

Annex – Better Regulation Checklist

Delivering high impact, high quality, low-cost legislation.

1. **Practicability:** Map the practical consequences of legislation in advance examining what processes and practical steps that businesses need to take to comply with. Involve the public authorities as well as the cities and other regional and local actors, who will need to be involved in implementation from the start.

Lessons to learn:

- *Several guidelines will need to be adopted under the **Artificial Intelligence Act**²⁷. Some of them are also expected to provide clarity on provisions that will likely start being applicable in the upcoming six months (i.e. the one on the definition and the one on prohibited practice). Essential work will also need to be done on the guidelines providing concrete examples on high-risk AI systems. Providers and deployers of AI may be discouraged to invest in AI and other technologies if they do not know in advance what are the obligations they will have to comply with. This really risks hampering innovation and competition in the single market. Despite this and ahead of the guidelines, the Commission has announced in the mission letter²⁸ to Commissioner Designate Roxana Mînzatu **an initiative on algorithmic management in the workplace**. This implies there is a legal gap that is not covered by the AI Act or the GDPR before concrete examples are developed.*
- *The logical and proportionate division of responsibilities among economic operators has been ignored in **the Deforestation Regulation, Construction Products and Cyber Resilience Act**.²⁹ Making the distribution sector responsible when it is not in control of production, design or standards of products that it distributes, and does not first place it on the market, gives responsibilities that is outside the sphere of influence of the sector can take on. Responsibilities should be assigned in line with commonly applied and generally accepted division between producers, manufacturers and importers in EU product law as set down in General Product Safety rules. This similarly applies when responsibility is given to police the supply chain to distributors, when this should be the role of enforcement authorities.*
- *The **Corporate Sustainability Due Diligence Directive**³⁰ requires companies to set up a system to identify social and environmental impacts along their supply chain. As SMEs indirectly fall within its scope, they will need to check whether the supplier of a supplier is in breach of the requirements of the Directive, including compliance with 23 international human rights and environmental conventions. This needs to be done at the request of the larger business partner/distributor who is within scope of the Directive, with civil liability attached to non-compliance.*
- *Not receiving important tools from the Commission in time, such as the information system and the application interface application, as well as lacking essential guidance and clarifications necessary for businesses to comply with the **Deforestation Regulation (EUDR (EU Deforestation***

²⁷ [Excellence and trust in artificial intelligence - European Commission \(europa.eu\)](#)

²⁸ See: [mission letter](#)

²⁹ A joint letter was sent from EuroCommerce to Commissioner Breton together with other associations on responsibilities in November 2022.

³⁰ [Directive - EU - 2024/1760 - EN - EUR-Lex \(europa.eu\)](#)

Regulation))³¹ made it very difficult to meet the application date at the end of 2024 and resulted in a proposed amendment for an extension of the transition period by one year.

- Pursuant to the new **Ecodesign for Sustainable Products Regulation (ESPR)**³² a number of delegated acts will be adopted, establishing mandatory ecodesign requirements for products to be able to enter the EU market. The development of these delegated acts will be key – consultations to the **new Ecodesign Forum** and collaboration with the stakeholders therein will be crucial to develop scalable, feasible, impactful and efficient ecodesign requirements.
- The **Energy Performance of Buildings Directive**³³ introduces requirements for charging stations, pre-cabling and solar on buildings that also need to match with local conditions, including planning, mobility plans and structural and technical feasibility when introduced to existing buildings (e.g. underground car parks depending on load bearing capacity).
- The Commission adopted **restrictions on microplastics**³⁴ on 25 September 2023, which include an implicit ban on loose glitter. The measure entered into force 20 days later (i.e. 17 October 2023). However, the definition of glitter and what is banned or not is unclear. Despite the promise made by the Commission to provide guidance (initially expected by the end of 2023), the document was still awaited in October 2024.
- Pictograms and markings required for **the Single Use Plastics Directive**³⁵ were provided after the deadline in the legislation. This made adjustments in the supply chain harder and more complicated as economic operators waited for the correct specifications.
- The lack of impact assessment on **Article 6a of the Price Indication Directive**³⁶ meant the large variety of marketing practices across the EU were not considered, creating legal uncertainty among businesses.
- Several delegated acts and guidance will need to complement the **Packaging and Packaging Waste Regulation**. Some of them will be technical requirements that require close collaboration with the businesses.

