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EUROPE'S TECHNOLOGY INDUSTRIES

POSITION PAPER

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Position and recommendations from Europe's technology industries on the proposed Ecodesign for Sustainable Products Regulation

Orgalim represents Europe's technology industries, providing innovative technology solutions which are underpinning the twin green and digital transitions and can unlock a greener, healthier and more prosperous future for the European Union and its citizens. Our industries welcome the Ecodesign for Sustainable Products Regulation as a key measure to further optimise the way resources are used throughout the economy and society as well as bringing new business opportunities – a win-win for the environment and the economy, making the most of new digital solutions.

✓ WHAT WE SUPPORT: THE PRINCIPLES

- The contribution to the circular economy, a functioning internal market, a level playing field and ensuring effective enforcement and market surveillance system

- The approach and the legal framework: the Ecodesign instrument, product by product rules, harmonised EU requirements, industry involvement and harmonised standards

- The potential benefits of the Digital Product Passport, economic incentives for circularity and the principle of a ban on the destruction of unsold durable goods

! WHAT CONCERNS US: HOW IT WILL WORK IN PRACTICE

- Protection of confidential business data, data within the scope of the Digital Product Passport and interplay with other legislation

- Duplication of efforts and double regulation, in particular for chemicals

- Implementation with a disproportionate impact on the competitiveness of economic actors (third party verification, regulation of components and non-enforceable requirements)

SHAPING A FUTURE THAT'S GOOD

What we support: the principles

Contribution to the circular economy, a functioning internal market, a level playing field and ensuring effective enforcement

Contribution to the circular economy, a functioning internal market and a level playing field

Orgalim supports the objective of the Ecodesign for Sustainable Products Regulation (ESPR), which is to establish a framework to improve the environmental sustainability of products and to ensure free movement in the internal market by setting ecodesign requirements that products must fulfil to be placed on the market or put into service. To secure the functioning of the internal market, requirements must be harmonised at EU level.

We are very concerned about different national provisions and mandatory requirements on products not aligned with the proposed new EU requirements. Our industries see the operation of the internal market as absolutely central for the circular economy to function. We also support that the new rules will apply both to products manufactured in the EU and those produced outside the EU and placed or put into service on the internal market, forcing importers to comply with European standards. This is crucial for fair competition and a level playing field. We support a Regulation instead of a Directive because the Regulation will ensure that the obligations will be implemented at the same time, and in the same way, in all EU Member States.

We recommend: Member States should avoid developing national measures on sustainable products that impair the functioning of the internal market.

Ensuring effective enforcement and market surveillance system

Ensuring effective enforcement through the market surveillance system will be of the utmost importance for the success of the ESPR, providing good and fair opportunities for manufacturers and constituting the most effective regime to reach sustainability objectives as well as a level playing field. However, requesting product information will not help if an adequate working capacity is not allocated by Member States. Increased focus on enforcement with more uniform requirements for the Member States will support a level playing field.

We recommend: Member States should be supported in implementing enforcement and surveillance activities when more products are regulated.

The approach and legal framework

Ecodesign instrument

We support the Ecodesign instrument which has already delivered for EU consumers, industry and the planet by taking into account all aspects of the life cycle of the product, and setting measurable and enforceable requirements based on the proportionality principle.

We strongly recommend: New performance and information requirements under the future upcoming ESPR Delegated Acts must make products more circular, be meaningful, easy to understand, comparable and verifiable. The burden put on companies must be proportionate, and data must be of added value for the different actors in the value chain – including the economic operators.

Setting ecodesign requirements product by product

We support that the European Commission will continue to set ecodesign requirements product by product to take into account individual characteristics and specificities of products via the adoption of product-specific legislation based on the best available evidence through impact assessments, as well as transparent and inclusive consultation with stakeholders. The complexibility of the ESPR will depend on the scope of the Delegated Acts setting out requirements for different products.

We recommend:

- It is important to keep in mind that there could be conflicting requirements, despite the fact that they all contribute towards the same objective. For example, some requirements may impact the safety or durability of products, or the most long lasting designs may be harder to repair. Another example is that the increase in more energy efficiency in some applications may increase the need for materials – which means more resources and a "heavier" footprint. Therefore, the requirements for products need to be fully harmonised with current/upcoming EU legislation and existing measures to ensure complementary, consistent and non-contradictory application, as well as avoiding double or cascading product requirements.

- The scope of the ESPR Delegated Acts should be limited to the product properties that are the most decisive to the environmental performance of a product/product group. This approach will reduce the complexity of the ESPR while still securing that sustainable products will be the norm.

