

SMEUnited's views on the ecodesign requirements for sustainable products¹

Key messages:

The new Ecodesign will have positive repercussions on repairer SMEs. However, it will also impact manufacturing SMEs, which will have to put on the market products respecting the new measures. Therefore, according to SMEUnited, Art. 19 should:

- Include specific tools and instruments to support these SMEs;
- Ensure the effective participation of SMEs and of their representatives in the Ecodesign Consultation Forum and in its working groups, in order to reduce costs and red tape for SMEs;
- Foresee financial support for the participation of SMEs in the development of standards that will support the implementation of the Regulation and its delegated acts. This task could be carried out by Small Business Standards (SBS).

Independent repairers play an important role in circular economy. They should be allowed access to the technical documentation on top of repair and maintenance instructions in order to intervene on electronic appliances. It is also essential that Member States set up incentive schemes to encourage repairation of goods already put on the market.

Most of the important measures will be decided in delegated acts. This is not in line with the principle according to which delegated acts are only permitted if they legislate specific and not essential matters. Therefore, all aspects that can be treated uniformly and independently of product groups should be regulated in the framework regulation.

Predictability and stable investment conditions should always be a priority when regulating products on the EU market. The proposal should mention the product groups which are prioritised from 2024 and create stable conditions for investments.

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REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a framework for setting ecodesign requirements for sustainable products and repealing Directive 2009/125/EC - COM(2022) 142 final

Furthermore, a methodology to clarify the prioritisation of these new product groups needs to be presented.

The Digital Product Passport (DPP) should only concern information with a proven added value, be developed in an open-dialogue with stakeholders, carry data in a secure way, respect privacy rules, business confidentiality, as well as intellectual property. SMEUnited supports that the DPP shall be based on open standards and developed with an interoperable format. Nevertheless, it is important to ensure that these standards are developed with the participation of SMEs.

Single, tailor-made products, typically manufactured by SMEs, should be exempted from ecodesign requirements and the DPP upfront.

General considerations:

The Commission has recently proposed the new Ecodesign for sustainable products. This proposal extends the scope of the ecodesign to almost all products groups and gives key roles to new instruments such as the Digital Product Passport.

In the middle to the long run, this Regulation will certainly have an impact on most manufacturing SMEs, which will have to put on the market products which respect the new measures and standards. It will also have positive repercussions on the world of repairers, a sector mostly composed of SMEs, which plays and will increasingly play a key role in reducing the environmental impact of products.

The need to measure and certify the environmental sustainability of SME processes and products within an overall framework is also reflected in the environmental taxonomy and sustainable finance, files on which SMEs will have to be prepared.

In this context, SMEUnited believes that a European Regulation is the best instrument to insert the new criteria to guarantee circularity in the ecodesign as this will lead to equal rules in all the Member States. This ensures level playing field throughout the EU markets and fair competition between competing companies.

Impact on SMEs:

Article 19 focuses on measures supporting SMEs through actions undertaken by the Commission and Member States. Taking possible impacts on SMEs into consideration from the beginning is a valuable step in the right direction. Nevertheless, the scope of the article is insufficient and will not reply to the underlying structural problem: the new ecodesign framework will structurally disadvantage SMEs by creating disproportionate costs.

Therefore, it is important that at European level, action is not limited to guidelines for SMEs. To put SMEs on an equal footing with industry / big enterprises, SMEs need a specific support tool to implement ecodesign requirements, because, most of them are not used to working with LCA in terms of staff skills, testing labs and testing costs. In this framework, it would also be useful if the Commission would make available free online databases for most products groups with performed LCAs in order to reduce costs.

Equally important it would be for the Commission to guarantee the real participation of SMEs and of their representatives in the working groups establishing ecodesign measures, as explained below, in order to make sure that the result is applicable by SMEs without excessive costs and red tape. To guarantee this result, SME tests should also be performed for each of the new product categories.

Producing more durable goods of higher quality will bring added value overtime and costs will be absorbed or offset. In the short term, though, it will lead to an increase in prices. For instance, previous implications of similar measures in France have shown that some sustainability requirements could be very costly to test or to comply with such as lifetime, remanufacturing information and recycled content. Furthermore, administrative and compliance costs will be high. Thus, for SMEs it will be necessary to provide easier access to finance as well as incentive tools that can support all phases of product development, from design, production, marketing, to after-sales management. In particular:

- circular design of products with a view to extending their life (reuse, remanufacturing, repair, upgrading, etc.);
- support for the adoption of circular business models based on collaboration and sharing;
- encouraging the adoption of product withdrawal systems;
- supporting reasonable forms of the "right to repair" which allow products to stay longer on the market without overburdening producers with high costs and red tape;
- encouraging on-demand production.