2. Workability: Involve the companies and public authorities that will be affected by measures/controls/certification/monitoring to find out how, when and where the requirements need to be managed and enable them to plan the resources they need. Engage companies and public authorities in understanding how reporting will work in practice, developing single reporting tools as needed, working with them if new obligations arise in the legislative negotiations and ensuring public authorities have the infrastructure in place.

³¹ [Regulation on Deforestation-free products - European Commission \(europa.eu\)](#)

³² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R1781&qid=1719580391746>

³³ [Directive - EU - 2024/1275 - EN - EUR-Lex \(europa.eu\)](#)

³⁴ [Commission Regulation \(EU\) 2023/... of 25 September 2023 amending Annex XVII to Regulation \(EC\) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals \(REACH\) as regards synthetic polymer microparticles \(europa.eu\)](#)

³⁵ [Single-use plastics - European Commission \(europa.eu\)](#)

³⁶ [Price indication directive - European Commission \(europa.eu\)](#)

Lessons to learn:

- *The transitional phase of the **EU Carbon Border Adjustment Mechanism (CBAM)**³⁷, which started on 1 October 2023, requires companies importing iron and steel, aluminium, cement, fertilisers and energy from most countries to extensive reporting obligations and data gathering. Traders, and as such the voice of importers, are excluded from being part of the EU CBAM Expert Group which has been exclusively created for EU producers irrespective that importers need to comply with CBAM. The possibility of using default values to calculate CO₂-emissions has been widely abolished since 1 July 2024 also exacerbates the situation.*
- *An upcoming set of amendments to the **Common Market Organisation Regulation** was announced by the European Commission following weeks of protests by farmers in a ‘non-paper’ (i.e. a non-public letter) to the European Council. The proposals have so far been subject to no open public consultations among stakeholders.*
- *The **CESOP legislation tackling VAT fraud in ecommerce**³⁸ requires payment service providers to store 7 years of data for cross-border e-commerce transactions if done more than 25 times a month with the same counterparty. This reporting/data storage requirement will have a high cost for payment service providers to comply with, which they will eventually charge to their customers, the merchants such as retailers and wholesalers.*
- *The **Ecodesign for Sustainable Products Regulation (ESPR)**³⁹ introduces a **ban on the destruction of unsold goods, specifically apparel and footwear**, as well as an obligation on economic operators to disclose information on discarded unsold consumer goods. The first disclosure is expected to cover unsold goods during the first full financial year after the ESPR comes into effect (year 2025). However, secondary legislation on the reporting obligations will not come until 12 months after the entry into force of the ESPR. Companies need clear reporting rules that lay down adequate timelines and clarify reporting format and a standardised methodology.*
- *The ongoing revision of the **Waste Framework Directive** introduces an **extended producer responsibility (EPR)** scheme. Being a Directive, companies will face the rules being phased in through 27 different EPR schemes with different reporting obligations, requirements, scope. To be able to develop the needed European secondary raw materials market and to avoid distorting the Single Market, more harmonisation and interoperability are urgently needed.*
- *The **Market Transparency Regulation** has been amended to reduce the frequency retail data is provided from weekly to monthly for some products because the collection of retail buying prices was found to be too difficult.⁴⁰ While this reduction in reporting requirements is welcomed, there are other problems with the data collection. In particular, there is an underuse of the data by some Member States leading to the Commission searching for ways to encourage use of the data that companies are mandated to report.*
- *In the Netherlands, **rules for organic products**⁴¹ require providers to maintain detailed records such as packaging slips, certificates and separate bookkeeping. They must also take extensive measures to stop organic products being mixed with other products that ironically encourage the use of more*

³⁷ https://taxation-customs.ec.europa.eu/document/download/c4b208a6-3945-4dcd-84d3-5f9551578851_en

³⁸ [Tackling VAT fraud in e-commerce - CESOP - European Commission \(europa.eu\)](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_1000)

³⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R1781&qid=1719580391746>

⁴⁰ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/14082-Agricultural-markets-obligation-to-notify-information-on-prices-and-other-data-adjustments-_en.

⁴¹ [Door Skal ingerichte Certificeringsplicht biologische producten onwerkbaar en kostbaar | Vakcentrum](https://www.vakcentrum.nl/door-skal-ingerichte-certificeringsplicht-biologische-producten-onwerkbaar-en-kostbaar)

plastic packaging. This is a deterrent and comes at an annual cost of €5,000 to €15,000 per company, on top of the one-off costs for the first certification (c. €4,000).

- 3. Capability:** Involve the companies that will be affected by targets to find out how feasible they are to reach, how long they will take and what are the consequences - not leaving this to a political decision.

