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Opinion of the European Committee of the Regions — Consumers' protection package

(C/2023/1330)

Rapporteur:	Dan BOYLE (IE/Greens), member of a Local Executive: Cork City Council
Reference documents:	Proposal for a Directive of the European Parliament and of the Council on common rules promoting the repair of goods and amending Regulation (EU) 2017/2394, Directives (EU) 2019/771 and (EU) 2020/1828 COM(2023) 155 final Proposal for a Directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims (Green Claims Directive) COM(2023) 166 final

I. RECOMMENDATIONS FOR AMENDMENTS

Amendment 1

Recital 3

COM(2023) 155 — Part 1

Text proposed by the European Commission	CoR amendment
In order to reduce premature disposal of viable goods purchased by consumers and to encourage consumers to use their goods longer, it is necessary to set out rules on repair of such goods. Repair should result in more sustainable consumption, since it is likely to generate less waste caused by discarded goods, less demand for resources, including energy, caused by the process of manufacturing and sale of new goods replacing defective goods, as well as less greenhouse gas emissions. This Directive promotes sustainable consumption in view of achieving benefits for the environment while also producing benefits for consumers by avoiding costs associated with new purchases in the short term.	In order to reduce premature disposal of viable goods purchased by consumers and to encourage consumers to use their goods longer, it is necessary to set out rules on repair of such goods. Repair should result in more sustainable consumption, since it is likely to generate less waste caused by discarded goods, less demand for resources, including energy, caused by the process of manufacturing and sale of new goods replacing defective goods, as well as less greenhouse gas emissions. This Directive promotes sustainable consumption in view of achieving benefits for the environment while also producing benefits for consumers by avoiding costs associated with new purchases in the short term and helping to ensure that it costs less to repair than to replace.

Amendment 2

Recital 14

COM(2023) 155 — Part 1

Text proposed by the European Commission	CoR amendment
The requirements laid down in delegated acts adopted pursuant to Regulation [on the Ecodesign for Sustainable Products] or implementing measures adopted pursuant to Directive 2009/125/EC of the European Parliament and of the Council, according to which producers should provide access to spare parts, repair and maintenance information or any repair related software tools, firmware or similar auxiliary means, apply. Those requirements ensure the technical feasibility of repair, not only by the producer, but also by other repairers. As a consequence, the consumer can select a repairer of its choice.	The requirements laid down in delegated acts adopted pursuant to Regulation [on the Ecodesign for Sustainable Products] or implementing measures adopted pursuant to Directive 2009/125/EC of the European Parliament and of the Council, according to which producers should provide access to spare parts, repair and maintenance information or any repair related software tools, firmware or similar auxiliary means, apply. Those requirements ensure the technical feasibility of repair, not only by the producer, but also by other repairers, including independent ones. As a consequence, the consumer can select a repairer of its choice. <i>In this context, this Directive should ensure that all actors of the repair sector can access spare parts at a reasonable and non-discriminatory price, as well as repair and maintenance information and diagnosis tools necessary to perform the repair, be it hardware or software.</i>

Reason

Strengthening consumer rights.