- Since March 2021 the current Ecodesign Directive has addressed durability, repair, reusability and recyclability with resource efficiency requirements on several products. The precedents set by these existing requirements, such as the professional repairer concept to ensure consumer safety, should continue to be used under the ESPR.

Industry input

Industry input will be vital for the success of the ESPR. Expert input from industry will be needed to make sure the requirements will work in practice.

We strongly recommend: The governance structure of the Ecodesign Forum must be specified further; defining how the Commission will use the Ecodesign Forum and making the procedure for adopting Delegating Acts and dialogue with stakeholders as transparent and inclusive as possible. It will be crucial for all relevant stakeholders to be part of the Ecodesign Forum as their industry-expert knowledge is essential.

Harmonised standards

Harmonised standards remain the best tool to provide presumption of conformity and accommodate state-of-the-art. With regard to the requirements for the use of recyclates or recycled content in products, it should be noted that there is still a lack of harmonised standards for the sufficient and reliable quality of plastic recyclates. There is no guarantee that corresponding recyclates can be offered in sufficient quantities on the market at competitive prices. Furthermore, it is very challenging to provide proof of the recyclates used in products, which is of great importance for imports from non-EU countries and necessitates corresponding market monitoring.

We strongly recommend: The Commission should refrain from issuing its own technical/common specifications. Requirements must be based on scientific assessment methods through recognised European or ISO /IEC/ITU international standards and must be reliable and verifiable. Standardisation bodies and global standards which also rely on technical expertise from industry and relevant stakeholders should be used in the design of the new requirements.

We recommend:

• Definitions must be clear, harmonised and comprehensible and, if possible, based on related standards in order to avoid misunderstandings.

• The calculation of Product Environmental Footprints (PEFs) and Product Carbon Footprints (PCFs) must be carried out according to uniform, transparent and comprehensible methods in order to ensure comparability of the results. There must also be clarification on how to deal with data from products from non-EU countries that are not subject to EU law. This also affects the general question of effective market surveillance in order to exclude competitive disadvantages for manufacturers in the EU compared to suppliers from non-EU countries.

• Where relevant, only one recyclate quota per product should be specified to ensure that sourcing will be possible.

The potential benefits

The Digital Product Passport (DPP)

Our industries see the potential benefits of the Digital Product Passport (DPP), such as better transparency in the value chain and easier access to data. We support a decentralised system and a product-by-product approach. Wherever possible, existing obligations will, however, have to be included in the DPP to tap this potential.

We recommend: DPP should, where useful, support the inclusion of data generated during the life cycle of the product

Data in the same format

Companies are required to deliver data to market surveillance authorities as well as to different parts of the value chain. The full potential of this data will only be realised if it follows the same format.

We strongly recommend: Specific standards must be set for data format based on ongoing standardisation activities and criteria on how the information is generated.

We recommend:
- A single standardised "template" or format for the sharing of information between relevant stakeholders in the value chain should be developed, while leaving manufacturers and traders free to choose the most suitable format to provide information to consumers. Interoperability between the DPP and company internal enterprise resource planning (ERP) systems must be ensured.

- The data requirements must be based on harmonised legislation within the EU, and must not duplicate other existing information requirements.

Economic incentives for circularity

Economic incentives for circularity are vital to further develop the internal market. For example, mandatory Green Public Procurement is a powerful tool to boost the demand for sustainable products, provided that the requirements are feasible to implement, measure and control. Making public authorities lead by example would back up EU industry's existing efforts to become a circular economy leader. To realise the large circular economy potential, Green Public Procurement has to drive the circular economy and enable economic potentials.

We recommend: Procurement should be based on the total cost of ownership, including product lifetime and operating costs and consideration of the post-consumption phase.

Ban on the destruction of unsold durable goods

We support the principle of a ban on the destruction of unsold durable goods where this is done in a manner that actually supports the objectives of the Circular Economy Action Plan. Therefore, we support the approach in the proposal of evaluating product group by product group.

We recommend:
- The possible prohibition on destruction of certain types of products should take into consideration existing alternatives such as reuse or remanufacturing. It is important that any future measures should both reduce waste and encourage others to follow the waste hierarchy, and are as robust as possible.

- Definitions in ESPR should be clarified; for example to clarify what should be understood as a consumer product as well as the definition of destruction.

What concerns us: how it will work in practice

Protection of confidential business data, data within the scope of DPP and interplay with other legislation

Protection of trade secrets and Intellectual Property Rights (IPR)

Our industries are very concerned about the protection of trade secrets and Intellectual Property Rights (IPR). We acknowledge that there is a balancing act between creating transparency and use of the data in the DPP on the one hand, and protecting companies' rights and trade secrets on the other hand. Confidential business data, IPRs and trade secrets of companies must not be served on a freely available silver plate to their competitors.

