Cosmetics Europe Position Paper on the Ecodesign for Sustainable Products Regulation Proposal & its provisions on Unsold Consumer Products

1. Introduction

Cosmetics Europe represents the cosmetics and personal care industry in Europe. The vast majority of Europe's 500 million consumers use cosmetic and personal care products every day. Ranging from dermo-cosmetics, antiperspirants, fragrances, make-up and shampoos, to soaps, sunscreens and toothpastes, these products play an essential role in all stages of our life, contributing to their quality of life, health, hygiene and mental well-being, self-esteem, and social interaction.

We **support** the proposal for an Ecodesign for Sustainable Products Regulation (ESPR) and its **objective to reduce the environmental impact of products** and to **improve the functioning of the internal market.** In particular, Cosmetics Europe supports the ESPR **objective to promote material loops and circularity by putting an end to the unjustified destruction of unsold consumer products**.

2. Responsible management of unsold consumer products

We would like to highlight our industry commitment to finding alternatives to the destruction of goods that consider the specificity of our products.

For several years, cosmetic companies have been implementing programs promoting the circularity of unsold cosmetic products and have established, where feasible, close collaboration with charities to donate to people in need. However, donation can be a solution only for certain types of products and when these continue to meet the required hygiene and safety standards. In other cases, other alternatives such as reuse, recycling and other forms of recovery (e.g., upcycling) can be opted for.

Examples of the cosmetics and personal care industry unsold goods management practices:

> *Donation*
> - According to the November 2021 French Agency for Ecological Transition (ADEME) report (link to the report), for many years in France, the cosmetic and personal care sector has been the leading sector for non-food donations. As an example of donation initiatives, the FEBEA (French Fédération des Entreprises de la Beauté), which represents 95% of the cosmetics sector in France, has joined forces with the French association "Dons Solidaires" in a solidarity operation (for more information) to fight hygiene precariousness and ensure that the most vulnerable can have access to as many products as possible. Initiatives of this kind show a responsible approach that makes it possible to meet the need for solidarity, while avoiding the destruction of unsold products, in line with the commitment to promote material loops and circularity.
> - Our companies also donate products for other social causes: for example, to support Look Good Feel Better (link to the website), a charity dedicated to improving the self-esteem, confidence and well-being of women and teenagers undergoing cancer treatment through free group and self-help skincare and make-up workshops. The service is available in 26 countries worldwide and over 1.87 million people have been supported to date. The charity is supported by over 50 leading companies and brands from the cosmetics industry.

> **_Reuse & Recycling_**
> - An example of reuse and recycling is OASHE - a project created by students from the IPAG business school that won the 2019 "Sustainable Beauty Challenge" organised by Cosmetic 360 and sponsored by LVMH, and whose theme was "responsible beauty". The idea was to recreate perfumes from old juices. Interested in this concept, Guerlain accompanied these students in a mentoring programme to bring their project to life: recovering perfume juices from the sorting centre before the bottles are recycled, and thus creating their own OASHE perfume line (for more information).

> **_Upcycling_**
> - In 2021, the Swiss designer Kevin Germanier, inventor of a new technique of silicone embroidery that gives new life to Swarovski crystal scraps, created for Guerlain the sparkling adornment of the Flacon aux Abeilles, made by Pochet du Courval - Guerlain's historic glassmaker. Made of crystal scraps in raspberry and pistachio colors, this creation is part of an eco-responsible up-cycling approach: a meeting between contemporary luxury, the arts and sustainable development (for more information).

3. Definitions: "unsold consumer products" and "destruction"

- **Definition of "unsold consumer products" - Art 2 (37)**

Cosmetics Europe is calling **for the revision of the proposed Commission definition of "unsold consumer products" to provide legal consistency and certainty, and to ensure that the framework foreseen by the European legislator is workable and effective.**

The concept of "unsold consumer products" must only cover products that are fit <u>for consumption and for sale and should clearly be distinguished from the notion of "waste",</u> which includes products that are required to be discarded. Understandably, cosmetic products that are not compliant with the safety requirements of the Cosmetic Product Regulation must be withdrawn from the market, as is for example the case of counterfeits, and cannot be considered as "unsold goods" to be made available to consumers. This clarification should be enshrined as an overarching principle in the ESPR Regulation itself.

