

Position on the Commission proposal for a regulation establishing a framework for setting ecodesign requirements for sustainable products

22 June 2022

The European Ventilation Industry Association (EVIA) support the need to keep legislation up-to-date and in line with the latest technological developments. In that light, we appreciate the European Commission’s proposals for an Ecodesign for Sustainable Products Regulation (ESPR). We believe that technological progress coupled with the current climate crisis necessitates measures that go beyond energy efficiency by including stringent sustainability, material, and resource efficiency requirements.

Nonetheless, we are concerned with certain elements that may bypass the potential offered by the ESPR as tool to achieve sustainability while simultaneously strengthening the European economy. As such, this paper presents our recommendations on improving the proposal. The format in which we have presented our position is in the form of amendment proposals followed by a justification to explain our views.

DEFINITIONS

Amendments to Article 2 – Definitions

Commission proposal published on 30 May 2022	EVIA recommendations
(28) ‘substance of concern’ means a substance that: (...) (c) negatively affects the re-use and recycling of materials in the product in which it is present;	(28) ‘substance of concern’ means a substance that: (...) (c) negatively affects the re-use and recycling of materials in the product
Justification	
EVIA suggests that Article 2, point 28(c) is removed. Whilst Article 7(2)(a) clarifies that the scope of “negatively affects” would be determined in the product specific delegated acts, EVIA would stress that there is a distinct lack of industry standardised processes for re-use and recycling certain materials. As such it cannot be determined whether the presence of a “substance of concern” “negatively affects” all or a majority of re-use and recycling methods.	

In addition, no specification is given as to what parameter(s) is/are considered as contributing to “negatively affect[ing]” re-use and recycling. If for instance the “negative affect” implications for the health and safety of workers in re-use and recycling facilities then toxicity and health aspects are already well catered for by Article 2, point 28(a) and (b), which draw on the EU’s established legislation REACH and CLP Regulations for the control and labelling of chemicals, that aim to improve chemical safety.

It should also be recalled that re-use and recycling facilities are subject to occupational health and safety legislation under the Member State’s transposition of the EU’s framework [Occupational Safety and Health \(OSH\) Directive](#), and the 24 implementing directives under the framework directive, including, among others, on [chemical agents](#) and [personal protective equipment](#).

Further, for electrical and electronic equipment, including HVAC proper end-of-life treatment is provided for under Article 8 of the Waste Electrical and Electronic Equipment (WEEE) Directive. Article 8(5) allows the Member States to establish minimum quality standards for the treatment of WEEE. Under the current WEEE Directive the Commission is empowered to adopt an implementing act on mandatory minimum quality standards. A 2021 [DG ENV study](#) recommends that minimum quality standards are introduced on the basis of the CENELEC EN 50625 series and EN 50614. A [Commission evaluation review](#) of the WEEE Directive is indicatively to conclude in Q3 2023; an implementing act on minimum quality standards and/or a full revision can be anticipated.

Commission proposal published on 30 May 2022	EVI recommendations
	<i>(22a) ‘reparability score’ means a score expressing the capacity of a good to be repaired;</i>
<p style="text-align: center;">Justification</p> <p>EVI understands that under Article 5: Ecodesign requirements of “reparability” is included as a product aspect on which ecodesign requirements can be set and that Article 14: Labels provides for the inclusion on labels of “classes of performance”. In the context of “reparability”, EVIA notes that these point to the introduction of “reparability scoring”.</p> <p>This would be aligned with ongoing developments under Ecodesign, where a “reparability score” is being introduced in GROW LOT X: Mobile phone and tablets. It should also be noted that developments at Member State level, for example in France where a “reparability index” has been introduced. An extremely important aspect of the Ecodesign Regulation is that it will engender the harmonisation of product sustainability regulation, thus superseding requirements at the national level. EVIA therefore supports the inclusion of a definition for “reparability score” in the Ecodesign Regulation.</p>	

The need for the inclusion of a definition in the Ecodesign Regulation is further justified by the Commission’s inclusion of a definition for “reparability score” in its proposal for a Directive to Empower Consumers in the Green Transition, which was published simultaneously to the Ecodesign Regulation proposal. In the recitals to the Empowering Consumers proposal it states that at the point of sale information must be provided “on the reparability of products through a reparability score ... only if a reparability score is already established for that product under EU law”. The establishment of “reparability scores” under EU law will be delivered under the Ecodesign Regulation, with the product-specific calculation methodologies set out in the product-specific ecodesign implementing regulations. As such it is logical that there is a definition for “reparability score” in the Ecodesign Regulation.

As such EVIA recommends that the below definition used in the Empowering Consumers Directive is used in the Ecodesign Regulation to ensure alignment:

(14d) ‘reparability score’ means a score expressing the capacity of a good to be repaired, based on a method established in accordance with Union law;

ECODESIGN REQUIREMENTS

Amendments to Article 5 – Ecodesign requirements

Commission proposal published on 30 May 2022	EVIA recommendations
<p>4. When preparing ecodesign requirements, the Commission shall:</p> <p>(...)</p> <p>(b) carry out an impact assessment based on best available evidence and analyses, and as appropriate on additional studies and research results produced under European funding programmes. In doing so, the Commission shall ensure that the depth of analysis of the product aspects listed in paragraph 1 is proportionate to their significance. The establishment of ecodesign requirements on the most significant aspects of a product among those listed in paragraph 1 shall not be unduly delayed by uncertainties regarding the possibility to establish ecodesign requirements to improve other aspects of that product;</p>	<p>4. When preparing ecodesign requirements, the Commission shall:</p> <p>(...)</p> <p>(b) carry out an impact assessment based on best available evidence and analyses, and as appropriate on additional studies and research results produced under European funding programmes. In doing so, the Commission shall ensure that the depth of analysis of the product aspects listed in paragraph 1 is proportionate to their significance and that the potential for regrettable substitution, as a result of potential requirements, is assessed across Union climate, environmental and energy efficiency priorities and other related Union priorities. The establishment of ecodesign requirements on the most significant aspects of a product among those listed in paragraph 1 shall not be unduly delayed by uncertainties regarding the</p>