The policy options that apply the highest incentives should be followed first. As such, this might include direct subsidies or VAT reductions targeting SMEs and/or tax exemptions linked to products that meet certain sustainability criteria.

As a last point, Art. 19 should also foresee financial support for the participation of SMEs in the development of standards that will support the implementation of the Regulation and its delegated acts. This task could be carried out by Small Business Standards (SBS)².

² Small Business Standards (SBS) - <https://www.sbs-sme.eu/> - is a European non-profit association (aisbl) co-financed by the European Union and EFTA Member States. Its goal is to represent and defend small and medium-sized enterprises' (SMEs) interests in the standardisation process at European and

Definitions

Throughout the text of the regulation, some definitions are either too vague or lack necessary information. For example, in some cases time limits are defined in days and in some cases in working days and there is no information about how to react in case of delays (e.g. of delegated acts). There is a lack of definition of objection proceedings and time limits and clarifications about timing of information updates are too vague.

Moreover, some definitions which are used across the different pieces of legislation in the Sustainable Initiative package present differences among them. Their finetuning is necessary since those initiatives are expected to act in parallel. For instance, in Ecodesign Art 2 (16) “remanufacturing” is defined as an industrial process which is transforming an object which is waste, while in the Construction Products Regulation (CPR) Art 3 (28) the “remanufactured product” is defined as a product which has been subject to a transformative process, without a reference to the initial state of the product or to the nature of the process as industrial or not. Varying definitions may lead to varying interpretation, which will affect the implementation of a coherent EU strategy.

Self-regulating measures

The option of self-regulation measures (article 18) is welcomed, but in its current form it is less attractive, especially for SMEs. We suggest lowering the criteria of the market share covered by a self-regulation measure from at least 80 % of units placed on the market or put into service to at least 50%.

Public procurements

Using public procurement to develop a demand for green /sustainable products can represent a further layer of red tape and investments, which might result in the exclusion of many SMEs. Therefore, the criteria for the “green public procurement” which are to be defined in a delegated act (article 4 and article 58) need to be set up carefully to avoid this result. This is especially true in the current context following the Covid-19 pandemic and the war in Ukraine, whereby European SMEs in several sectors struggle to keep up with the exorbitantly rising prices of energy, raw materials, late payment by private and public actors and the inflation stranding the European economy.

international levels. Moreover, it aims at raising the awareness of SMEs about the benefits of standards and at encouraging them to get involved in the standardisation process.

These new provisions should therefore refrain from putting additional burdens on contractors of public works, who are currently discouraged to accept new or to renew contracts, are unable to respond to procurement bids as rising costs are not properly taken into account by public authorities, or are even forced to limit or to suspend existing contracts with public authorities.

Unsold goods

In the future, new rules will allow the Commission to prohibit the destruction of unsold goods. This shall not apply to SMEs. SMEUnited welcomes this exemption, but underlines that it might create incentives to destruct goods via SMEs. It is thus likely that this exemption might be abolished quickly. In SMEUnited's view, it would be more appropriate not to think in terms of a ban on destruction, but to focus on the objective to reduce the number of unsold products on the market.

Repairers

SMEUnited wishes to stress the potential for independent repairers. Repairers play a crucial role in the circular economy: extending the life cycle of products means reducing the extraction and consumption of natural raw materials responsible for 60% of global greenhouse gas emissions. Their action should therefore be encouraged and promoted as much as possible to fight climate change.

Product parameters related to facilitating repair and maintenance should be amended. Annex I of the proposal lists the relevant product parameters for each product aspect that the Commission should consider when preparing a delegated act. Regarding the aspect "ease of repair and maintenance", the availability of technical documentation should be mentioned next to the parameter "availability of repair and maintenance instructions". This is indeed an indispensable tool to allow independent repairers to intervene on electronic appliances.

Article 57 allows Member States to grant incentives to encourage consumers to buy goods which score highly in the environmental performance. Such provision should not prevent Member States from setting up incentive schemes to encourage reparation of goods that have already been put on the market. This is the case in France, where a "Reparation Fund" has been established to reduce the price of repairing a good.

Market surveillance

With new product groups falling under the ecodesign requirements, it will be vital to ensure a system of high quality market surveillance. Market surveillance authorities may lack the technical knowledge or the sufficient human resources to verify the conformity of a good with the requirements laid out in a delegated act. Therefore, the proposal of the Commission should mention the possibility for Member States to establish technical consultative committees to assist the market surveillance authority.

