



**Regulation establishing a framework for setting
eco-design requirements for sustainable
products
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Position Paper

**Austrian Federal Economic Chamber (WKO)
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WKO Position Paper on the introduction of a Regulation establishing a framework for setting eco-design requirements for sustainable products (ESPR) ([EC Proposal](#), [Council's general approach](#), [Position EP](#))

Since its introduction, the Ecodesign Directive has contributed to the achievement of the EU's energy efficiency goals. By taking a comprehensive life-cycle approach and focusing on specific areas where the greatest energy savings can be expected, it has proven advantageous to businesses, consumers, and the environment.

The announced and long-anticipated reform of this system in form of the ESPR aims to "make sustainable products the norm" and reduce the negative impact of these on the environment during their life cycle.

It is of concern for the Austrian Federal Economic Chamber (WKÖ) that the ESPR meets the objectives of the European Green Deal, contributes to the achievement of climate targets and at the same time is coherent, practicable and compatible with the realities of economic activity. We want to highlight the following points:

Ensuring legal consistency and proportionality:

Basic structure maintained	We welcome maintaining the approach of the predecessor directive by providing a framework and creating individual requirements for individual product groups by means of delegated acts, as this reduces uncertainty for affected market players.
Keeping coherence with existing legal acts	Since the regulation is covering a large variety of product groups, special care must be taken to avoid overlaps with other EU legislations (e.g., REACH, RoHS, construction products, etc.). Likewise, product groups that are already subject to specific sustainability regulations, e.g., construction products and batteries, and those that have to meet very high safety and quality requirements, e.g., medical devices or personal protective equipment, should be explicitly excluded from the scope of the regulation.
Proportionality	In addition to the delegated acts defining criteria for different product groups, numerous other essential points of the regulation are to be regulated in delegated acts. In order to avoid delays due to a lack of information, all generally applicable requirements should, where possible, already be regulated in the regulation. But more specific definitions, like information and product requirements for individual product groups should be kept regulated via delegated acts.
Sufficient time frames for adaptation and implementation	Sufficient time frames are an essential prerequisite for a functioning implementation of the requirements of the regulation without the risk of economic damage, especially for SMEs.

Ensuring competitiveness

Maintaining global competitiveness	In order to be able to make a successful contribution towards sustainability and climate neutrality in the long term, it is essential that companies remain competitive. Overly rigid sustainability requirements must not lead to a disadvantage in global competition, especially not for SMEs.
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Maintaining a European “level playing field”	For a "level playing field" within Europe, it must be ensured that the new proposal and also already existing (delegated) legal acts in the field of eco-design are implemented evenly throughout the EU member states. In terms of the "level playing field", it must also be emphasized that products can only be truly comparable if the same methodology is used and comparable accounting limits, comparable basic data and comparable functional units are observed. In this context, it must also be borne in mind that reliable test methods are not yet available for certain (chemical) substances, which means that control via market surveillance cannot be guaranteed in these cases.
Reducing bureaucracy	The WKO is strongly advocating to reduce burdensome bureaucracy, like the new introduction of a reparability score or forcing companies to keep a register of complaint. It seems especially likely that a large tool such as the digital product passport (DPP) will lead to a significant additional workload. However, the additional workload cannot yet be clearly estimated, as parts of the DPP will only be defined by means of delegated acts. When drafting the delegated acts, particular attention must therefore be paid to minimizing bureaucracy and avoiding disproportionate burdens, such as a disproportionate level of details. The creation of burdensome, additional costs, e.g., through mandatory third-party verification, should also be rejected.
Public procurement	We welcome the efforts to generate a demand for green and sustainable products by involving public procurement. A resulting demand is the necessary prerequisite for the emergence of a supply and a functioning market.
Unclear definitions and scope for interpretation	During the assessment, unclear definitions and formulations in the text of the regulation (e.g. "product", "component" and "intermediate product"; alternating use of the term "products" and "articles") or the lack of necessary information (e.g. when a product is considered unsold or unused and what is considered destroyed) were frequently noticed. This needs to be corrected. Not doing so would lead to legal uncertainty in the application and restrict the economic operators.
Ensure protection of confidential business information	The protection of confidential business information is one major precondition to keep European businesses competitive. Especially, when it comes to a regulation including many reporting obligations like the Ecodesign Regulation, these have to be maintained. Therefore, any efforts to protect confidential business information are welcomed.
No inclusion of premature obsolescence	The focus on premature obsolescence from the European Parliament and the Council is disproportionate, since up to date, it is not underpinned with any data or numbers, apart from a consumerprotection survey a few years ago. A general suspicion without sound evidence showing that this practice by companies actually exists must be rejected.
No inclusion of “social sustainability”	On the one hand, a clear definition of “social sustainability” is lacking in the Ecodesign Regulation; on the other hand, corresponding aspects are already strictly regulated in other legislation, e.g in connection to the EU supply chain.
Establishing rights for companies	An important point, which has been worked out very laxly so far, are the appeal possibilities of the entrepreneurs. To date, there is a lack of concrete possibilities to object to or complain in this regulation.