	possibility to establish ecodesign requirements to improve other aspects of that product;
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Annex III – Procedure for defining performance requirements	
<p>Performance requirements shall be set as follows:</p> <p>(1) A technical, environmental and economic analysis shall select a number of representative models of the product or products in question on the market and identify the technical options for improving the product performance in relation to the parameters referred to in Annex I - in view of product-specific or horizontal requirements - taking into account the economic viability of the options and avoiding any significant increase of other life cycle environmental impacts, and significant loss of performance or of usefulness for consumers.</p> <p>The technical, environmental and economic analysis shall also identify, for the parameter under consideration, the best-performing products and technologies available on the market.</p> <p>The performance of products available on international markets and benchmarks set in other countries' legislation shall be taken into consideration during the analysis referred to in the first subparagraph as well as when setting requirements.</p> <p>Based on this analysis, and taking into account economic and technical feasibility, including the availability of key resources and technologies, as well as the potential for improvement, levels or non-quantitative requirements shall be defined.</p>	<p>Performance requirements shall be set as follows:</p> <p>(1) A technical, environmental and economic analysis shall select a number of representative models of the product or products in question on the market and identify the technical options for improving the product performance in relation to the parameters referred to in Annex I - in view of product-specific or horizontal requirements - taking into account the economic viability of the options and avoiding any significant increase of other life cycle environmental impacts, and significant loss of performance or of usefulness for consumers.</p> <p>The technical, environmental and economic analysis shall also identify, for the parameter under consideration, the best-performing products and technologies available on the market.</p> <p>The performance of products available on international markets and benchmarks set in other countries' legislation shall be taken into consideration during the analysis referred to in the first subparagraph as well as when setting requirements.</p> <p>Based on this analysis, and taking into account economic and technical feasibility, including the availability of key resources and technologies, as well as the potential for improvement, levels or non-quantitative requirements shall be defined. In undertaking this analysis the potential for regrettable substitution, as a result of potential requirements, is assessed across Union climate,</p>

	environmental and energy efficiency priorities and other related Union priorities.
<p style="text-align: center;">Justification</p> <p>EVIA notes that the possibility for regrettable substitution can be high in the context of implementing the European Green Deal’s (EGD) objectives, particularly under the broad umbrella of sustainability where action to deliver on a particular element can involve negative trade-offs for others. With a view to minimising the possibility that ecodesign implementing regulations engender regrettable substitution it would be prudent for ecodesign preparatory studies to more thoroughly consider the impacts of substitution with alternatives. Mandating consideration of the possibilities for regrettable substitution in the ecodesign preparatory studies would help to limit the possibility that adverse impacts inadvertently occur in the future, in respect to ensuring that a transition/substitution is indeed more beneficial than the status quo, and if so would allow mitigative measures to be considered and implemented to limit the possible regrettable impacts associated with the alternative.</p>	

INFORMATION REQUIREMENTS

Amendments to Article 7 – Information requirements

Commission proposal published on 30 May 2022	EVIA recommendations
<p>2. The information requirements referred to in paragraph 1 shall:</p> <p>(b) as appropriate, require products to be accompanied by:</p> <ul style="list-style-type: none"> (i) information on the performance of the product in relation to the product parameters referred to in Annex I; (ii) information for consumers and other end-users on how to install, use, maintain and repair the product in order to minimise its impact on the environment and to ensure optimum durability, as well as on how to return or dispose of the product at end-of-life; (iii) information for treatment facilities on disassembly, recycling, or disposal at end-of-life; 	<p>2. The information requirements referred to in paragraph 1 shall:</p> <p>(b) as appropriate, require products to be accompanied by:</p> <ul style="list-style-type: none"> (i) information on the performance of the product in relation to the product parameters referred to in Annex I; (ii) information for consumers and other end-users on how to install, use, maintain and repair the product in order to minimise its impact on the environment and to ensure optimum durability, as well as on how to return or dispose of the product at end-of-life; (iii) information for treatment facilities on disassembly, recycling, or disposal at end-of-life;

<p>(iv) other information that may influence the way the product is handled by parties other than the manufacturer in order to improve performance in relation to product parameters referred to in Annex I.</p>	<p>(iv) other information that may influence the way the product is handled by parties other than the manufacturer in order to improve performance in relation to product parameters referred to in Annex I.</p>
<p style="text-align: center;">Justification</p> <p>EVIA considers that the Article 7(2)(b)(iv) is a ‘blank cheque’ without clearly defined parameters. The information that would be required to be declared under Article 7(2)(b)(i), (ii) and (iii) is sufficiently comprehensive and it is difficult to imagine what “other information” the Commission envisages. EVIA suggest that Article 7(2)(iv) is removed but would welcome examples from the Commission as to what “other information” they had in mind in proposing Article 7(2)(b)(iv).</p>	

<p>Commission proposal published on 30 May 2022</p>	<p>EVIA recommendations</p>
<p>5. The information requirements referred to in paragraph 1 shall enable the tracking of all substances of concern throughout the life cycle of products, unless such tracking is already enabled by another delegated act adopted pursuant to Article 4 covering the products concerned, and shall include at least the following:</p> <p>(...)</p> <p>Where the Commission sets out information requirements in a delegated act adopted pursuant to Article 4, it shall:</p> <p>(a) establish which substances fall under the definition in Article 2(28), point (c), for the purposes of the product groups covered;</p> <p>(b) lay down deadlines for the entry into application of the information requirements referred to in the first subparagraph, with possible differentiation between substances; and</p>	

<p>(c) provide exemptions for substances of concern or information elements from the information requirements referred to in the first subparagraph.</p> <p>Exemptions referred to in the second subparagraph, point (c), may be provided based on the technical feasibility or relevance of tracking substances of concern, the need to protect confidential business information and in other duly justified cases.</p> <p>Substances of concern falling under the definition in Article 2(28), point (a), shall not be exempted from the information requirement referred to in the first subparagraph if they are present in the relevant products, their main components or spare parts in a concentration above 0,1 % weight by weight.</p>	
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Comment

EVIA would appreciate further clarity from the Commission on the parameters of the exemption mechanism for a substance of concern provided for in Article 7(5), subparagraph 2(c) from the information requirement to track substances of concern throughout a product’s lifecycle. In Article 7(5)(c) subparagraph suggests that an assessment of “the technical feasibility or relevance of tracking [the] substances of concern”. Such assessment would usually be made under the EU’s REACH Regulation, underpinned by risk assessments made by the Risk Assessment Committee (RAC), and socio-economic assessments by the Socio-economic Assessment Committee (SEAC). In the context of the preparatory studies for ecodesign implementing regulations it is unclear who would be responsible for conducting the assessment of “technical feasibility or relevance”, the consultant contracted for the ecodesign preparatory study or RAC and SEAC which are the EU’s chemicals expert groups. EVIA would note that there is a strong risk of double regulation on this issue.

