



**SVENSKT NÄRINGSLIV**  
SWEDISH ENTERPRISE

# The Confederation of Swedish Enterprise's position on broadening the scope of the Ecodesign Directive

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# Introduction

The Confederation of Swedish Enterprise supports efforts towards more sustainable products and believes that product development must incorporate key sustainability aspects. Although the development of more sustainable products is already well under way more needs to be done to promote further advancement.

It is important that the development of product policy takes place at EU level. National policies and regulations for circular economy run the risk of creating barriers to the EU internal market and to circular flows between countries and thereby also hamper product development. A well-functioning internal market is a prerequisite for the success of the circular economy in the EU.

Properly drafted, the Sustainable Products Initiative (SPI) and a broadening of the Ecodesign Directive to include more product groups may be relevant and appropriate tools for promoting the development of more sustainable products.

Swedish Enterprise brings together 50 industry and employer organisations and 60,000 companies and work on issues that are important to all companies, irrespective of sector and size. With this position paper, we wish to share our comments and input on the EU Commission's work on the planned broadening of the Ecodesign Directive. We put forward the following key messages:

1. Retain key elements of the Ecodesign Directive when its scope is broadened.
2. Review the appropriateness of drafting one or more directives and safeguard transparent processes.
3. Ensure systematic and transparent selection process for inclusion of new products in the Ecodesign Directive.
4. Mandate the standardisation organisations to further develop sustainability principles into horizontal and product specific.
5. Ensure that drafting of product requirements incorporates common set methodologies and consultation with business.
6. Safeguard and develop standards as tools for verification and for enabling continuous technical development and innovation.
7. Carefully co-ordinate the Directive with other Green Deal initiatives.
8. Allow various methods for verifying fulfilment of requirements and refrain from introducing a general demand for third-party verification.
9. Increase efforts to monitor implementation of legislation to ensure a level playing field.
10. Improve and strengthen market surveillance across the Union.

# 1 Retain key elements of the Ecodesign Directive when its scope is broadened

The current Ecodesign Directive was drafted for products that need energy to function. It was later expanded to include products related to energy. This means that energy use and efficiency have been important starting points and to date, measurable requirements for energy efficiency have been a basic precondition of the Directive. The Swedish business community is generally positive about experiences of the Ecodesign Directive, and it is important to retain the Directive's well-functioning elements when it is broadened.

Swedish Enterprise believes that the *key overall starting points* for broadening the Ecodesign Directive should be to:

- Methodically establish the dominant environmental aspects of given product groups and review the potential for environmental improvement that can be achieved by introducing ecodesign requirements.
- Ensure that the Directive continues to work effectively for products that are already covered by ecodesign requirements.

Key *general principles* on which the Ecodesign Directive is based, and which Swedish Enterprise considers as important to retain in a broadening of its scope to additional product groups, are the following:

- Retention of the legal basis, articles 34 to 36 of the Treaty on the Functioning of the EU, (the free movement of goods), which have been a key to the success of the Directive<sup>1</sup>.
- The application of the New Legislative Framework (NLF)<sup>2</sup> – which aims to avoid specific national requirements and limit legislation to overarching requirements for safety, health, and the environment, or other requirements of general interest – shall continue to apply.
- That decision 768/2008/EC on uniform conditions for the marketing of safe products in the EU, which sets out common definitions and instructions on how manufacturers are required to demonstrate compliance<sup>3</sup>, applies.
- That the Directive continues to function as a framework and sets performance targets.
- That the process of setting performance targets is transparent, easily understandable and involves stakeholders, in particular business, but also member states through consultation.
- That the Directive contains relevant horizontal definitions that do not deviate from other product legislation within the EU.
- That all set requirements for products must be verifiable and that harmonised standards<sup>4</sup> must be able to be used to evaluate compliance with requirements.
- That the Directive is also applied to imported products and products on platforms, and that compliance with the Directive is enforced.
- That requirements of applicable sections of the Directive must not result in significant negative consequences for industry competitiveness and that measures must not impose an unreasonable administrative burden on manufacturers.

