

Cefic position on the European's Commission proposal for an Ecodesign for Sustainable Products Regulation (ESPR)

Cefic supports the goal of the European Commission proposal on the Ecodesign for Sustainable Products Regulation, which is to bring to market products fit for a climate neutral, resource efficient and circular economy. The chemical industry wants to contribute to the success of this complex regulatory framework. A successful implementation will need to be smart, inclusive, simple, workable, and supported by incentives. Moreover, legal certainty, feasible timelines and transparent planning will enable the chemical industry and its value chain to take an active role in the European market transition towards sustainable products and increase the competitiveness of the EU industry in this market.

Summary:

Extending the scope of the Ecodesign Directive should help increase demand for secondary materials and create a market for sustainable products in general. This can only be achieved if the following conditions are in place:

1. ESPR proposes a clear interface between various legislative frameworks to avoid duplication with existing chemical legislations.

REACH should remain the main legislation regulating the safety of chemicals in the EU. A clear description of the process for the restriction of substances under the ESPR, including the involvement of other Committees (such as ECHA's Committees) must be provided under the ESPR.

Clear interfaces between the ESPR and other legislation will allow transparency, clarity, and predictability for the chemical industry. In particular, a detailed interface between the ESPR and the legislations on chemical management (e.g., REACH and other sector specific legislations) is required to ensure coherence across legislations and avoid duplication of legal requirements.

2. The Digital Product Passport (DPP) has relevant and necessary information requirements for chemical substances to realise a circular economy.

Cefic welcomes the DPP as a tool to increase transparency and ensure traceability of chemicals in products, their components and intermediate products used along the value chain to achieve sustainable products. The DPP needs to be user-friendly and designed to be workable and implementable by all value chain actors, including SMEs. Information requirements on chemical substances must only be addressed when relevant and necessary, e.g., substances which negatively affect product aspects (Annex I) on which performance criteria can be established.

3. Additional methods to assess environmental impact other than PEF are allowed and PEF methodology is amended to assess the benefits of all circular feedstocks

Limitations in the Product Environmental Footprint (PEF) methodology must be addressed to obtain the environmental footprint information that will serve the purpose of ESPR. To overcome with these limitations, flexibility in the definition of 'environmental footprint' must be allowed to include other scientifically validated standards (such as ISO 14040 series).

4. Strong incentives are proposed to bring at scale the market of sustainable products

To achieve the European Commission's objective of making sustainable products the norm, the right set of incentives, governance and collaborating networks will need to be put in place by authorities under the ESPR framework to support the EU chemical industry and its downstream users. Cefic calls for strong incentives to support innovation, value chain collaborations, fair prices for consumers, level playing field, and easier market access for European companies and self-sufficiency for the European market.

5. The ESPR sets a full EU-wide harmonisation of Ecodesign criteria

Article 3 (4) gives the possibility to Member States to set Ecodesign requirements for product parameters not covered by EU delegated acts, whenever the EU Commission has not explicitly stated that Ecodesign requirements are not necessary for that product parameter. This would give leeway for Member States to set national rules for specific product parameters, implying a significant risk of fragmentation of the EU Single Market. Cefic therefore recommends policymakers to strengthen harmonisation provisions by ensuring that Member States cannot restrict the placing on the market of products on grounds of Ecodesign requirements relating to any of the product parameters referred to in Annex I.

6. Industry has a seat at the Ecodesign Forum

Industry's participation can help maximise the potential of Ecodesign products given the chemical industry's upstream role in virtually all value chains.

7. A transparent and phased implementation timeline.

Transition periods need to be set in such a way to allow new product design and scaling up to be successful, production lines to be adapted, a well-functioning DPP be implemented and the risk of relocation to non-EU countries minimised.

Cefic makes the following recommendations:

1. ESPR proposes a clear interface between various legislative frameworks to avoid duplication with existing chemical legislations.

Cefic welcomes the European Commission's focus on avoiding double regulation for products that are already subject to product-specific legislations. We also support the approach whereby REACH remains the main legislation to assess and regulate the safety of chemical substances.

1.1. Scope of the restrictions of chemicals under ESPR should be made clear

- According to recital 22, "chemical safety is a recognised element of product sustainability". Consequently, the scope of "reasons relating primarily to chemical safety" to implement Ecodesign requirements on the use of substances (of concern) remains ambiguous.
- Chemicals' 'safety' should not be managed by the ESPR, but ESPR should clarify how this fits with existing legislations on chemical management.

It is crucial to clarify the scope of the ESPR and its relation to the already existing chemical legislations (notably REACH) to avoid duplication of requirements. This is also in line with the "One Substance, One Assessment" principle (OSOA).

