

ZVEI statement on the EU Commission's proposal of 30.3.2022 „Establishing a framework for setting ecodesign requirements for sustainable products” (ESPR)“

With this paper, we take the opportunity to comment on the draft Ecodesign Regulation (COM(2022) 142 final) published by the European Commission on 30 March 2022 as part of its Sustainable Product Initiative (SPI).

We welcome that the EU Commission continues to pursue the ecodesign approach. The Ecodesign Directive has proven over many years to be a strong instrument for increasing the energy efficiency of energy-related products. Important approaches such as the product group approach, the study and life-cycle based methodology and the involvement of all relevant stakeholders in the process have contributed to this success.

Nevertheless, we see difficulties in the implementation of the requirements by companies. We call for full consistency of regulations. There should be no overlaps, duplication of regulations or legal uncertainties. For example, we see a lack of consistency in relation to ingredients. Also, regulation will only be successful if the requirements are the same for all market actors in the EU internal market - this includes both those based inside and outside the EU - and their implementation is adequately monitored by market surveillance authorities.

Our focal points are:

1. Ensuring full EU harmonisation
2. Implementing product-specific measures
3. Continuing with the eco-design concept
4. Ensuring conformity assessment based on manufacturer's self-declaration
5. Maintaining committee procedure within the framework of Implementing Measures
6. Ensuring that harmonised standards take precedence over common specifications
7. Creating clear framework conditions for the digital product passport
8. Creating consistency in regulations, especially with regard to substances
9. Strengthening market surveillance
10. Considering repair index only under strict requirements
11. Allowing exceptions for destruction of unsold goods
12. Calculating PCF and PEF according to uniform methods
13. Creating a clear framework for the use of recyclates
14. Considering industrial products in green public procurement
15. Ensuring a system approach for industrial applications
16. Ensuring a holistic sustainability discussion
17. Involving all actors

1. Full EU harmonisation

We are in favour of a regulation instead of a directive. This obliges the EU member states to implement the requirements in time and with the same content and at the same time reduces the bureaucratic effort in connection with the implementation. Product requirements (and also requirements for their packaging), as well as product information and labelling (index, score, label ...) must be harmonised throughout the EU. National initiatives must not hinder the free movement of goods in the internal market. Nationally different requirements for products or their information and labelling significantly increase the effort for the industry. They also hinder comparability for consumers when making cross-border purchases.

2. Product-specific measures

We welcome the fact that the EU Commission wants to continue to set ecodesign requirements on a product-specific basis. Adherence to this principle becomes even more important due to the large extension of the scope of application. Moreover, both end products and components are affected, in each case in B2C and B2B business. In this respect, possible requirements must be clearly differentiated. The work plan for the product groups / delegated acts must be prioritised on the basis of the actual environmental relevance and communicated very early on so that industry can prepare itself.

3. Basic principles for the continuation/extension of eco-design

The ecodesign regime has proven its worth. It is supported by the industry.

In general:

The criteria according to Art. 15 Framework Directive 125/2009 must continue to be considered when developing implementing measures: Significant potential to improve environmental impacts, no excessive costs, stakeholder consultation, no significant adverse impacts on product functionality and affordability, no significant adverse impacts on industry competitiveness.

The basic principle of eco-design must be maintained: ban non-compliant economic operators from the market, but leave room for competition among the ambitious. This has worked well for energy efficiency.

However, for some requirements, e.g. the duration of the obligation to stock spare parts, the limit of what is sensibly possible has already been reached. Even today, brand-name manufacturers keep spare parts in stock for 10 years or more. But: there are a lot of devices and variants, so there are also a lot of (spare) parts. Too many spare parts have to be disposed of at some point. Finding the right balance within the framework of legal regulation is a major challenge.

In order to ensure high-quality and safe repairs, the concept of the "Professional Repairer" introduced on 1.3.2021 with various implementation measures should be maintained.

