

Product priorities for Ecodesign for Sustainable Products Regulation (ESPR) – Eurometaux’s input to the public consultation

Introduction

The European Commission’s legislative proposal on Ecodesign for Sustainable Products Regulation (ESPR) aims to make products sold in the EU subject to performance and information-related requirements, to ensure greater sustainability. As the scope of the new Regulation will cover products put on the EU single market, including final and intermediate ones, the EU product policy framework must become integral to improving product design, manufacturing, use and end-of-life treatment.

The European non-ferrous metals industry, represented by Eurometaux, delivers primary and secondary raw materials for the green and digital transitions. Metals are present in various products, including those listed in the 2020 Circular Economy Action Plan (CEAP) as key value chains namely, electronics and ICT, batteries and vehicles, packaging, textiles, construction and buildings.

This paper is our response to the Open Public Consultation that consists of the ‘Call for evidence’ paper and the ‘Questionnaire’ on the new product priorities under the ESPR.

Key asks

- **Substances of Concern (SoC)** – The ESPR should avoid overlap with EU chemical legislation. It should not restrict the presence of substances in products for reasons relating to chemical safety and hazard, without exposure and risk considerations. The SoC definition should be coherent with approaches proposed under different legislations and initiatives to protect consumers, e.g. CSS, and should not inhibit recycling.
- **Recycled content** – This measure should be applied to materials for which the uptake from secondary sources is not mature yet. It should be accompanied by an adequate policy framework to boost collection and sorting of metals-containing products and guaranteeing high-quality recycling, ensuring that enough recycled material is available in Europe.
- **Life cycle assessment** – The use of life cycle assessment to evaluate the environmental performance of products is key. The end-of-life recycling benefits of metals, their permanent properties and performance during their service lifetime must be properly taken into account.
- **Product design rules** – The ESPR should bring improvements where needed across different product groups and where specific product-rules are not established or when they don’t sufficiently address the sustainability aspects.
- **Coherent EU policy framework** – The EU’s product policy should integrate the different dimensions of sustainability across the full product life cycle, taking advantage of on-going and future legislative processes revising existing or setting new EU rules (e.g. CS3D, REACH, CPR, ELV, PPWD, Critical Raw Materials Act)¹.



Substances of Concern (SoC)

Published in 2020, the 'Chemicals Strategy for Sustainability (CSS) – Towards the Toxic-Free Environment' aims to better protect citizens from the harmful chemicals and boost innovation by promoting the use of safer and more sustainable chemicals. It sets concrete actions to minimise the use of SoC including requirements under the ESPR.

The legislative proposal of the Ecodesign for Sustainable Products Regulation goes further than CSS in defining the Substances of Concern by creating a blanket approach on substances that have a classifiable hazard of some type. This broad definition means that the vast majority of non-ferrous metals / metal compounds, including those necessary in applications needed for the Green Deal's twin transition e.g. in batteries, wind turbines, solar PV systems, electronics, would qualify as SoC, as they have classifiable hazard of some type.

However, even if most of those substances have intrinsic hazardous properties, it is possible to manufacture, use them in products and recycle them without posing an unacceptable risk to human health or the environment. An example is a battery that is a sealed unit, designed to prevent substances from being released during proper use. Manufacturing and recycling operations are then conducted by permitted facilities operating under controlled conditions under EU and national legislation to ensure workers and environmental protection.

Many of non-ferrous metals that would be covered under the proposed SoCs definition have also high circularity potential and are prioritised under other EU policies for safe recycling, e.g. Battery Regulation, to improve Europe's resilience and strategic autonomy in key battery raw materials. Recycling rates for many of them are already high compared to most other materials, offering a sustainable source for secondary material to lower import dependency.

A purely hazard-driven framework under the ESPR regime would not be appropriate and will have significant negative impacts on metals recycling and diminish the EU capacity to recycle complex materials as well as to supply strategic metals using its own sources. Also, production and recycling of many valuable and critical metals is dependent on the production and use of carrier metals (e.g. lead in precious metals recycling) several of which would fall under SoC definition.

