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SUSTAINABLE PRODUCT INITIATIVE PUBLIC CONSULTATION

European business welcomes the Sustainable Product Initiative (SPI) as a key legislative initiative to achieve a functioning market for secondary raw materials and circular products in Europe. Not only that but as an initiative to make our markets and products contribute to a climate neutral future. A future that is resource efficient and circular.

The SPI envisages the enlargement of the scope of the Eco-design directive which currently provides EU-wide rules for the improvement of the environmental performance of energy-related products. The Eco-design directive is the appropriate legal instrument to further develop circularity standards, as it is science-based and it sets product-specific requirements and chooses which products to target from a proportionality approach. A strong dialogue with industry will be essential since there is no 'one-size-fits-all' solution for all products on the market. Additionally, it will be important that the extension of the scope beyond energy related products does not create legal uncertainty and overburden the products already covered by the directive or other sectoral or product specific legislations.

The environmental and societal gains must measure up to the costs incurred by businesses. Moving from a linear economy to a circular economy, will require joint actions by all stakeholders. It is a paradigm shift moving away from a mere waste centered (linear) thinking, and towards a circular/sustainable material use thinking. Businesses, consumers, waste management companies (public and private), and public entities are very important in this process and their ability to work together will be crucial.

Circular economy can provide opportunities for companies to secure competitive advantages with innovative, more sustainable products. However, many companies will face major challenges along the way. In some cases, they must make considerable investments in research and development, realign their product portfolios, or open up new markets. The political decision-makers at European level and in the Member States should provide a supporting framework to implement the SPI.

PRINCIPLES FOR SUSTAINABILITY

An effective Sustainable Products Policy should start from a set of key general principles that can be transversally applied to all the different market segments. Additionally, specific sustainability principles can only be developed at the product group level be developed to capture the peculiarities of different product categories. **It will be extremely important to ensure a harmonized and coherent development at European level**, to avoid different approaches at Member States' level that can potentially hinder a smooth transition towards an EU circular economy market. An appropriate level of market surveillance should accompany new sustainability requirements.

The following principles should be the backbone of the initiative.

- **Lifecycle assessment:** All significant stages of the product's lifecycle need to be considered as they will enable to assess the overall impact when conflicts arise during the different stages. Life-cycle approach is a fundamental principle that should be considered as it can combine functionality, environmental, safety and sustainability considerations during design, production, use and end-of life (reuse, remanufacture, refurbish, recycling). Capturing the impact of products through their whole life cycle, including the energy use, will be essential to ensure more sustainable alternatives become the norm. Early and continuous engagement of manufacturers is vital, to ensure the feasibility of LCA approaches. LCA methods must be consistent with international standards and must always be product specific.
- **Innovative drive:** the overall approach should introduce enough flexibility to allow for circular materials, products and business models to emerge, setting requirements for results, not for the way to achieve the results. Having regulation that is too prescriptive, for example regarding design of products or choice of business model could prevent the uptake of a dynamic market. Innovation should be the driving force of most of these changes.
- **Level playing field** between EU products and those that will be imported from third countries needs to be maintained and reinforced, while respecting the EU's international commitments both at multilateral and bilateral levels. For instance, imposing design or remanufacture requirements, increased durability, fulfilment of extended producer responsibility obligations when applied to the product etc. must be required to all products entering the EU through an effective customs control and market surveillance. Otherwise, the effectiveness of the policy will be highly reduced by importing products with low sustainability considerations/performances.
- **Product-specific approach:** The design of products should not impose a rigid prioritization as proposed by the questionnaire (*i.e., 1st reuse, share, repair; 2nd remanufacture/refurbish/upgrade; 3rd recycled, etc*). Instead, it should take into account the prioritization of material use (prevention, reuse, lifetime extension, recycling, recovery and disposal) without neglecting the specificities of different product groups, according to product characteristics, economic viability or environmental impacts associated to their life-cycle .
- **Use of harmonised standards:** Regulation should continue to be based on the New Legislative Framework, meaning the concrete implementation at product level should take place using standards.
- **Waste collection:** A functional secondary raw material market should maximise separate waste collection and sort it according to its quality and safety. The improvement of reporting and recycling techniques, industrial capabilities and their scalability are essential in some waste streams.

In order to help enhancing recyclability, valorisation or recovery of waste streams, the necessary information about the quality of the waste streams should be provided.

SUSTAINABILITY REQUIREMENTS OR CRITERIA FOR PRODUCTS

Whereas we support political initiatives that create incentives to promote environmentally friendly business models, it is important to acknowledge that there are trade-offs between different policy goals, for example durability and reparability or energy efficiency. Requirements should be set only based on thorough analysis and weighing of the gains and costs of each option in each product category. Requirements such as "*right to repair*" or "*right to upgrade*" come close to legislative determination of the choice of business model. The upcoming SPI legislative proposal should be business model neutral. The sustainability goals should be the driver, and then leave manufacturers the choice of business model to reach goals.

