NOTAT

**Ministry of Environment
of Denmark**

Denmark's response to the public consultation on the Sustainable Products Initiative

Danish priorities of special importance for the Sustainable Products Initiative:

- The SPI should include a number of **sustainability principles and horizontal measures**, including **common minimum requirements** that are legally binding for all existing and future product legislation in the EU.

- Products should either be regulated as part of the Ecodesign Directive or sectoral regulation under the scope of the sustainability principles and horizontal measures in the SPI.

- When widening the scope of the Ecodesign Directive, the directive should be **strengthened to deliver on energy efficiency targets**

Key messages:

- Denmark welcomes the **widening of the Ecodesign Directive** beyond energy-related products to make it applicable to the **broadest possible range of products**.

- To increase the effectiveness of the current Ecodesign regulatory framework, the Commission must **ensure sufficient allocation of resources** to manage the tasks laid out in the current work plan for the Ecodesign Directive in parallel with the work on the SPI.

- The **Product Environmental Footprint (PEF) is an important instrument**, which could replace the EcoReport Tool in the widened Ecodesign Directive, with the MEErP revised accordingly. Also, the **PEF should be the primary methodology for other new and existing EU product legislation** and other related policies, and other **green claims** to identify the most important environmental aspects of a product or service.

- The SPI should include a generic, overall "**automatic" ban of the most hazardous chemicals** in products, as is the case in the current regulation of CMR substances in the regulation of toys and cosmetics.

- The **digital product passport is a highly needed tool** to accelerate the circular economy, which should be an integrated part of the legislative SPI proposal in order to enable tracking and tracing and ensure access to information about products and their components. To ensure coherence across policies, the digital product passport should be used as a once-only vehicle for the sharing of product information by companies.

The Sustainable Products Initiative (SPI) plays an essential role in making products fit for a climate neutral, resource efficient and circular economy, reducing the negative impact on environment, climate and health from products and services. Minimum requirements in the product legislation must continuously promote energy and resource efficiency, as well as durable and safe products. A coherent legal framework for sustainable products should aim at making sustainable consumption and production easy, transparent and trustworthy for consumers as well as producers. The initiatives presented must support a well-functioning single market for sustainable products, with effective and harmonised implementation across the EU as well as enforcement of e.g. product requirements, standards and methods. An effective and uniform market surveillance in the EU, based on the new market surveillance regulation can promote products durability, reusability, upgradability, reparability, renewability and chemicals safety not just for the benefit of consumers but also for ensuring a level playing field for businesses.

Challenges to making products sustainable
Denmark agrees with the majority of the market-related challenges listed in the public consultation. However, one challenge does surpass them all; that products do not sufficiently cover the costs of environmental externalities during resource extraction and processing, production, use and waste management. This fact contributes to lacking economic incentives for design for circularity, and benefits a linear approach. Denmark does not agree with the statement that more sustainable products are often too expensive for households with lower incomes. In many product categories, Ecolabelled products are not more expensive than conventional products. Denmark strongly agree with the listed policy-related challenges and would like to underline the need for both enforcement of requirements for minimum circular quality of products to be marketed (the ecodesign directive principle) and establish economic benefits for gradual improving the circular quality above this enforced minimum level.

Measures to make sustainable products the norm
It is increasingly important to assess the resource consumption and material efficiency aspects of energy-related as well as non-energy related products. Hence, it becomes increasingly important to assess the resource aspects in a consistent method across different studies. Denmark finds that the Product Environmental Footprint (PEF) is an important instrument with a potential of being an underlying methodology for assessing environmental and climate impact in relation to the Ecodesign Directive, and that the EcoReport Tool could be replaced by PEF and the MEErP revised accordingly, in the widened Ecodesign Directive. In addition, Denmark finds that the PEF methodology should be the primary methodology for other new and existing EU product legislation and related policies incl. EU Ecolabel, Green Public Procurement, Packaging and Packaging Waste Directive, Cosmetics Regulation, Toy Safety Regulation, and other green claims etc. to identify the most important environmental aspects of a product or service. Furthermore, the potential of PEF should be seen in relation to the existing recognized method of environmental product declarations (EPD) used in construction. EPDs have been used for a number of years and its wide use should be taken into consideration in the further development of PEF, with a goal of aligning the methods. It must continue to be possible to use EPDs and the underlying standards to document the environmental impacts of construction products and construction works. Using PEF as an EU harmonised life cycle assessment method can provide the scientific knowledge of the environmental hotspots, including energy use, of the representative product in a life cycle perspective. Denmark supports the Commissions work in updating the PEF impact categories to address chemical use, toxicity and direct and indirect land use.

