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REGULATORY SCRUTINY BOARD OPINION

Sustainable Products Initiative

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EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB

Opinion

Title: Impact assessment / Sustainable Products Initiative

Overall 2nd opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

Sustainable production and consumption is an essential part of the wider ongoing efforts to transform the EU's economy and society. In this context, the Commission is exploring ways of improving the sustainability of products on the EU market.

The initiative proposed builds on the Ecodesign Directive and aims to introduce measures that will create synergies with other related initiatives, such as the Consumer Empowerment Initiative and the Green Claims Initiative.

(B) Summary of findings

The Board notes the additional information included in the revised report responding to the Board's previous opinion.

However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the lead DG to rectify the following aspects:

- (1) The report does not sufficiently justify the choice of options regarding the scope and the sustainability requirements of the Sustainable Products Initiative (SPI).**
- (2) The report does not sufficiently define the methodology and standards that will be used to prioritise and assess products, including for social and due diligence aspects, its definition of 'sustainability', and trade-offs between competing objectives. It is not clear how policy coherence across the products in scope will be ensured.**
- (3) The report is not sufficiently explicit about the horizontal principles and objectives of the digital product passport and which of its elements need to be determined on a product-by-product basis.**

This opinion concerns a draft impact assessment which may differ from the final version.

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(C) What to improve

(1) The more complete problem description now focusses on the risk of diverging regulation in Member States, resulting from a lack of EU regulation. The report should clarify why this regulatory failure should be addressed by introducing product-specific rules, instead of general rules applicable to all products and services.

(2) The report should be clearer on the choice between, and arguments supporting, applying the Sustainable Products Initiative to a limited number of priority products and to all products. The report should better explain how it takes into account the higher administrative burden for businesses and administrations of the full-scope option.

(3) The report should better justify the choice of a wider set of sustainability requirements, that include due diligence. It should demonstrate how it has taken into account the higher compliance costs for businesses, especially SMEs.

(4) The report should be more explicit on the methodology, standards and requirements that will be used to prioritise and assess products, including social, sustainability and due diligence aspects. Where this is not yet possible, it should clarify why, explain the remaining steps to be followed, the decisions still to be taken, as well as summarise the nature of the document setting out the SPI methodology and its evidence base. It should state clearly the definition of 'sustainability' to be used, or justify why different definitions can be used for different products. The report should also explain the analytical framework that will be used to resolve policy trade-offs between competing objectives (such as between energy vs resource efficiency or jobs vs social standards). It should explain how policy coherence across the products in scope will be ensured. In this context, it should also justify why a less-ambitious methodology will be used for energy-related products.

(5) Considering the difficulty of estimating the costs and benefits of what will likely be a costly measure, the methodology should be more explicit as to what would be 'acceptable' cost increases. It should clarify whether there is an expected time horizon for durability savings to offset increased product prices resulting from the sustainability requirements.

(6) While the report now provides more information on the digital product passport, it is not clear what will be determined already in the main legal act. The report should be more explicit on the specific objectives, principles and infrastructure of the digital product passport that should feature in the horizontal SPI legal instrument. It should explain and justify what will be regulated in a possible 'horizontal SPI measure'. The report should also clarify how the envisaged regulatory digital product passport design will make it easier to create such passports for products outside the SPI scope. It should better explain how the envisaged implementation arrangements of the digital product passport will keep administrative costs for business and administrations to the minimum necessary.

(7) The scoring of options should be better explained and justified in the main report.

(8) As the implementation of the SPI will require substantial additional human resources, the report should explain how their availability will be ensured.

(9) The report should specify when an evaluation will be carried out. It should clarify whether a review as regards the possible inclusion of services under the scope of the SPI is envisaged.

The Board notes the estimated costs and benefits of the preferred option in this initiative, as summarised in the attached quantification tables.

(D) Conclusion

The lead DG must revise the report in accordance with the Board's findings before launching the interservice consultation.

If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.