<sup>1</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=SV>

<sup>2</sup> [https://ec.europa.eu/growth/single-market/goods/new-legislative-framework\\_en](https://ec.europa.eu/growth/single-market/goods/new-legislative-framework_en)

<sup>3</sup> <https://eur-lex.europa.eu/legal-content/SV/LSU/?uri=CELEX:32008D0768>

<sup>4</sup> [https://ec.europa.eu/growth/single-market/european-standards/harmonised-standards\\_en](https://ec.europa.eu/growth/single-market/european-standards/harmonised-standards_en)

## 2 Review the appropriateness of drafting one or more directives and safeguard transparent processes

Swedish Enterprise understands that the Commission may broaden the existing Ecodesign Directive to apply to more product groups rather than adding them to parallel sister directives. Yet, we believe that it may be difficult to expand the current Ecodesign Directive to include a large number of other product groups of various kinds. This is partly because prevailing conditions vary considerably between product groups, and partly because the current directive, which works well, could become ineffective with the addition of a large number of additional product groups. Different products and materials often have fundamentally different contexts, in terms of environmental aspects and technical properties, which suggests that most product groups are best handled by producing several sister directives. As with the current Ecodesign Directive, any sister directive should constitute a framework directive where methods for verifying established requirements are specified in harmonised standards.

### Swedish Enterprise calls on the Commission to:

- carefully consider and analyse the consequences of including additional product groups in the existing Ecodesign Directive compared to the alternative of establishing sister directives.

If the Commission decides to go ahead with having a single Ecodesign Directive, the structure of that directive needs to be changed, made even more comprehensive, and restructured so that it can be applied across products regardless of product type. However, such a change presupposes that the existing functionality of the Directive in terms of the products it currently applies to does not deteriorate. Swedish Enterprise wants to emphasize that the Ecodesign Directive has, and will continue to have, a major impact on companies' product development, which is why predictability, and a long-term perspective must be maintained. It is therefore important that the Directive is drafted in such a way that it remains relevant over time for all applicable product groups, as a return to, and revision of, the Directive creates uncertainty for all product groups it applies to. This in turn risks hampering product development and opportunities for achieving agreed goals under the Green Deal. The Directive must be kept at a highly comprehensive level if it is to include products of a completely different nature.

For products that are currently included in the Directive, an implementing act is applied through which the Directive is supplemented by product-specific requirements, so-called implementing measures. Implementing acts are drafted in a transparent process involving business and other stakeholders. This is a process that needs to be safeguarded in any broadening of the Ecodesign Directive or for any sister directives.

Swedish Enterprise believes that delegated acts can sometimes be effective tools for dealing with certain issues, but they should only be used for issues of a technical nature where it is well justified. The recently proposed Batteries Regulation suggests a large number of issues to be dealt with through delegated acts, which makes it difficult

to review the legislation and assess its impact. The use of delegated acts can lead to rapid and unpredictable changes for the business community, which can be difficult to manage as adjustments take time. The process for producing delegated acts is currently insufficiently transparent and only involves the participation of the business community to a limited extent. This is problematic as it is the business community that must ensure that set requirements are met.

When delegated acts are to be used the general process needs to change and include the business community and other stakeholders to a greater extent.

#### Swedish Enterprise calls on the Commission to:

- continue to use implementing acts in the Ecodesign Directive and only, where well justified, use delegated acts, and in those cases, ensure the involvement of business.

### 3 Ensure systematic and transparent selection process for inclusion of new products in the Ecodesign Directive

It is important that there are clear criteria and a system for determining which specific product groups are to be covered by future ecodesign requirements. The Commission's Circular Economy Action Plan states that the Commission wants to broaden the Ecodesign Directive to cover "*the broadest range of products*". The precise scope for the products to be covered by the broadening of the Ecodesign Directive is currently unclear.

The forthcoming broadening of the Directive is set to include a large number of new product groups in different sectors. Although introduced gradually, several products will likely need to be evaluated at around the same time, which will entail a heavy workload. Despite the large amount of work this entails, it is vital that thorough preparatory studies and impact assessments are carried out before deciding whether a product is to be subject to the Directive.

Product development is rapid in many sectors, which is why Swedish Enterprise wants to highlight that the definition of a product can evolve over time. Therefore, when defining a product to evaluate and possibly include in the Ecodesign Directive, it is important to consider any potential, future product developments.

The current Ecodesign Directive sets out a number of criteria that need to be analysed prior to decisions on the introduction of ecodesign requirements. The first criteria in Article 15 (2a) in the current directive is that the **product shall represent a significant volume of sales and trade** within the Union<sup>5</sup>. This criterion indicates that the product group must be of relevance and importance so that a clear and powerful effect is thereby achieved by implementing requirements. It is important in any broadening

<sup>5</sup> For products currently included in the directive, this volume has been set at 200,000 a year.

of the Directive that the corresponding selection method continues to be used as one of the parameters for selection.