Amendment 3

Recital 16

COM(2023) 155 final — Part 1

Text proposed by the European Commission	CoR amendment
To avoid overburdening producers and to ensure they are able to perform their obligation to repair, that obligation should be limited to those products for which and to the extent any reparability requirements are provided for in Union legal acts. Reparability requirements do not oblige producers to repair defective goods, but ensure that goods are repairable. Such reparability requirements can be laid down in relevant Union legal acts. Examples are delegated acts adopted pursuant to Regulation [on the Ecodesign for Sustainable Products] or implementing measures adopted pursuant to Directive 2009/125/EC of the European Parliament and of the Council ⁽¹⁾, which create a framework to improve the environmental sustainability of products. This limitation of the obligation to repair ensures that only those goods which are repairable by design are subject to such obligation. Relevant reparability requirements include design requirements enhancing the ability to disassemble the goods and a range of spare parts to be made available for a minimum period. The obligation to repair corresponds to the scope of the reparability requirements, for instance, ecodesign requirements may apply only to certain components of the goods or a specific period of time may be set to make spare parts available. The obligation to repair under this Directive, which allows the consumer to claim repair directly against the producer in the after-sales phase, complements the supply-side related reparability requirements laid down in Regulation [on the Ecodesign Sustainable Products], encouraging consumer demand for repair. ⁽¹⁾ Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (OJ L 285, 31.10.2009, p. 10).	To avoid overburdening producers and to ensure they are able to perform their obligation to repair, that obligation should be limited to those products for which and to the extent any reparability requirements are provided for in Union legal acts. Reparability requirements do not oblige producers to repair defective goods, but ensure that goods are repairable. Such reparability requirements can be laid down in relevant Union legal acts. Examples are delegated acts adopted pursuant to Regulation [on the Ecodesign for Sustainable Products] or implementing measures adopted pursuant to Directive 2009/125/EC of the European Parliament and of the Council ⁽¹⁾, which create a framework to improve the environmental sustainability of products. This limitation of the obligation to repair ensures that only those goods which are repairable by design are subject to such obligation. <i>An extension of the legal guarantee to match the better lifespan of products should follow.</i> Relevant reparability requirements include design requirements enhancing the ability to disassemble the goods and a range of spare parts to be made available for a minimum <i>defined</i> period. The obligation to repair corresponds to the scope of the reparability requirements, for instance, ecodesign requirements may apply only to certain components of the goods or a specific period of time may be set to make spare parts available. The obligation to repair under this Directive, which allows the consumer to claim repair directly against the producer in the after-sales phase, complements the supply-side related reparability requirements laid down in Regulation [on the Ecodesign Sustainable Products], encouraging consumer demand for repair. ⁽¹⁾ Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (OJ L 285, 31.10.2009, p. 10).

Reason

Extending the legal guarantee on products and having minimum repair times.

Amendment 4

Article 2

COM(2023) 155 final — Part 1

Text proposed by the European Commission	CoR amendment
2. ‘repairer’ means any natural or legal person who, related to that person’s trade, business, craft or profession, provides a repair service, including producers and sellers that provide repair services and repair service providers whether independent or affiliated with such producers or sellers;	2. ‘repairer’ means any natural or legal person who, related to that person’s trade, business, craft or profession, provides a repair service, including producers and sellers that provide repair services and repair service providers whether independent or affiliated with such producers or sellers, whether operating commercially or operating on a not for profit basis;

Reason

Stresses the existence and the importance of non-profit operators in the field of repair.

Amendment 5

Article 4

COM(2023)155 final — Part 1

Text proposed by the European Commission	CoR amendment
4. (f) the estimated time needed to complete the repair;	4. (f) the estimated maximum time needed to complete the repair;

Reason

Curtailement of time.

Amendment 6

Article 5

COM(2023) 155 final — Part 1

Text proposed by the European Commission	CoR amendment
1. Member States shall ensure that upon the consumer’s request, the producer shall repair, for free or against a price or another kind of consideration, goods for which and to the extent that reparability requirements are provided for by Union legal acts as listed in Annex II. The producer shall not be obliged to repair such goods where repair is impossible. The producer may sub-contract repair in order to fulfil its obligation to repair.	1. Member States shall ensure that upon the consumer’s request, the producer shall repair, for free or against a price or another kind of consideration, goods for which and to the extent that reparability requirements are provided for by Union legal acts as listed in Annex II. The Member States and the EU institutions shall promote and ensure the explicit inclusion of reparability requirements in public supply and works contracts. The producer shall not be obliged to repair such goods where repair is impossible. The producer may sub-contract repair in order to fulfil its obligation to repair.

