Contribution to the legislative debate on the European Commission proposal for an Ecodesign for Sustainable Products Regulation (ESPR)

Introduction

This paper summarises LightingEurope's recommendations for the ongoing Council and European Parliament debates on the European Commission's ESPR proposal.

As a general comment, we ask that the EU regulators maintain **consistency** across all the different legislative proposals related to sustainability. The ESPR must remain consistent with the proposed rules on empowering consumers in the green transition[1], green claims, the right to repair, the waste framework and waste electrical and electronic equipment.

LightingEurope supports

- The structure of setting out a general framework, with detailed rules set **at product level** and the DPP information requirements detailed product by product;

- A strong section on the **enforcement** of rules and market surveillance in the Commission's proposal and in some amendments from the Parliament;

- The Parliament and Council proposals to link the DPP to **existing EU databases**.

What are our main concerns?

- **Substances of concern:** the amendments discussed in the European Parliament and the EU Council risk further complicating the Commission's proposed rules;

- **Free movement of goods:** the ESPR is the opportunity to create a clear legal framework, whereas the Parliament and Council proposals will lead to even further fragmentation of the internal market;

- Proposals to share **large amounts of business sensitive information** (e.g. exact number of products placed on the market, details of suppliers and customers) with the Commission and authorities;

- The quantity of additional information that should be **printed** with or on the product;

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[1] Our joint industry paper on the ongoing legislative debate on Empowering Consumers in the Green Transition is available at this link.

- Without a link to existing EU databases and sufficient time to implement new data obligations and formats, the **DPP** may result in duplicate information and create an unnecessary and avoidable burden, especially for SMEs.

Substances of concern (art. 2.28 and 7.5)

Our concerns

The Commission's proposed definition covers thousands of substances, including CLP substances (many of which lack a CAS number and are therefore not easily trackable through a global supply chain). It would be unrealistic to require industries to track this high number of substances which may pose no risk to health or the environment in the application they are used.

The European Parliament and the Council are adding even more complexity and burden, proposing to enlarge the definition even further to also include other substances (e.g. POPs) and are in some cases extreme, e.g. by proposing to restrict all substances of concern.

Our proposals

We propose to strongly reduce the number of substances to be tracked at product level, focusing only on hazardous substances that impede the recycling of products based on currently available recycling technologies.

The final list of substances to be tracked must be set at product level and be subject to consultation with all stakeholders including recyclers.

No restriction of substances should be introduced with the ESPR delegated acts, leaving this to chemical legislation (e.g. REACH and RoHS).

Fragmentation of the internal market (art. 3)

Our concerns

The Commission's text postpones the harmonization of rules to the moment when the delegated acts will become applicable (in 4-5 years' time), whereas national requirements already apply now or in a few months.

The Parliament amendments (from the IMCO Committee) further encourage the setting of national requirements on sustainability, thus fragmenting the internal market even further.

Fragmented requirements across different EU Member States will result in companies splitting their resources to comply with specific national initiatives, rather than focusing on innovating to deliver on sustainability.

Our proposals

The harmonisation of rules should already apply immediately once the Framework Regulation enters into force, directly repealing existing conflicting national requirements.

Enforcement of rules for online marketplaces (art. 29)

Our concerns

Non-compliant products continue to flood the EU market, in particular through online sales channels such as online marketplaces. In many cases, when a product is sold from outside the EU, there is no economic operator in the EU jurisdiction who can be held liable for product compliance.

Our 2021 mystery shopping exercise showed that out of the 30 products proposed by the platforms' algorithms and delivered to us, 77% did not comply with EU mandatory requirements. This undermines both the world-wide credibility and impact of EU rules and the competitiveness of EU-based economic operators.

The Commission's good proposal on a number of minimum checks on surveillance of the products on the market could be weakened, especially by the Council.

Our proposals

Liability for products online that do not comply with the requirements set under the ESPR must be allocated to an economic operator within the EU jurisdiction.

We support some of the amendments that have been tabled by the European Parliament calling for the liability to fall on online marketplaces when there is no liable economic operator in the EU and in particular no importer. We have co-signed a joint statement where 31 organisations, both NGOs and European industry, call for the ESPR to address this - available here.

Both the Parliament and the Council should maintain the ambition of the Commission's dedicated Chapter on the enforcement of ESPR rules and in particular the proposal to introduce a requirement for a minimum of checks per product by Market Surveillance authorities.

Digital vs printed information (art. 7, 14, 21)

Our concern

The Commission's text and Parliament proposals seem to require the provision of information on many parameters related to the product's sustainability in printed form. This would have an unnecessary and avoidable impact on the environment, e.g. with many printed leaflets in product packaging.

Our proposal

The digital format should always be preferred for the different information requirements and for the label. This allows the users to easily access information when they need it during the product's lifetime.

Business Sensitive information (art. 30-31)

Our concern

The Commission's text and some Council proposals require the sharing of very sensitive business information (e.g. names of suppliers; quantities of products delivered) and create serious cybersecurity and other risks.

Our proposal

These new requirements should be optimised to the minimum to counter cybersecurity risks, e.g. we propose deleting the obligation to disclose the exact number of quantities of models supplied to an operator.

Digital Product Passport - DPP (art. 8-12)

Our concerns

The timeline for complying does not take into account the actual time that authorities need to finalise data models, standards, and implementing legislation, and that operators then need to understand and adapt to the new requirements.

The DPP will include many information requirements. As a decentralized database, there is a risk of duplicating information requirements that are already part of existing EU Databases (e.g. EPREL, SCIP).

Our proposals

A pragmatic timeline (no less than 8 months' time from the moment that all the technical specifications and information requirements are finalised and/or launched) should be set in the ESPR to allow the operators to collect the information, adapt their IT systems and then upload the data.

Information parameters that are already required by existing EU databases (e.g. EPREL or SCIP) should not also be required for the Digital Product Passport in the product delegated acts.

For energy related products subject to energy labelling, delegated acts at product level could require that sustainability-related parameters are added as additional parameters in the EPREL database.

Contact

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LightingEurope is the voice of the lighting industry, based in Brussels and representing 30 companies and national associations. Together these members account for over 1,000 European companies, a majority of which are small or medium-sized. They represent a total European workforce of over 100,000 people and an annual turnover exceeding 20 billion euro. LightingEurope is committed to promoting efficient lighting that benefits human comfort, safety and wellbeing, and the environment. LightingEurope advocates a positive business and regulatory environment to foster fair competition and

growth for the European lighting industry. More information is available at www.lightingeurope.org.