Full title	Sustainable Products Legislative Initiative
Reference number	PLAN/2020/7714
Submitted to RSB on	10 December 2021
Date of RSB meeting	Written procedure

ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board’s recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

<i>I. Overview of direct and indirect Benefits and estimated costs (total for all provisions) – Preferred Option vs BAU</i>			
	<i>Businesses</i>	<i>National Authorities</i>	<i>Citizens and Consumers</i>
Option 2b	<p>Direct benefits:</p> <ul style="list-style-type: none"> To the extent that the scope extension replaces national laws (or prevents their emergence) with harmonised EU requirements, this would facilitate compliance and reduce costs for producers selling across the EU. <p>Indirect benefits:</p> <ul style="list-style-type: none"> Signalling function to businesses, “green” image etc. Savings along the value chain <p>Costs:</p> <ul style="list-style-type: none"> For producers of the products/product groups newly 	<p>Direct benefits: n.a.</p> <p>Indirect benefits:</p> <ul style="list-style-type: none"> Potentially, additional tax income from increased European market activity <p>Costs:</p> <ul style="list-style-type: none"> Need for additional staff. All Member States highlighted the issue of understaffing (especially in federal countries) that might imply an even larger number of additional FTEs needed. The costs for preparing additional SPI measures of around additional costs of around EUR 25 million per annum (costs spread across business and national authorities). 	<p>Direct benefits:</p> <ul style="list-style-type: none"> Possibility for sustainable choices for a range of products beyond energy-using products <p>Indirect benefits:</p> <ul style="list-style-type: none"> Reduction of yearly electricity consumption Reduction of yearly emissions of relevant substances leading to positive health effects. Benefits are likely to be larger than the 30 to 60 billion Euros of costs per annum for businesses.

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	coming under the scope, there will be additional compliance costs for products falling under future SPI measures. The additional costs of another 30 SPI measures could be in a range of 30 to 60 billion Euros per annum when fully incurred		
Option 3b	<p>Direct benefits:</p> <ul style="list-style-type: none"> • Improvement of the level playing field between companies in Europe. • In all manufacturing sectors: a shift in activity from production towards maintenance and more sustainable design leading to material savings • Availability of high-quality recycled materials • For recyclers: growth in the market of recycled materials and of their quality • Growth in the sector of repair services, refurbishment, and remanufacturing and thus jobs in 	<p>Direct benefits: n.a.</p> <p>Indirect benefits:n.a.</p> <p>Costs:</p> <ul style="list-style-type: none"> • Compliance and enforcement of effective bans of products (Measure 3c.2) would imply the highest additional costs (significantly more than 2 FTEs). The complexity of enforcement and high costs related to it might be correlated to a low level of compliance from industries. 	<p>Direct benefits:</p> <ul style="list-style-type: none"> • Availability of more durable products, of better quality • Lower priced refurbished goods • Improved working conditions across the value chains • Higher probability of avoiding the catastrophic consequences of the planetary system crossing tipping points to irreversible evolution towards environmental conditions unsuitable for human civilisation or human life. • Health and environmental benefits because of reduction in pollution. Reduced GHG emissions of around 117 Mt CO₂e, with a monetary value of around EUR 12 billion per annum.

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	<p>these sectors, in particular social and solidarity economy organisations and SMEs</p> <ul style="list-style-type: none"> • Positive impacts on innovation <p>Indirect benefits:</p> <ul style="list-style-type: none"> • Better image of the manufacturing sector as contributing to the resolution of major environmental challenges, with benefits on attracting young, qualified talent <p>Costs:</p> <ul style="list-style-type: none"> • The three top cost drivers are the minimum requirements on recycled content on the product or components, imposing minimum requirements on re-manufacturability and minimum requirements to reduce carbon and environmental footprints and imposing minimum requirements on recycled content on the product or components. • More specifically costs would additionally be driven by the need to increase testing capacities (investment in test equipment and 		<p>In addition, reduction of 6% of EU particulate matter and 3% of EU resource depletion.</p> <p>Indirect benefits:</p> <ul style="list-style-type: none"> • Avoiding early failure of products prevents their early replacement and therefore reduces environmental impacts related to the production, transport, and disposal of new products.

