Recommendations on how to improve sustainability of products while preserving innovation

ITI Comments to the Proposal for a Regulation Establishing a Framework for Setting Ecodesign Requirements for Sustainable Products

ITI - the Information Technology Industry Council is the premier global advocate for technology, representing the world’s most innovative companies from technology, hardware, software, services, and related industries. The tech sector plays a crucial role in promoting global sustainability efforts and our member companies are dedicated to continuously improving the environmental, energy, and performance characteristics of the products they offer.

We appreciate the opportunity to provide comments to the Proposal for a Regulation establishing a framework for setting ecodesign requirements for sustainable products (ESPR). Our industry shares the goals of the proposal to improve sustainability and circularity of products. By constantly innovating, our members make sure that products are built in accordance with the highest safety and sustainability standards.

We welcome the harmonization of ecodesign requirements for the broad range of products at EU level, thus preventing fragmentation and ensuring legal certainty for manufacturers and other economic actors. Furthermore, we are pleased to see that the proposal aims to avoid duplication of efforts and regulatory burden in areas covered by sectorial legislation, such as on chemicals, hazardous substances, and waste. We encourage the Commission, when setting ecodesign requirements for specific product groups, to uphold the complementary role of the ESPR and set ecodesign requirements on aspects covered by other legislation only when necessary for the protection of the environment, when not covered by existing legislation, and only after consulting with all relevant stakeholders.

ITI’s recommendations on the ESPR proposal are set out below:

A Regulation rather than a Directive

We support the proposal for an Ecodesign Regulation instead of a Directive. A regulation will ensure that ESPR obligations are implemented at the same time and the same way across the EU Member States. EU Directives can be implemented with varying degrees of consistency by member states, resulting in inconsistency and complicating EU-wide compliance. The goal should be to set single market requirements to avoid market fragmentation and discrepancies in implementation requirements and timing from different Member States.
Clarify requirements and ensure consistency with other policies

When setting performance requirements for specific product groups, the Commission should adopt a balanced approach, taking into account the interaction between certain product aspects such as durability, repairability and material usage. Furthermore, it should ensure consistency and avoid overlap with existing directives and regulations and with upcoming Union initiatives (i.e., the Right to Repair, the Battery Regulation, the revised Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) and Directive on Restriction of Hazardous Substances (RoHS), the Waste from Electrical and Electronic Equipment Directive, and Packaging Directives).

Key definitions like “repair”, “durability”, “reliability”, “remanufacturing” and “refurbishment” should be aligned with international standards. This is of particular importance with regard to “remanufacturing” and “refurbishment”, as the two concepts tend to be confounded and the resulting product qualities are different for each process. Consistency with the overall objectives of reducing the negative environmental footprint of products should also be ensured. For example, overly prescriptive repairability requirements, such as setting short deadlines for the delivery of spare parts, could create unintended negative environmental and business impacts, as manufacturers tend to have limited control over delivery times and meeting the tight deadlines might require parts to be shipped by plane. Such requirements may also lead to an unnecessary and environmentally wasteful build-up of inventories for spare parts that are not in demand due to low likelihood of breakage.

It is also necessary to further clarify the methodology to quantify durability, recyclability, recycled content, and product environmental and carbon footprint to ensure actionable, repeatable, verifiable and comparable results across different product groups. In particular, the method to be used to quantify environmental and carbon footprint should be appropriate to the product group and based on industry accepted, standardised methodologies that consider the diversity of products, the most relevant aspects and their impacts over the product life cycle, and depth of primary data reasonably anticipated to be available in the supply chain. In partnership with industry, international and European standardization organisations should develop and continue to improve science-based assessment tools which would enable producers to reasonably measure carbon and environmental footprints in a way that is useful to the consumer and robust enough to substantiate green claims.

Regarding information requirements, we would like to highlight that information requirements on the performance of the product in relation to some product parameters may already be addressed by sectorial legislation and made available in other databases (i.e., SCIP database under the Waste Framework Directive). The ESPR and delegated acts should focus on areas of ecodesign or product stewardship not already suitably dealt by existing legislation or regulations, and instead provide legal cross reference with the other applicable laws such as the Waste from

Furthermore, comprehensive information on certain product aspects, such as information on materials or chemicals might be difficult to obtain, in particular for complex products. As an example, expanding the list of reportable substances beyond substances of very high concern would be a daunting and complicated task that would necessitate considerable time and additional resources for implementation. Companies may also experience difficulties obtaining information from suppliers, and in particular for offshore suppliers which are not subject to the same legal obligations. Therefore, when setting information requirements, the Commission should adopt a balanced approach that would allow achieving the ESPR objectives without overburdening businesses.

