

Comments of the Commission proposal for a Regulation on Ecodesign for sustainable products (ESPR) from The Swedish Cosmetics, Toiletries and Detergents Association (KoHF) and The Swedish Association of Professional Hygiene & Cleaning (BPHR)

General Comments

We support the goal of the Sustainable Product Initiative and the European Green Deal striving towards a circular economy.

We welcome that the Commission's legislative proposal is in the form of a regulation, as this provides increased harmonisation in the EU single market. The efficient functioning of the single market is vital to business and the development of the circular economy.

In the Regulation, the Commission proposes that future product-specific requirements be developed through delegated acts where an Ecodesign forum, that would involve representatives from, inter alia, the business community, will contribute. The setting of appropriate ecodesign-requirements demands knowledge and understanding of the product group concerned. KoHF and BPHR sees it as absolutely crucial that the process in the current legislation, for the production of product-specific acts, is inclusive to the affected sectors and transparent.

KoHF and BPHR would like to emphasize the importance of applying the Commission's Better Regulation Principles in setting ecodesign requirements and in producing impact assessments for product-specific requirements. It must also be possible to verify, follow up and set future ecodesign requirements in such a way that they maintain technological neutrality and not limit or counteract innovation.

Specific Comments

The Ecodesign Forum (Article 17)

KoHF and BPHR (hereinafter KoHF) believes that the following points need to be clarified in the regulation.

- The description of the Ecodesign Forum in *Article 17* is brief and general, (in accordance with the wording of the current Ecodesign Directive). The **forms of the Expert Group (the Ecodesign Forum)**, including the appointment of participants, the design of mandates, tasks, and rules regarding confidentiality/transparency are central to a well-functioning process for the drafting of product-specific delegated acts. As the horizontal rules for expert groups are general and the forms for expert groups appointed by the Commission have differed to such an extent, we believe that the regulation needs to be clarified regarding the forms for the Ecodesign Forum. KoHF also calls on the Commission to obtain input from stakeholders prior to the preparation of the rules of procedure for the forum to give the forum a high degree of legitimacy.

- **There is a need in the Regulation to further clarify how the Commission will use the Ecodesign Forum** in the drafting of delegated acts. The horizontal rules for expert groups are general and it is important that the regulation states how the Commission intends to use the forum. It is important that the forum can contribute to the delegated acts on an ongoing basis during drafting work and that it is able to contribute to the setting of all product-specific requirements, see amendments in Article 17 (addition 3 below).
- **The process must be transparent and there must be opportunities for a wide range of businesses involved to submit comments before the delegated act is adopted.** The process for this needs to be clearly stated in the regulation. Delegated acts were established to deal with “unnecessary technical details”, (the same applies to implementing acts). The process of delegated acts has often had limited transparency and interaction with various stakeholders. As delegated acts are now proposed to be used for much more than to amend or supplement non-essential elements of the legislation, the process must also be adapted by ensuring increased transparency and the opportunity to provide information and input during the work. This needs to be clarified, see amendments in Article 17 (addition 2 below). For example, a four-week consultation period is insufficient, which is the procedure currently used to obtain views from relevant actors.
- **When appointing members to the Ecodesign Forum, it is important to have a broad representation from business.** A breadth of expert knowledge from the business community is crucial in order to be able to set ecodesign requirements that are relevant, possible to comply with and that enable continued innovation. Furthermore, it is central that all parties in the value chain are represented in the Ecodesign forum, which needs to be clarified in the regulation. As sector organizations represent the entire sector, both large and small companies, these should be given a designated and clear role in the forum. This needs to be clarified in the Regulation, see addition in Article 17 (addition 1 below). It is unclear whether the Commission plans to set up an Ecodesign forum with subgroups or separate forums for each product group. How the Commission plans to organise and design this should be clarified in the Regulation.

KoHF proposes the following changes to Article 17, see addition in red text below.

Art 17. *“The Commission shall ensure that when it conducts its activities, it observes a balanced participation of Member States’ representatives and all interested parties involved with the product or product group in question, such as **a broad representation of industry including sector organisations and the whole value chain**, including SMEs and craft industry, trade unions, traders, retailers, importers, environmental protection groups and consumer organisations. These parties shall contribute in particular to preparing ecodesign requirements, examining the effectiveness of the established market surveillance mechanisms and assessing self-regulation measures **in a transparent process.**”*

To that end, the Commission shall establish an expert group, in which those parties shall meet, referred to as the ‘Ecodesign Forum’.

