



EUROPE'S  
VIDEO GAMES  
INDUSTRY



European  
Games Developer  
Federation

## ISFE & EGDF joint observations on the proposal from the EU Commission for a regulation on ecodesign sustainable products

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### Introduction

1. ISFE & EGDF believe climate change is one of the most critical challenges of the 21st century and welcomes the recent publication from the European Commission of an Ecodesign for Sustainable Products Regulation proposal.
2. The video games sector is committed to partake into the EU green transition, and launched in 2019 the UNEP-facilitated Playing for the Planet Alliance, encouraging studios and players across the globe to learn more about the impacts of climate change through in-game content. Our members also provide [guidance](#) to help studios to reduce their environmental impact.

### Executive Summary:

- **Preserving the ability for the sector to self-regulate is essential and efficient**

[More information available on pages 3-5](#)

ISFE and EGDF welcome the ability for economic operators to use self-regulatory measures, as stated in Article 18. Following the adoption of the current Ecodesign Directive (Directive 2009/125/EC), console manufacturers adopted the [Games Consoles Voluntary Agreement](#), (GCVA) which is applicable for both current and future generations of games consoles. The GCVA has proved to be effective, flexible enough to adapt to new innovations quickly and in a cost effective manner, also ensuring a high level of transparency and compliance, thus proving its relevance for the new framework suggested by the proposal. ISFE and EGDF therefore strongly recommend regulators to adopt Article 18 as it stands and maintain their support for self-regulation measures.

- **Prioritising physical products is the right approach for a successful EU green transition**

[More information available on pages 5-6.](#)

ISFE and EGDF welcome the fact that the proposal only applies to physical products, as defined in Article 2(1) of the proposal. Ecodesign requirements, and in particular the categories mentioned in Article 5 of the proposal, are suited for physical products and not for digital content (i.e. calling for the use of recycled content for digital content is redundant). ISFE and EGDF recommend that non-physical products are explicitly excluded from the scope of the proposal, in its Article 1 or in associated Recitals. For consistency with other EU legislation, ISFE and EGDF believe that the Commission could limit the scope to goods as defined within the [Directive 2019/771](#), Article 2(2).

- **On the destruction of unsold consumers goods (Article 20)**

[More information available on page 7.](#)

ISFE and EGDF agree with the objective of Article 20 of the proposal, making data on the destruction of unsold consumers goods available. However, the treatment, including the destruction, of electrical and electronic equipment waste (including hardware and physical copies of games) are processed by Producers Responsibility Organisations, in line with requirements embedded in the Waste Framework Directive ([2008/98/EC](#)) and the Waste of Electronic and Electrical Equipment Directive ([2012/19/EU](#)). Therefore, the disclosure requirement should be lifted on these organisations, as they are the ones handling such destruction.

- **On the definition of environmental impact (Article 2(23))**

[More information available on page 7.](#)

ISFE and EGDF agree with the European Commission that the assessment of the environmental impact of a product should be measured through scientific evidence. However, ISFE would like to avoid that such an exercise can be performed only through a specific methodology (e.g. the PEF method) as it may not necessarily best suit our sector's specificities. ISFE and EGDF would favour wording used by the European Commission in its recent [guidance on the application of the Unfair Commercial Practices Directive](#) (Section 4.1.1.4), which provides for more flexibility while safeguarding scientific rigorousness, and recommends regulators to adapt Article 2(23) as such.

- **On the definition of durability**

[More information available on page 7.](#)

ISFE and EGDF are concerned by the reference to "lifetime" within Annex VIII-point A of the proposal, as this is a concept defined neither in EU law nor in additional guidance. It is difficult for both manufacturers and regulators to assess the "lifetime" of a product. Designing adequate requirements to such a broad notion would thus be uncertain, therefore impacting the mere ability to enforce such obligations. ISFE suggests regulators to delete this reference.

