SVENSKT NÄRINGSLIV
SWEDISH ENTERPRISE

The Confederation of Swedish Enterprise's comments on the Presidency's compromise proposal on the Ecodesign requirements for Sustainable Products Regulation (ESPR)

The Confederation of Swedish Enterprise (hereafter Swedish Enterprise) has taken note of the Presidency's second compromise proposal on the Ecodesign requirements for Sustainable Products Regulation (ESPR), dated February 10th, 2023. These are Swedish Enterprise's comments and opinions.

- The Confederation of Swedish Enterprise continues to support a regulation for ecodesign requirements for more sustainable products as it sees this an important step in the transition to a more circular economy in Europe and a vital part of the implementation of the Green Deal. Swedish Enterprise would like to refer to its earlier and longer position on the Commission's proposal and its complementary position on chemicals in the ESPR.
- Swedish Enterprise finds that the Presidency's new compromise proposal contains positive changes. However, parts remain unclear and there are problematic parts that require further clarification and processing.
- One significant change proposed in the Presidency's compromise proposal is that product-specific legislation should be developed through implementing acts instead of delegated acts, which is the procedure proposed in the Commission's legislative proposal. In principle, Swedish Enterprise is in favour of implementing acts, as this is the normal procedure for developing product-specific legislation and has been the process within the existing Ecodesign Directive, and it is one that has previously worked very well. It is also of importance that the horizontal requirements are minimised, as they risk becoming misdirected and disproportionate. For this reason, Swedish Enterprise advocates that most of the regulation should take place vertically.
- Swedish Enterprise therefore welcomes the Presidency's proposal in Article 4, as well as the added Article 7a, that the future product-specific regulations are developed through implementing acts. At the same time, however, it wants to emphasise **that the key issue and greatest priority is that business and industry are well represented and properly involved in a transparent development of product-specific legislation**. In the event that the final design of the Ecodesign Regulation still uses delegated acts, it is absolutely essential that an **Ecodesign Forum** with parties from the entire value chain is given a strong and clear mandate.

- Swedish Enterprise finds that further clarification is needed in Article 17 regarding, among other things, the process for the Ecodesign Forum's design and appointment of participants, what the mandate should look like and how broad representation should be ensured (see the Confederation's previous position for a longer description). The Confederation believes that industry and business must be represented in this process. The successful procedure and working method under the current ecodesign directive must be preserved and preferably developed. Key lessons should also be drawn from the process within the platform for sustainable financing, where the business community was underrepresented and excluded. At the same time, it is highly positive that it has been clarified that standardisation organisations should be included both in the Ecodesign Forum and in the process of developing product-specific legislation.
- However, Swedish Enterprise questions how the interaction and collaboration between the Ecodesign Forum and the new Ecodesign Expert Group – as mentioned in Article 17a – will work. It foresees a need for further clarification of its mandate and regulations. It is crucial that the new Expert Group does not become an obstacle to the development of product-specific legislation or to any other aspect of the implementation of the regulation.
- Swedish Enterprise strongly advocates that the regulation should involve **full harmonisation** in order to promote the internal market. Swedish Enterprise notes that Article 3(4) has been removed and instead stated as a new recital 15; meanwhile Article 7a removes the power for the Commission to specify parameters for when the ecodesign criteria need not be applied. By giving Member States scope to specify national requirements, this is something that risks undermining the purpose of having a regulation.
- Swedish Enterprise believes that Article 2 requires clearer definitions of the various types of measures and activities that are aimed at giving products a longer service life. More specifically, this applies to *remanufacturing*, *upgrading*, *refurbishment*, *maintenance* and *repair*. This would facilitate understanding of what is required in terms of total product liability for the repaired and circulated product regarding, among other things, chemicals and product safety.
- Swedish Enterprise notes that, in the proposed criteria in Article 5 and Annex I, there is yet much prominence on extending the life of products. While this is positive, unfortunately there is less prominence on what materials products are made of and what their origin is. There is a reference to '*recycled content*' in Article 5(1)(j), but there is still no distinction between whether the material is derived from renewable or fossil sources. This issue is something that Swedish Enterprise has previously highlighted. We would therefore like to propose that the Presidency introduce an additional criterion in order to be able to include renewable material to a greater extent in the regulation (see addendum below).
- There is great value in putting greater emphasis on renewable raw materials, as there are several initiatives and a shift towards these types of resources in many industries, products and materials, including plastics, textiles, automotive and chemicals.

Renewable raw materials can be found in forestry, agriculture and the oceans, and will play an important role in the transition to a more circular and sustainable society.

- However, Swedish Enterprise welcomes the clarification in Article 5.4(b) that the Commission will take into account the relationship between different criteria; this is necessary if companies are to continue to develop further sustainable products.

