

## ISFE contribution to the European Commission consultation on New Product priorities for Ecodesign for Sustainable Products

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1. ISFE shares the views of the European Commission that climate change is one of the most critical challenges of the 21st century. The video games sector is committed to contributing to 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 reduce their environmental impact, and have developed internal training tools<sup>1</sup> to explain global warming and its causes, lays out the stakes of inaction, and provides specific insights and advice to employees based on their role.
2. ISFE welcomes the opportunity offered by the European Commission to contribute to the public consultation on the new product priorities for Ecodesign for Sustainable Products. Whilst video games products already fall under the scope of the current Ecodesign framework, and whilst this consultation is tailored for identifying new product categories for its application, ISFE would like to **share its observations on section III of the questionnaire**, which specifically mentions ICT products as a category for potential horizontal measures under the new ESPR framework.

### Executive Summary:

- **The video games sector has taken numerous efforts to improve the durability and recyclability of its products**

Video games console manufacturers strive to ensure that their products offer the highest quality and standards possible to ensure that players enjoy their video gaming experiences and that game developers release their games on platforms that are reliable. Durability is part of such quality standards. Durability and repairability has also been further facilitated through the adoption of the Games Consoles Voluntary Agreement, which includes requirements related to recyclability and repairability. New requirements should build upon such successful instruments, rather than adding new layers of regulations.

- **A careful consideration of the specificities of each product within a same category of products should be conducted before designing horizontal requirements**

Video games consoles, PCs, Notebooks/Laptops, Slate Tablets, Smartphones, Mobile Phones, TVs or even printers are disparate products with significant functional differences. A phone and a video game console have fundamentally different applications and functionalities, the first being designed primarily to communicate, while the latter being primarily designed to play video games. Therefore, ISFE encourages the Commission to conduct a careful assessment of such disparities before designing horizontal requirements, also to allow for better implementation of such requirements and to cater for the specificities of each sub-category of products.

- **On specific horizontal requirements suggested in the EC questionnaire**

ISFE is concerned that standardisation and limitation of usable components would stifle innovation in the sector. In addition, any new information requirements provided to independent repairers should not be detrimental to video games consoles manufacturers' and video game developers' IPs and to consumer safety. In both cases, the specificities of the sector must be adequately catered for in the design of ecodesign requirements.

Finally, certain requirements suggested by the questionnaire would potentially conflict with existing (Directive (EU) 2019/771) and forthcoming ('Right to Repair' proposal) EU legislation, leading to legal uncertainty rather harmonisation. Therefore, ISFE suggests to not adopt such horizontal requirements.

<sup>1</sup> See Ubisoft's [Climate School](#) for instance

## **I. The video games sector has taken numerous efforts to improve the durability and repairability of its products**

3. Games consoles constitute for more than 135 million players in Europe their gateway to entertainment and each is unique in the experience it offers to its players. Video games console manufacturers<sup>2</sup> strive to ensure that their products offer the highest quality standards possible to ensure that players enjoy their video gaming experiences. Durability is part of such quality standards that a player can safely expect when he or she purchases a console.
4. Given the complex nature of consoles, console manufacturers regularly provide maintenance and security updates to ensure continuity of the device and services offered on it. Also, when a new generation of consoles is released, manufacturers continue to provide updates for older generations for several years so that consumers can safely continue to enjoy their games, even if they do not purchase the new generation. Microsoft updated in April 2023 the OS of the Xbox One<sup>3</sup>, a console originally released in Europe in 2013.
5. Each console has its own technical specificities, with a unique hardware, operating system (OS), and features. Due to these differences, developing a game for a specific console takes time and resources for the video game developer, and not all developers can afford releasing their games on every console. Developers will first choose on which console they would like to release their game based on various criteria, such as, but not only, computing power, technological innovation, and durability.
6. It is not uncommon for developers to release games on older devices as these are still functioning and consumers are still using them, sometimes more than a decade after their release. For example, Ubisoft released in 2019 its latest iteration of Just Dance, *Just Dance 2020*, on the Nintendo Switch, the Wii U, but also on the Wii, a console released in 2006 and manufactured until 2013<sup>4</sup>.
7. Under the current Ecodesign framework (Directive 2009/125/EC), console manufacturers agreed with the European Commission to further improve the energy and resource 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>5</sup>. Whilst the scope of the original Ecodesign Directive only provides for the development and implementation of energy efficiency requirements, the GCVA includes additional resource efficiency and information requirements related to topics such as repairability and recyclability, thus being in line with the objectives of the Circular Economy Action Plan. This includes commitments regarding the provision of an out-of-warranty repair and refurbishment service, spare parts and ensuring repair is possible through non-destructive disassembly<sup>6</sup>.
8. Console manufacturers recognise the importance for consumers to have access to durable goods that can easily be repaired. They offer consumers the possibility to repair and/or refurbish consoles in authorised repair centres during and beyond the commercial guarantee period, thus ensuring access to repair and refurbishment over the entire lifecycle of a console.
9. **Considering the above, the video games sector has been proactive in favouring the sustainable production and consumption of its products, notably through instruments (such as the GCVA) leading to**

