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Position paper on the proposal for a new Ecodesign for Sustainable Products Regulation

On 30 March 2022, the European Commission published a proposal for a new Ecodesign for Sustainable Products Regulation, laying out the foundation for the Commission's strategy to achieve a more sustainable and circular economy. The **European Power Tool Association (EPTA) and the European Garden Machinery Federation (EGMF) – representing Europe's power tool and garden machinery industries** - support the Commission in this push to improve the resource efficiency of the European economy, while levelling the playing field by harmonising European rules and creating new business opportunities this way.

A competitive level playing field and the free movement of goods in the internal market are the cornerstones of European prosperity and innovation.

1. The positives: what we support

We very truly welcome the approach by the Commission to **tackle product group by product group, taking into account their respective specific properties and needs**, to ensure proportionality and effective, targeted measures. This is particularly important to us as power tools and garden machinery products are utilised in use-cases that can vary wildly, such as being used by skilled tradesmen under rough conditions in their day job, by landscapers in large-scale undertakings or a few times per month at home by enthusiastic DIY-lovers or homeowners. For these reasons, power tool and garden machinery design need to pay particular attention to safety and flexibility.

Furthermore, we welcome the Commission's openness to integrate the input and specialised knowledge of external stakeholders into the ESPR. EPTA and EGMF member companies consider it central for the overall success of the Regulation that technology-neutral, fit-for-the-future standards are created for the performance requirements and their measurement, the information requirements and their comparability, as well as the Digital Product Passport (DPP) and the way data is stored, processed, and accessed. Our industries are willing to actively contribute to the work on these standards within the European and international standardization organizations.

EPTA and EGMF members strongly support setting out an ESPR standardization roadmap and developing state-of-the-art technical standards in the context of ESPR, to ensure technical feasibility, safety and maximum impact on sustainability.

2. The open questions: what we think needs to be clarified

The Digital Product Passport aims at making information on a product available to economic operators along the supply chain, as well as to the end customer, to enable them to make green and sustainable choices. We share this aim and recognize its contribution to a more circular economy. However, EGMF and EPTA are concerned that it might result in **Intellectual Property Rights (IPR) and trade secrets being endangered if not implemented carefully**. In the same vein, requiring manufacturers to make available information on the quantities of a product covered by delegated acts can breach competition rules, while the added value is unclear. Even basic information such as unique identifiers and dates might disclose confidential commercial data such as on sales, leading to a "see-through company".

The dynamic aspects of the DPP, requiring information to be up to date during the entire lifecycle of a product, pose a huge burden to manufacturers. Therefore, harmonised standards need to be put in place, to determine who can change which information and who is responsible for the compliance of a product and reliability of the information after a change in its product passport was conducted.

EGMF and EPTA advocate for excluding sensitive business data from the scope of the Digital Product Passport or at least for ensuring and enforcing effectively high standards of confidentiality and introducing a clear identity access management-system.

Information in the product passport should be presented at a level of granularity (item, batch, or model level) that is relevant for each stakeholder, with information that has little impact on the circularity of a product group being excluded. Some information is not applicable to all levels, e.g., reporting on conducted repairs is impossible above item level.

Access rights should be attributed on a need-to-know basis. Particularly, this applies to the rights of actors to introduce or update information in the DPP, as manufacturers cannot ensure compliance otherwise. To make sure data stays recent and secure, data management should be saved decentralized with a central EU-wide registry only referencing that data.

At the same time, we encourage keeping the administrative burden on manufacturers proportionate. We also encourage avoiding the doubling of information requirements between different Union legislations that could, for example, lead to the doubling of material information in the DPP, REACH (Art. 33) and SCIP without any benefit to the circularity of the economy.

The establishment of the DPP should also take account of the lessons learned from the implementation of the SCIP database. We urge to avoid short deadlines, to launch the test phase(s) in advance with a proper announcement and to provide sufficient time for the industry to evaluate and contribute with feedback. Furthermore, we call on policymakers to ensure transparency in the establishment work of the DPP and most importantly, to make sure that it is designed to tailor to the needs of the intended targets.

We would also like to note that, since the upcoming Regulation on Batteries and Waste Batteries will establish the first DPP for batteries, which will be outside the scope of the ESPR, the battery DPP and ESPR DPPs should be based on the same legal framework and methodology to facilitate their application.