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	<p>space), the adaptation of production technology and (extensive) LCA to be performed for each type of product (time intensive). Verification costs of incoming raw materials would also significantly increase (according to two industry associations from the home appliance sector).</p> <ul style="list-style-type: none"> • Overall industry associations estimate that more staff will be needed in the field of testing, quality management, warehouse management and marketing. • Decreasing activity for mining and quarrying sector 		
Option 4b	<p>Direct benefits:</p> <ul style="list-style-type: none"> • A long list of economic operators benefits from the information made available (maintainers, repairers, re-furbishers, re-manufacturers, recyclers, logistics companies, retailers including on-line sellers, 2nd-hand retailers). • Increased efficiency (and hence 	<p>Direct benefits:</p> <ul style="list-style-type: none"> • Increased efficiency of Market Surveillance and customs authorities <p>Indirect benefits: n.a.</p> <p>Costs:</p> <ul style="list-style-type: none"> • Implementation and enforcement costs for the digital passport. In 	<p>Direct benefits:</p> <ul style="list-style-type: none"> • Reduced asymmetry of information helps making better informed choices • Availability of longer-life products, of better quality <p>Indirect benefits: n.a.</p>

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	<p>lower costs and higher quality) of maintenance, repair and recycling</p> <ul style="list-style-type: none"> • Market likely to reward good performers <p>Indirect benefits:</p> <ul style="list-style-type: none"> • Possible front-runner position in the transition of manufacturing towards sustainability • Possible EU leadership in the development of IT solutions for the secure end-to-end communication of industrial data along the value chain and the product lifecycle, as a foundational stone of Industrial Internet of Things, in the framework of the European Data Space for Smart Circular Applications (EDSCA) <p>Costs:</p> <ul style="list-style-type: none"> • According to industry associations the two top cost drivers are the costs related to information requirements on a set of social indicators and Information requirements in the form of a Digital Product 	<p>particular, costs and complexity of verifying social requirements.</p> <ul style="list-style-type: none"> • The costs for the Commission to set up the European Digital Product Passport are estimated at around EUR 8 million as one-off investment and at least EUR 1 million as annual maintenance cost. The costs for business will depend on the SPI measures and the lessons from first experiences (which will act as a form of piloting). 	

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	<p>Passport.</p> <ul style="list-style-type: none"> • Industry associations foresee upgraded IT systems to be put in place with an increase in testing staffing and personnel to keep data up-to-date and run the system. Some associations also fear unfair competition from non-complying (cheating) companies (false declaration). • Only one industry association declared that the SCIP Database implies high OPEX and administrative costs. All others agreed that this would not lead to significant costs as their sectors already show a high readiness level. 		
Option 5b	<p>Direct benefits:</p> <ul style="list-style-type: none"> • Increased demand for sustainable products, including recycled / sustainable substitutes • Reduction of waste and increased availability of recycled material and of their quality • Improved information in terms of environmental impact of products 	<p>Direct benefits:</p> <ul style="list-style-type: none"> • Savings resulting from green public procurement • Increased efficiency of Market Surveillance and customs authorities • Job creation <p>Indirect benefits:</p>	<p>Direct benefits:</p> <ul style="list-style-type: none"> • Increased number of collection points for specific products (e.g. batteries), easing the collection and recycling processes • Improved consumer satisfaction • Increased environmental awareness • Improved information in terms of environmental impact of products and

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	<p>and improvement of the level playing field between companies in Europe through classes of performance</p> <ul style="list-style-type: none"> • Greater accessibility of repair services and growth in the sector of repair services • Competitive advantage for companies providing sustainable products • Increased research and development activities to develop sustainable products / services leading to innovative products and production processes <p>Indirect benefits:</p> <ul style="list-style-type: none"> • Competitive advantage through operational performance improvement and better reputation <p>Costs:</p> <ul style="list-style-type: none"> • The main costs drivers are the investments required to comply with classes of performance. According to industry associations EPR schemes do not 	<ul style="list-style-type: none"> • Skills development in relation to product life-cycle analysis • Potential fiscal revenues <p>Costs:</p> <ul style="list-style-type: none"> • According to Member State Representatives, the most important cost driver is the compliance with the new Ecodesign framework: it implies the recruitment of more than 5 FTEs. 	<p>services</p> <ul style="list-style-type: none"> • Greater affordability of sustainable products in the medium term • Improved working conditions <p>Indirect benefits:</p> <ul style="list-style-type: none"> • New employment opportunities (e.g. recycling) • Improved safety, as labels often include requirements regarding chemicals and other hazardous products • Reduction in packaging waste