DIGITAL PRODUCT PASSPORT

Comments on Article 8 – Product passport

Commission proposal published on 30 May 2022	EVIA recommendations
<p>2. The requirements related to the product passport laid down in the delegated acts adopted pursuant to Article 4 shall, as appropriate for the product groups covered, specify the following:</p>	<p>2. The requirements related to the product passport laid down in the delegated acts adopted pursuant to Article 4 shall, as appropriate for the product groups covered, specify the following:</p>

(a) the information to be included in the product passport pursuant to Annex III;

(b) the types of data carrier to be used;

(c) the layout in which the data carrier shall be presented and its positioning;

(d) whether the product passport is to correspond to the model, batch, or item level;

(e) the manner in which the product passport shall be made accessible to customers before they are bound by a sales contract, including in case of distance selling;

(f) the actors that shall have access to information in the product passport and to what information they shall have access, including customers, end-users, manufacturers, importers and distributors, dealers, repairers, remanufacturers, recyclers, competent national authorities, public interest organisations and the Commission, or any organisation acting on their behalf;

(g) the actors that may introduce or update the information in the product passport, including where needed the creation of a new product passport, and what information they may introduce or update, including manufacturers, repairers, maintenance professionals, remanufacturers, recyclers, competent national authorities, and the Commission, or any organisation acting on their behalf;

(h) the period for which the product passport shall remain available.

(a) the information to be included in the product passport pursuant to Annex III;

(b) the types of data carrier to be used;

(c) the layout in which the data carrier shall be presented and its positioning;

(d) whether the product passport is to correspond to the model **or** batch, ~~or item~~ level;

(e) the manner in which the product passport shall be made accessible to customers before they are bound by a sales contract, including in case of distance selling;

(f) the actors that shall have access to information in the product passport and to what information they shall have access, including customers, end-users, manufacturers, importers and distributors, dealers, repairers, remanufacturers, recyclers, competent national authorities, public interest organisations and the Commission, or any organisation acting on their behalf;

(g) the actors that may introduce or update the information in the product passport, including where needed the creation of a new product passport, and what information they may introduce or update, including manufacturers, repairers, maintenance professionals, remanufacturers, recyclers, competent national authorities, and the Commission, or any organisation acting on their behalf;

(h) the period for which the product passport shall remain available.

Justification

EVIA contends that it is essential that the DPP is not applied at the “item level”. DPPs at the “item level” would lead to an enormous administrative and cost burden for manufacturers, which will considerably outweigh any potential benefits related to enabling Circular Economy services. It is still possible to unlock Circular Economy benefits to businesses and consumers in the EU if the DPP is applied at model or batch level. In particular, DPPs at the “item level” would have significant data storage costs, including in the form of emissions from cooling data centres.

Commission proposal published on 30 May 2022	EVIA recommendations
<p>4. When establishing the requirements related to the product passport, the Commission may exempt product groups from the requirement set out in paragraph 1 of this Article where:</p> <p>(a) technical specifications are not available in relation to the essential requirements included in Article 10; or</p> <p>(b) other Union law includes a system for the digital provision of information related to a product group for which the Commission considers that it achieves the objectives referred to in paragraph 3, points (a) and (b).</p>	
<p>Comment</p> <p>EVIA notes that Article 8(4)(b) aims to establish an exemption where other Union law already includes systems for the digital provisions of information. For HVAC products subject to energy labelling under Regulation (EU) 2017/1369 and its delegated acts there is a requirement to register products on the European Product Registry for Energy Labelling (EPREL). In addition, under the Waste Framework Directive (WFD) it is necessary to register the presence of Substances of Very High Concern (SVHC) in products on the Substances of Concern in Products (SCIP) Database. It is unclear whether products registered on either or both of these systems for the digital provision of information would be exempt from the requirement for a DPP. Whilst EVIA considers that this is unlikely to be the case, as EPREL and SCIP do not cover the full range of aspects on which ecodesign requirements can be set, clarification from the Commission would be welcome.</p> <p>Such clarification would be particularly welcome in order to better understand the Commission’s intentions for the future interrelationship between the DPP and SCIP and EPREL. EVIA would prefer that access to EPREL and SCIP entries is centralised and facilitated via the DPP, a data carrier connected to a unique product identifier.</p>	

LABELS – CLASSES OF PERFORMANCE

Comments on Article 14 – Labelling

Commission proposal published on 30 May 2022	EVIA recommendations
<p>1. Where the information requirements referred in Article 7(1) specify that information shall be included in a label pursuant to Article 7(6), point (d), the delegated acts adopted pursuant to Article 4 shall specify:</p> <p>(a) the content of the label;</p> <p>(b) the layout of the label taking account visibility and legibility;</p> <p>(c) the manner in which the label shall be displayed to customers including in case of distance selling, taking into account the requirements set out in Article 26 and the implications for the relevant economic operators;</p> <p>(d) where appropriate, electronic means for generating labels.</p> <p>2. Where an information requirement entails the inclusion in a label of the class of performance of a product as referred to in Article 7(4), the layout of the label referred to in paragraph 1, point (b), shall enable customers to easily compare product performance in relation to the relevant product parameter and to choose better performing products.</p> <p>3. For energy-related products, where information on a relevant product parameter, including on classes of performance referred to in Article 7(4), cannot be incorporated in the energy label established pursuant to Regulation (EU) 2017/1369, the Commission, after assessing the best way to communicate about this particular</p>	

information, may, if appropriate, require the establishment of a label in accordance with this Regulation.

4. When establishing the information requirements referred to in paragraph 1, the Commission shall, where appropriate, require the label to include data carriers or other means to allow customers to access additional information on the product, including means allowing access to the product passport referred to in Article 8.

5. The Commission may adopt implementing acts establishing common requirements for the layout of the labels required pursuant to Article 7(6), point (d).

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(3).

