



Public Consultation on Ecodesign for Sustainable Products

September 2022

About VOICE (Voice of Irish Concern for the Environment)

With over twenty-years' experience in waste and water policy development, public awareness and outreach to communities and companies to encourage behaviour change, VOICE has become one of the leading environmental charities in Ireland. We offer policy proposals both on a national and EU level on waste and the circular economy initiatives as well as support bottom-up community and individual engagement. We move beyond merely running public awareness events and workshops by asking and helping individuals, communities and businesses to become active participants in achieving sustainable change in their local or business environments. We often work in collaboration with the government, local authorities, community groups, other NGOs and businesses to affect positive behaviour change. We wish to submit the following observations and recommendations in response to the government's call for consultation on the EU Ecodesign for Sustainable Products or Sustainable Product Initiative.

Sustainable Product Initiative

The Sustainable Product initiative (SPI) has its roots in the EU's Green Deal¹, which calls for a more climate neutral and resource efficient community and to make producing and purchasing sustainable products and services the norm. We support this wide ranging and ambitious regulation to push businesses to make products that are robust, easily repairable, refurbished, reused and recyclable at the end of life. We also support the transition to a clean and toxic-free circular economy to ensure that chemicals of concern and hazardous materials are designed out to foster a cleaner and healthier environment for all.

We support the requirement of a Digital Product Passport to inform consumers of the product's bona fides, a list of chemicals and products used in its manufacture and its proper treatment at end of life. We also support the mandatory requirement of the

¹ [New proposals to make sustainable products the norm \(europa.eu\)](https://european-council.europa.eu/media/e3000420/1/1622020main_en.pdf)

use of Green Public Procurement criteria for all government purchases so that our public dollars are used to develop a more sustainable marketplace.

We call on the government to adopt effective fiscal measures including the removal of harmful subsidies and the adoption of lower (or zero) VAT rates for circular products and services, including reuse and repair activities.

We encourage the Irish government to support fully the adoption of this regulation and to push to strengthen the proposal in a few areas.

Observations and Recommendations

- 1) The SPI is an extension of the EcoDesign Directive that sets out energy efficient requirements and will now cover most products that have a detrimental impact on energy, water and material consumption.

We urge the application of this regulation to all products, prioritising those that have the most deleterious impact on the environment, including textiles, construction, plastic, packaging and electronics.

- 2) **Right to Repair and Reuse:** The SPI sets out ambition to make products more easily reusable and repairable.

We ask that the 'Right to Repair' and the 'Right to Reuse' be enshrined in the regulation and that parts and open-source repair instructions be widely and easily available to the public. This will bolster the repair economy (developing a local workforce), keep materials and products in use for longer and be a cost savings for individuals as there will be competition in the repair market. Shortening the supply chain will also have positive effects on GHG emission reductions and create a more robust and resilient economy. Additionally, products should be designed to be easily reused, especially packaging.

- 3) **Liability Relief:** The question of liability must be addressed either on an EU level or Irish level. On the repair level, many communities trying to organise 'Repair Cafes' cannot find insurance to cover their activities due to liability concerns. There must be legal exemptions for products repaired through volunteer community initiatives, giving community groups and volunteer repairers indemnity for their pro bono actions.

Additionally, supermarkets, shops and take-away food services often do not accept reusable packaging due to liability concerns. This seems to be unique in Ireland and chills efforts to provide or accept reusable packaging. A 'right to reuse' for reusable packaging must be accompanied by indemnity to the shop/take-away service accepting such packaging with the liability sitting with the consumer bringing their own container. Such liability relief will require engagement with the Food Safety Authority of Ireland.

- 4) **Industry Voluntary Measures:** The SPI proposal allows industry to set up their own voluntary measures to comply with this regulation.

We fear that allowing industry to regulate themselves gives them huge latitude to green wash their actions and not actually make their products more sustainable. It's basically letting the fox guard the henhouse. As we know, industry's primary function is to sell more products and make money for their shareholders. Altering how they do business will cost them money and resources and many industries will push back on this. We believe that an independent third party should set the standards to ensure a level playing field for all actors in specific industrial sectors and to set ambitious product standards to ensure a true shift towards eco-design.

- 5) **Destruction of Unsold Consumer Products:** the SPI proposal mandates that all economic operators that destroy unsold products must declare what was destroyed, why and how. Eventually, the Commission envisions a complete ban on such disposal with some exceptions. However, there are some loopholes in this section that must be addressed.