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	<p>seem to significantly impact businesses.</p> <ul style="list-style-type: none"> • Increase in staffing will mostly result from the need to document the amounts of recycled materials in products. 		
Option 6b	<p>Direct benefits:</p> <ul style="list-style-type: none"> • New business opportunities for companies in terms of products or services provided, but also of partnerships • Competitive advantage through operational performance improvement and better reputation <p>Indirect benefits:</p> <ul style="list-style-type: none"> • Greater B2B confidence • Savings from evolution of production and stock management practices <p>Costs:</p> <ul style="list-style-type: none"> • The main cost drivers according to industry associations are the ones related to the ban of the destruction of unsold/returned 	<p>Direct benefits:</p> <ul style="list-style-type: none"> • Reduction of the waste collection and management costs of unsold goods <p>Indirect benefits:</p> <ul style="list-style-type: none"> • EU funding instruments being used for sustainable / circular projects developing local economies <p>Costs:</p> <p>At the MS level monitoring and enforcement cost on compliance with the ban on destruction of unsold goods.</p>	<p>Direct benefits:</p> <ul style="list-style-type: none"> • Reduced environmental impact for goods and services by considering the whole life cycle • Increased accessibility of second-hand and donated products <p>Indirect benefits:</p> <ul style="list-style-type: none"> • Greater B2C confidence • New employment opportunities (e.g. reverse logistics; repair; reuse; recycling, etc.)

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	goods.		
Option 7c	<p>Direct benefits:</p> <ul style="list-style-type: none"> • Streamlining processes can save time, make interactions in process more efficient • Provides opportunity for niche firms focused on sustainability <p>Indirect benefits:</p> <ul style="list-style-type: none"> • Improvements to process, faster adoption, better coherence, standardisation, facilitate compliance for firms. • Better MSA coordination creates more level playing field. • Measures position manufacturers as ‘high-quality / green’ producers in global markets. <p>Costs:</p> <ul style="list-style-type: none"> • Two measures imply high costs increase according to industry associations: the collection of data regarding regulated products sales and usage and the provisions related to third party certification 	<p>Direct benefits:</p> <ul style="list-style-type: none"> • Improved information and data sharing improves understanding of products and markets and MSA activities and possibly customs enforcement • Better trained staff at MSA and national authorities, and clearer understanding of performance (benchmarked) • Support from EC on application of Ecodesign legislation and market surveillance • Support with product testing <p>Indirect benefits:</p> <ul style="list-style-type: none"> • In the case of centralised EC-level testing, possible MS level cost-savings • Common training, task sharing, 3rd party support to MSA, could all improve compliance, potentially save costs <p>Costs:</p>	<p>Direct benefits:</p> <ul style="list-style-type: none"> • New routes to signal non-compliance • Consumer savings through shorter lead times and through reduction of non-compliance could be 11.5 billion Euros per annum. • Reduced GHG emissions of around 22 Mt CO₂e, with a monetary value of around EUR 2.2 billion per annum.” <p>Indirect benefits:</p> <ul style="list-style-type: none"> • Improved market surveillance reduces ‘bad’ products on market, increases benefits to consumers

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	<ul style="list-style-type: none"> • More specifically, costs would be driven by data management IT systems to be put in place and a need to increase staffing to keep the data up-to-date and run the system. Third party certification would imply outsourcing costs of tasks, which are currently performed in-house (as well as managing the contacts with third parties). 	Strengthening of enforcement through market surveillance and customs controls requires 210 FTEs of staff in the EU 27, with an administrative costs of around EUR 10.5 million per annum	



Opinion

Title: Impact assessment / Sustainable Products Initiative

Overall opinion: NEGATIVE

(A) Policy context

Sustainable production and consumption is an essential part of the wider ongoing efforts to transform the EU's economy and society. In this context, the Commission is exploring ways of improving the sustainability of products on the EU market.

The initiative proposed builds on the Ecodesign Directive and aims to introduce measures that will be in synergy with other initiatives currently in preparation (such as the Consumer Empowerment Initiative and the Green Claims Initiative).

(B) Summary of findings

The Board notes the additional information provided in advance of the meeting and commitments to make changes to the report.