Depending on product group and associated sub-groups, it may be necessary to define the division basis based on different formats and units, i.e., not necessarily sales and trading volume but, for example, on total production volume. The choice of parameters for quantifying the size of a product group on the market should be aligned with measures used in other legislation to which the product is subject. In connection with the assessment of a product's size on the market, the division into different subgroups becomes an important aspect. This division and design of the selection criterion based on size must be product-adapted and designed in consultation with the sector concerned.

Under the second criteria (2b), **the product shall, considering the quantities placed on the market and/or put into service have a significant environmental impact within the community.** The third criteria (2c) means that, by introducing regulatory requirements, **the product shall present significant potential for improvement in terms of its environmental impact without entailing excessive costs.** It is important that the analysis of both these criteria is carried out in a clear and transparent process in which the business community is involved. Considerable differences can exist between products in the same product group. To be able to compare environmental performance between products, product groups therefore need to be divided into sub-groups based on function and the sub-group's prioritised environmental impact categories. The division of sub-groups for a product group lies at the heart of the results of an evaluation. Companies have the best knowledge about the environmental impact of their products and therefore need to be involved in this work.

New product groups that may be covered by the Directive are likely to have different designated prioritised categories for environmental impact. A linear relationship does not always exist between the size of a product group and its environmental impact. When defining a relevant size in the market to be covered by ecodesign requirements, a product's prioritised environmental impact categories therefore also need to be considered, as is done today by multiplying the environmental impact per product by the quantity of the product on the market. The total environmental benefit achieved by including a product group in the Ecodesign Directive must be significant in its entirety for the product group to be covered by the Directive. Prioritisation of environmental impact categories must be aligned with the initiative on *substantiating green claims*.

To be able to assess products based on criteria b and c above, a simplified life cycle analysis (LCA) is currently used, known as the methodology for Ecodesign of Energy-related Products, (MEErP). MEErP is currently not adapted for other types of products. A well-established simplified LCA method should continue to be used for the selection process in accordance with the criteria above, together with other relevant existing and new information about product groups' environmental impact.

The criteria 2c particularly is set to take into account: **the absence of other relevant Community legislation or failure of market forces to address the issue properly** is considered and whether there exists a wide disparity **in the environmental performance of products available on the market with equivalent functionality.** Swedish

Enterprise believes that if products are already covered by other well-functioning legislation, such products should also continue to be subject to that legislation, (for example the Construction Products Regulation) and, if necessary, updated instead of being included in the Ecodesign Directive. If there is a need for additional requirements for a product group, in addition to existing legislation, an analysis should be carried out to identify in which legislation it would be most appropriate to include supplementary regulation – in the Ecodesign Directive, or in existing or other new legislation for a given product.

In addition to the criteria above, the range of products subject to ecodesign requirements also needs to consider aspects such as the pace of technological development for specific product groups, (i.e. development is so fast that agreed requirements become obsolete), and whether the Ecodesign Directive is the right tool to enable this continued development.

**Swedish Enterprise calls on the Commission to:**

- continue to apply the selection criteria used to date when assessing whether additional product groups should be included in the Ecodesign Directive
- make appropriate division of product groups and their sub-groups in consultation with the sectors concerned
- consider the pace of technological development for product groups when assessing whether ecodesign requirements are appropriate.

Swedish Enterprise believes that the environmental benefits of including product groups in the Directive need to be carefully analysed and any environmental benefits that can be ascertained for a given product group should be weighed against any costs that inclusion is expected to entail. It is unreasonable to introduce 'all' products in the Directive in the short term. Rather, focus should be placed on the product areas where the environmental benefit of regulatory requirements is judged to be greatest. The Ecodesign Directive can certainly be a suitable regulatory tool for many products but not for all.

For intermediate products, as well as products that are part of a system, corresponding requirements are probably handled better in other legislation, such as additives in concrete, wood glue or paint for exterior use on wood. This is because it is the total environmental impact of the final product or system that needs to be considered. Detailed regulations of sub-components risk leading to sub-optimisation and hindering innovation. To minimise environmental impact at system level, flexibility is needed in system design in terms of the choice of technology and materials. Design requirements at the sub-component level are probably handled better through other legislation.

