



# New Ecodesign Regulation from a Chemical Perspective

28 August 2024

Ales Bartl, Ph.D.

Partner

Brussels

+32 (0) 2 645 5085

[bartl@khlaw.com](mailto:bartl@khlaw.com)

Alejandra Martínez Perea

Associate

Brussels

+32 (0) 2 645 5041

[martinezperea@khlaw.com](mailto:martinezperea@khlaw.com)

# Ales Bartl

- ◆ Ales Bartl has a broad experience in EU product regulatory law, including Registration, Evaluation, Authorisation, and Restriction of Chemicals (REACH) regulation, the Classification, Labelling, and Packaging (CLP) regulation, Biocidal Products Regulation (BPR), medical devices, electronic products, and general product compliance and product safety. He advises on regulatory compliance of a broad range of products marketed in the EU and represents clients before EU and national competent authorities on compliance and enforcement issues, including product withdrawals and recalls.
- ◆ Ales also represents clients before the Court of Justice of the European Union and the Board of Appeal of European Chemicals Agency.



# Alejandra Martínez Perea

- ◆ Alejandra Martínez Perea counsels clients on regulatory and compliance matters related to food and drug packaging, food and feed, medical devices, data sharing, and product safety. She also advises companies on REACH matters; the Classification, Labelling, and Packaging (CLP) Regulation; and the Biocidal Products Regulation (BPR).
- ◆ Alejandra also helps companies navigate the process of securing regulatory approvals for food contact materials within the European Union (EU) and at the level of individual Member States.





# Background



# New Ecodesign Regulation

- ◆ Eco-design criteria currently only applies to some types of electronic products such as lamps, household appliances and heating and cooling devices under Ecodesign Directive 2009/125/EC
- ◆ Intention is to extend it to other types of products
- ◆ **Regulation (EU) 2024/1781 of the European Parliament and of the Council of 13 June 2024 establishing a framework for the setting of ecodesign requirements for sustainable products (ESPR)**
  - ◆ Entered into force on 18 July 2024
  - ◆ First working plan to be adopted by 19 April 2025
  - ◆ Q4 2025 – Q1 2026: adoption of first ESPR measures applicable to e.g. textiles/steel
  - ◆ Mid 2027: first product requirements start to apply

# ‘Framework’ Regulation

- ◆ This is a framework regulation: defines general requirements, but does not provide any specific obligations per se
- ◆ It will be complemented by specific rules adopted per product group via Commission delegated acts

# Objective of the Regulation

- ◆ Setting ecodesign requirements to improve environmental sustainability
- ◆ By targeting performance and information requirements
  - ◇ Performance: related to improving environmental sustainability (based on Annex I product parameters)
  - ◇ Information requirements: including performance classes where appropriate (repairability score, durability score, carbon footprint or environmental footprint, etc.)
    - Main tool for information requirements: digital product passport

# Prioritized products

- ◆ Specific product groups will first be included in Commission's working plans
- ◆ Recital of the Regulation: *“For the first working plan, the Commission should prioritise iron, steel, aluminium, textiles, in particular garments and footwear, furniture, including mattresses, tyres, detergents, paints, lubricants, **chemicals** and electronic products for which ecodesign requirements are to be set for the first time or for which existing measures are to be reviewed”*
- ◆ Few exemptions: food, animal feed, living organisms, motor vehicles, defense/national security products, medicinal products





## II. Chemicals as a prioritized group?



# General provision

- ◆ Recital of the Regulation: *“chemicals, materials and products have to be safe and sustainable by design and during their life cycle, leading to non-toxic material cycles”*

# Safe and sustainable by design

- ◆ CSS: one of the goals is to adopt criteria for ‘Safe and sustainable by design’ chemicals
- ◆ Commission Recommendation 2022/2510 of 8 December 2022 establishing a European assessment framework for ‘safe and sustainable by design’ chemicals and materials
- ◆ Voluntary framework, test phase
  - ◇ 1<sup>st</sup> feedback in 2023 (not much response)
  - ◇ 2nd feedback collection is open from 15 May until 30 August 2024

# Possible outcome?

- ◆ It is possible that the criteria in the SSBD recommendation (or similar) will become binding by establishing them as eco-design criteria for chemicals
  - ◆ Commission alone can do that by way of a delegated act!

