

Proposal for a Directive on Common Rules Promoting the Repair of Goods

Response Template

Closing Date for Responses - **8 September 2023**

E-mail Response Template to - conspol@enterprise.gov.ie

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Therefore, it would be appreciated if formatting text within the table could be avoided (e.g. bullet points, carriage returns etc.)

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Article 1 Subject matter, purpose and scope (and associated Recitals)

1. This Directive lays down common rules promoting the repair of goods, with a view to contributing to the proper functioning of the internal market, while providing for a high level of consumer and environmental protection.
2. This Directive shall apply to the repair of goods purchased by consumers in the event of a defect of the goods that occurs or becomes apparent outside the liability of the seller pursuant to Article 10 of Directive (EU) 2019/771.

Recital 1 - Directive (EU) 2019/771 of the European Parliament and of the Council¹ pursues the objective of improving the functioning of the internal market, while achieving a high level of consumer protection. In the context of the green transition, this Directive pursues the objective of improving the functioning of the internal market, while promoting more sustainable consumption, and thereby complements the objective pursued by Directive (EU) 2019/771.

Recital 2 - In order to achieve these objectives, and in particular to facilitate cross-border provision of services and competition among repairers of goods purchased by consumers in the internal market, it is necessary to lay down uniform rules promoting the repair of goods purchased by consumers within and beyond the liability of the seller established by Directive (EU) 2019/771. Member States have already taken or are considering to introduce rules promoting repair and reuse of goods purchased by consumers outside the existing liability of the seller established by Directive (EU) 2019/771. Differing mandatory national rules in this area constitute actual or potential obstacles to the functioning of the internal market, adversely affecting cross-border transactions of economic operators acting on that market. Those operators may have to adapt their services to comply with the different mandatory national rules and may be faced with additional transaction costs for obtaining the necessary legal advice on the requirements of the law of the Member State of the consumer's habitual residence, when applicable pursuant to Regulation (EC) 593/2008 of the European Parliament and of the Council, and to adapt their contracts for the provision of repair services accordingly. This will affect, in particular, small and medium sized enterprises, mostly represented in the repair sector. Legal fragmentation may also negatively affect consumer confidence in cross-border repair due to uncertainties regarding factors which are important for the decision to repair goods.

Recital 3 - 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.

CCPC Response:

In regard to scope of this amendment, from an Irish perspective, please note that Article 3(7) of the SGD states that it shall not affect the freedom of Member States to allow consumers to choose a specific remedy if the lack of conformity of the goods becomes apparent within a period after delivery not exceeding 30 days. As the right to reject non-conforming goods without having to agree to their repair or replacement is a long-established right under Irish consumer sales law, sections 23 and 24 of the Consumer Rights Act (CRA) 2022 gave effect to this regulatory option. There may be requirement or reassurance by way of Article 1/or its associated recitals above that the Article 3(7) SGD has not been impacted by the amendment, so as to preserve and maintain the full domestic (CRA) scope of the short term right to terminate, (even for minor non-conformity). This short term right to reject a defective good is an important safeguard for the consumer who should not be expected nor inconvenienced to have a new but defective good just purchased subjected only to the remedy of repair. It also places a greater onus on traders/producers to ensure that their goods for sale are not defective.

Article 2 Definitions (and associated Recitals)

For the purpose of this Directive, the following definitions apply:

1. ‘consumer’ means a consumer as defined in Article 2, point (2) of Directive (EU) 2019/771;
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;