B2B:

In the B2B sector, a weakness of the eco-design guideline is becoming apparent. Plants and machines are made of individual components. Up to now, minimum energy efficiency requirements have been issued for some of these components by means of corresponding eco-design regulations. These potentials of the components have now been raised, but there are still very high savings potentials if there were requirements for minimum efficiency at

system or subsystem level. These potentials cannot currently be raised with the instrument of the Ecodesign Directive, as it only targets products. Technical approaches and standards for assessing the combination of components as well as experience in assessing complete systems are available.

4. Conformity assessment

We welcome the fact that conformity assessment is generally based on a manufacturer's self-declaration using harmonised standards, which create a presumption of conformity (Article 34). Mandatory involvement of third parties should only be used in justified exceptional cases.

The corresponding provisions of the Ecodesign Directive 2009/125 (Article 8.2) have proven their worth and should be retained: *“The conformity assessment procedures shall be specified by the implementing measures and shall leave to manufacturers the choice between the internal design control ... and the management system ... Where duly justified and proportionate to the risk, the conformity assessment procedure shall be specified among relevant modules as described ...”*.

5. Delegated Acts vs. Implementing Measures

The proposal envisages, on the one hand, expanding the current scope of ecodesign requirements and, on the other hand, enacting these requirements through delegated acts. As much as we can understand both, the two proposals do not go well together. Due to the massively increasing complexity, the derived legal acts should not be discussed less, but even more intensively than before. The committee procedure with implementing acts practised so far has contributed decisively to the success of ecodesign, because of the involvement of the co-legislators and all relevant stakeholders.

In addition to energy efficiency, the new ESPR draft now takes up a number of other aspects, such as reparability, recyclability or the use of certain substances. Moreover, the regulations are to apply to far more products, components and sectors than before. In order to recognize this complexity, we are calling for a more comprehensive approach both in the consultation on the ESPR itself and in particular in the consultations on the individual implementation measures that will follow in the coming years:

- full consistency of regulations. There should be no overlaps, duplication of regulations or legal uncertainties - especially between national and EU requirements, so as not to fragment the internal market;
- a detailed discussion of conflicting goals, e.g. use of recycled materials vs. removal of certain substances;
- a circular economy that is inclusive and lived by all. Legislation should take into account what the market and consumers are willing to accept and implement.

We are therefore in favour of retaining the committee procedure already practised in ecodesign within the framework of implementing measures. This will better ensure that ambitious, but also consistent and practicable ecodesign requirements can be achieved in each individual case. Delegated acts do provide for the possibility of objections by Parliament and Council. However, in our opinion, both the hurdles foreseen for this and the complexity, product-specific and technical minutiae of ecodesign measures (e.g. energy labels) would not really lead to sufficient involvement of the co-legislators and other stakeholders.

6. Harmonised standards versus common specifications

The NLF, with its approach of using harmonised standards to concretise abstract legal requirements and the principle of presumption of conformity, has proven itself as an instrument for placing products on the market. The procedure is transparent and offers all stakeholders the opportunity to participate. Harmonised standards should therefore be the only standards referred to.

We reject the option of having "common specifications" drawn up by third parties (consultants/institutes) (Art. 35) or this may only be done under very narrow and clearly defined conditions (cf. [BDI position paper on common specifications](#)). If the European standardisation bodies are not in a position to develop a high-quality standard on time due to the complexity of a mandate, this will also not be possible through third parties. In addition, Common Specifications will further promote a divergence between European and international standardisation

7. Digitaler Produktpass (DPP)

Digital product passports are important enablers for a circular economy, but only under clearly defined, appropriate and meaningful framework conditions. We support a decentralised and sector-specific approach. The data collected must offer actual(!) utility. Solutions that already exist in the industry must be taken into account. All DPP approaches should be based on international standards, in particular data sharing must be based on standardised formats.

Within global value chains, the availability of data along the supply chain cannot be taken for granted. Accordingly, it is important to limit data to what can actually be collected. SMEs in particular have great problems obtaining data from their upstream suppliers. This is shown by the experiences with the European substance database SCIP.

