

Eco-design for Sustainable Products Regulation proposal

Key message

- **Harmonization of rules** and a European framework will improve the communication of reliable and comparable information towards consumers.
- To ensure that the new Eco-design for Sustainable Products Regulation (ESPR) has a significant impact, **prioritisation needs to be product group specific**. We support the Commission's approach of having product group-specific requirements.
- **The Digital Product Passport should streamline and facilitate access to harmonised, relevant, and proportionate information** and start with existing information requirements.
- Establish a strong **inclusion of key stakeholders in the policy-making process, including by means of the Eco-design Forum** and appropriate consultations, and immediately set up a dialogue with the EU's major trading partners.
- More efforts to avoid early disposal of unsold products are welcomed, but the proposal needs to clarify the criteria to ensure a common understanding and meaningful reporting.
- On labels, **the proposal remains too vague and creates the possibility of diverging labels on different product aspects for the various product categories**. In this respect, the use and benefits of digital labels should be explored.
- **The Regulation needs to take the specific needs of SMEs into account**. We welcome measures like guidelines, financial assistance, and training, to take to help SMEs with the general implementation of this Regulation and future delegated acts.

Introduction

Retailers and Wholesalers welcome the proposal for an Eco-design for Sustainable Products Regulation (Regulation). Our sector plays a key role in nudging consumers to support sustainability and has already made a range of private and global commitments to provide more sustainable products. As the design phase of a product is central to reducing its environmental impact, we are ready to contribute to such an effort by starting to apply the eco-design approach to a broader range of product groups.

Our sector supports the eco-design approach, which has proven successful in reducing the energy consumption and environmental impact of energy-related products. We welcome that the proposal extends the scope of the existing Eco-design Directive to also include non-energy-related products. In our view to transition towards more sustainable products, we must set requirements for products both in the design phase and at the manufacturer level.

The aim of the Regulation is to increase harmonization across Europe which was not possible through the previous directive. We fully support this aim, since only with a strong Single Market we will be able to trigger changes. Europe being a world leader in eco-design requirements means we need to ensure that we all work together and do not lose sight of national differences. This must be done via delegated legal acts by the Commission and must not be regulated in each individual Member State, to avoid fragmentation of the internal markets.

To ensure a true level playing field there is a need for market enforcement of the eco-design requirements. Products that do not comply with the minimum level of environmental performance set in ESPR delegated acts should not have access to the EU single market. Eco-design requirements should be clear and need to be measurable and enforceable by market surveillance authorities to monitor implementation and ensure a level playing field.

Policy coherence is crucial to ensure a well-functioning policy framework for more sustainable products, and essential to remove trade barriers and ensure legal certainty. Further, the regulation must not overlap with other EU legislation to avoid duplication. For example, substances of concern should continue to be restricted via REACH (the Candidate List of Substances of Very High Concern (SVHC)) and not via the Eco-design for Sustainable Products Regulation or its delegated acts.

The prioritisation needs to be product group specific

To ensure the Regulation has a significant impact, we believe that prioritisation will be needed in the whole process: from identifying the product groups to be regulated, choosing the performance criteria, and defining these criteria (e.g., thresholds, testing methods, measurement) to ranking the performance criteria to use them in the delegated acts. Trade-offs will be necessary. This step sequences an important consideration. When looking at product design we know that product parameters sometimes come with trade-offs due to the state of current technologies. To optimise resource use, it is fundamental to design products for circularity by taking into account these trade-offs and incompatibilities and prioritise certain aspects having in mind the intended use of the products.

Further, the prioritisation needs to be product group specific; we support the Commission’s approach of having product group-specific requirements. Setting horizontal detailed rules in the Regulation would likely create legal uncertainty and hamper technical development and innovation. Instead, the proposed “product group approach” allows for considering the characteristics and specificities of products. It also allows taking into account the degree of maturity of each industry on eco-design requirements, given that the non-energy-related products have not been regulated before.