Comment

On Article 14 EVIA understands that where a product group is covered by a delegated regulation under Regulation (EU) 2017/1369 it could be subject to a second label for “classes of performance”, other than energy efficiency covered by the energy label. However, in Article 14(3) it is stated that where information on a class or classes of performance “cannot be incorporated in the energy label” a second label could be introduced. Under Article 16(3)(c) of Regulation (EU) 2017/1369 states the following:

“where appropriate, the use of other resources and supplementary information concerning the product, in which case the label shall emphasise the energy efficiency of the product. Supplementary information shall be unambiguous and with no negative impact on the clear intelligibility and effectiveness of the label as a whole towards customers. It shall be based on data relating to physical product characteristics that are measurable and verifiable by market surveillance authorities;”

Article 16(3)(c) makes it extremely unlikely that energy labels will be able to display information on other “classes of performance” as the supplementary information will struggle to be “unambiguous and with no negative impact on the clear intelligibility and effectiveness of the label as a whole towards customers”.

For TBS, energy consumption in the use-phase is most often the most significant life-cycle stage on which consumers should be encouraged to focus. Including other “classes of performance” on the energy label would reduce the understandability of the energy label to consumers, thus reducing its efficacy as a selection tool steering a consumers’ selection decision towards greater energy efficiency.

It can also be argued that as energy efficiency is the most important life-cycle stage this should be the focus of information provision to improve the sustainability of a consumers selection decision. Therefore, products covered by energy labelling should not be covered by other “classes of performance” that may detract from or confuse the energy efficiency selection decision.

DUE PROCESS

Comments on Article 4 – Empowerment to adopt delegated acts

Commission proposal published on 30 May 2022	EVIA recommendations
<p>The Commission is empowered to adopt delegated acts in accordance with Article 66 to supplement this Regulation by establishing ecodesign requirements for, or in relation to, products to improve their environmental sustainability. Those requirements shall include the elements listed in Annex VI and shall be established in accordance with Articles 5, 6 and 7 and Chapter III. The empowerment to adopt ecodesign requirements includes the power to establish that no performance requirements, no information requirements or neither performance nor information requirements are necessary for certain specified product parameters referred to in Annex I.</p> <p>When establishing ecodesign requirements in delegated acts referred to in the first subparagraph, the Commission shall also supplement this Regulation by specifying the applicable conformity assessment procedures from among the modules set out in Annex IV to this Regulation and Annex II to Decision No 768/2008/EC, with the adaptations necessary in view of the product or ecodesign requirements concerned, in accordance with Article 36.</p>	<p>The Commission is empowered to adopt implementing acts in accordance with the examination procedure referred to in Article 67(3) to supplement this Regulation by establishing ecodesign requirements for, or in relation to, products to improve their environmental sustainability. Those requirements shall include the elements listed in Annex VI and shall be established in accordance with Articles 5, 6 and 7 and Chapter III. The empowerment to adopt ecodesign requirements includes the power to establish that no performance requirements, no information requirements or neither performance nor information requirements are necessary for certain specified product parameters referred to in Annex I.</p> <p>When establishing ecodesign requirements in delegated acts referred to in the first subparagraph, the Commission shall also supplement this Regulation by specifying the applicable conformity assessment procedures from among the modules set out in Annex IV to this Regulation and Annex II to Decision No 768/2008/EC, with the adaptations necessary in view of the product or ecodesign requirements concerned, in accordance with Article 36.</p>

Delegated acts referred to in the first subparagraph may also supplement this Regulation by:	Implementing acts referred to in the first subparagraph may also supplement this Regulation by:
<p style="text-align: center;">Justification</p> <p>As an existing member of the Ecodesign & Energy Labelling Consultation Forum (EELCF) EVIA strongly believes that the current process for adopting implementing legislation under the Ecodesign Directive is appropriate and effective. In recent years there have been delays to the process of adopting ecodesign implementing regulations. However, these delays have more to do with insufficient resources, ineffective resource allocation and prioritisation within the Commission than with the modalities of the legislative process to adopt implementing acts.</p> <p>The Commission’s desire to move from implementing acts to delegated acts, in order to speed up the process is irrelevant unless the Commission receives sufficient resources to accommodate the massive increase of ecodesign related activity that will result from widening the scope of ecodesign to almost all tangible products. EVIA, therefore, supports maintaining implementing acts, as process which provides ex ante scrutiny opportunities to the Council and the European Parliament. At the same time as being more democratic the implementing act process serves a crucial scrutiny function to check the technical work of the Commission. Retaining implementing acts serves to improve democratic accountability whilst simultaneously helping to improve the quality of ecodesign implementing legislation.</p>	

Comments on Article 17 – Ecodesign forum

Commission proposal published on 30 May 2022	EVIA recommendations
<p>The Commission shall ensure that when it conducts its activities, it observes a balanced participation of Member States’ representatives and all interested parties involved with the product or product group in question, such as industry, including SMEs and craft industry, trade unions, traders, retailers, importers, environmental protection groups and consumer organisations. These parties shall contribute in particular to preparing ecodesign requirements, examining the effectiveness of the established market surveillance mechanisms and assessing self-regulation measures.</p> <p>To that end, the Commission shall establish an expert group, in which those parties shall meet, referred to as the ‘Ecodesign Forum’.</p>	<p>The Commission shall ensure that when it conducts its activities, it observes a balanced participation of Member States’ representatives and all interested parties involved with the product or product group in question, such as industry, including SMEs and craft industry, trade unions, traders, retailers, importers, environmental protection groups and consumer organisations. These parties shall contribute in particular to preparing ecodesign requirements, examining the effectiveness of the established market surveillance mechanisms and assessing self-regulation measures.</p> <p>To that end, the Commission shall establish an expert group, in which those parties shall meet, referred to as the ‘Ecodesign Forum’. <i>The ‘Ecodesign Forum’ shall function as a plenary, supported as a</i></p>

