

JBCE position on Ecodesign for Sustainable Product Regulation

The Japan Business Council in Europe (JBCE) welcomes this opportunity to provide feedback on the Commission proposal for the Ecodesign for Sustainable Products Regulation (ESPR). JBCE is a cross-sectoral association of companies with Japanese parentage. We support the EU's ambition to make sustainable products the norm in the EU and we firmly believe JBCE can contribute to this through the ESPR. However, we emphasise that the requirements for achieving the sustainable product should be workable and feasible. In pursuit of this, we would like to share our concerns below and would appreciate it if you would take our comments into consideration. In addition, JBCE proposes that the Commission offer a workshop and guidance for the respective ESPR requirements in order for stakeholders to better understand the proposal.

1. General

- **Product-group-specific approach**

JBCE appreciates that the Commission will introduce product-group-specific requirements via delegated acts. Assessing requirements based on a product group specific approach is needed to understand the relevant and feasible requirements for each product group. The process of formulating the delegated acts should be transparent and all stakeholders including industry should have the opportunity to participate in the discussion when drafting delegated acts and enough feedback opportunities should be provided.

- **Proportionality among requirements**

- JBCE would like to stress that a balance is needed between ambitious requirements and the implementation cost. Manufacturers have to deal with many legal requirements which are proposed under the EU Green Deal policy. JBCE urges the Commission to take a step-by-step approach, starting with minimum requirements, and introduce a review process to assess the effectiveness of the measures before setting additional requirements.
- Requirements should be relevant and avoid imposing measures without assurance that these requirements would be proportionate to the benefits reaped.

- **Ensure alignment with existing legislation**

- JBCE supports the Commission's general principle¹ that ESPR will only intervene when the environmental sustainability of products, which are also subject to separate product-specific legislation, cannot be fully and appropriately addressed by other instruments. Requirements that duplicate or conflict with other legislation

¹ [COM\(2022\) 140](#) Communication making sustainable products the norm

such as REACH, CLP and RoHS should be avoided.

- **Single-market fragmentation**

- JBCE appreciates and supports that the Commission will replace the Ecodesign Directive with an ESPR Regulation. As described in Table 25 "National level initiatives" in Annex 8 of the Commission working document, the business supplier's burden is increasing since member states are individually introducing environmental regulations. Harmonised rules should be introduced at EU level to avoid fragmentation of the Union's internal market.

2. Specific Items

1) Ecodesign Requirements

- All requirements should be well defined and workable in order to be enforceable by market surveillance authorities.
- JBCE would like to point out that too much focus on sustainability considerations might lead to risk considerations being overlooked, such as recyclability versus safety. The balance of requirements should be carefully assessed in product-level, secondary legislation
- Sustainability requirements should be carefully balanced to take into account unavoidable trade-offs including entire environment impact, such as energy efficiency. Setting mandatory horizontal requirements for sustainable design across product categories will impair freedom of design. The requirements for spare parts and recycled materials for repairs should also be carefully evaluated. Imposing new requirements on spare parts would result in hindering product circularity.

[Substances of concern]

- Consistency should be secured in legislation for chemicals.
 - Ecodesign should not regulate chemical substances individually and should be consistent with existing chemical Regulations such as REACH/RoHS, which are already providing the possibility to restrict substances for reasons related to the health or environment
 - The very wide definition of 'substance of concern' includes not only SVHCs on the Candidate List or substances in Annex XVII of REACH, but also skin and respiratory sensitizers, substances forming a chronic hazard to the aquatic environment, STOT SE and RE. At a later stage in the process endocrine disruptors, PBT, vPvB, PMT and vPvM substances will be added as well. This staggered, dynamic process makes it very difficult and burdensome for

industry to keep on track with SoCs. Especially in global supply chains, knowledge of the presence of such substances cannot be expected, nor will it be easy to obtain such information that is often considered confidential. We therefore call on the Commission to support industry by publishing clear guidance and a list of ‘substances of concern’ to refer to, e.g., based on the existing harmonised classification of substances.

- Substances that are an obstacle to mechanical or chemical recycling, but do not meet the hazard criteria of ‘substances of concern’, should be listed separately.