Trade-offs among the different eco-design requirements should be considered (e.g., recyclability vs durability, sustainable products vs durability or recyclability) as the compliance of one requirement could jeopardize the compliance of another one, as well as climate and environmental performance. When drafting the eco-design requirements, the trade-offs should be considered to ensure the compliance of the product from a comprehensive approach and with all the requirements in mind and not on a one-by-one basis.

Digital Product Passports

Digital Product Passports (DPPs) are a great opportunity to modernise and digitalize product information and a good tool for consumers to access information. DPPs should be founded on open and international standards, interoperability, and proportionality. They should help streamline and facilitate access to harmonized and relevant information. Having the support of the Green Deal Data

Space that the Commission is building within its Data Strategy is key to reaching these attributes and ensuring the reuse of all data that is already being reported to authorities on different occasions. We welcome the authorities to work in this direction to make the most of the Digital Product Passport.

It is furthermore important that the DPPs will work for different types of stakeholders and is harmonized in their scope. Including harmonization and interoperability for B2G, and B2B.

To gain experience with DPPs and avoid overambitious goals, we propose to start by including only already existing legal information requirements. DPPs is an opportunity to streamline information via e-labelling and the DPP. The DPPs would permit to simplify and enhance traceability and information provisions through e-labelling solutions. After gaining experience with this tool, further relevant information and data requirements could be considered to be added. Such mandatory product information should be based on the needs of the specific product group, have a purpose, and be proportionate.

The proposal needs to give appropriate transition periods for the industry to set up the infrastructures and collect and process the requested data, as DPPs are a new concept for the supply chains and will need time to be prepared and implemented.

Decentralised data storage

DPPs requirements should encourage a decentralised data-sharing system. This will allow companies to make the product data available and updated at no additional cost. Since, in many cases, companies hold the product data they need to share in DPPs, making those data requirements available through a dedicated webpage and accessible through open carriers including URLs will simplify data accessibility and portability issues. Decentralised data storage would also promote internal alignment with other EU regulations to avoid double codifications for the same products and operators.

International open standards

The Regulation should not try to create new frameworks but make use of internationally recognized standards for sharing information, such as GS1. All information included in the product passports shall be based on an open standard, developed with an interoperable format and shall be machine-readable, structured, and searchable.

DPPs and physical carriers

The proposal leaves open how the DPPs for the various product groups that will be regulated may look like but mentions the possibility of physical data carriers on or as a part of products. Hence, access to the DPPs could be affected by the way a product is used and treated by consumers. At the end-of-life of certain products, the physical data carrier may no longer be there. Notably, we believe that if consumers remove/damage the physical data carrier, which lies outside the control of businesses, this should not be considered as non-compliance.

Data sharing

The DPPs will require sharing data along the supply chain. To protect trade secrets and intellectual property rights the Regulation should only allow access on a need-to-know basis when setting information requirements under the DPPs. For example, the delegated acts need to clear standards for information security and confidentiality, including clear limitations on what information is made public, who has access to what types of information, and a clear definition of “confidential business information” that will not be made available to the public. These standards should be developed in consultation with the different actors in the supply chain to determine what information is relevant to consumers and what information should not be shared with competitors.

Data collection

To enable data interoperability and portability, the digital product passport shall be based on

international and open product identifiers, compliant with ISO standards¹. This will enable product identification and product data sharing among all stakeholders in the value chain in a balanced, cross-sectoral, and technologically neutral way. Ease of application should be secured to facilitate interoperability. Companies could utilise the DPPs for horizontal and vertical data-sharing purposes therefore the Commission should make sure existing legislation for data collection and sharing, such as the Data Act and other sectoral legislation, are respected and not duplicated in order to contribute to the development of a European data ecosystem. The development of the DPPs should be clearly linked to the Green Deal Data Space, which should take place with the participation of the industry, as it already happened in other contexts such as the Financial Data Space or is taking place at the Health Data Space.

Roles and responsibility

The proposal also should clarify the roles and responsibilities of the economic operators involved in the DPPs. The ESPR must clarify that the upstream parts of the supply chain need to be responsible for making information available via the DPPs. In our role as retailers and wholesalers, we are in direct contact with the consumers, but we are not the producers, who have been in control of the production process and therefore possess all the relevant data. Later parts of the supply chain like importers, distributors, and dealers should only be responsible for their part of the chain.

