

Making sustainable products the norm:

ECOS reflections on the review of the Ecodesign Directive

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ECOS strongly supports the intention of the European Commission to widen the scope of the Ecodesign Directive so to make products placed on the EU market fit for a climate-neutral, resource-efficient and circular economy. The Ecodesign Directive has a proven track record in successfully improving environmental performance of energy-related products by setting specific and forward-looking minimum requirements. The expansion of the framework is therefore justifiably at the centre of the EU's ambition to gradually make sustainable products the norm.

It is our view that any review of the Directive should not only deliver on the enlarged scope, but also meaningfully build – and improve upon – the experience gathered during its implementation to date. ECOS has been a key stakeholder actively supporting the development of the policy all throughout the policy cycle for well over a decade. In this paper, we set out our reflections on the aspects of the current Directive which are key to be preserved upon review of the legal text, as well as our suggestions for further improvement, including some specific proposals related to the enlarged scope of the instrument.

Key principles of the Directive should remain intact

We believe that a number of aspects related to the functioning of the current Ecodesign Directive should not be compromised and must remain intact. Concretely, we call for the following:

- Keep the Directive's focus on the **design phase** of products and the **life cycle approach** to identify and reduce the environmental impact of products by pushing the least performing products out of the market;
- Make sure that **tiered, forward-looking and quantified requirements** which progressively push the market towards best available technologies and provide policy certainty are the norm;
- Retain the **environmental, technical and economic analysis** as the basis for setting horizontal and product-specific requirements;
- Continue to use and further extend the **combination of push-pull mechanisms**, putting in place mandatory labelling alongside ecodesign requirements. Either through a review of the Energy Labelling Regulation or an introduction of a separate instrument, mandatory multi-criteria labelling of products on relevant resource efficiency characteristics should become the norm for all relevant high-impact product groups;
- Continue to prioritise quantified horizontal and product-specific measures on the basis of their environmental impact by means of **multi-year work plans**;
- Maintain **thorough and inclusive stakeholder consultation** when considering new measures, ensuring that all views and evidence are taken into account.

Improvements should be made on the basis of lessons learnt

The implementation of the Directive over the past decade has demonstrated not only the high potential of the framework to improve product environmental performance through horizontal and product-specific requirements, but also uncovered the need for certain improvements that are needed in order for the objectives of the Directive to be fully achieved. ECOS would like to stress the following points in particular:

Scope of the Directive should be forward-looking

For the Sustainable Products Initiative to fully deliver, it is of utmost importance that the **broadest possible range of products** are brought within the scope of the Directive and can thereby be adequately assessed and ultimately addressed through implementing measures in the future, including certain **services** with a proven – or steeply increasing – environmental impact (e.g. online gaming). In addition, a **circular economy hierarchy** and horizontal product **sustainability principles** should be established which would underpin the entire EU's product policy landscape.

The exclusion from the scope of **means of transport** should, we believe, be reconsidered as part of this exercise, given that it has previously proven to create obstacles in addressing the environmental performance of some specific product groups such as lifts, and that some products, such as, for instance, drones, are likely to benefit from minimum requirements in the future.

The definition of scope should equally ensure that the applicability of the Directive at the time a product is placed on the market or put into service does not inhibit the capacity of the framework to tackle aspects directly related to product lifetime extension, such as **software support**. Obligations that target not only manufacturers and importers, but also dealers, distributors and other market actors should be considered in this context as appropriate. Lastly, the **threshold of sales** established by the Directive for introduction of product measures should be reviewed so to ensure that it is fit for an enlarged scope, including for intermediary products.

Principles underlying the product assessment methodology should be reviewed

We believe that the methodology used for the assessment of product groups prior to the introduction of implementing measures has proven to be well designed and fit for purpose overall. However, it is important to ensure that the **guiding principles** for the methodology established by the Ecodesign Directive are well adapted for the different types of product groups and environmental hotspots that would need to be assessed¹. As a result, the principles listed in the Directive must ensure that the methodology allows for the assessment of all environmental and social externalities arising from the use of a given product or service, duly considering not only energy but also embedded climate, environmental and material impacts as well as the presence of hazardous chemicals in products. Moreover, the methodology should be **suited to properly assess different types of products and services** forming part of a circular economy, including situations where most environmentally friendly options would relate to, for instance, shared ownership of a product.

