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CAN EUROPE POSITION ON ECODESIGN OF SUSTAINABLE PRODUCTS REGULATION PROPOSAL

Climate Action Network (CAN) Europe is Europe's leading NGO coalition fighting dangerous climate change. With over 180 member organisations from 38 European countries, representing over 1.500 NGOs and more than 47 million citizens, CAN Europe promotes sustainable climate, energy and development policies throughout Europe.

Introduction

The Ecodesign of Sustainable Products Regulation (ESPR) offers crucial support to an EU industrial policy toolbox, addressing the important element of **setting product requirements** for any entity wanting to place their product on the EU market. This means any entity anywhere in the world, which therefore means that the ESPR provides the **global level playing field** that can reduce pressure on issues of ongoing political relevance such as the **risk of carbon leakage** as the EU raises its climate ambitions and actions ahead of other countries.

Building a more complete **industrial policy toolbox** extends beyond industry-related policies part of the Fit for 55 package, most notably the **EU ETS** and the **CBAM**. Alongside these tools, the ESPR's **product focus** would ideally be supported by the **production focus** of [the Industrial Emissions Directive](#) under revision in parallel to the ESPR.

Below we provide headline messages on the Commission's proposal for the ESPR.

Framework conditions needed to support industrial transformation

We cannot stress enough the importance of this piece of legislation in helping to achieve several EU environmental and social objectives, cutting across both production and consumption aspects and driving systemic change.

- **Subject matter and scope:**
 - Article one sets out product characteristics to be considered, evolving beyond the Ecodesign Directive and recent developments in circular economy policy on product reusability, reparability, upgradeability, etc. **The cross-cutting nature of the product impacts listed supports a much needed holistic and integrated approach, which can help identify and address 'hotspot' impacts and allows for product requirements that strengthen synergies between issues** (e.g. carbon and environmental footprint, resource efficiency and presence of substances of concern).

- o The above welcome and necessary developments help the legislation live up to the name of ‘sustainable’ products. **Unfortunately, it continues a historical approach of excluding important products such as food and feed**, despite little movement on these products in other EU policy agendas and despite food being one of the three consumption areas having greatest environmental impacts. (See separate point below on ‘governance hierarchy’.)
- o The **definition of ‘intermediate product’**, providing a helpful broad definition. This implies that high-impact intermediate products – materials, in other words – such as **cement and plastics can be addressed by the Regulation**. Including these materials in the scope of the Regulation is important for the effective evolution of EU product policy in addressing ‘hotspot’ issues including those relating to materials. Although the Commission’s proposal steps far short of explicitly naming this group of products. (See separate point below on ‘governance hierarchy’.)
- o The **definition of ‘carbon footprint’** allows indiscriminate **‘GHG removals in a product system’, confusing ecodesign product requirements with overall business decisions**. The Ecodesign Regulation should set out clear requirements, and not legitimise greenwashing that is already part of business practices, presenting products as ‘carbon neutral’ with vague, dubious and even fraudulent carbon reduction actions. The Regulation should also facilitate and strengthen synergies between environmental impacts, for example through reducing carbon footprints via material substitution and reduced resource use, thereby reducing pressure on habitat destruction and land use change. As in other policy discussions on ‘carbon removals’ and greenhouse gas reductions, the key questions still not satisfied by proposed policy actions are how much carbon (including all associated) is being removed, for how long and how sustainably (with what environmental and social impacts including costs)?
- o The **definition of ‘substance of concern’** too narrowly targets toxicity purely due to it being a barrier to recycling. The wider term of ‘substance of concern’ is helpful as it extends beyond REACH’s ‘substance of very high concern’ definition and approach. However, this narrow definition prevents the evolutions needed at the level of ecodesign of products which would explore synergies between substance presence and materials used, and to encourage synergistic solutions. (See separate point below on ‘governance hierarchy’.)
- Article 5 allowing a **horizontal approach to ecodesign requirements** is a welcome development, particularly for efficiency in legislation. Also welcome are **requirements addressing product ecodesign, performance and information provision**. The Regulation’s design therefore takes a **systemic approach** to product ecodesign and to how sustainable products can fit within EU societal structures so as to integrate them more easily – via consumer incentives and green public procurement. This systemic approach now needs to be clearly allowed in the Regulation’s implementation in relation to other overlapping pieces of legislation. (See separate point below on ‘governance hierarchy’.)
- Article 6 on **performance requirements** unfortunately sets out that such requirements, relating to the **presence of substances in products**, shall not be in relation ‘primarily to chemical safety’. This explicit exclusion is largely due to the existence of REACH and especially the chemical industry’s wish for REACH to address chemical safety on its own. However, it is unacceptable to hold back a holistic product-based approach that is designed to explore synergistic and conflicting impacts in the same product. This

represents an unnecessary limit to an ecodesign approach needing testing and development. It should therefore be deleted from the final legislative text.