3. 'seller' means a seller as defined in Article 2, point (3) of Directive (EU) 2019/771;
4. 'producer' means a manufacturer as defined in Article 2, point (42) of Regulation [on the Ecodesign for Sustainable Products];
5. 'authorised representative' means authorised representative as defined in Article 2, point (43), of Regulation [on the Ecodesign for Sustainable Products];
6. 'importer' means importer as defined in Article 2, point (44), of Regulation [on the Ecodesign for Sustainable Products]
7. 'distributor' means distributor as defined in Article 2, point (45), of Regulation [on the Ecodesign for Sustainable Product];
8. 'goods' means goods as defined in Article 2, point (5), of Directive (EU) 2019/771 except water, gas and electricity;
9. 'refurbishment' means refurbishment as defined in Article 2, point (18), of Regulation [on the Ecodesign for Sustainable Products];
10. 'reparability requirements' mean requirements under the Union legal acts listed in Annex II which enable a product to be repaired including requirements to improve its ease of disassembly, access to spare parts, and repair-related information and tools applicable to products or specific components of products;

Recital 6 - Reparability requirements should comprise all requirements under Union legal acts which ensure that goods can be repaired, including but not limited to requirements under the ecodesign framework referred to in Regulation [on the Ecodesign for Sustainable Products], to cover a broad range of products as well as future developments in any other field of Union law.

CCPC Response:

There seems to be an inconsistency of the methodology of definitions when it comes to reparability requirements. Most of the above list of definitions terms are defined by reference to either the SGD or to the Regulation on the Eco design for Sustainable Products (ESPR). Whereas the definition for reparability requirements contained in the Article refers to the Union legal Acts list in Annex II, while its associated recital (the only one for this definition section) refers to the said Regulation with catch-all references to any relevant Union legal acts with attempts to future proof by referring to 'future developments' in any other fields of Union law. Should it not be the other way around for consistency

and clarity? There is scope to expand the examples of the reparability requirements with the recital to include also rights of access to diagnostic tools, codes and trade manuals and provision for training and safety programmes-particularly for reparation of complex goods. These examples will help facilitate repairers to access the data, codes, spare parts, service tools, know-how and trade information requisite for proper repair. It will further safeguard against attempts by producers to resile from their obligations under reparability requirements by their non-cooperation or their assertion of intellectual property rights (IPR) be it under commercial secrets, or the law of confidence, or by way of exclusive or selective distribution agreements. The new definition for repairer is welcome and this service provider will play a central role in the promotion of a robust repair regime that is being developed in the Union.

It is suggested also the recital cross references the Data Act (currently at political approval but not yet published in the OJEU) which also refers to products that are connected with a related service at the time of purchase, rent or lease. Such related services may include regular repair and maintenance (recital 17 Data Act).

Article 3 Level of harmonisation (and associated Recitals)

Member States shall not maintain or introduce in their national law provisions diverging from those laid down in this Directive.

Recital 32 - Promoting the repair of goods purchased by consumers, with a view to contributing to the proper functioning of the internal market while providing for a high level of environmental and consumer protection, cannot be sufficiently achieved by the Member States. Emerging national mandatory rules promoting sustainable consumption by way of repair of defects outside the scope of Directive (EU) 2019/771 are likely to diverge and lead to fragmentation of the internal market. Member States may not amend the fully harmonised rules concerning defects within the liability of the seller set out in Directive (EU) 2019/771. The objective of this Directive can rather, by reason of its scale and effects, better be achieved at Union level through fully harmonised common rules promoting repair within and outside the liability of the seller established in

Directive (EU) 2019/771. The Union may therefore adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective.

Recital 5 - This Directive should not affect the freedom of Member States to regulate aspects of contracts for the provision of repair services other than those harmonised in Union law.

CCPC Response:

It is noted that the Repair amendment is a maximum harmonisation measure like the SGD itself to ensure common rules and application within the internal market. As remarked in the first reply above, the harmonisation requirement must not impact on the regulatory option of Article 3(7) of the SGD regarding the short term right to terminate, that has been incorporated into the domestic regime here.

Article 4 European Repair Information Form (and associated Recitals)

1. Member States shall ensure that, before a consumer is bound by a contract for the provision of repair services, the repairer shall provide the consumer, upon request, with the European Repair Information Form set out in Annex I on a durable medium within the meaning of Article 2 (11) of Directive 2019/771/EU.