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<sup>2</sup> Microsoft, Nintendo and Sony Interactive Entertainment

<sup>3</sup> Patchnote available here : <https://support.xbox.com/en-US/help/hardware-network/settings-updates/whats-new-xbox-one-system-updates>

<sup>4</sup> <https://www.mcvuk.com/business-news/just-dance-2020-might-be-the-last-game-released-on-nintendo-wii/>

<sup>5</sup> More information on the Games Consoles Voluntary Agreement can be found at <https://efficientgaming.info/eu-voluntary-agreement/eu-voluntary-agreement>

<sup>6</sup> See section 3.2.1 of the [Games Consoles Voluntary Agreement v4.0](#)

**increased durability and repairability of video games consoles. Any new requirements should take into account and build upon such successful initiatives.**

## **II. A careful consideration of the specificities of each product within a same category of products should be conducted before designing horizontal requirements**

10. Horizontal requirements are not in every circumstance the most practical manner to implement ecodesign requirements on products. Careful consideration must be given to the specificities of the products such requirements intend to cover, not just in terms of functionalities, but also in terms of usage, components and constraints. Such consideration will in turn allow for better policy making that is fit for the specificities of each product, in turn supporting their more sustainable production and greater (energy or resource) efficiency, further supporting the green transition of the European Union.
11. Whilst video games consoles, Desktop PCs, Workstations, Notebooks/Laptops, Slate Tablets, Smartphones, Mobile Phones, TVs or even printers all are “ICT products”, referring to such a catch-all term to regulate equally such disparate products is not necessarily the most practical as it does not take into account their significant functional differences. A phone and a video game console have fundamentally different applications and functionalities, the first being designed primarily to communicate, while the latter being primarily designed to play video games.
12. Even when various devices can be used as platform to play video games (i.e. a PC, laptop, video game consoles, or smartphone), the differences in components among these devices makes their range of applications and functionalities completely different, therefore making the introduction of horizontal energy and material efficiency requirements difficult, as illustrated by the examples below:
  - a. For instance, the CPU of a game console or a PC can easily reach temperatures ranging from 65°C to 85°C, whilst a product with less computing capacity (such as a smartphone) will reach lower temperatures<sup>7</sup>. Therefore, thermal design requirements (such as for heat sinks, fans, flame retardancy grades) differ as these devices are not designed with the same set of constraints in mind.
  - b. In addition, the application software run on each of these devices are fundamentally different from one another. A video game designed for a smartphone fundamentally has different properties in terms of minimum computing power requirement than a game designed for the latest generation of games consoles or PC. Therefore, any horizontal requirements designed for ICT should not unduly impact software developers of each of these devices.
  - c. The differences in terms of computing power could also be significant within the same category of products, such as PCs or laptops. Two different laptops may have very different applications and functionalities based on their embedded hardware (presence or absence of a GPU, computing power of the CPU, amount of RAM available, etc.) but also software (version of the Operating System). For instance, a laptop with no dedicated GPU cannot smoothly run any of the latest video game titles, and its main functionalities would mostly be limited to navigation and basic office work. This illustrates that developing ecodesign requirements for a specific type of product is already a complex task on its own, made only even more complex for a broad range of products such as ICT.
13. **Based on the above, ISFE encourages the European Commission to carefully consider the specificities of each product within the ICT product category before designing horizontal requirements. Such**

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<sup>7</sup> Also taking into account that a smartphone must not reach too high temperatures as it must lie in everybody’s pocket.

requirements should not prove impractical to implement, or lead to situations where software developers would be impacted in their ability to release quality products adapted for each device.