1.2. The process for restricting chemicals under ESPR and the interface between REACH and ESPR must be clarified and described in detail

- **REACH should remain the main legislation regulating the safety of chemicals in the EU** to ensure policy coherence and legal certainty, a consistent implementation of EU law in the framework of product policy and administrative predictability for industry. The collaboration with ECHA, including the Risk Assessment Committee and the Socio-Economic Committee (in line with the OSOA approach from the Chemical Strategy for Sustainability) should also be defined and described in the ESPR text.
- In case the EU Commission intends to restrict Substances of Concern (SoC) as defined under Article 2 (28) (c) for reasons *other* than chemical safety, there should be a **defined procedure allowing for stakeholder consultation**, in line with the principles of openness and good administration. This consultation process should take place at the earliest stage possible and then apply along all stages of the procedure: preparation, drafting, revision, and publication stages of the ESPR-derived legislations. Consequently, the stakeholder consultation procedure should be expressly provided for in the legislative proposal itself.

1.3. Interfaces with existing and new legislative acts will need to be adequately clarified to avoid double-regulation for specific requirements.

Clearly described interfaces will allow transparency, clarity, and predictability for the chemical industry. In particular:

- the interface between REACH and the ESPR, including the definition and management of SoC.
- the interface between the ESPR and existing sector specific legislation (e.g., Restriction of Hazardous Substances, Construction Products Regulation, Packaging and Packaging Waste Directive, etc.)

1.4. The state-of-the art recycling technologies should be recognised when defining SoC according to Article 2 (28) (c)

The definition of SoC in Article 2 (28) (c) includes substances hampering a specific sustainability aspect of the product to be realised; re-use and recycling of materials are specifically mentioned.

Paragraph (c) must also consider the **state-of-the art recycling technologies and the organisation of the recycling loops** as:

- There are substances crucial for the product's sustainability and contribution to the EU Green Deal objectives, e.g., catalysts for low emissions mobility, additives (that are integral for recyclability and durability of plastics).
- Recyclability strongly depends on the recycling method and/or technology and the overall organisation of the waste management operations. These evolve over time. Similar reasoning applies for reusability.
- Depending on the technology and the quality of the secondary raw materials they might be restricted for specific uses. Secondary materials need to be subject to existing regulations such as REACH and CLP.

Paragraph (c) must be complemented with wording referring to a **technology neutral approach**, taking into account the ongoing technological developments (e.g., chemical recycling) that would allow to deal with legacy substances that make recycling via traditional processes (e.g., mechanical recycling) more challenging. This additional wording to be included in Article 2 (28) (c) is essential for avoiding substance restrictions based on outdated information on the feasibility of its recycling properties.

1.5. ESPR should allow for restriction of substances used in manufacturing only if they remain in the end product

Ecodesign requirements also apply to substances used in the *manufacturing* process. The substances should be regulated under ESPR only if they meet the following criteria:

- A substance is present in the end product and its presence can be measured.
- The presence of the substance in the product creates direct consequences for sustainability or recycling.

As substances in production processes *outside the EU* cannot be checked, regulating substances used in production processes only in the EU can lead to a disadvantage for EU producers compared to external companies, as a level playing field cannot be guaranteed. This reinforces the need for strong incentives under the ESPR framework to support EU industry, as detailed in item 5.

2. The Digital Product Passport (DPP) has feasible information requirements for chemicals substances

Cefic welcomes the DPP as a tool to increase transparency and ensure traceability of chemicals in products, their components and intermediate products used along the value chain to achieve sustainable products. In addition to informing on product data and composition, the DPP will play a key role in market surveillance to prevent fraudulent products in the market, notably imported products. Adequate enforcement is crucial to ensure competitiveness and innovation as well as a level playing field across European and non-European companies.

2.1. Engaging all actors in the supply chain

- DPP as a tool should be designed such that it is **workable and implementable by all actors of the supply chain**. We support criteria deemed crucial by the ESPR proposal including interoperability, data ownership, need-to-know principle, and data security.

- At the same time, we are concerned about the feasibility of implementing DPP by SMEs. This is why user friendliness of the DPP is also an important aspect.
- Stakeholders outside of the EU value chains should also be required to cooperate and provide all the relevant information to EU market players and to be fully compliant with DDP's information sharing provisions.

