

Eurochambres position on the Ecodesign for Sustainable Products Regulation (ESPR)

Eurochambres supports the introduction of an eco-design instrument that considers all aspects of the life cycle of a product, while respecting the principle of proportionality. However, the new performance and information requirements must meaningfully contribute to the improvement of the products circularity. The burden on businesses must be proportionate and the competitiveness of the European economy must not be jeopardized.

Eurochambres welcomes the objectives of the regulation on eco-design requirements for sustainable products proposed by the European Commission, as part of the circular economy package. The proposal addresses the design of products and sets new requirements to make products more durable, reliable, reusable, upgradable, repairable, easier to maintain, refurbish and recycle, and energy and resource efficient.

In principle, Eurochambres believes that the framework for improving the environmental performance of products has the potential for economic success. Nevertheless, we stress that, introducing excessive eco-design requirements **can limit the diversity of products** on the market and **hinder innovation**. Corresponding specifications on the durability, repair-friendliness and recyclability of products should therefore give companies sufficient flexibility in developing new products. Moreover, it must also be ensured that the new regulation **does not impose excessive bureaucratic burdens on businesses** and that their competitiveness in the European market is not jeopardized. Lastly, **the protection of confidential business data and intellectual property rights** within the scope of the digital products passport will be of utmost importance.

The legal framework and competitiveness

Eurochambres supports the Commission's plan to repeal the previous eco-design directive and replace it by a regulation. The harmonisation of legislation governing the EU single market will contribute to establishing a **level-playing-field and provide additional legal certainty for businesses** seeking to market their products in other member states. To secure this level-playing-field, the Commission must ensure the equal implementation of this regulation in all member states. The **effective enforcement by national authorities** is crucial for safeguarding and further developing the internal market **to avoid competitive disparities within the EU**. The EU Commission must be aware of this when formulating additional obligations for companies, but also for national authorities.

To achieve the goal of climate neutrality and to ensure sustainable growth in the long term, it is essential not to put the competitiveness of companies at risk. Excessive sustainability requirements can put European companies in a position of temporary competitive disadvantage, particularly when considering external competitors subject to different market rules. With this in mind, we strongly support the application of the new standards to both products produced in the EU, as well as imported ones. This will foster fair competition by promoting a level playing field across the European market.

Ecodesign requirements on a product-by-product basis

Eurochambres supports the Commission's plan to introduce obligations on a product-by-product basis as specified by **Art. 5**. We believe that an approach based on a thorough impact assessment and **transparent** and **broad stakeholder consultation** allows for additional consideration of the needs and specificities of certain products, while leaving room for technological progress down the line. However, the complexity of the eco-design for Sustainable Products Regulation (ESPR) will depend on the scope of the delegated acts setting out the requirements for the different products. We stress that especially for SMEs, **bureaucratic barriers must be as minimal as possible**. There are, however, some points that could contradict this overall objective.

We are critical of the requirement in **Art. 5 (1) (m)** (Environmental impact, including carbon footprint and environmental footprint (PEF)). If these requirements were to be implemented via a delegated act, this could lead to considerable bureaucratic, financial and personnel costs for affected companies. The data requirements of recommendation (EU) 2021/2279 on PEFs are complex and comprehensive. In practice, external service providers are usually involved. Typically, a company does not only produce one type of product, so that numerous PEFs would have to be created. Given this context, it seems likely that there will be "bottlenecks" here, which could lead to products, **especially from small or medium-sized enterprises**, not being able to be put on the market at all or only after a considerable delay

We would also like to highlight the possibility of **conflicting requirements**. For instance, some recyclability requirements may conflict with durability or repairability requirements. This needs to be carefully evaluated. In general, the ESPR should follow the approach of "*least complexity*". Therefore, delegated acts should be limited to those aspects of a product that are **most relevant to the environmental performance** of a product or product group.

In addition to the delegated acts for various product groups, **numerous other central aspects of the regulation will be regulated in delegated acts**, including requirements for the design of labels, for the adaptation of eco-design obligation and for the digital product passport. Although we generally welcome this flexibility, we consider important to have all generally applicable requirements already covered in the Regulation to avoid negative consequences on the effective application of the Regulation at national level. In some cases, the requirements set out in the regulation or in the delegated acts are extremely precise. An example of this is the minimum number of full-time employees for the conformity assessment body set out in **Art. 43**. Despite it is in the nature of a regulation to provide more detailed requirements than a directive, the arising question is on whether this detailed elaboration is compatible with the **principle of subsidiarity**. We are of the opinion that Member States, as more familiar with the respective domestic frameworks, have the possibility to implement the requirements in an optimised and flexible way.

A clear legal framework is an essential precondition for the correct planning of business activities. Therefore, future expected legal requirements should be released and communicated to companies already at an early stage. In this context, we welcome the proposed **working plan, covering a period of three years**, setting out a list of product groups for which eco-design requirements are intended to be established (**Art. 16**).

Regarding the regular update of this plan, setting an **annual deadline** to finalise the respective updates **is needed**. This would facilitate businesses to stay informed about the Commission's plans. We would like to highlight the lack of precise methodology for the ranking of product groups regulated by delegated acts. The draft suggests a ranking "*by relevant scientific means*", which does not allow for a transparent identification of the elements belonging to the different product groups.

The current eco-design directive evaluates the environmental impact of a product group according to the **methodology used for the eco-design for energy-related products**. However, this methodology is **not appropriate** for other groups of products, raising the need for an adjustment of the same. Future methods must take into account the **entire life cycle** of a product, as well as the impact of the procurement of semi-finished products, spare parts, and by-products in the entire value chain. However, to enable product and technology development, the implementation requirements should **not be too prescriptive**. Otherwise, the Regulation would hinder innovation and undermine the objectives of the Green Deal.

