The Confederation of Swedish Enterprise´s detailed position on digital product passports

Introduction

The Confederation of Swedish Enterprise welcomes the development of digital tools that channel information between different actors in the value chain and help companies to increase transparency. This is a key enabler of the circular economy. Swedish Enterprise also welcomes more information about products made available to consumers and customers to enable informed choices. A digital product passport, ("product passport"), appropriately designed and aligned with, industry initiatives, could contribute to this and thereby facilitate the circular economy and circular business models.

Sharing information between actors with the help of product passports offers many advantages. However, it is particularly important that a product passport is designed in such a way that it promotes rather than harms the competitiveness of European business. Therefore, key aspects to consider include keeping the amount of data reported at a reasonable level; that trade secrets, in the event that such data is included, is handled in a secure manner; and that effective market surveillance, including imported products, is established.

Swedish Enterprise has set out its position on the planned European product passport in more detail below.

1. The purpose of the digital product passport and what it should focus on

The purpose of the product passport is crucial to determine what information needs to be included in the passport itself. The European Commission's overall aim with product passports is to digitalise product information *which would provide producers and other key supply chain actors, consumers and market surveillance authorities with information relevant for ensuring the sustainable management of a product*[1]. So, according to the Commission, the purpose of the product passport is to make information available to a number of different target groups and thereby contribute to sustainable development.

Swedish Enterprise would like to emphasize that traceability systems and databases already exist in various industries with the aim of streamlining operations and reducing environmental impact. Traceability is used to optimise logistics flows, planning, inventory efficiency, product security, resource use and provides tools for developing more sustainable and circular business models. A product passport, properly designed, could have a function of

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[1] Public Consultation on the Sustainable Products Initiative, March 2021.

co-ordinating and synchronising information flows by ensuring that different information systems communicate with each other in the same "language", across industries and product groups. To make the product passport work efficiently and according to its stated aims, it is vital that the design of the product passport is based on the business community's prerequisites and needs. In this way, added value such as improved consumer information and the availability of relevant information to authorities would be a natural additional bonus.

2. Appropriate content and design of product passports

Prioritisation of information to be included
Decisions about what information to include in the product passport must be based on the utility of information, to enable informed choices and when using products, and to meet established environmental and safety requirements. To avoid excessive administrative burdens for companies, especially for small and medium-sized enterprises, information included in product passports must be determined on a "need to know" basis rather than a "nice to know" basis. As an initial step, existing information should be used, and additional information can be added subsequently as required.

Need for information must be defined by product group and target group
Information that is relevant to include in a product passport must vary and be defined at product level. The need for information depends on, among other things, the specific characteristics of products, such as expected lifespan and area of use, and the legislation to which the product is subject. For products with a long-expected lifespan, for example, it must be considered that the need for information varies during different parts of the product's life cycle. Information relevant to disassembly, maintenance and repair, and how a product can be recycled is important to enable circular product flows. However, if information constitutes trade secrets, this must be managed securely.

The need for information also differs between different target groups. Business actors need a certain type of information, sometimes highly detailed, which also varies considerably between different products and for different circular business models. The information needed for consumers to make more sustainable choices can also vary greatly for different consumers depending on values and knowledge; but this information should be at a more general level. Market surveillance authorities primarily need information linked to existing legal requirements. Regardless of target group, trade secrets, if they are to be included, must be handled securely, (see section below). Another important aspect to consider is how information in product passports should be communicated to different target groups, i.e., how and by whom various recipients, (consumers, customers, companies, etc.) should be informed. All commercial actors along the value chain must complete information in the product passport whenever a product is repaired, refurbished or otherwise modified during its lifetime, where equal conditions and reporting obligations must apply to all actors.

Avoid large central computer systems: decentralise with the help of existing systems
It is positive that the European Commission has announced that duplicate reporting will be avoided by using existing information in databases, something that businesses strongly

supports. There have been several examples in recent years of changes to legislation with the aim of increasing information sharing in certain parts of the value chain. This may relate to information requirements for individual product groups, (such as tobacco and fish), but also generic requirements that apply to most product groups, (such as the SCIP database)[2]. All these rely on collecting information in central databases. Given that product passports are expected to cover a large number of products and information throughout the value chain, it is vital that information is shared efficiently. Ideally, gathering all information in a large, central database from which all actors will then receive information should be avoided. Rather, product information should stay with the actor responsible for it, whereupon the actor shares information when requested by another actor in the value chain. This also ensures that information that is shared is the most current, given that products are developed and changed over time.

Several different standards and systems for data sharing in value chains already exist at national and European level. It is important to use information held on these existing systems in the development of a product passport, and if necessary, supplement these systems and enable readability between systems. Examples include standards for data templates for building modelling EN ISO 23386: 2020, EN ISO 23387: 2020. Another example is ECMA-370 which is a self-declaration for IT products based on market demand for product content and databases for the collection, packaging, and dissemination of information about the contents of electrical products linked to recycling EPREL – the Energy Label Database and the WEEE recycling information database.

