MPTB-ES-PO-0105

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# EUROPEAN SPACE SECTOR FEEDBACK ON THE SUSTAINABLE PRODUCTS INITIATIVE – ESPR PROPOSAL OF 30 MARCH 2022

**Reference:** ***European Commission Proposal of 30 March 2022 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 (COM(2022) 142 final) – Ecodesign for Sustainable Products Regulation (ESPR)***

This is the joint contribution of the European Space Industry, represented by ASD-EUROSPACE – with the support of European and national space agencies – to the European Commission's (COM) call for feedback on its Proposal of 30 March 2022 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 (COM(2022) 142 final) under the Sustainable Products Initiative – Ecodesign for Sustainable Products Regulation (ESPR) – hereafter "**ESPR Proposal**").[1] It has been prepared with support of the **CSS Space Focus Group**, a splinter group of the Materials and Processes Technology Board of the European Space Components Coordination (ESCC MPTB) established in April 2021.[2]

This feedback follows on our contribution of 9 June 2021 to the COM Public Consultation on the SPI (MPTB-ES-PO-0078) and the related questionnaire response.[3]

[1] Available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12567-Sustainable-products-initiative_en.

[2] See the list of CSS Space Focus Group participants at the end of this contribution. For further information about the CSS Space Focus Group, please see Eurospace News Alert of 26 April 2021 (link).

[3] The response is available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12567-Sustainable-products-initiative/public-consultation_en. The ASD-Eurospace contribution paper of 9 June 2021 is also available on the Eurospace website..

## GENERAL COMMENTS ON THE ESPR PROPOSAL

We welcome and support the overall objectives and **product-specific approach** of the ESPR Proposal; it aims to convert the Ecodesign Directive into a Regulation to achieve harmonisation and establish a flexible **framework** to improve the environmental sustainability of products by setting ecodesign requirements and increase transparency across the supply chain for specific product groups in COM **delegated acts**, based on the prioritisation criteria in Article 16 and multi-annual working plans.

In relation to the space industry, we welcome the explicit acknowledgment in **recital (16)** of the ESPR Proposal, which states:

> *"Similarly, the space industry is strategic for Europe and for its technological non-dependence. As space technologies operate in extreme conditions, any ecodesign requirements for space products should balance sustainability considerations with resilience and expected performance."*

In addition to these elements we believe it is important to recall again also the following **specificities of space products**, especially with regard to Article 5(4) and Article 16 of the ESPR Proposal:

- Products sent into space **do not result in waste on Earth or on the EU territory**, hence limiting the applicability of Circular Economy considerations in the Space Sector to the life cycle and operations on ground (incl. ground support equipment, ground stations, engineering and qualification models).
- Space products typically only account for a **minute consumption** of resources when compared to products in other sectors. On the other hand, they are also highly and increasingly dependent on scarce resources, where the consumption may not be negligible.
- **No** product **repair** is possible after launch.
- Space products are **highly complex** in terms of assemblies (launchers, satellites, etc.) and **global supply chains**, being supplied exclusively in B2B and B2G relationships.
- Long-term development and R&T, incl. strict and expensive qualification procedures;
- The need to consider **confidentiality, security and defence requirements** and challenges for imported products;[4]

[4] This is specifically important for those space programmes, which are strategic to the European Commission itself in the field of safety and security, such as Galileo, EGNOS, where manufacturing of satellites is contracted to the European space industry, with contracts which may be bound to security measures. Reporting restrictions are also imposed for military projects (US ITAR /EAR or equivalent in EU). The importance of the space domain for security and defence is also recognised in the EU Strategic Compass for Security and Defence, which foresees the development of a new EU Space Strategy for security and defence by the end of 2023.

- Equipment designed to be sent into space is **excluded from the scope** of various pieces of product-specific EU legislation.[5]

At the same time, the European Space Sector recognises and is working proactively to address the environmental impact of space activities. As an example, the ESA Clean Space Office aims to reduce the environmental impacts of space activities both on Earth and in space (see Figure 1 below). On Earth, they work to reduce the environmental impacts of space activities through their EcoDesign branch. This work also included adaptations to apply the life cycle assessment (LCA) approach to space, given that it is a unique sector.[6]