Such committees should be made up of stakeholders from the business community and civil society who have a technical knowledge of the product group covered in the delegated act. Their role should be to signal to the market surveillance authority products that appear not to comply with the ecodesign requirements.

Specific considerations:

SMEs involvement in the system

The meetings of the different product groups will play a key role in the product specific requirements. If SME representatives are not fully included in the decision process, the results will be technical measures which are not going to be feasible for SMEs. Therefore it is important that the Commission makes sure that SMEs and their official representatives are effectively and not only theoretically included in the Ecodesign Forum. This means that the Commission should support SMEs and their representatives financially in order to attend the meetings and provide feedback on the technical drafts discussed there. This will allow the results to be applied by SMEs without huge investments and red tape.

Delegated acts and multiannual working programmes

The design of the regulation on establishing a framework for setting ecodesign requirements for sustainable products is comparable to the directive on establishing a framework for the setting of ecodesign requirements for energy-related products. This is positive, as Member States can build on existing expertise. However, most of the important measures will be decided in delegated acts, including the information requirements and the content of the product passport. All this will be decided outside of the regular law-making process, leaving the original framework a “carte blanche”. This is not in line with the principle according to which delegated acts are only permitted if they legislate specific and not essential matters. Therefore, all aspects that can be treated uniformly and independently of product groups should be regulated in the framework regulation.

However, it is important to ensure coherence between the future ecodesign Regulation and its implementing acts and other pieces of legislation affecting a specific product. This is important to avoid duplication or unclear requirements and putting an excessive burden on economic actors.

It is also important to note that trade-offs between the new ecodesign requirements (such as durability, reliability, reusability, reparability, possibility of remanufacturing and recycling) might be necessary in order to avoid conflicting targets. **Therefore, delegated acts for individual product groups need to be crafted carefully.** To that extent, more response time for published delegated acts is crucial, since these delegated acts will contain product group specific detailed information. This process deviates from usual consultation of delegated acts.

Predictability and stable investment conditions should always be a priority when regulating products on the EU market. With the extension of the ecodesign beyond energy intensive products to any product, this predictability is already hindered. The current proposal envisions the number of working programs for specific product groups. It does not mention the product groups that will be analysed in the first working programs and delegated acts from 2024-2030. This is an unnecessary burden. The text of the proposal should mention the product groups which are prioritized and create stable conditions for investments. Furthermore, the working plans also draw attention to the fact that a methodology to clarify the prioritisation of product groups is still lacking. To increase transparency an understandable methodology needs to be presented. The methodology for ecodesign of energy-related products used in Directive 2009/125/EC would not be suited for many other product groups and would need to be adapted.

Measures related to the Digital Product Passport

The implementation of the Digital Product Passport (DPP) will be specifically challenging to SMEs. SMEUnited believes that this tool should make it easier for the producer to communicate the relevant product information, without adding additional administrative and bureaucratic burdens. This means that information should only be gathered when there is a proven added value. For instance, all information on substances of concern (SoCs) should be restricted to data which are essential for repairing, re-using and recycling. All other information on SoCs would overburden SMEs.

More in general, to achieve a reduction of red tape, it should be kept in mind that various aspects need to be considered. The DPP should be developed in an open-dialogue with stakeholders in order to take account of their views, should carry data in a secure way, respect privacy rules, business confidentiality, as well as intellectual property. Clear rules, especially regarding open questions about when the requirement of a DPP ends, will need to be supplemented. Regarding data security, we wish to highlight that the in-use energy consumption of devices will provide a lot of information about the life and the habits of the user, even if collected in an anonymous way. So, there is the potential of establishing “surveillance”.

The current proposal to collect the data in a decentralised system will not be able to reply to these needs. Instead, the data should be registered in the EU Commission register which is mentioned in article 12. This will allow long-term conservation. If a producer/importer goes out of business, the data of the products they have put on the market will not be lost. The register should not be accessible exclusively to national authorities but to all economic actors that need it, for example to repairers needing access to the technical documentation of a product or part of it. However, it should be kept in mind that also such a central register could make the DPP an interesting target for data hacks and measures should be taken to prevent this.

Many SMEs do neither have the technological facilities, nor the financial and human resources to support the implementation of a DPP. Leaving the data processing and transmission up to SMEs will result in excessive costs and DPP that may not meet the criteria regarding data security and privacy rules. The best way to ensure high quality and to take tackle the burden on SMEs will be automated processing and transmission of data, which the Commission will need to provide. This must include automated acquisition and transmission of information as well as the creation of the DPPs.

