

# Potential risks of a revision of the Ecodesign Directive & APPLiA proposal on EU Product Policy Framework

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## Summary

In view of the Trinomics Workshop on the revision of the Ecodesign Directive under the remit of the Impact Assessment of the Sustainable Product Initiative, APPLiA would like to outline its concerns on the potential risks and consequences of such a revision. We invite Trinomics and the European Commission to consider these risks in their impact assessment work. APPLiA strongly believes that a one-size-fits-all approach should not be the way forward for the future of sustainable product policy. For this reason, we introduce in this paper a proposal for a new effective Framework for EU Product Policy.

## 1. Building on Ecodesign success story

A future EU sustainable product framework should continue to drive innovation and competition that further improves consumer choices. It should appreciate how individual sectors are already driving a circular economy so that targets and proposals can be better adapted to reality and market conditions.

For the home appliances sector, the current Ecodesign Directive has been well able to contribute to deliver this as it is built on a clear methodology, based on a combination of key principles:

- a) the Least Life Cycle Cost (LLCC) where the final cost for the consumer is the driving factor,
- b) compliance with requirements that can be verified on the product when placed on the market,
- c) self-declaration and use of harmonised standard for presumption of conformity,
- d) transparency, allowing all stakeholders to make testing in addition to Market Surveillance Authorities.

Furthermore, the Ecodesign legislation allows not only to develop product specific implementing measures, but also more horizontal ones addressing more than one product at a time, such as the Standby Regulation (EC/801/2013). This provides a very **high level of flexibility for policymakers**.



This approach has worked well for the current scope of energy-related products. Widening the scope to non-energy-related products including B2B products, materials, and services, would make it very difficult to build future regulations on the above-mentioned principles. We would recommend instead that a parallel legislation, with appropriate methodologies, should be considered for non-energy related products. Of course, good practices from the existing Ecodesign and Energy Labelling legislation could be used to inspire an ecodesign-like framework for non-energy related products.

With regard to further extending the scope of Ecodesign requirements to meet the sustainability principles the Commission has set in the CEAP, this has already started in the current Ecodesign Directive. The Directive already addresses durability, repair, reusability and recyclability, with new resource efficiency requirements on many products entering into force in March 2021. The Framework Directive is already fit for purpose to address further resource efficiency issues for the products under the scope of the legislation. We support exploring these further requirements on products where there is a demonstrated additional impact for the sustainability of products in line with the SMERC principles, while taking into account the specificities of different product groups.

We recognise the value of the Ecodesign regulatory approach and also support the principle of taking the opportunity of the ongoing review of the Methodology for the Ecodesign of Energy related Products (MEErP) to assess ways of strengthening sustainability aspects while reflecting the diversity and uniqueness of the ErP groups.

Ecodesign measures have been effective because they have regulated measurable, verifiable parameters of the product on the basis of a clear and transparent methodology. Any requirement must be measurable on the product, designed so that they can be efficiently enforced by Market Surveillance Authorities (MSA). Unless tested in a cost-efficient manner and within a short enough time span, MSAs will never be able to catch non-compliant products before they disappear from the market. Additionally, measurements must be supported by harmonised standards listed in the OJEU, developed by appropriate standardisation bodies. Standardisation is a prerequisite to any policy discussion on material/energy efficiency aspects of products. Only a solid standardisation base can secure reliable, accurate, reproducible product requirements which are enforceable at a reasonable cost. Building on the horizontal work already done on the scope of the EN 4555X series of standards, APPLiA supports the further development of product specific standardisation requests to CEN and CENELEC to produce reliable test methods and material efficiency (such as durability, reparability, reusability).

Whilst the Ecodesign Directive is undoubtedly a regulatory success story for the Commission in delivering on environmental, energy efficiency and decarbonisation objectives, it can be further improved. The European Court of Auditors (ECA) Special Report 01/20 identified delays as a key factor in undermining the Directive. Indeed, persistent delays with the adoption and revision of implementing regulations continue to slow down progress to achieve further energy efficiency savings. Moreover, market surveillance remains a key area to be improved. Expanding the Ecodesign Directive to include non-ErP products may further exacerbate these issues.

