



EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs
Single Market Enforcement
Notification of Regulatory Barriers

Message 315

Communication from the Commission - TRIS/(2022) 04493

Directive (EU) 2015/1535

Notification: 2022/0634/B, 2022/0635/B, 2022/0636/B, 2022/0637/B

Detailed opinion from the Commission (article 6, paragraph 2, second indent of Directive (EU) 2015/1535). This detailed opinion extends the standstill period until 22-03-2023.

Comunicado detallado - Podrobné vyjádření - Udførlig udtalelse - Ausführlichen Stellungnahme - Üksikasjalik arvamus - Εμπεριστατωμένη γνώμη - Detailed opinion - Avis circonstancié - Parere circostanziato - Detalizēts atzinums - Detali nuomonė - Részletes vélemény - Opinioni dettaljata - Uitvoerig gemotiveerde mening - Opinia szczegółowa - Parecer circunstanciado - Podrobný úsudok - Podrobno mnenje - Yksityiskohtainen lausunto - Detaljerat yttrande - Подробно становище - Aviz detaliat - Aviz detaliat.

Amplia el plazo del estatu quo hasta 22-03-2023. - Prodłużuje lhůtu pro stávající stav až do 22-03-2023. - Fristen for status quo forlænges til 22-03-2023. - Die Laufzeit des Status quo wird verlängert bis 22-03-2023. - Praeguse olukorra tähtaega pikendatakse kuni 22-03-2023. - Παρατείνει την προθεσμία του status quo μέχρι την 22-03-2023. - Extends the time limit of the status quo until 22-03-2023. - Prolonge le délai de statu quo jusqu'au 22-03-2023. - Proroga il termine dello status quo fino al 22-03-2023. - Pagarina "status quo" laika periodu līdz 22-03-2023. - Pratęsia status quo laiko limitą iki 22-03-2023. - Meghosszabbítja a korábbi állapot határidejét 22-03-2023-ig. - Jestendi t-terminu ta' l-istatus quo sa 22-03-2023. - De status-quo-periode wordt verlengd tot 22-03-2023. - Przedłużenie status quo do 22-03-2023. - Prolonga o prazo do statu quo ate 22-03-2023. - Časový limit momentálneho stavu sa predĺži až do 22-03-2023. - Podaljša rok nespremenjenega stanja do 22-03-2023. - Jatkaa status quo määräaika 22-03-2023 asti - Förlänger tiden för status quo fram till: 22-03-2023 - Удължаване на крайния срок на статуквото до 22-03-2023 - Prelungește termenul status quo-ului până la 22-03-2023.

Die Kommission hat diese ausführliche Stellungnahme am 16-12-2022 empfangen.

The Commission received this detailed opinion on the 16-12-2022.

La Commission a reçu cet avis circonstancié le 16-12-2022.

(MSG: 202204493.EN)

1. MSG 315 IND 2022 0634 B EN 22-12-2022 16-12-2022 COM 6.2(2) 22-12-2022

1. MSG 315 IND 2022 0635 B EN 22-12-2022 16-12-2022 COM 6.2(2) 22-12-2022

1. MSG 315 IND 2022 0636 B EN 22-12-2022 16-12-2022 COM 6.2(2) 22-12-2022

1. MSG 315 IND 2022 0637 B EN 22-12-2022 16-12-2022 COM 6.2(2) 22-12-2022

2. Commission

3. DG GROW/E/3 - N105 04/63

4. 2022/0634/B, 2022/0635/B, 2022/0636/B, 2022/0637/B - B30, B30, B30, B30

5. article 6, paragraph 2, second indent of Directive (EU) 2015/1535

6. Within the framework of the notification procedure laid down in Directive (EU) 2015/1535, the Belgian authorities notified to the Commission on 21 September 2022 the following drafts (hereinafter, 'the notified drafts'):

- Law on the introduction of a reparability and durability score and the dissemination of information on the duration of products' software compatibility;
- Royal Decree determining the products covered by the reparability score, the technical standards for establishing the



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scores for each criterion and the method of calculating the overall score;

- Royal Decree determining the products covered by the obligation to inform about the duration of software compatibility;
- Royal Decree determining the modalities of communication, format of the reparability score and accessibility to technical standards.