- **Reparability:** Ensuring that products can be repaired in the long run increases their longevity and promotes reduction of waste. It also allows for reuse and for returned products to be sold as refurbished, which is a growing business-model. Reparability should be in balance with product safety, intellectual property, and liability. Specifications for reparability must be product specific. This is the only way to ensure that an appropriate repair is both ecologically and economically advantageous. Certain elements need to be considered:
 - For certain products, the trader can have a say on who can repair their products as this ensures continuous quality and safety.
 - Access to information on reparability may be granted if it does not infringe business secrets and other IP rights, which would put European companies at a disadvantage in relation to other competitors. A tailored approach might be necessary for complex professional use machines that require specialised operation and service.
 - Safety and health of consumers is not put at risk. For some products that deal with heat, electricity, chemicals, mechanical stability or require water-tightness, it is important that repairs are conducted in the appropriate conditions by capable and qualified repairers.
 - Those incentives are in place to ensure that enough manpower specialised in repairing and reconditioning is available, for example through education in technical areas.
 - Restrictions about the product's lifetime and the product's repair could cause confusion about warranties (guarantee and the liability of producers and traders).

There is a big difference between B2B and B2C in regard to repair, and this must be taken into account in regulation. Furthermore, an increasing number of consumers import products from outside the EU, complicating the means to uphold the right to repair in a reasonable way. Where reparability is not feasible, other options need to be considered.

- **Recyclability:** It is important to take into consideration that possible mandatory requirements for the uptake of secondary raw materials should be sector specific, since there is no one-size-fits-all approach

Mandatory requirements for recycled content can act as a stimulus for the creation of a market for secondary raw materials in some sectors (considering there is a sufficient supply of high-quality recycled materials). While in other cases, it may negatively impact markets where recycling rates are already very high. Product recyclability should first be improved through innovative techniques before imposing certain obligations for producers, as it will guarantee the availability of quality materials inside and outside the EU.

It is important that such obligations remain feasible and describe a clear transition path for producers, as policy predictability will enable business to invest in circular and more sustainable solutions.

It will be worth considering the potential for multiple recycling, where products and processes are suitable for several recycling cycles without loss of quality (this is already a common practice in sectors such as aluminium, steel and glass)

Any type of policies or measures needs to be material- and product-specific, acknowledging the specifics of inputs (primary and secondary raw materials), manufacturing processes and outputs (products). In this respect we want to emphasize that the Industrial Emissions Directive (IED) shall exclusively regulate the manufacturing processes. It shall not regulate products nor establish mandatory performances levels regarding the use of primary or secondary inputs. Conversely, the SPI shall not regulate the manufacturing processes that are already regulated e.g. under the IED.

- **The ban on the use of certain substances,** when there is no risk for consumers, the environment or workers would risk hampering the competitiveness of EU companies, putting them at a disadvantage compared to non-EU companies. Further it might even create products of sub-optimal quality and not fit-for-purpose. Therefore, sustainability requirements should rightly balance sustainability features and the expected technical functions of a given product. The REACH Regulation itself provides for specific derogations and exemptions for concrete applications where there are no established valid alternatives.

We should avoid that the ban of a substance in a product will lead to an alternative that may be less sustainable, and thus lead to a substitution that would be regrettable from a broader sustainability perspective. Any restrictions of substances are and should be managed within REACH regulation.

MEASURES TO FOSTER CIRCULARITY IN EUROPE

- **Green Public Procurement:** With an estimated 14% of the EU's GDP being spent on public procurement, finding ways to make it more circular-focused could serve as an effective measure. Unfortunately, while green public procurement (GPP) is one of the priorities from the 2017 Public Procurement Package by the

Commission, there are strong indications that Member States often still put most emphasis on the purchase price during a public procurement process rather than on the quality or lifecycle costs of a product or service.

An EU-wide mandatory GPP criteria could be a possibility. It should always be consistent with the principles and guidelines of the Public Procurement Directive. Further it should be based on clear definitions, sound life cycle assessments, and methodologies that have been co-developed with all relevant stakeholders. They should not limit cross-border procurement or add unnecessary burden for suppliers.

- **Existing EPR schemes**, based on the minimum requirements set by the Waste Framework Directive (WFD), play an important role in promoting sustainable design. They provide an incentive to the producer to design more sustainable productions. Learning from existing schemes, it will be important that it is harmonised to prevent confusion, and avoid separate streams working in parallel. Revenues from EPR schemes should directly contribute to increase circularity.

Member states should clearly and legally define the roles and responsibilities for Producer Responsibility Organisations (PROs), authorities and other stakeholders based upon the principle of “shared responsibility”, so that each player respects the obligations to achieve the recycling targets of EU waste legislation.

Improving the access to finance for the production and consumption of sustainable products will foster the emergence of more circular economy models.