Substance restrictions should be primarily dealt with via REACH and RoHS processes and not under the Ecodesign Regulation to ensure policy coherence and regulatory certainty across the single market. A clarification on when a substance would “negatively affect a product’s sustainability” in order to justify a restriction of that substance is necessary, as this condition could be interpreted broadly, which could create significant uncertainty for manufacturers. Additionally, the benefits from disclosing such information would likely be marginal and disproportionate in comparison to the burden for manufacturers.

Facilitate implementation of the Digital Product Passport for businesses and align environmental aspects with product groups

ITI supports the creation of a Digital product passport (DPP) as a tool to facilitate verification of product compliance by national market surveillance authorities and improve traceability of products. The DPP offers an opportunity for legislators to integrate existing marking and labelling requirements into a single instrument and make a step towards a digital information disclosure instrument that will be more accurate and more sustainable and help drive the circular economy.

However, further clarification on the operation of the DPP is needed. We recommend the establishment of general requirements related to the DPP that would apply to all products at the product model level, with the possibility for the Commission to require the disclosure of specific environmental aspects through vertical delegated acts applicable to specific product groups. Furthermore, the requirements need to be verifiable and, where applicable, reporting methodologies need to be standardized.

The information to be included in the DPP should not impose disproportionate burdens on businesses and should exclude any intellectual property or proprietary data. The information needs to be limited to what is relevant and necessary for the ESPR circularity objectives and
tailored to the specific audience. The DPP must be easy to access and easy to provide update
with a single approach per category of products. Furthermore, Article 8(2)(e) specifies that the
DPP shall be made available before a sale, which is in direct contradiction to the requirement to
provide data based on the batch or item. We recommend that the Commission require
businesses to consolidate information at the highest reasonable level of product design. For
example, in response to ECHA’s SCIP database, several IT companies are reporting at the highest
level of the product design, e.g., laptop, desktop, phone. Further, the appropriate level of
reporting information in the product passport should be specific to the finished product.
Different batches or components may use different substances. To that end, we recommend
creating simplified DPPs at the machine type level rather than at the machine type and model,
feature code, and options level.

When the Commission sets any requirements related to the tracking and communication of
sustainability information, it is necessary that the tools be prototyped and tested for sufficient
time before requiring their adoption by businesses. It is recommended that the implementation
be done in phases to allow reasonable time for companies to develop internal solutions and
electronic interfaces to the new system(s). Any upgrades, changes or maintenance should be
conducted on a strict schedule with enough time for businesses to change their internal IT
interfaces. Furthermore, the cost of creating and maintaining the DPP should not exceed the
intended circularity benefits.

The proposal to require verification by customs authorities that a product is listed in the DPP
registry before allowing release for free circulation has the potential to place undue burden on
foreign manufacturers, with little and possibly negative benefit to consumers. Where other
countries have implemented customs checks against a product registry for regulatory purposes,
we have observed little benefit to product compliance when compared to the post-market
surveillance strategy typically implemented under existing EU legislation, and it can actually delay
the delivery of the latest and most technologically advanced products to local consumers.
Additionally, because of the large portion of products manufactured within the EU, this burden
would be placed unfairly on foreign manufacturers, while also not eliminating the need for post-
market surveillance. Finally, because of the large number of different entry points to the EU
market, not all customs authorities may have the same interpretation of the regulation and its
scope, resulting in inconsistent implementation.

Questions also arise as to implications for products that are already on the market, as well as for
second-hand and unique products. It should be noted that, with regard to second-hand products,
economic operators may not be able to obtain all the information required by the DPP provisions.
Regarding unique or handmade goods, information on model, batch or item, is usually not
available. Therefore, we recommend clarifying that second-hand, refurbished, repaired, unique
or handmade products may be excluded from DPP requirements when compliance would be too
burdensome or unreasonable. We also recommend clarifying that new rules would not apply to products already on the market.

Finally, a clarification on the ownership of the DPP data and where it is hosted is needed. It would be preferable for businesses that the DPP is hosted by the company itself to allow for ease of maintenance and information updating. DPP implementation must be accompanied by appropriate safeguards protecting confidential and sensitive business information.

**Avoid conflicting requirements and digitise labels**

With regard to labelling requirements, it is worth noting that ICT companies market products globally. Therefore, ICT products need to comply with a multitude of global labelling requirements. We are concerned that Article 15 may establish conflicting requirements and effectively prohibit labels required by other countries. This could restrain global trade and complicate compliance.

