

**Europacable calls for improvements to ensure that the new Ecodesign for Sustainable Products Regulation (ESPR) effectively promotes sustainable products and improved product information transparency for European citizens, while recognising the key role of industry in the environmental transition process.**

Brussels, 28 November 2022

**Europacable, the voice of Europe's wire and cable industry, calls on EU co-legislators to improve the proposal for a new Ecodesign for Sustainable Products Regulation (ESPR). The aim should be to ensure legal certainty for the promotion of sustainable products and improved product information transparency all across Europe, while avoiding to alter the dynamism of the wire and cable industry through double legislation and unnecessary administrative burden.**

The European wire and cable industry is strongly committed to the success of the European Green Deal. Manufacturers are actively developing solutions to support Europe's decarbonisation objectives through electrification and digitalisation, as well as the continent's energy independence. Significant efforts and investments both in terms of innovation and product certifications are driven by the industry with the aim of designing and manufacturing products that will contribute to improve environmental quality for European citizens.

With this in mind, Europacable calls on EU co-legislators to take into consideration the following improvements to the ESPR proposal, as well as to the revised CPR proposal, to ensure:

**A. Strict alignment of sustainability requirements and Digital Product Passport provisions for all products in the Single Market:** The European Commission has established a framework to improve the climate and environmental sustainability of all products in the Single Market together with a Digital Product Passport via the proposal for an Ecodesign for Sustainable Products Regulation (ESPR). Concurrently, it has decided to broaden the scope of the new Construction Product Regulation (CPR) by including environmental sustainability aspects for construction products. Europacable believes that it would be vital to promote strict alignment between the CPR and ESPR to ensure a consistent and coherent implementation of the new rules all across the EU.

In particular, we fear that a same product group could end up being subject to both regulations with different requirements on climate and environmental sustainability depending on the use of that product. This might be the case for power, control and communication cables currently falling within the scope of the CPR and possibly within the ESPR depending on the interpretation of the definition of "energy-related products".

Therefore, Europacable strongly recommends that EU co-legislators ensure that the sustainability aspects of CPR are strictly and fully aligned with the ESPR to avoid unnecessary duplications which would jeopardise the Single Market:

- ***A more detailed definition of "energy-related products" within the ESPR proposal (art. 4(2)) should be envisaged together with the request for the European Commission to issue clear guidelines for the interpretation of such definition;***

- ***The delegation of power to the European Commission when defining the product groups to be covered by ecodesign requirements (Annex VI (4) of ESPR) should be framed to guide the EU's executive body in the selection of products and therefore avoid potential overlaps with product families already covered by the CPR.***

Furthermore, it is vital to ensure a strict alignment with the suggested Digital Product Passport to avoid any unnecessary burden to construction product manufacturers. In this respect, Europacable strongly recommends that:

- ***New art. 78 of the CPR ensures that required information and documentation will be processed via the Digital Product Passport and that the latter follows a product-by-product approach and avoids any overlap and duplication with already existing information requirements.***

**B. Averting other duplication of efforts and double regulation, in particular for chemicals:**

consistency and alignment between the proposed ESPR and existing or new requirements under other EU initiatives and legislations (SCIP database, Product Environmental Footprint, Right to Repair) must be ensured to avoid the duplication of effort in providing information. In particular, as chemicals are already regulated under other legislation, they should not be further regulated under the ESPR. The REACH regulation and the RoHS directive should remain the primary legislation regarding chemical substances.

Conversely, the introduction of the concept of Substances of Concern in the ESPR creates a risk of confusion and substitution with Substances of Very High Concern (SHVC) as clearly and successfully managed within the REACH directive. **The information requirements for substances on the REACH Candidate List should be specified exclusively in REACH** in order to avoid multiple regulations which could result in inconsistencies.

- ***In this respect, Europacable fully supports the amendment proposals nr. 1 and 2 [published by BusinessEurope](#) on information requirements on substances of concern.***

**C. Protecting trade secrets and intellectual property rights:** to assure the long-term viability of our industry against unfair competition from outside the Union, Europacable calls for a reasonable level of transparency and use of data within the DPP, in order to preserve manufacturers' trade secrets and IPR – and with that, their overall competitiveness.