The European databases SCIP and EPREL are not prime examples in this context. Their scope clearly overshoots the original intention to provide users only with useful and necessary data. We also see this danger with a digital product passport. Already today, consumers can view or access more product-related information than many want, need or can understand. This also applies to other stakeholders, such as recyclers. A central register should be limited to an absolute minimum of necessary information.

The DPP should be used to do away with paper as much as possible. Therefore, the digital format should be applied as the standard case for all product-related information required by law.

The requirements for the DPP must be designed in such a way that existing industry solutions are taken into account. The ZVEI has developed a decentralised solution approach for a digital product passport based on so-called partial models of the management shell (IEC 63278-1) for industrial applications (B2B area) and successfully demonstrated the applicability within the framework of the "ZVEI show case "PCF@Control Cabinet". This solution approach uses the product identification according to IEC 61406, which is already widely used in industry and must therefore also be referenced. The sole reference to ISO 15459-x does not go far enough and is not even feasible for many customer-specific products/assets. This structure of the Digital Product Passport can also be used for the development of Smart Services or new digital business models, such as the development of Product-as-a-Service models.

Weitere Informationen: [ZVEI Position paper on DPP](#) and implementation within the framework of the [„ZVEI-Show-Case PCF@Control Cabinet“](#).

8. Consistency of regulations - especially for substances

We ask for full consistency of regulations. There must be no overlaps, duplication of regulations or legal uncertainties. The definitions must be clearly aligned with existing regulations.

The demand for consistency applies in particular in connection with substances. We therefore welcome the statement in recital 22 that ESPR-based acts should not contain restrictions on substances based on chemical safety.

We suggest changing the wording from "shall" to "may". Substances of concern" are already regulated under RoHS, REACH, POPs, F-Gas Regulation, etc. There is no scope for addressing them in further regulations.

We are critical of possible information and tracking requirements for ingredients through eco-design regulations. This possibility is addressed in several places, e.g. in Article 1.1d, 5.1, 7.2a, 7.5 (Substances of concern, name, location, concentration, tracking and information ...). Information requirements on SoC are also regulated in more and more European legal acts (REACH, Waste Framework Directive, ESPR), which increases multiple regulation and inconsistencies.

There is also a need for clarification regarding the linking of substances of concern with requirements for recyclability and reuse. See e.g. Recital 19: "Identification of chemicals hindering re-use and recycling" or Art. 2, Definitions, para. 28.

The wording under letter c) of the passage "negatively affects the re-use and recycling of materials" should be clarified by using the word "inhibits".

Tracing of substances can be useful to inform treatment facilities how to dismantle a product at the end of its life or recycle its components for another use. While we welcome the Commission's intention that some exemptions can be made for reasons of technical feasibility or to protect confidential business information, we believe that the approach should be reversed. In other words, instead of making exceptions, the substances of concern to be reported should be selected on the basis of relevance, benefit and demand for the information in the value chain. Our proposal for Art. 7(5): see Annex.

9. Market surveillance

Product-related requirements on the quality of consumer goods and information for consumers (label, product passport ...) influence - politically intended - the competition of manufacturers.

Compliance with the rules of competition must therefore also be effectively monitored. Effective market surveillance with sufficient capacities on the part of the competent authorities in the countries is therefore of fundamental importance. This must be enforced by the member states accordingly in order to achieve a level playing field for market participants. With ESPR as well as with measures within the framework of the initiative "Empowering

Consumers for a Green Transition", additional product and information requirements will come. Verifying their compliance is significantly more complex than, for example, energy consumption. This brings new challenges for market surveillance.

In the ESPR proposal, the EU Commission refers to "reinforced market surveillance" in many places. Article 59, for example, is intended to oblige member states to submit corresponding action plans by mid-2024 at the latest. This is initially to be welcomed. However, plans are not enough. The market surveillance authorities must actually be provided with significantly more resources. We recommend that the action plans required in Article 59 of the COM proposal and the concrete measures for their implementation first be examined for efficiency and effectiveness before new and difficult-to-monitor product or information requirements are enacted.

Special aspect: There are conceivable requirements that could not be checked at all at the time of placing on the market, such as the use of recycled materials or durability. We therefore look at such requirements critically.