According to the notification messages, the notified drafts aim to promote the repair of products and extend their lifetimes in order to limit their impact on the environment. The notified drafts establish rules to introduce a reparability score for a number of products and propose to make the placing on the market of products concerned by the reparability and durability score dependent on obtaining a minimum score.

The examination of the notified draft has prompted the Commission to issue the following detailed opinion and comments.

1. Detailed Opinion

The notified drafts introduce minimum requirements on the reparability and longevity (or durability) of products, which fall in the scope of harmonized requirements that have been introduced through a number of implementing regulations under the Ecodesign Directive. At the EU level for the following products, for which the royal decree proposes minimum reparability requirements, harmonized reparability requirements already apply:

- Household washing machines and household washer-dryers within the scope of Commission Regulation (EU) 2019/2023
- Household dishwashers within the scope of Commission Regulation (EU) 2019/2022
- Electronic displays within the scope of Commission Regulation (EU) 2019/2021

These correspond to product categories "(1) household front-loading and top-loading washing machines ", "(2) household dishwashers" and "(7) television sets" of Article 3 of the notified draft 2022/635/B.

In Article 4(1) of notified draft 2022/634/B, the criteria for creating a reparability score are listed as follows:

- (1) The availability of technical information and maintenance and repair manuals
- (2) The ease with which the product concerned can be disassembled
- (3) The availability on the market of spare parts and their delivery time
- (4) The price of spare parts
- (5) Other criteria specifically related to the product

In particular, for electronic displays including television sets, Regulation (EU) 2019/2021 sets out minimum requirements on the availability of spare parts (i.e. Annex II point D(5)(a)), the delivery times of spare parts (i.e. Annex II point D(5)(c)), the availability of repair information (i.e. Annex II point D(5)(b)) and the ease of disassembly of products (i.e. Annex II point D(1)). These ecodesign requirements overlap with criteria (1), (2) and (3) listed above. Therefore, setting a minimum reparability score for placement on the Belgian market that includes requirements related to these criteria would be in conflict with Regulation (EU) 2019/2021.

Similar ecodesign requirements exist in Regulations (EU) 2019/2022 and (EU) 2019/2023 for the placing on the market of household dishwashers and household washing machines. The proposed minimum reparability score for the placing of these products on the Belgian market would be in conflict with the abovementioned Regulations, in view existing harmonized requirements related to criteria (1), (2) and (3) of the Belgian minimum reparability score.

Similar to reparability, the possibility of introducing a longevity score with a minimum requirement falls within the scope of harmonization of measures under the ecodesign and energy labelling framework. We note that there is no list of products communicated for which a longevity score would be developed, nor are there criteria for the proposed longevity



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score. However, we would like to point out that the existing ecodesign requirements for vacuum cleaners already contain longevity related requirements on the operational motor lifetime and the durability of vacuum cleaner hoses. Therefore, any potential minimum longevity requirement that would include these two aspects would be in conflict with the existing ecodesign requirements.

For these reasons, the Commission delivers a detailed opinion in accordance with Article 6(2) of Directive (EU) 2015/1535, to the effect that the notified drafts would be in contradiction with the above-mentioned provisions of Commission Regulation (EU) 2019/2021, Commission Regulation (EU) 2019/2022 and Commission Regulation (EU) 2019/2023.

The Commission would remind the Belgian Government that under the terms of Article 6(2) of Directive (EU) 2015/1535, the delivery of a detailed opinion obliges the Member State that has drawn up the draft technical regulation concerned, to postpone its adoption for six months from the date of its notification.

This standstill period therefore comes to an end on 22 March 2023.

The Commission also draws the attention of the Belgian Government to the fact that under the above-mentioned provision the Member State that is the addressee of a detailed opinion is obliged to inform the Commission of the action that it proposes to take on the detailed opinion.