	<p><i>minimum by an ‘Energy-related Products’ sub-group and a ‘Non-Energy-related Products’ sub-group.</i></p>
<p style="text-align: center;">Justification</p> <p>EVIA as a committed and long-standing member of the existing Ecodesign & Energy Labelling Consultation Forum (EELCF) under the Ecodesign Directive, welcomes the intention to retain an expert consultation forum to support the implementation of the Ecodesign Regulation. Work on product-specific ecodesign implementing regulations is extremely technical and as such strong input from industry experts is fundamental to delivering verifiable, implementable and enforceable implementing regulations. The effectiveness of the current Ecodesign Directive is in no small part down to the close working relationship between the relevant Commission services and industry members of the EELCF.</p> <p>However, EVIA would note that the utility and effectiveness of the current EELCF is predicated on the expertise provided by the EU industry associations in a relatively narrow sector, namely the ‘Energy-related Products’ (ErP) that are within the current scope of the Ecodesign Directive. EVIA is extremely concerned that the Ecodesign Regulation’s extension of the scope to almost all tangible products may dilute the effectiveness of the Ecodesign Forum as a consultative body on technical sector/product-specific issues given the diversity of expertise and viewpoints. For example, for ErP the most significant life-cycle stage is energy consumption in the use-phase, whilst for Non-ErP it is likely to be environmental impacts in the production and/or end-of-life stages.</p> <p>As such EVIA strongly suggests that the Ecodesign Forum mandatorily functions as a plenary to coordinate on horizontal and governance issues related to the Ecodesign Regulation, with, as a minimum two sub-groups on ErP (in essence the current EELCF with an expanded membership to cover ErP products/EU industry associations newly in scope) and on Non-ErP. This would allow the relevant sector/product expertise to be efficiently utilised and to allow sector/product-specific considerations to be given the necessary due care and attention.</p>	

DESTRUCTION OF UNSOLD GOODS

Comments on Article 20 – Destruction of unsold goods

<p>Commission proposal published on 30 May 2022</p>	<p>EVIA recommendations</p>
<p>1. An economic operator that discards unsold consumer products directly, or on behalf of another economic operator, shall disclose:</p> <p>(a) the number of unsold consumer products discarded per year, differentiated per type or category of products;</p>	

(b) the reasons for the discarding of products;

(c) the delivery of discarded products to preparing for re-use, remanufacturing, recycling, energy recovery and disposal operations in accordance with the waste hierarchy as defined by Article 4 of Directive 2008/98/EC.

The economic operator shall disclose that information on a freely accessible website or otherwise make it publicly available, until a delegated act adopted pursuant to paragraph 3 starts applying to the category of unsold consumer products discarded by the operator in question.

Justification

From the definition of “destruction” under Article 2, point 35, EVIA interprets that the definition exempts manufacturers of electrical and electronic equipment, subject to the WEEE Directive, from the requirements under Article 20. Manufacturers of electrical and electronic equipment are required to dispose of waste equipment via Producer Responsibility Organisations (PROs) under national implementation of the Directive, in order to ensure the proper treatment of waste electrical and electronic equipment. As such manufacturers of waste electrical and electronic equipment are required to deliver unsold electrical and electronic equipment to a PRO, which is an organisation to which a product is delivered for treatment in line with the Waste Framework Directive’s waste hierarchy, therefore including re-use and remanufacturing. It is therefore the PRO is an economic operator disposing of the unsold consumer products on behalf of the manufacturer of the unsold electrical and electronic equipment and is thus responsible for disclosing the information.

It is also understood that the definition of “destruction” would exempt unsold/unused spare parts stocked to fulfil so called material efficiency requirements under ecodesign.

Further, from the definition “consumer” in Article 2, point 36, which draws on that used in the Sale of Goods Directive, Directive (EU) 2019/771, it is interpreted that Article 20 requirements apply only to business-to-consumer (B2C) and not to business-to-business (B2B);

“consumer’ means any natural person who, in relation to contracts covered by this Directive, is acting for purposes which are outside that person’s trade, business, craft or profession;”.

MONITORING/REPORTING

Comments on Article 31 – Monitoring and reporting of economic operators

Commission proposal published on 30 May 2022	EVIA recommendations
<p>1. When requiring manufacturers, their authorised representatives or importers to make available to the Commission, information on the quantities of a product covered by delegated acts adopted pursuant to Article 4, third subparagraph, point (b), the Commission shall take into account the following criteria:</p> <p>(a) the availability of evidence on the market penetrations of the relevant product in order to facilitate the review of delegated acts adopted pursuant to Article 4 applicable to that product;</p> <p>(b) the need to avoid disproportionate administrative burden for economic operators.</p> <p>The Commission shall specify the period of time to which the information referred to in the first subparagraph shall relate. That information shall be differentiated per product model.</p> <p>The Commission shall ensure that the resulting data is processed securely and in compliance with Union law.</p> <p>The Commission shall specify in those delegated acts the means through which the relevant information shall be made available and its periodicity.</p>	<p>1. When requiring manufacturers, their authorised representatives or importers to make available to the Commission, information on the quantities of a product covered by delegated acts adopted pursuant to Article 4, third subparagraph, point (b), the Commission shall take into account the following criteria:</p> <p>(a) the availability of evidence on the market penetrations of the relevant product in order to facilitate the review of delegated acts adopted pursuant to Article 4 applicable to that product;</p> <p>(b) the need to avoid disproportionate administrative burden for economic operators.</p> <p>The Commission shall specify the period of time to which the information referred to in the first subparagraph shall relate. That information shall be differentiated per product model.</p> <p>The Commission shall ensure that the resulting data is processed securely and in compliance with Union law and that any publication of the resulting data by the Commission is aggregated.</p> <p>The Commission shall specify in those delegated acts the means through which the relevant information shall be made available and its periodicity.</p>
<p>Justification</p> <p>EVIA suggest that the Commission is required to ensure that any information on the quantities of a product sold (i.e. market data) is aggregated prior to publication. It short, it must not be possible to identify the sales volume of an individual manufacturer as this is confidential business</p>	

information. Under Article 31(3) the Commission would be required to aggregate in-use data prior to publication. EVIA suggest that it would be consistent to ensure that this is also the case for information on the “quantities of a product”.