**Swedish Enterprise calls on the Commission to:**

- carefully consider the appropriateness of introducing ecodesign requirements for intermediate products included in systems given the risk of sub-optimisation at system level.

In the circular economy, products and materials must be reused and circulated, and remanufacturing and upgrades must increase. It is necessary to clarify how products that were manufactured before the product group to which they belong were included in the broadening of the Ecodesign Directive will be handled when they are to be remanufactured or upgraded in the future, and thereby fail to meet the current requirements of the Directive.

**Swedish Enterprise calls on the Commission to:**

- adapt the ecodesign requirements in such a way that they also can be used in the context of materials and products which were manufactured before ecodesign requirements were introduced, and which are returned to the market after a circular process.

## **4 Mandate the standardisation organisations to further develop sustainability principles into horizontal and product specific**

In its current form, the Directive contains several definitions. In broadening the Directive, existing relevant definitions of a business-wide nature should remain, such as ‘manufacturer’ and ‘placing on the market’. Remaining definitions need to be adjusted so that they can be applied across sectors or transferred to product-specific legislation. It is also vital to ensure that all definitions are harmonised across EU-legislation.

Swedish Enterprise believes that the establishment of *sustainability principles* for products is positive if the principles are comprehensive and constitute a framework for product development in the legislation. This can contribute to clarity and predictability that supports continuous product development. It is important that sustainability principles are harmonised with global standards and definitions as many companies operate in global markets. How sustainability principles should be applied to different product groups, in connection with the Ecodesign Directive, more concretely should be addressed within European standardisation efforts.

Preconditions for and the meaning of different sustainability concepts and principles, (“principles”) differ between different product groups. The majority of sustainability principles linked to the material efficiency of products have recently been defined in horizontal EN standards for energy-related products in the EN 4555X series, such as durability, repairability, recyclability, reusability, upgradeability, recycling, remanufacturing, etc. Based on these horizontal standards, it is proposed that product-specific standards will be developed for material efficiency in various energy-related products.

Swedish Enterprise assumes that in the development of sustainability principles for other product groups, the Commission will give the European Committee for

Standardization (CEN) a mandate to develop these, in the same way as the horizontal standards developed by CEN for material efficiency aspects for energy-related products.

It is crucial that new established principles also can be monitored, evaluated and verified and methods for how this should be developed and included in horizontal or product-specific standards.

**Swedish Enterprise calls on the Commission to:**

- give CEN a mandate to develop horizontal standards for relevant sustainability principles for additional product groups in the Ecodesign Directive, and subsequently, if necessary, product-specific standards
- allow the market, through standardisation, to develop horizontal standards and product-specific standards for the *application and verification* of sustainability principles for different products.

## **5 Ensure that drafting of product requirements incorporates common set methodologies and consultation with business**

Products that have already been regulated under the Ecodesign Directive have primarily been considered in terms of energy use parameters. The purpose of the Ecodesign Directive is to improve the environmental performance of products throughout their life cycle. Minimum requirements for energy use have been defined for products to be placed on the European market. Ecodesign requirements thus function as a threshold of lowest acceptable levels to ban and remove the very worst products. The requirements have been set in implementing acts developed on the basis of life cycle analyses and the criteria set out in Article 15 (4).

The broadening of the Directive also requires a continued holistic approach, which includes an evaluation of the entire life cycle of products – including the use phase and end-of-life, to ensure that set requirements provide more sustainable products. The Directive needs to be kept at an overall level and set out clear frameworks and objectives that the product requirements aim to achieve. Requirements in associated implementing acts must be designed to enable continuous product and technical development, i.e. that detailed requirements are not imposed. A high degree of detailed regulation risks hampering product development and reducing the degree of freedom for technological innovation. This may have a negative impact on the EU's ambition to become circular and fossil-free.

It is crucial that it is possible to monitor and verify requirements in a systematic and transparent manner and that technological neutrality is safeguarded. Standardisation should be mandated to design methods for verifying set requirements in harmonised standards, including future products that are subject to the Ecodesign Directive.

The category or categories of environmental impact that new product groups in the Directive are to be graded on and for which the products groups will receive minimum requirements, must be determined in consultation with relevant sectors. Management of different products' environmental impact categories, and which of these should take precedence in the Ecodesign Regulation, needs to be developed on the basis of a common set methodology, see LCA methods in section 3 of this document.