European home appliance manufacturers are increasingly subject to a conflicting regulatory landscape. Over the past few years, the European Commission has proposed more and more burdensome regulations, often establishing double or cascading ecodesign requirements on a single product category. Policies set at horizontal level pose the risk of setting double regulation at product level. Such double



legislation impedes the ability of industry players to innovate while increasing the cost of products without creating additional environmental benefit. It also makes measurement, verification and enforcement more complex which can lead to an unlevel playing field.

We would like to open a constructive dialogue to elaborate the most efficient way forward, taking into account the importance of addressing sustainability criteria while strengthening rather than putting at risk the success of the Ecodesign framework. Given the Commission's indicative timeline to adopt the legislative proposal in Q4 2021, we would appreciate opening such dialogue at the earliest opportunity.

## 2. Risks on opening the Ecodesign Directive

As a sector, we would like to outline the main risks and concerns we see with the opening of the Ecodesign Directive.

### 2.1. Legal basis

A key enabler for the success of the current ecodesign legislation is due to its legal basis which ensured the applicability of the Directive and its implementing measures equally and identically on the EU market. The Directive is part of article 34-36 of the TFEU - Free movement of goods in the Internal Market.

**We recommend not changing the current legal structure to ensure an effective EU Single Market.**

### 2.2. Scope - Article 1(1)

The Ecodesign Directive has a very specific scope which covers only energy-related products. This means that each article of the Directive is written in function and specifically for those products. In short, the Directive is tailored for energy-related products.

It goes without saying that widening the scope to a huge variety of different products (and potentially services) that do not have a direct link to each other in terms of life cycle, availability on the market, distribution channels, conformity declaration and others, will result in a very complex and probably inefficient legislative instrument. Creating a much broader and more complex legal text could jeopardise the end-objectives and implementation of the legislative requirements.

**This is why we recommend establishing a separate legislative tool under the SPI for non-energy related products. We also believe that to increase circularity a horizontal regulation that covers all stages - supply chain, user phase and end of life - should be established - See proposal in paragraph 3.**

### 2.3 Link with other legislation - Article 1(4)

The Ecodesign legislation clearly outlines that adopted implementing measures shall be without prejudice to European Waste management legislation and European Chemicals legislation, including European legislation on fluorinated gases. There is an appropriate and complete EU Framework Regulation put in place to effectively analyse and manage chemicals, as well as chemicals in articles and complex products, including REACH Regulation (EC) No 1907/2006, RoHS II Directive 2011/65/EU, and the POP Regulation



(EU) 2019/1021. These existing rules should remain the primary set of legislation and have the leading role in risk-assessing and managing chemicals in materials, articles, and in complex products.

**Although we believe that to increase circularity all the relevant phases should be addressed - supply chain, user phase and end of life - we believe that Ecodesign rules should refrain from setting chemical requirements to products' components, since an inappropriate overlap with the current chemical-related framework of legislations is unavoidable. This latter situation would thereby create more complexity on the existing set of rules, consequently adversely impacting manufacturers of home appliances and market surveillance authorities. It would also result in generating an atmosphere with a great lack of legal clarity and certainty when it comes to compliance, not only towards Ecodesign rules, but also to all of the mentioned-above pieces of legislation.**

The implementation of such a complex framework of (chemical) legislations may have been somewhat lengthy, but it is worth noticing that it is now a well-established structure, and stakeholders putting consumer products on the EU market, such as APPLiA member-companies, have been complying to it for so long as its debut.

#### 2.4 Conformity assessment (Article 8)

The Ecodesign is a CE marking legislation with a clearly defined conformity assessment procedure which allows manufacturers the choice between internal design control (Annex IV) and the management system (Annex V), making reference to the modules described in Annex II of Decision 768/2008/EC. For home appliances this implies Module A.

The CE marking ensures the principle of presumption of conformity. This is based on the concept of harmonised standards the reference numbers of which shall be published in the official journal of the European Union.

This principle of legal acts setting minimum requirements in combination with harmonised standards setting the measurement methods for determining and verifying the declared values by manufacturers in combination with post-market verification is not only APPLiA preferred way of working, but has also demonstrated that it works. It only requires sufficient resources for targeted action of market surveillance authorities in the Member States.

Revising the Ecodesign would entail the risk that the whole conformity assessment procedure is questioned. A well-functioning system could change this drastically, leaving the door open to more complex and less effective alternatives (e.g. pre-market third party verification, bypassing or shortening standardisation procedures, etc.).