Since the introduction of a product passport is clearly designed to contribute to a more sustainable society, it is important to ensure that the actual development of a product passport does not in itself entail an environmental impact. If a fully developed central product passport system were to be created, the energy consumption required to share all information contained in it would increase many times over without increasing added value. This is unacceptable. A decentralised solution, for example structured as GS1, (a global, private, non-profit standardisation organisation), is preferable from environmental and sustainability standpoints.

Difficulty with access and reliability of data for products with extended supply chains
Many products have long, global and complex supply chains. This often creates difficulties in obtaining credible data from countries outside the EU. Therefore, it is important that the mandatory information to be included in the product passport is based on the legal require-ments contained in EU regulations, that the level of scope is reasonable, and that required information is needed to achieve established environmental goals. It must also be possible to control and verify the information to be included, and supervision must be exercised and given the necessary resources provided to maintain a level playing field in the market.

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[2] The SCIP database contains information on products that contain particularly hazardous substances.
https://echa.europa.eu/sv/scip

Data needs to be standardised as much as possible
To ensure that the product passport contains reliable information, data should, as far as possible, be based on standards including existing international product standards or industry standards. These can be developed by supplementing basic information with additional product features according to the purpose of the product passport. Standardised data is also important for ensuring the freedom of communication between different systems. It should be a clear guiding principle of product passports that they should be based on established methods, databases and models and that its introduction should not have effects that counteract the overall objective of the reform.

Reporting must be continuously improved
In many sectors, product development is very rapid. When developing legislation linked to a product or product group, it is important to consider potential future product development so as to encourage innovation. The continuous development of technology also presupposes that reporting requirements are continuously adapted. It is also important to continuously evaluate the effect of a product passport by obtaining the views and suggestions of stakeholders such as manufacturers, retailers, recycling companies and consumer organisations. A process for updating reporting requirements needs to be developed and presumably adapted depending on product type.

It must be possible to control and verify data
The information to be reported in the product passport must be based on recognised scientific knowledge and possible to verify and control. Data that is not possible to verify has no value and should not be included as it risks becoming misleading and can result in an uneven playing field between products.

A unique product passport for specific products versus a generic passport for product types
The design of the product passport for different product groups or types must be clear and not overly complex. For some products, a unique product passport could probably be beneficial where unique information on the physical product is needed, perhaps in combination with certain general information. For other products, general information is sufficient to meet the purpose of the product passport. The key is to decide on the benefit that the specific information entails when deciding on unique and generic information for a product.

3. Management and protection of trade secrets and other knowledge-based assets

The considerable importance of trade secrets
Trade secrets are for many companies one of the most important instruments for obtaining and maintaining a competitive advantage. They are covered by the EU directive on undisclosed know-how and business information, (trade secrets), (Directive 2016/943), which describes how large investments can be behind trade secrets (reason 1) and that trade

secrets, of all sizes of companies, are valued as highly as patents and other intellectual property rights, (reason 2).

The importance of companies' knowledge-based assets is also the reason the European Commission has developed an action plan for intellectual property rights as part of its industrial strategy. Lack of sufficient protection for the knowledge-based assets affects companies' incentives to invest in innovation.

The importance of balancing different interests
The desire for transparency must be balanced against companies' legitimate interest to protect their investment in innovation. The legitimate interest of companies in protecting their knowledge-based assets must be weighed against other interests. Requirements for product passports reporting on the internal market must not result in innovative companies in the EU being in a worse position than innovative companies from third countries. Swedish Enterprise is generally of the opinion that there should be restraint in requiring trade secret information to be covered by the product passport.

The protection of trade secrets is based on traders keeping information secret for business reasons. Different companies make different strategic choices about what should be kept secret. For example, the precise composition of different ingredients of a given product might be something that some companies publish, and some companies keep as trade secrets. Innovative companies make these choices based on business models and strategic business reasons, key factors that determine their competitiveness. It is therefore not possible to generalise about what information constitutes a company secret or not – it varies from company to company. It should also be borne in mind that the EU definition of trade secret may clash with countries outside the EU and their interpretation of the term.

From a competitiveness perspective, it is important that companies in Europe can continue to enjoy robust protection of their trade secrets. In the absence of such protection, the whole purpose of the Trade Secrets Directive will be undermined.

Protection of trade secrets and risk of counterfeiting
Pirated copies are made of all types of products, including spare parts. This is a major problem and sharing information in the product passport must not lead to a further deterioration in this regard. It is therefore vital to identify safe ways of sharing undisclosed business information. This could be done by the player in the value chain who needs information about a product for remanufacturing, for example, requesting it and having the information made available in a securely manner, similar to source code deposit.

4. Importance of verification, self-declaration, and market surveillance

Effective market surveillance is necessary

It is vital that market surveillance is carried out on the information provided in the product passport to ensure a level playing field in the internal market. As more product requirements are set in the EU's internal market, market surveillance needs to be increased accordingly. It is also crucial that the performance of market surveillance include all products placed on the EU market, i.e., both those manufactured within the Union and those imported. In addition, market surveillance should impose the same conditions on the product regardless of which sales channel is used and not, as today, have stricter controls in physical stores than in e-commerce. As the information in the product passport aims, among other things, to get consumers to make more sustainable choices, it is central that the information is verified in order to avoid "green washing".