10. Repair index

A repair index is not addressed in the ESPR proposal, but in the COM proposal "Empowering Consumers for a green Transition".

Because of the thematic proximity to ESPR, we comment here.

An EU-wide harmonised labelling for reparability is conceivable. However, the French model would have to be improved (regarding criteria, verification).

Strict requirements would have to be placed on a repair index..

- It must actually(!) be suitable in practice to lead to more repairs. It must be limited to information that is relevant and understandable for consumers. In this context, the aspect of economic efficiency of repairs must be considered. There will only be more repairs if they are economical for the consumer. That is the big hurdle - and not, for example, the lack of spare parts. Appropriate measures should be tested for their effectiveness before they are implemented.
- It must be mandatorily harmonised at EU level and come quickly enough to make national activities that jeopardise the internal market superfluous.
- The evaluation of the criteria of a label must be based on a robust, science-based, EU-wide standardised methodology.
- Because of its high importance for consumers and producers, the label needs to be developed very carefully, in close stakeholder dialogue.
- Verification of a label would be complex and costly. The aspect of market surveillance (see point 9 above) is therefore particularly important here.
- The practical aspects, in particular an indication at the point of sale (also online sales), must be thought through thoroughly and in consultation with the obligated addressees (retailers, manufacturers).

11. Destruction of unsold goods

In principle, we support a ban on the destruction of unsold durable goods. However, there must be exceptions, for example if the unsold products contain critical or even

prohibited ingredients (also due to new regulations). A consideration must be product-specific.

12. Calculate PCF and PEF according to uniform methods

The calculation of Product Environmental Footprints (PEFs) and Product Carbon Footprints (PCFs) (Article 1 of the draft regulation) must be carried out according to uniform, transparent and comprehensible methods in order to ensure comparability of the results. It must also be clarified how to deal with data from products from non-EU countries that are not subject to EU law. This also affects the general question of effective market surveillance in order to exclude competitive disadvantages for manufacturers in the EU compared to suppliers from non-EU countries.

13. Use of recycled materials requires appropriate standards

Before regulating the use of recyclates, it should be evaluated whether their use is ecologically advantageous in individual cases. In any case, the requirements for the use of recyclates or minimum secondary raw material contents (Article 1) provided for in the draft regulation should be product-specific in view of the possibly different ecological and technical implications. In addition, harmonised standards for sufficient and reliable quality are still lacking for plastic recyclates, for example. It is also not ensured that sufficient quantities of the corresponding recyclates are available on the market at competitive prices. The availability of recyclates should be taken into account in the product-specific implementation. Furthermore, it is hardly possible to provide evidence of the recyclates used in products, which is of great importance for imports from non-EU countries and a correspondingly necessary market monitoring. Furthermore, if possible, only one recycled material quota should be specified per product.

Our statements on the use of recycled materials in the electrical industry: [Plastics in the Electrical Industry, Guideline on plastic recyclates in the electrical industry](#)

14. Green Public Procurement

The draft supports the increased use of green public procurement, with more requirements for public procurers. Public procurement is a major market player with a potentially strong influence that can be significantly strengthened. Today, there is a perception that green public procurement is focused on commercial products such as office equipment, telecommunications, etc. We would like to see a similar focus on industrial products such as electric motors, variable speed drives and UPSs used in the public sector such as utilities, electricity distribution, water supply and wastewater treatment, education, hospitals, etc.

15. System approach for applications in industry

The biggest lever for energy savings in industry application is optimising the energy efficiency of drive systems. Many studies show that the correct design of drive systems is crucial to maximise performance and minimise motor losses. Energy-efficient systems are those that are perfectly matched to their applications. Technical approaches and standards for the design of an efficient system are available and must also be consistently required by law. We strongly recommend extending the Ecodesign Directive from products to the system or

subsystem level (plant, machinery), including consideration in the event of servicing and enabling market monitoring.