Further, if the obligation to request the unique operator identifier is on multiple economic operators this could create multiple overlapping and administrative burdens that will lead to inefficiencies. The information to create the identifier should be provided directly by the relevant actor only. The complexity of global supply chains must be kept in mind. Supply chains can involve multiple actors along the different tiers and manufacturing processes, most of them shared by several economic operators. Many of them are SMEs and are widespread across the world, which makes it even more complex.

Lastly, new requirements for the DPPs should complement existing requirements at a national level to make compliance easier for companies and prevent duplication of data and information requirements, and excessive administrative burden.

Labels and the risk of creating diverging labels

In Article 14 the proposed text is too vague and creates the possibility of diverging labels, namely different labels on different product aspects for different products, listed in Article 7 (1). At a later stage, the Commission could introduce new labels for different product groups via delegated acts, leading to confusion and possibly contradicting parallel labels. There is a need for clarification on the aim of the labels envisioned here instead of giving a blank check for the introduction of a plethora of labels. In this respect, the use and benefits of digital labels should also be explored.

In Article 26 on obligations related to labels, the proposal should clarify that displaying labels based on a certification scheme or established by public authorities should remain allowed. The current text could be interpreted as only allowing labels established by delegated acts under the Eco-design for Sustainable Products Regulation for products in the scope of the Regulation.

In Article 40 the Regulation foresees alternative conformity declarations and markings besides CE marking. In some cases, for example for apparel and footwear CE markings are not commonly used to indicate conformity and, in these cases, businesses should still have the opportunity to use alternative conformity declarations and markings.

¹ Standards for data templates for building modelling EN ISO 23386: 2020, EN ISO 23387: 2020

Unsold products – a need for more transparency and clear criteria

Our sector agrees that unsold products shall not be landfilled but instead reused or recycled. However, the Regulation establishes in Article 20 a general reporting obligation, which is unclear in its effectiveness and not addressing the root cause of the issue. We believe that reporting obligation, in its current form, is too broad, disproportionate, and unclear, and should be revisited.

First, it includes potentially all consumer goods placed on the EU market, obliging businesses to collect a very large amount of information, and also for products which could not be in the scope of the Regulation and out of the scope of a potential destruction ban. Secondly, it expands the reporting requirement not only to products that are destroyed (paragraph 5) but also discarded (paragraph 1), requesting information that is very demanding to collect (e.g., number of unsold goods, including customer returns in the entire territory of the Union specifying for each of them the reason). Sometimes, the required information is not in the control of economic operators, but could rather be with other actors, such as municipalities and/or waste operators. Further, Article 20 foresees the possibility that the Commission may - at a later stage - adopt implementing and delegated acts to lay down a reporting format and verification methods, while however, the obligation to report seems to start immediately after the adoption of the Regulation, without any clear indication on the how to fulfil it. There is a need for clarification of how the Commission will collect and use these data. We call for a more balanced approach, reducing the scope of the obligation, for example by establishing that it will be assessed in each delegated act whether a transparency obligation and/or a ban on the destruction of goods should be introduced, rather than imposing a reporting requirement *ex ante* for all consumer goods.

As far as the ban on the destruction of goods is concerned, we welcome the Commission's intention to lay down exemptions. First, unsold products during the season can be sold to dealers at a lower price to be remarketed by other sealers or distributors. Those products are not to be considered unsold goods. Second, defective, counterfeit, and remanufactured/recycled products should be exempted from the ban on destruction. Defective products should be included as exemptions because, as damaged products, they can not be commercialized, but often, for example, they can be recycled into new yarns. Counterfeit products should be included in the exemption as in some cases, depending on the nature of the intellectual property, recycling is not allowed, and destruction is required. Similarly remanufacturing and recycling should not be considered destruction of a product when other options like reuse have been explored, and recycling is the only available end-of-life treatment available for said product.

