



CONEBI feedback to a Proposal for a Regulation establishing a framework for setting ecodesign requirements for sustainable products

CONEBI represents the European Bicycle, Pedal Assist E-Bike, Parts & Accessories Industries via its national industry members. In the EU there are about 1000 companies, the majority of them being small and medium sized enterprises (SMEs), providing more than 150,000 direct/indirect jobs. Via the CONEBI's national industry members, more than 600 small, medium and large companies are represented in CONEBI.

CONEBI welcomes the European Commission's Proposal for a Regulation establishing a framework for setting ecodesign requirements for sustainable products, hereafter called Ecodesign rules. We support the efforts to facilitate a more circular and green economy as well as make it easier for consumers to make sustainable choices. The bicycle industry has for a long time been at the forefront of producing long-lasting, repairable and high-quality products that promote European sustainability goals.

It is therefore very important for the whole cycling ecosystem that the new Ecodesign rules are efficient, enforceable, and demonstrably contribute to the circular economy goals – all while keeping product safety in mind. Importantly, the burden put on companies shall be proportionate; additional requirements must be manageable and affordable for all companies, in particular SMEs; while providing maximum environmental benefits for European customers. We welcome that the proposal paves the way for product-specific measures, allowing for tailoring the requirements to fit given products or product groups.

As the bicycle industry, we are prepared to provide our expertise in the process of developing the product-specific Ecodesign rules. It shall also be ensured that stakeholders for the relevant products are closely involved in the process of drafting the product-specific acts providing expert information and input.

Please see detailed comments and suggestions by CONEBI ordered by importance below.

Definitions (Article 2)

Regarding the definitions laid out in Article 2, streamlining, and cross-referencing with other legislations (such as the EU Machinery Directive¹) shall be ensured. This is necessary to avoid multiple and/or contradicting definitions. In particular:

- In Article 2 para 2 and 3, it shall be further clarified what is the difference between an ‘intermediate product’ and a ‘component’ and how the associated requirements change with the changed status of a product.
- The definition for environmental footprint in Article 2 para 23 makes a direct link to the Product Environmental Footprint method. This method is however rather complex and might not be the most suitable one for all products. Therefore, the definition should only suggest a method and not prescribe it to allow for other methods within the product-specific acts.
- The definitions of remanufacturing, refurbishment and repair (Article 2 para 16, 18, 20) all refer to modifications of both a product and waste. Such definitions blur the boundaries of the waste status of a product. For example, when repairing a product that is already considered waste, issues linked to liability as well as to potential collection targets arise. The difference between products with defects and waste shall be clearly defined.
- Finally, the definition of substances of concern (Article 2, para 28) severely diverges from the established European chemicals management legislation by including substances that “negatively affect the re-use and recycling of materials in the product in which it is present.” While the EU Commission already indicated its intention to introduce a new category of “substances of concern” alongside the well-established “substances of very high concern (SVHC)” in its "Chemicals Strategy for Sustainability" in 2020, the EU Commission has still to propose a proper definition and procedure for those substances within the main legislative framework for chemicals. It is very important that the definition of substances of concern within the Ecodesign proposal does not lead to double requirements. It therefore needs to be in line with the existing Union legislation. The last sub paragraph of the proposed definition is too open for interpretation could cover a very large number of materials and substances and should therefore be removed.

Ecodesign Requirements (Article 5)

According to Article 5 para 1, the new product requirements shall be defined by the delegated acts. We agree that specific requirements should be set on a product-to-product basis in collaboration with industry stakeholders and sectoral experts. At the same time, we believe that a strong and clear framework should be set in the overarching legislation, outlining the basis for the secondary legislations. Where overarching definitions and European standards are necessary, this should be stipulated horizontally.

The first two requirements listed under Article 5 para 1 (a) and (b) durability and reliability are very important and as an industry we are working on enhancing these aspects. However, it is rather difficult to introduce a metric to assess durability of a product. Even though it is possible to do the measurements for simple mechanical products such as bicycle frames, determining the durability

¹ Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC

and/or reliability would be much more complicated for complex electro-chemical or electromechanical systems such as batteries and motors within e-bikes.

Upgradability is also an important requirement; we are looking forward to discussing how to best approach it in a way that takes into account product safety and possible tampering issues. Similarly, a concept of substantial modification shall be considered here (in line with other legislation, such as the EU Machinery Directive).