- **On the Digital Product Passport (Chapter III)**

- ***Providing different access rights through a single data carrier would lead to significant logistic burdens.***

[More information available on page 7.](#)

ISFE and EGDF believe Article 9(a)(b) may be difficult to implement in relation to Article 9(f). Whilst the first two paragraphs imply that the Digital Product Passport should be accessible on the product itself or its packaging by a unique data carrier (barcode, QR code, etc), paragraph 9(f), itself linked to Article 10(b)), seems to indicate that different access rights should be granted depending on the profile of the operator accessing the Passport (e.g. a consumer, distributor, importer, etc...). Whilst we understand that access rights should be differentiated by user, this raises the question on how to provide, through a single access point, different sets of data according to different profiles without entailing disproportionate administrative and/or logistic burdens to the manufacturer of the product.

- ***Manufacturers should not bear the cost of making the DPP interoperable***

[More information available on page 8.](#)

Article 10(a) of the proposal requires the Digital Product Passport for a given product category to be fully interoperable with other Digital Product Passports. However, the technology does not exist yet, and the time needed to deliver the prototypes (to be produced via the call DIGITAL-2021-TRUST-01-DIGIPASS) and implementing them may take years. This could even occur after the official adoption of this proposal, which would, as a Regulation, be directly applicable to all market participants in every Member State. This could lead to a situation where the Digital Product Passport technology is not yet available whilst market participants would be required to comply with its related provisions. Harmonisation should therefore be provided before an obligation is put on manufacturers.

- ***Clear exemptions should be made in Article 7 to protect consumer safety, product performance and intellectual property***

[More information available on pages 8-9.](#)

Providing consumers and independent repairers with too detailed information on repairability (such as diagnostic tools, detailed repair manuals) or on specific key parts of the product (e.g. proprietary components, internal batteries, etc...) would compromise the protection of video games developers' and games console manufacturers' intellectual property and may hinder consumer safety. Therefore, information requirements should not hinder the protection of intellectual property or consumer safety. This is why ISFE and EGDF recommend that regulators include similar safeguards in the future sustainable products initiative to those included in Article 9(1)(e) of the Waste Framework Directive ([Directive \(EU\) 2018/851](#)).

## Background information

### Preserving the ability for the sector to self-regulate is essential and efficient

1. ISFE and EGDF welcome the ability for economic operators covered by ecodesign requirements to resort to self-regulatory measures, as stated in Article 18. Following the adoption of the current Ecodesign Directive (Directive 2009/125/EC), console manufacturers<sup>1</sup> agreed with the European Commission to further improve the energy efficiency of games consoles. Their commitments are embodied in the [Games Console Voluntary Agreement](#), (GCVA) which applies to both current and future generations of games consoles<sup>2</sup>. Self-regulation measures allow for the development of flexible, rapid, and cost-effective measures that can generate significant results, including greater energy savings, in contrast to mandatory implementing measures.

### On the added-value of the GCVA

2. The European Commission supported the launch of the GCVA with an inception impact assessment report<sup>3</sup> which concluded that the VA “provides the most advantages, has the best cost-benefit ratio, and provides the best energy efficiency improvement [compared to other regulatory options]”<sup>4</sup>. The European Commission originally estimated the GCVA to generate cumulative energy savings of 1 TWh per year by 2020<sup>5</sup>. It is estimated that over 6.1 TWh of energy use was avoided in 2020 for UHD capable consoles through the use of energy efficiency technologies and power management driven by the GCVA<sup>6</sup>
3. In 2019, the Commission tasked an independent research consortium led by the [CSES](#), [Ökopol](#) and [Vienna University of Technology](#) to perform a review study of the GCVA. Their conclusions indicate that the proposed regulatory measures within the GCVA generated 54.42 TWh of energy saving over the lifetime of former generation consoles (PS4 and Xbox One)<sup>7</sup>, which is comparable to the electricity consumption of Greece in 2019 (51.74 TWh<sup>8</sup>) and significantly higher than the European Commission’s original expectations of 1TWh/year by 2020<sup>9</sup>. For the new generation of 8K definition consoles, released in 2020<sup>10</sup>, Signatories of the VA expect lifetime energy savings to reach 46 TWh (when comparing to new energy efficient technology introduced since UHD capable consoles)<sup>11</sup>. The manufacturers have made great efforts to ensure that this new generation of consoles keep within power caps levels for previous generations in spite of significantly increased performance and functionality compared to the previous generation.