Currently, the EcoReport Tool and the MEErP methodology are used to formulate Ecodesign product regulations, but this methodology has no uniform way to calculate the impact if e.g. the lifetime of products increases. In general, EcoReport Tool and the MEErP are insufficient in handling resource efficiency and circularity as such, as well as other non-energy related environmental impacts, e.g. chemicals and toxicity, biodiversity, and direct and indirect land use. Denmark supports the on-going revision of the MEErP in order to improve the methodology and better incorporate resource efficiency, chemicals, toxicity and circular economy in future or revised regulations.

The PEF methodology should also qualify the increasing proliferation of private ecolabels and use of (false) green claims by providing a common methodology for measuring environmental impacts of products and services. In the light of the ongoing initiative on green claims, the PEF methodology should together with the EU Ecolabel and other Type I ecolabels be used as a way to substantiate green claims and private labels, especially to avoid greenwashing. To be clear, Denmark would welcome the integration of the PEF-methodology as the foundation for the EU Ecolabel and other Type I ecolabels, using the existing labels as the vehicle to communicate green characteristics to consumers. This would build on the already high recognition rate for the EU Ecolabel of companies and consumers. Today, it is expected that a company shall be able to document a green claim, but there is no threshold or definition of what it means to have a "green" product or service. In this regards, it is important that the Commission and Member States establish a verification and surveillance system towards the use of PEF. Private Green claims should only be allowed if, through PEF and/or Type I ecolabels, the company can confirm that the relevant product or service environmentally is among the best third of the market. The Commission should establish a sufficient effective mechanism to monitor the proper uses of PEF in the market. The Commission should ensure registration of products' environmental footprint and request that green claims are verifiable at the latest when the product is placed on the market. The registration and verification should be coherent and aligned with a digital product passport if such exists for that particular product.

The PEF methodology and the accompanying PEF Category Rules (PEFCR) should be revised over time and developed regularly by the Commission in collaboration with MS and stakeholders and finally adopted in a PEF-committee. This should be done in order to secure democratic legitimacy. PEFCR should – as a minimum – be developed for product categories for which ecolabel criteria will be established or updated. The Commission should elaborate a PEF governance system regarding gradual development of the methods, maintain and ensure efficient and low-cost access for businesses etc. to the high-quality database (secondary data), maintain a product database regarding published PEFCR based PEFs and elaborate and regularly update benchmarks for the prioritized product categories.

Furthermore, we recognize that in the CEAP "food" is mentioned as one of the key product value chains and a priority product category. The specific challenges concerning PEF for food and food labelling should be discussed in the suitable context such as in the initiatives regarding sustainable food production and labelling in the Farm to Fork Strategy, which focus on specific measures to increase the sustainability of food distribution and consumption.

Design for sustainability - sustainability requirements for products
The legislative SPI proposal should include a number of sustainability principles and horizontal measures, including common minimum requirements that are legally binding for

all existing and future product legislation in the EU. The principles mentioned in the Circular Economy Action Plan (CEAP) is a good starting point.

Products should either be regulated as part of the Ecodesign Directive or sectoral regulation under the scope of the sustainability principles and horizontal measures in the SPI. The SPI proposal should address how and where different types of products and services are best regulated, including electronics and ICT, textiles, furniture, high impact intermediary products such as steel, cement and chemicals, batteries, means of transport, packaging, plastics, and construction products and construction works.

Denmark welcomes the intention for the SPI legislative proposal to widen the scope of the Ecodesign Directive beyond energy-related products so as to make it applicable to the broadest possible range of products and make it deliver on circularity, taking into account existing well-performing regulation of product groups, and securing a harmonisation where relevant. In the widening of the Ecodesign Directive, particular attention should be given to priority products mentioned in the CEAP. Denmark considers textiles, furniture, means of transport, equipment in data-centres, as well as high-impact intermediate products such as steel, cement and chemicals, to be highly relevant. Likewise, Denmark asks the Commission to investigate the relevance of including services within the widened scope of Ecodesign, especially as relates to data and data services from data-centres.