- ***To this end, Europacable fully supports the amendment proposals nr. 3 and 8 [published by BusinessEurope](#) on the Digital Product Passport.***

**D. Restricting the scope of the ESPR to finished products:** Europacable sees the risk of disproportionate negative impact on the competitiveness of economic actors if components and parts would be covered by Delegated Acts under the ESPR instead of finished products only, and where life cycle assessments could be imposed on all products. **Components should not be regulated in their quality of components, and at the same time as part of finished products.** The ESPR should generate an overall environmental and economic benefit. An excessively extended scope of the regulation could severely endanger the competitiveness of the industry.

- ***Therefore, Europacable fully supports the amendment proposal nr. 16 published by BusinessEurope on performance requirements and prioritisation.***

We call on the European co-legislators to take the Europacable input into consideration. We look forward to working with the European Parliament Rapporteurs Mrs Doletti, Mrs Spyraiki and Mr Cormand, all Shadow Rapporteurs, as well as the Czech Presidency of the Council of the EU and European Member States for developing effective improvements to the ESPR proposal. Europacable firmly believes that the ESPR has to promote sustainable and safe products while recognising and maintaining the key role of industry in the decarbonisation and energy independence of Europe.

For further information please contact: Alberto Lampasona, Director Public Affairs  
Email: [a.lampasona@europacable.eu](mailto:a.lampasona@europacable.eu)

#### **About Europacable**

Europacable is the voice of Europe's leading wire and cable producers. High-quality, sustainable power and telecommunication cables, produced by our members in Europe, empower electrification and digitalisation of our societies. Founded in 1991, Europacable represents the largest cable makers in the world providing global technology leadership, as well as highly specialized small- and medium sized businesses from across Europe.

With our future being ever more electrified and digitalised, cable technology will be the core backbone of Europe's energy and telecommunication infrastructures. Sustainable, low-carbon manufacturing and high-performance cables are essential to achieve Europe's climate neutrality objectives by 2050. Europacable is committed to the principles of free enterprise and fair trade. Our members employ over 80.000 people of which more than 50% in Europe, generating a worldwide turnover over € 70 billion in 2021.

Europacable is a member of EuroFSA, FEEDS, Orgalim, RGI, WindEurope and a partner of CENELEC and EUEW. Europacable is listed in the European Commission's Transparency Register under 453103789-92. [www.europacable.eu](http://www.europacable.eu)

## Proposed amendments

### B. Averting other duplication of efforts and double regulation

#### AM 1 – Recital 25

Text proposed by the Commission	Proposed amendment
<p>(25) “Information on the presence of substances of concern in products is a key element to identify and promote products that are sustainable. The chemical composition of products determines largely their functionalities and impacts, as well as the possibilities for their re-use or for recovery once they become waste. The Chemicals Strategy for Sustainability calls for minimizing the presence of substances of concern in products, and ensuring the availability of information on chemical content and safe use, by introducing information requirements and tracking the presence of substances of concern throughout the life cycle of materials and products. Regulation (EC) No 1272/2008 of the European Parliament and of the Council<sup>65</sup> and other existing chemicals legislation such as Regulation (EC) No 1223/2009 already ensure communication on hazards to health or the environment posed by certain substances of concern on their own or in a mixture. Users of substances and mixtures should also be informed about pertinent sustainability-related information not primarily related to hazards to health or the environment. Furthermore, users of products other than substances or mixtures, and managers of waste from such products, should also receive sustainability-related information, including information primarily related to chemicals’ hazards to health or the environment. Therefore, this Regulation should allow for the setting of requirements related to the tracking and communication of sustainability information, including the presence of substances of concern in products throughout their life cycle, including with a view to their decontamination and recovery when they become waste. Such a framework should aim to progressively cover all substances of concern in all products listed in working plans setting out the product groups the Commission intends to tackle.”</p>	<p>(25) “Information on the presence of substances of concern in products is a key element to identify and promote products that are sustainable. The chemical composition of products determines largely their functionalities and impacts, as well as the possibilities for their re-use or for recovery once they become waste. The Chemicals Strategy for Sustainability calls for minimising the presence of substances of concern in products, and ensuring the availability of information on chemical content and safe use, by introducing information requirements and tracking the presence of substances of concern throughout the life cycle of materials and products. Regulation (EC) No 1272/2008 of the European Parliament and of the Council and other existing chemicals legislation such as Regulation (EC) No 1223/2009 already ensure communication on hazards to health or the environment posed by certain substances of concern on their own or in a mixture. Users of substances and mixtures should also be informed about pertinent sustainability-related information not primarily related to hazards to health or the environment. Furthermore, users of products other than substances or mixtures, and managers of waste from such products, should also receive <b>relevant</b> sustainability-related information, including information primarily related to chemicals’ hazards to health or the environment. Therefore, this Regulation should allow for the setting of requirements related to the tracking and communication of sustainability information, including the presence of <b>relevant</b> substances of concern in products <b>throughout their life cycle</b>, including with a view to their decontamination and recovery when they become waste. <b>Information requirements should only require actors to deliver data once. Such a framework should aim to progressively cover all substances of concern in all products listed in working plans setting out the product groups the Commission intends to tackle.</b>”</p>