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<sup>1</sup> Microsoft, Nintendo and Sony Interactive Entertainment

<sup>2</sup> More information on the Games Consoles Voluntary Agreement can be found at <https://efficientgaming.info/eu-voluntary-agreement/eu-voluntary-agreement>

<sup>3</sup> [SWD\(2015\) 89 final](#)

<sup>4</sup> *Ibid*, p. 36.

<sup>5</sup> European Commission, *Commission recognises voluntary energy efficiency agreement for game consoles*, 22/04/2015. Available [here](#)

<sup>6</sup> <https://www.efficientgaming.info/eu/faq.html>

<sup>7</sup> Zimmermann, T. et al., *Review Study of the Ecodesign Voluntary Agreement for the Product Group “Videogames Consoles”*, 2019, pp. 154-155. Available [here](#).

<sup>8</sup> Source: Eurostat, *Supply, transformation and consumption of electricity*

<sup>9</sup> European Commission (2015). *Impact Assessment: Accompanying the document Report from the Commission to the European Parliament and the Council on the voluntary ecodesign scheme for games consoles*. Link: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015SC0089>

<sup>10</sup> PlayStation 5, Xbox Series X

<sup>11</sup> Microsoft, Nintendo, Sony Interactive Entertainment, *Games Consoles Self-Regulatory Initiative 10th Steering Committee Meeting*, 28 July 2020, p. 25. Available [here](#)

### **On the flexibility offered by the GCVA**

4. With regular reviews, the GCVA is flexible enough to adapt to new technologies in a timely and cost-efficient manner. It enables the games console industry to proactively develop energy efficient solutions that allow for the evolution of gaming technology without degrading the level of play<sup>12</sup>. For instance, as part of the requirements included in the last version of the GCVA, Signatories introduced a 70W cap for navigation and a 100W cap (compared to 110W previously) for 4K/UHD media playback for 8K capable devices (which marks the first time the industry has been able to achieve power consumption levels which require no increase in caps when introducing a new generation of consoles). These changes further echo the ability of Signatories to take on feedback from stakeholders who have asked about for lower power caps.
5. Since its adoption in 2015, the GCVA has been reviewed at least every two years, for a total amount of 3 times. Changes included new requirements relating to energy savings, but also additional requirements on resource efficiency and information requirements to consumers to support product life extension<sup>13</sup>. Considering the average length of the EU legislative process, ISFE believes adopting a Delegated Act instead of a Voluntary Agreement would not lead to faster adaptations and reviews. In stark contrast, the [Implementing Regulation 617/2013](#) concerning ecodesign requirements for computers and computer servers has not been reviewed once since its adoption in 2013, despite efforts to do so.
6. Monitoring and ensuring compliance with the GCVA are more efficient for Member States and for the European Commission when compared to regulatory monitoring. The self regulatory process is less costly and requires less public resource, as the cost of administration, monitoring & reporting, and auditing by a 3rd party independent inspector (which in any case is selected with the European Commission) is borne by the Signatories.

