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INTRODUCTION

Creating a framework for sustainable products in the Single Market is part of the EU's current environmental ambitions, as set out in the European Green Deal of 2019¹. The Single Market with its Four Freedoms has the potential to bring benefits to citizens and businesses in the EU in various areas. Nevertheless, the full potential of the free movement of goods has still not been realised due to negative aspects such as inefficient use of resources, insufficient enforcement of existing requirements, uneven playing field for businesses, or environmental degradation caused by products' life cycles.

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1588580774040&uri=CELEX:52019DC0640>

In order to tackle these challenges, the Commission introduced a new Circular Economy Action Plan in 2020², followed by a flagship proposal for the Regulation Establishing a Framework for Setting Ecodesign Requirements for Sustainable Products (further referred to as “ESPR”) in 2022³. This proposal is meant to play an important role in helping to fulfil the goals set by the European Green Deal. Specifically, it is supposed to create a horizontal framework for setting ecodesign requirements based on sustainability and circularity aspects.

The aims of the ESPR are twofold – to improve the environmental sustainability of products and at the same time to promote the better functioning of the Single Market and free movement of sustainable products. It is suggested that the policy debate focuses on the Single Market and regulatory aspects of the proposal, leaving the environmental aspects for future policy debates.

THE ESPR PROPOSAL

The ESPR proposal builds upon and expands the scope of the existing well-functioning framework established by the Ecodesign Directive⁴ that regulates the environmental impacts of energy related products. This framework enables extensive stakeholder involvement through the Consultation Forum, and has so far resulted in over 30 product regulations that have led to substantial energy savings and other environmental benefits. The process has worked through multi-annual working plans that identify priority products and detailed work on these is then carried out involving stakeholder input.

One of the aims of the ESPR is to promote the better functioning of the Single Market. Several Member States have lately seen an increased demand for environmentally sustainable products and reacted by adopting their own rules in this area. However, individual rule setting by Member States leads to fragmented regulations that businesses in the EU need to follow. A common set of rules in the ESPR and the following legal acts should thus lead to harmonised requirements across the EU.

² <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1583933814386&uri=COM:2020:98:FIN>

³ https://environment.ec.europa.eu/publications/proposal-ecodesign-sustainable-products-regulation_en

⁴ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32009L0125>

Ecodesign Requirements and Related Instruments

The ESPR aims to improve and widen the existing ecodesign framework. Like the existing framework, it provides for the adoption of subsequent product regulations, which will apply directly in the Member States. They will need to be properly enforced by Member States once they come into effect. The cornerstone of the framework is the setting of ecodesign requirements. These requirements will include performance and information related criteria. All of these will aim to improve certain sustainability aspects of products listed in the ESPR, such as their reusability, reparability, energy efficiency or upgradability.

An important novelty is the introduction of the Digital Product Passport. This instrument will tie all the relevant information to the products, making it easily accessible throughout the value chain. The information requirements would specify details related to the information to be accessed via the Digital Product Passport while technical details will be set out in harmonised standards. These information requirements might also provide for the relevant information to be included in labels.

Another important aspect of the ESPR is the strengthening of market surveillance. Experience from the current ecodesign framework shows the importance of market surveillance for realising the envisaged environmental savings and competitiveness benefits. To match the increase in scope and ambition, dedicated measures are proposed to ensure effective market surveillance for the future framework.

Developing a comprehensive set of ecodesign requirements for priority products could therefore not only strengthen the efforts towards achieving climate neutrality but also clarify the regulatory environment, making it easier for EU businesses to follow and consequently alleviate the administrative burden they have to face. Focusing on the promotion of sustainable products might also create favourable market conditions for circular business models to thrive and encourage companies to allocate their capital in a way that emphasizes the importance of sustainable products and to complete their green and digital transition. It will also reduce resource consumption and could therefore enable a less dependent and more resilient industrial response to present challenges.

Adoption of Specific Regulatory Frameworks

One of the main characteristics of the ESPR is its continual nature. Upon entry into force, many aspects that the ESPR will introduce will need to be implemented and further developed. Due to the fact that it is a framework regulation, specific details, such as ecodesign requirements for concrete product groups or destruction of unsold goods, will need to be developed after the legislative process on the ESPR is finalised. Here, the ESPR sticks to the co-creation approach known from the current legislative framework on ecodesign for energy-related products. Setting of priority products will be part of multiannual working plans and input from all key players is to be collected through a newly established platform, the Ecodesign Forum, which builds on the existing Ecodesign Consultation Forum.

Understanding the ESPR as a piece of framework legislation that sets the stage for future rule making of specific ecodesign requirements for product groups and other related areas imposes certain demands on the legislator. Among others, it means that the necessary instruments have to be drafted in a way that will best serve the overarching goals of the ESPR. It also means that the new rules should be drawn up in a transparent and inclusive way. All the tasks arising from the ESPR should therefore be properly distributed among the relevant parties. Consequently, the division of tasks merits a thorough discussion right at the beginning of the ESPR negotiations.

Discussion questions:

- How can the ecodesign requirements, the Digital Product Passport and other aspects introduced by the ESPR contribute, together with market surveillance, to the better functioning of the Single Market and the free movement of sustainable products? How can it contribute to the digital transition of the European industry and to the improvement of its competitiveness and resilience?
 - The ESPR is a framework legislation allowing for further rule making and requiring coordination among all key players – EU institutions, Member States and stakeholders. What should be the role of each party, and how should the relevant competencies be divided, to ensure effective adoption of product-specific requirements as well as correct implementation of all the instruments laid down by the ESPR?
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