2. Repairers other than those obliged to repair by virtue of Article 5 shall not be obliged to provide the European Repair Information Form where they do not intend to provide the repair service.

3. The repairer may request the consumer to pay the necessary costs the repairer incurs for providing the information included in the European Repair Information Form.

Without prejudice to Directive 2011/83/EU, the repairer shall inform the consumer about the costs referred to in the first subparagraph before the consumer requests the provision of the European Repair Information Form.

4. The European Repair Information Form shall specify the following conditions of repair in a clear and comprehensible manner:

- (a) the identity of the repairer;
- (b) the geographical address at which the repairer is established as well as the repairer's telephone number and email address and, if available, other means of online communication which enable the consumer to contact, and communicate with, the repairer quickly and efficiently;
- (c) the good to be repaired;
- (d) the nature of the defect and the type of repair suggested;
- (e) the price or, if the price cannot reasonably be calculated in advance, the manner in which the price is to be calculated and the maximum price for the repair;
- (f) the estimated time needed to complete the repair;
- (g) the availability of temporary replacement goods during the time of repair and the costs of temporary replacement, if any, for the consumer;
- (h) the place where the consumer hands over the goods for repair,
- (i) where applicable, the availability of ancillary services, such as removal, installation and transportation, offered by the repairer and the costs of those services, if any, for the consumer;

5. The repairer shall not alter the conditions of repair specified in the European Repair Information Form for a period of 30 calendar days as from the date on which that form was provided to the consumer, unless the repairer and the consumer have agreed otherwise. If a contract for the provision of repair services is concluded within the 30 day period, the conditions of repair specified in the European Repair Information Form shall constitute an integral part of that contract.

6. Where the repairer has supplied a complete and accurate European Repair Information Form to the consumer, it shall be deemed to have complied with the following requirements:

(a) information requirements regarding the main features of the repair service laid down in Article 5(1) point (a), and Article 6(1), point (a) of Directive 2011/83/EU and Article 22(1), point (j), of Directive 2006/123/EC;

(b) information requirements regarding the repairer's identity and contact information laid down in Article 5(1), point (b), and Article (6)(1), points (b) and (c), of Directive 2011/83/EU, Article 22(1), point (a), of Directive 2006/123/EC and Article 5(1), points (a), (b) and (c), of Directive 2000/31/EC;

(c) information requirements regarding the price laid down in Articles 5(1), point (c), and Article 6(1), point (e), of Directive 2011/83/EU and Article 22(1), point (i) and (3), point (a), of Directive 2006/123/EC;

(d) information requirements regarding the arrangements for the performance and the time to perform the repair service laid down in Articles 5(1), point (d), and Article 6(1), point (g), of Directive 2011/83/EU.

Recital 7 - In order to help consumers identify and choose suitable repair services, consumers should receive key information on repair services. The European Repair Information Form should lay down key parameters that influence consumer decisions when considering whether to repair defective goods. This Directive should set out a model standardised format. A standardised format for presenting repair services should allow consumers to assess and easily compare repair services. Such standardised format should also facilitate the process of providing information on repair services, in particular for micro, small and medium sized businesses providing repair services. In order to avoid additional burdens due to overlapping pre-contractual information requirements, a repairer should be deemed to have fulfilled corresponding information requirements of relevant EU legal acts, where applicable, if the European Repair Information Form has been filled in correctly and provided to the consumer. Information in the European Repair Information Form should be provided to consumers in a clear and comprehensible manner and in line with the accessibility requirements of Directive 2019/882.

Recital 8 - The consumer's free choice to decide by whom to have its goods repaired should be facilitated by requesting the European Repair Information Form not only from the producer, but also from the seller of the goods concerned or from independent repairers, where applicable.