Stakeholder involvement, self-regulation and guidelines

Stakeholders' involvement in defining these methods and in the development of the ESPR and the associated delegated acts will be crucial for the success of the regulation. The input of experts from industry and business should therefore be **central to the specific elaboration of the requirements**. Eurochambres supports the setting up of a "**Ecodesign Forum**", as suggested in **Art. 17** of the proposal, which will involve stakeholders and experts. However, at the same time we call for the further development of its structure. The Commission must ensure that the dialogue within the Forum is as **transparent, inclusive, and effective** as possible. Furthermore, it must be ensured that the essential expert knowledge also **flows directly into the design of the delegated acts**.

Art. 18 gives economic operators the possibility to submit a **self-regulation measure** establishing eco-design requirements for products, as an alternative to delegated acts. We support this proposal as businesses and industries are able to create requirements for product groups in a practical, efficient, effective and monitorable way. In practice, a larger proportion of product groups could be covered more quickly this way, as the effort would be shared between different stakeholders and the Commission would not have to operate autonomously. However, we are critical of the requirement that the market share in terms of volume of the signatories to the self-regulation measure in relation to the products covered by that measure must be at least 80 % of units placed on the market or put into service. Thus, we suggest the Commission to consider a **majority market coverage (at least 50%) as sufficient**.

Lastly, we support the Commission's proposal to accompany the delegated acts with **guidelines covering specificities of SMEs** active in the product or product group sector affected, as proposed in Art. 19. This is of particular importance, since the adaption of manufacturing processes and products according to the new eco-design requirements, as set out in the delegated acts, is a major challenge for business, especially for SMEs.

Digital product passport

Eurochambres welcomes the creation of a digital product passport (DPP) for the registration, process and share of product-related information amongst supply chain with businesses, authorities, and consumers. We acknowledge the **enormous potential of such a tool for businesses**, since it guarantees an easier access to data, or improvement in the circularity of products and materials. We especially support a **decentralized system** and the **product-by-product approach**, proposed by the Commission. Nevertheless, this proposal also raises concerns over the potential lack of protecting **confidential business data**, the interplay with other legislation, **competitiveness**, and **excessive administrative burdens for affected businesses**. From a business point of view, the protection of confidential business data and intellectual property rights within the scope of the digital products passports is of **utmost importance**. We acknowledge the conflict of objectives between the creation of transparency and the protection of trade secrets. Hence, a particularly careful balancing of measures is necessary. We call for data containing trade secrets or intellectual property rights to be excluded from the scope of the delegated acts for digital product passports contained in the eco-design for Sustainable Products Regulation. In case these cannot be excluded, at least **extremely lofty standards of cybersecurity and confidentiality measures must be introduced**. Furthermore, the information requirements should not violate existing contractual obligations of companies. We also point out, that, long-term, international contracts that businesses have already concluded must be preserved and should not be violated by the introduction of a product passport.

In **Art. 8 (2) (e)**, the Commission proposes that information in the digital products passports should be accessible to everyone before the purchase of a product. We are particularly critical of this point about the protection of trade secrets, as it means that basically anyone can access any information. This proposal introduces competitiveness concerns over sensitive and confidential business data being publicly available. Differentiating between **publicly available information**, and information with a **more restricted access**, granted for instance to specific actors across the value chain, would help alleviate such concerns.

Furthermore, we are of the opinion that the introduction of a **Unique Product Identifier** for each product including intermediates and components would lead to multiple "information points" being present on a final product. We are concerned that this will result in **uncertainty and uncertainty** for manufacturers, distributors, customers, and authorities and contribute to undermine the purpose of the initiative. The Commission rightly proposes to develop a European database in which all unique identifiers will be aligned. It should be ensured, that existing projects and initiatives are included in the development of such a database.

Green public procurement and third-party verification

Art. 4 and Art. 58 of the proposal allow the Commission to supplement the regulation by delegated acts to establish requirements applicable to public contracts, including implementation, monitoring, and reporting of those requirements by member states. Eurochambres welcomes the efforts to use **public procurement** to increase demand for green or sustainable products. The public sector, which is a major consumer of goods, should lead by example in achieving the EU's sustainability goals, as the demand for sustainable products is the prerequisite for the emergence of a supply and a functioning

market. However, in the **definition of the criteria**, attention must be paid to ensuring that the formulations remain flexible and **do not lead to any disadvantage for SMEs**.

In addition, ensuring effective enforcement and market surveillance is crucial for the success of this regulation. However, **adequate market surveillance** cannot be replaced by **third-party verification**, as it adds costs to manufacturing and contribute to slow down innovation without adding value.

Double regulation and duplication of efforts

Finally, we would like to highlight the need for consistency and alignment between the proposed ESPR and existing or new requirements under other EU initiatives and legislations (e.g., SCIP databases, Environmental Footprint – PEF, the Right to Repair initiative, the Construction Product Regulation, etc.). It must be ensured that **duplication of effort in providing information is avoided**. In particular, suggest that all companies required to provide data under the DPP be exempted from the requirement to enter data into the SCIP database.

Further information: Mrs Florian Schmalz, Tel. +32 2 282 08 74, schmalz@eurochambres.eu
Press contact: Ms. Karen Albuquerque, Tel. +32 2 282 08 72, albuquerque@eurochambres.eu