- **High value collecting, sorting, and recycling technologies** must be scaled-up by mobilising financial resources for expanding the European waste collection and sorting across Europe as well as treatment technologies to ensure the sufficient infrastructure for material use. There should be an increase of EU support for innovative companies linked to circular economy from early-stage development to growth and expansion phase. Additionally, providing guidance to Member States will be essential to achieve high levels of separate collection for the necessary secondary raw materials market.
- **Destruction of unsold durable goods:** The destruction of products should only take place when those products pose a risk in terms of health or safety, or when constituting an IP infringement. In all other cases, destroying spare parts of products no longer on the market reduces the lifecycle of products already sold and in use. We should prioritize the recovery of materials contained in those goods.
- **On-demand products:** While the sustainable benefits of on-demand production are acknowledged, we urge caution as incorrect implementation may put remote and island regions, at a significant disadvantage. Since products are mostly not manufactured in such areas and orders for products made over-seas are made on a much smaller scale, decreasing attractiveness for foreign manufacturers. Long delivery times could also be an issue. The Commission is asked to come up with solutions in this regard that would not put small and island regions at a disadvantage.

DIGITAL PRODUCT PASSPORT

An option considered to improve information on the sustainability of a product is the Digital Product Passport (DPP), and has the potential of providing significant reassurance to consumers on health/safety and sustainability. It will be important to first develop the objectives of the instrument for the involved stakeholders (i.e. consumers, producers, market surveillance authorities and supply chain related stakeholders). These objectives will then clarify what type of information is required to fulfil the objectives, and to what extent the objectives can be achieved with existing information. Gathering information should not become a goal in itself, but should be linked to concrete objectives for a circular economy in which all supplied information is used to accelerate the circular economy.

For instance, the DPP could very well work, as it could help to avoid information overload on packaging. This would give greater prominence of essential information on-pack and help reduce the costs and waste associated to packaging/label changes.

Administrative burden and overlaps

The DPP should be designed properly, to prevent additional disproportionate administrative burden (i.e. disproportionality of SCIP database) and particularly be of concern for SMEs. For instance, requiring the detailed disclosure of all substances present in final products will add significant bureaucracy and confusion (consumers or economic actors might not need the same detailed level of information) without providing significant reassurance to consumers on health & safety and sustainability. Same as requiring translating any free-form text in all EU languages.

Overlapping with other information requirements from other legislation should also be avoided. Therefore, the goals, feasibility and effectiveness of such passports need to be assessed first in close cooperation with industry stakeholders. It needs to consider value chains, a product-specific approach, and the quantity of data that is required to make such a passport effective. In certain sectors (e.g., retail) technologies such as product scanning techniques, are already widely in place: any future DPP should therefore take advantage of the progress and achievements of the currently existing system. In this regard, a product passport might increase administrative burden without serving additional purpose for the producer. In other cases (e.g., construction sector), a similar equivalent to the DPP could already be in place, therefore there would not be a need to extend the scope to these sectors.

Data gathering

The primary data information is dispersed, not homogeneous and the systems used are not uniform among the different stakeholders. There is a need for harmonized technological evolution and adaptation between Member States for an effective, data-secure, and fast information exchange.

- **It should be comparable across the EU** and based on objective/scientific methodologies to allow transparency, trust, and traceability, while upgrading

digital skills. In a global and changing environment, the scope of traceability should be embedded into the whole value chain and then downwards till end-of-use, and ultimately until end-of-life.

- **It should ensure the interoperability with other datasets** developed at global, EU or Member State level. We recommend developing the DPP **as a decentralised system** that allows companies to deliver the pertinent data once. The data required by the DPP must be based on scientific evaluation methods, **recognized by European and international standards**, and must be reliable and verifiable.
- **The unit of reference of the Digital Product Passport should be established based on the nature of the specific product.** For instance, for articles under the scope of EU harmonised legislation, the default unit of reference may be the product model, as defined by existing legislation (e.g. New Legislative Framework legislation). This will facilitate the uptake of the DPP, as companies can use their existing data systems to implement the DPP. Individual DPP per product would result in significant economic costs, associated with the maintenance of millions of DPP and large environmental impacts linked to data centres.
- **It might also raise confidential business information and competition concerns.** The information disclosure should be proportionate and on a “need to know” basis, to align with intellectual property rules.

Implementation and market surveillance

It is important to ensure effective application and adequate market surveillance. The information must be verifiable to ensure a level playing field between EU and non-EU companies. The authorities should have sufficient resources to be able to effectively check the accuracy of the product claims and, if necessary, sanction infringements. A distortion of competition would otherwise be the result. Harmonised market surveillance activities across Member States can avoid a duplication of work and resources and promote more effective information sharing.

The DPP should have a transition period, so that companies can have the time they need to prepare for new potential obligations. Perhaps implementing first some pilot projects in collaboration with industry to give enough time to organise and adapt, could be a viable option.

To enforce market surveillance, the DPP could be used by customs authorities to assess if the product complies with Union Law to enter the single market.
