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Orgalim comments on the draft Working Plan of the proposed new Ecodesign for Sustainable Products Regulation (ESPR)

Executive summary

To build on the success of the existing Ecodesign Directive and ensure that the Ecodesign for Sustainable Products Regulation (ESPR) will be successful in addition to protecting the competitiveness of our industries, we recommend that the following **key principles** are respected when developing new ESPR requirements for products:

- To secure the functioning of the EU internal market, requirements must be harmonised at EU level.
- A detailed impact assessment must always be conducted.
- Effective enforcement and market surveillance must be ensured.
- New ESPR requirements for products must follow the New Legislative Framework (NLF).
- Requirements must be based on scientific assessment methods through recognised European or ISO /IEC/ITU international standards and must be reliable and verifiable.
- Requirements should be technology-neutral.
- Ecodesign requirements must continue to be set on a product-by-product basis.
- Unnecessary and burdensome duplication of efforts and double regulation both at horizontal and product levels should be avoided and consistency with other legislation ensured.
- ESPR requirements should make products more circular, be meaningful, easy to understand, comparable and verifiable.
- 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.
- More in-depth studies of potential energy savings should be conducted.
- The European Commission should develop a ten year ESPR Working Plan instead of the current three year plan.
- The industry should be involved as early and as fully as possible in the process.
- Economic operators should be provided with sufficient time to prepare for the implementation of new ESPR requirements to ensure legal certainty and predictability.
- Last but not least, start small and simple to encourage political support for further measures.

Regarding **end-use products**, it is important that producers in the value chain of these products are aware of what kind of information and data they are expected to share through the value chain and how the data flow might work in practice.

In relation to **intermediate products**, we welcome that data will be requested from manufacturers of these products as it will help our industries to access data from these manufacturers. However, we are critical of the proposal to regulate intermediate products under the future ESPR for the reasons explained in this document.

We believe that **horizontal product sustainability criteria** will be ambitious on paper, but will not actually lead to correspondingly ambitious circular products as there is no one-size-fits-all solution. To build on the success of the Ecodesign Directive and ensure that ESPR will be successful, we strongly recommend that the Commission continues to set ecodesign requirements **product-by-product** to take into account individual characteristics and specificities of products.

Introduction and key recommendations

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 proposed new Ecodesign for Sustainable Products Regulation (ESPR) 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. Orgalim has already expressed its views and recommendations in its position paper dated 1 June 2022.

We thank the European Commission for consulting the public on what the new product priorities under the ESPR should be.

To build on the success of the Ecodesign Directive and ensure that the ESPR will be successful in addition to protecting the competitiveness of our industries, we recommend that the following key principles are respected when developing new ESPR requirements for products:

- **To secure the functioning of the EU internal market** – one of the EU's success stories and major achievements – it is essential that **requirements are harmonised at EU level**. Harmonised EU requirements also provide a critical mass enabling the EU to promote product sustainability, allowing it to scale up circular solutions (e.g. more and better quality recycling material) and further incentivise companies to develop efficient and successful sustainable products and circular solutions across Europe. We are very concerned about different national provisions (in particular in France) 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 at EU level and this is why we strongly recommend Member States to avoid developing national measures on sustainable products that impair the functioning of the internal market.
- A **detailed impact assessment** must always be conducted before adopting all rules under the ESPR to ensure that their implementation will be workable, proportionate and will contribute to a circular economy. There must be proven environmental benefits that exceed the costs to industry.
- **Ensuring effective enforcement and market surveillance** will be of the utmost importance for the success of the ESPR and will be even more necessary in the future to ensure a level playing field. Any new ESPR measure must be proportionate and enforceable by market surveillance authorities. Circular economy requirements, such as recycled content or durability may be more expensive and more burdensome to check than is currently the case. This must therefore be also taken into consideration when thinking of setting those measures.
- New ESPR requirements for products must follow the **New Legislative Framework** (NLF) including the application of the CE marking and declaration of conformity. Product requirements must be based on applicable internal market regulations, to ensure a level playing field and to adjust relevant provisions to specifically solve uncertainties related to definitions, requirements and responsibilities of the different actors. **Definitions** must be clear, harmonised and comprehensible and if possible based on related standards applied by professionals in order to avoid misunderstandings. Definitions should not be mixed but be carefully analysed regarding the responsibilities of the different actors.
- 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 should be used in the design of the ESPR requirements.
- Requirements should be **technology-neutral** to ensure a variety of technology options applicable to sustainable design requirements and choices related to material efficiency. Only harmonised standards listed in the EU Official Journal should be generally referred to.