2.2. A defined and harmonised procedure for non-disclosure requests

Protection of intellectual property (IP) and confidential business information (CBI) is crucial to sustain investment in innovation and to allow businesses to compete for the benefit of consumers. Although the ESPR considers provisions that allow for the protection of IP/CBI (e.g., Article 5 (5) (e), Article 7 (5), Article 10 (h)), it is not yet clear what will be the **procedure for a non-disclosure request** due to IP/CBI reasons. Interested operators should have the possibility to flag information requirements whose disclosure would be likely to undermine legitimate commercial interests, including intellectual property rights in the course of the preparation of delegated acts setting information requirements. In this regard, we also recommend that access rights are granted based on the **one up, one down principle**, meaning that only the direct seller or buyer in the value chain get access to information necessary for the final product passport and compiled before transferring it to the next downstream user.

2.3. Tracking of Substances of Concern should only apply to the relevant substances present in end products

When considering the **feasibility of the information requirements**, Cefic is concerned about the feasibility of tracking **ALL the substances of concern** (this could be in the range of 12000 substances according to the Cefic-Ricardo Impact Assessment Study on CSS)¹ throughout the life cycle of products, as indicated under Article 7 (5), including imports.

Instead, we suggest that information requirements applicable to the use of substances (of concern) should:

- Only track the substances of concern **when relevant and necessary**, e.g., substances which negatively affect product aspects (Annex I) on which performance criteria can be established (Article 6).
- Be **threshold-based**. Thresholds should be established based on scientific evidence.
- Be shared on a **need-to-know basis**, with a tailored approach that provides only relevant information for each of the different stakeholder groups to respect IP and CBI provisions.

2.4. Ensuring flexibility on the use of other standards to establish the unique product identifier

A unique product identifier should be set at the level of the individual product. Article 9, paragraph 1 c requires product identification for the DPP in accordance with norm ISO/IEC 15459:2015. Cefic recommends some **flexibility in the Standards to be used to derive the unique product identifier**:

- IEC 61406 (Identification Link) should be set as mandatory minimum requirement for globally unique instance identification.
- IEC 61406 can optionally be combined with other standards, e.g., ISO IEC 15418 and ISO IEC 15459-x in cases where a standardised encoding of information into the globally unique ID has a benefit for the customer or the supply chain.

¹ <https://cefic.org/app/uploads/2021/12/Economic-Analysis-of-the-Impacts-of-the-Chemicals-Strategy-for-Sustainability-Phase-1.pdf>

2.5. Information requirements should be set up at the level of the model

Excluding the unique product identifier, most information requirements (e.g., carbon and environmental footprint) should be set at the level of the **product model**, since in most cases products belonging to **the same product model share similar environmental characteristics**. This will facilitate the uptake of the DPP, as companies can use existing data systems designed at model level to implement it, thereby avoiding unnecessary costs (incl. environmental costs related to data storage) and complexities associated with information at the level of the individual product and frequent update of DPP.

3. Additional methods to assess environmental impact other than PEF are allowed and PEF methodology is amended to assess the benefits of all circular feedstocks

Article 5 (m) refers to environmental and carbon footprint as product aspects that could be the object of Ecodesign requirements for appropriate product groups for all stages of their life cycle, and Article 2 (23) makes specific reference to the Product Environmental Footprint (PEF) method as a basis for deriving such information. **Limitations in the PEF approach** need to be addressed before setting regulatory requirements based on this methodology, such as:

- the circularity of feedstock,
- the use of biomass,
- the biogenic carbon uptake,
- the limits of USEtox to assess toxicity and the potential role of complementary methods (e.g., ProScale) to overcome these limitations,
- the limits of the Abiotic Depletion Potential method, or
- the alignment with the LCA Standards to address avoided emissions (limiting the support for decision making towards a low carbon economy).

In addition to these limitations, PEF should not be considered as the only methodology to calculate the environmental product footprint for the following reasons:

- It covers 16 impact categories, leaving aside several key environmental impact categories (e.g., biodiversity) that may be relevant for many products.
- The PEF databases and Category Rules (PEFCRs) still need further development. Currently, these PEFCRs are only available, or in the process of being developed, for around 25 product categories. Establishing new PEFCRs will require considerable time and effort.
- Even where a PEFCR has been developed for a specific product category, the outcome may not offer sufficient granularity to permit comparative quantitative assessments between individual products if it is (overly) reliant on the use of generic secondary data for key phases of a product's lifecycle.

Therefore, we recommend that EU policymakers **broaden the definition of “environmental footprint” (Article 2 (23)) to environmental impacts categories included in other scientifically validated standards (for example, ISO 14040 series).**

4. Strong incentives are proposed to bring at scale the market of sustainable products

The European Commission aims to make sustainable products the norm. For this transformation to be successful, the right **set of incentives, governance and collaborating networks** will need to be put in

place by authorities under the ESPR framework to support the EU chemical industry and its downstream users.