The establishment of the DPP needs to be **reality-proof** and the DPP should ultimately be a harmonised and relevant **one-stop-shop** for product information as this will guarantee maximum efficiency and effectiveness for consumers, supply chain actors and public authorities.

Digital instructions provide a number of benefits over paper manuals, most notably that they massively reduce the amount of paper waste and that they are easy to update. The advantages of digital instructions, such as sustainability and availability, make the digital format the future-proof norm.

EGMF and EPTA encourage policymakers to reiterate the **sustainable benefits of digital instructions** allowing for assembly, maintenance etc. instructions required in the ESPR to be provided digitally.

Furthermore, we recommend that **technical documentation** should have to be provided **in English only** as readers are going to be well-informed supply chain actors and translations will lead to imprecisions in the wording, which is detrimental to such technical files.

The ESPR also aims to reduce the number of products being destroyed without ever being used for their actual purpose, to stop the negative impacts on the environment of this practice. We support this endeavour and to achieve this aim, we recommend amending the definition of “unsold consumer products” by including “unused” products, to prevent counting used products as unsold. We also want to point out, that when changes in legislation occur, transition periods should be long enough for companies to adapt, to prevent a situation in which products that were placed on the market following high European standards suddenly become non-

compliant and must be destroyed. Similarly, we argue that “destroy” should consistently be used instead of “discard”, to maintain the same wording throughout the proposal. We would also like to stress that the benefits and costs of the envisaged disclosure obligations on the number of destroyed products, and all other potential such obligations, need to be properly assessed to avoid unfair burden and discrimination across and within different industries. The obligations must also have a clearly stated and specific purpose, the benefits of which must be backed by strong evidence. This should generally be a driving principle.

EPTA and EGMF strongly encourage changing the following wording:

- “unsold” to “unused”
- “discard” to “destroy”

making the Regulation clear-cut and effective in its result.

Lastly, we would like to have a more precise definition of what is a ‘reasoned request’ for providing information and documentation on the conformity of a product. The ambiguity of the term could lead to different interpretations by the authorities in the various Member States and disproportionate application of administratively burdensome procedures. We are also worried that potential requirements to supply information to Market Surveillance Authorities without a ‘reasoned request’ might be introduced. This will potentially force manufacturers to set up tracing systems for all products, including second-hand sales, exacerbating the issue of unreasonable and unequal administrative burden.

3. The worries: what we consider priorities

Performance requirements should be clear, suitable for each product group and most importantly have no adverse effects on other parameters related to sustainability and circularity or the safety of the product. **EPTA and EGMF member companies manufacture products that are designed to have the maximum lifetime possible, being durable, reliable and safe**, oftentimes under rough conditions such as vibrations, dust, or humidity. Power tools and garden machinery are not subjected to fashion trends that might lead to superfluous waste creation. **Instead, the users of our tools and machinery expect them to make their tasks easier, quicker, and safer. These aspects are therefore of utmost importance to EPTA and EGMF member companies.**

As a result, EPTA and EGMF **welcome the inclusion of the concept of maintenance** as opposed to only repair in the proposal – as proper maintenance can often prevent the need for the latter (e.g. the blades of a lawnmower can be sharpened instead of replaced). Furthermore, **requirements on reparability should not compromise safety**. EPTA and EGMF consider harmonised standards, technology neutrality and a well-tailored approach for every product group essential when setting performance requirements, to not jeopardize manufacturers’ efforts to make their products more sustainable and safer on their own, through competition and changes in the preferences of consumers.

EPTA and EGMF argue that concepts included in the current proposal such as intended use and specified conditions of use, as well as maintenance, should be an integral part of the Regulation, as they allow manufacturers to design for safety and sustainability as opposed to for fringe cases.

Product requirements should furthermore be specific, measurable, enforceable, and relevant to improve a product’s impact on the environment. To ensure comparability between different manufacturers, it is of paramount importance that harmonised standards exist, setting the methods of measurement and specific definition of a given product parameter. As an example, the reliability and the mode of failure of every product model can vary strongly between manufacturers. Defining appropriate tests and acceptance criteria will therefore be arduous, and standards need to be drafted to prevent fragmentation. The requirements should also be distinct from each other – parameters that might be related need clear definitions separating them. **It should also be noted that some product parameters might have adverse effects on other product parameters:** designing products to be easier to repair might for example result in them being less durable.

