

MBB Position Paper on the Ecodesign for Sustainable Products Regulation

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Context

The circularity of products and services is a key part of achieving the European Union's (EU) climate objectives. The recent Commission proposal for an 'Ecodesign for Sustainable Products' regulation (ESPR) aims to improve the sustainability and circularity of goods across their lifecycle, increase the flow of information across all actors, and reduce waste in the process. The proposed legislation will thus replace the already existing Ecodesign directive, widening the scope of products and ecodesign requirements covered, and introduces new information requirements. The above has been presented as part of a wider package, which also includes separate sectorial initiatives covering textiles and construction materials.

General Comments

The Malta Business Bureau (MBB) in principle welcomes the proposal to introduce ecodesign and information requirements for products in circulation in the EU market. This is seen as a way to further streamline the value chain and improve the sustainability of products, reducing waste where possible through an information-driven approach. Information gaps are some of the main challenges which inhibit a truly circular approach being applied to the way we manufacture, use, repurpose and dispose of products. This regulation thus represents a key opportunity to develop new circular markets for our products.

It is positive to see that the previous Ecodesign Directive will be repealed and instead replaced by the proposed regulation. The harmonisation of legislation governing the EU single market will naturally help improve its functioning and provide increased legal certainty, lower costs, and a level playing field for businesses seeking to market their products in other member states.

Another positive development relates to the product-group approach as specified in Art. 5, which allows for the additional consideration of the needs and specificities of certain products, while leaving room for technological progress down the line. This will ensure that only relevant and proportional requirements are placed on each product or group of products, providing greater legal certainty to businesses. Nonetheless, further guidance needs to be provided on how and why certain products shall be prioritised and how the Commission work plan (Art. 16.2) shall be drawn-up in practice.

MBB supports the proposal's recognition of the needs of SMEs. A set of guidelines to aid implementation by SMEs (Art. 19) is an important step to support a section of businesses which will be hardest hit by new standards and reporting requirements. Appropriate financing measures at both the EU and National levels to aid in their transition will be equally crucial.

Notwithstanding this support, all businesses would benefit from sufficient **transition time** between the regulation's entry into force and the application of new requirements. This will enable businesses to implement the necessary production and processes changes, and gather required input from its supply chain actors.

Ecodesign Requirements

The MBB stresses the importance of the qualification and limits placed on Ecodesign requirements by Art. 5 vis-a-vis potential impacts of these requirements on product performance, affordability, health and safety, among others. While the business community is committed towards doing its part and improving the sustainability of its operations and products, this **should not come to the detriment of competitiveness and attractiveness of European products**. This is particularly important until Europe's Climate diplomacy bears more fruit, and third countries implement similar measures for their products. Furthermore, it is crucial that businesses are only obliged to abide by those ecodesign requirements which are most environmentally relevant to the product in question.

In this respect, the setting up of a 'Ecodesign Forum' (Art. 17) involving stakeholders and experts from industry is a positive development, which will contribute to the consideration of Ecodesign requirements based on appropriate assessments by the affected actors. Art. 17 should more clearly specify which industries shall be part of the Forum, especially with regards to those industries whose products will be included in the Commission working plan mentioned in Article 16.2.

To facilitate implementation and reduce enforcement issues, the resulting ecodesign requirements should be based on **common European and/or international standards** which are already readily available for businesses. Should the Commission opt to introduce its own form of criteria, this may risk increasing compliance costs.

A system based on already established standards may also pave the way for **self-assessment of conformity** by economic operators themselves. This should be considered as an alternative to third-party conformity assessments (Art. 39), since the latter risks introducing additional costs for businesses and delay the marketing of EU products. Self-assessments could prove to be a good cost-effective balance between ensuring product conformity with Ecodesign requirements and the efficiency which business processes require.

A crucial point will be to ensure consistency across EU legislation and **avoid double-regulation** for products which are already governed by other legislative instruments. Clear examples are the Packaging and Packaging Waste Directive for packing, the proposed Corporate Sustainability Due Diligence Directive for information requirements, and REACH concerning the articles governing substances of concern. In this respect, such consideration should be more clearly expressed in Art. 5.

Information Requirements

The MBB believes that the creation of a Digital Product Passport (DPP) will help facilitate the flow and accessibility of information across value chains, in theory improving the circularity of products and materials. We agree with the proposal's product specific approach which focuses on the needs of the recipients of this information. The Commission's commitment to support SMEs (Art. 19) implement the DPP through dedicated guidelines, one-stop shops, funding, training and other assistance is also crucial to reduce the potential negative impact on smaller companies which may be overwhelmed and hardest hit by reporting requirements.

Nonetheless, the DPP raises several significant concerns which have not been adequately addressed by the Commission proposal. Firstly, information requirements which extend beyond the circularity objectives of the proposal should be avoided. Aside from creating significant administrative costs for business to compile and present the information, especially from suppliers, certain information may not be as valuable or have unclear environmental benefits. In this regard, it would be practical to specify in Art. 8 of the proposal that any information requirements must be justified to improve the environmental sustainability of products and to ensure free movement in the internal market. Thus, the information contained in the DPP

should strictly follow the **'need to know' principle** and avoid unnecessary administrative costs which provide little value in terms of the environmental objectives of the proposal.

The DPP also raises competitiveness concerns over sensitive and confidential business data being available in a shared registry (Art. 12). The MBB argues that the current proposal does not sufficiently alleviate such concerns over the protection of knowledge-based assets. It is reasonable to imagine that the requirements may in certain instances require the disclosure of trade secrets. This is apparent, for example, in the proposed requirement to provide information on certain substances of concern. Differentiating between information which should be available to all actors, and that which should be available only to specific actors across the value chain would help alleviate such concerns.

One of the objectives of the ESPR, and the DPP in particular, is to have accurate and comparable data which may also interact with other EU data legislation. As mentioned above, unless the ecodesign requirements are based on already established legislation or standards, such data collection and comparability will not be efficiently carried out, especially considering the level of information which needs to be gathered from supply chain actors. Linked to this, successful implementation will very much depend on the cooperation between EU manufacturers or importers and non-EU suppliers, with the former relying on the latter to supply accurate and timely information on the materials being used. We consider it unreasonable for EU businesses to be held liable for incorrect information coming from non-EU suppliers. Necessary legal measures should be in place to safeguard EU businesses in such cases.

For questions or more detailed information please contact EU Affairs Manager Daniel Debono and Senior Policy Executive (Sustainability) Gabriel Cassar on infobrussels@mbb.org.mt

The Malta Business Bureau is the EU advisory organization of the Malta Chamber of Commerce, Enterprise and Industry and the Malta Hotels and Restaurants Association. The MBB is a partner of the Enterprise Europe Network.