It is also unclear how entrepreneurs and product manufacturers will have to deal with potential, but expected, delays in the preparation of individual delegated acts.

Requirements for product groups

Important points for consideration on information requirements

The information requirements must in no case contradict applicable competition law, hinder contractual obligations or the preservation of trade secrets vis-à-vis the competition. Requirements for information to be affixed to products must not be excessive, lest they lead to more uncertainty among manufacturers, distributors, customers and authorities.

One company cannot monitor an entire supply chain on its own, so it must be clearly defined which areas fall under each responsibility. (e.g., the respective upstream and downstream step.)

Essentially, we miss a clarification in the regulation when the obligation of a product and a contractor by the "Digital Product Passport" (DPP) ends, e.g. when the "lifecycle" of a product ends by the definition as "waste".

Important points for consideration on product requirements

The regulation also aims to implement a number of product requirements, ranging from durability, reliability, and reusability, to the ability to be repairable and upgradeable, to the ecological footprint and waste generation. In principle, we view the implementation of many of these criteria, e.g., recyclability, positively. When designing the delegated acts, it is essential to ensure that there is clarity with regard to the precision of the criteria, that conflicting objectives (e.g., durability vs. possibility of recycling, ...) are prevented and that dependencies between the criteria are considered.

Furthermore, it must always be taken into account that fulfilment of the criteria is often not just a question of design and production, but also depends on the consumer's usage behavior. Producers and distributors have only a limited influence over this.

Methodology for three-year working plan is missing

The planned three-year working plan of the Commission for the preparation of the delegated acts for various product groups is seen quite positively. However, in contrast to the directive, the draft regulation lacks a comprehensible methodology for ranking the product groups. For the development of such a methodology, a close involvement of stakeholders in an open, transparent and scientifically sound process is crucial.

No pre-emptive prioritization and destruction bans

For the development of the working plan for the Ecodesign Regulation, a stakeholder survey was conducted with regard to product groups to be prioritized. The results have not yet been presented by the EC. Naming already product groups that should be prioritized or introducing destruction bans for unsold goods of certain product groups within the regulation itself would be pre-empting the results of this consultation. Such a way of procedure has to be opposed.

Sufficient participation of the economy

Representation in the Ecodesign Forum	<p>The establishment of an Ecodesign Forum based on the concept of the Consultation Forum from the Ecodesign Directive is to be viewed positively. It is important that affected industry sectors are sufficiently involved. It should also be clarified that organizations representing the interests of business and industry must also be mandatory forum members.</p> <p>When selecting participants for the forum, it must be further taken into account that the new regulation will cover significantly more product groups than the former directive. This must be reflected in the number and selection of included experts.</p>
Strengthen option of self-regulation measurements	<p>Self-regulation measurements can help to accelerate the process of regulating as many different product groups as fast as possible and in this way support the deployment of eco-design conform products. The EU should take advantage of this option instead of hindering it. Therefore, obstacles to self-regulation measurements, like too short revision periods or the hard to provide proof, that free movement in the internal market is ensured more quickly or at a lesser expense with a self-regulation measure via a delegated act, need to be removed.</p> <p>Product groups that are regulated in voluntary agreements must not be subsequently affected by (horizontal) delegated acts after all, in order to avoid uncertainty.</p>



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