### **On the transparency and high-level of compliance of the GCVA**

7. Transparency and stakeholder involvement are also ensured throughout the process: Representatives of NGOs and civil society are directly involved in the discussions shaping the form of the VA. The Environmental Coalition on Standards ([ECOS](#)), the [NRDC](#), [Oekopol Institute for Environmental Strategies](#) are represented alongside EU institutions in the regular Steering Committees of the GCVA<sup>14</sup>. Content of the meetings and of the VA are also made publicly available online at <https://efficientgaming.info/eu-voluntary-agreement/meetings>. This ensures transparency as well as an involvement and oversight on the VA's content by the civil society, as foreseen by Annex VIII of the proposal.
8. The GCVA includes safeguards to ensure that console manufacturers operating in Europe take the necessary measures to improve the energy efficiency of their devices, in line with the objectives of the Ecodesign Directive. This system is already compliant with the new proposed requirements embedded in Annex VIII of the proposal, outlining the high level of accountability of the GCVA and the commitment from its Signatories to make the VA a successful venture:
  - Sections 4, 5 and 6 of the GCVA outline a detailed monitoring and reporting system that Signatories must follow to be compliant. This includes the submission, by each Signatory, of a Product

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<sup>12</sup> For instance, if the GCVA has been a regulation as adopted in its original state in 2015, 4K and 8K capable devices would not have been covered by specific requirements.

<sup>13</sup> Thus proving the relevance of the GCVA, who has for a long time included additional resource efficiency requirements before the release of this proposal.

<sup>14</sup> See all past meetings and minutes [here](#)

Compliance Report for each games console model that falls within the scope of the GCVA to an Independent Inspector. The Inspector then publishes an Annual Compliance Report (ACR) to support the European Commission in assessing whether the objectives of the voluntary agreement have been met. The latest iteration of the ACR, published in May 2021, demonstrates compliance by all Signatories with the requirements of the GCVA<sup>15</sup>.

- Any failure to comply 12 months after publication of the ACR results in the automatic withdrawal of the non-compliant Signatory from the GCVA<sup>16</sup>. However, considering the limited number of console manufacturers operating in Europe, any expulsion of any of the Signatories would most likely result in the GCVA not meeting the threshold of 80% of market coverage necessary to fulfil the Representativeness criterion<sup>17</sup>. It is, therefore, in the interest of console manufacturers to maintain compliance with GCVA requirements to ensure that the GCVA continues to meet the requirements for self-regulation measures under the Ecodesign Directive.
  - Console manufacturers deploy reasonable efforts to address cases of non-compliance. In 2019, after being notified by the Independent Inspector of its non-compliance with some aspects of the Auto-Power Down requirements included in the GCVA, Microsoft immediately took the corrective actions required for its devices to be compliant<sup>18</sup>. This example illustrates the willingness of consoles manufacturers to ensure timely and full conformance with the objectives of the Ecodesign Directive, as well as the effectiveness of the GCVA to address non-compliance cases.
9. **Considering the above, voluntary agreements allow the industry to develop requirements in a cost-effective framework which generate significant results. ISFE and EGDF, therefore, strongly encourage the regulators to adopt Article 18 as it now stands to ensure that Self-Regulatory Measures remain a viable alternative to Delegated Acts in the proposed framework.**

## **Prioritising physical products is the right approach for a successful EU green transition**

10. ISFE and EGDF welcome the fact that the proposal only applies to physical products, as defined in Article 2(1) of the proposal. Ecodesign requirements, and in particular the categories mentioned in Article 5 of the proposal, are suited for physical products and not for digital content (i.e. calling for the use of recycled content for digital content is redundant).
11. Video games developers and studios creating video games cannot entirely reduce the carbon footprint of their content as emissions originating from a video game is due, mainly attributable to elements that are out of the developer's control. Such elements include for instance the quality of the energy grid from which the video game draws its power, or the energy required by the internet network on which the video game is played. Therefore, it is extremely difficult, if not impossible, to impose ecodesign requirements on video games software as developers are not able to control such outputs.

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<sup>15</sup> Intertek, "Independent Inspector Annual Compliance Report – Final Reporting Period 2020", page 5. Available [here](#).