Defining requirements for new product groups to be included in the Ecodesign Directive will be demanding. It is important that the preparation of requirements is done based on harmonised and transparent methodology and process. Requirements should be set for the categories of environmental impact that constitute the essential environmental aspects of given products as set out in Article 15 (4) of the current directive. It is also crucial, as stated in the same paragraph, that an impact assessment is carried out 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.

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**Swedish Enterprise calls on the Commission to:**

- identify priority environmental impact categories for each product group in consultation with relevant sectors and with an accepted LCA methodology
- requirements introduced by law are technology-neutral performance targets and do not include technical requirements
- ensure that it is possible to monitor and verify set requirements in a transparent manner
- carefully assess impacts of requirements before they are determined with regard to the parameters in Article 15, paragraph 4 and 5 of the existing Directive.

Swedish Enterprise wants to emphasize the importance of an effective legislative process to ensure that requirements that are introduced have not lost their relevance when they enter into force, (these processes should take three years but have taken up to six to eight years under the current Directive<sup>6</sup>). An extended legislative process may delay technological development and sought after environmental improvements. At the same time, it is important that the legislative process is transparent. Different timelines are probably needed for different product groups due to the speed of, for example, technological development. Once the legislative process is complete, it is important that business is given sufficient time to implement established ecodesign requirements through restructuring of production and product development. Product development often takes some time and there needs to be room to test the function of products and systems they are to be part of over time. Implementation time for the business community needs to be set relative to when the reform is adopted.

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**Swedish Enterprise calls on the Commission to:**

- pursue an efficient legislative process to ensure that current regulation does not become irrelevant, and that different timelines may be suitable for different product groups
- provide business with sufficient time to implement requirements and to determine implementation time on a product by product basis.

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<sup>6</sup> [https://www.eca.europa.eu/Lists/ECADocuments/SR20\\_01/SR\\_Ecodesign\\_and\\_energy\\_labels\\_EN.pdf](https://www.eca.europa.eu/Lists/ECADocuments/SR20_01/SR_Ecodesign_and_energy_labels_EN.pdf)

## 6 Safeguard and develop standards as tools for verification and for enabling continuous technical development and innovation

The business community must be given the mandate to develop technical solutions based on framework conditions and requirements, set by decision-makers, that enable continued technological development and innovation. Here, standardisation has a key role in defining common verification methods and at the same time enabling further development. It is important that the broadening of the Ecodesign Directive to more product groups continues to be based on the development and use of harmonised standards to specify how products are to be verified against the requirements of the legislation. This approach has worked well in the Directive to date and is important to safeguard in the future.

Standards are efficient and flexible tools that can be adapted to rapid technological development. The business community is involved in standardisation work, which means that the standards they draft have a wide degree of acceptance in the business community. The introduction of more product groups in the Ecodesign Directive, which means that more standards need to be developed, requires increased commitment from business to develop standards in the future.

### Swedish Enterprise calls on the Commission to:

- apply standardisation to the development of methodologies to verify set requirements and thereby ensure that innovation and technological development are enabled
- ensure that the demarcation between what is to be defined as standards and what is to be specified in legislation is clear in the Directive and associated implementing acts.

Read more about harmonised standards in section 8 on third-party verification.

## 7 Carefully co-ordinate the Directive with other Green Deal initiatives

Swedish Enterprise would like to stress the importance of expanding the scope of the Directive in alignment with existing and future EU legislation. Many of the initiatives within the Green Deal overlap and it is crucial that it is clear what the different pieces of legislation regulate and that legislation on subject areas is not split into several legislative files. There must be clarity about where different issues are regulated. It is also vital to ensure alignment, including harmonisation of definitions, with *all* EU-legislation related to products.

**Swedish Enterprise calls on the Commission to:**

- carefully co-ordinate the various Green Deal initiatives that the Commission is working on so that they do not contradict one another, lead to duplicate regulation, have different definitions, or in other ways create ambiguity for business or public administration.

In this context, we would like to draw particular attention to the need to align the Ecodesign Directive with the initiative on substantiating green claims, the chemicals legislation and other parts of the EU's chemicals strategy, the introduction of digital product passports, future due diligence legislation, and new criteria for green public procurement.

