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COMMISSION DELEGATED REGULATION (EU) .../...

of 16.6.2023

supplementing Regulation (EU) 2017/1369 of the European Parliament and of the Council with regard to the energy labelling of smartphones and slate tablets

(Text with EEA relevance)

{SEC(2023) 164 final} - {SWD(2023) 101 final} - {SWD(2023) 102 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

This Commission delegated regulation sets requirements for the energy labelling and the provision of product information for smartphones and slate tablets. The objectives are to contribute to the EU climate and energy targets and to the material efficiency objectives set out in the Circular Economy Action Plan 2020. More specifically, this initiative, due to the specific design of the energy label, would help deliver on the three specific objectives:

- (a) facilitating repair and increasing durability of these products and key components (e.g. battery and display);
- (b) fostering product designs aimed at achieving cost-efficient material and energy savings; and
- (c) helping consumers make an informed and sustainable choice at the point of sale.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The consultation activities are described at length in the Annex 2 ('Stakeholder consultation') of the impact assessment. The stakeholders' opinions were quite often divergent and polarised between different categories, typically with original equipment manufacturers on one side, and repairers on the other. These opinions can be summarised as follows:

- the EU Member States **cautiously welcomed** the Commission's work on potential ecodesign requirements and the energy labelling of mobile phones and tablets (**advocating in particular** for the latter **the inclusion of a reparability** score in the energy label); at the same time, **some concerns** were raised **on the testing burden** (in particular related to the number of devices to be tested).
- the standardisation organisations highlighted some caveats concerning the direct 'use' (in terms of classifications, definitions), for regulatory purposes, of the EN 45554 standard, developed in reply to the Commission's standardisation request M/543.
- The main industry (original equipment manufacturers) players were proactive and participative during the process. While they generally supported the preparatory work on the potential Ecodesign requirements for mobile phones and tablets, **they expressed some reservations, in particular on the draft requirements on improved reparability and spare parts availability. They were not supportive of the proposed energy labelling scheme, claiming that the benefits are not fully clear**, given that manufacturers are already highly incentivised to ensure efficient phones for end-user satisfaction.
- SMEs, mainly working in the field of repair, refurbishment and recycling, **judged as important (a game changer**, in some cases) the proposed material efficiency requirements on durability, reparability, upgradability, maintenance, reuse and recycling.
- environmental and consumer NGOs, as well as repairers' organisation, welcomed the Commission work on potential ecodesign requirements and energy labelling of mobile phones and tablets, **while pushing, in some cases, for tighter requirements.**

Each of the comments was analysed in detail, and changes to the draft regulations were made, when feasible and relevant, in particular:

- attention was given to elaborate testing methods that are not excessively burdensome in terms of duration and complexity; and
- in the impact assessment, specific estimations were made confirming the relevance of the proposed energy label in terms of the expected energy savings, alongside the material efficiency aspects.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The *energy labelling delegated regulation* introduces an energy label (for smartphones and slate tablets) that contains information on the energy efficiency of the device as well as information on material efficiency aspects. The energy efficiency is determined in accordance with an energy efficiency index. The label also contains information related to material efficiency aspects, namely:

- (a) the battery endurance per cycle and in cycles;
- (b) the repeated free fall reliability (i.e. how many falls the device can withstand while remaining operational),
- (c) the dust and water ingress protection,
- (d) a reparability score, based on scoring criteria (such as disassembly depth, fasteners and tools to be used in the repair process, etc.) set out to rate the extent to which products are repairable.

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2017/1369 of the European Parliament and of the Council of 4 July 2017 setting a framework for energy labelling and repealing Directive 2010/30/EU¹, and in particular Article 16(1) thereof,

Whereas:

- (1) Regulation (EU) 2017/1369 empowers the Commission to adopt delegated acts as regards the labelling or re-scaling of the labelling of product groups representing significant potential for energy savings and, where relevant, other resources.
- (2) The Commission has carried out a preparatory study to analyse the technical, environmental and economic aspects of mobile phones, smartphones and slate tablets. The study was conducted in close cooperation with stakeholders and interested parties in the Union and third countries, and the results have been made publicly available.
- (3) The preparatory study concluded that the scope for reducing the energy consumption of smartphones and slate tablets is substantial. It also concluded that the battery lifetime and consequently the product lifetime of smartphones and slate tablets can significantly be improved by means of an energy labelling scheme. Smartphones and slate tablets should therefore be covered by energy labelling requirements. An energy label is however currently not seen as appropriate for cordless phones and feature phones, given the moderate spread in the energy efficiency of products available on the market.
- (4) In total, smartphones and slate tablets consumed 36,1 TWh of primary energy in 2020, including all life cycle phases. The preparatory study showed that, without regulatory action, these values are likely to increase to 36,5 TWh of primary energy in 2030. The combined effect of this Regulation and Regulation (EU) 2023/XXXX [OP: please insert reference to C(2023) 3538]² is expected to limit the energy consumption of smartphones and slate tablets in 2030 to 23.3 TWh, meaning 35 % of primary energy consumption is saved compared to what would happen if no measures were taken.