<sup>16</sup> [EU Games Console Voluntary Agreement v4.0](#), section 5.4 : Non-Compliance, page 25. "A Signatory who remains non-compliant twelve months after the publication of the Independent Inspector's Annual Compliance Report or relevant investigation report shall forfeit its status as a Signatory of the SRI. [...] Within 30 days of the exclusion of a non-compliant Signatory, remaining Signatories must commission a report proving coverage of at least 80% of products placed on the market."

<sup>17</sup> Under the current framework, this constitutes only an indicative threshold as part of the EC guidelines for self-regulation measures ([\(EU\) 2016/2125](#)), but this will come as a binding requirement under the new framework suggested by the proposal.

<sup>18</sup> Intertek, "Independent Inspector Annual Compliance Report – Final Reporting Period 2019", page 13-14. Available [here](#).

12. The device on which the game is played constitutes one of the major, if not the primary, source of energy usage when playing. Energy efficiency improvement implemented by hardware producers, as seen under the EU Games Console Voluntary Agreements (see above), will likely be the most efficient way to achieve significant energy gains, and will ultimately lower the energy consumption (and, by extension, the emissions) of games. Therefore, the current approach proposed by the EU Commission to focus on physical products only is efficient, and would most likely lead to a reduction of emissions resulting from the playing of video games.
13. Any ecodesign requirements imposed on video games software could lead developers to significantly restrict themselves when developing a title expected to be released on EU markets. Developers could either restrain themselves from developing vast virtual environments or from using the latest innovations at their disposal (such as DLSS, raytracing, 4K or 8K resolutions...) as this would use too much computing power, and therefore energy, while playing. These technologies often allow developers to fulfil their creative vision and to respond to players' expectations on an interactive and innovative gameplay experience. Such requirements would constitute a significant burden for video game developers, especially SMEs, who will in turn be reluctant to release their titles on EU markets.
14. Extending the scope of the proposal to video games software would lead to significant compliance challenges, as it would likely be the platform on which the title is released (i.e. the console manufacturer, and online platform holder) that will be partly responsible for ensuring that the video games on its platform do not breach some of the adopted ecodesign requirements (such as energy efficiency requirements). Given the number of titles released every year<sup>19</sup>, this would translate into a significant burden for platform holders. In the case of video games available on PC, it may even be impossible for any market player to ensure compliance with energy efficiency requirements because of the endless possibilities of hardware and OS configurations, making it possible for a game which is compliant on a given configuration to be non-compliant on another configuration.
15. **Considering the above, ISFE and EGDF strongly encourage regulators to restrict the scope of application of the proposal to physical products only, for which ecodesign requirements could be designed more easily.**

## On the definition of environmental impact

16. Article 2(23) of the proposal links the notion of environmental impact to the Product Environmental Footprint method<sup>20</sup>. Annex I, point (l) provides for clarification by defining the scope of the potential ecodesign requirements related to environmental footprint *“as a quantification, in accordance with the applicable delegated act, of a product’s life cycle environmental impacts, whether in relation to one or more environmental impact categories or an aggregated set of impact categories”*.
17. ISFE and EGDF agree with the European Commission that the assessment of the environmental performance of a good should be measured through sound and reliable scientific evidence. However, ISFE would like to avoid that such an exercise can be performed only through a specific methodology (e.g. the PEF method) as these may not necessarily best suit a sector’s specificities. In this regard, the recent European Commission guidance on the application of the Unfair Commercial Practices Directive provides for more flexibility by stating that studies measuring the “environmental performance of products [...] should be made according to recognised or generally accepted methods applicable to the

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<sup>19</sup> Around 2000 physical games are annually released just in Europe. Source: PEGI, available in [ISFE Key Facts](#), page 15.

<sup>20</sup> (23) ‘environmental footprint’ means a quantification of a product’s environmental impacts, whether in relation to a single environmental impact category or an aggregated set of impact categories based on the Product Environmental Footprint method;

relevant product type<sup>21</sup>. Such wording ensures that adequate safeguards are put in place, and provides flexibility for producers to make an assessment based on the most suitable methodology for their product. The use of such alternative methods to the PEF could be recognised within the delegated act or the self-regulatory measure associated to a given product category, pending these are sound and robust enough to constitute valid alternatives.

