

EEB response to the Ecodesign for Sustainable Products Regulation (ESPR) consultation – June 2022

https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12567-Sustainable-products-initiative_en

Introduction

The EEB welcomes the transformation of the current Ecodesign Framework Directive into a new Ecodesign for Sustainable Products Regulation. We think it clearly reflects the ambition of the EU to make sustainable products the norm (even if we are surprised to notice this ambition is not part of the article 1 on subject matter and scope proposed by the EU Commission).

We call for the new Ecodesign to deliver on sustainability as the current Ecodesign has delivered on energy and climate: [contributing to half of our 202 energy efficiency target, to one third of our 2020 GHG emissions reduction target, while being beneficial for EU citizens, for EU industry and job creation](#). And [the potential savings are still tremendous until 2030](#), if we stop delaying implementing measures.

That's why our first priority should be to boost the effectiveness of the policy.

Making sustainable the norm should however not happen at the expense of social and environmental justice in Europe and along the global value chains bringing products on the EU market. And this essential dimension of social and environmental justice to any claim for sustainability cannot be resumed with 'affordability' provisions, which often mean keeping lower quality products on the market for the poorest, and consequently aggravating the poverty gap over time. Truly sustainable products should be the default option for all.

That's why our second priority is to integrate social aspects and due diligence along value chains as part of the parameters to be investigated and regulated upon when defining Ecodesign implementing measures.

As more and more of our goods are purchased online, online marketplaces have to act with responsibility. Their legal obligations with regards to the products they offer and advertise should be similar to the obligations of brick and mortar shops and any distributor or dealer. Their duties towards ensuring full compliance of the goods and materials they offer cannot be waterdown to a vague collaboration with market surveillance when other manufacturers, importers, distributors are to be sanctioned when not complying with EU requirements.

That's why our third priority is to ensure a clear responsibility and liability with regard the compliance of the products sold or advertised by online sales platforms.

Finally, the EEB praises the improved formulations to enhance market surveillance, but we still regret that the text shies away from setting the necessary provisions towards dissuasive sanctions. Intentionally or not, those not respecting the rules should be really discouraged to cheat EU citizens and business or neglect their obligations.

We thus call for establishing clearer dissuasive sanctions in case of non-compliance.

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1. Boosting effectiveness of the policy

As it stands now the text is too close to an empty shell, full of good intentions but delegating any concrete measures to the future and with no clear mechanisms to ensure any ambition is actually implemented through future legal acts.

We thus call for:

- a. Setting guiding targets in terms of contribution to Climate and CE goals: notably on resource consumption and related emissions savings
- b. Setting more precise criteria to define the level of stringency of the future legal acts, such as for example:
 - *least life cycle cost* including societal costs (human health; risk of supply shortages; biodiversity and ecosystems degradation) in addition to consumers costs (energy bill, replacement bill)
 - and/or the need to act within planet boundaries for environmental footprint (e.g: calculating a max material/carbon footprint for the targeted product group) and leading to an absolute environmental footprint reduction
- c. Setting calendar deadlines to prevent delays by the EU Commission services, and past indecent delays, considering the possibility for an accelerated legislative draft proposal by the members of the Ecodesign forum to be submitted to the EU Parliament and the Council
- d. Not wasting time and resources 1: Adopting a multi-tiers top performer approach when setting the EU legal acts: the benchmark of today (best available technology or non-available best technology with Technical readiness above 6/7) becoming the norm of tomorrow (= the last tier ambition)
- e. Not wasting time and resources 2: Prioritising horizontal requirements covering multiple product groups, which may be made more specific in certain product groups (*standby regulation* model)
- f. Not wasting time and resources 3: Not delaying decision to future legal acts when they can be discussed during this co-decision process: notably on ban of unsold goods (at least for electronics & textiles), on a systematic digital product passport, on software update not deterring product performances for digital and connected products along their whole expected life time, on mandatory repair information such as manuals and repair instructions under open access format, on a first work plan (along the priorities identified in SPI communication and as was formulated under first Ecodesign Directive of 2006 for most energy guzzling products)
- g. Not wasting time and resources 4: Making sure some fundamental criteria are defined for several product policy instruments (Ecodesign, GPP, Ecolabel, EPR modulated fees) with a performance increase but a common testing & verification procedure that would optimize market surveillance efforts, as well as industry controls and declaration (today the methodologies to test and declare compliance with Ecodesign are not the same as the methodologies to test and declare conformity with GPP criteria or Ecolabel criteria even on the same parameters)
- h. Not wasting time and resources 5: Not entering endless discussion on the design parameters not to be regulated upon. In art 3 point 7, article 4 and annex VI point 3, it is referred to the possibility of defining parameters that shall not be regulated upon. In view of the expected challenges to already properly investigate and prioritize parameters to regulate upon, it should not be added a complementary complexity to regulate on parameters not to be regulated upon. There is no worse scenario to create

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endless discussions, generate delays, waste resources and risk defining not-future-proof measures. As today, parameters which are not regulated should be ignored or potentially mentioned for future consideration in review clauses.