- Ecodesign requirements must continue to be set **product-by-product** to take into account individual characteristics and specificities of products including specific functionality of products within the same product category as well as differences between business-to-consumer B2C and business-to-business B2B products, and the information that is relevant to them 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. There is no one-size-fits-all solution due to the huge variety of products and different types of uses of the products.
- When setting ESPR requirements, it is important to avoid unnecessary and burdensome **duplication of efforts, double regulation** both at horizontal and product levels and to **ensure consistency** with other legislation. As **packaging and construction products** and their sustainability aspects are already covered by other legislation (the proposal for a new Packaging and Packaging Waste Regulation (PPWR) and the proposal for a revised Construction Products Regulation (CPR)), we welcome that the Joint Research Center (JRC) is not considering the inclusion of packaging and construction products in the scope of the first ESPR Working Plan.
- New performance and information requirements under the future upcoming ESPR Delegated Acts should **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.
- 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.
- When setting specific eco-design requirements, the Commission should identify the most appropriate parameters to improve sustainability, while ensuring that **trade-offs** between the different product aspects are analysed. 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, safety is not always necessarily compatible with sustainability and 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.
- **More in-depth studies of potential energy savings** should be conducted. For example, in the Ecodesign Working Plan there seems to be **double counting of energy consumption**; energy consumption of motors, energy consumption of fans and compressors (which have built-in electric motors).
- The Commission should develop a **ten year ESPR Working Plan instead of the current three year plan** to drive innovation by companies and give them better visibility.
- The industry should be involved as early and as fully as possible in the process. **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.
- Economic operators should be provided with **sufficient time** to prepare for the implementation of new ESPR requirements to ensure legal certainty and predictability.
- Last but not least, **start small and simple** to get political support to do further measures. 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 Digital Product Passport (DPP) to be tested in smaller fields of application before its use becomes more widespread.

End-use products

We will not comment on the details of the initial list of end-use products which have been shortlisted by the Joint Research Center to be potentially included in the first ESPR Working Plan.

However, we would like to draw attention to the fact that our industries will be indirectly affected by these end-use products through our value chains (e.g. textile machinery or electrical equipment for textiles). It is therefore important that **producers in the value chain of these products are aware of what kind of information and data they are expected to share through the value chain and how the data flow might work in practice**. In addition, we would welcome information regarding **the upstream level** (Tier 2 supplier level?) **up to which** the Commission is expecting suppliers to share information along the value chain.

To avoid double regulation and ensure that life cycle assessments will be conducted on all products, components should not be regulated both as components and at the same time as part of finished product. This is why **ESPR delegated acts should not impose ecodesign requirements on components or parts, but only on finished products**.

Intermediate products

We will not comment on the details of the initial list of intermediate products which have been shortlisted by the Joint Research Center to be potentially included in the first ESPR Working Plan.

However, we would like to highlight that a meaningful exchange of information between the different actors in the value chain will improve the product life cycle footprint, from design to recycling and therefore contribute to a circular economy. 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. **We therefore welcome that data will be requested from manufacturers of intermediate products** as it will help our industries to access data from these manufacturers.