18. Other regions in the world refrained to limit the assessment of the environmental impact of a product or of an organisation to one specific methodology, favouring flexibility as long as the methodology used preserves the scientific rigorousness of the exercise<sup>22</sup>. ISFE believes doing the opposite could lead to a situation where a company would be forced to reiterate the same exercise of assessing its impact according to different regional methodologies, thus impacting the ability to compare data and leading to significant administrative costs<sup>23</sup>. In addition, this decision would discard many of the internationally and scientifically sound methodologies (e.g. GHG Protocol, ISO, ETSI, ITU...) which could be used as valid alternatives to the PEF.
19. **Considering the above, ISFE and EGDF therefore believe the inclusion of the PEF method as part of Article 2(23) could be detrimental, and suggests a more flexible approach, as outlined by the European Commission in its recently adopted UCPD guidance. Therefore, ISFE and EGDF call on the regulators to adapt Article 2(23) to the wording used by the EU Commission in its UCPD guidance.**

## On the destruction of unsold consumers goods

20. ISFE and EGDF agree with the objective of Article 20 of the proposal, making data on the destruction of unsold consumers goods available. However, under the Waste of Electrical and Electronic Equipment Directive, covering both video games hardware and physical copies of games, manufacturers are entitled to dispose of their waste through an Extended Producer Responsibility scheme, which often relies upon specific organisations at national level (so-called Producers Responsibility Organisations (PROs)).
21. Often, the manufacturers of the original product must, under this scheme, send their electronic waste to the respective PRO in each Member States, which will ultimately decide whether the product will be reused, remanufactured, recycled or destroyed<sup>24</sup>. This means that the original manufacturer loses control on the treatment of said waste, and will therefore experience difficulties in having visibility on the exact number of units of its products being destroyed<sup>25</sup>.
22. **Therefore, and considering the above, ISFE and EGDF suggest that the proposed disclosure requirement should be lifted on the Producer Responsibility Organisations, as they are the ones handling the destruction process of products.**

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<sup>21</sup> See section 4.1.1.4 of the [EU Commission Guidance on the interpretation and application of Directive 2005/29/EC](#). *“This could also be the case if the life cycle assessment studies of the product have proven its environmental performance. These studies should be made according to recognised or generally accepted methods applicable to the relevant product type and should be third-party verified. Such environmental performance evaluations may involve comparisons (see also section 4.1.1.7 on comparative environmental claims). If such methods have not yet been developed in the relevant field, traders should refrain from using general benefit claims.”*

<sup>22</sup> See for instance in the US: <https://www.sec.gov/news/press-release/2022-46>

<sup>23</sup> As the company may need to get information from third party suppliers in its value chain several times for different aspects.

<sup>24</sup> In accordance with the waste hierarchy established by the Waste Framework Directive ([Directive 2008/98/EC, consolidated version](#))

<sup>25</sup> Which only happens if the product cannot be reused, remanufactured or recycled, therefore limiting the occurrences of destruction.

## On the definition of durability

23. Point a of Annex I in the proposal outlines the product parameters around durability (and on which delegated acts or Self-Regulatory Measures may include specific requirements on) as *“through the product’s guaranteed lifetime, technical lifetime, mean time between failures, indication of real use information on the product.”*
24. ISFE and EGDF are concerned by the reference to “lifetime”, as this is a concept defined neither in EU law nor in additional guidance. Applying ecodesign requirements related to the technical lifetime of a product would be difficult, due to the fact that manufacturers may not be able to accurately assess the average lifetime of their product as this in part depends on a number of factors outside of their control such as actual storage conditions, use and handling in addition to the fact that producers might not necessarily be able to assess the lifetime of their product prior its commercialisation<sup>26</sup>. It would therefore be almost impossible to set up ecodesign requirements related to the “technical lifetime” of a product, in particular for highly complex products, making its enforcement highly uncertain.
25. **Considering the above, ISFE and EGDF recommend regulators to delete the reference to “lifetime” as part of Annex I-Point a.**