#### Justification

For complex products it is very difficult to create a full list of materials and substances. Before implementing new requirements on the tracking of hazardous substances, we should make sure that the existing ones work, are fit for-purpose, and fulfil the needs of the stakeholders. Information requirements for all Substances of Very High Concern should be first addressed and handled as there is still much to do in this area. The information requirements for substances on the REACH Candidate List should be specified exclusively in REACH in order to avoid multiple regulations which could result

in inconsistencies, and also to achieve feasibility and clarity for the companies concerned. In addition, it is important to use currently required information and make sure that any further required information will in fact add value. Especially for chemicals, we must stress the importance of a product-by-product approach. Policymaking regarding chemicals should be risk-based, not hazard-based and REACH and RoHS must remain the primary legislation for addressing chemicals. The fulfilment of this proposed requirement in Recital 25 very much depends on a combined importers-non-EU manufacturers' ability for collaboration, while non-European companies will not be held liable to provide complete and correct information to European customers or enforcement agencies.

Communicating and recording potentially several thousand individual substances of concern is impossible and too burdensome for the industry. There are 224 substances classified as Substances of Very High Concern (SVHCs), while 12 000 substances could be classified as "hazardous" according to the proposed definition of 'substances of concern'.

Relevant substances for a given product category would need to be identified through an impact assessment and need to be further specified in the delegated acts. Within this framework regulation, criteria and methods should be established to determine which substances are relevant to the information requirements for a given product group and have a negative impact on the recycling of the respective products.

#### AM2 – Art 7-5

Text proposed by the Commission	Proposed amendment
<p>5. The information requirements referred to in paragraph 1 shall enable the tracking of all substances of concern throughout the life cycle of products, unless such tracking is already enabled by another delegated act adopted pursuant to Article 4 covering the products concerned, and shall include at least the following:</p> <ul style="list-style-type: none"> <li>(a) the name of the substances of concern present in the product;</li> <li>(b) the location of the substances of concern within the product;</li> <li>(c) the concentration, maximum concentration or concentration range of the substances of concern, at the level of the product, its main components, or spare parts;</li> <li>(d) relevant instructions for the safe use of the product;</li> <li>(e) information relevant for disassembly.</li> </ul> <p>Where the Commission sets out information requirements in the delegated act adopted pursuant to Article 4, it shall:</p> <ul style="list-style-type: none"> <li>(a) establish which substances fall under the definition in Article 2(28), point (c), for the purposes of the product groups covered;</li> <li>(b) lay down deadlines for the entry into application of the information requirements referred to in the first subparagraph, with possible differentiation between substances; and</li> <li>(c) provide exemptions for substances of concern or information elements from the information requirements referred to in the first subparagraph.</li> </ul>	<p>5. The information requirements referred to in paragraph 1 shall enable the tracking of <b>all relevant</b> substances of concern <b>throughout the life cycle of included in</b> products, unless such tracking is already enabled by another delegated act adopted pursuant to Article 4 covering the products concerned, and shall include <b>at least</b> the following:</p> <ul style="list-style-type: none"> <li>(a) the name of the substances of concern present in the product;</li> <li>(b) <b>where relevant</b>, the location of the substances of concern within the product;</li> <li>(c) the concentration, maximum concentration or concentration range of the substances of concern, at the level of the product, its main components, or spare parts;</li> <li><b>(d) relevant instructions for the safe use of the product;</b></li> <li>(e) information relevant for disassembly.</li> </ul> <p>Where the Commission sets out information requirements in the delegated act adopted pursuant to Article 4, it shall:</p> <ul style="list-style-type: none"> <li>(a) establish which substances fall under the definition in Article 2(28), <b>point (c), and are relevant</b> for the purposes of the product groups covered; <b>this relevance evaluation should be based on horizontal criteria developed in dialogue with stakeholders;</b></li> <li>(b) lay down deadlines for the entry into application of the information requirements, <b>in a step-by-step process</b>, referred to in the first subparagraph, with possible differentiation between substances; <b>and</b></li> </ul>