Increasing the effectiveness of the current Ecodesign regulatory framework should be a priority in order to deliver on its potentials. Consequently, the Commission must ensure allocation of sufficient resources to manage the tasks laid out in the current work plan for the Ecodesign Directive and delivering on the objectives on energy-related products laid out herein in parallel with the work on the SPI.When widening the scope of the Ecodesign Directive, the directive should be strengthened to deliver on energy efficiency targets to contribute to the EU climate target of 55 pct. CO_2 neutrality by 2030.

EU legislation on ecodesign and energy labelling has delivered half of the EU's energy efficiency target in 2020 and should continue to contribute significantly to this target. The inclusion of more products in the scope should include products that benefit from the Ecodesign approach of promoting better product design, thereby making it possible to verify and supervise whether products are up to standard.

Focus should be on promoting better product design with regard to durability, reparability, re-usability, recyclability, smart appliances, Cost of Ownership (purchase price, installation, maintenance, energy consumption and disposal), Life Cycle Cost (Cost of Ownership and environmental externalities), safety including chemicals safety and longevity. Denmark encourages the Commission to start the necessary work on provisions related to these characteristics and put in motion the necessary standardisation processes in case no harmonised standard is currently available, thus ensuring safe products with indication of expected lifetime. This could be prioritised e.g. in the upcoming revision of the regulation on computers and computer servers and other ICT initiatives under Ecodesign.

When developing product requirements for resource efficiency, it should be ensured that they can be implemented by manufacturers and enforced by market surveillance agencies (MSA). This should be done building on the experiences of the energy efficiency requirements under the Ecodesign Directive, including the documentation burden for manufacturers and MSA. The widening of the Ecodesign Directive as part of the Sustainable Products Initiative should not unnecessarily delay or diminish the current efforts of the existing Directive or its

implementing measures. The inclusion of more circular economy aspects should continue, encompassing energy and environmental aspects in the whole life cycle. To this end, the Ecodesign and Energy Labelling Working Plan 2020-2024 should be completed as soon as possible.

The SPI and the EU Sustainable Chemicals Strategy are closely interrelated parts of realising the CEAP and must be seen in context. The objectives in the Chemicals Strategy concerning traceability and information on chemical content and safe use, safe-and-sustainable-by-design, non-toxic material cycles by minimising the presence of chemicals of concern in products, extension of the generic approach to risk management to ensure that consumer products do not contain substances that are carcinogenic, mutagenic or toxic to reproduction (CMR substances) (and the possible expansion of the chemicals covered by the generic approach) are highly relevant for the SPI.

So far, chemicals of concern have been covered by the specific regulation pertaining to electric and electronic equipment in the Restriction of Hazardous Substances (RoHS) Directive. A broader range of products regulated under the SPI calls for chemical requirements to be added in the product legislation in order to ensure safety as well as non-toxic material loops for the new product categories. Focus should be on reducing the presence of hazardous substances in products, including substitution and ban of the most harmful substances with reference to the Classification, Labelling and Packaging (CLP) and Registration, Evaluation, Authorisation and restriction of Chemicals (REACH) regulations. Enhancing the performance of products on a broad range of environmental parameters is not expected to follow an improvement on all parameters simultaneously. Thus, trade-offs between requirements may occur, resulting in requirements not automatically supporting the same targets or potentially even working against each other. E.g. enhanced energy efficiency or prolonged lifetime might involve use of chemicals that would ideally be substituted by less harmful chemicals. The development of sustainability-principles as well as criteria should make room for this, allowing progress in one area without necessarily demanding it to be the case on every single one. The guiding principle should be that progress in reducing one type of environmental impact must never mean a setback in another. Furthermore, the trade-off choices should be fully documented.

Concerning chemicals of concern, the SPI should in general implement a generic, overall "automatic" ban of the most hazardous chemicals in products (specific exemptions that are duly justified by societal needs can be made), as is the case in the current regulation of CMR substances in the regulation of toys and cosmetics. In addition, further chemical requirements of certain relevance to specific product groups should when relevant be included in the specific product regulations, e.g. allergens in textiles.