Lessons to learn:

- *It is assumed that existing acceptance infrastructure will be used to roll out the **Digital Euro**⁴² and **European digital identity wallet (EUIDW)**⁴³. However, merchants including retailers and wholesalers need to be consulted to ensure that this will work in practice. The current payment terminal landscape is centred around card-based payments using the EMV standard from Mastercard and Visa. Only very modern terminals (Android based) could have a separate digital identity or digital euro applications in addition to normal card based payments. The same applies when you consider how transactions will flow from stores to the back-end of Payments Service Providers.*
- ***Food waste legislation**⁴⁴ imposed a reduction target for retail and wholesale that is combined with consumers. This is irrespective of the fact that retail and wholesale contribute less than 7% and has no control over consumers' behaviour. At best it can only encourage consumers. This misses what would be more effective, such as removing VAT on donations that could create the right incentives and achieve results.*
- *The **Packaging and Packaging Waste Regulation** introduces obligations related to reuse of packaging and restrictions for certain packaging formats. On reuse a provision on refill stations was added during the legislative process without an impact assessment. The regulation should support our members in their efforts and refrain from forcing businesses to use a specific reuse format such as refill at the store level, while other initiatives and innovations might be more appropriate to reach the stated objectives of more sustainable packaging. For the bans, further input from retailers and wholesalers is needed, as the restrictions come with conditions and exemptions that need to be clear and implementable to ensure that unintended effects like increased food waste and spoilage is prevented.*
- *The consequences of hard stops can lead to unnecessary stock destructions or market disruptions, which except in high-risk cases (e.g. acute risk to health), could be better dealt with permission to allow products already on the market to be sold until stock is depleted.*

- 4. Indirect effect:** Map consequences for those the rules are intended to affect, but also go a step further to examine how their practical application will indirectly affect other companies and their operations (e.g. considering what information is necessary, the interaction with the supply chain, etc.).

⁴² [Digital euro - European Commission \(europa.eu\)](https://european-council.europa.eu/media/en/press-operations/infographic-117123.pdf)

⁴³ [EU Digital Identity Wallet Home - EU Digital Identity Wallet - \(europa.eu\)](https://european-council.europa.eu/media/en/press-operations/infographic-117123.pdf)

⁴⁴ [EU actions against food waste - European Commission \(europa.eu\)](https://european-council.europa.eu/media/en/press-operations/infographic-117123.pdf)

Lessons to learn:

- *The inclusion of low value gift cards in the **Anti-Money Laundering Directive**⁴⁵ deterred those that wished to offer these as an enticement to consumers – with no bearing on the overall goal of the legislation.*
- *Initiatives announced in speeches e.g. the **Forced Labour proposal**⁴⁶, sets an unrealistic timetable for proper assessment of the indirect consequences before a proposal, especially where no impact assessment accompanies the measure.*
- *The strict payment terms imposed by the **proposal for a Regulation to combat late payments** missed the financial cost (estimated to be €2 trillion for the whole economy) and the consequences of that financial gap. This blind spot undermined the viability of SME retailers, the value proposition of wholesalers who were willingly offering supply chain credit and created market entry barriers. It also strengthened the position of large suppliers and online intermediation (particularly those of non-EU origin).⁴⁷*
- *A **complete or partial surcharging ban for payments**⁴⁸ has the indirect effect that it reduces competition and increase consumer prices and, in the end, makes the most expensive payment methods stronger.*

5. **Competitiveness check:** Map consequences for those the rules will affect vis-à-vis relative competitiveness within the Single Market, and with third countries. This requires a big-on-big, small-on-small approach and better coordination between Commission services.

Lessons to learn

- *The **EU Strategy for Sustainable and Circular Textiles**⁴⁹ contained 24 measures aiming to create a greener, more competitive sector is spread across multiple initiatives. The sustainability-related and social aspects of the textile sector are addressed in complex horizontal regulatory proposals including the Corporate Sustainability Due Diligence Directive (CSDDD) and the Ecodesign for Sustainable Products Regulation (ESPR), which introduces the Digital Product Passport to digitalise product information. The Empowering Consumers Directive and the Directive on Green Claims will soon regulate the communication of voluntary sustainability claims, while the revised Waste Framework Directive will address the basic concepts related to end-of-life management.*
- *The **Farm to Fork Strategy**⁵⁰ contained 27 measures. Some legislation did not even make it through the mandate such as sustainable foods framework law, food information and animal welfare. If the strategy is over-ambitious for the law makers to develop, it will be over-ambitious for the companies to implement. On the other hand, it also encourages Member States to take action themselves. This fragments the Single Market and can in fact undermine it, like the Romanian ban on Nutri-Score.*