ESPR is an ambitious initiative in terms of scope, timeline, and market creation. This ambitious initiative will not be successful unless ESPR is integrating and is complemented by strong incentives to support innovation, value chain collaborations, fair prices for consumers, level playing field, easier market access for European companies and self-sufficiency for the European market. Cefic recommends **tracking progress by measuring the uptake of ESPR compliant goods into the market** and foreseeing a **mechanism addressing potential shortcomings involving key stakeholders**. Finally, the criteria for the Green Public Procurement should foster a real stimulus for the market of sustainable products. For this, the criteria need to be proportionate and based on scientific and economic evidence.

Finally, we consider that ESPR is a good step in the direction of a well-functioning internal market and the free circulation of goods within. Cefic relies on the ESPR to install an **increased harmonisation of incentives across the European Union**.

5. A full EU-wide harmonisation

Cefic is concerned that the current wording of the proposal may lead to significant market fragmentation. Indeed, Article 3 (4) gives the possibility to Member States to set Ecodesign requirements for product parameters not covered by EU delegated acts, whenever the EU Commission has not explicitly stated that Ecodesign requirements are not necessary for that product parameter. This would give leeway for Member States to set national rules for specific product parameters, implying a significant risk of fragmentation of the EU Single Market. Not only this goes against the spirit of the Commission proposal, but it also will have negative impacts from both a sustainability and competitiveness standpoint:

- Companies will have less incentives to undertake risky investments in sustainable innovations if they do not have the legal certainty that they can deploy such innovations throughout the Single Market.
- Having different product design for different European markets will require companies to have different production processes across the EU, leading to unnecessary duplication of manufacturing equipment and supply chain complexities entailing significant costs for companies operating within the EU. There would be an increase in product scrapping and waste, as companies would not be able to sell send unsold products to other markets.

Cefic therefore recommends policymakers to **strengthen harmonisation provisions by ensuring that Member States cannot restrict the placing on the market of products on grounds of Ecodesign requirements relating to any of the product parameters referred to in Annex I**. This is in line with the current text of the Ecodesign Directive.

6. Industry has a seat at the Ecodesign Forum

The Ecodesign Forum will be an important platform to provide support to the European Commission in preparing the Ecodesign requirements for each product type.

During this preparation process, the ESPR must ensure:

- **transparent consultation procedures** ahead of publishing delegated acts
- **inclusive and adequate flexibility** in the representation of stakeholders at the Ecodesign Forum
- **clear link with other technical advisory boards**, such as the one for Product Environmental Footprint.

Cefic will be pleased to work hand in hand with the European Commission to achieve a successful transition and to position the European Union market as a leader in sustainable products. Cefic's participation to the Ecodesign Forum will **maximise the contribution of the chemical industry's innovation to the objectives of the ESPR**, given the industry's integral upstream role in the value chains.

The chemical industry is concerned about the **transition between the Ecodesign Directive and the ESPR**. The Communication on making sustainable products the norm points out that the Ecodesign and Energy Labelling Consultation Forum will continue preparing new and revising existing Ecodesign criteria for products under the scope of the Ecodesign Directive, in view of the upcoming requirements announced in the ESPR. Cefic asks the European Commission to perform a new call for participation already now to ensure that all interested stakeholders can join the discussion and provide relevant input to the European Commission.

7. A transparent and phased implementation timeline

Clear and realistic implementation timelines for both the ESPR and the subsequent delegated acts, as well as a robust stakeholder consultation process, are crucial for the implementation of the ESPR framework. Realistic transition times should be established from the date of entry into force of any new Ecodesign requirements (Art. 5 (5)). Transition times are essential:

- to provide industry with the legal certainty and adequate time to make the needed design changes, scale them up, bring them to the market, adapt supply chains while minimising the generation of waste associated with the transition to new Ecodesign requirements.
- to set up a well-functioning DPP from the start.
- to allow time to adapt production processes: many European plants have highly automated production lines and adaptation of these processes in line with the ESPR requirements will take time and require significant investments.
- to reduce the risk of relocation of manufacturing facilities to non-EU countries with less robust environmental standards.

When setting the implementation timelines, we encourage the European Commission to take into consideration the difficulties that the companies already encounter to obtain the relevant information for compliance from non-European manufacturers, in particular for substances that are exclusively used in manufacturing processes.

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About Cefic
Cefic, the European Chemical Industry Council, founded in 1972, is the voice of large, medium, and small chemical companies across Europe, which provide 1.2 million jobs and account for 15% of world chemicals production.