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JBCE's views regarding the new product priorities under the Ecodesign for Sustainable Products Regulation (ESPR)

Being a cross-sector association with member companies operating in different industries and across various stages in the supply chain, JBCE welcomes the opportunity to contribute to the public consultation on the new product priorities under the Ecodesign for Sustainable Products Regulation (ESPR). We would like to emphasise that the requirements for achieving sustainability should be effective and workable. In pursuit of this, we would like to share further detail our views and provide our insights on the new product priorities under the ESPR proposal below.

1. Introduction

➤ Implement a product-group-specific approach

JBCE welcomes the fact that the Commission will introduce product-group-specific requirements via secondary legislation. Assessing requirements based on a product group specific approach is needed to understand the relevant and feasible requirements for each product group. The process of formulating the relevant secondary legislation should be transparent and all stakeholders, including the industry, should have the opportunity to participate in the discussions in the drafting-phase of the secondary legislation and enough feedback opportunities should be provided. Product-specific impact assessment should be concluded before introducing any new measures.

➤ Guarantee proportionality among requirements

JBCE would like to stress that a balance is needed between ambitious requirements and implementation costs. Manufacturers deal with legal requirements proposed under the EU Green Deal policy. Hence, JBCE urges the Commission to take a step-by-step approach, starting with minimum requirements, and introducing a review process to assess the effectiveness of the measures before setting additional requirements.

Also, requirements should be relevant and imposing measures without assurance that these requirements would be proportionate to the benefits reaped should be avoided.

➤ **Ensure alignment with existing legislations**

JBCE supports the Commission's general principle that ESPR will only intervene when the environmental sustainability of products, which are also subject to separate product-specific legislation, cannot be fully and appropriately addressed by other instruments. Requirements that duplicate or conflict with other legislations such as REACH (Registration, Evaluation, Authorization, and Restriction of Chemicals), CLP (Classification, Labelling, and Packaging) and RoHS should be avoided.

➤ **Avoid single-market fragmentation**

JBCE appreciates and supports the fact that the Commission will replace the Ecodesign Directive with an ESPR Regulation. As described in Table 25 "National level initiatives" in Annex 8 of the Commission working document, the business supplier's burden is increasing since Member States are individually introducing environmental regulations. Harmonised rules should be introduced at EU level to avoid fragmentation of the Union's internal market.

2. Details in new product priorities

2-1. Horizontal measures identified for potential first action under the ESPR

To ensure adequate regulations for product sustainability, we believe it is necessary to evaluate each product category on a vertical basis, rather than by implementing horizontal measures. Horizontal measures for durability, recyclability, or recycled content may hinder product innovation, therefore a careful balance between these aspects is necessary. Environmental requirements differ amongst products and a horizontal approach may not be effective to reduce environmental issues effectively.

2-2. Durability

Horizontal measures are not appropriate, and obligations should be assessed and introduced through a product-specific approach. For instance, even though some requirements related to the availability or delivery time of spare parts are already in force and are more or less aligned between several implementing acts adopted under the current Ecodesign directive, it is important to highlight that those requirements were assessed on a product-by-product basis and introduced via vertical regulations, and we believe that this way of working should be kept as it allows for a full consideration of the products' specificities. Moreover, we also support the introduction of an EU repairability index/label based on robust, knowledge-based and verifiable criteria and that would also put an end to the proliferation of national initiatives that represent a barrier to the Single Market.

However, focusing too much on durability requirements may hinder innovation in product development, therefore, a careful balance of the requirements is necessary. Safety concerns should also be taken into account for repairability requirements. For example, if the repair were to be done by a person who does not have sufficient skill or if parts were to be replaced with non-compatible parts, this could lead to safety risks like fire, smoke, electric shock, etc. and may eventually shorten the product's lifetime. Also, manufacturers would not be able to take responsibility for such troubles or may not be able to fix the problem caused by such a repair/replacement which was not intended by manufacturers. It is important to determine durability requirements for each product category, rather than imposing uniform standards across all categories. For materials, durability is developed in consideration of the final product's conditions and environment, and uniform standards could increase the risk of a higher environmental impact.

2-3. Recyclability

We believe that chemical restrictions should be under chemical laws such as RoHS and REACH. If restrictions are introduced under the ESPR for recyclability, only those substances that hinder recycling should be restricted, and specific obligations and thresholds should be considered for each product. It is difficult to disassemble and recycle products composed of complex articles in the same way as simple products, so it is not possible to impose requirements horizontally. Additionally, information on end-of-life products is already provided under the WEEE Directive and the SCIP database, and double regulation should be avoided.

For this reason, we recommend considering the differences of each product category when setting recycling obligations and thresholds. For example, to establish a system that can disassemble complex products, separate them by material, and recycle them. Regulations must be considered for each product category to ensure recycling requirements are achievable and practical. While it may be difficult to compare products with different requirements, methods should be developed to assess recyclability to ensure that they are environmentally sustainable.

2-4. Post-Consumer recycled content

The use of post-consumer recycled content (PCR) should be considered on a product-by-product basis as availability and supply stability of different materials vary greatly per product category. Horizontal regulations for PCR content may hinder optimal recycling for each product and application. Excessive use of recycled materials could affect production due to procurement difficulties. We should aim to reduce environmental impact for each product

group rather than for the category of intermediate materials. The choice of materials and restrictions on substances should not create conflicts between existing and upcoming requirements. However, there are opportunities to support sustainable content through ESPR by incentivizing the use of recovered or renewable (bio-based) materials in addition to recycled materials. Promoting resource efficiency by using less virgin material would be constructive.

