



CONFEDERATION OF INDUSTRY OF THE CZECH REPUBLIC RESPONSE TO PUBLIC CONSULTATION - INCEPTION IMPACT ASSESSMENT ON THE REVISION OF THE ECODESIGN DIRECTIVE

Confederation of Industry of the Czech Republic (SP CR) welcomes the opportunity to comment on the Inception Impact Assessment on the revision of the Ecodesign Directive.

A future EU sustainable product framework should continue to drive innovation and competition that further improves consumer choices. It should appreciate how individual sectors are already driving a circular economy so that targets and proposals can be better adapted to reality and market conditions.

Furthermore, the Ecodesign legislation allows not only to develop product specific implementing measures, but also more horizontal ones addressing more than one product at a time, such as the Standby Regulation (EC/801/2013). This provides a very **high level of flexibility for policymakers**.

This approach has worked well for the current scope of energy-related products. Widening the scope to non-energy-related products including B2B products, materials, and services, would make it very difficult to build future regulations on the above-mentioned principles. Of course, good practices from the existing Ecodesign and Energy Labelling legislation could be used to inspire an ecodesign-like framework for non-energy related products.

We recognise the value of the Ecodesign regulatory approach and also support the principle of taking the opportunity of the ongoing review of the Methodology for the Ecodesign of Energy related Products (MEErP) to assess ways of strengthening sustainability aspects while reflecting the diversity and uniqueness of the ErP groups.

Any requirement must be measurable on the product, designed so that they can be efficiently enforced by Market Surveillance Authorities (MSA). Unless tested in a cost-efficient manner and within a short enough time span, MSAs will never be able to catch non-compliant products before they disappear from the market. Additionally, measurements must be supported by harmonised standards listed in the OJEU, developed by appropriate standardisation bodies.

The European Court of Auditors (ECA) Special Report 01/20 identified delays as a key factor in undermining the Directive. Indeed, persistent delays with the adoption and revision of implementing regulations continue to slow down progress to achieve further energy efficiency savings. Moreover, market surveillance remains a key area to be improved. Expanding the Ecodesign Directive to include non-ErP products may further exacerbate these issues.

European home appliance manufacturers are increasingly subject to a conflicting regulatory landscape. Over the past few years, the European Commission has proposed more and more burdensome regulations, often establishing double or cascading ecodesign requirements on a single product category. Policies set at horizontal level pose the risk of setting double regulation at product level. Such double legislation impedes

the ability of industry players to innovate while increasing the cost of products without creating additional environmental benefit. It also makes measurement, verification and enforcement more complex which can lead to an unlevel playing field.

GENERAL COMMENTS:

1. When assessing environmental impacts, it is necessary to create comparable assessment schemes so that the data are comparable between Member States. Here we draw attention to the risks that arose with the application of LCA. Accredited laboratories have such different results that the whole LCA process is not credible.
2. Ensuring product recyclability must not be a one-way process in which products are adapted to current recycling technologies. It has to be a two-way process, where the products are designed so that recycling is possible, but at the same time waste technologies are continuously innovated so that this recycling is practically ensured. The introduction of ecodesign and eco-modulation rules must not lead to a reduction in industry's ability to innovate products. At the same time, waste processors must be motivated to offer innovative ways of processing waste from these products. Manufacturers should therefore be motivated not to use solutions that complicate future recycling, but should build on future innovative waste treatment solutions, not just on the state of the art. The example of chemical recycling shows that the development of new technologies solves the recycling of such products, which we consider problematic today, for example due to the use of a combination of polymers.
3. As many of the proposed measures will also be financially demanding, it is immediately necessary to allocate funds so that the measures are implemented in time and everywhere (it is not possible to think of a "multi-speed Europe"). This includes, for example, the aforementioned digitization of product information, including solutions such as digital passports and labels.
4. In Chapter B. Objectives and Policy options (Inception impact assessment) is stated: "Particular attention will be given to the operational feasibility, minimizing related administrative burdens and facilitating implementation and enforcement. ... In doing so, particular attention will be paid to coherence with existing relevant EU policy instruments and other ongoing new initiatives."
There is no mention in the document of the area of verification of the appropriate implementation of the Ecodesign Directive in individual Member States, especially for manufacturers.
Confederation of Industry of the Czech Republic believes that this is one of the fundamental problems of the current regulation, where the rules do exist, but in principle they are not followed very much, as no one verifies them. The rules discussed should therefore ensure a greater degree of enforceability and verifiability that individual products actually comply with the limits of the Directive.