Text proposed by the European Commission	CoR amendment
2. Where the producer obliged to repair pursuant to paragraph 1 is established outside the Union, its authorised representative in the Union shall perform the obligation of the producer. Where the producer has no authorised representative in the Union, the importer of the good concerned shall perform the obligation of the producer. Where there is no importer, the distributor of the good concerned shall perform the obligation of the producer. 3. Producers shall ensure that independent repairers have access to spare parts and repair-related information and tools in accordance with the Union legal acts listed in Annex II. 4. The Commission is empowered to adopt delegated acts in accordance with Article 15 to amend Annex II by updating the list of Union legal acts laying down reparability requirements in the light of legislative developments.	2. Where the producer obliged to repair pursuant to paragraph 1 is established outside the Union, its authorised representative in the Union shall perform the obligation of the producer. Where the producer has no authorised representative in the Union, the importer of the good concerned shall perform the obligation of the producer. Where there is no importer, the distributor of the good concerned shall perform the obligation of the producer. 3. Producers shall ensure that independent repairers have access to spare parts and repair-related information and tools in accordance with the Union legal acts listed in Annex II. 4. <i>Repairs should be increased in order to decrease the import of similar goods.</i> 5. The Commission is empowered to adopt delegated acts in accordance with Article 15 to amend Annex II by updating the list of Union legal acts laying down reparability requirements in the light of legislative developments.

Reason

It is important that the rules expressly consider the case of public procurement, goods supply contracts and public works contracts. The EU's common rules should expressly promote reparability of goods and view this type of requirement positively.

Amendment 7

New article 9

COM(2023) 155 final — Part 1

Text proposed by the European Commission	CoR amendment
	Amendment to Directive (EU) 2019/771 Commercial guarantees, the following text is added: (4) Member States may lay down rules on other aspects concerning commercial guarantees which are not regulated in this Article, including rules on the language or languages in which the commercial guarantee statement is to be made available to the consumer. These aspects may include the following. a) In cases of products not covered by durability requirements under Ecodesign, manufacturers should be able to offer a voluntary extension of the minimum legal guarantee period. This would incentivise sellers and producers to offer more durable goods, since they would have to bear the potential costs of a repair or replacement for a longer period of time. From a consumer perspective, it would increase the chances of getting goods repaired, as the costs would be taken in charge. b) An obligation to provide for the temporary replacement of goods, where proportionate. In addition to mandatory timeframes to perform the repair, measures should be set to ensure that a replacement good is provided, either by the seller or the manufacturer, for the duration of the repair. c) Incentives under the sale of goods to further promote repair, such as zeroing the legal guarantee period.

Reason

This would be too burdensome for companies, in particular, for SMEs.

Amendment 8

Article 12

COM(2023) 155 final — Part 1

Text proposed by the European Commission	CoR amendment
In Article 13(2) of Directive (EU) 2019/771 the following sentence is added: ‘In derogation from the first sentence of this paragraph, where the costs for replacement are equal to or greater than the costs for repair, the seller shall repair the goods in order to bring those goods in conformity.’	In Article 13(2) of Directive (EU) 2019/771 the following sentence is added: ‘In derogation from the first sentence of this paragraph, where the costs for replacement are equal to or greater than the proven costs for repair, the seller shall repair the goods in order to bring those goods in conformity.’

Reason

To establish the highest standard of proof.

