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From:	Presidency
To:	Permanent Representatives Committee/Council
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Subject:	Proposal for a Regulation of the European Parliament and of the Council establishing a framework for setting ecodesign requirements for sustainable products and repealing Directive 2009/125/EC - Progress report

Delegations will find attached the progress report on the Proposal for a Regulation of the European Parliament and the Council on Ecodesign for sustainable products, with a view to the meeting of the Competitiveness Council on 1 December 2022.

I. INTRODUCTION

1. On 30 March 2022, the Commission submitted the proposal for a Regulation of the European Parliament and the Council on ecodesign of sustainable products¹. The legal basis of the proposal is Article 114 of the Treaty on the Functioning of the European Union (TFEU).
2. The proposal updates, modernises and extends the framework for the ecodesign of sustainable products, while repealing the legislative framework in place (the Ecodesign Directive²). It stems from the Commission's Circular Economy Action Plan of 2020³ and is meant to play an important role in helping to fulfil the goals set by the European Green Deal⁴.
3. Specifically, the proposal is supposed to create a horizontal framework for setting ecodesign requirements based on environmental sustainability and circularity aspects. With this, the aims of the proposal are twofold – to promote the better functioning of the Single Market and at the same time to improve the environmental sustainability of products. To serve these objectives, the proposal extends the product scope, introduces, among others, new ecodesign requirements, establishes the Digital Product Passport (DPP), provides for the setting of mandatory green public procurement criteria, and creates a framework to prevent unsold consumer products from being destroyed.
4. The European Economic and Social Committee provided its opinion on the proposal on 13 July 2022.⁵

¹ Proposal for a Regulation of the European Parliament and of the Council establishing a framework for setting ecodesign requirements for sustainable products and repealing Directive 2009/125/EC, doc. ST 7854/22 + ADD 1.

² Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (recast), OJ L 285, 31.10.2009, p. 10–35.

³ doc. 6766/20 + ADD 1

⁴ doc. 15051/19 + ADD 1

⁵ doc. NAT/851-EESC-2022

5. In the European Parliament, the Committee on the Environment, Public Health and Food Safety (ENVI) has not yet voted on its report, neither have the Committees on the Internal Market and Consumers Protection (IMCO) and on the Industry, Research and Energy (ITRE) on their respective opinions.

II. WORK CONDUCTED IN THE COUNCIL PREPARATORY BODIES

6. The Czech Presidency started the examination of the proposal in the Working Party on Competitiveness and Growth (Internal Market) on 4 July 2022 when the Commission introduced the proposal to delegations.
7. The impact assessment accompanying the proposal was examined in detail during the Working Party meetings on 14 July and 9 September 2022. During the examination, the Commission provided, among others, a thorough explanation of the considered policy options and the preferred option.
8. Following the discussions on the impact assessment, to better structure the work, the Czech Presidency asked delegations for their initial written comments and questions which a large number of Member States provided. This feedback helped the Czech Presidency and the Commission in preparation of the Working Party meetings to make them more focused and tailored to the Member States' concerns.
9. In the following eight meetings held up to 1 December 2022 under the Czech Presidency, the Working Party concentrated its discussions on the text of the proposal where all the articles were examined, mostly by batches, grouped by topical proximity, together with the related recitals and annexes.

10. For each group, a majority of delegations have responded to four individual calls of the Czech Presidency to provide written comments on the provisions of the proposal, following their examination at the Working Party. Having received written comments on the whole proposal, the Czech Presidency has been able to start preparing possible common positions on the proposals for amendment received.
11. Apart from the discussion at the Working Party on Competitiveness and Growth (Internal Market), the Working Party on Competitiveness and Growth (High Level) shared its views on the proposal during its meeting on 9 September 2022. The High Level Group generally supported the proposed regulation and particularly the new DPP, yet at the same time pointed out the need to ensure coherence with other Union legislation and mentioned potential impact of the proposal on competitiveness of EU businesses, especially SMEs, challenges for market surveillance authorities, or concerns about the high number of envisaged delegated acts.

III. WORK CONDUCTED AT THE COUNCIL

12. Besides the examination in the Working Party and the discussion in the High Level group, the proposal has been addressed by the Council in its Environment and Competitiveness (Internal Market, Industry) formations. The proposal was initially presented by the Commission in the Environment Council under French Presidency on 28 June 2022 where a few Member States requested an involvement of the Environment Council in order to properly address environmental aspects of the proposal.

13. The Competitiveness Council held a policy debate on the proposal at its meeting on 29 September 2022, focusing on questions related to the Single Market and the free movement of sustainable products, competitiveness of the European industry, as well as on the process of adopting product-specific requirements. Ministers generally supported the proposal and emphasised its potential to contribute to realising the green and digital transition of the EU (e.g. by ensuring resource efficiency). Some ministers stressed the importance of certain aspects of the proposal such as the DPP, together with the need to maintain the competitiveness of European businesses and the level playing field towards products imported from third countries. Ministers broadly demanded sufficient involvement of Member States in the preparation of subsequent legal acts stipulating ecodesign requirements.
14. In order to complement the discussion at the Competitiveness Council and as a follow-up to the meeting on 28 June 2022, the Environment Council held a policy debate on the proposal at its meeting on 24 October 2022, focusing on the possible contribution of the proposal to the green transition and on the role of providing information on products' aspects in this context. Ministers welcomed the proposal in the framework of enhancing circular economy in the EU. Many ministers stressed the need to provide understandable and reliable information via the DPP and to ensure coherence with other Union legislation. Some ministers highlighted the importance of the provision on the ban on destruction of unsold consumer products or presented their concerns about the use of delegated acts.
15. The policy debates at both the Competitiveness and the Environment Council meetings provided political guidance for the future work of the Competitiveness Council preparatory bodies on the proposal.