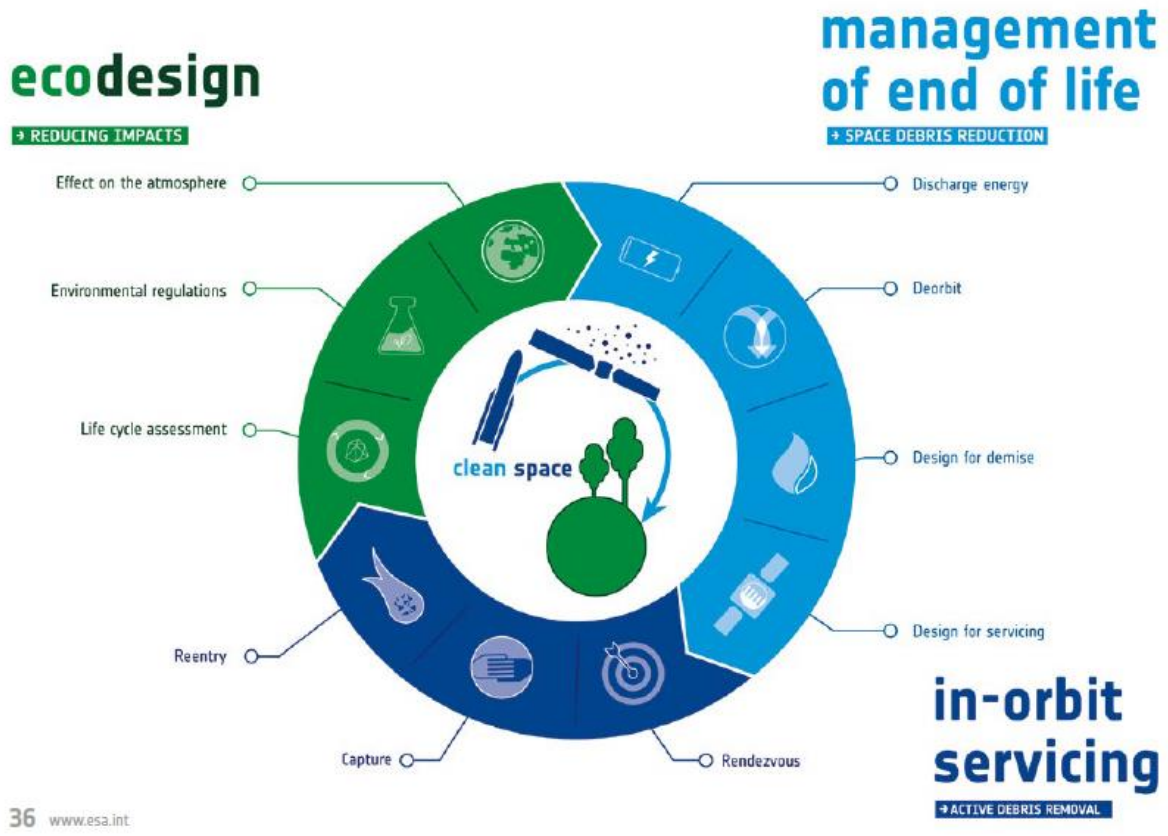


**Figure 1 Activities of the ESA Clean Space Office addressing the environmental impact of space activities (Source: ESA, 2022)**

In our view, taking into account all these specificities has the following main implications for space products, components and materials:

- Our products should have a rather **low priority** for setting ecodesign requirements with regard to the criterial for prioritising products in Article 16 of the ESPR Proposal;

[5] E.g. Batteries Directive 2006/66/EC Article 2(2)(b); RoHS Directive 2011/65/EU Article 2(4)(b); Mercury Regulation (EU) 2017/852 Article 8(1)(b))

[6] See ESA, Corporate Responsibility and Sustainability, Report 2020-21, page 36, available here.

- The **initial focus** should rather be on consumer products and **(simpler) product categories further upstream** in the value chain;[7]
- Within the ecodesign requirements, the need for ***information requirements*** (aiming at increased transparency) and ***performance requirements*** (which may not be needed for space products given the already required high performance) has to be assessed separately;
- According to Article 5(5)(a) of the ESPR Proposal there shall be *"**no significant negative impact** on the functionality of the product, from the perspective of the user"* from ecodesign requirements. However, we believe that there should be no negative impact on functionality **at all** for our products due to very specific and complex requirements applying to them.
- Some of the **possibilities of specific provisions/exemptions** in the ESPR Proposal appear to be very relevant for our products, e.g. the COM power to establish that no performance/information requirements are necessary for certain specified product parameters referred to in Annex I (Article 4(1)3), exemptions from information requirements for certain substances of concern or information elements in delegated acts (Article 7(5) 2nd subpar., point (c)) or self-regulation measures as alternatives to delegated acts (Article 18);
- Information to be supplied pursuant to information requirements for non-consumer products shall always be provided **also in English language** (ref. Article 7(7));
- **Dedicated impact assessments** prior to the adoption of delegated acts (Article 5(4)(b)), allowing **enough time** for industry to provide input and taking product specificities firmly into account, will be crucial.

## SPECIFIC COMMENTS ON THE DIGITAL PRODUCT PASSPORT

We believe that a Digital Product Passport (DPP) could potentially be useful to collect some relevant information, especially **for the benefit of actors further down in the supply chain**.

With regards to DPP contents and design we would like to share the following comments:

- We request a dedicated prior **feasibility, usefulness and impact assessment per information field**.
- Where substances of concern present in the product are to be identified, this information should not be limited to the name of the substance (see Article 7(5)(a)), but also extend to the **CAS and EC number** where available.
- We note that there is a **discrepancy with REACH and SCIP** in that in the ESPR Proposal the reporting threshold (above 0,1 % weight by weight) for substances of

[7] Space-relevant product categories in the preliminary assessment of the Commission for its 1st ESPR working plan include e.g. paints, lubricants and aluminium. A public consultation on the categories of products to be selected under the first ESPR working plan is currently expected by the end of 2022.

concern included in the REACH Candidate List pertains to the *"level of the product, its main components, or spare parts"*, whereas it principally relates to the article as such (as defined in REACH Article 3(3)) under the REACH Regulation (see Article 7(5)); this could lead to a situation where substance disclosure requirements applicable under REACH Article 33/to the SCIP Database are not reflected in the DPP/a different calculation is necessary. We believe that – in order to ensure coherence – the reference object for the threshold calculation should be the same under all regulatory instruments (REACH, SCIP and SPI).