However, the Board gives a negative opinion, because the report contains the following significant shortcomings:

- (1) The report is not sufficiently clear on what will be addressed by the Sustainable Products Initiative, or by the subsequent implementing legislation and other related initiatives. It is not clear on how full coverage and coherence between all these initiatives will be ensured. There is also no clarity on the precise role, scope and delivery instrument of the digital product passport.**
- (2) The report does not sufficiently elaborate on the options and their relative merits. It does not sufficiently justify the preferred package of sub-options, in particular as regards product scope and sustainability requirements.**
- (3) The report does not sufficiently consider the costs and benefits. It does not provide sufficient indication of the order of magnitude of expected impacts and whether they would be positive or negative. The analysis of impacts on SMEs is insufficient. The expected compliance and administrative costs are not clearly presented.**

(C) What to improve

- (1) The report should better demonstrate the specific problems the Sustainable Products**

Initiative aims to tackle (including clear evidence and improved explanation of the link to the underlying internal market issues). It should better explain how the initiative is intended to interact and work together with related initiatives (such as on Green Claims, Consumer Empowerment, Corporate Sustainable Governance) and how potential overlaps, gaps and inconsistencies (for instance as regards social due diligence requirements or sustainability concepts) will be avoided. This should be made clear upfront but also detailed when it comes to the problem description and later in the scope, objectives and measures considered.

(2) The report needs to be clearer about what would be determined in the Sustainable Products Initiative and what in the subsequent implementing legislation and the reasoning behind it. As regards the digital product passport, it should clarify its precise role (including for other initiatives) and scope as well as envisaged delivery form (e.g. horizontal instrument, exclusive specification in implementing measures).

(3) With a view to bringing out more clearly the available policy choices, the report should better present the sub-options. It should explain how the Ecodesign process, which would be the basis for the initiative, could be sufficiently improved and accelerated to ensure the objectives are successfully achieved. It should justify why the environmental footprint methodology is not better integrated, also in view of its envisaged role under the Green Claims initiative. The report should also improve its description and analysis of the proposed due diligence requirements and how full coherence with the Sustainable Corporate Governance initiative will be ensured. It should explain how possibly conflicting objectives would be tackled in a coherent way in the implementing legislation (e.g. between early replacement of products to reduce energy use and minimal use of natural resources; between technical or economic feasibility and how are these defined).

(4) The report should strengthen its analysis of costs and benefits and of impacts (notably on SMEs). While acknowledging the uncertainties and difficulties in estimating some of these aspects, the report should at least give an indication of whether the expected overall economic impact would be positive or not. It should also provide a more developed analysis of the expected compliance and administrative costs. The main report should include an assessment of the impacts on SMEs, including possible mitigating measures and how it has applied the ‘think small first’ principle. It should explain better the role of consumer choices, whether this initiative intends to change consumer behaviour and how it plans to do so.

(5) The report should better explain the performance scoring and the justification of the preferred package of sub-options. It should, for instance, better demonstrate, on the basis of the collected evidence, why an all-encompassing product scope is preferable to a narrower product scope likely to deliver similar benefits in a more efficient manner. It should better assess the overall proportionality of the preferred option package.

(6) The views of different categories of stakeholders should be presented more systematically throughout the main report. The report should explain how it took relevant minority views into account.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The lead DG must revise the report in accordance with the Board's findings and resubmit it for a final RSB opinion.

Full title	Sustainable Products Legislative Initiative
Reference number	PLAN/2020/7714
Submitted to RSB on	20 July 2021
Date of RSB meeting	15 September 2021



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(4) The report should strengthen its analysis of costs and benefits and of impacts (notably on SMEs). While acknowledging the uncertainties and difficulties in estimating some of these aspects, the report should at least give an indication of whether the expected overall economic impact would be positive or not. It should also provide a more developed analysis of the expected compliance and administrative costs. The main report should include an assessment of the impacts on SMEs, including possible mitigating measures and how it has applied the ‘think small first’ principle. It should explain better the role of consumer choices, whether this initiative intends to change consumer behaviour and how it plans to do so.

(5) The report should better explain the performance scoring and the justification of the preferred package of sub-options. It should, for instance, better demonstrate, on the basis of the collected evidence, why an all-encompassing product scope is preferable to a narrower product scope likely to deliver similar benefits in a more efficient manner. It should better assess the overall proportionality of the preferred option package.

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