Amendment 9

Recital 32

COM(2023) 166 final

Text proposed by the European Commission	CoR amendment
The Commission Recommendation (EU) 2021/2279 contains guidance on how to measure the life cycle environmental performance of specific products or organisations and how to develop Product Environmental Footprint Category Rules (PEFCRs) and Organisation Environmental Footprint Sectorial Rules (OEFSRs) that allow comparison of products to a benchmark. Such category rules for specific products or traders can be used to support the substantiation of claims in line with the requirements of this Directive. Therefore, the Commission should be empowered to adopt delegated acts to establish product group or sector specific rules where this may have added value. However, in case the Product Environmental Footprint method does not yet cover an impact category, which is relevant for a product group, the adoption of PEFCR may take place only once these new relevant environmental impact categories have been added. For example, as regards marine fisheries, the PEFCR should for example reflect the fisheries-specific environmental impact categories, in particular the sustainability of the targeted stock. Concerning space, the PEFCR should reflect defence and space-specific environmental impact categories, including the orbital space use. As regards food and agricultural products, biodiversity and nature protection, as well as farming practices, including positive externalities of extensive farming and animal welfare, should, for example, also be integrated before the adoption of PEFCR could be considered. As regards textiles, the PEFCR should for example reflect the microplastics release, before the adoption of PEFCR could be considered.	The Commission Recommendation (EU) 2021/2279 contains guidance on how to measure the life cycle environmental performance of specific products or organisations and how to develop Product Environmental Footprint Category Rules (PEFCRs) and Organisation Environmental Footprint Sectorial Rules (OEFSRs) that allow comparison of products to a benchmark. Such category rules for specific products or traders can be used to support the substantiation of claims in line with the requirements of this Directive. Therefore, the Commission should be empowered to adopt delegated acts to establish product group or sector specific rules where this may have added value. However, in case the Product Environmental Footprint method does not yet cover an impact category, which is relevant for a product group, the adoption of PEFCR may take place only once these new relevant environmental impact categories have been added. For example, as regards marine fisheries, the PEFCR should for example reflect the fisheries-specific environmental impact categories, in particular the sustainability of the targeted stock. Concerning space, the PEFCR should reflect defence and space-specific environmental impact categories, including the orbital space use. As regards food and agricultural products, biodiversity and nature protection, as well as farming practices, including positive externalities of extensive farming and animal welfare, should, for example, also be integrated before the adoption of PEFCR could be considered. As regards textiles, the PEFCR should for example reflect the microplastics release, before the adoption of PEFCR could be considered. <i>The aim should be to make Product Environmental Footprint the preferred and acknowledged method of analysis.</i>

Reason

To lessen the use and number of different methodologies in life cycle analyses.

Amendment 10

Recital 35

Text proposed by the European Commission	CoR amendment
In order to facilitate consumers' choices of more sustainable products and to incentivise efforts of traders to lower their environmental impacts, when the claim communicated relates to future environmental performance, it should as a priority be based on improvements inside trader's own operations and value chains rather than relying on offsetting of greenhouse gas emissions or other environmental impacts.	In order to facilitate consumers' choices of more sustainable products and to incentivise efforts of traders to lower their environmental impacts, when the claim communicated relates to future environmental performance, it should as a priority be based on improvements inside trader's own operations and value chains rather than relying on offsetting of greenhouse gas emissions or other environmental impacts. <i>No claim of any product being carbon-neutral can be seen as valid if based on offsetting.</i>

Reason

To undermine the use and increase the value of the term 'carbon-neutral'.

II. POLICY RECOMMENDATIONS

THE EUROPEAN COMMITTEE OF THE REGIONS (CoR),

1. highlights the commitment to ensure that consumers are empowered to make better-informed choices and play an active role in the ecological transition, as put forward by the European Green Deal; to this end, stresses that changes are needed both in consumer and business behaviour;
2. underlines that granting consumers the right to repair would be instrumental in advancing Europe's industrial transition and strengthening its resilience and open strategic autonomy;
3. points out that combating greenwashing was identified as a priority in the Commission's new circular economy plan and new consumer agenda, completing strategies targeting specific sectors, such as the Farm to Fork and biodiversity strategies;
4. welcomes the publication of the much-awaited directive on substantiating and communicating environmental claims — an important step towards greener and more sustainable consumption in the EU to protect consumers and companies from greenwashing, and to improve legal certainty as regards environmental claims and the level playing field on the internal market;
5. calls for harmonised rules for providing information to consumers, including, inter alia, repair scores and information on estimated lifespans, spare parts, repair services and on when software updates are available (for goods with digital elements), while keeping in mind the imperatives of consumer safety;
6. stresses the importance of basing product information on standardised measurements (for example for durability), and of developing standards where these do not yet exist;
7. calls for a reparability product label to be introduced across the EU, similar to the energy efficiency label;
8. further confirms the proposal for a Directive on substantiation and communication of explicit environmental claims as it stands does not appear to raise any issue regarding its compliance with the principle of subsidiarity. EU action is justified and necessary, because a harmonised and well-functioning internal EU market with regards to environmental claims would increase the level of environmental protection and set a level playing field for businesses operating in the EU. Moreover, the proposed action as it stands does not appear to raise any issues regarding its compliance with the proportionality principle;