[Environmental impact, including carbon and environmental footprint]

- The implementation of the environmental footprint is highly challenging for industry and feasibility must be ensured. The introduction of such requirements should therefore be carefully assessed for each product category.
 - Collecting accurate, qualitative and quantitative data to calculate the environmental footprint throughout global supply chains is highly complex, especially in the case of complicated, assembled products.
 - There should be sufficient flexibility with regard to the methodology of calculating environmental impact. In addition to the EU PEF methodology (Recommendation C(2021)9332)², standardized ISO or other equivalent methodologies should be acceptable as well.

Information requirements

- JBCE considers that as a general principle it is vital to clarify throughout the Ecodesign Regulation the respective access rights of data users/actors, particularly for information that should be safeguarded in respect to personal data protection and confidential business information.
- On several occasions, the ESPR Regulation proposal gives wide discretion to the Commission to decide what information is considered relevant when considering the information requirements to be included in an ecodesign delegated act. For example, Article 7(2)(b)(iii), “other information that may influence the way the product is handled”, is a ‘blank cheque’ without clearly defined parameters. It’s difficult to imagine what “other information” the Commission has in mind. JBCE requests that Commission provide examples so that the

² [COMMISSION RECOMMENDATION](#) on the use of the Environmental Footprint methods to measure and communicate the life cycle environmental performance of products and organisations

categories/types of relevant data can be more clearly defined in the Ecodesign Regulation.

- Moreover, we are concerned about the possible introduction of information requirements related to in-use measurement of energy consumption or performances as foreseen in Article 31, and in particular to the collection and reporting of the data to the Commission. Depending on the details that will be defined in delegated acts, JBCE is concerned it could mislead the end-user if values from in-use measurement are compared to declared values according to measurement conditions specified in the standards. The values would not always match with the power consumption evaluated in different conditions, such as temperature, operation mode, etc.
- Feasibility and proportionality are also essential considerations with regard to the inclusion of information requirements to facilitate the tracking/tracing of 'substances of concern'. For complex products with many components, such as electrical and electronic products, it is impractical to indicate the detailed information for many substances as is currently proposed, e.g. location in the product and concentration. JBCE notes that Article 7(5) provides for an exemption mechanism based on an assessment of the "technical feasibility or relevance of tracking". Such an assessment is welcome but would traditionally be carried out under REACH/CLP, making use of RAC and SEAC expertise. In the context of the preparatory studies for ecodesign implementing regulations, it is unclear who would be responsible for conducting the assessment of "technical feasibility or relevance", the consultant contracted for the ecodesign preparatory study or RAC and SEAC that are the EU's chemicals expert groups. JBCE notes that there is a strong risk of double regulation on this issue.

Product Passport

- In order to avoid duplication of data, existing databases (such as EPREL or SCIP) should be linked to or integrated in the Digital Product Passport (DPP). The DPP should offer a single digital solution that is not an additional marking requirement.
- In order to protect confidential business information, it is paramount that access rights are distinguished for various different categories of data-users, i.e., end-users, professional repairers or market-surveillance authorities. Their respective access should be determined on a need-to-know basis and defined in product-specific, ecodesign delegated acts and not in generic one-size-fits-all, horizontal delegated acts.
- It is essential that the DPP is not applied at item level, which would entail an enormous administrative, implementation and cost burden for manufacturers. DPPs at item level would have disproportionate indirect costs related to data storage, from energy consumption in data centres, that would have negative implications for the EU's climate neutrality objective,

outweighing any potential benefits for the Circular Economy.

- Although the Commission proposal requires the traceability of products and substances, it is still unclear how the requirements will apply to the global supply chain, such as the traceability of recycled content and secondary materials throughout the global supply chain. The scope of substances must be properly defined and assessed by a competent authority. The feasibility of manufacturers tracing substances and their relevance for stakeholders along the value chain must be taken into consideration in the scope assessment in order to avoid additionally burdening manufacturers.