<p>Exemptions referred to in the second subparagraph, point (c), may be provided based on the technical feasibility or relevance of tracking substances of concern, the need to protect confidential business information and in other duly justified cases.</p> <p>Substances of concern falling under the definition in Article 2(28), point (a), shall not be exempted from the information requirement referred to in the first subparagraph if they are present in the relevant products, their main components or spare parts in a concentration above 0,1% weight by weight.</p>	<p><b>(c) provide exemptions for substances of concern or information elements from the information requirements referred to in the first subparagraph.</b></p> <p><b>Exemptions referred to in the second subparagraph, point (c), may Substances of concern should be selected and reported based on based on science-based evidence, technical feasibility, direct relevance to circularity for the specific product group, and the need to protect confidential business information and in other duly justified cases.</b></p> <p>Substances of concern falling under the definition in Article 2(28), point (a), shall not be exempted from the information requirement referred to in the first subparagraph if they are present in the relevant products, <b>their main components</b> or spare parts in a concentration above 0,1% weight by weight.</p>
<p><b>Justification</b></p> <p>Same justification as for above amendment 1.</p>	

### C. Protecting trade secrets and intellectual property rights

#### AM 3 – Art. 8(3)

Text proposed by the Commission	Proposed amendment
<p>3. The requirements referred to in paragraph 2 shall:</p> <p>(a) ensure that actors along the value chain, in particular consumers, economic operators and competent national authorities, can access product information relevant to them;</p> <p>(b) facilitate the verification of product compliance by competent national authorities; and</p> <p>(c) improve traceability of products along the value chain.</p>	<p>3. The requirements referred to in paragraph 2 shall:</p> <p><b>(a) be justified to significantly improve the environmental sustainability of products and to ensure free movement in the internal market;</b></p> <p>(b) ensure that actors along the value chain, in particular consumers, economic operators and competent national authorities, can access product information relevant to them;</p> <p>(c) facilitate the verification of product compliance by competent national authorities; and</p> <p><b>(d) improve traceability of products along the value chain without compromising data security of economical actors.</b></p> <p><b>To protect confidential business information and comply with requirement (b) of paragraph 3, actors in the value chains should make a specific request to the manufacturer when the information cannot be shared publicly, and the information needs to be shared in a secure way.</b></p>

### Justification

The objective of the ESPR is to establish a framework to improve the environmental sustainability of products and to ensure free movement in the internal market by setting ecodesign requirements that products must fulfil to be placed on the market or put into service.

The industry is very concerned about the protection of trade secrets and Intellectual Property Rights (IPR). There is a balancing act between creating transparency and use of the data in the DPP on the one hand, and protecting companies' rights and trade secrets on the other hand. Confidential business data, IPRs and trade secrets of companies must not be served on a freely available silver plate to their competitors.

Hence why :

- The confidentiality related to protectable trade secrets must be respected and the protection of IPRs, data exposing IPR and trade secrets must be protected or facilitating product piracy should not be listed in the ESPR Delegated Acts, and the Regulation should exclude this type of data from its scope. If IPR and trade secrets are not excluded from the scope, then high standards of cybersecurity and confidentiality will need to be in place.
- What information should be made available to market surveillance authorities without request must be clarified and these measures must respect confidentiality related to protectable trade secrets, IPRs, security laws and for export control legislations (including dual use).

