



May 2023

ECODESIGN FOR SUSTAINABLE PRODUCTS REGULATION

CALL ON EU POLICYMAKERS

BusinessEurope welcomes efforts to establish a functioning EU market for secondary raw materials and circular products. The proposal for a Regulation on Ecodesign for Sustainable Products (ESPR) is a unique opportunity to reach this objective by strengthening the internal market with requirements harmonised at EU level and setting tailored ecodesign requirements per product group in coordination with relevant experts and stakeholders.

However, certain changes proposed in the Council and the European Parliament risk undermining the potential of the ESPR to accelerate the circular economy transition. In addition to the points outlined in our [position paper](#), we urge the co-legislators to safeguard and strengthen the provisions regarding close cooperation with industry and company representatives through the Ecodesign Forum and the proposed Ecodesign Expert Group. Furthermore, BusinessEurope wishes to highlight three key issues which we understand are currently considered by policymakers.

SAFEGUARD THE ENVIRONMENTAL AND CLIMATE BENEFITS OF THE ESPR

The proposals to introduce product and information requirements on social sustainability and due diligence aspects are highly concerning and should be resisted.

Firstly, including social sustainability and due diligence in the scope of the ESPR would lead to overlaps with legislation that is designed to address these topics, such as the Corporate Sustainability Reporting Directive (CSRD), Corporate Sustainability Due Diligence Directive (CSDDD), the Regulation banning goods made using forced labour and legislation on responsible minerals and batteries. Overlapping regulation must be avoided to prevent unjustified burdens for businesses, legal uncertainty and to complicate the design and manufacturing process as well as placing on the market of circular products.

Moreover, social sustainability and due diligence should be addressed at company level rather than within product design. These issues require legislation that takes into consideration the complexity of global supply chains and should be implemented at the operational level. The ESPR is not designed to deliver on company level issues.

Finally, introducing social sustainability as a product parameter will dilute the weight of parameters that are vital for circularity. This would undermine the objectives of the ESPR and its potential to serve as an important tool for more circular products. BusinessEurope urges policymakers to allow the ESPR to be an enabler for the EU's climate and environmental goals, by resisting the inclusion of social sustainability and due diligence aspects that are and can be addressed in other legislations more effectively.



FOCUS ON SUBSTANCES OF RELEVANCE TO CIRCULARITY

BusinessEurope is concerned by the lack of progress in ensuring that the definition of substances of concern (SoCs) and information requirements exclusively target substances based on their relevance for circularity.

The definition of SoCs in the European Commission's proposal (article 2(28)) covers over 12 000 substances as a minimum, without counting substances that may be defined as substances of concern due to their negative impact on recycling. This broad definition creates legal uncertainties, since any substance may potentially be targeted and will overburden actors in the supply chain for reasons unrelated to circularity. This is particularly a risk for many SMEs.

The definition of SoCs should be changed to cover only 'substances of relevance to circularity', i.e. impeding the reuse or recycling of a product. The assessment of whether a substance is impeding recycling or reuse should be based on state-of-the-art recycling technologies, to be continuously evaluated ensuring that new innovative technologies for recycling and reuse are taken into account. It should also be clarified that this definition is specific to the ESPR, thereby avoiding unintended consequences of the definition's application outside this Regulation.

Proposals to mandate the Commission to determine which substances fall under the definition, considering for example the impact on reuse and recycling, is a welcome effort but does not solve the overall problem. This approach is dependent on the Commission's interpretation and application. It neither provides the needed predictability nor makes negative impact on circularity a prerequisite for a substance to fall under the definition.

DIGITAL PRODUCT PASSPORT

BusinessEurope welcomes the proposed Digital Product Passport (DPP) but cautions against proposals to introduce requirements to provide all information assuming their relevance for a purchasing decision. Moreover, we are concerned of the lack of progress to remove the possibility for the Commission to at a later stage decide what information should be included in the registry (article 12). For the DPP to deliver on its objective to promote circularity, the need-to-know and data minimisation principles must be adhered to. Companies are more than willing to collect and disclose data in the DPP provided it is for clearly defined circularity and sustainability purposes. Furthermore, to make the system effective and limit the costs, it must be clarified that the DPP should rely on existing databases where relevant, including SCIP, EPREL and established industry solutions.

BusinessEurope moreover encourages the establishment of a DPP based on a decentralised system. A centralised system is of limited added value for the circular economy and is worrying from a data security perspective and the need to protect intellectual property rights and sensitive business information. A decentralised system would be an efficient way for businesses to continuously share updated information with actors in the value chain.