanetti** also raised concerns on market surveillance being **understaffed and lacking resources in Member States**. Mainly, Article 29 calls for the **cooperation of online platforms with market surveillance authorities** with specific obligations, and she reinstates that consistency in the legal framework is crucial. She concludes by saying that Article 29 needs to **operate within the boundaries** of what was decided by the **co-legislators** not long ago concerning the **DSA** & the General Product Safety Regulation (GSPR).

Sylvia Maurer, Director of ‘Sustainability, Food, Health, Energy & Safety Department’, BEUC

“More information to consumers does not mean more sustainable choices.”

Ms. Sylvia Maurer highlighted that measures such as taking **energy-consuming products** off the market pushes consumers to choose more sustainable options, and thus it is the manufacturers' responsibility to ecodesign their products, by making the sustainable choice the default choice on the market. Nonetheless, **Ms. Maurer** acknowledged the importance of **informing consumers on sustainability, repairability & reuse**, but enforcement is a **weak angle**. Especially when it comes to the Council's alarming decisions on the topic; online market places are not responsible for **offering consumers liable information**. The lack of enforcement, as mentioned before, **creates unfair competition**, and Member States should re-call other good models of **cooperation and coherence** in environmental/sustainable regulations across the EU. **Ms. Sylvia Maurer** suggested not only online and digital labelling, but also offering leaflets at points of sale in addition to all other steps mentioned to achieve sustainable outcomes.

Juliette Beaulaton, Public Affairs Advisor, Ecommerce Europe

"ESPR is an opportunity to raise the bar and standard for products that are made for consumers, and an opportunity to develop circular practices."

Ms. Juliette Beaulaton stated how the ESPR will bring change to how we think about products' lifespan, make sustainable products the norm and create strong foundations for circular practices to grow (e.g. facilitating repairs and trade of second-hand, refurbished products). She also brought up **second-hand products** and discussing where they fit in the discussion to ensure that we do not make it impossible for these products to be exchanged on the EU market. On compliance, **Ms. Beaulaton** accentuated the complexity of the topic in the context of e-commerce, where a wide variety of actors and channels coexist and complement each other. She highlighted the **recent positive changes in EU law that will impact compliance** (e.g. Article 4 of the MSR, the GPSR with the extension of the role of the responsible person in the EU for all products, Product Safety Gate) and stated that we should ensure consistency with these legislations in the ESPR. She also echoed what the European Commission mentioned regarding the **role of enforcement** and expressed her **concern at the shift of responsibility from public authorities to private operators due to a lack of resources**. She concluded by saying that we need to have a wider discussion on compliance focusing workable solutions and trying to address the roots of the problem (e.g. making sure that the measures discussed recognizes that not all OMPs have the same business model/capabilities, making

sure we create the right tools to facilitate enforcement, or making sure we work on facilitating compliance for smaller seller across the board).

Ourania Georgoutsakou, Secretary General, LightingEurope

“We need to close the legislative gap now and ensure that the framework for sustainable products – the ESPR - allocates liability to an EU economic operator in the EU that can held liable for product compliance online.”

Ms. Ourania Georgoutsakou noted that already today we see **high levels of online non-compliance with sustainability obligations**, such as the WEEE obligations to register with a producer responsibility scheme and contribute to the cost of collection and recycling. The ESPR and product-specific legislation under it will create numerous obligations for companies whose main activity is to manufacture products. For example, manufacturers or importers placing products on the market will have to track 12 000 substances across a global supply chain or will have make products repairable and assure the availability of spare parts. She stressed that it is **not acceptable that we continue to accept that online there may be no EU-based economic actor who can be held liable for complying with sustainability obligations**. The DSA introduced some rules on checking traders or products and within the ESPR we need to build on this framework and ensure that an economic operator established within the EU jurisdiction and benefiting from the transaction can be held liable for compliance with ESPR rules, both offline and online.

Linda Leffler-Olsson, Head of Brussels Office, Svensk Handel

“Consumer safety is key, but so are our sustainable goals.”

Ms. Linda Leffler-Olsson started off by saying the ESPR is part of consumer trust, and it is only one piece of legislation out of many in Europe, with more regulations, obligations and cost to come. The lack of enforcement means little to no risk of foreign companies to be non-compliant, but it also means harder for companies to compete in Europe and internationally. She also mentioned how the importance of price is on the rise, with consumers going for

cheaper options, and thus non-compliant sellers enjoy cost advantage when selling to European countries compared to compliant sellers inside and outside Europe. **Ms. Leffler-Olsson** advocated for pressure on the market to address sustainability and compliance issues, and encourages policymakers to think about accountability and liability for dangerous products.

Key takeaways from the discussion

Paloa Zonetti:

Some solutions are ready and there is a need to ensure they are coherent and work together with good coordination and cooperation. GSPR and DSA have just been adopted, let's give both a chance to be applied and assess their efficiency.

Sylvia Maurer:

Let's use the opportunities available and develop the legislations in place. Current legislations are not good enough for future years. let's focus on solutions more than legislative compliance.

Juliette Beaulaton:

Legitimate players are essential, and so is a nuance discussion and workable solutions are essential to preserve the ecosystem. Focus should be on ambitious measures to address the roots of the issue and promote cooperation rather than focusing solely on the aspect of marketplace liability.

Ourania Georgoutsakou:

It's crucial to make sure rules and legislations are present in order for EU authorities to be able to do their job. Not fixing this now sends the wrong message to compliant and non-compliant companies.

Linda Leffler-Olsson:

The goals are common, let's continue negotiations with a solution-oriented mindset.

Q&A

A representative from Toy Industries of Europe (TIE) addressed a question to **Ms. Zonetti** representing **the European Commission** and **Ms. Beaulaton** representing **Ecommerce Europe**, concerning the authorities within the EU that gather documents without specifically taking on a liability role – which presents loopholes to non-EU platforms – and what solutions can be suggested on the matter.

Juliette Beaulaton, Ecommerce Europe

There is no clear-cut answer for this, but it's necessary to define liability and what would being liable mean for these actors in practice in this situation and answer several unanswered questions (e.g. how are private actors expected to fulfill the tasks that would come with liability, for example testing).

Paola Zanetti, European Commission

Also, the non-compliance with KYBC (Know Your Business Customer), it will be heavily sanctioned by the DSA when the latter is implemented; let's give it a chance.

Closing remarks

Ms. Alessandra Moser, Assistant to MEP Ms. Alessandra Moretti

In a few words, **Ms. Moser** thanked the speakers on their timely and interesting discussions around the event's topic of e-commerce compliance with the **ESPR**, which will be voted on in **ENVI Committee** in a few weeks. **Ms. Moser** concluded by promising to deliver the best by taking into account the event's comments in the plenary sessions despite the discouraging position of the **Council**.