

Proposals for amendments on Substances of Concern related articles in the Proposal for a Regulation establishing a framework for setting ecodesign requirements for sustainable products (ESPR) and repealing Directive 2009/125/EC, supported by the European associations APPLiA, EPEE, JBCE, EHI, EHPA, ENPC, LightingEurope, and SEMI.

## Amendment 1

### Article 2 - Definitions – point 28

*Text proposed by the Commission*

*Amendment*

Article 2 (28)

substance of concern' means a substance that:

(a) meets the criteria laid down in Article 57 and is identified in accordance with Article 59(1) of Regulation (EC) No 1907/2006; or

**(b) is classified in Part 3 of Annex VI to Regulation (EC) No 1272/2008 in one of the following hazard classes or hazard categories:**

- **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, Bioaccumulative, 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; or**

**(c) negatively affects the re-use and recycling of materials in the product in which it is present;**

Article 2 (28)

substance of concern' means a substance that:

(a) meets the criteria laid down in Article 57 and is identified in accordance with Article 59(1) of Regulation (EC) No 1907/2006; or

**(b) impede** the recycling of materials in the product in which it is present, **based on available recycling technologies;**

*Justification*

*The definition must be more precise and be linked with the evolution of recycling technologies. Additionally, the definition of substances of concern should be more linked to the evolution of recycling technologies.*

For chemicals safety aspects, REACH should remain as the main regulatory framework. It is therefore proposed to replace the expression 'negatively affecting' with 'impeding', as the current definition is vague and substances that 'impede' recycling or reuse should be considered as a Substance of Concern. Ensure that the list of substances is dynamic and accommodates the evolution of recycling methods and technologies. More advanced recycling technologies – both mechanical and chemical – will likely allow for more substances to be recycled in the future.

The definition of substances of concern should focus only on hazardous substances that impede reuse and recycling of products. This is in line with the focus of the Ecodesign Regulation on regulating product sustainability.

Looking at the number of substances that would be covered with the proposed definition, including CLP substances, it would be unfeasible to track this high number of substances and would add unnecessary burden to industries to comply with it. Indeed, the burden will be on the industry to put in additional resources and time, to check the truth-worthiness of the information provided up the supply chain. It has to be understood that it is the final material that is often made of a mixture of which the CLP classification can totally differ.

Furthermore, the current CLP is under revision with still existing gaps. Policy-makers should at least wait for the completion of the review before providing any requirement based on this piece of legislation. For these reasons, it is highly recommended to not include the substances classified in CLP for the definition of 'substance of concern'.

## Amendment 2

### Article 7 - Information requirements - paragraph 5 - subparagraph 1 (ENVI)

#### *Text proposed by the Commission*

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:

#### *Amendment*

The information requirements referred to in paragraph 1 shall enable the tracking of **relevant** substances of concern, **including the threshold, to be defined for a specific product group pursuant to a multi-stakeholder consultation, including at least industry and recyclers**, 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 the following:

#### *Justification*

*Focusing on key Substances of Concern for each product group is the only way to implement a feasible information requirement in ESPR. It is neither realistic nor scientifically justified to track all Substances of Concern. For instance, more than 12,000 Substances of Concern may be identified in upcoming years. That is why it is necessary to focus tracking of substances of concern on key substances for each product group.*

*There must be opportunities for value chain actors involved to input before the delegated acts are adopted. Expert knowledge from the business community is crucial to enable setting relevant ecodesign requirements which do not hinder continued innovation. Recyclers should be involved to ensure that the list of substances is dynamic and accommodates the evolution of recycling methods and technologies. More advanced recycling technologies – both mechanical and chemical – will likely allow for more substances to be recycled in the future.*

### Amendment 3

#### Article 7 - Information requirements - paragraph 5 - subparagraph 1 – point b (ENVI)

*Text proposed by the Commission*

*Amendment*

**(b)** the location of the substances of concern within the product;

(b) **where relevant** the location of the substances of concern within the product;