### AM 8 – Art. 31(1)

Text proposed by the Commission	Proposed amendment
<p>1. When requiring manufacturers, their authorised representatives or importers to make available to the Commission, information on the quantities of a product covered by delegated acts adopted pursuant to Article 4, third subparagraph, point (b), the Commission shall take into account the following criteria:</p> <p>(a) the availability of evidence on the market penetrations of the relevant product in order to facilitate the review of delegated acts adopted pursuant to Article 4 applicable to that product;</p> <p>(b) the need to avoid disproportionate administrative burden for economic operators.</p> <p>The Commission shall specify the period of time to which the information referred to in the first subparagraph shall relate. That information shall be differentiated per product model.</p> <p>The Commission shall ensure that the resulting data is processed securely and in compliance with Union law.</p> <p>The Commission shall specify in those delegated acts the means through which the relevant information shall be made available and its periodicity.</p>	<p><del>1. When requiring manufacturers, their authorised representatives or importers to make available to the Commission, information on the quantities of a product covered by delegated acts adopted pursuant to Article 4, third subparagraph, point (b), the Commission shall take into account the following criteria:</del></p> <p><del>(a) the availability of evidence on the market penetrations of the relevant product in order to facilitate the review of delegated acts adopted pursuant to Article 4 applicable to that product;</del></p> <p><del>(b) the need to avoid disproportionate administrative burden for economic operators.</del></p> <p><del>The Commission shall specify the period of time to which the information referred to in the first subparagraph shall relate. That information shall be differentiated per product model.</del></p> <p><del>The Commission shall ensure that the resulting data is processed securely and in compliance with Union law.</del></p> <p><del>The Commission shall specify in those delegated acts the means through which the relevant information shall be made available and its periodicity.</del></p>

### Justification

The confidentiality related to protectable trade secrets must be respected and the protection of IPRs, data exposing IPR and trade secrets must be protected. Confidential business data, IPRs and trade secrets of companies must not be served on a freely available silver plate to their competitors.

Gathering information on quantities placed on the market should not be requested because this information is confidential business information.

## D. Restricting the scope of the ESPR to finished products

### AM 16 – Art. 5-4

Text proposed by the Commission	Proposed amendment
<p>4. When preparing ecodesign requirements, the Commission shall:</p> <p>(a) take into account the following elements:</p> <p>(i) Union climate, environmental and energy efficiency priorities and other related Union priorities;</p> <p>(ii) relevant Union legislation, including the extent to which it addresses the relevant product aspects listed in paragraph 1;</p> <p>(iii) self-regulation measures, as provided for in Article 18;</p> <p>(iv) relevant national environmental legislation;</p> <p>(v) relevant European and international standards;</p> <p>(b) carry out an impact assessment based on best available evidence and analyses, and as appropriate on additional studies and research results produced under European funding programmes. In doing so, the Commission shall ensure that the depth of analysis of the product aspects listed in paragraph 1 is proportionate to their significance. The establishment of ecodesign requirements on the most significant aspects of a product among those listed in paragraph 1 shall not be unduly delayed by uncertainties regarding the possibility to establish ecodesign requirements to improve other aspects of that product;</p> <p>(c) take into consideration relevant technical information used as a basis for or derived from Union legislation or instruments, including Regulation (EC) No 66/2010, Directive 2010/75/EU, technical screening criteria adopted pursuant to Regulation (EU) 2020/852 and green public procurement criteria;</p> <p>(d) take into account the views expressed by the Ecodesign Forum referred to in Article 17.</p>	<p>4. When preparing ecodesign requirements, the Commission shall:</p> <p>(a) take into account the following elements:</p> <p>(i) Union climate, environmental, <b>resource</b> and energy efficiency priorities and other related Union priorities;</p> <p>(ii) relevant Union legislation, including the extent to which it addresses the relevant product aspects listed in paragraph 1, <b>to ensure harmonisation and assure the avoidance of double regulation or overregulation;</b></p> <p>(iii) self-regulation measures, as provided for in Article 18;</p> <p>(iv) relevant national environmental legislation;</p> <p>(v) relevant European and international standards;</p> <p><b>(vii) appropriate consultations, including at expert level.</b></p> <p>(b) carry out an impact assessment based on best available evidence and analyses, and as appropriate on additional studies and research results produced under European funding programmes. In doing so, the Commission shall ensure that the depth of analysis of the product aspects listed in paragraph 1 is proportionate to their significance. The establishment of ecodesign requirements on the most significant aspects of a product among those listed in paragraph 1 shall not be unduly delayed by uncertainties regarding the possibility to establish ecodesign requirements to improve other aspects of that product;</p> <p>(c) take into consideration relevant technical information used as a basis for or derived from Union legislation or instruments, including Regulation (EC) No 66/2010, Directive 2010/75/EU, <b>technical screening criteria adopted pursuant to Regulation (EU) 2020/852</b> and green public procurement criteria;</p> <p>(d) take into account the views expressed by the Ecodesign Forum referred to in Article 17.</p>
<p><b>Justification</b></p>	



Product requirements must be introduced only after an impact assessment and cost/benefit analysis have been conducted to ensure that the new requirements will be proportionate and will contribute to the circular economy.

There shall be no disproportionate negative impact on the competitiveness of all economic actors and in particular of SMEs.