Commission proposal published on 30 May 2022	EVIA recommendations
<p>2. When requiring a product to be able to measure the energy it consumes or its performance in relation to other relevant product parameters referred to in Annex I while in use, pursuant to Article 4, third subparagraph, point (c), the Commission shall take into account the following criteria:</p> <p>(a) the usefulness of in-use data for end-users to understand and manage the energy use or performance of the product;</p> <p>(b) the technical feasibility of recording in-use data;</p> <p>(c) the need to avoid disproportionate administrative burden for economic operators.</p> <p>Products covered by a requirement set pursuant to Article 4, third subparagraph, point (c), shall record the resulting in-use data and make it visible to the end-user.</p>	<p>2. When requiring a product to be able to measure the energy it consumes or its performance in relation to other relevant product parameters referred to in Annex I while in use, pursuant to Article 4, third subparagraph, point (c), the Commission shall take into account the following criteria:</p> <p>(a) the usefulness of in-use data for end-users to understand and manage the energy use or performance of the product;</p> <p>(b) the nature and volume of the data likely to be generated by the use of the product or related service;</p> <p>(c) the technical feasibility of recording in-use data taking into account cybersecurity, data protection and data storage;</p> <p>(d) the need to avoid disproportionate administrative burden for economic operators.</p> <p>Products covered by a requirement set pursuant to Article 4, third subparagraph, point (c), shall record the resulting in-use data and make it visible to the end-user.</p>
<p>Justification</p> <p>EVIA stresses that the implications of in-use monitoring and reporting requirements go beyond the direct costs of procuring, designing and incorporating sensors into a Technical Building System (TBS). Indeed, indirect costs associated with the provision of monitoring and reporting functionality far exceed the upfront cost of the sensor componentry. As such whilst EVIA welcomes Article 31(2)(c) requiring an assessment of</p>	

“the technical feasibility of recording in-use data”, EVIA emphasises that such an assessment must also consider vital elements related to the indirect costs, for example for data protection. However, predominantly these indirect costs are cybersecurity and data storage.

From a cybersecurity perspective, in order to collect and report the in-use data to the Commission, manufacturers will be required to integrate internet connection as default. Such a massive increase in Internet of Things/connected TBS would vastly and rapidly increase the size of the cyber-attack surface, proliferating vulnerabilities that could be exploited by cyber-criminals. EVIA acknowledges that the EU has adopted essential requirements for the cybersecurity of inter-connected devices, under the Radio Equipment Directive Delegated Regulation, which will become applicable from 1 August 2024. However, cybersecurity is an evolving threat to which essential requirements cannot be a perfect solution. Further, whilst manufacturers proactively implement ‘security-by-design’ principles, cyber risks cannot always be foreseen and prevented.

From a data storage perspective, in order to report in-use data to the Commission manufacturers will be required to gather, process and store enormous quantities of data, from millions of TBS. All this data will need to be securely stored, often in multiple locations, requiring an exponential increase in the demand for data centres, and thus emissions from data centre cooling. To fully consider the implications for data storage EVIA would further suggest an additional criterion under Article 31(2) namely to consider “the nature and volume of the data that is likely to be generated”, drawing on the Article 3(2)(a) of the Commission’s proposal for a data act. Thorough assessment of the periodicity of reporting/intervals of reporting to the Commission and to the end-user is essential to ensure proportionate data collection and thus data storage.

Commission proposal published on 30 May 2022	EVIA recommendations
<p>3. When requiring manufacturers, their authorised representatives or importers to collect, anonymise or report to the Commission in-use data referred to in paragraph 2, pursuant to Article 4, third subparagraph, point (d), the Commission shall take into account the following criteria:</p> <p>(a) the usefulness of in-use data for the Commission when reviewing ecodesign requirements or assisting market surveillance authorities with statistical information for their risk-based analysis;</p> <p>(b) the need to avoid disproportionate administrative burden for economic operators.</p>	<p>3. When requiring manufacturers, their authorised representatives or importers to collect, anonymise or report to the Commission in-use data referred to in paragraph 2, pursuant to Article 4, third subparagraph, point (d), the Commission shall take into account the following criteria:</p> <p>(a) the usefulness of in-use data for the Commission when reviewing ecodesign requirements or assisting market surveillance authorities with statistical information for their risk-based analysis;</p> <p>(b) the need to avoid disproportionate administrative burden for economic operators.</p>

<p>Such requirements referred to in the first subparagraph may in particular consist of:</p> <p>(a) collecting the in-use data if it can be accessed remotely via the internet, unless the end-user expressly refuses to make that data available;</p> <p>(b) anonymising the data collected under point (a) and report it to the Commission at least once a year. The economic operator shall include the product database identification number of the model as referred to in Article 12(5) of Regulation (EU) No 2017/1369 and, if relevant to their performance, geographical information on the products.</p> <p>The Commission shall specify the details and format for reporting the in-use data as referred to in the second subparagraph, point (b).</p> <p>4. The Commission shall periodically assess the in-use data received pursuant to paragraph 3 and shall, where appropriate, publish aggregated datasets.</p>	<p>Such requirements referred to in the first subparagraph may in particular consist of:</p> <p>(a) collecting the in-use data if it can be accessed remotely via the internet, unless the end-user expressly refuses to make that data available;</p> <p>(b) anonymising the data collected under point (a) and report it to the Commission at least once a year. The economic operator shall include the product database identification number of the model as referred to in Article 12(5) of Regulation (EU) No 2017/1369 and, if relevant to their performance, geographical information on the products;</p> <p>(c) access and use requirements in accordance with Articles 4, 5, 6 and 7 of Regulation (EU) XXXX/2022 [Data Act].</p> <p>The Commission shall specify the details and format for reporting the in-use data as referred to in the second subparagraph, point (b).</p> <p>4. The Commission shall periodically assess the in-use data received pursuant to paragraph 3 and shall, where appropriate, publish aggregated datasets.</p>
<p style="text-align: center;">Justification</p> <p>EVIA note that under the DPP Articles the Commission clearly address the important issue of differentiated access rights to the data that is to be stored in the DPP. However, under Article 31(3) requiring manufacturers to “collect, anonymise or report to the Commission in-use data” no provision is made to frame data access rights. Clearly, framing the access rights of various actors is essential to ensure data protection (for in-use performance data from TBS in residential settings can be revealing of private living patterns/habits) and to protect confidential business information. EVIA notes that access rights and their differentiation, are a defining feature of the Commission’s proposal for a Data Act. As such EVIA’s recommendation is that the provisions is added to Article 31(3) to ensure that the in-use performance data is aligned with the requirements in the Data Act.</p>	

