



## Roadmap on consumer policy – strengthening the role of consumers in the green transition

August 2020

### Introduction

1. ISFE shares the European Commission's conviction that achieving a more sustainable economy by tackling climate change is one of the most critical challenges of the 21<sup>st</sup> century and welcomes the opportunity to contribute to the roadmap consultation on the review of the consumer policy. The video games sector has taken numerous initiatives to provide clear and detailed information to its consumers and is continuously striving to improve the durability of its devices and services.

### About ISFE

2. ISFE represents the video games industry in Europe and is based in Brussels, Belgium. Our membership comprises of national trade associations in 18 countries across Europe which represent in turn thousands of developers and publishers in the member states. ISFE also has direct members, the leading console manufacturers and European and international video game companies, many of which have studios with a strong European footprint. They produce and publish interactive entertainment and educational software for use on personal computers, game consoles, portable devices, mobile phones and tablets.
3. ISFE's purpose is to serve Europe's video games ecosystem by ensuring that the value of games is widely understood and to promote growth, skills, and innovation policies that are vital to strengthen the video games sector's contribution to Europe's digital future. The video games sector represents one of Europe's most compelling economic success stories. Relying on a strong IP framework, the sector is a rapidly growing segment of creative industries. In 2019, the size of Europe's video games industry was €21 billion and registered a growth rate of 55% over the past 5 years in European key markets<sup>1</sup>. Video games have a proven ability to successfully drive new business models. The digital transformation with the growth of online and app-based gaming represents today 76% of the industry's total European revenue. Via the launch of new high-performance consoles and the strong growth of mobile gaming, the industry offers players across Europe and in all age groups the possibility to enjoy and engage with video games<sup>2</sup>. Today 51% of Europe's population plays videogames, which is approximately 250 million people, and 54 % of the players regularly play on consoles.

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<sup>1</sup> ISFE Key Facts 2020 from GameTrack Data by Ipsos MORI and commissioned by ISFE <https://www.isfe.eu/isfe-key-facts/>.

<sup>2</sup> See also <https://www.isfe.eu/data-key-facts/>

## Early obsolescence is not a viable business model for the video games sector

4. Games consoles are the gateway to entertainment for more than 135 million players in Europe. Video games console manufacturers<sup>3</sup>, video game developers and publishers strive to ensure that their products offer the highest quality and standards possible to ensure that players enjoy their gaming experiences. Durability and a high degree of quality control are also parts of such quality standards that a player can safely expect when he or she purchases a console or video game.
5. Console manufacturers design consoles to have a long life as their economic model is based on the sale of games more than on the sale of consoles. There is an economic incentive to extend console life allowing the user to continue to purchase more games without having to spend money on replacement consoles or repairs.
6. Each console has its own technical specificities, such as unique hardware, operating system (OS), and different features. Due to these differences, developing a game for a specific console takes time and resources that are usually limited for the video game developer, and especially for small studios. Developers will first choose on which console they would like to release their game based on various criteria, such as, but not only, computing power, technological innovation, but also durability so that players can continuously enjoy their games without experiencing any hardware failures.
7. In addition, it is not unusual for publishers to release games on older devices as these can still be operational and have consumers using them also decades after their release. For example, in 2019 Ubisoft released its latest iteration of Just Dance, *Just Dance 2020*, on the Nintendo Switch, the Wii U, but also on the Wii, a console released in 2006 and not commercially in circulation since 2013<sup>4</sup>.
8. Given the complex nature of consoles, console manufacturers regularly do maintenance and security updates to ensure continuity of service. Also, when a new generation of consoles are released, they continue to update their older devices for several years so that consumers can safely continue enjoying their games, even if they do not purchase a new device. Last November, Microsoft updated the operating system of Xbox 360<sup>5</sup>, a console originally released in Europe in 2005.
9. Video-game developers and publishers update and maintain their products to high standards of quality and stability as a business imperative. Over the last decade, the business model for video games has shifted from one through which consumers purchased and played a static game to a business model through which additional updates and content regularly evolve gameplay after the initial purchase. These updates and services are generally designed to extend and enhance the gameplay experience, provide value to the consumer, and include technical updates and “patches<sup>6</sup>” as well as content updates. Maintaining a technologically secure and stable gameplay environment that meets or exceeds player expectations is critical to business success, and developers and publishers regularly release updates that patch and repair gameplay environments to maintain or increase engagement with their products and services. For example, since its launch in September

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<sup>3</sup> Microsoft, Nintendo and Sony Interactive Entertainment

<sup>4</sup> <https://www.mcvuk.com/business-news/just-dance-2020-might-be-the-last-game-released-on-nintendo-wii/>

<sup>5</sup> Patchnote available here : <https://support.xbox.com/help/xbox-360/console/system-update-operating-system>

<sup>6</sup> “Patches” are updates that usually fix bugs and/or bring new content to the game. Most of those “patches” are free of charge for the consumer and are part of the service video game studios continuously ensure to provide quality content to players.