9. supports the idea to provide environmentally relevant, reliable, comparable and verifiable information to consumers through an EU legal framework requiring companies to substantiate claims via the environmental footprint method;
10. underlines that considering the overall environmental footprint of a product across its entire lifespan is particularly important. Looking at in-use energy consumption in isolation does not say anything about a product's overall environmental impact and may even make it more difficult to repair it;
11. stresses the need to accelerate the process to harmonise specific rules for specific claims, particularly those falling outside the scope of life cycle assessments (such as durability, recycled content, and biodiversity), based on a monitoring activity carried out by the European Environmental Agency of the most important claims in the market;
12. points out that the regulator's primary focus must be on removing inefficient, toxic, wasteful and polluting products from the EU market altogether, complemented with (and not driven by) better consumer information (as is the case with the Ecodesign and energy labelling frameworks for energy-related products);
13. highlights the fact that measures and guidance need to be put in place to make the process easier for SMEs to be able to substantiate their green claims;
14. calls for a strong governance framework involving local and regional authorities and civil society in order to establish a transparent and inclusive processes for developing rules for substantiating and communicating green claims, such as a consultation forum on green claims;
15. welcomes the publication of a long-awaited proposal for a directive on repair and reuse; points out that the lack of reliable information on products' environmental sustainability, reparability and lifespan is among the main obstacles preventing consumers from adopting more sustainable consumption behaviours;
16. underlines the importance of encouraging the repair and reuse of products to achieve a truly sustainable economy;
17. believes that manufacturers should be required to design their products in such a manner that they last longer, can be safely repaired, and in a way that ensures that their parts can be easily accessed and removed;
18. stresses the need to ensure better access for end users and independent repair service providers to spare parts and instruction manuals within a reasonable timeframe and at a reasonable cost, for a period corresponding to the expected lifespan of the product; underlines the importance of informing consumers before purchase of the durability of the given product, and on its reparability and the availability and affordability of spare parts necessary for repairs, including the length of the period during which spare parts and accessories are available, the procedure for ordering them, information about the availability of a user and repair manual, and repair tools and services;
19. stresses that the installation of generic (standard) components, which can be incorporated into many different product types and production series, should be encouraged. The use of generic components should in turn be reflected in a higher ranking in the reparability label;
20. stresses that improving consumer information will help consumers compare and identify the most sustainable products available on the market;
21. regrets, however, that the proposal does not introduce changes to the legal guarantee framework to extend legal guarantee periods for more durable goods by defining them through the ecodesign implementing measures (i.e. by creating product-specific guarantee periods), or further expand the reversal of the burden of proof to align it with the legal guarantee period and introduce a joint seller-producer liability;
22. points out that an extended guarantee can incentivise repair over replacement;

