

Departments of Enterprise, Trade and Employment,
and Environment, Climate and Communications
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13 September 2022

Submission to DETE and DECC on the European Commission's Proposal for a Regulation on Ecodesign for Sustainable Products.

Dear Sir / Madam,

Ibec welcomes this opportunity to comment on the consultation published by DETE and DECC. We represent the views of a wide range of industry sectors across the country.

Our membership supports the overall objectives of the proposed Ecodesign for Sustainable Products Regulation (ESPR). The existing Ecodesign Directive, which it will replace, has proven to be an effective regulatory instrument for improving the energy efficiency of electrical and electronic products. However, the ESPR represents a significant increase in scale, scope and ambition for member states. The restricted wordcount set in the joint DETE/DECC consultation does not allow for a detailed assessment. Ibec therefore expects the Departments to follow up this consultation with sector-specific bilateral discussions.

In this regard, Ibec considers that DETE and DECC should draw on the recent learning experience of developing and implementing the Whole of Government Circular Economy Strategy. In order for the stated aim of being above the EU average for Eurostat's circularity metric by 2030 to be realistic, a whole of government approach will certainly be needed, with continual active stakeholder engagement. To this end, Ibec has facilitated a series of circular economy briefings in conjunction with DECC and the EPA over the past year.

Ibec now offers the following observations and recommendations in respect of the ESPR proposal.

Key Recommendations

- Establish sector specific working groups with industry, in conjunction with both DECC and DETE, to guide and inform the national position on not just ESPR but the entirety of European Commission's Circular Economy Package domestically. Technical expertise from industry and relevant stakeholders should be pivotal in guiding the national ESPR position.
- Avoid developing national measures on sustainable products that impair the functioning of the internal market. Sense check policies to ensure they do not inadvertently lead to a more unsustainable outcome.

→ The ESPR should be drafted in such a way as to avoid an undue burden on businesses, whether relating to product design, supply chain due diligence, data collection, or product labelling. It is vital that DETE and DECC provide the Irish Environment Permanent Representative with clear guidance of specific drafting points.

→ The Government, through the Environment Council, should mandate the Commission to allocate adequate financial resources for enterprises to ensure effective and inclusive implementation of the ESPR, including support for RD&D, information systems and other 'first mover' costs.

→ This is particularly important for Irish SMEs, for whom a timely response to the Regulation and the ensuing product specific legislation could prove challenging.

→ Be mindful of the need to protect Intellectual Property Rights (IPR) and sensitive trade information. Implementation with a disproportionate impact can hinder competitive growth; third party verification, regulation of components and non-enforceable requirements. If IPR and trade secrets are not excluded from the scope, then high standards of cybersecurity and confidentiality will need to be in place.

→ Government should play its part adequately when it comes to creating a pull from the general public vis-à-vis educational campaigns on circularity and sustainability.

→ Ibec believes that further work on the ESPR proposal text is required in respect of the following:

- Requiring information on substances of concern should be based on their relevance, usefulness and information demand in the value chain.
- Digital Product Passport must be strictly relevant to circular economy purposes and must protect confidential business information. Its environmental benefit will hinge on good quality, consistent, comparable and interoperable data.
- The governance structure of the Commission's Ecodesign Forum must be specified further as industry-expert knowledge is essential. The Forum should be made up of enterprises of all sizes and sectors. It should draw on stakeholder experience and expertise via consultations, discussion panels and regular meetings.
- Ibec also recommends that the Forum should act as a sounding board for the Commission when adopting related Delegated Acts. Comprehensive assessments, based on an impact-focused LCA approach, should underpin any such Delegated Acts.
- Ensure policy coherency of scope and requirements between the ESPR and other EU environmental and single market legislation.
- Base performance requirements and compliance methods on existing harmonised European or international standards such as the IEC/ISO/ITU.
- The Commission should issue common specifications only in exceptional circumstances.
- Third-party conformity assessments should be avoided unless deemed essential in specific cases, as they are costly and may not add value.