- We strongly agree that the **technical design and operation** of the DPP (Article 10) should ensure data authentication reliability and integrity (lit. (g)), as well as a **high level of security and privacy** (lit. (h)).

## SPECIFIC COMMENTS ON THE "SUBSTANCES OF CONCERN" DEFINITION

We note that the definition of 'substance of concern' in Article 2(28) is very wide[8]; it does not only cover substances included in the REACH Candidate List (lit. (a)), but also substances with certain harmonised classifications according to Annex VI of the CLP Regulation (lit. (b))[9] or substances which negatively affect the re-use and recycling of materials in the product in which they are present (lit. (c); substances to be established by COM, see Article 7(5))[10].

In association with the specific provisions by COM in delegated acts for specific product groups under Article 7(5), this will lead to different disclosure requirements and possible restrictions under the ESPR as compared to the REACH Regulation and WFD/SCIP. We are concerned about this added complexity arising from the different reportable or restricted substance definitions, which could exacerbate the tracking challenges for substances in products already encountered under REACH and WFD/SCIP. As already pointed out in our contribution to COM of 9 June 2021, we advocate a full alignment of SPI provisions with the REACH Candidate List for our products.

[8] Note: The term of substances of concern is already legally defined differently for example in Article 3(1)(f) of the Biocidal Products Regulation (EU) No 528/2012.

[9] Carcinogenicity categories 1 and 2; germ cell mutagenicity categories 1 and 2; reproductive toxicity categories 1 and 2; [*to be added in the course of the legislative procedure once Regulation (EC) No 1272/2008 contains these hazard classes: Persistent, Bioacumulative, Toxic (PBTs), very Persistent very Bioaccumulative (vPvBs); Persistent, Mobile and Toxic (PMT), very Persistent very Mobile (vPvM); Endocrine disruption*]; respiratory sensitisation category 1; skin sensitisation category 1; chronic hazard to the aquatic environment categories 1 to 4; hazardous to the ozone layer; specific target organ toxicity – repeated exposure categories 1 and 2; specific target organ toxicity – single exposure categories 1 and 2.

[10] The case of lit. (c) would not be applicable to substances part of products sent into space which do not return on Earth or to the EU territory.

## CONCLUSIONS

We welcome and support the overall objectives and product-specific framework approach of the ESPR Proposal, as well as the explicit acknowledgment in recital (16) of the ESPR Proposal of key **specificities of space products** with regard to any ecodesign requirements. The European Space Sector recognises and is working proactively to reduce the environmental impact of space activities, for example as part of the EcoDesign branch of the ESA Clean Space Office, which includes work on space-specific adaptations to the LCA approach. In addition to the specificities mentioned in the ESPR Proposal, our products have a number of other important characteristics mentioned in this feedback that **should be taken into account** for the implementation of the new Regulation, once adopted. Based on these specificities we believe that our products should have a rather **low priority** for setting ecodesign requirements while the initial focus should rather be on (simpler) product categories further upstream in the value chain. If any ecodesign requirements or a Digital Product Passport were considered for space products, these should be underpinned by **in-depth and detailed impact assessments**, fully exploring the possibilities of specific provisions/exemptions in the Regulation; in particular *"performance requirements"* may not be necessary. In relation to the **broad definition of "substance of concern"** in the Regulation we are concerned about discrepancies and additional complexities due to reporting discrepancies as compared to REACH Article 33 and WFD/SCIP; we therefore advocate a full alignment of SPI provisions with the REACH Candidate List for our products. More generally, there is a need – as also acknowledged in the ESPR Proposal – to **prevent duplication and ensure clarity** as regards the interface between ESPR and REACH rules governing chemicals, including chemical substances in products.

***Kind regards,***

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**This contribution has been prepared with the support of the Materials and Processes Technology Board of the CSS Space Focus Group. It reflects the best knowledge available from experts in their field, thanks in particular to the support of ASD-EUROSPACE, the following corporations represented in the CSS Space Focus Group of the MPTB:**

> **AIRBUS DEFENCE AND SPACE, ARIANEGROUP, LEONARDO COMPANY, MT AEROSPACE, BEYOND GRAVITY (former RUAG SPACE), THALES ALENIA SPACE**

**and space agencies:**

> **AGENZIA SPAZIALE ITALIANA (ASI), CENTRE NATIONAL D'ETUDES SPATIALES (CNES), DEUTSCHES ZENTRUM FÜR LUFT- UND RAUMFAHRT (DLR), EUROPEAN SPACE AGENCY (ESA)**

**Other MPTB/CSS Space Focus Group participants are the European Defence Agency (EDA) as observer and REACHLaw, a consultancy supporting the group on REACH and other chemical regulations.**