- i. Not engaging in self regulations as substitutes to regulation, rather promoting voluntary agreements and self-developed code of conducts as going beyond minimum legal requirements to differentiate further frontrunning industry. The existing industry self-regulations under Ecodesign are a clear failure in terms of delivering quicker and better than regulations: the imaging equipment initiative is to be turn into a regulation under 222-2024 working plan, the voluntary agreements on Complex Set Top Boxes is in the limbo for years and only the lack of resources by the EU commission obliges us to remain with a de facto not regulated industry; and the initiative by the game consoles industry has not really challenged business as usual and is even beyond other recent regulations in terms of repair provisions.

If those leverages for making the new Ecodesign deliver effectively on sustainability and for ensuring an efficient use of dedicated resources are not taken into consideration, the promises of the policy may never be fulfilled.

2. Integrating social criteria and due diligence

The EEB thinks we cannot credibly talk about making sustainable products the norm without including social and due diligence parameters, as part of the parameters to be scrutinized and when relevant to be regulated upon.

We also think that those parameters cannot be claimed to be properly covered by Corporate Sustainability and Due Diligence legislative initiative (CSDD) as CSDD sets provisions at company level, not providing strong certainty at product level. Integrating social and due diligence parameters at product level would enable to encourage performance beyond legal requirements and foster improvement over time; help target social sustainability hot spots specific to high impact product groups (as in the deforestation legislation), address limitations of CSDD only covering big companies, notably in problematic sectors like electronics or textiles where SMEs may play a role in problematic supply chains.

We believe the setting of product passport is a clear opportunity to convey company level due diligence obligations to consumers and contribute to guide purchasing decisions, even if we are well aware that available information is not the unique guidance for consumers.

It is to be noted that Due Diligence provisions have been set in the revised Batteries Regulation, and those provisions have not been dismissed by the EU Parliament and the Council. This should be considered a precedent to replicate where appropriate rather than a regime of exception for a single product group.

Neglecting social and due diligence parameters during preparatory studies may be a clear missed opportunity as there might not be other investigation performed on a given product group or horizontal dimension, and even if it's decided not to set minimum performances or certification under Ecodesign, those parameters could be deemed relevant for GPP or Ecolabel criteria, which should also be inspired by findings of preparatory studies. Staying blind on them is definitively the worst scenario.

This call for integrating social and due diligence parameters is actually in line with fair transition objective and cannot be restricted to affordability. Affordability mainly means setting poor ambition requirements to get the price accessible to the most vulnerable, which will only enlarge gap between poorest and most wealthy household. In contrary we believe that the ambition to make sustainable products the norm should mean making sure sustainable products are accessible to all through economy of scale for sustainable products,

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level playing field for competitors and barriers to entry to products not really sustainable, notably as staying blind on social and due diligence criteria, but simply a bit less bad.

3. Making sure online sales platform are made as responsible as other economic operators

We do not understand why online sales platform should not have the same obligations as other economic operators, notably distributors and dealers. This could most likely create an unfair competition with bricks and mortar shops, and this represents a major concern as online procurement is a growing trend. It is noticeable that in the definition of distributors and dealers, online sales do not appear as clearly included.

We are all the more concern when we see the recent decision of the Amazon shareholders to [reject](#) 15 resolutions brought forward to influence workers' rights and the company's environmental impact.

Online marketplaces cannot become the steppingstone for non-compliant products to enter the EU market. The provisions for a good collaboration with market surveillance authorities (art 29) is not enough: online sales platforms need to take responsibility for the products they sale/advertise (possibly cascading down this responsibility in case of declared non-compliance, but not escaping it).

The EEB calls for a greater level playing field for all economic operators when it comes to ensuring compliance of products entering the EU market, as well as more dissuasive sanctions in case of non-compliance, including a (temporary) prohibition to operate on the market in case of repeated infractions. In view of their tremendous power, online marketplaces have a clear role to play to enhance compliance of products, but this potential can only be unleashed if they are made responsible and have to play by the same rules as other economic operators.

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