IV. MAIN ISSUES

16. Based on the discussions held at Working Party level and on the written comments received, the Czech Presidency has identified a general and broad support among Member States for the proposal's overall aim and objectives. Member States have substantially contributed to a time-intensive and constructive debate during the first article-by-article examination of the text. In this context, the following sensitive issues have been identified so far:

a) Legal basis and scope

The scope of the proposal is, compared to the existing framework of the Ecodesign Directive, broadly extended. A majority of delegations welcome it, although the matter of sufficiency of the legal basis poses an issue for certain Member States. Given that certain provisions in the proposal tackle more than just harmonisation of measures, these Member States question appropriateness of the sole legal basis of the proposal in Article 114 of TFEU on the Internal Market, not including also Article 192 of TFEU on Environment.

b) Subsequent legal acts, adequate involvement of Member States and self-regulation measures

The proposed regulation envisages setting the product-specific codesign requirements and providing details with relation to some other articles of the proposal in subsequent legal acts. Many Member States question a wide use of delegated acts in this context and would prefer using implementing acts to a various extend instead. On the use of delegated acts, the Working Party heard an opinion of the Council Legal Service. Moreover, a large number of Member States argue that they should be sufficiently involved in the process of preparation of the subsequent legal acts, including through adequate participation in the Ecodesign forum. In certain areas some Member States suggest that the empowerment to adopt subsequent legal acts be specified more in detail in the proposal.

Furthermore, several Member States expressed doubts about using self-regulation measures as an alternative to subsequent legal acts, based on the experience with such measures under the current Ecodesign Directive.

c) Coherence with the existing and currently negotiated legislation

While there is a broad support for a new horizontal regulation focused on the sustainability aspects of products, the vast majority of Member States emphasise the necessity of ensuring a coherence of the proposal with the existing or currently negotiated EU legislation. Delegations namely stress that provisions on substances of concern should be in coherence with REACH⁶ and other chemical legislation, provisions on labels in line with the Energy Labelling Directive⁷, provisions on the DPP in conformity with the currently negotiated Batteries Regulation, provisions on unsold consumer products in line with the Waste Framework Directive⁸, provisions on conformity of products adhering to the New Legislative Framework and in compliance, among others, with the Construction Products Regulation⁹ and its currently negotiated revision, and provisions on market surveillance adhering to the Market Surveillance Regulation¹⁰.

As regards the provision on online marketplaces, the views of Member States significantly differ. Some Member States would like to see the provision aligned with the recently adopted Digital Services Act and the currently negotiated General Product Safety Regulation, or deleted altogether. Other Member States would like to see more stringent obligations for the providers of online marketplaces.

⁶ OJ L 396, 30.12.2006, p. 1–849

⁷ OJ L 198, 28.7.2017, p. 1–23

⁸ OJ L 312, 22.11.2008, p. 3–30

⁹ OJ L 88, 4.4.2011, p. 5–43

¹⁰ OJ L 169, 25.6.2019, p. 1–44

d) *Destruction of unsold consumer products*

One of the newly introduced elements of the proposal is a provision on handling unsold consumer products. This includes a reporting obligation and a possibility to prohibit economic operators to destroy such products, which should in principle not apply to SMEs. Member States vary in their level of ambition on the matter of how far-reaching this provision should be. A number of delegations would like to set more ambitious rules, with no exceptions, namely for SMEs. Other Member States, on the other hand, prefer the provision being minimalist. Moreover, some Member States have concerns about the impact on their national measures on waste management. Delegations also ask whether Article 114 of TFEU is a sufficient legal basis for this provision.

e) *The DPP and labels*

The newly proposed DPP is regarded by most Member States as a welcomed tool which will provide consumers with information to make sustainable choices, will facilitate provision of information within the value chains, and will help market surveillance and customs authorities with exercising their tasks. However, apart from various questions on the actual functioning of the DPP, several delegations raise their concerns about confidentiality of information stored in the DPP. Member States also comment on the placement of the data carrier on the product or its packaging.

Concerning the provision on labels, a number of Member States insist on the need for coherence with the existing labelling obligations in order to avoid duplicities and confusion for the consumers. Moreover, concerning the provision against mimicking the labels, a group of Member States asks for their already established national labels to stay in place after this proposed regulation comes into force.

f) Additional burden for businesses and national authorities

Several parts of the proposal create new obligations for both businesses and Member States. Consequently, delegations voice concerns over possible difficulties especially for SMEs and national market surveillance or customs authorities in complying with the new obligations.

In this context, several Member States also raise the issue of the entry into force of the proposed regulation, arguing for a sufficient transitional period for both national authorities and businesses. This concerns sufficient transitional period for the proposed regulation and for the subsequent legal acts.

V. CONCLUSION

17. During the Czech Presidency, there has been a considerable progress at the Working Party level with the first examination of the proposal, providing inputs for the first possible revised text. However, taking into account the complexity of the proposal, further work at the Working Party level is still needed.
18. The Czech Presidency considers this report to be a balanced summary of the main issues identified during the examination of the proposal and a fair contribution to shaping the way forward.
19. The Competitiveness Council is invited to take note of the present Presidency progress report.