The major criterion for setting energy efficiency requirements under the Ecodesign Directive has so far been the 'least-life cycle cost' (LLCC) point. This means that only energy efficiency

¹ Additional improvements, many of which are possible under the current legal framework, should be made as part of the ongoing review of the methodology for ecodesign of energy-related products (MEErP)

improvements that can pay back quickly are considered. This criterion has proven to lead to overly conservative estimates and, in turn, to requirements which have often become obsolete far too quickly. This has been a particular issue for Member States looking to set more stringent requirements at national level but finding themselves held back by the low level of ambition of the EU ecodesign regulations which, once established, take years to revise (e.g. for space heaters, with the current regulation contradicting the climate objectives set by some Member States). In order for sustainable products to genuinely progressively become the norm, it is important for the Directive to make it clear that the **best available technologies are to be taken as reference points** for new requirements. Instead of LLCC, we propose to resort to the use of the **Life Cycle Cost 'Break Even Point'** for the ambition of short-term ecodesign requirements – a point where environmental savings are maximised while the life cycle cost of the product remains stable for the consumers. **Technology learning curves** should equally be integrated into the methodology so to ensure that the regulations upon entry into force are up to date by reflecting anticipated technology improvements.

Process for introducing implementing measures should be made more efficient

While the process established for the introduction of implementing measures – including both the broad consultation of stakeholders in the Consultation Forum and the multi-year working plans – have clearly shown their value, more can be done to ensure that the regulatory process is efficient. The implementation of the current Ecodesign and Energy Labelling Working Plan has been characterised by chronic delays, and only a quarter of measures listed in the Plan have been adopted to date. In addition to a significant increase in resources dedicated to the implementation of product policy, we recommend the following in order to make the process more streamlined and efficient:

- Ensure that **Working Plans under the enlarged Directive are fit for purpose**, allowing to identify priority product groups to be tackled and horizontal measures to be introduced. This entails consideration of separate Working Plans for energy-related, non-energy-related products, and intermediate products, for instance;
- The **Working Plan should not only establish a priority list of products, but also an indicative calendar for the implementation of the Plan as well as progress indicators and milestones** (e.g. 'by month XX, the Commission plans to have YY measures adopted and ZZ having passed the Consultation Forum stage'). This would not only ensure that stakeholders involved in the process can provide targeted and timely input into the discussions, but also facilitate early planning and preparation for new requirements by the economic operators;
- The Directive should specify the **maximum duration during which a decision by the Commission on the regulatory requirements should be taken** following the finalisation of the preparatory study in order to ensure that the requirements introduced do not lag behind technological developments. In cases where this maximum duration is overshot, the Commission should be required to justify the delay through a report to the Council and the Parliament;
- The Directive should ensure that **clearer rules and guidelines are in place in relation to the way implementing measures are to be reviewed and revised**. We believe that more structured and specified rules are to be required by default, ensuring that requirements are updated regularly;
- Finally, **more transparency** should be introduced into the process in relation to, in particular, the last stages of the preparation of implementing measures in which stakeholders are not officially consulted (e.g. Inter-Service Consultation).

Self-regulation should not be prioritised or allowed altogether

The implementation of the voluntary agreements under the Ecodesign Directive to date have entirely failed to deliver on both climate and circular economy objectives and have clearly demonstrated the limits of the self-regulatory approach². The existing agreements not only fall significantly short in ambition to constitute a meaningful set of commitments to reduce the environmental impact of concerned products and to genuinely challenge business as usual, but are also in no way speedier to address specific environmental aspects if compared to mandatory requirements.

We call on the Commission to either **remove the possibility of establishing new voluntary agreements** altogether thus clearly prioritising horizontal and product-specific mandatory measures instead, or **at the very least to significantly reinforce the existing framework** in order to ensure that the contents and future updates of self-regulatory measures are sufficiently assessed by the European Commission against overall objectives of the Directive, that comments by Member States and other stakeholders are duly taken into account, and that market surveillance aspects are significantly strengthened. The currently existing guidelines for self-regulatory measures have proven to be entirely insufficient.