Repairers should provide the European Repair Information Form only where the consumer requests that form and the repairer intends to provide the repair service or it is obliged to repair. A consumer may also choose not to request the European Repair Information Form and to conclude a contract for the provision of repair services with a repairer pursuant to pre-contractual information provided by other means in accordance with Directive 2011/83/EU of the European Parliament and the Council.

Recital 9 - There are situations in which a repairer incurs costs necessary for providing the information on repair and price included in the European Repair Information Form. For instance, the repairer may need to inspect the goods to be able to determine the defect or type of repair that is necessary, including the need for spare parts, and to estimate the repair price. In these cases, a repairer may only request a consumer to pay the costs that are necessary for providing the information included in the European Repair Information Form. In line with the pre-contractual information and other requirements set out in Directive 2011/83/EU, the repairer should inform the consumer about such costs before the consumer requests the provision of the European Repair Information Form. Consumers may refrain from requesting the European Repair Information Form where they consider that the costs for obtaining that form are too high.

Recital 10 - Repairers should not alter the conditions of repair that they provide in the European Repair Information Form, including on the price for repair, for a certain period of time. This ensures that consumers are given sufficient time to compare different repair offers. In order to safeguard as much as possible the contractual freedom for repairers other than producers of goods for whom an obligation to repair applies, to be able to decide whether to conclude a contract for the provision of repair services at all, repairers should remain free to decide not to conclude such a contract, including in situations where they have provided the European Repair Information Form. If a contract for the provision of repair services is concluded based on the European Repair Information Form, the information on conditions of repair and price contained in that form should constitute an integral part of the contract for the provision of repair services, thereby defining the repairer's obligations under that contract. Non-compliance with those contractual obligations is governed by the applicable national law.

Recital 18 - While this Directive imposes the obligation to repair on the producer, it also facilitates consumer choice of repair services from other repairers. This choice should in particular be facilitated by requesting the European Repair Information Form not only from the producer but also other repairers like the seller or independent repairers or by searching via the online repair platform. As consumers would need to pay for the repair, they are likely to compare repair opportunities in order to choose the most suitable repair services for their needs. Thus, it is likely they

approach independent repairers in their proximity or the seller before reaching out to producers which may for instance be located at a greater distance and for which the price could be higher due to transportation costs.

Recital 27 - The Commission should enable the development of a voluntary European quality standard for repair services, for instance by encouraging and facilitating voluntary cooperation on a standard between businesses, public authorities and other stakeholders or by issuing a standardisation request to the European standardisation organisations. A European standard for repair services could boost consumer trust in repair services across the Union. Such standard could include aspects influencing consumer decisions on repair, such as the time to complete repair, the availability of temporary replacement goods, quality assurances such as a commercial guarantee on repair, and the availability of ancillary services such as removal, installation and transportation offered by repairers.

CCPC Response:

Regarding Article 4 para 3 which stipulates that; ‘the repairer may request the consumer to pay the necessary costs the repairer incurs for providing the information included in the European Repair Information Form’.

It is agreed here that a reasonable payment of costs can be charged by the repairer to the consumer when providing the pre-contract information on the assessment of the cost of the repair. This can help reduce barriers to entry for SME/micro-enterprise repairers vs big producers who can absorb these costs more easily.

The form stipulates a time estimate for repair; it could also have a provision to state any anticipated reasons for a long period and/or delay such as access to spare parts etc.

The introduction of the European Repair Information Form is a welcome measure that will inform consumer choice and decisions regarding repair services in both the domestic and internal market.

Aside from the ‘Right to repair issue’ a current issue for consumers is where in order for the trader to establish if a fault has occurred for example with a washing machine, or if accidental damage has occurred(something stuck in the machine/overloaded etc) , the consumer may often pay a call-out fee (potentially c. 80-100 euro), this fee may or may not be re-imbursed depending on whether the item is faulty. With the ‘right to repair’, If the trader/engineer has to make a call-out to the consumer to determine the extent of the repair and /or spare parts needed in order to

determine the cost for the Repair info form for the consumer, the consumer seems to be liable for the costs of this information relating to the cost of the repair. This raises the point that consumers should not be liable for this cost.