# New REACH registration requirement?

- ◆ Revised REACH: initial proposal to include REACH registration requirement ‘information on environmental footprint of substances’
- ◆ Not included in the latest Commission’s overview of REACH revision  
**CARACAL-48 (28 March 2023) AP 4.1**
- ◆ Left for eco-design regulations?



# III. Information requirements related to substances of concern



# Content of substances of concern as a specific information requirement for all types of products

- ◆ Presence of substances of concern in products is one of the eco-design criterion to be set by the Commission by delegated acts, in principle for all products

- ◆ **Article 2(27):**

*“‘substance of concern’ means a substance that is*

*(a) Identified as SVHC*

*(b) classified in Part 3 of Annex VI to CLP Regulation (i.e., has a **harmonized** classification) as:*

*– CMR, cat. 1 and 2*

*- PBT/vPvB/PMT/vPvM/ED*

*– respiratory and skin sensitisation category 1,*

*– chronic hazard to the aquatic environment categories 1 to 4,*

*– hazardous to the ozone layer,*

*– specific target organ toxicity (repeated and single), or*

*(c) negatively affects the re-use and recycling of materials in the product in which it is present;”*

- ◆ The ESPR definition significantly broader than substances subject to generic restrictions under (future) revised REACH: the ESPR definition also includes CMR Cat. 2, ecotox categories and STOT-RE single exp.



# Main requirement: information requirements

- ◆ Information requirements: the information provided on the product shall *“enable the tracking of all substances of concern throughout the life cycle”* and at least:
  - ◆ Name of the substances of concern; location of the substances; concentration/maximum concentration or range in the product; its components or spare parts; relevant instructions for safe use; information relevant for disassembly
- ◆ Similar to SCIP database, but SCIP database only for articles and for SVHCs

# Thresholds?

- ◆ The Commission may set thresholds on the concentration of substances in the product triggering the tracking requirement and, in duly justified cases, provide derogations from the tracking requirement
- ◆ The Commission should ‘take into account’ thresholds under REACH and CLP

# Digital Product Passport ('DPP')

- ◆ Information on substances of concern will typically be provided by DPP
- ◆ Provided by a QR code accompanying the product
- ◆ Will typically include: content of substances of concern; Materials and their origins, Lifecycle environmental impacts, Performance/carbon footprint criteria; Information destined to treatment facilities on disassembly, recycling, or disposal at end-of-life, etc.



# IV. Restriction of substances of concern as a general performance criterion?



# Restriction of substances of concern as a performance criterion?

- ◆ Recitals: ecodesign criteria not intended to restrict substances based primarily on chemical safety
- ◆ Restriction may arguably only be set if necessary for performance and sustainability requirements
- ◆ Maybe concept of ‘negatively affects the re-use and recycling’ may be used here as a blanket provision?
- ◆ COM to define the scope in the product-specific delegated act and will provide exemptions for certain substances of concern
- ◆ PPWR as a first battlefield?

# Concept of ‘negatively affects the re-use and recycling’ under PPWR

- ◆ PPWR: no criteria
- ◆ Obligation for COM to monitor the presence of substances of concern in packaging and determine the extent to which they affect the reuse and recycling of materials and/or need for REACH restrictions
- ◆ PPWR: Member States may request the Commission to consider restricting the use of substances of concern that potentially negatively affect the re-use and recycling of materials in packaging in which they are present, for reasons other than those related primarily to their chemical safety
- ◆ By 1 January 2028, the Commission shall identify substances of concern that negatively affect the re-use and recycling of materials in the packaging in which they are present



# V. Essential use derogations?



# Essential use derogations?

- ◆ Essential use concept to be used horizontally in all legislation for derogations from restrictions of ‘substances of concern’
  - ◇ Communication from the Commission [‘Guiding criteria and principles for the essential use concept in EU legislation dealing with chemicals’](#)  
(April 22, 2024)
- ◆ But: derogations under Eco-Design Regulation: not under essential use concept (not mentioned in the Regulation, nor in PPWR)
- ◆ ‘Substances of concern’ under ‘essential use’ concept narrower than in eco-design/PPWR (similar to categories for generic REACH restriction)
- ◆ Thus: the concept in principle not applicable for derogations under the eco-design requirements





# Thank You

Any questions?

Ales Bartl, Ph.D.

Partner

Brussels

+32 (0) 26455085

[bartl@khlaw.com](mailto:bartl@khlaw.com)



Alejandra Martínez Perea

Associate

Brussels

+32 (0) 26455041

[martinezperea@khlaw.com](mailto:martinezperea@khlaw.com)