## On the Digital Product Passport

### On the logistic burdens implied by the proposal

26. ISFE and EGDF believe Article 9(a)(b) may be difficult to implement in relation to Article 9(f). Whilst the first two paragraphs imply that the Digital Product Passport should be accessible on the product itself or its packaging by a unique data carrier (barcode, QR code, etc), paragraph 9(f), itself linked to Article 10(b)), seems to indicate that different access rights should be granted depending on the profile of the operator accessing the Passport (e.g. a consumer, distributor, importer, etc...). Whilst we understand that access rights should be differentiated by user profile, this raises the question on how to provide, through a single access point, different sets of data according to different profiles without entailing disproportionate administrative and/or logistic burdens to the manufacturer of the product.
27. Should the Digital Product Passport be applied on an item level (rather than by product category), ISFE and EGDF are concerned that complying with said information requirements would result in a significant administrative and cost burden for manufacturers. In this eventuality, for each product they release, manufacturers would bear the data storage and handling costs, for a period of time which has yet to be defined. These costs can increase exponentially the more products the manufacturer would commercialise. **ISFE and EGDF therefore encourage the regulators to, when adopting Delegated Acts or Self-Regulatory Measures, favour a product-category approach for information requirements.**
28. **Therefore, ISFE and EGDF would recommend regulators to lift the logistical burden by, for instance, favouring e-labelling schemes over physical markings on the product or its packaging, in order to offer flexibility required to provide different access rights to different profiles of users.**

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<sup>26</sup> Even with accelerated Life Cycle testing techniques

## On the interoperability requirement

29. Article 10(a) of the proposal requires the Digital Product Passport for a given product category to be fully interoperable with other Digital Product Passports. However, the technology does not exist yet and would have to be built from scratch. While Recital 33 indicates that the EU Commission must adopt harmonised standards with a common specification in this regard, this may take time.
30. ISFE and EGDF welcome in this regard the Digital Europe call [DIGITAL-2021-TRUST-01-DIGIPASS](#) to deliver three prototypes of Digital Product Passports. However, the time needed to deliver the prototypes and to implement them may take years, and could well happen after the official adoption of this proposal, which would, as a Regulation, be directly applicable to all market participants in every Member States. This could lead to a situation where the Digital Product Passport technology would not be available whilst market participants would be required to comply with its related provisions.
31. **In the absence of such harmonisation, it should be clearly stated that manufacturers are exempted of such interoperability obligations to avoid (1) manufacturers bearing the cost to develop an interoperable Digital Product Passport, which is impossible, and (2) the case where a delegated act or a self-regulatory measure could be rendered invalid due to the impossibility to ensure such interoperability.**

## Information requirements related to ecodesign requirements of a product must not be detrimental to consumer safety, intellectual property and trade secrets.

32. The Waste Framework Directive ([Directive \(EU\) 2018/851](#)), which has been implemented in Member States on 5 July 2020, recognises the importance of preserving a product's safety and security, as well as its intellectual property rights. Its Article 9 establishes that spare parts, technical information and repairs instructions should be made available, **if they do not compromise the product's safety and quality, "without prejudice to intellectual property rights"**<sup>27</sup>. This EU acquis must be reflected in any future circular economy proposal.
33. Games consoles are a complex environment in which many key internal components form part of a secure system relying on technological protection measures ("TPMs") and proprietary parts that are deployed to protect against intellectual property infringement. Importantly, the deployment of TPMs by the video games console manufacturers benefits all those who create and develop video games for consoles, and not just the platform holder. With a secure hardware system in which new titles can be created and published, developers (who are often SMEs) are more willing to make the financial investments necessary to support the development of new games because they have the assurance that their IP is protected. This in turn benefits the consumer who has more choice.
34. Every console manufacturer provides clear and detailed information about their product's commercial guarantee, directly available at the point of purchase. Such information includes conditions under which a consumer may be offered a repair or refurbishment of the product within the commercial guarantee period, as well as any specific procedures needed to be followed to ensure a quality repair (where available) by an authorised repair centre.
35. Authorised repair centres use proprietary diagnostic software that contains detailed proprietary blueprints to identify components within a console that require repair. In addition, because most parts of a console form part of an encrypted system protected by TPMs to preserve the device against

