



## **ETSY'S INITIAL FEEDBACK ON THE THE PROPOSAL FOR A NEW ECODESIGN FOR SUSTAINABLE PRODUCTS REGULATION (ESPR)**

*August 2022*

### **ABOUT ETSY**

Etsy is a global marketplace for unique and creative goods. Our mission is to keep commerce human and we're committed to using the power of business to strengthen communities and empower people. Our marketplace provides a platform to enable a global community of sellers to market and sell their goods to buyers around the world, who come to Etsy to be inspired and delighted by items that are crafted and curated by creative entrepreneurs.

Etsy is a marketplace that represents microbusinesses, usually shops of one, selling handmade, vintage, and second hand goods. Overall, there are nearly 826,000 active Etsy sellers in the European Union. Notably, across our major European markets (France, and Germany), 79-82% of our sellers are women, 73-91% of sellers are businesses of one, nearly all (92-93%) run their creative businesses out of their homes, and 39%-41% live in rural areas<sup>1</sup>.

### **INTRODUCTION**

Etsy welcomes the opportunity to provide our initial feedback on the European Commission's proposal for a Regulation on ecodesign for sustainable products (ESPR). We appreciate the Commission's goal to harmonize ecodesign requirements across the EU, whilst striving for a more environmentally-conscious Single Market for consumer goods.

We believe that in order to fully realize the Commission's ambition in reducing the negative life cycle environmental impacts of products whilst promoting the growth of the circular economy for Small and Medium Enterprises (SMEs), it is imperative that any upcoming measure avoids imposing onerous compliance and trade burdens on small businesses, in particular microbusinesses. Enabling small businesses to sell online is crucial, especially as part of the EU's post-COVID pandemic recovery measures, as these businesses contribute significantly to the EU's economic recovery and growth.

Etsy believes that we have a responsibility to help protect small sellers that are often overlooked by other stakeholders and ensure they remain competitive with their much larger counterparts in the fast changing regulatory environment in the European Market. Our main priority is to support a revised legal framework for ecodesign requirements which allows for a more consistent and effective implementation of EU law throughout the Single Market, without discouraging small businesses, in particular microbusinesses, from selling online. To this end, we submit the following comments and recommendations.

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<sup>1</sup> [2021 Global Seller Census](#)

## **ETSY'S FEEDBACK ON THE ESPR**

We are encouraged to see that the Commission's ESPR proposal shares our imperative of supporting and promoting the growth of SMEs. This sentiment is reflected in certain parts of the proposal, creating caveats and exemptions in an attempt to protect the needs of small businesses. We would, however, like to take this opportunity to further expand on some areas where amendments can be made to ensure that microbusinesses are not adversely impacted by an effort to control the negative externalities created by the unsustainable business practices of large multinational corporations.

### **1. Supporting Microbusinesses by introducing De-Minimis Threshold**

The EU classifies "microbusinesses" as an enterprise of less than 10 individuals, or under a 2 million turnover. The vast majority of sellers on platforms such as ours fall under this classification. These sellers are producers of creative and bespoke goods, often shops of one, predominantly operating from their homes. The needs of a one-person business may already differ drastically from that of 20 person businesses. Given the size of a microbusiness it is a fair assumption that these operators are not contributing to the negative externalities of production that the ESPR is attempting to control. Alternatively, by imposing the stringent compliances under the ESPR on microbusinesses the regulation will result in creating an environment where small scale sellers will become increasingly uncompetitive and allow the European market to be overwhelmed by large multinationals that can accommodate the increase in the costs of administrative compliance due to economies of scale.

In line with the above, we believe certain stringent requirements posed on manufacturers (e.g. Digital Product Passport) under this proposal should exclude microbusinesses, in particular under a *de minimis* threshold, to avoid creating an uncompetitive environment. This would be the most effective approach to ensure that there is no disproportionate negative impact on microbusinesses in particular as stated in Article 5(d).