CIRCUMVENTION

Comments on Article 33 – Circumvention

Commission proposal published on 30 May 2022	EVIA recommendations
<p>1. Products falling within the scope of a delegated act adopted pursuant to Article 4 shall not be placed on the market or put into service if they are designed to alter their behaviour or properties when they are tested in order to reach a more favourable result for any of the product parameters regulated in delegated acts adopted pursuant to Article 4 by which the products are covered.</p> <p>For the purposes of this paragraph, products designed to be able to detect they are being tested and automatically alter their performance in response and products pre-set to alter their performance at the time of testing shall constitute products designed to alter their behaviour or properties when they are tested.</p> <p>2. Economic operators placing a product covered by a delegated act adopted pursuant to Article 4 shall not prescribe instructions specific to testing that alter the behaviour or the properties of products in order to reach a more favourable result for any of the product parameters regulated in delegated acts adopted pursuant to Article 4 by which the products are covered.</p> <p>For the purposes of this paragraph, instructions leading to a manual alteration of the product before a test that alters the performance of the product shall constitute instructions specific to testing that alter the behaviour or the properties of products.</p> <p>3. Products falling within the scope of a delegated act adopted pursuant to Article 4 shall not be placed on the market or put into service if they are designed to alter their behaviour or properties</p>	

within a short period after putting the product into service leading to a worsening of their performance in relation to any of the product parameters regulated in delegated acts adopted pursuant to Article 4 by which the products are covered or their functional performance from the perspective of the user.

4. Software or firmware updates shall not worsen product performance in relation to any of the product parameters regulated in delegated acts adopted pursuant to Article 4 by which the products are covered or the functional performance from the perspective of the user when measured with the test method used for the conformity assessment, except with explicit consent of the end-user prior to the update. No performance change shall occur as a result of rejecting the update.

Software or firmware updates shall not worsen performance referred to in the first subparagraph to the extent that the product becomes non-compliant with the requirements set out in delegated acts adopted pursuant to Article 4 applicable at the time of the placing on the market or putting into service of the product.

Comment

EVIA welcomes the inclusion of an article dedicated to circumvention. Indeed, ‘Circumvention and software updates’ articles have been increasingly incorporated as standard in revisions of ecodesign implementing regulations; see the 2019 Winter Package revisions, including ENER LOT 5: Displays, ENER LOT 12: Commercial refrigeration, and ENER LOT 30: Motors. This approach was inspired by the EU funded [ANTICSS project](#). Ongoing revisions of ecodesign implementing regulations are following this approach of integrating dedicated ‘Circumvention and software updates’ articles. EVIA believes that this should remain the approach to circumvention for products covered by product-specific implementing regulations under the Ecodesign Regulation.

COMMON SPECIFICATIONS

Comments on Article 35 – Common specifications

Commission proposal published on 30 May 2022	EVIA recommendations
<p>1. The Commission may adopt implementing acts laying down common specifications for ecodesign requirements, the essential requirements for product passports referred to in Article 10 or for test, measurement or calculation methods referred to in Article 32, in the following situations:</p> <p>(a) it has requested one or more European standardisation organisations to draft a harmonised standard in relation to an ecodesign requirement or method that is not covered by a harmonised standard or part thereof, the references of which have been published in the Official Journal of the European Union, and there are either undue delays in the standardisation procedure or the request has not been accepted by any of the European standardisation organisations;</p> <p>(b) the Commission has decided in accordance with the procedure referred to in Article 11(5) of Regulation (EU) No 1025/2012 to maintain with restriction or to withdraw the references to the harmonised standards or parts thereof by which an ecodesign requirements or method is covered.</p> <p>Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(3).</p> <p>2. Test, measurement and calculation methods referred to in Article 32 which are in conformity with common specification or parts thereof shall be presumed to be in conformity with the requirements set out in that Article and with test, measurement and calculation</p>	<p>1. The Commission may adopt implementing acts laying down common specifications for ecodesign requirements, the essential requirements for product passports referred to in Article 10 or for test, measurement or calculation methods referred to in Article 32, in the following situations:</p> <p>(a) it has requested one or more European standardisation organisations to draft a harmonised standard in relation to an ecodesign requirement or method that is not covered by a harmonised standard or part thereof, the references of which have been published in the Official Journal of the European Union, and there are either undue delays in the standardisation procedure or the request has not been accepted by any of the European standardisation organisations.</p> <p><i>Before beginning the process to adopt implementing acts for test, measurement or calculation methods the Commission must request a reasoned opinion from the committee established pursuant to Article 22 of Regulation (EU) No 1025/2012, which must consult with the European standardisation organisations.</i></p> <p>(b) the Commission has decided in accordance with the procedure referred to in Article 11(5) of Regulation (EU) No 1025/2012 to maintain with restriction or to withdraw the references to the harmonised standards or parts thereof by which an ecodesign requirements or method is covered.</p>

<p>requirements set out in delegated acts adopted pursuant to Article 4 to the extent that those requirements are covered by such common specification or parts thereof.</p> <p>3. Products which are in conformity with common specifications or parts thereof shall be presumed to be in conformity with ecodesign requirements set out in the delegated act adopted pursuant to Article 4 by which those products are covered to the extent that those requirements are covered those common specifications or parts thereof</p>	<p>Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 67(3).</p> <p>2. Test, measurement and calculation methods referred to in Article 32 which are in conformity with common specification or parts thereof shall be presumed to be in conformity with the requirements set out in that Article and with test, measurement and calculation requirements set out in delegated acts adopted pursuant to Article 4 to the extent that those requirements are covered by such common specification or parts thereof.</p> <p>3. Products which are in conformity with common specifications or parts thereof shall be presumed to be in conformity with ecodesign requirements set out in the delegated act adopted pursuant to Article 4 by which those products are covered to the extent that those requirements are covered those common specifications or parts thereof.</p>
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Justification

Test, measurement and calculation methods are the foundations for the successful implementation of product-specific ecodesign implementing regulations. It is essential that they are verifiable, reproducible and that the results are comparable. Robust calculation methodologies are development under the auspices of the European Standardisation System (ESS). Under the ESS standards are developed by drawing on the technical expertise of industry experts. Standards developed by the European Standardisation Organisations (ESO) – CEN, CENELEC and ETSI – can become harmonised standards (hENs) on the recommendation of the Commission. hENs can then be used to underpin presumption of conformity in respect to compliance verification with the relevant Union harmonisation legislation.

EVIA recognises that delays occur in standardisation activity. However, EVIA does not believe that the solution to delays are to empower the Commission to set “common specifications” for test, measurement and calculation methods in lieu of standards. Delays occur partly because of the technical nature of the work, but also from bureaucratic/administrative obstacles within the ESOs, and with the Commission. As such it can be extremely difficult to ascertain whether delays in a standardisation procedure are “undue delays”. It is also possible for an ESO to reject a Commission standardisation request (sReq) for legitimate reasons.