2014, Electronic Arts Inc. has released dozens of updates to *The Sims 4*, many of which fix bugs, solve errors or otherwise repair the gameplay environment<sup>7</sup>. As a result of the focus on continuous updates, the community around the game continues to grow, even 5 years after its launch date. These business results incentivise developers and publishers to continue allocating resources to maintaining a quality and stable gameplay environment which alleviates any concerns around early obsolescence.

## **Video game consoles manufacturers provide clear and detailed information to its consumers**

### ***On repairability opportunities***

9. Console manufacturers recognise the importance for consumers to have access to durable goods that can easily be repaired when malfunctioning. Under the [Games Consoles Voluntary Agreement](#) (see point 14 below), they offer consumers the possibility to repair and/or refurbish consoles in authorised repair centres during the commercial guarantee period. They also offer an out-of-warranty repair service to ensure access to repair over the entire lifetime of a console.
10. Every console manufacturer provides clear and detailed information concerning their product's repairability opportunities in its commercial guarantee, directly available at the point of purchase. Such information includes conditions under which a consumer can request a repair or refurbishment of the product, as well as any specific procedures needed to be followed to ensure a quality repair by an authorised repair centre without damaging the product owner's commercial rights.
11. Authorised repair centres ensure repairs meet the required quality and safety standards expected by the consumer and required by European law<sup>8</sup>. In addition, they do not compromise consoles' systems and their technology by adequately protecting both games developers' intellectual property and proprietary components (see point 11).
12. Games consoles are a complex environment in which key internal components of a console form part of a secure system that consists of technological protection measures ("TPMs") and proprietary parts that are deployed to protect against copyright infringement. The deployment of TPMs by the video games console manufacturers benefits all those who create and develop games for consoles, and not just the platform holder. With a secure hardware system in which to create and publish new games, developers (who are often SME's) are more willing to make the financial investments necessary to support the development of new games. This in turn benefits the consumer who now has a wider array of games and interactive experiences to enjoy.
13. The Waste Framework Directive ([Directive \(EU\) 2018/851](#)), which has been implemented in Member States on 5 July 2020, recognises the importance of preserving a product's safety and security, as well as its intellectual property rights. Its Article 9 establishes that technical information and repairs instructions should be made available, **if they do not compromise the product's safety and quality, "without prejudice to intellectual property rights"**<sup>9</sup>. These three boundary conditions of accepted European law must be reflected in any future repairability proposals.

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<sup>7</sup> Last update [was released](#) on 18 August for both PC and consoles

<sup>8</sup> [Directive 2001/95/EC](#) on general product safety

<sup>9</sup> [Directive \(EU\) 2018/851](#), Article 9(e)

14. **Considering the above, providing too detailed information on the repairability of a games console could compromise the device's security system and technology and result in the infringement of intellectual property rights. ISFE, therefore, recommends to favour a principle-based approach as suggested in option 1 of the inception impact assessment, instead of developing a new stand-alone consumer protection instrument (option 2) which would detail which specific information on product's repairability should be communicated to consumers. Without considering the sector's specificities, such an instrument could severely threaten the economic input the video games industry contributes to Europe, as well as the device's safety and thus the protection of consumers.**

### ***On the product's environmental characteristics***

15. For many years, the video games sector has undertaken considerable efforts to improve the energy efficiency and durability of its goods and services. Following the adoption of the EcoDesign Directive in 2009 ([Directive 2009/125/EC](#)), console manufacturers agreed with the European Commission to further improve the energy efficiency of games consoles. Their engagement is codified under the [Games Consoles Voluntary Agreement](#) (VA), and includes specific provisions related to energy and resource efficiency (including repairability and recyclability) which are applicable for both current and future generations of games consoles<sup>10</sup>.
16. Every console manufacturer provides information on their environmental impact as well as on the climate-friendly initiatives they are involved in. Consumers can easily access this information, online and learn prior to purchase how the company incorporates sustainability considerations into its products. Such information includes, but is not limited to, details on waste management, plastic usage, energy consumption and compliance with EU and international regulatory frameworks<sup>11</sup>.
17. Consumers are increasingly purchasing and playing video games digitally as opposed to purchasing a physical copy from a retail location. When a video game is downloaded digitally, a key metric to measure the environmental impact of that game is the energy used during gameplay, and this information is already made available by console manufacturers, easily accessible by consumers online<sup>12</sup>. The percentage of video games downloaded digitally is expected to continue increasing and the percentage of video games purchased physically is expected to correspondingly decrease<sup>13</sup>. Thus, the most significant environmental impact of video game consumption, both at present and into the future, is already available to consumers.
18. ISFE believes it is essential that consumers benefit from reliable information on a product prior to its purchase. However, the lack of specific EU guidance on key sustainability information for consumers encourages Member States to adopt their own legislation, which ultimately leads to further fragmentation of the Single Market on this issue. On this regard, aligning with already adopted dispositions, such as the French Law on Repairability, which Article 13 outlines the various key