16. Holistic approach

We need to take a more holistic approach to the sustainability debate instead of focusing too much on individual aspects that are attractive from a consumer and media perspective, but are not the big levers. For example, the current debate focuses very much on repairability (right-to-repair). This is an important issue and we believe that in case of defect, repair should always be considered. However, the low cost-effectiveness of repairs will not allow for the "big bang", no matter what the legal requirements are.

Repair-friendly equipment that breaks down frequently is not sustainable. And repair-friendly appliances that consume too much energy are not either. In addition, repair-friendly products can entail a higher resource input in production (for example, thicker housing walls, more screw connections, etc.). Energy consumption still has the greatest environmental impact for many electrical consumer goods.

In the debate, the "long levers" should first be identified and corresponding measures checked for actual impact and feasibility.

17. Circular society - involve all actors

It is not enough to only talk about a circular economy and to only address and regulate the economy, industry and trade - without considering what the market and the consumer are willing to accept and implement.

We would like to see policy-makers looking even more closely at their options in terms of information and education. Example: We have achieved great success on the topic of energy efficiency. Public campaigns such as "Deutschland macht's effizient" (Germany is doing it in an efficient way) have supported this well.

Status: 22. Juni 2022

Contact:

Christian Eckert
Sustainability & Environment
christian.eckert@zvei.org

Jochen Reinschmidt
Digitalisation & Law
jochen.reinschmidt@zvei.org

Annex I

Proposal Art. 7-5:

<p>5. The information requirements referred to in paragraph 1 shall enable the tracking of all substances of concern throughout the life cycle of products, unless such tracking is already enabled by another delegated act adopted pursuant to Article 4 covering the products concerned, and shall include at least the following:</p> <ul style="list-style-type: none">(a) the name of the substances of concern present in the product;(b) the location of the substances of concern within the product;(c) the concentration, maximum concentration or concentration range of the substances of concern, at the level of the product, its main components, or spare parts;(d) relevant instructions for the safe use of the product;(e) information relevant for disassembly. <p>Where the Commission sets out information requirements in the delegated act adopted pursuant to Article 4, it shall:</p> <ul style="list-style-type: none">(a) establish which substances fall under the definition in Article 2(28), point (c), for the purposes of the product groups covered;(b) lay down deadlines for the entry into application of the information requirements referred to in the first subparagraph, with possible differentiation between substances; and(c) provide exemptions for substances of concern or information elements from the information requirements referred to in the first subparagraph. Exemptions referred to in the second subparagraph, point (c), may be provided based on the technical feasibility or relevance of tracking substances of concern, the need to protect confidential business information and in other duly justified cases. <p>Substances of concern falling under the definition in Article 2(28), point (a), shall not be exempted from the information requirement referred to in the first subparagraph if they are present in the relevant products, their main components or spare parts in a concentration above 0,1% weight by weight.</p>	<p>5. The information requirements referred to in paragraph 1 shall enable the tracking of all relevant substances of concern throughout the life cycle of products, unless such tracking is already enabled by another delegated act adopted pursuant to Article 4 covering the products concerned, and shall include at least the following:</p> <ul style="list-style-type: none">(a) the name of the substances of concern present in the product;(b) the location of the substances of concern within the product;(c) the concentration, maximum concentration or concentration range of the substances of concern, at the level of the product, its main components, or spare parts;(d) relevant instructions for the safe use of the product;(e) information relevant for disassembly. <p>Where the Commission sets out information requirements in the delegated act adopted pursuant to Article 4, it shall:</p> <ul style="list-style-type: none">(a) establish which substances fall under the definition in Article 2(28) and are relevant for the purposes of the product groups covered; this relevance evaluation should be based on horizontal criteria developed in dialogue with stakeholders;(b) lay down deadlines for the entry into application of the information requirements, in a set by step process, referred to in the first subparagraph, with possible differentiation between substances; and(c) provide exemptions for substances of concern or information elements from the information requirements referred to in the first subparagraph. Exemptions referred to in the second subparagraph, point (c), may Substances to be reported shall be selected based on the technical feasibility or relevance for the specific product group, the need to protect confidential business information and in other duly justified cases.
--	---