Should the Belgian Government not comply with the obligations provided in Directive (EU) 2015/1535, or should the text of the draft technical regulation under consideration be adopted without account being taken of the above-mentioned objections, or be otherwise in breach of EU law, the Commission may commence proceedings pursuant to Article 258 of the Treaty on the Functioning of the European Union.

2. Comments

For other products considered in the notified draft 2022/635/B, no reparability requirements apply at the moment, but some of these products are included in the new Ecodesign and Energy Labelling Working Plan 2022-2024 . Specifically, this concerns "(3) household vacuum cleaners, wired, cordless and robots", "(6) smartphones" and "(8) laptops including digital tablets" of Article 3 of the notified draft 2022/635/B.

Reparability related requirements will systematically be included in ecodesign implementing measures, where appropriate. Therefore, it is likely that reparability requirements for these products will be introduced in the near future and that the requirements for products listed in the notified draft will fall under the scope of harmonization of future measures. Specifically, ecodesign requirements for smartphones and tablets are currently at an advanced stage of preparation. The implementing Regulation is expected to be adopted at the beginning of next year at the latest and contains extensive reparability requirements related to criteria (1), (2) and (3) of the Belgian minimum reparability score.

In addition, even if the requirement for a minimum reparability score were to be removed, setting out a reparability score has a high potential of falling within the scope of harmonization of future EU measures under the Ecodesign and Energy Labelling Framework. In the Ecodesign and Energy Labelling Working Plan 2022-2024, the Commission states that: "Based on the standard on the ability to repair, reuse and upgrade (EN 45554) the Commission's Joint Research Centre has developed a repair score system. The Commission is exploring the potential of introducing it for relevant products, possibly as information on the energy label for specific products such as smart phones and tablets."

Specifically, regarding smartphones and tablets, a reparability score has been included in the draft delegated act under the Energy Labelling Regulation (Regulation (EU) 2017/1369), also expected to be adopted at the beginning of next year at the latest. The Belgian royal decree that determines the products covered by the reparability score, includes in its scope smartphones and tablets. This falls in the scope of harmonization of the forthcoming delegated act.

Furthermore, the draft measures for smartphones and tablets under the Ecodesign Directive and the Energy Labelling



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Regulation already include ecodesign requirements and a scoring on various longevity related parameters such as drop resistance.

In addition, the draft Royal Decree notified under 2022/636/B includes the obligation to provide information on the "software compatibility" of smartphones, tablets and computers. "Software compatibility" is defined in the notified draft 2022/634/B as "information on the length of time the manufacturer or supplier support and update the operating system or software to ensure normal use of the product by a prudent and reasonable user." We would like to note that for smartphones and tablets the draft delegated act under the Energy Labelling Regulation (Regulation (EU) 2017/1369) requires information on the "Minimum guaranteed availability of operating system security updates (years)" and "Minimum guaranteed availability of operating system functionality updates (years)" to be provided in the product information sheet. Therefore, this falls in the scope of harmonization of the forthcoming delegated act. Moreover, ongoing work on the review of the ecodesign regulation and the proposal of an energy label for computers could include similar information requirements.

The Commission would like to remind the Belgian authorities that in the absence of a harmonised system at European level concerning the calculation and display of a repairability score, any national measure aimed at establishing such a system must be assessed in the light of Articles 34 to 36 TFEU. Article 34 TFEU prohibits quantitative restriction on imports and measure having equivalent effect between Member States. This covers any measure which may directly or indirectly, presently or potentially impede intra-EU trade (judgment of the Court of Justice of the European Union in Case C-8/74 Dassonville).

The obligation to calculate and display the repairability score of certain electrical and electronic products for the purposes of placing them on the Belgian market risks making their marketing more restrictive and therefore may have the effect of restricting their access to the Belgian market in a manner contrary to Article 34 TFEU.

Such obstacles to the free movement of goods must be justified under one of the exceptions referred to in Article 36 TFEU or on the basis of mandatory requirements developed in the case law of the Court of Justice.

The Commission invites the Belgian authorities to take the above comments into consideration.

The Commission furthermore recalls that once the definitive text has been adopted, it has to be communicated to the Commission in accordance with Article 5(3) of Directive (EU) 2015/1535.

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