- Products should be prioritised according to their environmental and economic potentials. The ESPR proposal requires further product definitions and appropriate categorizations.
- Requirements on destroyed goods should be progressively implemented, reflecting any sectoral constraints on immediate implementation.
- For legal clarity, the Commission should harmonise all technical definitions with existing legislations and initiatives.

General Observations

Ibec supports the Commission's choice of Regulation rather than Directive for the implementation of eco-design principles. It removes the scope for inconsistency between EU and national level requirements, promoting a more level playing field for products placed in the single market.

However, as currently drafted, ESPR would be challenging to implement. Products would need to fulfil detailed and wide-ranging information and performance reporting. Ibec believes that such information should be limited to essential requirements over the lifetime of a product, in order to mitigate any negative impact on business competitiveness. For example, the mandatory public disclosure of intermediate substances in proprietary production processes could undermine a company's competitive advantage if trade secrets thereby become available to non-EU competitors. Given Ireland's relative success in attracting international high-tech enterprise, this should be of particular concern.

Information requirements on substances of concern

The proposed definition of 'substances of concern' will likely overburden actors in the supply chain. This will imply further burdens on indigenous enterprise as non-European companies will not be held liable to provide complete and correct information to European customers or enforcement agencies. The terminology of can lead to legal uncertainties which threatens the proposed product-by-product approach.

The definition of 'substances of concern' should be more closely aligned to Substances of Very High Concern under REACH and should be risk-based. The proposed hazard-based approach may necessarily discourage the use of substances that are vital to other objectives of circularity (e.g., durability and reliability) that should be assessed on a life-cycle basis. Additionally, the information requirements for substances on the REACH Candidate List should be specified exclusively in REACH in order to avoid unnecessary double-regulation.

Ibec considers that the definition in Article 2 (28) of the proposed Regulation may lead to an extensive list of substances of concern that does not differentiate between those that have been properly identified as posing a risk (SVHCs under REACH) and others that pose a hazard that should be dealt with by other EU legislation.

The Commission's proposal implies taking a hazard-based rather than risk-based approach. This is not helpful from a business point of view, as the listed substances can be crucial to circular innovation and can be safely managed. Such terminology can hinder development if it also disregards technological advancements in the waste and recycling sectors.

The Commission does intend to allow some exceptions in terms of technical feasibility, or to protect confidential business information, but the proposed approach may result more harm than good. Ibec urges DECC and DETE to instead advocate for reporting of substances based on their scientific assessment, relevance and usefulness of the information, and relevance to the value chain.

Digital Product Passport (DPP)

For the DPP to work and not hinder enterprise activity it must be strictly relevant to circular economy. Disclosure of data must be genuinely justified for clearly defined circularity and sustainability purposes. Reporting of data which is either already required by other legislation (CSRD/Due Diligence as an example) or presents itself as 'nice to know' information can raise confidentiality issues (if it is thereby made public) and is unnecessarily bureaucratic. The DPP should be rooted in the 'need to know' where information sought is used for a specific valid purpose.

The DPP should offer a digital solution that is not an additional marking requirement, but rather an integrated system that represents transition towards a digital, more reliable and greener information sharing as a driver for the Circular Economy.

Electronic labelling (e-labelling) via a data carrier (QR code) should be preferred over - and replace where possible - physical markings (on product, packaging and relevant data from inbox documentation), as it is the more sustainable alternative. It also offers a more convenient and reliable access to updated information attached to the device itself.

It is preferable that the DPP is not applied at item level. Otherwise, this would create an enormous and unnecessary administrative, implementation and cost burden, considerably outweighing any potential benefits related to enabling Circular services. It is still possible to unlock Circular Economy benefits to businesses and consumers in Europe if the DPP is applied at model or batch level.

European competitive advantage must be strongly protected in the current geopolitical climate. This in turn requires adequate protection of confidential and sensitive information. In our view, and that of like-minded trade associations across Europe, the current DPP proposal does not meet this standard.

