

Commentary on the Leaked Draft of the European Product Act

Four Critical Issues Threatening the Single Market

25.09.2026

Ahead of the anticipated official publication of the European Product Act (EPA) in early October, our initial analysis of the leaked draft has identified several areas requiring critical attention. While there are further points to be raised in due course, we are currently highlighting four major concerns in the draft that threaten to undermine both the established New Legislative Framework (NLF) and practical market operations.

1. The Contradictory Expansion of "Essential Requirements"

The leaked draft introduces a fundamental structural contradiction regarding the protection of public interests and diverges significantly from Decision No 768/2008/EC. Under the original Article 3 of the Decision, legislation is designed to *"restrict itself to setting out the essential requirements determining the level of such protection and shall express those requirements in terms of the results to be achieved."*

The EPA leak attempts to mirror this in its proposed Article 7, stating that legislation shall *"restrict itself to setting out the essential or other substantive requirements determining the level of protection of public interests and shall express those requirements in terms of the results to be achieved."*

However, this goal-oriented approach is directly undermined by the EPA's new definition of these requirements in Article 4(9). Here, the draft defines them as binding rules *"irrespective of how they are designated and whether they are expressed as objectives, performance requirements, or detailed specifications."*

By explicitly defining "essential requirements" to include *"performance requirements, or detailed specifications,"* the draft contradicts its own mandate in Article 7 to express requirements as results to be achieved. High-level protective goals should not be conflated with granular technical rules. This will inevitably render future legal acts significantly more complex and convoluted.

We urge the Commission to return to the original wording of the Decision No 768/2008/EC, because the current wording would constitute a return to the "old approach" from before 1985.

2. The Unworkable Broadening of "Substantial Modification"

A second major concern lies in the newly proposed definition of a "*substantial modification*" in Article 4(22) of the leaked EPA draft. The text departs from established and precise definitions in favour of a dangerously broad threshold.

For comparison, Article 3(16) of the Machinery Regulation provides a clear and practicable definition. It defines a substantial modification strictly around safety, requiring that an unforeseen change affects safety "*by creating a new hazard, or by increasing an existing risk, which requires*" specific physical interventions, such as "*the addition of guards or protective devices*" or "*the adoption of additional protective measures*."

In stark contrast, Article 4(22) of the EPA leak defines it as a modification that affects safety or other essential requirements by creating or increasing a risk, "*or by having an impact in the performance of the product*."

This addition is highly problematic. Linking a substantial modification merely to an "*impact in the performance*" creates an unmanageable and disproportionate legal trigger. Under this vague wording, almost any minor alteration runs the immediate risk of being classified as a substantial modification. This includes standard repair or maintenance tasks that may affect performance. Such a broad scope could trigger a new and burdensome conformity assessment for everyday interventions.

We urge the Commission to refrain from expanding the definition of “substantial modification” and to return to its original approach.

3. The Return of Mandatory “Paper Instructions”

A third critical concern relates to Article 12(11), which would require complete instructions for use and essential safety or other public interest-related information, to be provided on paper or marked on the product. This requirement would apply both to products intended for consumers and to professional products that could reasonably be expected to be used by consumers, even where they are not intended for consumers. This would represent a major regulatory and environmental setback.

The proposed obligation would reverse the progress achieved under Omnibus IV and go beyond both the current legal framework and recently adopted EU legislation. Existing Commission guidance in the Blue Guide recognises that complete instructions may be provided electronically, while the Machinery Regulation permits digital instructions and limits mandatory paper provision to information essential for safe use. The EPA shall not establish a horizontal full-paper requirement that would be more restrictive than these established approaches.

The practical consequences would be considerable. For complex products, instructions covering use, maintenance, repair and spare parts can comprise hundreds of pages in several languages. Mandatory printing would increase paper consumption and create additional burdens related to transport, storage, waste and version-control, while outdated information could remain in circulation. At the same time, more paper does not automatically provide better or safer information. Extensive multilingual manuals can obscure essential warnings, whereas digital information can be updated, searched, filtered and presented in a product- and language-specific manner.

Article 12(11) should therefore make clear that instructions for use may be provided electronically and limit mandatory paper provision to essential safety information for products intended for consumers. References to “other public interest-related information” should be deleted from the paper-based information requirements, and their application to products not intended for consumers should be removed.

We urge the Commission to preserve digital instructions as the default and to limit mandatory paper provision to essential safety information for products intended for consumers. The European Product Act must not become a European Paper Act.

4. The Missing Horizontal Exemption for Spare Parts

A fourth critical concern is the complete absence of a horizontal exemption for spare parts. Without such a provision, an identical component needed to repair or refurbish an older product may have to comply with requirements introduced only after the original product was placed on the market. In many cases, redesigning the spare part would make it incompatible with the original product and render repair technically impossible or economically unviable.

The EPA should therefore establish a horizontal “repair-as-produced” principle across the NLF. Article 2(6) of the Cyber Resilience Act provides an appropriate model by excluding spare parts intended to replace identical components and manufactured according to the same specifications. A corresponding horizontal provision should ensure that such spare parts remain subject to the legal requirements that applied when the original product was placed on the market, provided that they are manufactured according to the same specifications and do not pose significant risks. This is essential to enable repairs, refurbishment, longer product lifetimes and a functioning circular economy.

We urge the Commission to introduce a horizontal exemption for spare parts based on the “repair-as-produced” principle. Without it, the EPA will undermine repair and refurbishment rather than support the transition to a circular economy.

About the BDI

The BDI represents the interests of German industry to political decision-makers. In doing so, it supports companies in global competition. It has an extensive network in Germany and Europe, in all important markets and in international organisations. The BDI provides political support for international market development. It also offers information and economic policy advice on all industry-related topics. The BDI is the umbrella organisation for German industry and industry-related service providers. It represents 38 industry associations and more than 100,000 companies with around eight million employees. Membership is voluntary. Fifteen regional offices represent the interests of industry at the regional level.

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