Labels

- JBCE recognises labelling as a useful means of providing information to consumers to improve the sustainability of their product selection decisions. To be effective, labelling must be unambiguous and intelligible. As such JBCE believe that further clarity is necessary as to how the existing energy labelling and other 'classes of performance' labelling as proposed under the ESPR Regulation will operate. Avoiding consumer confusion is paramount. Labelling is effective when it clearly and unambiguously targets an improvement in a sustainability aspect in isolation, e.g., energy efficiency.
 - If two labels are required for energy labelling and other 'classes of performance' it will lead to confusion among consumers and big burdens for companies to prepare two types of label.
 - If other 'classes of performance' are included as supplementary information on the energy label, it is also highly likely to result in consumer confusion.
 - If the products covered by energy labelling are exempted from labelling for other 'classes of performance', those products might miss the opportunity to apply for subsidies at national level.
- JBCE supports efforts to digitise labelling via e-labelling. Manufacturers should be given the flexibility to decide whether printed labels are kept or not. CE marking and safety requirements in instruction manuals should also be allowed to make use of e-labelling.

Market surveillance

- Implementation of market surveillance should be aligned with the Market Surveillance Regulation (MSR) provisions.
- Recital 96 of the ESPR proposal says that a product that presents a risk should, for the purposes of the ESPR, be defined as a product that does not comply with the ecodesign requirements and that this specific definition should be used when applying Articles 19 and

20 of the Market Surveillance Regulation (MSR). However, Art. 19 of the MSR only applies for products presenting a serious risk. This would mean that any products that don't comply with the ecodesign requirements must be withdrawn or recalled. Recital 96 should be deleted or aligned with the MSR.

- JBCE questions the enforceability of some of the requirements proposed in the ESPR proposal, such as the use of recycled materials or durability.
- The tasks for economic operators in section VII of the ESPR (manufacturer and importer) now also include the obligation to indicate the email address (on top of the name and postal address). In the past, industry was against this. However, the positive thing is that this can also be done in the product passport, but it should be made clear that if it is indicated in the product passport, the ESPR is the *lex specialis* and an indication on the product or packaging is not necessary anymore according to other applicable NLF legislation.

Common specifications

- The ESPR Commission proposal allows the Commission to adopt implementing acts laying down 'common specifications', for test, measurement and calculation methods, in case the standardisation work takes too long or the standardisation body refuses to work on it. This proposal would risk disregarding the know-how of the experts working on these standards and therefore potentially increasing the introduction of mistakes / wrong interpretations into the legal text.
- The common specification is a tool that is beyond the NLF decision. Such common specifications may conflict with international or European standards, creating technical barriers to trade and confusion. Common specifications written by a unique actor may create unbalanced requirements which are not based on a consensual approach involving all the stakeholders. Also, the writing of such specifications requires public resources that would be better spent on drafting international or European harmonised standards. This is therefore an undesirable solution.
- The obligation for the European Commission to offer a standardisation mandate is missing in the proposal. A clear deadline for the European Commission to offer a standardisation mandate is required in the proposed legislation. The deadline should be as short as possible (e.g. 3 months after publication of the regulation in the OJ), to allow the ESO sufficient time to have standard ready on the enforcement date of the requirements to avoid the necessity of common specifications.
- The legislation should state that the standardisation mandate for the harmonised standard covering newly proposed, circularity requirements should be aligned with international standards. Unique requirements in the EU would lead to technical barriers to trade, impacting design and adding administrative burdens for the economic operators.

22 June 2022



- Articles R9 and R19 (formal objections) of NLF decision 768/2008 are missing in the proposed legislation.

Incentives for sustainable business models

- Circular business models, such as Product-as-a-Service, should be taken into account under the ecodesign requirements as a means to help extend product life.
- In addition, as indicated in the SPI Communication, the Commission should take action to incentivise businesses, member states and regions to boost the uptake of circular business models. Such business models have a high potential to contribute to energy savings through improved energy and resource efficiency (as referenced in the RePowerEU Communication).
- We welcome the setting of mandatory criteria for public procurement and recommend setting specific targets for the member states to ensure effective implementation.

About JBCE

Founded in 1999, the Japan Business Council in Europe (JBCE) is a leading European organization representing the interests of about 90 multinational companies of Japanese parentage active in Europe. Our members operate across a wide range of sectors, including information and communication technology, electronics, chemicals, automotive, machinery, wholesale trade, precision instruments, pharmaceutical, textiles and glass products.

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EU Transparency Register: 68368571120-55