We recommend that the SoC definition under ESPR should be workable to ensure consistency with approaches proposed under different legislations and initiatives to protect consumers, e.g. CSS, and should not inhibit recycling.

Our asks:

- Avoid overlaps with EU chemical legislation. The ESPR should not restrict the presence of substances in products needed for achieving the EU strategic autonomy and sustainable innovations for reasons relating to chemical safety or their hazard classification only, without exposure and risk consideration.
- Ensure the consistency of SoC definition under ESPR with approaches taken under different legislations and initiatives to protect consumers, e.g. CSS and not to inhibit recycling.
- Improve the Substances of Concern definition at least by requiring that a substance will have to meet the three prescribed criteria in a given sequence: (a) meet requirements of Art. 57 REACH or (b) be classified in Annex VI CLP



and (c) demonstrate that it negatively affects the re-use and recycling of materials in the product in which it is present, based on available state-of-the-art recycling technologies.

- Focus on substances with the most harmful properties for human health or environment that may cause significant chronic effects due to high exposure/releases from consumer products.
- Introduce overall exemptions from any minimisation or substitution requirements of SoC where they do not cause harmful exposure to human health or the environment (e.g., metals in an alloy matrix¹). This would allow continued use of safe and sustainable materials.

Recycled content

Non-ferrous metal scrap is an input to metals production that is in high demand and all available material will be used due to its high value and ease of recycling. Availability of recycled metal scrap is a competitive issue influenced by global trade.

Non-ferrous metals already achieve high recycling efficiency but the demand is growing as confirmed in the study by KU Leuven 'Metals for the clean energy applications – Pathways to solving Europe's Raw Materials Challenge'². Metals can be recycled endlessly without losing their properties or market value. Therefore, a **well-established market for secondary metals already exists in Europe**. This is often not the case for other types of materials that could benefit from the application of the recycled content measure.

Primary and secondary metal production is complementary. Hence, introduction of post-consumer recycled content requirements, as suggested by the JRC Report underpinning the on-going consultation, **would not be appropriate for non-ferrous metals**, as the primary and secondary metals have identical quality and price, and they are often mixed together in and passing the same steps of metallurgical processes, due to technical reasons, before reaching the market.

High targets for recycled content may also result in shortening the product life cycle. If a product has the potential for a second life but the policy demands a high recycled content percentage, the product could be more easily directed to the waste route instead of having life cycle extension which would go against e.g. the EU objective of promoting the re-use of products. In addition, **redirecting metal scrap to fulfil recycling content obligations in specific applications may lower it elsewhere**.

Furthermore, recycling over certain limits also brings trade-offs. If the industry is asked to increase recycled content of a metal with high recycling efficiency, the more cleaning and further treatment steps are necessary for processing inputs of different composition for high-quality yields. This requires higher energy consumption and CO₂ emissions.

¹ Such exemption exists in the Commission Decision (2014/955/EU) for pure non-contaminated metal alloys in massive form.

² <https://www.eurometaux.eu/metals-clean-energy/> .



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In this context, the overarching aim of future legislation must be to **boost collection, maximise recycling efficiency of metals-containing products coming to their end-of-life**, guaranteeing high-quality recycling and ensuring that enough recycled material is available in Europe. Such a framework will automatically trigger favourable conditions for the development of secondary material use.

Our asks:

- Use recycled content mainly as a stimulus for those materials where secondary raw materials markets are not yet fully functioning.
- Focus on ensuring that metals-containing products are collected, sorted and recycled effectively using the best available techniques, at their end-of-life.

Life cycle assessment

The use of life cycle assessment to evaluate the environmental performance of products is a central tool to avoid making product choices based on single indicators or parts of the lifecycle. The policy has a role to play in driving improvement in the lifecycle performance of products, as long as the method can consistently account for the contribution of products throughout all lifecycle stages to improve products circularity, energy performance and other environmental sustainability aspects.