The Forum will have the opportunity to contribute to the delegated acts throughout the work and will be consulted regarding all product-specific requirements.”

KoHF calls on the Council and the Parliament to carefully analyse the delegation proposed by the Commission in the regulation and to consider whether the proposed delegation is reasonable or whether it should be adjusted.

Product passport (Article 8)

Information sharing is an important part of the circular economy and for the functioning of circular business models. KoHF welcomes the introduction of a digital product passport (DPP) as a tool to promote the circular economy. We welcome the basic structure of the digital product passport in the proposed legislation. It is positive that the product passport is proposed to be based on competition-neutral standards, data that is generic, built on pre-existing solutions, and be decentralised.

Safety Data Sheets, SDSs, is a main source of information for chemical substances. Digitalisation of SDSs is a necessary future step. The alignment with SDSs and the information requirements in the Digital Product Passport must be carefully considered to avoid unnecessary administrative burden.

It is of considerable importance that information that is to be included in the product passport is proportionate, justified, and relevant to its objective. Business sensitive information must be protected. To ensure that the product passport is limited to only relevant and necessary information that companies can share, it is important that the interests of the business community are fully taken into account in future product legislation, e.g., through broad representation of the business community in the Ecodesign Forum.

Impact Assessments (Article 5.4 (b))

It is positive that the Commission writes in [Article 5.4.b](#) that an impact assessment must be carried out when drafting Ecodesign requirements. However, compared to the corresponding wording in the current Ecodesign Directive, there are a number of key aspects that are missing from the new Article regarding assessment of the how requirements affect the environment, consumers, manufacturers etc.

The inclusion of these impacts is listed later in Article 5.5, but they should be stated in the Article which describes the requirements for impact assessment, see below, (the addition in red text is taken from the current Ecodesign Directive Art. 15.4.b). An alternative might be to outline in Article 5.4.b that the impact assessment criteria in Article 5.5 should be analysed; it is not clear in Article 5.5 how the criteria are to be evaluated. An outstanding question is also who will review the impact assessments that are produced.

Art 5.4 (b) “carry out an impact assessment, *which shall consider the impact on the environment, consumers and manufacturers, including SMEs, in terms of competitiveness — including in relation to markets outside the Community — innovation, market access and costs and benefits*, based on best available evidence and analyses, and as appropriate on additional studies and research results produced under European funding programmes. In doing so, the Commission shall ensure that the depth of analysis of the product aspects listed in paragraph 1 is proportionate to their significance. The establishment of ecodesign requirements on the most significant aspects of a product among those listed in paragraph 1 shall not be unduly delayed by uncertainties regarding the possibility to establish ecodesign requirements to improve other aspects of that product;”

Notification of conformity assessment bodies (article 41)

This chapter sets out the conditions under which third-party verification is required in a delegated act. KoHF would like to emphasise that requirements for third-party verification should not be set as a general requirement, only if necessary for specific reasons. This should be clarified in the Regulation in Article 41.

Article 41. The approach used in the Ecodesign Directive to demonstrate conformity should continue to be used, i.e., enable companies to choose the method of verifying legal requirements by following the methods in harmonised standards and/or by third party verification. Therefore, additions should be made to Article 41 to clarify that this should only be done if it has been deemed necessary in the delegated act.

Art 41. “Member States shall notify the Commission and the other Member States of bodies authorised to carry out the third-party conformity assessment tasks *when provided for under the delegated acts adopted pursuant to Article 4.*”

On behalf of The Swedish Cosmetics, Toiletries and Detergents Association (KoHF) and The Swedish Association of Professional Hygiene & Cleaning (BPHR)

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About KoHF

The Swedish Cosmetics, Toiletries and Detergents Association (KoHF) is a trade association for companies that import, manufacture or market chemical-technical consumer products such as cosmetics and hygiene products and detergents on the Swedish market. The organization has nearly 150 member companies ranging from micro-sized enterprises to multinationals.

About BPHR

BPHR is the Swedish Association of Professional Hygiene & Cleaning. The members of BPHR are Sweden's leading companies that import, manufacture and market chemical-technical products, tools and machines for professional hygiene, cleaning and maintenance. The products are used in the areas of personal hygiene, cleaning, restaurants and commercial kitchens, the food industry, industrial laundries and other laundries, the engineering industry and vehicle cleaning.

BPHR have approximately 20 member companies ranging from micro-sized enterprises to multinationals.