> ***Art. 5.1 j a (new)*** *content or renewable raw material content*
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> ***Annex I (h) a (new)*** *use or content of renewable raw materials*
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> ***Recital 66 (a) (new)*** *In order to ensure that the impact of material extraction needed to produce sustainable product, the ecodesign requirements set under this Regulation, includes the feedstock used to produce products. The content of renewable resources need to be sustainable sourced and produced with nature-positive outcomes.*

- Swedish Enterprise believes that there is still a lack of clarity regarding *Substances of Concern* (SoCs) in Article 2 of the Presidency's compromise proposal. Including such a large number of substances defined as SoC in the sharing of information – as the proposal suggests – may cause difficulties. This is why it is important that the requirements are product-specific and clearly delineated. Article 7.5 states that information must be made available concerning the names of SoCs, as well as where the substances are found in products and their concentrations. The Confederation wishes to stress that it is extremely important to clarify and specify what the concept of '*where relevant*' means in this context, concerning the requirements imposed on companies, even where it is product-specific.
- Swedish Enterprise recommends that information requirements on SoCs be introduced in a systematic way based on relevant and requested information and that the requirements do not entail a disproportionate administrative burden for companies, particularly for SMEs and micro-enterprises.
- Swedish Enterprise questions Article 7.2(b)(v), which states that the *carbon footprint* may need to be declared for different product groups. A carbon footprint is extremely difficult to determine, as there is no accepted method for a reliable calculation. In addition, this would also entail disproportionate requirements for companies to declare this, given the traceability requirements that such a calculation would entail, i.e., for all actors who have been involved in the life cycle of a product.
- It is seen as positive that the Presidency highlights the difficulties and challenges for SMEs and micro-enterprises in the implementation of this legislation, and that it states that support for these companies should be increased. Swedish Enterprise has previously highlighted the need for support, not least linked to the upcoming product

passport and the large amounts of information that it will include. It is therefore of central importance to continue working with more precise and concrete measures to support SMEs and micro-enterprises.

- Swedish Enterprise wants to particularly emphasise that the **requirements in the regulation are set at a level that makes it possible for SMEs to comply without requiring or facing excessive resources, costs or other consequences**. Furthermore, it should be clarified at what point that different actors in the value chain are responsible for ensuring that performance and information requirements are met. There should be administrative digital tools developed for the product passports, as many SMEs are likely to lack digitised systems with product data. There should also be format templates developed for reporting data, which include the information to be reported in order to meet the requirements.
- In the recitals, an addition has been made (recital 14), stating that business models that sell second-hand products should be promoted to a greater extent, and that these products are not required to meet the ecodesign requirements if they were already on the market and have not been redesigned to such a significant extent that they can be classified as new. Swedish Enterprise sees a need to clarify when and how products should be covered by the ecodesign requirements, and how the companies that operate within these business models should be defined. The main rule should be that the same requirements should apply to all products placed on the internal market, regardless of whether they are new, used, remanufactured or have another origin. In a future circular economy, there will be a diversity of different types of products; having differentiated requirements is neither possible nor desirable. However, in the shorter term, there may be room for exceptions for those products that already currently exist and that were placed on the market before there were acts with product-specific requirements. However, these exceptions should be decided on a case-by-case basis and be combined with some form of risk analysis.
- Swedish Enterprise welcomes the fact that the need to protect trade secret information has been clarified with the addition of Article 10 (f).
- The Presidency's compromise proposal includes a number of changes to Article 20 regarding the prohibition on destroying unsold consumer goods, something which Swedish Enterprise welcomes. This includes clarifications on how an economic operator who destroys unsold goods should report information on this (Article 20(1) and (5)), and that exceptions to the prohibition can be granted where justified (Article 20(3)). Although these changes are generally positive, Swedish Enterprise believes that it still lacks some important clarifications.
- It is fundamental that the definition of unsold consumer products is clarified so that it is clear that it is only products that are '*fit for consumption and sale*'. Otherwise, the regulation risks having disproportionately large consequences where companies need to track and report products that have been destroyed during production or transportation, or have been rendered unsellable due to improper handling by the consumer. Given the purpose of the provision, Swedish Enterprise recommends that the definition be clarified as follows.

> ***Article 2.37*** '*unsold consumer product*' means any consumer product ***fit for consumption and sale (EP ENVI report)*** that has ***been made available on the market for purchase but has*** not been sold ~~or~~ that has been returned by a consumer in view of their right of withdrawal in accordance with Article 9 of Directive (EU) 2011/83/EU.

- The timing of the entry into force of the reporting requirements needs to be regulated. The proposal does still not contain any provision on how to report, as this has been left to the Commission to define. However, it is fundamental that companies understand how the calculation should be made so that reliable figures can be presented. Swedish Enterprise therefore recommends that the reporting obligation should only enter into force when the Commission has adopted an implementing act for this calculation, and that there is an implementation deadline linked to this date.
- Furthermore, recycling should not be considered as '*destruction*' under the legislation. *Re-use*, *remanufacturing* and *recycling* are complementary solutions in a circular economy, and all three processes involve the development of new products and materials that can later be reused. A ban on recycling certain products would have an extremely negative impact on business. Swedish Enterprise therefore recommends that '*recycling'* be added to the definition, as an exception to what should be considered destruction. Furthermore, as a minimum solution, it should add '*recycling*' as a possible exception to the prohibition in Article 20.3.c.(iv).

> ***Article 2.35*** '*destruction*' means the intentional damaging or discarding of a product as waste with the exception of discarding for the only purpose of delivering a product for preparing for re-use, ~~or~~ remanufacturing **or recycling** operations;

> ***Article 20.3 (d)*** *refusal of products for donation, preparing for re-use, remanufacturing* ***or recycling****.*

- Swedish Enterprise sees some problems with Article 58 on green public procurement and believes that this article needs further work. In particular, this concerns addendum 2d, which should be deleted; ~~(d) the market situation at European Union level, including the competitive pressure, of the relevant product group.~~
- Swedish Enterprise finds it positive that the compromise proposal highlights the need for harmonised and international standards in the methods used for assessing conformity in Articles 32 and 35. For the global competitiveness of European industry, it is important to continue working on standardisation approaches that are linked to the evaluation and control of established product requirements.

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