

EUROPEN Information note on Ecodesign for Sustainable Products Regulation proposal

On 30 March 2022, the European Commission published the first part of its Circular Economy Package, which includes:

1. A proposal for a Regulation on Ecodesign for Sustainable Products (so-called SPI)
2. A proposal on new rules to empower consumers in the green transition
3. The EU strategy for sustainable and circular textiles
4. A proposal for a Regulation laying down harmonised conditions for the marketing of construction products

The second part of the Circular Economy Package is expected to be published on 20 July 2022 and will include, amongst others, a proposal for the revision of the Packaging and Packaging Waste Directive (PPWD), and a proposal for a Regulation on substantiating environmental claims using the Product/Organisation Environmental Footprint methods (green claims).

For information, the below diagram from the European Commission provides an overview of the initiatives planned in the Circular Economy Package. The present note focuses on the proposal for an Ecodesign for Sustainable Products Regulation.

Making sustainable products the norm in a more resilient Single Market



Overview of initiatives in the Circular Economy package

Proposal for a Regulation on Ecodesign for Sustainable Products (SPI)

Background

The European Commission's [Communication on making sustainable products the norm](#) and the final European Commission [Proposal for the Ecodesign for Sustainable Products Regulation](#) (ESPR), repealing the Ecodesign Directive 2009/125/EC to deliver on the so-called "Sustainable Products Initiative" (SPI) was published on 30 March 2022, as part of the Circular Economy Package I.

While the Communication outlines the Commission's broad approach to sustainable products, the ESPR puts forward a number of new obligations for manufacturers with a focus on the design of products. The Commission published together with the proposal of the ESPR its [Annexes](#) which provide guidance on the implementation of various obligations, a [factsheet](#) on making sustainable products the norm, and its [impact assessment](#) for the ESPR.

For background, the sustainable products policy initiative was announced as part of the Circular Economy Action Plan 2.0 published in March 2020. EUROOPEN participated to the different stakeholder consultations held on the SPI and throughout the process, advocated for packaging to be excluded from the scope of the SPI, sustainability measures specific to packaging being already governed by the PPWD.

Objectives of the proposed Regulation

The proposal recalls that the objectives of this proposed Regulation are to:

- Establish a framework for the setting of ecodesign requirements that products shall fulfil to be placed on the market or put into service.
- To improve product sustainability and to ensure the free movement in the internal market of products for which ecodesign requirements are set.

In order to achieve these objectives, the proposed Regulation:

- Plans the adoption of delegated acts containing requirements related to product durability, reusability, upgradability and reparability, the presence of substances of concern in products, product energy and resource efficiency, recycled content in products, product remanufacturing and high-quality recycling, and for reducing products' carbon and environmental footprints;
- Provides for the creation of an EU digital product passport, for the setting of mandatory green public procurement criteria;
- And creates a framework to prevent unsold consumer products from being destroyed.

Products in scope

The Commission will adopt by the end of 2022 a working plan setting the prioritisation of products to be regulated. To this effect, it will launch in the course of 2022 a public consultation on the categories of products to be selected under the first Ecodesign for Sustainable Products Regulation working plan. The working plan will cover at least 3 years, laying down a list of product groups for which it plans to adopt delegated acts as well as the aspects for which it intends to adopt delegated acts of horizontal application.

The Commission has carried out a preliminary prioritisation assessment of products to be regulated under this Regulation and requirements that will apply to them, identifying the following product categories as suitable candidates: textiles, furniture, mattresses, tyres, detergents, paints, lubricants, iron, steel and aluminium. A few sectors, such as food, feed and medicinal products, are exempted from the scope of the proposal.

Although it recognises that the essential requirements for packaging allowed on the EU market are already laid down in the PPWD, currently under revision, the Communication explicitly states that "as packaging varies greatly depending on the product category, it should be one of the key aspects to cover when developing product-specific

ESPR rules”. It can therefore be understood that Delegated Acts with a focus on packaging may be adopted to complement “with more targeted rules” the essential requirements of the PPWD.