Confederation of Industry of the Czech Republic (SP CR) would like to outline the main risks and concerns we see with the opening of the Ecodesign Directive.

- **Legal basis** - A key enabler for the success of the current eco-design legislation is due to its legal basis which ensured the applicability of the Directive and its implementing measures equally and identically on the EU market. The Directive is part of article 34-36 of the TFEU - Free movement of goods in the Internal Market.

We recommend not changing the current legal structure to ensure an effective EU Single Market.

- **Scope – Article 1 (1)** - The Ecodesign Directive has a very specific scope which covers only energy-related products. This means that each article of the Directive is written in function and specifically for those products. In short, the Directive is tailored for energy-related products.

It goes without saying that widening the scope to a huge variety of different products (and potentially services) that do not have a direct link to each other in terms of life cycle, availability on the market, distribution channels, conformity declaration and others, will result in a very complex and probably inefficient legislative instrument. Creating a much broader and more complex legal text could jeopardise the end-objectives and implementation of the legislative requirements.

This is why we recommend establishing a separate legislative tool under the SPI for nonenergy related products. We also believe that to increase circularity a horizontal regulation that covers all stages - supply chain, user phase and end of life - should be established.

- **Link with other legislation – Article 1 (4)** - The Ecodesign legislation clearly outlines that adopted implementing measures shall be without prejudice to European Waste management legislation and European Chemicals legislation, including European legislation on fluorinated gases. There is an appropriate and complete EU Framework Regulation put in place to effectively analyse and manage chemicals, as well as chemicals in articles and complex products, including REACH Regulation (EC) No 1907/2006, RoHS II Directive 2011/65/EU, and the POP Regulation (EU) 2019/1021. These existing rules should remain the primary set of legislation and have the leading role in risk-assessing and managing chemicals in materials, articles, and in complex products.

Although we believe that to increase circularity all the relevant phases should be addressed - supply chain, user phase and end of life - we believe that Ecodesign rules should refrain from setting chemical requirements to products' components, since an inappropriate overlap with the current chemical-related framework of legislations is unavoidable. This latter situation would thereby create more complexity on the existing set of rules, consequently adversely impacting manufacturers of home appliances and market surveillance authorities. It would also result in generating an atmosphere with a great lack of legal clarity and certainty when it comes to compliance, not only towards Ecodesign rules, but also to all of the mentioned-above pieces of legislation.

- **Conformity assessment (Article 8)** - The Ecodesign is a CE marking legislation with a clearly defined conformity assessment procedure which allows manufacturers the choice between internal design control (Annex IV) and the management system (Annex V), making reference to the modules described in Annex II of Decision 768/2008/EC. For home appliances this implies Module A.

The CE marking ensures the principle of presumption of conformity. This is based on the concept of harmonised standards the reference numbers of which shall be published in the official journal of the European Union.

This principle of legal acts setting minimum requirements in combination with harmonised standards setting the measurement methods for determining and verifying the declared values by manufacturers in combination with post-market verification is preferred and functional. It only requires sufficient resources for targeted action of market surveillance authorities in the Member States.

Revising the Ecodesign would entail the risk that the whole conformity assessment procedure is questioned. A well-functioning system could change this drastically, leaving the door open to more complex and less effective alternatives (e.g. pre-market third party verification, bypassing or shortening standardisation procedures, etc.).