*Justification*

*Focusing on key Substances of Concern for each product group is the only way to implement a feasible information requirement in ESPR. It is neither realistic nor scientifically justified to track all Substances of Concern. For instance, more than 12,000 Substances of Concern may be identified in upcoming years. It is necessary to focus tracking of substances of concern on key relevant substances for each product group.*

### Amendment 4

#### Article 7 - Information requirements - paragraph 5 - subparagraph 2 – point a (ENVI)

*Text proposed by the Commission*

*Amendment*

Where the Commission sets out information requirements in a delegated act adopted pursuant to Article 4, it shall:

(a) establish which substances fall under the definition in Article 2(28), **point (c)**, for the purposes of the product groups covered;

(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

Where the Commission sets out information requirements in a delegated act adopted pursuant to Article 4, it shall:

(a) establish which substances fall under the definition in Article 2(28) **and are relevant** for the purposes of the product groups covered; **this relevance evaluation should be based on horizontal criteria developed in dialogue with stakeholders;**

(b) lay down deadlines for the entry into application of the information requirements, **in a phased approach**, referred to in the first subparagraph, with possible differentiation between substances; and

### *Justification*

*Focusing on key Substances of Concern for each product group is the only way to implement a feasible information requirement in ESPR. It is neither realistic nor scientifically justified to track all Substances of Concern. For instance, more than 12,000 Substances of Concern may be identified in upcoming years. It is necessary to focus tracking of substances of concern on key relevant substances for each product group.*

*There must be opportunities for value chain actors involved to input before the delegated acts are adopted. Expert knowledge from the business community is crucial to enable setting relevant ecodesign requirements which do not hinder continued innovation.*

### **Amendment 5**

#### **Article 7 - Information requirements - paragraph 5 - subparagraph 2 – point c (ENVI)**

##### *Text proposed by the Commission*

(c) provide exemptions for substances of concern or information elements from the information requirements referred to in the first subparagraph. 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.

##### *Amendment*

(c) provide exemptions for substances of concern or information elements from the information requirements referred to in the first subparagraph. 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 existence of analytical methods to detect Substances of Concern***, the need to protect confidential business information and in other duly justified cases.

### *Justification*

*Any chemical restriction should go through detailed assessments carried out by scientific committees, and currently, the secondary legislation adoption process envisioned under the ESPR does not involve required scientific expertise and stakeholder involvement necessary to assess and substantiate such restrictions.*

### **Amendment 6**

#### **Article 7 - Information requirements - paragraph 5 - subparagraph 3 (ENVI)**

##### *Text proposed by the Commission*

Substances of concern falling under the definition in Article 2(28), point (a), shall not be exempted

##### *Amendment*

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.

from the information requirement referred to in the first subparagraph if they are present in the relevant products, or spare parts in a concentration above 0,1 % weight by weight.

*Justification*

*ESPR focusing on key Substances of Concern for each product group is the only way to implement a feasible system. It is neither realistic nor scientifically justified to track all Substances of Concern. For instance, more than 12,000 Substances of Concern may be identified in upcoming years. It is necessary to focus tracking of substances of concern on key substances for each product group.*

**Amendment 7**

**Article 7 - Information requirements - paragraph 8 - new subparagraph 1 and 2  
(ENVI/IMCO/ITRE)**

*Text proposed by the Commission*

*Amendment*

**(8) (new)**

***Any supplier of an article, a substance or a mixture shall provide the recipient of the article, substance or mixture with sufficient information, free of charge, to allow the manufacturers to comply with information requirements related to the product aspects listed in Article 5(1), as laid down in the delegated acts adopted pursuant to Article 4.***

***If the recipient of the article, substance or mixture is not the manufacturer, the recipient shall ensure that the information referred to in the first sub-paragraph is communicated to the manufacturer.***

*Justification*

*Objective of this amendment is to have communication from suppliers to manufacturers on all aspects related to the Digital Product Passport. Companies can encounter many difficulties when trying to get information from upstream suppliers, particularly those located outside of Europe.*