In addition, we believe that our industries will be affected by these intermediate products as:

- Users of the above-mentioned intermediate products for manufacturing our technologies/products
- Providers of equipment which further process and recycle intermediate products

We are critical about regulating intermediate products under the future ESPR for the following reasons:

- We believe that the approach of **regulating end-use products**, as ecodesign has functioned in the past, is more efficient and its impact for the environment and sustainability is overall greater than by regulating intermediate products at the material level. For example, “green/sustainable” steel can be used in an inefficient non-sustainable product but if the carbon footprint of the end product is set as a requirement under ESPR, it is already likely to require the product producer to include sustainable materials.
- When setting ESPR requirements, it is important to avoid unnecessary and burdensome duplication of efforts, double regulation both at horizontal and product levels, and to **ensure consistency** with other legislation. For instance, we foresee a **possible double regulation** for intermediate products such as the following examples:
 - Steel and aluminium which are already covered for example by the EU Emissions Trading System (ETS) and the Carbon Border Adjustment Mechanism (CBAM).
 - Chemicals which are already regulated under the REACH Regulation and RoHS Directive. As chemicals are already regulated in other chemicals legislation (REACH and RoHS), chemicals should not be further regulated under the ESPR. We fully support the Recital 22 of the proposed ESPR Regulation: “*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*”.
 - Plastics which are already regulated, for example in the packaging regulation.

- The added value for the environment and sustainability must be made clearer (e.g. a “green/sustainable” steel can be used in an inefficient non-sustainable product).

There is a strong demand from our industries for the Commission to first define, based on a comprehensive impact assessment, **how regulating intermediate products would work in practice under the ESPR and what kind of obligations** the user and/or processor of the intermediate product would have **related to the Digital Product Passport (DPP)** as the DPP is supposed to apply to the product over its life cycle.

Horizontal measures

We believe horizontal product sustainability criteria will be ambitious only on paper but will not actually lead to ambitious circular products as **there is no one-size-fits-all solution**. To carry forward the success of the ecodesign and ensure that ESPR will be successful, **we strongly recommend that the European Commission will continue to set ecodesign requirements product-by-product** to take into account individual characteristics and specificities of products including specific functionality of products within the same product category as well as differences between business-to-consumer B2C and business-to-business B2B products, and the information that is relevant to them, 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. Differentiating consumer (B2C) and professional (B2B) products in the context of material efficiency is crucial because incentive structures, customer behavior, customer relations, pricing, material composition and market dynamics distinguish both sectors.

The product-by-product approach of the Commission will allow for repair and durability parameters to be assessed on a product-by-product basis.

We welcome that the exact content of the horizontal product sustainability provisions could differ and be adapted depending on the characteristics of the product categories to which they would apply. However, given that the products proposed to be in the scope of ESPR – e.g. energy-related products, including ICT and electronics – are extremely diverse, we do not see the value in setting horizontal requirements. Furthermore, we would welcome clarification on how these proposed horizontal measures would work in practice and which products would be potentially in their scope compared to products potentially in the scope of upcoming ESPR delegated acts and products already in the scope of existing Ecodesign measures.

- Regarding the proposed horizontal measure on **durability**:
 - We emphasise again the importance of the product-by-product approach to take into account individual characteristics and specificities of products including specific functionality of products within the same product category as well as differences between business-to-consumer (B2C) and business-to-business (B2B) products, and the information that is relevant to them. Requirements on durability will depend on the type of products and also on the services offered in conjunction with the products.
 - Europe’s technology industries, whose competitiveness depends on their long-term reputation and credibility, avoid designing products of short durability. Planned ageing is not, and cannot be, a long-term sustainable business model.
 - We support the principle of countering “planned obsolescence” on the condition that “planned obsolescence” is defined and that the EU standards and guidelines are applied.
 - The durability of a product is a complex concept that depends on its design, but also on several other aspects such as robustness, reparability, upgradability, maintenance and reuse as well as on the usage of the product by consumers and customers, the way the product was installed, the environment of the product, etc.
 - As durability alone is a complex concept, we are concerned that the proposed horizontal measure on durability will also incorporate provisions related to reliability, reparability, reusability and upgradability.