¹ OJ L 198, 28.7.2017, p. 1.

² Commission Regulation (EU) 2023/XXXX of XX XXX 2023 [OP: please insert reference to C(2023) 3538 and date] laying down ecodesign requirements for smartphones, mobile phones other than smartphones, cordless phones and slate tablets pursuant to Directive 2009/125/EC of the European Parliament and of the Council and amending Commission Regulation (EU) 2023/826 (OJ L XXX, XX.XX.2023, p. X).

- (5) Smartphones and slate tablets that are displayed at trade fairs should bear the energy label if the first unit of the model has already been placed on the market or is placed on the market at the trade fair.
- (6) The relevant product parameters should be measured or calculated using reliable, accurate and reproducible methods. Those methods should take into account recognised state-of-the-art measurement methods including, where available, harmonised standards adopted by the European standardisation bodies, as listed in Annex I to Regulation (EU) No 1025/2012 of the European Parliament and of the Council³.
- (7) The energy efficiency index of a smartphone or a slate tablet should be calculated with the operating system version installed on the product model at the date of placement on the market. Until the date of end of placement on the market, if an updated version of the operating system is installed on the same product model, the energy efficiency index should be recalculated and, where applicable, the value of any other parameter of the label and of the product information sheet should be reassessed. Any change in the energy efficiency index, or where applicable in any other parameter value part of the label and of the product information sheet, should be considered relevant in respect to Article 4(4) of Regulation (EU) 2017/1369, in particular when this change is detrimental for the end users.
- (8) To facilitate compliance checks, the content of the technical documentation referred to in Annex VI should be sufficient to allow market surveillance authorities to check the values published on the label and in the product information sheet. In accordance with Article 12 of Regulation (EU) 2017/1369, values for the measured and calculated parameters of the model should be entered into the product database.
- (9) Recognising the growth of sales of energy-related products through providers of online platforms, as defined in Regulation (EU) 2022/2065 on a Single Market For Digital Services⁴, rather than directly from suppliers' websites, it should be clarified that such providers of online platforms should enable traders to provide information concerning the labelling of the product concerned, in compliance with Article 31(2) of Regulation (EU) 2022/2065. The 'information concerning the labelling and marking' referred to in Article 31(2), point (c) of Regulation (EU) 2022/2065 should, in the context of this Regulation, be understood as encompassing both the energy label and the product information sheet. In line with Article 6 of Regulation (EU) 2022/2065, providers of online platforms are not liable for products sold through their interfaces on the condition that they do not have actual knowledge of the illegality of such products and upon receiving knowledge on the illegality of the products they act expeditiously to remove them from their interfaces. A supplier selling directly to end-users via its own website is covered by dealers' distance selling obligations referred to in Article 5 of Regulation (EU) 2017/1369.

³ Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council (OJ L 316, 14.11.2012, p. 12).

⁴ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (OJ L 277, 27.10.2022, p. 1).

- (10) In order to ensure coherence with existing industry norms, references in this Regulation related to fasteners and connectors, tools, working environment and skill level, in the context of calculating the reparability score, are consistent with the terminology used in standard EN 45554, which provides general methods for the assessment of the ability to repair, reuse and upgrade energy-related products.
- (11) The requirements set out in this Regulation should apply from 21 months after its entry into force.
- (12) The measures provided for in this Regulation were discussed by the Consultation Forum established pursuant to Article 14(1) of Regulation (EU) 2017/1369 and with the Member States experts in accordance with Article 17 of Regulation (EU) 2017/1369,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

This Regulation establishes requirements for the labelling of smartphones and slate tablets, and the provision of supplementary product information on smartphones and slate tablets.

This Regulation does not apply to the following products:

- (a) mobile phones and tablets with a flexible main display which the user can unroll and roll up partly or fully;
- (b) smartphones for high security communication.

Article 2

Definitions

1. For the purpose of this Regulation, the following definitions shall apply:
 - (1) ‘mobile phone’ means a cordless handheld electronic device, which has the following characteristics:
 - (a) it is designed for long-range voice communication over either a cellular telecommunications network or a satellite-based telecommunications network, requiring a SIM card, eSIM or similar means to identify the connected parties;
 - (b) it is designed for battery mode usage, and connection to mains via an external power supply and/or wireless power transmission is mainly for battery charging purposes;
 - (c) it is not designed to be worn on the wrist;
 - (2) ‘smartphone’ means a mobile phone, which has the following characteristics:
 - (a) it is characterised by wireless network connection, mobile use of internet services, an operating system optimised for handheld use and the ability to accept original and third-party software applications;
 - (b) it has an integrated touch screen display with a viewable diagonal size of 10,16 centimetres (or 4,0 inches) or more, but less than 17,78 centimetres (or 7,0 inches);