Firstly, the definition of unsold consumer products refers to 'any consumer product that has not been sold or that has been returned by a consumer'. This definition should also explicitly include returned items, deadstock and excessive inventory.

We are also concerned about the practice of large retailers that sell 'mystery boxes' to get rid of unwanted inventory.² Customers buy a box of unknown items which only passes along unwanted items that most likely will be disposed of by the consumer. This might be another method of destruction used by economic operators to work around this provision.

Under this proposal, it states that '[i]n the delegated acts...the Commission shall set out certain exemptions to those prohibitions where it is appropriate in view of: (a) health and safety concerns; (b) damage to products as a result of their handling or detected after a product has been returned by a consumer; (c) fitness of the product for the purpose for which it is intended, taking into account, where applicable, Union and national law and technical standards; (d) refusal of products for donation, preparing for re-use or remanufacturing.' (emphasis added)

Two problems arise here in subsections (b) and (d) as they create huge loopholes for economic operators.

- 1) 'Damage' should be defined in the regulation to include only significant and serious faults to the product that make it unusable for its intended

² [OMKMNOE Mystery Box, Random Mystery Box Electronics, Surprise Box Contains Unexpected Gifts, Such As Drones, Bluetooth Headphones, As A Gift to Others Or Even A Surprise,Black : Amazon.co.uk: Sports & Outdoors](https://www.amazon.co.uk/Sports-Outdoors)

purpose. Without a set definition, the determination of what is damaged is very subjective and could include a minor snag or label rip in clothes or

discolouration or mislabelling, which would not affect the quality of the product. Additionally, the economic operator could theoretically slightly damage the product to avoid bans on its destruction. The damage must be serious enough to affect the use of the product for which it is designed and there must be some penalty for employee mishandling the product in order to avoid the ban on destruction.

- 2) 'Refusal of products for donation' could also provide a good excuse for retailers/producers to avoid any future ban of product destruction. The design of the product or its poor performance or demand might make the product ill suited for donation. The producer should take the hit for this and ensure that whatever they place on the market has a demand in society. Additionally, some electronics cannot be donated as some charities are worried about potential liability associated with potentially faulty electronic items. Therefore, if a charity does not want the product, it might be allowable to destroy it. If a product cannot be donated, the economic operator must have a system in place to reuse, repair or recycle the unwanted item.

- 6) **Inclusion of Plastic and Single Use Packaging:** Given the exponential increase of global plastic production and pollution, the lack of circularity of most plastic products and packaging and the devastating consequences of plastic production and proliferation, we recommend that the Sustainable Product Initiative include specific measures on plastics and packaging.

The SPI should fully support the further phase-out of single-use plastics and packaging, and include measures to prevent the release of microplastics.

- 7) **Hazardous Chemicals:** The SPI should appropriately address the presence of hazardous chemicals in products and packaging, and prohibit the use of the most hazardous chemicals in consumer products, consistent with ongoing developments in chemical legislation and the development of safe and sustainable by design criteria. For instance, we support a ban on the use of PFAS (forever chemicals) in paper/compostable packaging as they have done in Denmark and Sweden. See our report on PFAS in packaging.³

³ [Microsoft Word - Report on PFAS in food contact materials v4.docx \(website-files.com\)](#)

Conclusion

We urge the Irish Government to throw its full support behind the Sustainable Product Initiative and subsequent delegated acts. We encourage the Minister to push to eliminate the above-mentioned potential loopholes to ensure that industry is not greenwashing their activities, but rather moving towards the development and sale of more sustainable products and design out in-built obsolescence.

This is consistent with the objectives of the government's Waste Action Plan for a Circular Economy⁴ and it is also the desire of the Dail Committee as it stated in its report on the Circular Economy legislation,

'47. The Committee recommends that an examination be conducted into the potential measures for addressing the challenge of planned obsolescence, particularly in relation to electronics. This should include a broad examination of international examples and potential measures could include "a right to repair".

48. The Committee recommends that the Bill might provide for legislative or regulatory measures to track and discourage early or intentional obsolescence in design or manufacturing of goods and that such measures could be informed by a consideration of the operation of similar policies in other countries, including France and Italy.

49. The Committee also recommends proactive measures to support and encourage more successful "repair cafés" as seen across EU Member States and in the UK, including grants from the Circular Economy Fund and potential use of VAT reliefs and tax credits.⁵

We also support the recommendations laid out by ECOS, contained in Appendix 1.