**APPLiA recommends keeping the current structure and preserving the module A (self-declaration) approach.**

#### 2.5 The principle of implementing acts for setting product specific requirements (Article 15)

The Ecodesign Directive foresees the use of implementing measures to involve member states in setting product specific requirements. Although it might entail certain risks, APPLiA strongly believes that this legislative procedure is the most appropriate one. The legal base of implementing measures ensure the



full involvement of all parties and a good discussion between experts at national level and Commission officials.

**If the Ecodesign Directive is reviewed this procedure of implementing measures should be maintained.**

#### 2.6 Criteria for setting implementing measures (Article 15)

Article 15 specifies the criteria for the eligibility of products to be covered by implementing measures (units on the market, environmental impact etc.), but also which approach to use to set the requirements (impact assessment, LCA, stakeholder consultation etc.), including clear safeguard clauses (no negative impact on the functionality of the product, health and safety should not be negatively affected, etc.).

**If the ecodesign is revised, these criteria will be rediscussed reopening long debates. This could endanger the thin compromise that was the result of many complex and political discussions.**

#### 2.7 Working Plan (Article 16) & Consultation Forum (Article 18)

The way of working for the development of implementing measures as described in these articles has demonstrated to be a feasible and productive way involving all stakeholders and Member States, with scrutiny of the EU Parliament.

The Working Plan is one of these procedures in which an open and transparent process allows to identify the priority list of products. This process works well if it focuses on ErP as for these products, the highest impact is due to the use phase. For non-ErP this system might not fully work. This is why we would propose to keep the current procedure for ErP and develop a parallel legal framework for non-ErP.

The Consultation Forum is another of these procedures that has proven to be very effective in driving political and technical discussions on specific product issues. The strength of this Forum is the inclusion of all relevant national and stakeholder experts who have the right knowledge and expertise to discuss draft legal proposals.

**We fear that reopening the Directive would endanger both these procedures.**

#### 2.8 Least Life Cycle Cost (LLCC) (Annexes)

The implementing measures establish that the level of energy efficiency or consumption must be set aiming at the life cycle cost minimum to end-users, taking into account the consequences on other environmental aspects. The reason is that the implementation of the requirements in the design of the products must ultimately be beneficial to consumers and other end users.

**The respect of this principle ensures that consumers, instead of paying for the introduction of more expensive design options, obtain a net benefit from the use of the product.**

#### 2.9 Ecodesign parameters for products (Annex I)

Annex I clearly shows how the circular economy topics are well included in the Ecodesign.



In this Annex, the Directive defines parameters that cover the entire lifecycle of products and all relevant environmental aspects which are also the core of the SPI.

**Therefore, the legal text of the Ecodesign Directive as it stands today already allows for the inclusion of the ambitious environmental and climate goals of the Green Deal and the Circular Economy Action Plan.**

### **3. Conclusion and APPLiA proposal on the future of product policy**

Based on these arguments we conclude that opening up the Ecodesign legislation for revision is not the most appropriate way for meeting the objectives outlined for the SPI, especially for home appliance products.