In addition, under the current legislation, compliance and regulatory marks such as the CE mark are required to be printed or etched on the product and additional safety information must be provided with the product. Allowing for DPP labels and electronically provided information requirements in lieu of physical markings would result in trade, consumer and environmental benefits while increasing the cost-effectiveness and overall competitiveness of the industry.

**Ensure broad stakeholder participation and legal certainty for companies**

ITI welcomes the establishment of an ‘Ecodesign Forum’, which would include Member States experts and stakeholder representatives and assist the Commission in preparing ecodesign requirements, establishing the Commission working plan, and assessing the self-regulating measures. The development of ecodesign requirements for specific products should be carried out in close cooperation with manufacturers, importers, and other economic actors, in order to ensure that requirements are feasible, balanced, and based on industry expertise and best practices.

We recommend that, in addition to convening the Ecodesign Forum, the Commission carries out broad public consultations on its working plan and on the delegated acts it is preparing. Furthermore, delegated acts should provide for sufficient transition period allowing businesses to comply with ecodesign requirements without suffering significant negative impacts. The transition period should be set on a product-by-product basis, depending on the product type and the complexity of the specific requirements, but should not be shorter than 36 months.

When setting its working plan, the Commission should prioritise areas where it could achieve significant environmental benefits without imposing disproportionate costs on businesses. It
should distinguish between consumer and business products, keeping in mind their different characteristics. Finally, we encourage the Commission to preserve, where possible, the existing exemptions under the Ecodesign Directive, in order to ensure coherence and legal certainty for businesses. As an example, high-end/research products exempted under Commission Regulation (EU) 2019/424 account for low volume of sales and trade within the EU and the exemption for such products should be kept in place.

**Adopt a targeted approach with regard to information requirements on unsold consumer products**

The ESPR proposal outlines comprehensive information requirements that would apply to all economic operators discarding unsold consumer products. This would impose significant burdens and costs on businesses. The reporting requirements regarding unsold goods are unclear. Furthermore, it is essential that any prohibition of destruction of unsold goods be clearly defined and establish exclusions based on certain parameters, including safety and unreasonable cost. For example, goods that have been determined to pose a safety risk must be destroyed. Also, certain returned products that are damaged may not be economically feasible to repair to allow for resale or reuse.

Based on marketing predictions, companies plan and manufacture the appropriate product quantities, and use alternative channels such as discount markets or liquidators to sell goods that were not sold through primary channels. Companies are not in the business to produce goods for destruction, and they try to plan for appropriate quantities. If goods are not sold through primary channels, they are typically sold through discount markets or donated. Finally, ICT products are vastly recyclable and, even in the case of a non-compliant or defective product, most parts could be reused or recycled.

Therefore, the one-size-fits-all approach adopted by the ESPR proposal with regard to information requirements on unsold products is disproportionate and unjustified. We recommend a targeted approach, focusing on products or sectors where the Commission has identified significant negative environmental impact. We also recommend clear definitions and exclusions from the prohibition for products that pose safety risk or are damaged or in a condition that would not allow for liquidation or donation in lieu of destruction.

**Align definitions of economic operators**

The ESPR includes the notion of “dealer” among the economic operators in the supply chain. However, we recommend replacing this notion with “trader” – a definition that is already established in EU legislation, and in particular in the Market Surveillance Regulation and the Omnibus Directive, and is included in the Digital Services Act and the General Product Safety Regulation proposal. This would be beneficial for maintaining legal coherence and will also ensure that consumer-to-consumer transactions are not captured by the ESPR scope.
**Protect online marketplaces’ and search engines’ business sensitive information**

We consider further clarification is required regarding the scope and purpose of the provision of article 29 (1) d), allowing market surveillance authorities to access marketplaces’ and search engines’ interface to identify non-compliant products, in order to avoid risks to business sensitive information and users’ privacy. Search engines do not have access to merchant data and collecting such information as a web index would pose feasibility challenges. Monitoring obligations under the ESPR should not go further than obligations under existing EU market surveillance legislation.

**Rely on international industry-driven consensus-based standards**

We recommend that the proposal be structured to promote reliance on international industry-driven consensus-based standards to avoid fragmentation with global regulatory environments and avoid the development of region-specific technical specifications. We also recommend that a declaration of self-conformity (self-regulation) to the specific technical specifications in an internationally harmonised standard by the manufacturer/producer be allowed to demonstrate conformity of products under the ESPR.