Governance hierarchy across legislative tools

The ESPR proposal is a potentially ground-breaking piece of legislation which can help:

- drive forward the EU's so-far sluggish ecodesign product policy area
- stimulate sustainable products becoming the norm through both minimum requirements and market pull tools such as incentives to the public and green public procurement
- inspire progressive and future product/service designers through clear ecodesign characteristics
- strengthen the business case for progressive companies wanting to (further) develop alternative business models, moving clearly and intentionally away from making profits from a take-make-sell approach.

To unleash the Regulation's full potential as a ground-breaker, there is a need to set the ESPR in a governance hierarchy alongside (and not subordinate to) other related legislations that also need modernising and overhaul. The most immediate legislations here are the Construction Products Regulation and REACH, as well as food and feed legislation. **The ESPR needs to become the 'jewel in the crown' of EU product and industrial policy, aiming to change market dynamics to drive ecodesign of products and corporate business models, and create synergies with future demand-side management measures** which are already recognised as essential in meeting several urgent environmental and social objectives.

The ESPR's ambition level needs to allow it to influence political framing leading to further demand-side measures already on the EU's political agenda on 'winter preparedness' in the context of the Russian invasion of Ukraine. Reducing overall energy consumption by 15% due to an energy crisis will inevitably become normalised as irreversible climate system change will worsen, leading to lowered levels in water bodies such as rivers and lakes, too high demands on energy systems if heating/cooling are not limited. Demand-side measures to come will need to intentionally address resource and energy consumption limits, including in sectors / consumption areas such as construction (so living/working space), mobility (so shared cars replacing personal cars, train travel replacing air travel), and food (organic, plant-based). The ESPR design should make such transition easier, and not be constrained by existing pieces of legislation designed within a 20th century mindset.

Prioritisation, planning and consultation

- Article 16 on prioritisation and planning **appears to prioritise products having environmental impacts, energy use and waste generation, etc 'in particular whether they take place within the Union'**. This is an unfortunate narrowing of products despite the European Union's consumption impacts increasingly being made beyond the EU as products are increasingly imported. The proposal sets out that the European Commission will in future set out a list of product groups for which it intends to establish ecodesign requirements. This is an unnecessary and unrealistic delay built into the Regulation. **Key product groups can already be listed in the legislative text, with**

priorities relating to the consumption areas of construction, mobility and food and drink¹.

- Article 18 sets out **self-regulation measures**, for example, voluntary initiatives. These have continually had poor performance records across the decades and should be excluded from the Regulation, especially as there is little time to waste on such measures.

Incentives

- Article 57 sets out **Member State incentives**, requiring such incentives to be applied only to the highest two classes of performance populated or products with an EU Ecolabel. This is a very welcome restriction, which will serve to provide improvement incentives to economic operators (the market pull) while also ensuring a harmonised approach to incentives across the Union.
- Article 58 on **green public procurement** helpfully includes the possibility of mandatory elements (such as technical specifications, selection and award criteria) which is a welcome development in relation to long-recognised need for mandatory GPP status. Public authorities' potential influence on markets is long recognised as important, given the level of spending they make and serves as a social contract with society to use their purchasing power to change the market and improve society.

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¹ DG Environment commissioned a series of studies under its sustainable consumption and production agenda in the late 2000s, leading to the EIPRO report (<https://op.europa.eu/en/publication-detail/-/publication/3b4b06b7-4bc0-4350-a20b-accdc70d1d94/language-en>) and various IMPRO reports, giving suggestions for policy tools to make improvements to specific product impacts for buildings, meat and dairy, dietary changes, and passenger cars. They can be found doing a web search for 'IMPRO' and 'JRC'.