Market surveillance mechanisms should be significantly reinforced

The existing market surveillance regime underpinning the Ecodesign Directive has visibly demonstrated its shortcomings. With some 10-25% of products regulated under the framework estimated to be non-compliant with the existing requirements and some 10% of anticipated energy savings having been lost as a result, far-reaching improvements are needed to ensure that requirements that are introduced are duly implemented on the ground. The provisions in the Directive related to market surveillance should, first of all, ensure that **genuinely dissuasive penalties** are introduced for non-compliance which encompass all equivalent models and are proportionate to the impact of the non-compliance on the whole European market. In addition, Market Surveillance Authorities and the European Commission should be required to **publicise cases of repeat non-compliance** by communicating the brand name of the non-compliant models so that the risk of reputational damage acts as a driver. Finally, a **compensation for consumers** having purchased the non-compliant products should be considered, especially in relation to requirements with an impact that is easy to measure (e.g. energy use).

To further facilitate market surveillance, a fit-for-purpose **digital product passport** should be introduced and the **general product registration database for energy labelled products extended to all products** under the Ecodesign framework. In addition, a **minimum percentage of products to be tested** by individual Member States should be defined in the Directive, and national authorities should be required to cover products regulated under Ecodesign when drawing up their national market surveillance programmes. The European Commission should, in its turn, be granted a **mandate to carry out own independent market surveillance** and make specific proposals on how to further improve surveillance mechanisms.

The review of the Ecodesign Directive should equally make sure to effectively **outlaw all attempts at circumventing regulatory requirements**, which, regrettably, remain widespread today³. While the

² Our detailed analysis of the self-regulatory measures on imaging equipment and games consoles is available at: <https://www.coolproducts.eu/products>

³ As demonstrated by the [Horizon 2020 ANTICSS project results](#), for instance

use of software tools for the purpose of circumvention has been addressed in the most recent implementing measures and the Energy Labelling Regulation, a wider, more inclusive provision is needed which ensures that manual alterations of products designed for the sole purpose of altering testing results, as well as situations where products otherwise exploit loopholes in regulatory requirements or testing situations (e.g. through dedicated manufacturer's instructions for testing) are no longer permitted under the framework. In addition, and in order to make the provision operational, it is equally important for Market Surveillance Authorities to be explicitly allowed to use **alternative test methods** for the purpose of assessing against potential circumvention attempts.

Conformity assessment procedures should be improved

Self-declaration of conformity with the ecodesign requirements has demonstrated some weaknesses, especially for business-to-business products and complex systems to be installed in situ. Other conformity assessment methods such as **third-party certification** – currently only considered under the Directive where 'duly justified and proportionate to the risk' – should be considered. Such alternative means to assess conformity will increasingly be relevant for the different types of products that will be brought under the scope of the regulatory instrument.

While the reliance on harmonised European standards for the purposes of conformity assessment has in large part proven to be effective, it is important to ensure that other reliable, accurate and reproducible methods, which take into account the generally recognised state-of-the-art for the verification by market surveillance authorities remain permitted. In addition, the Directive should explicitly retain the reference to the fact that harmonised European standards are not to fix or amend limits for environmental aspects but are to be used in support of regulatory requirements. The Directive should, furthermore, stress the requirement for standards developed under the Directive to be robust, reliable and reflect real-life use of products to the largest extent possible.

Lastly, in order for the Sustainable Products Initiative to be successful, dedicated **success indicators and monitoring framework** should be established (e.g. looking at the gradual reduction of resource use, carbon footprint and other environmental parameters). This will allow for progress made to be continuously assessed and, if needed, for the necessary adjustments to the framework to be made in the future.

Additional contributions

A range of principles and requirements we would recommend for sectors which are currently not regulated under Ecodesign but which are expected to be brought in scope are available as part of our previous publications:

- [Report: Durable, repairable and mainstream: How ecodesign can make our textiles circular](#)
- [Report: From Barrier to Enabler: Towards a Greener EU Construction Products Policy](#)
- [Report: For Better Not Worse: Applying Ecodesign Principles to Plastics in the Circular Economy](#)