- Increased product durability means conflicts with other aspects of the product such as lightweighting, energy efficiency, substances substitution and affordability.
- There is currently no methodology available that would allow a reliable assessment of the durability of products.
- To note that for Energy Related Products (ErPs), the following ecodesign assessment standards have been given:
 - EN 45552 General method for assessment of the durability of ErP (2020)
 - EN 45553 General method for assessing the ability of an ErP to be remanufactured (2020)
 - EN 45554 General method for the assessment of the ability to repair, reuse, upgrade ErP (2020)
 - EN 45555 General method for assessing the recyclability and recoverability of ErP (2019)
 - EN 45556 General method for assessing the proportion of reused components in ErP (2019)
 - EN 45557 General method for assessing the proportion of recycled materials content in (2020)
 - EN 45558 General method to declare the use of critical raw materials (CRM) in ErP (2019)
 - EN 45559 Methods for providing information relating to material efficiency aspects of ErP (2019)
 - These are general assessment standards and need to be specified/defined for each product/product group separately in a standard for that product. These standards cannot be used for other products than ErPs. It would be interesting to ascertain if these standards have already been used for assess requirements of ErPs.
- In addition, there is a technical report on terms used in the standards: TR 45550 Terms and definitions related to material efficiency.
- Regarding the proposed horizontal measure on **recyclability**:
 - We emphasise again the importance of applying a product-by-product approach to take into account individual characteristics and specificities of products including specific functionality of products within the same product category as well as differences between business-to-consumer (B2C) and business-to-business (B2B) products, and the information that is relevant to them.
 - Recyclability can be calculated and there is already a standard; EN4555 General methods for assessing the recyclability and recoverability of energy-related products. However, it is important that the measure on recyclability will be proportionate. There must be proven environmental benefits that exceed the costs to industry.
 - The recyclability should not be assessed for the whole product but only for the most relevant materials (probably only for 1-3 main materials if necessary).
- Regarding the proposed horizontal measure on the **use of recyclates or recycled content in products**:
 - We emphasise again the importance of applying a product-by-product approach to take into account individual characteristics and specificities of products including specific functionality of products within the same product category as well as differences between business-to-consumer (B2C) and business-to-business (B2B) products, and the information that is relevant to them.
 - 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, and at competitive prices, as there will be increased competition for recycled materials, especially plastics, in the near future. The standard EN 45557 only includes assessment of some materials' recyclability (e.g. metals, glass and plastics).
 - 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 would welcome information explaining why the Commission and JRC are referring to post-consumer recycled content instead of recycled content.

- Regarding a possible horizontal measure on **lightweight design**:
 - We emphasise again the importance of applying a **product-by-product approach** to take into account individual characteristics and specificities of products including specific functionality of products within the same product category as well as differences between business-to-consumer B2C and business-to-business B2B products, and the information that is relevant to them. Requirements on lightweighting of products will depend on the type of products.
 - Lightweighting of products, i.e. achieving the same functionality with less material, is one of the best options for effective design strategy regarding material efficiency.
 - However, there are several limitations to lightweight design:
 - Lightweight design is not possible for all products.
 - Reducing material might affect other aspects and functionalities of the products such as their safety, strength, robustness, durability, reparability, recyclability and energy efficiency. Therefore, a trade-off regarding these other aspects of the products and consumer choice must be taken into account prior to setting requirements for lightweight design.
 - Different proposed resource efficiency parameters contradict each other. For example, lightweighting could negatively impact product durability. Appliances break more quickly and will have to be replaced more often than products containing weightier, but longer lasting, materials. Another example is that lightweighting design could influence the choices of materials and affect recyclability (impact on WEEE objectives).

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 €2,497 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.



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