Methodology for market surveillance of product passport requirements needs to be developed

It is important that market surveillance of product passports is co-ordinated and conducted in a systematic and equivalent manner throughout the Union. Methodologies for how this is to be achieved must therefore be developed containing well-defined requirements and supervisory guidance.

Market surveillance are currently managed by member states with some co-operation between countries. Market surveillance are generally costly and require considerable amounts of knowledge. As member states are responsible for market surveillance and its design, ambition, resources and efficiency, this often leads to differences in market surveillance between different member states. It is unfortunate that efforts in this sphere vary to the extent that they do. Increased co-ordination and a common approach to market surveillance is therefore needed to achieve greater uniformity.

In Sweden, for example, market surveillance is linked to the Construction Products Regulation for various construction products. At the same time, building materials imported into Sweden from other member states have partially incorrect performance declared in their performance declaration and CE marking. The responsible authority in the country of manufacture states that they do not have the resources to conduct market surveillance. This creates an unacceptable distortion to competition.

Sufficient resources to implement fair market surveillance of product passports must be ensured. Swedish Enterprise calls on the European Commission to ensure that this is the case through dialogue with member states.

Particular focus is needed to improve market surveillance of imported products

Currently, market surveillance does not function satisfactorily with regards to imported products. This applies in particular to products available via online marketplaces from sellers outside the EU and where there is no responsible economic actor within the EU. This is

something that requires greater focus and improvement, as new product requirements and reporting requirements in the product passport are introduced, to ensure fair competition in the internal market.

Avoid third-party verification requirements

Verification of requirements linked to product passports must be possible through self-declaration by manufacturers, and other actors in the value chain, in conjunction with available documentation. A generally mandatory requirement for the introduction of third-party verification or inspection to verify requirements is not preferable, as this is very costly and resource intensive.

5. Legal and technical aspects related to data sharing

Legal aspects of data sharing must be considered

A product passport entails companies making certain data available to authorities and other actors. It is important that the product passport makes it easier for companies to voluntarily share relevant data. To the extent that the product passport also requires mandatory data sharing, it must be ensured that the rules are also compatible with other rules concerning companies' handling of data.

The extent to which companies share data is determined by compliance with data protection rules and commercial considerations. Intellectual property rights must also be considered when data is shared, mainly with regard to who must consent to the possible transfer of data. It must therefore be guaranteed that legal conditions – intellectual property rights, data protection rules and competition law – are in place to enable the sharing of current data.

To avoid complicated and costly considerations and demarcations for companies, rules on data sharing must be supplemented with guidance from the EU that helps companies to legally comply with the requirements. In some EU countries, such as Sweden and Finland, it must also be ensured that the principle of public access to information does not result in information, that companies share due to the product passport, risk being disclosed. This principle makes companies often hesitate to provide sensitive information to authorities.

Product passport rules must also align with recently published and forthcoming data sharing initiatives, mainly in the context of the EU data strategy, to avoid overlapping or conflicting rules. In addition, in other industries, further sector-specific legislation concerning data sharing is expected and must be considered.

Reduce technical barriers to facilitate data sharing

Companies' ability to share data requires access to relevant technical knowledge and tools. Data sharing also assumes interoperability, i.e., the ability to exchange information between different systems. For these reasons, businesses need technical guidance to reduce possible technical barriers against data sharing.

Data sharing already happens today in many different ways[3]. There is thus no universally accepted data sharing model that is suitable for all situations. It is important that the product passport remains technology-neutral and focuses on principle-based rules regarding data sharing. This is especially true for product markets in which technological development is rapid.

6. SME may require extra guidance and support

It is vital that the requirements for product passport reporting are established at a reasonable and manageable level. Collecting, administering, and making available large amounts of information is demanding and special consideration must be given to the limited resources of small and medium-sized enterprises. It is also important that information to be included in the product passport is selected carefully and is justified from a sustainability point of view, see section 2. SMEs may need special guidance, skills development and access to administrative tools to effectively manage and administer information without adversely affecting their competitiveness. Even today, the burden is high for many smaller companies to meet and report according to environmental and sustainability requirements. In the long term, the focus on sustainability strengthens companies' competitiveness, but requirements must be manageable, realistic and contribute to more sustainable development. A balance needs to be struck between environmental costs and benefits so that the competitiveness of SMEs is not eroded.

This position paper har been produced in close cooperation with Swedish Enterprise´s member organisations.

Stockholm 4 th of November 2021

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[3] Companies and authorities can also enter into agreements to share certain amount of data. They can also enter into partnerships for more long-term and continuous data sharing. Companies may also choose to make public data of general interest as part of their social responsibility efforts. Third parties are also hired to process data and ensure that data that is of general interest is shared without authorities having access to the full amount of data. Yet another model involves the public sector offering rewards to encourage private actors who specialise in data analysis to find solutions to a specific problem that concerns the public interest.