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<sup>10</sup> More information on the Games Consoles Voluntary Agreement can be found at <https://efficientgaming.eu/>

<sup>11</sup> See for [Microsoft](#), [Nintendo](#), and [Sony Interactive Entertainment](#)

<sup>12</sup> Under the Games Consoles VA, consoles manufacturers must provide energy efficiency information to consumers, including power consumption during gameplay (or "active gaming" power consumption). See for instance the case of [Sony Interactive Entertainment](#).

<sup>13</sup> Since 2014 in key European markets, online revenue has multiplied by 2.5, and now represents 76% of Europe's total revenue. Source : ISFE Key Facts 2020 from GameTrack Data by Ipsos MORI and commissioned by ISFE <https://www.isfe.eu/isfe-key-facts/>.

sustainability information a product should display at the point of purchase<sup>14</sup>, could constitute a first step towards a broader harmonised framework at European level.

19. **To this end, but also to provide further legal clarity for businesses, ISFE strongly encourages the European Commission to clarify its appreciation of “environmental characteristics” prior to the launch of any legislative proposal referring to such a notion.**

## **Building upon the sector’s ability to empower consumers in the green transition**

20. The video games sector has a track record of self-regulating to enhance the protection and safety of its consumers. [The Pan-European Game Information \(PEGI\)](#) self-regulatory system, adopted in 2003, provides reliable information to parents and players on the suitability of a game content and is currently used in more than 35 European territories. In addition, console manufacturers work in close collaboration with the European Commission within the framework of the Games Console Voluntary Agreement (VA) since 2009. The proposed self-regulatory measures within the Agreement were shown to generate greater energy savings than through the alternative adopted regulatory measures over the lifetime of current generation consoles<sup>15</sup>. Signatories of the Agreement estimate energy savings to exceed 48.2TWh, which is equivalent to Portugal’s annual energy production<sup>16</sup>. Both the PEGI system and the VA gathered the essential support of the European Commission and demonstrate the ability of the video games sector to develop reliable and perennial systems that produce significant results.
21. Many companies in the video game industry have self-regulated with respect to the environmental impact of their operations. Companies provide information to consumers with respect to the environmental sustainability of their operations, supply chains and infrastructure, thus empowering consumers to make purchasing decisions based on the environmental stewardship of a particular company. In addition, video game companies have used their games and services as tools to empower players towards the green transition, using gameplay to educate consumers about how they can become better environmental stewards. For example, in June 2020, Electronic Arts launched the Eco-Lifestyle expansion pack for The Sims 4 through which consumers are encouraged to – and learn to – live sustainably, collaborate on green-initiatives and use reclaimed materials. In addition, certain video game companies are exploring the incorporation of elements, such as “green nudges”, into their games to further differentiate their products and therefore empower consumers in the green transition.
22. Video games, and consoles, are complex products which combine various features, such as, but not only, online connectivity, presence or not of single and/or multiplayer modes, updates of video games or the ability to play through a physical cartridge or through a direct download. This combination makes it difficult, if not impossible, to precisely assess the environmental impact of a video game or a device through a single metric (such as recyclability for instance) as it would provide for only a partial overview of the real impact of the product. It is therefore essential that standards used to assess the environmental characteristics of a product rely on a tailored methodology, which would best reflect each sector’s specificities. Hence video games studios often develop their own assessment processes to provide with reliable measurements that can then be communicated to the consumers.

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<sup>14</sup> LOI n° 2020-105 du 10 février 2020 relative à la lutte contre le gaspillage et à l’économie circulaire. Access [here](#).

<sup>15</sup> PlayStation 4, PlayStation 4 Pro, Xbox One, Xbox One S, Xbox One X

<sup>16</sup> Estimate verified in the European Commission’s independent consultants’ study published in 2019 on <https://efficientgaming.eu/>

**23. Considering the above, ISFE would again recommend the European Commission to favour a policy option that would allow businesses to be flexible on the metrics and methodology used to provide information to consumers on key environmental characteristics. A principle-based approach, as laid out in option 1, would allow for such flexibility while respecting the impetus to communicate more information to the consumer.**