EPTA and EGMF support defining information and performance requirements on a product level, to ensure that the information given is precise and has utility. We also argue that **performance requirements should be based on the intended use of the product**, as otherwise comparability cannot be ensured. Harmonised standards should be used wherever possible to ensure a futureproof, state-of-the-art solution that is comparable between manufacturers and protects innovation and competition. Power tools and garden machinery in particular can vary wildly in their “performance” regarding the product parameters, depending on the state (e.g. sharpness) of the working accessory such as a drill bit or blade, the material being worked on, the technique of the operator and the environment it is used in. To ensure maximum impact on sustainability as well as keeping the burden for economic operators bearable, **product requirements need to be tailored and targeted to a given product group, after an extensive impact assessment involving all stakeholders.**

In addition, when delegated acts require products to be able to measure live-data, these requirements need to be proportionate, realistic and tailored to the product group. EPTA and EGMF member companies’ products are not usually used in situations, where being aware of energy consumption and similar parameters can change a consumer’s behaviour. When the goal is to drill a hole or cut a tree, only using half a tool’s power is no option to the user as it will only result in the task taking twice the time to complete. The positive effect on sustainability is therefore lost. Additionally, power tools and garden machinery are not necessarily or commonly connected to the internet, nor do they have incorporated display screens to inform about the energy consumption. Adding such components would increase the recycling complexity and resource intensity of products and would therefore be contrary to the aim of the ESPR.

EPTA and EGMF consider it vital to take into account the utility of information for the consumer when setting requirements to measure product parameters.

To ensure legal clarity and prevent differing requirements between Union legislation, chemicals should not be regulated under the ESPR and instead be dealt with under the existing legislation on substances such as the **REACH Regulation or the RoHS Directive, which have already proven to be effective in reducing the usage of harmful chemicals in products.** As such, we support that the ESPR should not enable the restriction of substances based on chemical safety and should not create duplications with RoHS or REACH. **We also consider the definition of Substances of Concern as given in Article 2 (28) (c) to be too broad**, as it may result in needing to create an extensive list of materials and substances, which is nigh impossible for complex products and creates little additional value for economic operators or consumers while endangering IPR and trade secrets. Furthermore, regrettable substitution should be avoided, and all economic actors need to have access to a substitute, for the sake of fair and open competition.

Information requirements on chemicals need to be clear and simple to ensure a level playing field and enable economic operators to transfer correct and reliable information, to facilitate green choices by the consumer. A well-defined and transparent process for adding new substances, such as under REACH and RoHS, should be established. **International harmonised standards and chemical legislation should be taken into account when setting requirements for substances**, as complex global supply chains such as in the power tools and garden machinery industries would otherwise make it difficult to get reliable information on chemicals for manufacturers as the last step in the value chain, without extensive and laborious testing, as chemical composition is an IPR of the supplier.

Proper enforcement mechanisms and strengthening market surveillance will be central in making sure the goals of the ESPR are fulfilled. As a result, EPTA and EGMF welcome the Commission’s push to strengthen market surveillance authorities. However, we do not think that mandatory **third-party assessment mechanisms are necessary for effective enforcement**, as they slow down innovation and do not offer advantages over self-assessment procedures, but instead delay the development of more sustainable products.

EPTA and EGMF therefore oppose extending obligations for third party assessment procedures to more product groups without in-depth analysis and justification, as experience has shown that self-assessment procedures are just as reliable. It should also be considered that if all the products in scope of ESPR have mandatory third-party assessment, notified bodies would likely be overloaded.

EPTA represents European power tool manufacturers. Our 25 member companies represent approximately 70.000 employees in Europe (170 000 worldwide) and 90% of all corded and cordless power tools sold on the European market. Power tools are used by professionals, skilled tradesmen and DIY consumers. The industry's annual turnover is about 7 billion Euro. EPTA members are committed to the highest possible standards of quality and safety of their tools. Innovation and advanced technologies as well as customer-friendly applications are key to our companies' growth and competitiveness. Further details can be found at www.epta.eu or contact us at marinelli@epta.eu.

The European Garden Machinery Industry Federation – EGMF – has been the voice of the garden machinery industry in Europe since 1977. With 30 European corporate members and 7 national associations representing manufacturers for garden, landscaping, forestry and turf maintenance equipment, we are the most powerful network in this sector in Europe. Our members are responsible for employing 120,000 people in the EU, and in 2020 sold over 19 million units on the European Market.

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