Confederation of Industry of the Czech Republic (SP CR) recommends keeping the current structure and preserving the module A (selfdeclaration) approach.

- **The principle of implementing acts for setting product specific requirements (Article 15)** - The Ecodesign Directive foresees the use of implementing measures to involve member states in setting product specific requirements. Although it might entail certain risks, **SP CR strongly believes that this legislative procedure is the most appropriate one.** The legal base of implementing measures ensure the full involvement of all parties and a good discussion between experts at national level and Commission officials.

If the Ecodesign Directive is reviewed this procedure of implementing measures should be maintained.

- **Criteria for setting implementing measures (Article 15)** - Article 15 specifies the criteria for the eligibility of products to be covered by implement measures (units on the market, environmental impact etc.), but also which approach to use to set the requirements (impact assessment, LCA, stakeholder consultation etc.), including clear safeguard clauses (no negative impact on the functionality of the product, health and safety should not be negatively affected, etc.).

If the ecodesign is revised, these criteria will be rediscussed reopening long debates. This could endanger the thin compromise that was the result of many complex and political discussions.

- **Working Plan (Article 16) & Consultation Forum (Article 18)** - The way of working for the development of implementing measures as described in these articles has demonstrated to be a feasible and productive way involving all stakeholders and Member States, with scrutiny of the EU Parliament.

The Working Plan is one of these procedures in which an open and transparent process allows to identify the priority list of products. This process works well if it focuses on ErP as for these products, the highest impact is due to the use phase. For non-ErP this system might not fully work. This is why we would propose to keep the current procedure for ErP and develop a parallel legal framework for non-ErP.

The Consultation Forum is another of these procedures that has proven to be very effective in driving political and technical discussions on specific product issues. The strength of this Forum is the

inclusion of all relevant national and stakeholder experts who have the right knowledge and expertise to discuss draft legal proposals.

We fear that reopening the Directive would endanger both these procedures.

- **Least Life Cycle Cost (LLCC) (Annexes)** - The implementing measures establish that the level of energy efficiency or consumption must be set aiming at the life cycle cost minimum to end-users, taking into account the consequences on other environmental aspects. The reason is that the implementation of the requirements in the design of the products must ultimately be beneficial to consumers and other end users.

The respect of this principle ensures that consumers, instead of paying for the introduction of more expensive design options, obtain a net benefit from the use of the product.

- **Ecodesign parameters for products (Annex I)** - Annex I clearly shows how the circular economy topics are well included in the Ecodesign.

In this Annex, the Directive defines parameters that cover the entire lifecycle of products and all relevant environmental aspects which are also the core of the SPI.

Therefore, the legal text of the Ecodesign Directive as it stands today already allows for the inclusion of the ambitious environmental and climate goals of the Green Deal and the Circular Economy Action Plan.

CONCLUSION

Confederation of Industry of the Czech Republic understands the EU Commission's intention to broaden the scope and use the experience gained with Ecodesign also for other products. However, we are of the opinion that for other product categories such as textiles, furniture, intermediate products, etc. the EU Commission should use the Ecodesign for ErPs as a blueprint and adapt it to the specificities of the new product categories, leaving the Ecodesign for ErPs working well as it is today, and has for many years in the past.

We also understand that the EU Commission intends to create an overarching legal framework to reflect the intentions of the EU Green Deal and the Circular Economy Action Plan as described in the SPI. We are of the opinion that such a general framework can be created, in line with the Commission's sustainability principles, whilst leaving the Ecodesign for ErPs untouched. Furthermore, we believe that such an overarching framework could also encompass other pieces of legislation such as the Waste Framework Directive, WEEE, RoHS, etc. Policy objectives, policy choices and incentives across all policy areas need to be both clear and consistently implemented, including potentially inevitable trade-offs, to create the market for sustainable circular business models and opportunities from a product lifecycle perspective.