- (c) where the device has a foldable display or has more than one display, at least one of the displays falls into the size range in either opened or closed mode;
- (3) ‘smartphone for high security communication’ means a smartphone, which has the following characteristics:
- (a) it is accredited, or otherwise approved by the designated authority in a Member State or is in the process of accreditation or other approval to transmit, process or store classified information;
 - (b) it is intended for professional users only;
 - (c) it is capable of detecting physical intrusion to the hardware, including for intrusion detection at least a controller, related wiring, flexible printed circuit board circuitry for drill protection integrated to the device chassis and integrated tamper loops on the main printed circuit board;
- (4) ‘professional user’ means any natural or legal person, to whom a product has been made available for use in the course of their industrial or professional activities;
- (5) ‘slate tablet’ means a device that is designed for portability and has the following characteristics:
- (a) it has an integrated touch-sensitive display with a viewable diagonal size greater than or equal to 17,78 centimetres (or 7,0 inches) and less than 44,20 centimetres (or 17,4 inches);
 - (b) it does not have an integrated, physically attached keyboard in its designed configuration;
 - (c) it primarily relies on a wireless network connection;
 - (d) it is powered by an internal battery and is not intended to work without battery; and
 - (e) it is placed on the market with an operating system designed for mobile platforms, identical or analogous to smartphones;
- (6) ‘point of sale’ means a location where smartphone or slate tablet units are displayed or offered for sale, hire or hire-purchase.
2. For the purposes of Annexes II to IX, the definitions set out in Annex I shall apply.

Article 3

Obligations of suppliers

1. Suppliers shall ensure that:
- (a) each smartphone or slate tablet is supplied with a printed label in the format as set out in Annex III;
 - (b) the values of the parameters of the product information sheet, as set out in Annex V, are entered into the public part of the product database;
 - (c) where specifically requested by the dealer, the product information sheet is made available in printed form;

- (d) the content of the technical documentation, as set out in Annex VI, is entered into the product database;
 - (e) any visual advertisement for a specific model of smartphones or slate tablets contains the energy efficiency class and the range of energy efficiency classes available on the label in accordance with Annexes VII and VIII;
 - (f) any technical promotional material concerning a specific model of smartphones or slate tablets, including technical promotional material on the internet, which describes its specific technical parameters includes the energy efficiency class of that model and the range of energy efficiency classes available on the label, in accordance with Annex VII;
 - (g) an electronic label in the format and containing the information, as set out in Annex III, is made available to dealers for each smartphone and slate tablet model;
 - (h) an electronic product information sheet, as set out in Annex V, is made available to dealers for each smartphone and slate tablet model.
2. The energy efficiency class and the repeated free fall reliability class as set out in Annex II shall be calculated in accordance with Annex IV.

Article 4

Obligations of dealers

Dealers shall ensure that:

- (a) each smartphone and slate tablet, at the point of sale, including at trade fairs, bears the label provided by suppliers in accordance with point (a) of Article 3(1) displayed in proximity to the product or hung on it or placed in such a way as to be clearly visible and unequivocally associated to the specific model;
- (b) in the event of distance selling, the label and product information sheet are provided in accordance with Annexes VII and VIII;
- (c) any visual advertisement for a specific model of smartphones or slate tablets, including on the internet, contains the energy efficiency class and the range of energy efficiency classes available on the label, in accordance with Annex VII;
- (d) any technical promotional material concerning a specific model of smartphone or slate tablet, including technical promotional material on the internet, which describes its specific technical parameters includes the energy efficiency class of that model and the range of energy efficiency classes available on the label, in accordance with Annex VII.

Article 5

Measurement methods

The information to be provided pursuant to Articles 3 and 4 shall be obtained by reliable, accurate and reproducible measurement and calculation methods, which take into account the recognised state-of-the-art measurement and calculation methods, as set out in Annex IV.

Article 6

Verification procedure for market surveillance purposes

Member States shall apply the verification procedure laid down in Annex IX when performing the market surveillance checks referred to in Article 8(3) of Regulation (EU) 2017/1369.

Article 7

Review

The Commission shall review this Regulation in the light of technological progress and present the results of this assessment including, if appropriate, a draft revision proposal, to the Consultation Forum established pursuant to Article 14(1) of Regulation (EU) 2017/1369, no later than [*OP: please insert date = 4 years after the entry into force of this Regulation*].

The review shall in particular assess the appropriateness of:

- (a) revising the test methods to reflect changes in typical end-user behaviour and new functionalities;
- (b) adding environmental footprint information on the label;
- (c) revising the verification tolerances set out in Annex IX;
- (d) revising the reparability index, including additional aspects and the prices of spare parts.

Article 8

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [*OP: please insert the date = 21 months after the entry into force of this Regulation*].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 16.6.2023

For the Commission
The President
Ursula VON DER LEYEN