We strongly recommend:

- The confidentiality related to protectable trade secrets must be respected and the protection of IPRs, data exposing IPR and trade secrets must be protected or facilitating product piracy should not be listed in the ESPR Delegated Acts, and the Regulation should exclude this type of data from its scope. If IPR and trade secrets are not excluded from the scope, then high standards of cybersecurity and confidentiality will need to be in place.

- What information should be made available to market surveillance authorities without request must be clarified and these measures must respect confidentiality related to protectable trade secrets, IPRs, security laws and for export control legislations (including dual use).

Data within the scope of DPP and the interplay with other legislation

Our industries are also concerned about the data that will be within the scope of the DPP, the interplay with other legislation and other issues listed below.

We strongly recommend:

- New DPPs must be introduced only after an impact assessment and cost/benefit analysis have been conducted to ensure that the new requirements will be proportionate and will contribute to the circular economy.

- Consistency and coherency with other legislation must be ensured e.g. documentation requirements need to be aligned with the provisions / rights on data access of the Data Act.

- Information requirements should be limited to the essential requirements of stakeholders over the lifetime of a product. It is crucial that information collected will add value for the different actors in the value chain.

- "Use-data" in the text of the ESPR Regulation should be defined and product-specific Delegated Acts should clarify which data will be covered in the DPP, who can access data, who owns the data and the responsibilities of each market operator (e.g. who has the obligation to store information on the DPP; the entity placing on the market or the manufacturer, what are the obligations of users/third parties?)

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[1]Such as for example IEC 82474-1 ED1 Material declaration – Part 1: General requirements, draft Recommendation ITU-T L.GDSPP "Requirements for a global digital sustainable product passport to achieve a circular economy.

- The data format should be designed to be applicable for different legislation, and should be interoperable with existing requirements, to avoid duplication of information and duplication of data itself.

- The DPP should rely on existing databases; such as the database for information on Substances of Concern In articles as such or in complex objects (Products) – SCIP database, the European Product Registry for Energy Labelling (EPREL) database, the database for Construction Products, and avoid unnecessary and burdensome duplication.

- Responsibilities to provide data must be shared between the different actors in the value chain, so that the burden of providing the data is not only on the manufacturer who is placing the product on the market.

We recommend:

- The DPP should follow the data minimisation principle (as much data as needed, as little data as possible). Access to information should be allowed on a need-to-know basis only.

- We need a decentralised approach and must avoid a central "registry" of the EU for millions of individual product identifiers. Data management should be kept at manufacturers' or product/data users' level.

- The DPP needs to be designed in a flexible and feasible manner to be operative in the upcoming relevant data spaces.

- The standardised knowledge and data models of the product and associated properties (data) should reflect the mechanism defined by the experts (terminology, performance, physical interdependencies, etc) and not mirror and copy data in centralised databases.

Designed by policymakers together with the industry

To be successful, the DPP should be designed by policymakers together with industry, given its considerable knowledge and expertise about value chains, existing systems and what is required for a product passport to work in practice.

We strongly recommend:

- The Commission should start with a small number of products and simple criteria based on data already available, rather than with a wide scope and complex criteria. It is important for the DPP to be tested in smaller fields of application before its use becomes more widespread.

- The DPP must be tailor-made, product category by product category, to define the level of details needed; e.g. by product unit or by reference.

- Existing DPP solutions for certain sectors should be ensured and the standards used should be considered. For example, in the industry 4.0 area there is a decentralised solution for a digital product passport based on what are referred to as sub-model models of the asset administration shell (IEC 63278-1). This product identification approach enables access to both user-friendly web pages of the manufacturer and standardized machine-readable information about the product via a product identification according to IEC 61406 (e.g. in the form of a QR code).

We recommend: To ensure that the DPP is really effective (e.g. tracking and tracing of products, information for treatment facilities, etc.), the data carrier representing the identifier should be physically present on the product. Exemptions should be considered for products when not relevant, for example when dimensions are limited.

Duplication of efforts and double regulation, in particular for chemicals

No double regulation for chemicals

Consistency and alignment between the proposed ESPR and existing or new requirements under other EU initiatives and legislations (e.g. EPREL and SCIP databases, interface between chemicals, products and waste, the proposal on substantiating environmental claims using the Product/Organisation Environmental Footprint (PEF/OEF) methods, the proposal on new rules to empower consumers for the green transition, the Right to Repair initiative, the Construction Product Regulation, etc.) must be ensured to avoid the duplication of effort in providing information. In particular, as chemicals are already regulated in other chemicals legislation (e.g. the REACH Regulation and RoHS Directive), chemicals should not be further regulated under the ESPR.