- **Definition of "destruction" – Art 2 (35)**

The definition of "destruction", as proposed in the ESPR, is currently not in line with the "waste hierarchy" as outlined in Art. 4 of the Waste Framework Directive (link). To ensure alignment, the ESPR definition of "destruction" should not only mention "re-use and remanufacturing" as exceptions to destruction, but also "recycling and other recovery (e.g., energy recovery)".

4. Reporting requirements of unsold consumer products

Cosmetics Europe acknowledges the two-step approach to first mandate economic operators to disclose the quantity of unsold consumer products discarded and, afterwards, to prohibit the destruction of unsold consumer products in the sectors where this practice is more wide-spread and unjustified.

However, given the sensitivity of this data from a business and competition point of view, the reporting requirements foreseen should aim to be meaningful for the regulatory framework and, hence, be exclusively tailored to the needs of the Commission for the implementation of sectoral bans in the future. For this reason, information about unsold consumer products should only be made available to the Commission, upon its request, for this sole purpose. Transparency of companies' practices can be addressed in the context of the Commission delegated acts: this would ensure that the specificity of the wide diversity of products is considered.

It is also important that economic operators are provided with adequate time necessary to comply with the reporting requirements. This time is essential for companies to adapt their systems to account for the appropriate requirements in line with the Regulation, so that better enforceability is ensured.

5. Ban adoption on the destruction of unsold consumer products and flexibility on the alternatives to destruction

Concerning the potential bans on the destruction of unsold consumer products, it is in Cosmetics Europe's view essential to provide companies with the flexibility to choose the alternatives to destruction that best suit the characteristics of their products, bearing in mind that donation is not always feasible due to health and safety requirements or to other concerns. In this way, companies can leverage the technological solutions and recycling capabilities that are available to them and manage unsold goods in the most sustainable and cost-effective manner. It is important to already set out this flexibility at the ESPR legal framework stage, by clearly outlining what is defined as an exemption to destruction and, hence, exempted from a future potential ban, as per our suggested amendment to Art 2(35).

> **Please note:** Should it be decided, following the legislative process, that a ban for all sectors is needed upfront directly in the Regulation, then there would be no point in setting out and implementing a reporting mechanism. Indeed, the sole intended scope of reporting requirements is to inform the Commission on which sectors need a ban before proceeding to the ban itself. If a ban upfront in the Regulation is decided, Article 20 (1) and any reference to reporting requirements should be deleted. Having both a reporting mechanism and a ban upfront directly in the Regulation would not only miss the point of the Commission intended two-step approach, but also bring unnecessary and unduly regulatory burdens and costs on companies.

In any case, it is important that economic operators are provided with the adequate time necessary to implement a ban. This time is essential for companies to adapt their systems to account for the appropriate requirements in line with the Regulation, so that better enforceability is ensured.

6. <u>Other general aspects</u>

Cosmetics Europe supports the ESPR approach of establishing a horizontal regulatory framework, followed by delegated acts by product group, as it allows for product specificities to be taken into consideration. We also support the definitions of 'making available' (Recital 39) and 'placing on the market' (Recital 40), since they promote legal clarity by being consistent with our sectoral legislation, the EU Cosmetic Product Regulation (CPR), and the 'Blue Guide' on the implementation of the EU product rules. Furthermore, we strongly support the upholding of the General Internal Market principle, as currently embedded in the ESPR proposal.

To further enhance legal clarity, the ESPR should also promote consistency and avoid duplication by considering the upcoming revisions of horizontal and sectorial regulations, arising from European Green Deal pillars (e.g. under the Chemicals Strategy for Sustainability (CSS) and the New Circular Economy Action Plan (CEAP)).

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