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<sup>27</sup> [Directive \(EU\) 2018/851](#), Article 9(e)

hacking and piracy of video games, console manufacturers cannot directly provide spare parts or similar diagnostic software to independent repair companies without compromising console systems and technology. Furthermore, as recognised by the Joint Research Centre in 2019, some repairs require "appropriate technical skills that most consumers do not have. If a product is not properly repaired, consumer safety could be compromised"<sup>28</sup>.

36. **Therefore, ISFE and EGDF strongly encourage regulators to incorporate as part of Article 7 a specific exemption for information requirements when these could affect the preservation of a products' safety, quality and protection of intellectual property rights. This provision should also be reflected in the future so-called "Right to Repair" proposal from the European Commission.**

## About ISFE

ISFE represents the video games industry in Europe and is based in Brussels, Belgium. Our membership comprises of national trade associations in 15 countries across Europe which represent in turn thousands of developers and publishers in the member states. ISFE also has direct members, the leading console manufacturers and European and international video game companies, many of which have studios with a strong European footprint. They produce and publish interactive entertainment and educational software for use on personal computers, game consoles, portable devices, mobile phones and tablets.

## About EGDF

The European Games Developer Federation e.f. (EGDF) unites national trade associations representing game developer studios based 19 European countries: Austria (PGDA), Belgium (FLEGA), Czechia (GDACZ), Denmark (Producentforeningen), Finland (Suomen pelinkehittäjät), France (SNJV), Germany (GAME), Italy (IIDEA), Malta (MVGSA), Netherlands (DGA), Norway (Produsentforeningen), Poland (PGA), Romania (RGDA), Serbia (SGA), Spain (DEV), Sweden (Spelplan-ASGD), Slovakia (SGDA), Turkey (TOGED) and the United Kingdom (TIGA). Altogether, through its members, EGDF represents more than 2 500 game developer studios, most of them SMEs, employing more than 35 000 people.

ISFE and EGDF's purpose is to serve Europe's video games ecosystem by ensuring that the value of games is widely understood and to promote growth, skills, and innovation policies that are vital to strengthen the video games sector's contribution to Europe's digital future. The video games sector represents one of Europe's most compelling economic success stories. Relying on a strong IP framework, the sector is a rapidly growing segment of creative industries. In 2021, the size of Europe's video games industry was €21 billion and registered a growth rate of 55% over the past 5 years in European key markets<sup>29</sup>. Video games have a proven ability to successfully drive new business models. The digital transformation with the growth of online and app-based gaming represents today 76% of the industry's total European revenue. Via the launch of new high-performance consoles and the strong growth of mobile gaming, the industry offers players across Europe and in all age groups the possibility to enjoy and engage with video games<sup>30</sup>. Today 51% of Europe's population plays videogames, which is approximately 250 million people, and 54 % of the players regularly play on consoles.

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<sup>28</sup> Cordella, et al. (2019). Analysis and development of a scoring system for repair and upgrade of products, Joint Research Centre Technical Reports, 2019, p.132. Access [here](#).

<sup>29</sup> ISFE Key Facts 2020 from GameTrack Data by Ipsos MORI and commissioned by ISFE <https://www.isfe.eu/isfe-key-facts/>.

<sup>30</sup> See also <https://www.isfe.eu/data-key-facts/>