**Substantiating green claims**

The initiative on substantiating green claims is included, together with the SPI, in the package purposed to make sustainable products the norm on the European market. The consultation for the SPI, in which the Ecodesign Directive holds a central role, states that the sustainability performance of products will be the basis for product requirements and made visible in conjunction with various instruments. It is vital that priority environmental impact categories, methodologies, concepts and definitions of product sustainability and environmental performance are aligned between the broadening of the Ecodesign Directive and the initiative on substantiating green claims.

**Chemicals**

Regarding the restriction of substances, it is important that duplicate regulation is avoided. Ordinary legislative procedures should continue to be used for chemicals so that member states' influence over issues is maintained. The current Ecodesign Directive states that the Directive and related implementing acts shall not affect EU legislation on chemicals. This article, 1.4, should remain in the broadened directive. It would be unfortunate to split substance restrictions over several acts. To do so would not reflect the principles of better regulation and would create ambiguity.

Substances that are not identified as Substances of Very High Concern by REACH, but which could prevent recycling for other (technical) reasons, can advantageously be handled in product-specific legislation. This is because the conditions are different for different products and materials. RoHS is a good example of product-specific legislation that already addresses this. Determining which substances that prevent recycling must take place in an easily understood and transparent process in which the business community is involved. Swedish Enterprise would also like to take this opportunity to emphasise that it would be unfortunate to impose a blanket ban on specific substances on the grounds that they currently prevent recycling. Recycling techniques are evolving rapidly and in the near future, it may be possible to recycle certain materials and products that, due to the presence of certain substances, are not possible to recycle today.

**Digital product passports**

Digital product passports (DPP) can be useful for fulfilling the intentions of the broadened Ecodesign Directive by channelling information along the value chain. At the same time, Swedish Enterprise calls on the Commission to evaluate the

sustainability benefits of specific information before setting requirements. When the passport's function is specified in relation to the Ecodesign Directive and other product regulations, it is crucial that information in the DPP is limited to what is relevant and necessary for the purpose and for the specific product i.e., what information is requested in the value chain and how it should be used. All reporting requires resources, and it is therefore important that information included in product passports is designated on a "need to know" basis rather than a "nice to know" basis. The sharing of information with other actors must consider the handling of company-sensitive information such as IP and property rights, recipe, CAD drawings, 3D drawings and other confidential information. It is also important for the Commission to review what types of products that need a DPP. The benefits of a DPP must be clear if it is to be introduced. It is also crucial that the definitions and information requirements under the Ecodesign Directive are compatible with the DPP.

### Due diligence

Issues relating to due diligence of ecodesign requirements should be handled at an overarching company level, rather than a product-specific level. Swedish Enterprise believes that the creation of specific due diligence requirements for individual product groups is not appropriate as it risks leading to contradictory duplicate regulations. Many companies already work with due diligence, for example linked to conflict minerals and on a more voluntary basis through UNGP and OECD Due Diligence Guidance. Work is also underway within the Commission to develop a horizontal due diligence regulation. Swedish Enterprise calls on the Commission to focus on drafting a general regulation and thus avoid the risks associated with contradictory duplicate regulation.

## **8 Allow for various methods for verifying fulfilment of requirements and refrain from introducing a general demand for third-party verification**

It is crucial that all products that are given market access, including imported products and products on platforms, meet basic sustainability and safety requirements. Regulations within the EU should be designed so that it makes it easier for companies to produce information for verification without being subject to a large additional administrative burden. Insofar as it is feasible to do so, manufacturers' declarations should be used to avoid costly third-party involvement where the need for such involvement is unclear. Manufacturers' verifications that a product meets requirements along with available documentation should be considered sufficient. It is a basic precondition for fair competition that companies within and outside the EU have the same conditions regarding verification.

Today, the Ecodesign Directive is not based on third-party review with the exception of a small number of products, for example boilers. If in the future more products will be subject to third-party verification requirements, this must be done as efficiently as possible to minimise costs and the administrative burden for companies. Prior to any decision on requirements for third-party verification for products within the Eco-

design Directive, an impact assessment should be performed to assess the significance of this verification in achieving set impact targets. In addition, an effective third-party audit system must be developed that also includes an audit of those performing the third-party audit.