### III. Additional comments on specific suggested horizontal measures

#### a- Standardisation and limitation of components

14. ISFE notes that the European Commission suggested in its questionnaire to establish horizontal durability requirements on the “Use of standard components / Compatibility with commonly available spare parts”, and on the “Number of materials and components used”, and horizontal recyclability requirements on the “Choice of materials and restrictions on substances (*e.g. choice and combination of polymers; homogeneous fibres*)”
15. The use of standardised components would stifle innovation in the sector. Manufacturers would not be inclined to invest into R&D to improve their components if these are standardised across the whole product category, or if this would imply that the specificities of their components must be communicated to other device manufacturers to allow for standardisation.
16. Most of the components developed for video games applications, such as GPUs, have found uses beyond video gaming and are now used in various fields such as healthcare or research on artificial intelligence, or even genome sequencing<sup>8</sup>. Similarly, Virtual Reality headsets, first developed for video games purposes, are now used beyond video gaming: for instance, patients suffering from cancer at the San Carlos Clinic, in Spain, use virtual reality headsets to support their well-being during their treatment. Patients would visualise bucolic and relaxing landscapes, seascapes and world cities while physically receiving their chemotherapy session in the hospital<sup>9</sup>. Therefore, requiring standardised components within consoles, VR headsets, PCs, laptops, or even smartphones could lead to a decrease of spill-over effects to other sectors and applications.<sup>10</sup>
17. The use of standardised components could also potentially negatively affect the gameplay experience and the quality of video games being released. A faster SSD allows for reduced screen loading times; a more powerful CPU allows for the calculation of several tasks at once, therefore having a direct impact on the smoothness of the gameplay experience; a GPU with more cores allows the display of more elements on the screen, etc. It is not uncommon to see video game studios developing games with the use of specific components in mind<sup>11</sup>. Standardised use of components could lead to a stifling of the creative vision of video game developers, who would not be able to fully use the latest technological innovations brought by a new component to improve the gameplay experience.
18. The question of the limitation of components or materials<sup>12</sup> is linked to the question of standardisation. As outlined in paragraphs 11 and 12 above, the ICT category encompasses a broad range of products (mobiles, tablets, PCs, TVs, game consoles...), which all have different needs and constraints in terms of components

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<sup>8</sup> See this article from McKinsey, which explores how GPUs have been increasingly used in healthcare:

<https://www.mckinsey.com/capabilities/mckinsey-digital/our-insights/tech-forward/warp-speed-how-gpus-can-enable-large-scale-healthcare-enterprise-applications>

<sup>9</sup> For more information, see <https://www.comunidad.madrid/en/hospital/clinicosan-carlos/noticia/pacientes-oncologicos-clinico-san-carlos-utilizan-gafas-realidad-virtual>

<sup>10</sup> A useful summary of the potential applications of video game technology to the wider society is available in the 2022 Niko Partners White Paper on “Gametechnology: How Video Games are Seriously Changing the World”, available [here](#).

<sup>11</sup> For instance, Marcus Smith, Creative Director at Insomniac Games, the studio behind *Ratchet & Clank: Rift Apart*, explicitly referred to the PS5 SSD as a feature on which the game could build upon. See his [interview to GamesRadar](#) on 28 August 2020: “We knew that there was going to be an extremely fast SSD [in the PS5], so we were trying to leverage that as much as possible.”

<sup>12</sup> Horizontal requirement on “Number of materials and components used”, and horizontal recyclability requirements on the “Choice of materials and restrictions on substances (*e.g. choice and combination of polymers; homogeneous fibres*)”

and embedded substances. Therefore, fixing an equal and maximum amount of components to be used by both smartphones and high-end PCs for instance would likely hinder the ability to design new products for each of these subgroups.