⁴⁵ [Anti-money laundering and countering the financing of terrorism at EU level - European Commission \(europa.eu\)](https://ec.europa.eu/anti-money-laundering/)

⁴⁶ [Retail and Wholesale committed to making forced labour history, but needs consistent EU rules - EuroCommerce](https://www.eurocommerce.eu/retail-and-wholesale-committed-to-making-forced-labour-history-but-needs-consistent-eu-rules/)

⁴⁷ [Late Payments - EuroCommerce](https://www.eurocommerce.eu/late-payments/)

⁴⁸ [Surcharging will benefit consumers - EuroCommerce](https://www.eurocommerce.eu/surcharging-will-benefit-consumers/)

⁴⁹ https://environment.ec.europa.eu/publications/textiles-strategy_en

⁵⁰ [Farm to Fork Strategy - European Commission \(europa.eu\)](https://ec.europa.eu/farm-to-fork/)

- In the proposal on **promoting repair and reuse of products**⁵¹ new obligations are introduced for sellers and manufacturers, but many products are produced outside the EU. Consumers can directly import products and the initiative leaves an open question on what happens when there is no EU producer and there are no spare parts, repair manuals or responsible operators. This lack of achievable enforcement is likely to make compliant products more expensive than non-compliant products and can encourage purchase of non-reparable products by consumers based on price. Enforceability of new rules on all businesses targeting consumers in the EU is critical to ensure a level playing field.
- The announcement of **new cross-border enforcement rules** prior to the completion of the evaluation of the **Unfair Trading Practices in the Food Supply Chain Directive**, risks undermining the rules on choice of law and court, and private international law, by creating special rules for cross-border enforcement for the food supply chain. Extra-territorial effect of laws that effectively prohibit international retail alliances and the renationalisation of sourcing (where a complaint is pending), undermines the competitiveness of retailers and wholesalers, reducing the benefits of scale and pressure that the EU itself has enjoyed through its joint purchasing of gas and vaccines vis -a-vis negotiations with international multi-national suppliers.⁵²

6. Retain flexibility where possible: Avoid too strict rules that are difficult to implement and disproportionately costly, by leaving space for flexibility on how and not being too prescriptive. Focus on final results rather than specific ways to achieve them and preserve a technologically neutral approach to regulation.

Lessons to learn

- The **mandatory acceptance of cash**⁵³ is not future proof nor offers flexibility for Member States to cater for local circumstances or preferences. It means that payments that are already digital or automatic will need to accept cash in the future. This also will come at a time when banks are reducing access to cash and the number of ATMs are in decline.
- The **Energy Efficiency of Buildings Directive**⁵⁴ require retailers to invest in charging stations for e-vehicles for a substantive share of their car parks. One country has extended the obligation to install solar panels on car parks. These investments remove the flexibility of retailers and ignores the fact that there can be a business case in investing in charging stations or solar panels, which before it became law could also be supported by public finances or incentives. Where Member States choose to accelerate compliance with earlier deadlines, this causes logistical, infrastructure and cost problems. In Spain for example, the transposition of the Directive⁵⁵ meant Spanish retail companies had to introduce 20,000 electric vehicle charging points in less than 8 months.
- The **Urban Waste Water Treatment Directive**⁵⁶ introduces extended producer responsibility. The producers of pharmaceuticals and cosmetics are required to contribute to the cost of treatment, and extended producer responsibility applies to pharmaceutical distributors if they place products on the market of a Member State for the first time, even if the product had already been placed on the

⁵¹ [Making repair the most attractive option for consumers and retailers \(eurocommerce.eu\)](https://european-council.europa.eu/media/en/press-communications/infographic/infographic_making-repair-the-most-attractive-option-for-consumers-and-retailers.pdf)

⁵² See - [Retail and wholesale in the agri-food supply chain - EuroCommerce](#) and [Unfair trading practices: focus on facts, not haste! - EuroCommerce](#)

⁵³ [For retailers 'cash' is not always 'king' - EuroCommerce](#)

⁵⁴ [Directive - EU - 2024/1275 - EN - EUR-Lex \(europa.eu\)](#)

⁵⁵ Spanish Royal Decree 29/2021 of 21 December 2021.

