

Our position

Comments on the EU Digital Product passport



AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €3 trillion in 2020, directly supports more than 4.8 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

Introduction

The lack of reliable information on sustainability along value chains for products placed on the EU market reduces the ability of economic operators and consumers to produce and purchase sustainable products. Improving information flows will require mobilising the potential of digitalising product information.

The European Commission's initiative to establish a 'Digital Product Passport' (DPP) aims to harness the full potential of digital solutions. A DPP will increase transparency and ensure the necessary communication and provision of sustainability-relevant information for product characteristics along value chains and business sectors.

In parallel, a DPP would help reduce the information overload on packaging and minimise the costs associated with changes related to product labelling. Although a DPP is a 'win-win' opportunity for the environment and the economy, there are several aspects that need to be carefully assessed to ensure its proper establishment and effective implementation.

Objectives and architecture

In drafting the legislation on DPP, the Commission should bear in mind the level of complexity between product groups and business sectors. Any requirements for information on the sustainable characteristics of products under the DPP must be established on a sector-by-sector and product group-by-group basis. This is particularly important, for example, when it comes to the relatively easy, thus less costly, data gathering for simple products versus for more complex products which would be more time-consuming and costly for the relevant companies and business sectors.

In the proposed regulatory framework on batteries, the requirements for the Electronic Exchange Platform have been limited to industrial and electronic vehicle batteries, while portable and automotive batteries have been excluded. This underscores the complexity associated with the implementation of such costly systems, especially when it comes to fast-moving consumer goods (FMCGs) and other everyday consumption products.

Governance

AmCham EU supports the idea of a decentralised system to manage the data, but there must be a harmonised approach at EU level for its governance. The EU should guarantee the interoperability and connectivity between the systems based on standards. The EU should provide guidelines regarding processes, data nomenclature, choice of technology, etc.

Information requirements

Information on product characteristics must meet certain requirements to ensure the relevant information is of added value to all key stakeholders along value chains. Information needs to be clear, concise, meaningful, understandable, accessible, reliable, comparable and verifiable. Moreover, any information and data provided should be limited to existing regulatory requirements set by the EU legislation.

The DPP should apply to product models or groups of products as defined by existing legislation. Information contained in the DPP should be dynamic to adjust to changes throughout the product's life cycle, such as upgrades and repairs. This will facilitate the uptake of the DPP, as companies can use their existing data systems to implement the DPP and avoid unnecessary costs and complexities associated with DPP defined by individual products.

To ensure that all consumers can access the Digital Product Passport, several access options should be available, such as:

- Scanning the product by the consumer itself; and/or
- Possibility to scan the product at point of sale through machines made available by retailers.

Interoperability

An effective implementation of the DPP should focus on providing different and relevant types of information to the various stakeholders along value chains.

Different information should be available to different groups, based on product information and requirements:

- Consumers: instructions for use, information on repair centres, sorting instructions and other information as required by existing EU legislation (eg CLP regulation)
- Economic operators along the value-chains: information on proper dismantling and waste treatment of products; the presence of Substances of Very High Concern (SVHCs) through a link to the SCIP database; etc.
- Authorities: information on compliance of products with EU legislation; information on poison centres for relevant product categories etc.

The question of interoperability and coordination between several electronic exchange systems and product passports is also important given that the Sustainable Products Policy Initiative foresees addressing both final and intermediary products. In both cases special attention must be paid to

interoperability and coherence with existing or legally required databases (eg the Substances of Concern in articles as such or in complex objects [Products] database; Batteries Electronic Exchange platform, European Product Database for Energy Labelling [EPREL]; and the Information and Communication System on Market Surveillance [ICSMS] platform) in order to limit administrative burden and duplication.

Economic operators' responsibilities

The Batteries Regulation considers that the economic operator placing an industrial or electric vehicle battery on the market should be responsible for their attribution of a unique product passport and for filling in the relevant information. In this framework, it is important to clarify which markets shall be considered.

In the case of complex products, such as electric and electronic equipment, there could be several electronic exchange systems to update and product passports to establish. This may complicate the tracking of information and the allocation of responsibilities for data sharing.

Similarly, in the case of repurposing or remanufacturing a product, it should be clear that the responsibility to update the information is transferred to the remanufacturer who will be placing a remanufactured product on the EU market. Similarly, in the case of upgrading, repairing, repurposing or remanufacturing a product, it should be clear that the responsibility to update the information is transferred to the installer, repairer or remanufacturer who will be putting the product into service or placing it on the EU market.

Sensitive data protection, confidentiality and Intellectual Property rights

Confidentiality is a key issue that should be taken seriously by policy-makers when designing the Digital Product Passport (DPP). The tool should not require companies to share information that breaches confidentiality and Intellectual Property (IP) rights. In this regard, any information required should abide by existing data protection, confidentiality and IP rights regulations. At the same time, information on the authenticity/originality of the products, through access to the official and legitimate manufacturers' websites via the DPP, could be provided to the end consumer particularly when access to this information is linked to consumer safety during the use phase.

Although disclosing meaningful information on product characteristics for the effective implementation of the DPP is appropriate, a prior assessment of the most efficient process of information provision should be performed.

Regarding the regime for accessing data in the DPP, we support a mix of confidential and publicly available data. A majority of stakeholders¹ who responded to the Trinomics survey support a mix of public and confidential data:

- Information for consumers should be public.
- Information for economic operators along the value-chains should exclusively be limited to accredited economic operators to maintain confidentiality of business data, protect competitiveness and respect competition law. Increasing transparency in the value chain and with waste management operators will improve sorting and recycling, while protecting confidential business information and enhancing competitiveness.

Clarification of data protection obligations and the potential liabilities in case of data breach is essential, and must be clarified upfront. Furthermore, in case of significant business events such as change in ownership or bankruptcy, there should be legal obligations for companies to transfer product data to prevent loss of information.

¹ 47% exactly. Source: Trinomics Impact Assessment study for the Sustainable Product Initiative Workshop 3: Digital Product Passport, April 2021