23. highlights the importance of tackling high repair prices and other such barriers to repair (such as those related to IP laws). The consumer's decision as to whether to buy new or to repair is largely influenced by price. Structures and framework conditions that favour repairs therefore need to be put in place in order to address the market failure and so create a circular economy. This can be achieved, for example, by adopting tax measures (cutting/abolishing the sales tax on repairs; cutting the wage tax on repairs, tax deductibility of repair costs for consumers) and by creating other financial incentives for repairs such as repair bonuses, repair funds, etc. Alongside these mainly financial aspects, the necessary documentation (e.g. workshop manuals, blow-up views, repair instructions, circuit diagrams) must be freely accessible to repairers, otherwise repairs will become slower, more expensive or even impossible;
24. believes that consumers need to be provided with goods and services that producers can show have been produced sustainably and are made for long-term use, with sufficient information made available to them showing how to best preserve a product's lifespan;
25. supports establishing and standardising national platforms to act on consumer rights, while limiting the number of approved and recognised accreditation bodies that define and enable consumer confidence in sustainable practices;
26. stresses the importance of promoting the continued use of goods in a way that would end product disposal, resulting in lower environmental and economic costs, particularly in the area of e-waste;
27. finds the level of waste (particularly electronic) created by disposing of products unacceptable, especially where goods have the potential to be repaired or at least provide parts for other products, and stresses the need to drastically reduce such disposals;
28. highlights that the loss of rare earth materials through the quick and unnecessary disposal of such goods results in an unacceptable economic cost;
29. calls for involving consumers more with diagnostic tools that inform them on how to efficiently use a product and when it needs to be repaired;
30. calls for incentivising companies that through research and development improve the durability of their products, and companies that prolong the availability of spare parts not used in subsequent upgraded goods for longer periods of time;
31. encourages regional and local governments to promote and develop a circular economy, particularly in less developed regions, as opposed to the more prevalent linear model based on a 'take-make-dispose' model stresses that the continued use of products should be preferred to single use or short-term use, and that the production process of all goods should be designed for sustainable long-term use; highlights that an extension of the legal guarantee is necessary to match the better lifespan of products;
32. supports regional and local governments in encouraging the development of not-for-profit and voluntary sectors as important service providers for implementing the right to repair; recognises that repair cafés are an important piece of social infrastructure;
33. highlights the need to innovate by identifying and promoting other novel forms of social infrastructure, such as tool libraries;
34. highlights the need to maximise the interchangeability of parts in products of a similar type;
35. insists on ensuring that motherboards and internal working areas of any product can be easily accessed;
36. supports shortening, wherever possible, repair time and the physical distance between consumers and repair services;

37. highlights the need to broaden producer responsibility to take a 'cradle to grave' approach to products they produce;
38. calls for manufacturers to provide information to consumers on a prior rather than on a sought for basis;
39. highlights the importance of enhancing training and education, administered by regional and local governments, to better address skills needed to repair and maintain goods;
40. recommends that the range of possible repairers must be expanded to include people who are removed from the labour market, such as people with disabilities from special employment centres and people who are serving a prison sentence, ensuring fair working conditions and a fair compensation;
41. considers it necessary to organise and implement better and harmonised surveillance of the internal market, with specific customs controls to prevent the import of counterfeit and/or unsafe textiles which do not conform to the expressly stated requirements for those who produce and operate within the EU and to protect consumers and the environment;
42. acknowledges the vital role of skills development, including reskilling and upskilling programs, administered by regional and local governments, in empowering individuals to engage in repair and maintenance activities, thereby contributing to a more sustainable economy;
43. draws attention to the need to develop other educational initiatives that can help improve awareness of consumer rights and entitlements, and the need to identify and act on greenwashing;
44. believes that the digital product passport goes hand in hand with the simplification of existing labels to ensure that consumers receive coherent and reliable information on the environmental and social footprint of products; the introduction of such an instrument should enable micro-enterprises and SMEs to better communicate their sustainability, without creating excessive costs and administrative and bureaucratic burdens;
45. understands that the more local and closer the repair cycle, the greater the opportunity for higher levels of employment;
46. recognises the disproportionate impact of environmental challenges on less developed regions within the European Union and underscores the need for targeted support and capacity building for these regions to effectively participate in the transition towards a more sustainable and circular economy;
47. believes that an open form of repair economy will encourage greater entrepreneurship locally, while inspiring the reuse and refurbishment of products in imaginative ways, enhancing also the resilience of less developed regions by promoting local job creation and reducing dependence on external supply chains;
48. realises that in strengthening consumer rights, we better promote environmental sustainability and achieve more appropriate economic growth;
49. acknowledges the urgent need to align repair and reuse practices with climate goals, ensuring that repair and refurbishment contribute to reducing greenhouse gas emissions and mitigating the environmental impact of discarded products.

Brussels, 10 October 2023.

*The President
of the European Committee of the Regions*
Vasco ALVES CORDEIRO