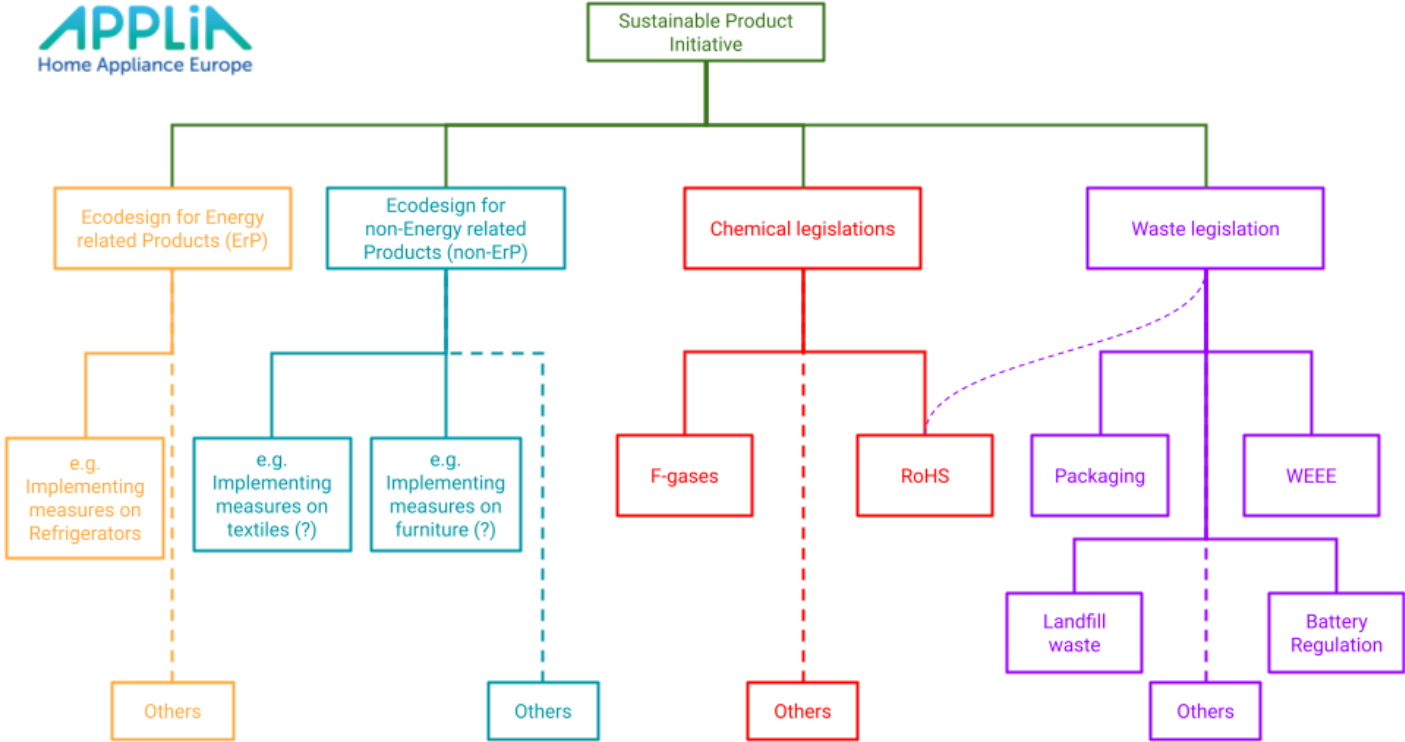
APPLiA understands the EU Commission's intention to broaden the scope and use the experience gained with Ecodesign also for other products. However, we are of the opinion that for other product categories such as textiles, furniture, intermediate products, etc. the EU Commission should use the Ecodesign for ErPs as a **blueprint** and adapt it to the specificities of the new product categories, leaving the Ecodesign for ErPs working well as it is today, and has for many years in the past.

We also understand that the EU Commission intends to create an overarching legal framework to reflect the intentions of the EU Green Deal and the Circular Economy Action Plan as described in the SPI. We are of the opinion that such a general framework can be created, in line with the Commission's sustainability principles, whilst leaving the Ecodesign for ErPs untouched. Furthermore, we believe that such an overarching framework could also encompass other pieces of legislation such as the Waste Framework Directive, WEEE, RoHS, etc. Policy objectives, policy choices and incentives across all policy areas need to be both clear and consistently implemented, including potentially inevitable trade-offs, to create the market for sustainable circular business models and opportunities from a product lifecycle perspective.

**To meet the Commission objectives and the target set by the Green Deal, APPLiA would like to propose an alternative structure for the future of product policy.**

In our proposal, set below, we would recommend establishing a horizontal framework which sets horizontal sustainable principles. Under the umbrella of this framework fall all the legislation that covers the supply chain, the use phase and the end of life. The structure also reflects the need to avoid double regulation as each framework has its own clear scope. The overarching sustainable principles should then not endanger this approach and avoid setting requirements that are either in contradiction or are overlapping with requirements set in the vertical legislations.

We have visualised our concept in the graph below.



We remain open to further discuss this proposal and the arguments set above with the European Commission and all the interested parties to ensure a stronger and effective EU product policy.

APPLiA - Home Appliance Europe represents home appliance manufacturers from across Europe. By promoting innovative, sustainable policies and solutions for EU homes, APPLiA has helped build the sector into an economic powerhouse, with an annual turnover of EUR 50 billion, investing over EUR 1.4 billion in R&D activities and creating nearly 1 million jobs.