The newly introduced concept of substances of concern, as stated previously, especially the criterion “negatively affect[s] the re-use and recycling of materials in the product in which it is present” is very vague to take into consideration for Ecodesign requirements and double regulates with risk of great legal uncertainty. Without thorough assessment and in view of not favouring existing and or hampering future developments in the recycling processes, the definition of “substances of concern” should only refer to already established categories within the Chemical frameworks such as REACH Regulation (EC) No 1907/2006, RoHS Directive 2011/65/EU.

Article 5 para 5(c) states that there shall be no significant negative impact on consumers in terms of the affordability of relevant products, also taking into account access to second-hand products, durability and the life cycle cost of products. We recognize the added value of the products that are designed sustainably, keeping in mind the goals of the Ecodesign rules. However, it shall be noted that affordability of products might be affected; this will probably be the case at least in the short term, as companies will need to transform the production processes and develop/implement new solutions and technologies. For example, a component made of recycled materials is currently at least 5-10 % more expensive than a part made of raw materials.

Product parametres (Annex I) and procedure for defining performance requirements (Annex II)

We welcome that in Annex II para 1, it is stated that “*where relevant, the analysis referred to in the first subparagraph shall take into account the likely impacts of climate change on the product during its prospective lifetime, and the product’s potential to improve climate resilience throughout its life cycle*”. This is especially important for products like bicycles, as it would be useful to establish a parameter that would allow taking into account environmental benefits linked to the use of the product – for example, cycling brings significant health benefits, carbon footprint reductions through replacement of car journeys, use phase of bicycles and e-bikes etc. This could possibly be included under Annex I (q) conditions of use.

However, several clarifications of the new product parametres outlined in Annex I are necessary. For example, what is meant by standard components in Annex I (b) – does it refer to components with standardized size/form or to components that fulfil relevant product safety standards?

In Annex I (b) and (c) conditions for access to product data and to test protocols are mentioned. Here, intellectual property rights and trade secrets need to be considered; if such level of detail is shared, it has to be clearly established who might have access and measures against misuse shall be put in place. This is also important in relation to anti-tampering measures, as disclosing certain details about the products could enable their subsequent modification in a manner that could endanger product safety.

Product Safety

We welcome that the proposal clearly states that the new eco-design requirements should be in place while ensuring product safety. However, this should be re-emphasised throughout the proposal and taken into account when performing a technical, environmental and economic analysis of the criteria for any product group. For example, in Annex I (e), we support avoidance of technical solutions detrimental to re-use, upgrading, repair, maintenance, refurbishment, remanufacturing and recycling of products and components; however, such approach shall never come at the expense of user safety.

Information collection (Article 7)

Recital 63 in the introductory section of the proposal states that the regulation should allow for the collection of sales data directly from manufacturers or retailers. It is important that it is clear how the data would be collected, who would bear responsibility for the data safety as well as who would be able to access such data; it should therefore also be clarified what level of detail would be required. Information about sales is often considered trade secrets and is therefore highly sensitive, this needs to be taken into consideration.

Recital 64 outlines that the Commission should have access to products' actual energy consumption while in use. However, such information can be difficult, if not impossible to calculate in case of pedal assisted e-bikes. The actual energy consumption depends on the input of the rider and degree of assistance chosen and therefore varies for different users.

Article 7 para 2 (b) (ii) includes a possibility for the information requirements to include *“information for consumers and other end-users on how to install, use, maintain and repair the product in order to minimise its impact on the environment and to ensure optimum durability, as well as on how to return the product at end-of-life”*. We support enhanced repairability of the products, as bicycles are known to be modular and repairable in case of break down. However, it is important to ensure compatibility with other legislations (for example the EU Machinery Directive) and to keep product safety in mind if and when establishing who shall be responsible for different kinds of repairs (based on complexity and safety).

Furthermore, Article 7 para 6 states that information requirements shall indicate the modalities for making the required information available. Here, it is important that the amount of required information remains feasible and understandable for consumers. The information should be clear and allow the users to make meaningful comparisons among products, not overloading them with information that might be difficult to understand.

In addition to that, the Substances of Concern In articles as such or in complex objects (SCIP) database established under REACH Regulation (EC) No 1907/2006 already covers substances of concern and their inclusion in the DPP would lead to doubling of the obligation and create significant burden for producers.

Regarding the storing of technical documentation for 10 years, as stated in Article 21 para 3, manufacturers should be allowed to keep the documentation in both digital and/or paper form. The same logic should apply for accompanying product instructions (para 7). In addition to that, the difference between consumers and end-users should be clarified in this paragraph.

Digital product passport (Chapter III, Annex III)

Digital product passports (DPP) can become an important tool improving access to information for both producers and consumers, providing better traceability of the products and highlighting sustainably developed ones. As a unique identifier of all products, it could even be eventually used for other purposes; for example, to support the cycle theft systems that could benefit from the identification mechanisms and allow for simpler tracing of stolen products. We hope that the requirements for the digital product passport will follow the framework used throughout the Ecodesign proposal, allowing for modifications for different products and product groups to best fit their characteristics.