We fully support the Recital 22 of the proposed ESPR: "This Regulation should not enable the restriction of substances based on chemical safety, as done under other Union legislation. ...This Regulation also should not result in the duplication or replacement of restrictions of substances covered by the RoHS Directive". For example, the case of the Ecodesign Regulation covering electronic displays that banned the use of halogenated flame retardants in the enclosures and stands of electronic displays must not be repeated. In addition, it is important to use currently required information and make sure that any further required information will in fact add value. Especially for chemicals, we must stress the importance of a product-by-product approach.

We strongly recommend:
- REACH and RoHS must remain the primary legislation for adressing chemicals.

- Policymaking regarding chemicals should be risk-based, not hazard-based.

- Information requirements for all Substances of Very High Concern should be first addressed and handled as there is still much to do in this area.

- There should be no regrettable substitutions (when one chemical is banned, only to be replaced with another chemical just as harmful, or potentially worse) of Substances of Very High Concern or Substances of Concern. The information requirements for substances on the REACH Candidate List should be specified exclusively in REACH in order to avoid multiple regulations which could result in inconsistencies, and also to achieve feasibility and clarity for the companies concerned.

Avoid full list of materials and substances

For complex products it is very difficult to create a full list of materials and substances.

We strongly recommend: Before implementing new requirements on the tracking of hazardous substances, make sure that the existing ones work, are fit-for-purpose, and fulfil the needs of the relevant stakeholders.

Implementation and disproportionate burden for industry

Do not extend third party verification for new products if not needed

As mentioned earlier, ensuring effective enforcement and market surveillance will be of the utmost importance for the success of the ESPR. However, identifying non-compliance is not to be confused with self or third party assessment. The first is the prerogative of the market surveillance authorities and the latter refers to options for manufacturers to check and prove the conformity of their products. We strongly believe that third party verification should not be extended to new products without a strict justification, as it will add costs to manufacturing and slow down innovation while not adding value.

We strongly recommend: Mandatory third party verification should be considered only if objective data supports this option. Self-assessment is just as valid a procedure, and offers the same level of compliance benefits, as any conformity assessment procedure supported by a third party (e.g. notified body).

Requirements must be measureable and enforceable

It should be recognised that some circularity requirements, such as reparability and durability, are time-related requirements that go beyond what can be verified on the product itself at the time of placing on the market. Even if other requirements such as recyclability or recycled content are not time-related, it is almost impossible to distinguish recycled material content from virgin material content at material level.

We recommend: Mandatory requirements should be set only if they are measurable and enforceable.

No disproportionate negative impact on the competitiveness

This proposal requires a substantial effort from industries, and especially for SMEs we are concerned that their skills and resources may not be sufficient to meet the detailed requirements, particularly with regard to information requirements. Therefore, we applaud the proposal for stating there shall be no disproportionate negative impact on the competitiveness of economic actors, at least for SMEs. We welcome the measures to help SMEs with the general implementation of the ESPR and the future Delegated Acts. However, disproportionate negative impact is not acceptable for any economic actor. We see the risk of such a negative impact, especially where components and parts could be covered by Delegated Acts under the ESPR instead of finished products only, and where life cycle assessments could be imposed on all products. The ESPR should generate an overall environmental and economic benefit. In addition, we are concerned about the very high number of planned upcoming Delegated Acts, as implementation will be challenging for industry and authorities alike.

We strongly recommend:
- There shall be no disproportionate negative impact on the competitiveness of all companies – not only SMEs.

- Sufficent time must be allowed for industry to implement the new requirements in the future upcoming Delegated Acts to ensure legal certainty and predictability.

We recommend:

- In order to ensure effective and inclusive implementation of the ESPR, the Commission needs to allocate adequate resources.

- Member States should prioritise support measures for industry, and in particular for SMEs.

- ESPR Delegated Acts should not impose ecodesign requirements on components or parts.

- Life Cycle Assessments should not be mandatory for all products covered by Delegated Acts.

- Gathering information on quantities placed on the market should not be requested because this information is confidential business information.

- Gathering of, and access to, use phase data should be done with caution due to privacy issues.

Orgalim represents Europe's technology industries, comprised of 770,000 innovative companies spanning the mechanical engineering, electrical engineering, electronics, ICT and metal technology branches. Together they represent the EU's largest manufacturing sector, generating annual turnover of €2,480 billion, manufacturing one-third of all European exports and providing 10.97 million direct jobs. Orgalim is registered under the European Union Transparency Register – ID number: 20210641335-88.