⁵⁶ [Carriages preview | Legislative Train Schedule \(europa.eu\)](#)

market in another Member State. In smaller Member States (e.g. Estonia) the burden of producer responsibility falls onto a few actors in the market, creating an unreasonable financial burden, and gives no flexibility to Member States to consider national specificities that could share the burden with other downstream actors. Such discretion would meet the objectives of the polluter pays principle but without unintended consequences for the availability, affordability and accessibility of critical medicines.

7. Focus inspection at the right level: If requirements are met by those at the beginning of the chain, they should be the focus of checks and inspections to relieve the pressure further down the chain. Responsibilities should be given to the person best placed or who is in control, with consistent legal definitions used.

Lessons to learn

- In the proposal for **Empowering Consumers for the Green Transition**⁵⁷ and for dual quality products under the **Unfair Commercial Practices Directive**⁵⁸, the responsibilities on economic operators are not clear. Retailers are covered by the concept of trader, which is the economic operator that sells directly to a consumer. However, this could also be a producer (in the role of a retailer) or other service providers like booking, rental and gaming websites. In this sense, a pure retailer is dependent on the producer to ensure a product is compliant and all the relevant information is correct, and responsibilities should be distributed accordingly.
- The **proposal on promoting repair and reuse** borrows elements from the product law hierarchy⁵⁹ but places producer obligations on distributors, by copying the definition of producer of the **Ecodesign for Sustainable Products Regulation (product law)**. This is irrespective of the fact that the purpose of promoting repair and reuse is not for competent authorities to identify the responsible operator on the Union market, but for the consumer to know who should provide repair. These mismatches undermine, for example, the purpose of e.g. **the Market Surveillance and Compliance of Products Regulation**⁶⁰ that aimed to streamline obligations so economic operators did not have to check over 30 pieces of EU product law to understand what their obligations were.

8. Avoid duplication: Map the practical implications of compliance and apply a once-only principle, so obligations only fall on one party to meet the objective and unnecessary duplication (e.g. more registrations) is avoided. Data that is already available to the EU should not be collected a second time. Work in harmony with what already exists, to avoid wide divergences in approach, and have at the forefront of mind simplification (e.g. through one-stop shops, the once only principle and development of tools to enable a single report (a single input/single reporting tool) to be used for all legally required purposes or that helps businesses find requirements and submit their responses⁶¹).

⁵⁷ [Directive - EU - 2024/825 - EN - EUR-Lex \(europa.eu\)](#)

⁵⁸ [Directive - 2019/2161 - EN - omnibus directive - EUR-Lex \(europa.eu\)](#)

⁵⁹ In EU product law, the hierarchy of economic operators includes the producer, the authorised representative, the importer, the fulfilment service provider and the distributor (i.e. retailer and wholesaler). In EU product law, the producer has the ultimate responsibility to ensure a product placed on the EU market is safe, the distributor is for instance obliged to make sure all the mandatory information is attached to the product but is not responsible for its veracity.

⁶⁰ [Regulation - 2019/1020 - EN - EUR-Lex \(europa.eu\)](#)

⁶¹ Similar to tools provided for non-EU businesses wishing to import products into the EU (e.g. [Help for My Trade Assistant | Access2Markets](#)).

Lessons learned

- According to the **EU Deforestation Regulation**⁶², non-SME traders need to submit due diligence statements which refer to the due diligence statements previously uploaded by the operator. This creates unnecessary duplication.
- An Implementing Act will define the harmonised labels and specifications relating to Article 11 of the **Packaging and Packaging Waste Regulation**. Where Member States act faster, for example in Spain where Spanish Royal Decree 1055/2022 will enter into force in January 2025 ahead of the EU mandatory requirements, could result in businesses duplicating or wasting efforts to comply if the requirements differ. The same result will occur as the Regulation permits Member States to go beyond the minimum harmonisation, leading to fragmentation of the Single Market made worse by goldplating that results in a maze of national requirements.
- The **Textile Labelling Regulation (TLR)**⁶³ is currently undergoing a review – this is a technical legislation to provide information on fibers composition. However, the Commission is considering introducing new labelling domains beyond the technical scope of the TLR and that are or will be addressed under other EU initiatives. **Regulatory coherence** is crucial to ensure a well-functioning policy framework, remove trade barriers and facilitate implementation by economic operators, especially avoiding duplication of obligations.

⁶² [Regulation - 2023/1115 - EN - EUR-Lex \(europa.eu\)](#)

⁶³ [Regulation \(EU\) 1007/2011 - European Commission \(europa.eu\)](#)