However, the implementation of this new system shall take into account the protection of intellectual property rights and confidentiality of certain business information. For example, in Annex III (e), the proposal envisions including technical documentation within the DPP. It shall be noted that technical documentation contains very specific and extensive information about the product (sometimes up to thousands of pages) and is normally only disclosed to control authorities. It is a highly sensitive document and should thus not be covered by the information access obligation.

The need-to-know basis of access to information shall therefore be clarified and delegated acts linked to the requirements within the DPP should also include provisions on to whom the different information points shall be accessible. Efficient measures should be put in place to prevent misuse of access to confidential information (e.g., setting up shell recycling companies to access detailed data about competitors' products).

The level of detail that will be included within the DPP has to be established to contain relevant technical data, but avoid placing undue burdens on producers, especially on SMEs. For products with complex supply chains and many individual parts (such as bicycles), it might be very difficult to satisfactorily cover the whole supply chain. Similarly, if every product has a unique DPP, what happens when it is modified – for example, a tire or a battery is exchanged?

Furthermore, Article 7 para 5 foresees the tracking of all substances of concern in the DPP. This begs the question where the link of the DPP is to already established European databases such as SCIP and European Product Registry for Energy Labelling (EPREL). How does the EU legislator ensure that a disproportionate burden for all economic actors along the information chain is avoided? Similarly, it shall be noted that the lists of the substances of very high concern change continuously – how would this be addressed, would the producer be responsible for updating the information about the product after such changes take place?

Overall, the relevant information provided must be understandable and easily accessible to be beneficial for consumers – allowing them to truly compare the products and make more informed choices. The basis for this is outlined in the introductory section recital (23) stating that “to improve product sustainability, information requirements should relate to a selected parameter relevant to the product aspect, such as the product’s environmental footprint or its durability”; meaning that not all product parameters need to be necessarily covered by information requirements.

In Article 13, the proposal refers to ‘release for free circulation’. We believe it would provide more legal certainty if the wording was changed to refer to the customs clearance instead, meaning that products are free to be placed on the market with the customs clearance.

Finally, it shall be ensured that there should always only be one DPP per product, even if multiple legislations require one. The requirements shall be streamlined and cross-referenced across the relevant legislations.

EU Declaration of conformity (Article 37, Annex V)

There are deviations between the requirements for the EU Declaration of conformity as outlined in the proposal and the CE Declaration of Conformity (as defined in the EU Machinery Directive). This suggests that eventually, two declarations would need to be issued for each product; leading to doubling of work and unnecessary burden on companies.

We therefore propose changing the wording in Annex V to “... declaration shall contain **at least** the following elements:... ” or alternatively elaborating on the Annex V “(10) additional information” and explicitly stating that the EU Declaration of Conformity can be combined with more content from other EU directives and regulations.

Obligations of economic operators (Chapter VII)

In Article 21 para 9 it shall be clarified that 10 days refer to 10 working days.

Internal production control (Annex IV)

The Ecodesign framework is a CE marking legislation and therefore has clearly defined conformity assessment procedures. We welcome that the proposal establishes the internal production control as the conformity assessment procedure in Annex IV. This is a well-established procedure in practice. CONEBI supports self-assessment based on harmonised standards.

Enforceability and level playing field

It is crucial that enforceability of the requirements and compliance both for different EU and non-EU countries are ensured, in order to guarantee a level playing field for all producers. We therefore also support the safeguards foreseen in Article 3 on Free Movement to ensure equal access to the entire Internal Market. That being said, it remains unclear how the ambitious Ecodesign rules laid out in the proposal could be enforced for products imported from third countries. For example, what would be the procedure for implementing such measures as creating a unique facility identifier (Article 2, para 33) outside of the EU?

Component-specific acts within the existing Ecodesign Directive

Under the current Ecodesign Directive component-specific acts as well as product-specific acts exist. To our understanding, the new proposal wants to recognise these already existing acts under the new framework to ensure legal continuity. While this is generally encouraged, this may have negative spill-over effects for products that come newly into the scope but have not been looked at during the original drafting of those component-specific acts. The EU legislators need to ensure that the existing product- and component specific acts are recognised but also that there is no risk of ex post facto law

for the products newly in the scope such as means of transport. Already today there is duplication of requirements within Ecodesign when components within products have been regulated as well as the product itself. This should be avoided and not further encouraged.

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