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⁴ [gov.ie](http://www.gov.ie) - Waste Action Plan for a Circular Economy (www.gov.ie)

⁵ [Joint Committee on Environment & Climate Action – Report on the Pre-Legislative Scrutiny of the Circular Economy Bill 2021 – December 2021 \(oireachtas.ie\)](http://oireachtas.ie)

Appendix 1



Position paper

Ecodesign for Sustainable Products Regulation

How to ensure it makes sustainable products the norm

Brussels, 22 June



The Ecodesign for Sustainable Products Regulation proposal, issued late March 2022, introduces a toolbox to be used by EU decision-makers to address sustainability issues of products traded on or put into service in the European market. ECOS welcomes the proposed regulation as a step forward in addressing the EU's material footprint as well as impacts on land, water and climate fuelled by Europe's unsustainable production and consumption patterns. As a framework regulation, the ESPR itself creates the frame, rationale, and method for establishing sustainability-related requirements for products through delegated acts. The sections below outline how co-legislators can further strengthen the ESPR and materialise their ambition to make sustainable products the norm.

Keep

1. Ambition

The ESPR framework is applicable to all physical products traded on the European market. This includes consumer products like smartphones or clothing, as well as intermediary products like steel and aluminium. This is a positive setting to address environmental sustainability issues of key sectors throughout their value chain. It also rightly acknowledges the presence of substances of concern as a barrier to circularity which can be addressed through this policy tool at the very design stage. Although existing sector-specific legislation is the primary tool to be used to drive sustainability requirements, the ESPR can intervene should this legislation fail to sufficiently address the sector's environmental impact. This much necessary element of the regulation should be further strengthened by establishing clear criteria, a timeline, and a procedure for the ESPR to intervene in sectors that are already covered by product legislation (e.g., packaging and packaging waste directive).

The range of tools the ESPR sets out to use during the development of implementing legislation should also be highlighted as a major strength of the initiative. Recognising that product policy needs to rely on a variety of complementary requirements, measures and incentives to address sustainability issues, the delegated acts can introduce mandatory digital product passports, minimum performance requirements with regards to sustainability parameters such as repair or reuse, bans on the destruction of unsold goods, as well as mandatory green public procurement criteria. This allows for a tailored approach to sectors as diverse as lubricants and textiles.

2. Enforcement

The current market surveillance regime underpinning the Ecodesign Directive has demonstrated its shortcomings, with some 10-25% of products regulated under the framework estimated to be non-compliant with the existing requirements and around 10% of anticipated energy savings having been lost as a result. The text of the ESPR proposal addresses some of these flaws by expanding the provisions on market surveillance and by establishing an administrative cooperation group ("ADCO") composed of national market surveillance authorities. The proposal contains provisions that would empower the European Commission to set a minimum number of checks on products to be performed by the market surveillance authorities, and addresses measures to avoid circumvention. The proposed framework could be even further improved with stronger penalties in case of non-compliance targeting all economic operators and therefore also online marketplaces and making them legally liable. Market Surveillance Authorities and the European Commission should also go further in reporting on non-compliance penalties and checks and be required to publicise cases of repeated non-compliance by communicating the brand name of the non-compliant models so that the risk of reputational damage

acts as a driver. Finally, compensation for consumers having purchased non-compliant products should be considered, especially in relation to requirements with an impact that is easy to measure (e.g., energy use or minimum durability).

3. Working plan and Ecodesign forum

ECOS welcomes the thorough process to be followed under the ESPR when it comes to the prioritisation of products and measures, and their publication as part of a three-year working plan. This can reduce the risk of delays in implementing legislation as it provides for visibility over upcoming requirements and sets a given timeframe for adoption. In that respect, securing sufficient Commission resources to roll out the series of product and horizontal legislation will be a key success factor. To further ensure the work is kickstarted as soon as possible, co-legislators should include in the body of the regulation a list of priority products to be tackled in the transitional period before the first working plan is adopted as was the case in the original ecodesign directive from 2009. The consultative process among a wide variety of stakeholders foreseen as part of the Ecodesign forum should be maintained and implemented in full transparency.

Strengthen

1. Implementation

The stated ambition of the ESPR will have to be translated into ambitious decisions during the implementation process. However, a number of questions persist:

- How are sustainability hotspots identified and how is it decided which products are to be prioritised, as well as which measures most adequately address these sustainability issues?
- Based on which criteria can it be decided to introduce a product category that has failed to drive sustainability in their own existing product regulation into the ESPR, and in which timeframe?