The end-of-life recycling benefits of metals, their permanent properties and performance during their service lifetime must be properly taken into account. In that respect, the Product Environmental Footprint (PEF) methodology, based on high-quality datasets, should be made complementary to existing life cycle assessment tools after essential developments and corrections to the methodology are made.

Our asks:

- Make the lifecycle assessment the basis of assessing product and material sustainability.
- Take into account the end-of-life recycling benefits of metals, their permanent properties and performance during their service lifetime.

Product design rules

The current Ecodesign Directive (2009/125/EC) covers energy-related products only. However, once it is replaced by the ESPR the new rules will apply to most products put on the EU market³. The number of products to deal with will grow

³ Exceptions will apply to food & feed, medicinal & veterinary products, living plants & microorganisms.



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immensely and the evaluation of product priorities and horizontal measures will be very work-intensive exercises for the years to come.

The EU legislation already features several product-specific regulations from the automotive, construction, packaging, or battery sectors⁴ that are of key importance for non-ferrous metals. For these products, as a general principle, the ESPR should only apply if and when the environmental sustainability dimensions cannot be fully and/or appropriately addressed via the existing, specific legislation.

Many metals products are intermediate products that require further processing by the downstream sector before they are used in the final applications (e.g. metal sheets will be used to make car bodies, cans, buildings facades or roofs, etc.).

Our ask:

- Product-specific legislation should always have the priority over horizontal/multi-product ones like the ESPR in line with the principle '*lex specialis derogat lex generalis*'.

Coherent EU policy framework

The EU's product policy should integrate different dimensions of sustainability across the full product life cycle, including various parameters such as resource and energy use, lifetime, recyclability, cost effectiveness, environmental impacts, economic and social impacts. All materials have different sustainability benefits and limitations across these different categories. For example, metals benefit from high durability and recyclability, but also have a high energy footprint when produced from primary raw materials but relatively low energy footprint, when produced from scrap. In addition, they must be sourced and produced with care for their potential environmental and social impacts. The use of substances in products needs to be regulated through a predictable and proportionate regulatory framework, not hindering long-term investments and maintaining metals production in the EU.

Our asks:

- Use the proposed EU's Critical Raw Materials Act as an important starting point towards enhancing EU metals supply chains, from mining to processing to recycling.
- Avoid overlaps and ensure coherence in the on-going and future reviews of EU policy to create coherent conditions on the responsible sourcing (e.g. due diligence, industry-led schemes), chemicals management (e.g. REACH, CLP, OSH), and waste legislation for collection & end-of-life recycling (e.g. Waste Framework, ELV, WEEE).
- Make sure that wide ESPR requirements are coordinated with product-specific regulations (e.g. batteries, construction products, WEEE, ELV), avoiding unnecessary administrative burden and regulatory uncertainty.

⁴ End-of-Life Vehicles Directive (ELVD), Construction Products Regulation (CPR), Packaging & Packaging Waste Directive (PPWD), Batteries Directive. (Note: all those acts are currently at different points of legislative processes: under revision or awaiting publication of new text in the EU Official Journal.)



ABOUT EUROMETAUX

Eurometaux is the decisive voice of non-ferrous metals producers and recyclers in Europe. With an annual turnover of €120bn, our members represent an essential industry for European society that businesses in almost every sector depend on. Together, we are leading Europe towards a more circular future through the endlessly recyclable potential of metals.

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ⁱ Acronyms used: CLP – Classification, Labelling & Packaging of Substances & Mixtures, CPR – Construction Products Regulation, CS3D – Corporate Social Due Diligence Directive, ELVD – End-of-Life Vehicles Directive, PPWD – Packaging & packaging Waste Directive, OSH – Occupational Health & Safety, REACH – Registration, Evaluation and Authorization of CHemicals Regulation.