Responsibility for information, including Digital Product Passport(s)
Denmark finds that a digital product passport is a highly needed tool to accelerate the circular economy. The framework for the digital product passport should be an integrated part of the legislative SPI proposal in order to enable tracking and tracing and ensure access to information about products and their components concerning; origin and composition including declaration of hazardous chemicals and substances of concern, their durability, composition, reuse, repair and dismantling possibilities, availability of spare parts, and end-of-life handling, as well as their environmental footprint and performance. Also, this framework needs to be closely aligned with horizontal provisions on data sharing to be laid down in the forthcoming Data Act.

The information in the digital product passport should not only facilitate sustainable production and consumption, but should also be a tool for consumers, empowering them to make more sustainable choices when they buy products. In developing the digital product passport, it is important to acknowledge the hesitance companies have towards sharing business sensitive information, which should be dealt with in the design of the digital product passport and how data is reported here. Finally, it is important to emphasize, that the digital product passport needs to be embedded in a data infrastructure in order to make it easily shared with relevant stakeholders (business partners, investors, authorities etc.).

Denmark finds that it is important to ensure that the digital infrastructures and the digital product passports provide an environmentally sound information on energy and CO_2-emissions, resource and material efficiency and can stimulate increased usage of secondary raw materials. Information about products could serve as a tool for importers and distributors of products to set requirements to the manufacturers on use of materials and chemicals in the products. Besides static information collected along the supply chain and fixed at the moment of placing the product on the market, the digital product passport could also include dynamic information generated throughout the product's use. We also encourage the Commission to look into the possibilities of launching pilot projects, involving relevant stakeholders, for the development of digital product passports for products within the key value chains identified in the Circular Economy Action Plan. Pilot projects should revolve around the use of digital technologies such as Artificial Intelligence, Internet of Things and blockchain, with potential to contribute to tracking and ensuring transparent and reliable environmental information across value chains. Also, the feasibility of letting the existing data infrastructure build up by the Peppol standards for electronic business communications and the eDelivery network provide the infrastructure of the digital product passport should be studied. It is key that the architecture of the digital product passports integrates existing databases e.g. SCIP and EPREL and corresponds with a common European Data Space for Smart Circular Applications. A digital product passport should build on known technology, with easy access for those to enter and update data, and with a requirement for verification. Also, it is important to ensure a that the data infrastructure allowing for the sharing of circular data between companies also outside of Digital Product Passports. Finally, we urge the Commission to ensure coherence in requirements asking information on products from companies, to ensure that companies are not asked for the same or similar information more than once, and ensure that, where relevant, the digital product passport is the main vehicle (one-time-only) for sharing of information on products.

Circular business models
Denmark finds that strengthening the companies in the EU through support of innovative circular business models and entrepreneurs should be important aims of the CEAP and the SPI. Denmark fully supports the Commissions intention to establish sustainability principles as part of the SPI to incentivise product-as-a-service and other models where producers keep ownership of the product or the responsibility for its performance throughout its lifecycle. Denmark sees the further dissemination of circular business models as key to improving product durability, reusability, upgradability and repairability of products.

Denmark sees digitalisation and the use of data as an enabler for circular business models that should be fully supported by the Commission. Denmark sees three main types of data that can underpin different circular business models in collaboration with suppliers and customers along the value chain: 1) Material traceability data, i.e. information about product

design, material content, -quality and -origin in products, and whether the materials contain hazardous substances which are central to assess whether the products can be reused, repaired, remanufactured or recycled etc., 2) life cycle assessment of environmental and climate impact, and 3) product performance data, i.e. information on the use and condition of the products, which can provide companies with information on how they continuously can maintain and improve the performance of the products.

Companies are experiencing obstacles for collecting, using and sharing of data internally and along the value chain to promote their circular business models, most notably lack of data-interoperability. Lack of data standards, data sensitivity, lack of trust in the supply chain and lack of easy access to public data. Denmark finds that the Commission should play an active role in helping companies overcoming these barriers thereby supporting them in accelerating the use of data to enable circular business models by 1) providing clear guidance for sharing of data and use of relevant tools while respecting companies' need for confidentiality around certain data; 2) by uniforming data formats and standards to increase data interoperability, and 3) by facilitating easy access to public data for business development e.g. through data spaces.