As such EVIA does not support the Commission’s empowerment to adopt “common specifications” without thorough democratic scrutiny of its decision to begin work on an implementing act. EVIA recommends that it be mandatory for the Commission to request a reasoned opinion from the Committee on Standards established under the Standardisation Regulation (EU) No 1025/2021, comprised of Member State representatives, prior to commencing work on a “common specification”.

MARKET SURVEILLANCE

Comments on Article 59 – Market surveillance actions plans

Commission proposal published on 30 May 2022	EVIA recommendations
<p>1. Without prejudice to Article 13 of Regulation (EU) 2019/1020, each Member State shall, at least every 2 years, draw up an action plan outlining the market surveillance activities planned to ensure that appropriate checks are performed on an adequate scale in relation to this Regulation and the delegated acts adopted pursuant to Article 4. Each Member State shall draw up the first such action plan by [16 July 2024].</p> <p>The action plan referred to in paragraph 1 shall at least include:</p> <p>(a) the products or requirements identified as priorities for market surveillance, taking into account the common priorities identified by the administrative cooperation group pursuant to Article 62(1), point (a), and in accordance with the implementing acts referred to in paragraph 5;</p> <p>(b) the market surveillance activities planned in order to reduce non-compliance for those products or requirements identified as priorities, including the nature and minimum number of checks to be performed during the period covered by the action plan.</p>	<p>1. Without prejudice to Article 13 of Regulation (EU) 2019/1020, each Member State shall, at least every 2 years, draw up an action plan outlining the market surveillance activities planned to ensure that appropriate checks are performed on an adequate scale in relation to this Regulation and the delegated acts adopted pursuant to Article 4. Each Member State shall draw up the first such action plan by [16 July 2024].</p> <p>The action plan referred to in paragraph 1 shall at least include:</p> <p>(a) the products or requirements identified as priorities for market surveillance, taking into account the common priorities identified by the administrative cooperation group pursuant to Article 62(1), point (a), and in accordance with the implementing acts referred to in paragraph 5;</p> <p>(b) the market surveillance activities planned in order to reduce non-compliance for those products or requirements identified as priorities, including the nature and minimum number of checks to be performed during the period covered by the action plan;</p> <p><i>(c) the customs surveillance activities planned in order to support market surveillance activities;</i></p>

2. The priorities for market surveillance referred to in paragraph 1, point (a), shall be identified on the basis of objective criteria, including:

- (a) the levels of non-compliance observed in the market;
- (b) the environmental impacts of non-compliance;
- (c) the number of relevant products made available on national markets; and
- (d) the number of relevant economic operators active on those markets.

3. The nature and number of checks planned pursuant to paragraph 1, point (b), shall be proportionate to the objective criteria used to identify the priorities in line with paragraph 2.

4. Member States shall communicate their action plans to the Commission and other Member States through the information and communication system referred to in Article 34 of Regulation (EU) 2019/1020.

5. The Commission may adopt implementing acts listing the products or requirements that Member States shall at least consider as priorities for market surveillance pursuant to paragraph 1, point (a).

Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 67(2).

(d) information on the appropriate financing, support measures and other instruments necessary for the Member State to conduct the planned market surveillance activities, including the minimum number of checks to be performed during the period covered by the action plan.

2. The priorities for market surveillance referred to in paragraph 1, point (a), shall be identified on the basis of objective criteria, including:

- (a) the levels of non-compliance observed in the market;
- (b) the environmental impacts of non-compliance;
- (c) the number of relevant products made available on national markets; and
- (d) the number of relevant economic operators active on those markets.

3. The nature and number of checks planned pursuant to paragraph 1, point (b), shall be proportionate to the objective criteria used to identify the priorities in line with paragraph 2.

4. Member States shall communicate their action plans to the Commission and other Member States through the information and communication system referred to in Article 34 of Regulation (EU) 2019/1020.

5. The Commission may adopt implementing acts listing the products or requirements that Member States shall at least consider as priorities for market surveillance pursuant to paragraph 1, point (a).

	Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 67(2), following consultation with the expert group established pursuant to Article 17.
<p style="text-align: center;"><i>Justification</i></p> <p>EVIA welcomes the Commission’s intentions to improve market surveillance. Non-compliance erodes the emissions savings and environmental improvements in delivery of the European Green Deal’s objectives, that are the promise of ecodesign implementing regulations. Truly delivering on ecodesign’s promise is impossible without verification by Member State Market Surveillance Authorities (MSA).</p> <p>EVIA would note that market surveillance does not only cover enforcement activities conducted internally to the Internal Market. Indeed, customs surveillance is a vital part of effective enforcement of the Internal Market. As such it would be prudent to require Member States to consider custom surveillance in their action plans.</p> <p>Whilst EVIA believes that the requirements under Article 59 for the Member States to adopt action plans on a biennial basis is a positive development, EVIA notes that such a measure does not automatically resolve the fundamental deficiencies in the enforcement of the EU’s Internal Market, chiefly underfunding and understaffing. Member States must define action plans that are fully funded. As such the Member States should be required to detail how their action plan is to be funded and how much will be allocated to specific actions under Article 59(1).</p> <p>EVIA also supports the Commission’s empowerment to adopt implementing acts listing the products that the Member States must as a minimum consider as a priority. However, EVIA would recommend an amendment to Article 59(5) to ensure that the Commission consults with the industry experts in the ‘Ecodesign Forum’ on the prioritisation of products.</p>	

About EVIA

The European Ventilation Industry Association (EVIA) was established in Brussels in July 2010. EVIA's mission is to represent the views and interests of the ventilation industry and serve as a platform between all the relevant European stakeholders involved in the ventilation sector, such as decision-makers at the EU level as well as our partners in EU Member States.

Our membership is composed of more than 40 member companies and 6 national associations across Europe realising an annual turnover of over 7 Billion Euros and employing more than 45,000 people in Europe.

EVIA aims to promote highly energy efficient ventilation applications across Europe, with high consideration for health and comfort aspects. Fresh and good indoor air quality is a critical element of comfort and contributes to keeping people healthy in buildings.

For more information, see www.evia.eu.