### **2. Exempting small-batch handmade items from the ESPR's Digital Product Passport requirement**

Article 8(4) and corresponding Recital 29 state that the Commission "*should be allowed to exempt product groups from the product passport requirements in case technical specifications are not available in relation to the essential requirements for the technical design and operation of the product passport*". Given the unique nature of handmade and bespoke products, we would hereby like to suggest craft and handmade products be explicitly considered a product group to be exempted from all requirements under this Regulation, including the Digital Product Passport. We would posit two arguments for this exemption:

- (1) Handmade products in their essence are unique and generally produced in small quantities if not in units of 1. Expecting sellers to manually create a unique product passport for such goods will prove to be burdensome, given the additional raw material, time and skill required to comply and the inability to do so in a scalable manner given the

bespoke nature of the product itself. This exemption should go hand-in-hand with the scale of production of the seller, and apply to small-batch manufacturers of artisan and handmade products.

- (2) Handmade goods are often made from repurposing old products or embellishing old products, therefore we think it imperative to continue adapting the definition and scope on compliances for operators according to the impact of their production styles.

As a pure third-party marketplace, we nonetheless generally strive to encourage our sellers to include as much pertinent information in their listings about their products. We therefore also call for the Commission's support in providing educational resources tailored to handmade sellers' unique circumstances when selling online. This will help these small businesses grow, support their local economies, and offer greater choice to EU consumers. We welcome the opportunity to introduce the nuances of handmade products more closely by introducing you to some of our sellers should that be informative as the Commission examines the specificities of certain product groups during the consultation phase for the delegated acts.

### **3. Acknowledging second hand goods are part of a different supply chain**

Given that the ESPR's goal is to promote the circularity of products and encourage a longer lifespan of the goods being put on the EU market, Etsy would posit that differences between brand-new products and second hand goods (e.g. vintage products) need to be taken into account in this regulation. The ESPR will hopefully allow, in the long term, for end consumers to be able to access product information for both first and second hand goods. However, we believe this goal will realistically only be achieved in a gradual process, once digital product passports are widely adopted for all *new* products first. Until then, it's important to acknowledge that the supply chain of brand new products and second hand products is significantly different, while the brand new products begin from a source where an in depth understanding of raw material sourcing and efficiency can be gauged by the producer, second hand products owners are not privy to the same information. For example, a French vintage seller selling leather jackets on Etsy procures these jackets from thrift stores and auctions and then proceeds to place them on the EU marketplace, while a jacket manufacturer would be able to provide a breakdown of raw materials, durability and other such details, the French Etsy seller will be unable to do so given her position in the value chain. Acknowledging this difference and the impact on informational access for second-hand products, the ESPR should consider revisiting the demands from second-hand and vintage traders listing a product on platforms.

Additionally, the requirement for products that were placed on the market before the passing of the ESPR needs to be clarified. Retroactively placing such a compliance on products placed on the market is unfeasible, and by extension requiring second hand sellers to comply with information that the original manufacturer of the product no longer has is impossible.

All in all, we believe that it is necessary to adapt the legal definitions as well as the requirements for economic operators according to their role in the supply chain of second-hand, and to allow some flexibility in provisions for providing such information. This differentiation will keep encouraging the marketing of second-hand products and hence truly contribute to a circular economy.

#### **4. Preserving online marketplaces' intermediary role**

We welcome the fact that the Commission's approach to online marketplaces liability within the EPSR proposal rightly upholds the Ecommerce Directive principles, and is in line with the DSA. We absolutely believe that marketplaces have a responsibility to help towards improved product compliance in the EU, but also believe those obligations should be aligned with their capabilities, knowledge, and the role they play in the market.

Intermediary liability protections in particular enable smaller platforms like Etsy to operate at scale and offer opportunities to entrepreneurs around the globe. Without such protections, Etsy could be forced to screen every item before allowing it on our site, a resource-intensive activity that would be impossible to automate in many circumstances, given the diversity of products, shops and seller locations on Etsy. It's important to note once again that most of the +120M items for sale on Etsy are handmade or vintage items, not mass market goods.

#### **CONCLUSION**

Etsy remains committed to contributing to a more environmentally-conscious Single Market for consumer goods, and to being a collaborative partner to policymakers seeking to find pragmatic solutions to the collective challenges we face. We are hopeful our experiences and suggestions are useful as policymakers consider these difficult and complex problems, and offer ourselves up as a resource and partner in developing new solutions to foster a circular e-commerce that ensures small entrepreneurs and microbusinesses continue to thrive in the Single Market.

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