Incentives for circularity

Green Public Procurement (GPP)
Denmark fully supports the importance of Green Public Procurement (GPP) to be covered in the impact assessment, in line with the CEAP reference to proposing minimum mandatory GPP criteria and targets, and encourages focus on possible incentives to stimulate green private procurement.
The Commission has developed 20+ GPP product criteria, many inspired by criteria related to the EU Ecolabel. Where relevant, the Commission shall carry on this praxis, e.g. with regard to consumable goods like paper, detergents and textile/furniture. Other relevant GPP criteria could be to focus on Total Cost of Ownership/Life Cycle Costs and standardise procurement of reused/second hand products. Accordingly, Denmark encourages the Commission to look more into the integration of TCO/LCC tools into GPP criteria for durable goods (e.g. cars and lighting), and to ensure a better and more systematic monitoring of member states use of GPP criteria, common definitions and tools. That includes looking into the possibilities of incorporating relevant standardized product information derived from the GPP criteria in the existing, mandatory electronic invoice thereby ensuring automatic monitoring of member states use of GPP criteria on the basis of near-real time public procurement data. In short, if a product fulfils the GPP criteria, it is then stated on the electronic invoice. PEF should be used to assess the basic environmental profile for a product area, and to verify GPP criteria with regard to the relevance of the environmental criteria and hotspots, thereby making sure that GPP is setting criteria for products and services covering the environmentally performing best third of the market. Finally, Denmark sees public procurement as an important demand side instrument in supporting the uptake circular business models, and urges the Commission to integrate support for circular business models in the work on GPP criteria.

EU Ecolabel
The voluntary EU Ecolabel is an important tool with its "market pull effect" and is gaining ground with increasing knowledge, an increasing number of license holders and more EU Ecolabelled products. Accordingly, Denmark encourages the Commission to revise and

develop new product groups with even more focus on circular economy thinking, and where relevant move to product-service systems. The EU Ecolabel provides a trustworthy and transparent alternative to private labels, but also an easy alternative for green procurers or as a basis for developing procurement criteria, e.g. the EU GPP criteria. In order to ensure a coherent product policy, the PEF methodology should be used as the basis for future new criteria and update of existing criteria. On top of the PEF, the EU Ecolabel should include other aspects in criteria setting, e.g. social aspects, restrict the use of special hazardous substances of concern irrespective of its actual risk and quality. In this regard, identification and tackling the most important differences between the EU Ecolabel and PEF (product scope, definition and functional unit, primary or secondary data and chemical focus on hazards or risk) is necessary.

Eco-modulated fees in the Extended Producer Responsibility (EPR)
The obligation for collective schemes to modulate the financial contributions paid by producers, which is a part of the new general minimum requirements for EPR schemes in the revised Waste Framework Directive, could be an effective instrument to promote better product design with regard to recyclability and as a way to reduce the presence of hazardous substances in products. One major limitation for its use is that the modulation must be based on the actual costs of the waste treatment which makes it difficult to include criteria like climate effect, durability etc. that does not directly affect the costs of the waste treatment process. Therefore, in order to reach the goal of giving incentives to better design, it is important to develop common criteria for the EU, showing how to take into account durability, reparability and re-usability within the possibilities of the Waste Framework Directive. Besides, setting individual criteria by each collective scheme or even by each Member State will create market distortion, as producers then need to develop products to each national market in order to meet their specific criteria. The Commission should develop specific criteria for modulated fees for individual product groups based on the PEF methodology and integrated with other policy instruments such as the eco-design and ecolabels. The modulation of the EPR fee levels should be a matter of national and organizational decision.

Compliance with and enforcement of sustainability requirements for products
In order to ensure compliance with the future sustainability requirements for products, it is the position of the Danish Government that legislative protocols should be supplemented and compliant with such protocols enhanced through appropriate actions, e.g. coordinated communication activities across the EU as well as market surveillance enforcement campaigns focusing on the new opportunities and applicable regulation.

The operational support of the legislative acts are deemed particularly important during the implementation phase of new regulation in order to promote not only awareness of the new requirements, but also how these can be met. The initiatives will also help the Market Surveillance Agencies (MSAs) in gathering information on the level of compliance in different product groups. Gathering and sharing detailed information on compliance should therefore be a priority whilst – and after – widening the scope of the Ecodesign Directive, as this will enable a more targeted and effective enforcement in the years to come.