We would like to see the introduction of differentiation between *new vs. used and/or damaged* unsold goods for reporting. Furthermore, for the reporting format, the Commission needs to take into account that the information to be reported needs to be done by weight and not by the number of items. This would link these reports with current waste management. Finally, we call upon the co-legislators to keep the SMEs exemption for reporting under Article 20.

Maintain and extend the Eco-design Forum to gather the whole value chain

Retailers and Wholesalers strongly support that the Eco-design Forum is maintained under the ESPR. Involving stakeholders like our sector in the process and preparation of delegated acts is crucial. Our sector is part of this group under the existing Eco-design Directive, and we support that with this Regulation its membership is extended. The whole value chain (repair, resell, rental, recycling, sorting, etc) needs to be represented if we want to take reuse, repair, re-manufacturing, etc. seriously. This should also include the opportunity for experts from companies and brands to participate directly.

Clarify key definitions, terms and obligations

The proposal includes definitions and terms that are too vague and need to be specified. Some general points should be further clarified in the Regulation.

Inconsistencies

In some cases, time periods and deadlines are defined as days and in some cases as working days. The definition of “manufacturer” needs to be consistent with other product policy legislation, to ensure legal certainty. We would welcome further clarity on how a “dealer” is distinguished from a distributor, importer, or online marketplace. Furthermore, we believe that economic operators and public authorities in general accept information and documents in English, to avoid costly and time-consuming translations.

Unclearity

To improve legal certainty and ensure the circularity of the product, clear definitions of product durability, upgradability and reparability are necessary. These elements are needed for designing a product and for setting the design standards for sustainable products. This is particularly important as reparability is set as a parameter for improving the product (Annex 1).

Further, the current requirements on the availability of spare parts and manuals, and the period for which they are provided is too vague. Indeed, the aim is to extend the lifetime of products to accommodate resource scarcity and the transition to a circular economy, and therefore it must be easier to repair products - both in terms of the product design, and the supply of spare parts. However, the ESPR must ensure that unnecessary demands are not made, which ultimately work against the intention of the proposal, for example, the overproduction of spare parts that are ultimately not used. Especially for this aspect, the Regulation must also align with the upcoming regulation on right to repair.

There is a high level of uncertainty due to the proposed broad and unclear definition of “*Substances of Concern (SoC)*” when referring to substances that “*negatively affect the re-use and recycling of materials in the product in which it is present*” or “*substances that impact product’s sustainability*”. It is key to have a clear frame for this definition and to set a process for scientifically evaluating the restriction of chemicals for reasons other than safety.

Article 29 sets out the obligations of online marketplaces and online search engines to provide market surveillance authorities, in reference to Article 7(2) of Regulation (EU) 2019/1020 (Market Surveillance and Compliance of Products), with information. However, to make sure that article 29 supports the effectiveness of the regulation, we would welcome further clarity on the frequency and depth of information in Article 29 (1); (c) establish a regular and structured exchange of information on offers that have been removed on the basis of this Article by online marketplaces; (d) allow authorities’ online tools to access their interfaces to identify any non-compliant products; and (e) allow authorities to scrape data from their online interfaces for product compliance purposes.

In order to make sure that there is always an economic operator in EU who is responsible for any product being compliant with this legislation, we suggest that all authorised representative representing a product or a seller in a third country, where there is no importer or manufacturer in EU, should be registered in an official database to be valid as an authorised representative. This will make it easier for both online marketplaces and market surveillance authorities to check the validity of the information that sellers from third country provide about their representation in EU.

Don’t forget the specific needs of SMEs, in particular on Green Public Procurement

Article 19 foresees guidelines, financial assistance, and training, that the Member States and the Commission shall guide and help SMEs, when appropriate, with the general implementation of this Regulation and the future delegated acts. These measures are important and need to be ready once the Regulation and the delegated acts enter into force. Equally important, that red tape is a challenge for many small companies, and additional administrative burdens arising from this Regulation need to be minimized.

We support the concept of Green Public Procurement, which can support the transition towards a circular economy by boosting the demand for sustainable products. The criteria for Green Public Procurement as described in Articles 4 and 58 need to be crafted in a way that does not exclude SMEs from benefiting.

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