

Department of Enterprise, Trade and Employment,

Department Environment, Climate and Communications

13th September 2022

Submission on the consultation from DETE and DECC on the European Commission Proposal for a Regulation on the Ecodesign requirements for Sustainable Products (ESPR)

Dear Sir/Madam,

Engineering Industries Ireland, Ibec's newest Trade Association was established in November 2021 with 150 member companies. The engineering sector we represent has exports at €8.8 billion or 3.6% of national exports, 10,800 enterprises, employing 50,751 people and 65% are indigenous companies. The companies span a broad range of markets, including, industrial automation, precision engineering, agriculture machinery, material handling, packaging, energy and environment, process engineering, automotive, metal fabrication & processing, renewables and engineering services.

Engineering Industries Ireland are delighted to have the opportunity to contribute to the consultation and help to inform the Irish position on negotiations on the EU Commission's Proposal for a Regulation on Ecodesign for Sustainable Products. We support the main objectives of the proposal for a regulation to reduce the negative life cycle environmental impacts of products to improve the functioning of the internal market by building on existing successful ecodesign rules.

We are committed to continue working closely with policymakers to ensure the proposed new Regulation on ecodesign for sustainable products achieves maximum benefit for the future competitiveness of engineering manufacturing industries, and for the Irish and EU economy as a whole.

In particular:

- The implementation of the proposed new requirements must be workable, proportionate and must contribute to a circular economy. There must be proven environmental benefits that exceed the costs to industry.
- The requirements must be verifiable and enforceable to guarantee a level playing field.

- The protection of European Intellectual Property Rights regarding confidential business information on products must be guaranteed in particular in the context of the digital product passports.

Key messages:

- Engineering Industries Ireland welcomes that the Commission's legislative proposal is in the form of a regulation, as this provides increased harmonisation in the EU single market which is a prerequisite for the development of the circular economy and it will ensure that the obligations will be implemented at the same time, and in the same way, in all EU Member States.
- The usage of Delegated Acts to produce product-specific legislation deviates from standard procedures used when developing regulations covering products, as well as from the current process used in the Ecodesign Directive. The process for setting the ecodesign requirements needs to be clarified further in the Regulation.
- Establishing circular economy policies demands the involvement of actors who represent the engineering industries product's whole value chain and a representation of the business community in the Ecodesign forum therefore needs to be ensured. The process for setting up the forum and deciding its members needs to be clarified in the Regulation.
- The Regulation is interlinked with several other current or coming European legislation (for example Chemicals legislation) and it is crucial to avoid double regulation when setting the requirements in the ESPR.
- The information requirements in the Digital Product Passport must be set on a need-to-know basis in relation to the purpose of the passport. The requirements also need to be closely intertwined with other initiatives under the EU's digital agenda and must safeguard knowledge-based assets. All this must be further clarified within the Regulation.
- The primary focus of the regulatory framework is on original manufacturers and on new production of materials and products. In many respects, there are no wordings on how existing products on the market, which are repaired, remanufactured or upgraded and then reintroduced to the market, are affected by the regulations, including how economic actors who perform these services are covered by future performance and information requirements. It is vital that this is clarified in the Regulation.
- The information requirements on Substances of concern (SoC) needs to be product-specific and they should be conducted in a systematic and stepwise manner, based on relevant and

requested information. The Regulation needs to be complemented with information on the process for defining reporting requirements for SoCs.

- Standardisation must continue to have a central role in both defining the methods and in demonstrating compliance with the upcoming product requirements. This is central in enabling further technical development and innovation. Thus, the European Commission should refrain from setting common specifications.
- Engineering Industries Ireland sees that the Regulation and the coming product specific legislation, could prove challenging for SME's and stresses the need to support them. It is positive that the Commission in drafting the Regulation is considered how Member States and the Commission can support SMEs.