Article 1.2 clearly describes that the setting up of a DPP applies not just to products, but also to intermediate products and components. It is unclear what the consequences are for integrated systems such as buildings or for complex products that contain various parts, components or installations such as cars. Looking at the scope of article 1.2, this will lead to the introduction of performance requirements and separate detailed DPP's according to articles 5, 6, 7 and 8. This will create uncertainty and administrative burdens for SME's in particular. We suggest that flexibility is built in for integrated and complex systems consisting of several products, components and intermediate products so that DPP's on a system level (for a whole building, for completed cars) are possible.

Especially in carpentry, it is common to provide customers with fast and easy serviced products that are not subject to a preliminary purchase contract. In the current version, the DPP needs to be provided even before the customer agrees to a purchase contract. This is not feasible for many SMEs and particularly carpenters and it will take away their benefit in comparison to larger companies. More precisely, it will hinder them from providing fast and uncomplicated goods to their customers at a fair price. Any good that is being produced without a purchase contract and on behalf of a customer, should thus be exempt from the DPP.

Future delegated acts need to ensure that independent repairers can access the technical documentation of electric appliance and consumer electronics, including the diagrams of the electronic boards. We believe that this could improve the current Commission's plans for the DPP and make it a valuable tool for repairers to obtain information for their activity, respecting IP and business secrets.

Moreover, the DPP will heavily rely on European standards for its implementation. SMEUnited welcomes article 10 d) of the proposed Regulation stating that the product passport shall be based on open standards and developed with an inter-operable format. Standards should guarantee interoperability, common data formats and interfaces that ensure access to data. Nevertheless, it is also important to ensure that these standards are developed with the participation of SMEs so that they incorporate their needs and peculiarities and do not create disproportionate burdens and costs on them. The need to involve and consider SMEs in the development of the DPP and the standards that will support its implementation (both regarding its format but also the information to be included in the passport) should be stressed in the Regulation and in any future Standardisation Requests to be issued by the European

Commission for the developments of standards in this area. Moreover, any pilot projects to further develop DPP prototypes should include the participation of SMEs.

Harmonised standards and common specifications

European harmonised standards will be essential to the implementation of the new Eco-design Regulation. Standards will be necessary to support the deployment of the Digital Product passport and to provide the methods to measure and assess whether products comply with eco-design requirements.

There are already a series of relevant horizontal standards and ongoing standardisation work at the European and International level (e.g. CEN-CLC TC 10 on material efficiency, ISO/TC 323/WG 5 on product circularity datasheet, ISO/IEC JTC 1/SC 31 on automatic identification) that can support the future Regulation. From the point of view of SMEs, it is important to avoid the proliferation of standards and to build on what already exist whenever possible.

Article 35 of the proposed Regulation empowers the Commission to adopt implementing acts establishing common specifications to meet the essential requirements of the future Regulation. Similar clauses have been included in recent proposals put forward by the Commission such as the new proposed Machinery Regulation. While SMEUnited opposes in principle to the empowerment of the Commission to adopt technical specifications, it acknowledges the need to have a backstop measure to do so in case standards are not available. However, it is important that this provision stresses the need to involve and consult stakeholders, including SMEs, through the Ecodesign Forum in the adoption of common specifications by the Commission.

Single, tailor-made products and their costs under the new ecodesign framework

For SMEs, what often distinguishes them from their large company competitors, is the ability to produce single, tailor-made products. While the ecodesign requirements will ensure valuable, durable goods on the European market, their application should focus on the areas with the most potential for improvement. In an assessment of expected costs and benefits, it is not surprising that a good that is only produced once will not reap large benefits. Instead, the ecodesign requirements will create an unnecessary bureaucratic, time- and energy-consuming obstacle for SMEs providing tailor-made products to their customers.

This also includes the necessity to provide the customer with a Digital Product Passport. For tailor-made products, two main aspects decrease the benefits of the product passport. First, the customer might have been much more involved in choices around the production as well as the material. Unlike with a mass-produced item, it is much easier for the consumer to ask questions about his ordered product. Producers are likely to answer any questions as they

depend on the satisfaction of this singular customer. All this means that costs will skyrocket at an exceedingly small benefit. Thus, single, tailor-made products should be exempted from ecodesign requirements and the Digital Product Passport upfront.

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For further information on this position paper, please contact:

Guido Lena
Sustainable Development Director
E-mail: g.lena@smeunited.eu