Third-party verification can be a way for companies to objectively demonstrate that performance requirements are met, thereby reducing the risk of being perceived as green-washing and unfair competition with products that are incorrectly claimed to meet requirements. On the other hand, introducing general requirements for mandatory third-party verification is not the right way to go as it is costly and resource intensive. Third-party verification should only be used where it is needed and where there is a clear benefit.

In broadening the Ecodesign Directive, Article 8 on conformity assessment should be retained. This states the principle of “presumption of conformity”, which works well for legal texts where minimum requirements are set in the legal text and then combined with harmonised standards in which measurement methods are established for how verification should be carried out. This is a method that has worked well for the products currently covered by the Directive. As new product groups are subject to ecodesign requirements, associated harmonised standards need to be developed. The fact that companies demonstrate compliance with legal requirements in accordance with the standard should continue to function as an alternative to third-party verification. It is important that freedom of choice of ways to show presumption of conformity exists for companies.

#### **Swedish Enterprise calls on the Commission to:**

- continue to exercise the presumption of conformity by enabling companies to choose the method for verification of legal requirements by following methodology in harmonised standards and/or through third-party verification
- not require third-party verification without special reasons. Prior to any decision on requirements for third-party verification for products within the Ecodesign Directive, an impact assessment should be carried out to assess the significance of this verification in achieving set performance targets
- ensure that corresponding verification requirements also apply to imported products and products on platforms.

## **9 Increase efforts to monitor implementation of legislation to ensure a level playing field**

As product legislation is developed and introduced in the EU, the Commission needs to allocate more resources to monitoring the implementation and application in different EU countries. This is instrumental to ensure that there is a level playing field and that circular flows are not hindered. Harmonised rules within the EU are one of the most important factors in promoting circular material and product flows within the bloc. For example, this applies to rules in waste management and product regulation.

Today, while lack of implementation occurs in some member states, they are over-implemented (gold plating) in others. All in all, this leads to major differences between national regulations. On the EU internal market, these differences create obstacles to efforts to increase circular flows of materials and products.

**Swedish Enterprise calls on the Commission to:**

- invest more resources in monitoring the implementation of directives and product legislation and their application in the EU member states and take measures to address the under- and over-implementation.

## 10 Improve and strengthen market surveillance across the Union

Market surveillance ensures that companies comply with established rules. EU citizens have the right to equal and effective protection, irrespective of a given product or its origin. In addition, market surveillance plays a critical role for companies by preventing unfair competition as companies that do not comply with established rules risk sanctions. Therefore, well-functioning market surveillance is vital for the market, as well as for safety, health, and the environment. Along with the broadening of the Ecodesign directive, and increased product requirements, the role of market control will grow even more important.

Irrespective of how a product ends up on the EU market, the same controls should be applied. The performance of market surveillance must include all products made available on the EU market, i.e., those manufactured within the EU and those imported into the bloc. In addition, the competent authorities should impose the same conditions on products irrespective of which sales channel is used, and not, as is currently the case, perform stricter controls in physical stores than in e-commerce.

With a broadening of the Ecodesign Directive and increased product regulation, market surveillance must also be broadened and developed to include more detailed issues, several of which are probably not possible to measure on specific products. It is probable that less focus is placed on practical tests and more focus put on reviewing documentation relating to, for example, materials, recyclability, and carbon footprint. Market surveillance will then be more oriented towards reviewing data and its reliability. The method of verifying requirements through harmonised standards, (see section 9), enables effective supervision where focus can be placed on checking documentation and compliance.

Market surveillance is currently managed at a national level with some degree of co-operation between member states. Controls are costly and require extensive knowledge. Member states are responsible for the design and resources put into market surveillance. With different preconditions and levels of ambition within each Member State, this results in market surveillance with various degrees of efficiency across the Union. It is unfortunate that these efforts vary. Therefore, greater co-ordination and a common approach to market control need to be established. Co-ordinated market

surveillance should include minimum requirements and guidance documents to ensure that the surveillance is carried out in an equivalent manner. The design of a more co-ordinated and broader market control at EU level needs to be harmonised with other EU legislation such as the Market Surveillance Regulation.

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**Swedish Enterprise calls on member states and the Commission to:**

- ensure that sufficient resources are allocated to the competent authorities to enable them to conduct effective market surveillance in physical and on-line sales channels
- develop a common approach, further digitalise market surveillance and data management and co-ordinate market surveillance to a greater degree across the union.

*This position paper has been produced in close cooperation with Swedish Enterprise's member organisations.*

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