ECOS believes a more comprehensive implementation guidance is needed to outline how the prioritisation and set-up of the working plan will be dealt with. While objectives to decouple resource use from growth are acknowledged in the preambles and introductory parts of the legal text, the actual prioritisation of sectors based on, for example, their respective share in contributing to the EU's consumption footprint is not established as a criterion for inclusion in the working plan. Furthermore, the future requirements themselves should be designed to actively drive a regenerative, non-toxic circular economy. The ESPR proposal does not make a difference between the different tiers of the circular economy and should be strengthened by putting an increased focus on proposing regulatory measures that promote sufficiency, reduction, reuse and repair.

2. Provisions on the destruction of unsold goods

A testimony to the high ambition level of the ESPR, an entire chapter of the proposal is dedicated to the 'destruction of unsold consumer products'. However, it mostly consists of information disclosure and reporting obligations with regards to the destruction of those goods.

Actual bans on the destruction of unsold goods are possible in the framework of the ESPR but need to be developed in delegated acts. ECOS encourages a wide uptake of this type of measure but warns the exemptions to such prohibitions are subject to interpretation. This is for example the case in regard to

how 'damage to products' is defined, and it should therefore be meticulously enforced with checks, controls and penalties. To avoid loopholes, the definition of unsold goods should explicitly include returned items, deadstock and excessive inventory.

Moreover, given the lion's share of EU companies are in fact SMEs, the entire section should be significantly strengthened by removing the foreseen exemptions for SMEs relating to the destruction of unsold goods.

3. Information requirements

The ESPR has the potential to introduce wide-ranging information requirements, including as part of the establishment of a Digital Product Passport (DPP). Co-legislators should aim to add details with regards to the implementation of the DPP so that it is rolled out within a reasonable timeframe (e.g., 2024), and that a system is in place for stakeholders to access data from mandatory information requirements even when the DPP is not yet functional.

In order to be an active driver for product sustainability, the DPP should include the full bill of materials and chemicals used in a product, as well as the product assembly scheme. ECOS believes that the no data no market principle should be mainstreamed, and therefore a mandatory DPP should be introduced for all products. The DPP should generate the data necessary to base future sustainability requirements on and should therefore be as open as possible to cater for the needs of important circular economy players such as repairers, consumers, market surveillance authorities and environmental NGOs.

4. Use of standards

The ESPR proposal refers to the use of standards for implementing elements of the ESPR, including for conformity assessment, but keeps the possibility open to use other technical specifications, the so-called 'common specifications'. ECOS welcomes this approach as it provides for a fallback option should the availability of suitable standards cause delays in implementing mandatory rules. Standards should be fit for purpose and translate environmental ambition into practice. However, the procedure for triggering the development of common specifications in the absence of suitable standards should be better outlined in the proposal.

Remove

1. Exemptions from ecodesign requirements

Ecodesign requirements are to be introduced to improve a number of product aspects such as durability, reliability, reusability, presence of substances of concern, or energy efficiency. However, the ESPR proposal foresees that a number of criteria can influence whether these ecodesign requirements are actually to be considered. For example, there should be no negative impact on the functionality of the product from the perspective of the user, or they should not negatively impact the competitiveness of economic actors or create a disproportionate administrative burden on manufacturers. All of these criteria are vague, highly contextual and lie in the eye of the beholder. ECOS warns that these criteria could be used to oppose the legality of the requirements developed through delegated acts and allow economic operators to stall for delays. We therefore recommend to either provide some more specifications or remove them.

2. Industry self-regulation

The ESPR leaves the possibility for some products to be regulated through so-called voluntary agreements, which are drawn up by the industry. As long as it can be argued that policy objectives can be delivered faster or in a less costly manner, the door is open for industry players to come up with a set of commitments they themselves need to abide by. ECOS believes voluntary agreements have consistently failed to prove more effective than mandatory rules as the four existing ones under the previous Ecodesign framework have delivered meagre results, including with regard to poor market coverage, weak requirements and delays in adapting to technological developments. ECOS therefore urges co-legislators to re-envisage the role industry agreements should play in driving sustainability. Rather than serving as minimum requirements, the efforts industry is willing to agree on should set themselves apart as sustainability front-runners, showcasing a consolidated willingness of the sector to do better than average.

3. Limitations to scope

The ESPR applies to physical goods that are traded on the European market, but digital or cloud services are excluded from the regulation's reach. On-demand service consumption such as streaming, Video On Demand and cloud gaming has resulted in an increase in web traffic by more than 25% per year. This is a major environmental blind spot of the ESPR because the pace at which consumption of such services increases overshadows the energy efficiency gains the sector can achieve. Co-legislators should address this issue during the upcoming negotiations.