2-5. End-use products

End-use products include both commercial B2B and consumer use. However, we are aware that this questionnaire defines consumer products as end-use.

Regarding tires, as explained in the JRC report, a recycling system has already been put in place, and tires should be prioritized as new eco-design targets. If it is used as part of a product, such as in lubricants, paints, or varnishes, we propose that it be treated as an intermediate material, separated from products that consumers use directly. In addition, technical textiles and technical ceramics are also used as part of the product, so they do not become the final product. This is because it is appropriate for parts and materials to meet eco-design requirements as part of the final product in which they are used. In cases where a particular sector or product may already have vertical legislation, this vertical legislation should take precedence over the ESPR.

We would like to propose addressing requirements at the individual article level accordingly. For example, regulatory incentives can support sustainability in the tire industry, which is already regulated for many aspects of Extended Producer Responsibility. Re-treading, a sustainable remanufacturing solution for truck and bus tires (C3), involves replacing the old tread with a new one, resulting in significant resource savings. Supporting more sustainable content through ESPR measures, including recovered and bio-based materials, can enhance resource efficiency and incentivize the use of less virgin material. Paints used with vehicles are too different from paints applied to buildings, thus they would require individual requirements. On the other hand, paints used for farm machinery and construction equipment require special long-term performance, which are “durability”, “stain resistance”, water proof” and “weather resistance”. However, it will also be important in the secondary legislation to keep manageable recycling related aspects and presence of substances of concern in order not to make the use of recycled material a burden for end-use products.

2-6. Intermediate products

We do not agree with the proposed restriction of intermediate materials by the ESPR. The focus of this regulation should be to prioritize the final products directly used by consumers, rather than intermediate materials.

Regarding chemical substances, the REACH and CLP regulations already exist. Double regulation should be avoided. Under REACH, over 25,000 individual chemical substances with significant variations in properties and applications have been registered. Evaluating all chemicals based on the same set of criteria will not result in more sustainable chemicals. Additionally, reagents and reference substances for analysis should be exempted; otherwise, hazardous chemicals cannot be analysed or detected.

There are numerous plastics and polymers used in a wide range of applications. Therefore, it is necessary to be as specific as possible with plastics and polymers, such as designating them by HS codes, as proposed for plastics under CBAM. Otherwise, it will cause confusion throughout the entire value chain and hinder implementation.

Recycling of intermediate products is often difficult because they chemically react and cannot be converted to their original form. This raises doubts about the feasibility and practicality of regulating intermediate products. Furthermore, since intermediate products are only used within the industry and not by end-users, we question the benefit of regulating them under ESPR.

Recycling methods and difficulties vary depending on the composition and application. For example, in the case of copper, it ranges from copper ingots (raw materials) being processed into machine parts to copper components directly incorporated into final products or devices. It depends on factors such as whether it is pure copper or a specific alloy, in what form, and how it is incorporated into the final product. In the case of aluminium, if the purity decreases due to contamination during the process, the purity of recycled aluminium cannot be restored. Therefore, it is necessary to perform closed-loop recycling within the same product group (e.g., can-to-can, sash-to-sash, plate-to-plate). Glass also has various manufacturing methods and recycling performance, so it cannot be generalized.

The criteria for recyclability should not be based solely on mechanical recycling. Especially when recycled materials such as plastics and polymers are intended for sensitive applications involving contact with food or drinking water, chemical recycling or solvent-based recycling methods are necessary. Considering safety and sustainability, the most appropriate

recycling method needs to be determined.

Efforts should be made from the perspective of resource circulation. It is more effective to prioritize the establishment of recycling systems and infrastructure for the distribution of recycled materials. The proposed battery regulation sets goals for the use of recycled materials and recycling rates for each metal, but it would be better to regulate on an application-specific basis. Additionally, when intermediate materials are incorporated into complex moulded products, recycling should be phased in to enable it. Having a system or scheme for proper collection and disassembly will be beneficial.

3. Conclusion

JBCE supports the overall aim of the Ecodesign for Sustainable Products Regulation as it contributes to a sustainable design covering the entire products' lifecycle and thus helps achieve a circular economy. However, JBCE would like to emphasize that the requirements for manufacturing a sustainable product should be effective and workable. For this reason, we would like to once more emphasize the need for a product-by-product approach.

Indeed, imposing horizontal requirements across sectors and products with different characteristics and requirements does not necessarily lead to improved safety, durability and recyclability. On the contrary, there is also the possibility that the environmental load will increase. Also, we firmly believe that requirements on final product should be limited to direct consumer use, and should not include B2B products. Products that are incorporated as parts or functionalities should be managed via the final product. Each sector and product already have vertical laws applying to them, and these vertical laws should take precedence over the ESPR. Intermediate products are not sold directly to consumers, so they should be excluded from the scope. In addition, many of the intermediate products are reactive and may not return to their original state.

We look forward to continuing this open dialogue with stakeholders from all sectors and products and we would very much welcome further guidance and seminars to deepen the understanding of this legislation for the industry.

About JBCE

Created in 1999, the Japan Business Council in Europe (JBCE) is a leading European organisation representing the interests of close to 100 multinational companies of Japanese parentage active in Europe.

Our members operate across a wide range of sectors, including information and communication technology, electronics, chemicals, automotive, machinery, wholesale trade, precision instruments, pharmaceuticals, steel, textiles and glass products.

Building a new era of cooperation between the European Union (EU) and Japan is the core of our activities, which we perform under several committees focusing on Corporate Social Responsibility, Digital Innovation, Environment & Energy, Standards and Conformity and Trade.

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