Ibec would like to bring it to the attention of DECC and DETE that the ESPR proposal on the DPP appears to contradict existing legislation, including Directive (EU) 2016/943 on trade secrets and WTO's TRIPS Agreement¹ thereby placing European enterprises at a disadvantage. Sharing such sensitive information should be based on need and the data should be processed in a secure manner.

Enterprises must be provided with the appropriate digital infrastructure and adequate transition time. The DPP should be built upon existing technologies and regulations in order to allow enterprises perform self-assessments of their compliance and to avoid the need for third-party assessment. Existing systems such as the European Product Registry for Energy Labelling (EPREL) database and the database for Construction Products can be incorporated into the DPP.

¹ The Agreement on Trade-Related Aspects of Intellectual Property Rights is an international legal agreement between all the member nations of the World Trade Organization.

ESPR could also provide further guidelines in relation to what information should be made available to market surveillance authorities and inform stakeholders which regulatory bodies are implementing ESPR requirements.

Where products and constituent products/services are sufficiently similar, the use of generic data and information within the DPP should be facilitated. This is especially important for SMEs that may be required to provide data for inclusion in DPPs prepared by their customers.

Performance requirements and prioritisation

Compared to existing Ecodesign Directive, the ESPR will use Delegated Acts to set requirements for specific product groups. Ibec notes that there could be conflicting requirements as some requirements may impact the safety, durability and energy efficiency of products. This should not lead to a heavier environmental footprint; therefore, product groups and their requirements need to be fully harmonised with current/upcoming EU legislation and existing measures.

In order to avoid regression from existing regulation, it will be essential that delegated acts are supported by a comprehensive and scientific assessment, submitted to public consultation and Ecodesign Forum recommendations.

In essence, ESPR should set environmental sustainability requirements when existing requirements are not set at a satisfactory level and not lead into an unnecessary revisions of current product policy framework. Progress in terms of the number of product groups for which ESPR is implemented should be gradual.

Ibec welcomes the Commission's proposal to recognise that industry-led measures can be used as alternatives to Delegated Acts. Compliance and enforcement should be based on existing harmonised international and European standards. There is no need for the Commission to issue its own technical common specifications. Such should only be issued in exceptional circumstances with clear guidelines and checks. This will have a positive environmental impact as third party assessment will no longer be necessary.

Unsold consumer products

Policies aimed at preventing the destruction of unsold goods are commendable. The Commission's proposed measures aimed at protecting consumers are necessary. The ESPR proposal should:

- i) improve its terminology on the definition of product destruction and consumer products
- ii) take into consideration existing alternatives such as reuse, remanufacturing, and the recovery of usable parts, and
- iii) include PROs, resellers and refurbishers in the scope of actors handling unsold goods and EOL product management

It is important to make sure that commercially sensitive information regarding unsold consumer goods is not made publicly available. Ibec urges DETE and DECC to ensure better enforceability via adequate transition time for enterprise as the time between the publication of the relevant implementing act setting out the format of the disclosure and the application of the required can take time.

Definitions and Legislation

The ESPR text requires further legal clarities. The distribution of responsibilities between various regulatory and economic actors needs definition. The level of proposed Delegated Acts is of concern given that the implementation could prove challenging. Industry and authorities alike need adequate transition time.

ESPR definitions must be harmonized with existing legislation, e.g., the Market Surveillance Regulation and Enforcement and Modernisation Directive. Once clarities are in place, DECC and DETE must ensure that the regulation is understood by the enterprise community and not used as a regulatory baton.

Mandatory requirements should be set only if they are measurable and enforceable. Enterprises must be able to understand the incoming legislative changes.

SME Support

The ESPR proposal itself aims not to produce negative impact on SMEs. Ibec believes that the reality could be very different. Many Irish SMEs are still recovering from the economic downturn of the Covid-19 pandemic and are experiencing hardship given unprecedented energy price inflation and increased operational costs due to a tight labour market and a raft of new employment legislation.

DETE and DECC must ensure that SMEs receive support particularly with regard to information requirements. Ibec supports further investment into the sector as they will need a higher degree of support in their circular transition.

Ibec would be happy to discuss the foregoing points further with either Department if required.

Yours sincerely,

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