19. **Considering the above, ISFE would recommend the European Commission to refrain from designing horizontal requirements related to the standardisation of components in ICT, as it could impact both the willingness from the sector to invest in new hardware innovation, which are known to find applications beyond video gaming, but could also indirectly impact the creative freedom of video game developers. Instead, ISFE would favour a product-specific approach to cater for the specificities of each product.**

***b- Include relevant safeguards for the protection of IP of video game developers***

20. ISFE notes that the European Commission suggested in its questionnaire to establish horizontal durability requirements on the “Availability of repair (+upgrade) information and maintenance instructions to independent operators and/or end users”, and on the “Spare part availability and delivery time”, and horizontal recyclability requirements on the “Access to product data relevant for recycling, including dismantling information”.
21. Whilst video game companies promote sustainable consumption of their products through facilitation of repairs (see Section I, para. 7-8, of this document), ISFE believes it is essential that any type of information requirements provided to independent operators must include adequate safeguards to protect both the IP rights of console manufacturers and of video game developers and the consumer safety. 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 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>13</sup>.**
22. 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.
23. Authorised repair centres use proprietary diagnostic software that contains detailed proprietary blueprints to identify components within a console that require repair. Because most parts of a console form part of an encrypted system protected by TPMs to preserve the device against hacking and piracy of video games, console manufacturers cannot directly provide certain spare parts or similar diagnostic software to independent repair companies without compromising consoles systems and technology.
24. In 2019, the Joint Research Centre recognised that 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>14</sup>. It is impossible for console manufacturers to guarantee that repairs performed by third party repair operators will respect the safety and security requirements of the console as well as the quality

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<sup>13</sup> [Directive \(EU\) 2018/851](#), Article 9(e)

<sup>14</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](#).

standards manufacturers honour. For instance, installing unauthorised components which does not meet the required technical specifications could lead a console to overheat and consume far more energy than usual.

**25. In light of the above, ISFE strongly recommends the European Commission to include appropriate safeguards to protect both consumer safety and IP rights of console manufacturers and of video game developers when designing information and spare parts requirements.**

***c- Avoid conflicts with existing and forthcoming European legislation***

26. ISFE notes that the European Commission suggested in its questionnaire to establish horizontal durability requirements on the “Minimum lifetime and labelling”, on the “Minimum durability of function”, and on “availability of repair information”.

27. ISFE would like to highlight that such elements are already covered by existing EU legislation, such as the Sales of Goods Directive ([Directive \(EU\) 2019/771](#)), which establishes that goods must meet objectives requirements for conformity, including on durability and functionality, for a minimal period of two years<sup>15</sup>. As for availability of repair information, the recent ‘Right to Repair’ proposal from the EU Commission already includes provisions dedicated to this issue. Both instruments are horizontal in nature and additional requirements outside the scope of these two instruments would create legal uncertainty and potentially, result in conflicting provisions.

**28. Therefore, ISFE does not believe it is useful to create an additional layer of legislation for such elements, as these may conflict with existing and forthcoming EU legislation, and lead to legal uncertainty rather than harmonization of the EU acquis.**

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## About ISFE

The Interactive Software Federation of Europe (ISFE) comprises [national trade associations](#) covering 18 countries throughout Europe which represent in turn hundreds of games companies at national level. ISFE also has as direct members the leading European and international publishers, many of which have studios with a strong European footprint, that produce and publish interactive entertainment and educational software for use on personal computers, game consoles, portable devices, mobile phones and the Internet.

The video games industry represents one of Europe’s most compelling economic success stories, relying on a strong IP framework, and is a rapidly growing segment of the creative industries. The European digital single market area is the third-largest market for video games globally. All in all, there are around 5,000 game developer studios and publishers in Europe, employing over 98,000 people. In 2021, Europe’s video games industry was worth €23.3bn.

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<sup>15</sup> [Directive \(EU\) 2019/771](#), Article 7(1)(d)