Delegated Acts to set specific product requirements

The working plan that will define and prioritise product groups is yet to come, but the proposal already indicates that the Commission foresees the preparation and adoption of:

- Up to 18 Delegated Acts between 2024 and 2027, phasing in 4 products in 2024, 6 in 2025, and 4 each year as from 2026 in order to reach the SPI objectives.
- 12 Delegated Acts to be adopted between 2028 and 2030.
- Horizontal implementing acts (on average one per year as from 2024) in relation to market surveillance, disclosure of information on the destruction of unsold consumer goods or the acknowledgement of self-regulatory measures.
- Horizontal tasks related to the digital product passport, support for market surveillance and customs control, and a European circular business hub to support the exchange of experience between economic actors in integrating circularity in product design and manufacturing

The power of the Commission to adopt delegated acts would be conferred for a period of six years from one month after the entry into force of the Regulation.

NB: *The European Parliament and Council have the power to oppose Commission’s Delegated Acts or to revoke the delegation altogether, but not to modify the Acts. The Commission prepares and adopts delegated acts after consulting expert groups composed of representatives from each EU Member State.*

Implications for packaging

The explanatory memorandum (page 2 of the proposal) states that “*this Regulation will set requirements where existing legislation does not, or where it insufficiently addresses environmental sustainability aspects.*”

Packaging is mentioned as one of the product groups already covered by product-specific legislation. It further states that “*before setting concrete requirements at product-specific level through measures under this Regulation, the Commission will assess in detail any potential overlaps or conflicts with existing legislation to avoid duplicating requirements and putting an excessive burden on businesses.*”

As states above, the Communication accompanying the proposal states that “*Concerning packaging, the essential requirements for packaging allowed on the EU market are laid down in the Packaging and Packaging Waste Directive (PPWD), currently under revision. However, as packaging varies greatly depending on the product category, it should be one of the key aspects to cover when developing product-specific ESPR rules. This must complement, with more targeted rules, the essential requirements laid down in the PPWD.*”

The proposal however already mentions several points affecting packaging to a certain extent:

- **Recital 21** states that “*While requirements for placing on the market packaging as a final product are laid down under European Parliament and Council Directive 94/62/EC57, **this Regulation may complement that Directive by setting product-based requirements focussing on the packaging of specific products when placed on the market.** Where relevant, such complementary requirements should contribute in particular to minimising the amount of packaging used, in turn contributing to the prevention of waste generation in the Union.*”
- **Article 5 on Ecodesign Requirements**, paragraph 1, states that “*The Commission shall, as appropriate to the relevant product groups and with due consideration for all stages of their life cycle, establish ecodesign requirements to improve the following product aspects(...).*” This paragraph provides a list of product aspects such as durability, reusability, reparability, etc. and is complemented by product

parameters laid down in [Annex I](#) that may “be used as a basis for improving the product aspects referred to in Article 5(1)”. Annex I makes a reference to packaging as follows:

- “(i) weight and volume of the product and its packaging, and the product-to-packaging ratio;
- (p) amounts of waste generated, including plastic waste and packaging waste and their ease of re-use, and amounts of hazardous waste generated;”

Could also be placed on packaging:

- **Recital 39** specifies that labels could be prescribed by Delegated Acts to “provide information allowing for the effective comparison of products, for instance by indicating classes of performance”. The Commission would set out “the most effective way of displaying these labels”, taking into account the implications for customers and economic operators and the characteristics of the products concerned. The Commission may require for the label to be printed on the packaging of the product.
- **Article 9** lays down the general requirements of the product passport and explains that the data carrier shall be physically present on the product, its packaging or on documentation accompanying the product, as specified in the applicable delegated act adopted pursuant to Article 4.
- **Articles 7-21-23-27- 39**: The information manufacturers/importers will have to provide about their products (batch or serial number, registered trade name, contact details, CE marking, etc.) could be placed on the products’ packaging.