We welcome and support:

- A harmonised EU framework which is essential to secure the continued functioning of the Single Market, one of the EU's success stories and major achievements.
- The Ecodesign instrument which already delivered for EU consumers, industry and the planet by taking due consideration of all aspects of the life cycle of the product and setting measurable and enforceable requirements.
- That the Commission will continue to set ecodesign requirements product by product - to take into account individual characteristics and specificities of products - in product-specific legislation via the adoption of delegated acts, based on the best available evidence through impact assessments, and transparent and inclusive consultation of stakeholders. The performance requirements set out in the upcoming product-specific legislation must promote and enable innovation and technological development, as well as safeguard technological neutrality. Furthermore, it must be possible to comply with and verify, the requirements.
- That the commission will increase and coordinate market surveillance throughout the European Union.
- Engineering Industries Ireland is generally positive to the proposal for a ban on the destruction of unsold consumer goods. However, there is a need of clarifying and complementing the Regulation on this topic regarding reporting requirements and exemptions.

Protection of confidential business data, data within scope of Digital Product Passport (DPP) and interplay with other legislation

➤ Protection of Trade secrets and IPR

Engineering Industries are very concerned about the protection of trade secrets and Intellectual Property Rights (IPR). We acknowledge that there is a balancing act between creating transparency and use of the data in the DPP on the one hand and protecting companies' rights and trade secrets on the other hand. Confidential business data, IPRs and trade secrets of companies must not be served on a freely available silver plate to their competitors.

We strongly recommend

- The confidentiality related to protectable trade secrets must be respected and the protection of IPRs, data exposing IPR and trade secrets must be protected or facilitating product piracy should not be listed in the ESPR Delegated Acts, and the Regulation should exclude this type of data from its scope.

➤ Data within the scope of DPP and interplay with other legislation

Engineering Industries are also concerned about the data that will be within the scope of the DPP, the interplay with other legislation and other issues listed below

➤ The Digital Product Passport should be designed by policy makers together with industry

Given the knowledge and expertise about the value chains, existing systems and what is required for a product passport to work in practice, the Digital Product Passport should be designed by policymakers in collaboration with industry.

We recommend

- A DPP pilot is run with a small number of products with simple criteria before its use becomes more widespread

➤ No duplication of effort and double regulation

Consistency and alignment between the proposed ESPR and existing and new requirements under other EU initiatives and legislation (e.g. EPREL and SCIP databases, right to repair initiative, Product/Organisation Environmental Footprint, The Construction Product Regulation, Regulation

(EU) 2019/1021 on persistent organic pollutants (POPs Regulation), Directive 2012/19/EU on waste electrical and electronic equipment (WEEE), Directive 94/62/EC on packaging and packaging waste, Directive 2008/98/EC on waste and Regulation (EC) No 765/2008 and Decision No 768/2008/EC (New legislative framework (NLF) must be ensured to avoid duplication of effort in providing information. In particular, as chemicals are already regulated in other chemical legislation (Regulation (EC) 1907/2006 on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) and Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS). Especially for chemicals, we must stress product by product approach. In this context, it is important that ongoing revision processes are considered for optimum results.

We recommend:

- Policy making regarding chemicals should be risk based, not hazard based.
- Chemical should not be further regulated under the ESPR as REACH and RoSH must remain the primary legislation for addressing chemicals.

➤ **Third party verification of new products only if needed**

Ensuring effective enforcement and market surveillance will be of utmost importance for the success of the ESPR. Engineering manufacturers should be allowed to check and prove conformity of their products. Third party (e.g., notified body) verification should not be extended to new products without justification as it will add costs to manufacturing and slow down innovation while adding non value-added activities.

We recommend:

- Mandatory third-party verification should only be considered if objective data supports it. Self-assessment offers the same levels of compliance.

➤ **No disproportionate negative impact on competitiveness**

Albeit the proposal states that there shall be no negative impact on competitiveness at least for SME's, Engineering Industries Ireland sees that the Regulation and the coming product legislation will require a substantial effort from industry especially SME's and we are concerned that the skills and resources may not be sufficient to meet the requirements for information.

Therefore, we recommend:

- There should be no disproportionate negative impact on the competitiveness of all business especially engineering industries SME's
- Sufficient time must be allowed for engineering industry to implement the new requirements in the Delegated acts to ensure legal certainty and predictability.
- In order to ensure effective and inclusive implementation of the ESPR, the commission needs to allocate adequate resources.
- Irish Government should prioritise support measures for industry especially SMEs.
- ESPR Delegated Acts should not impose ecodesign requirements on components or parts.
- Information on quantities placed on the market should not be required.

I would be happy to provide further detail on the foregoing comments if required.

Yours sincerely

Pauline O'Flanagan,



Director,

Engineering Industries Ireland

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