Article 5 Obligation to Repair (and associated Recitals)

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.
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.

Recital 6 - Reparability requirements should comprise all requirements under Union legal acts which ensure that goods can be repaired, including but not limited to requirements under the eco design framework referred to in Regulation [on the Ecodesign for Sustainable Products], to cover a broad range of products as well as future developments in any other field of Union law.

Recital 11 - Directive (EU) 2019/771 imposes an obligation on sellers to repair goods in the event of a lack of conformity which existed at the time that the goods were delivered and which becomes apparent within the liability period. Under that Directive, consumers are not entitled to have defects repaired which fall outside that obligation. As a consequence, a large number of defective, but otherwise viable, goods are prematurely discarded. In order to encourage consumers to repair their good in such situations, this Directive should impose an obligation on producers to repair goods to which reparability requirements imposed by Union legal acts apply. That repair obligation should be imposed, upon the consumer's request, on the producers of such goods, since they are the addressees of those reparability requirements. That obligation should apply to producers established both inside and outside the Union in relation to goods placed on the Union market.

Recital 12 - Since the obligation to repair imposed on producers under this Directive covers defects that are not due to the nonconformity of the goods with a sales contract, producers may provide repair against a price paid by the consumer, against another kind of consideration, or for free. The charging of a price should encourage producers to develop sustainable business models, including the provision of repair services. Such a price may take into account, for instance, labour costs, costs for spare parts, costs for operating the repair facility and a customary margin. The price for and the conditions of repair should be agreed in a contract between the consumer and the producer and the consumer should remain free to decide whether that price and those conditions are acceptable. The need for such a contract and the competitive pressure from other repairers should encourage producers who are obliged to repair to keep the price acceptable for the consumer. The repair obligation may also be performed for free when the defect is covered by a commercial guarantee, for instance, in relation to guaranteed durability of goods.

Recital 13 - Producers may fulfil their obligation to repair by subcontracting repair, for instance, if the producer does not have the repair infrastructure or if repair can be carried out by a repairer located closer to the consumer, among others where the producer is established outside the Union.

Recital 14 - 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.

Recital 15 - The obligation to repair should also be effective in cases where the producer is established outside the Union. In order to enable consumers to turn to an economic operator established within the Union to perform this obligation, this Directive foresees a sequence of alternative economic operators required to perform the obligation to repair of the producer in such cases. This should enable producers located outside the Union to organise and perform their obligation to repair within the Union.

Recital 16 - 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, 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.

Recital 19 - In line with Directive (EU) 2019/771, a producer should be exempted from the obligation to repair where repair is factually or legally impossible. For example, the producer should not refuse repair for purely economic reasons, such as the costs of spare parts. National law implementing Directive (EU) 2019/771 or the preceding Directive 1999/44/EC of the European Parliament and of the Council is already using the criterion whether repair is impossible and national courts are applying it.

CCPC Response:

Article 5(1) states that; ‘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’. This ‘obligation to repair by the producer’ is qualified by the associated recitals for its actual meaning and effect. The obligation is non-applicable

where repair is impossible. No examples are offered on impossibility of repair nor does the proposal state as to who decides that it is impossible to repair a product. An elaboration on the circumstances or examples of ‘impossibility of repair’ would be a useful addition in the Recitals.

Recital 12 is useful in explaining the nature of the obligation and the policy underpinning it: ‘Since the obligation to repair imposed on producers under this Directive covers defects that are not due to the nonconformity of the goods with a sales contract, producers may provide repair against a price paid by the consumer, against another kind of consideration, or for free. The charging of a price should encourage producers to develop sustainable business models, including the provision of repair services.’

Recital 14 states that the requirements contained in the Eco design Regulation and Directive where ‘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’. This is a key piece of legislative text in terms of the provision for an effective repair service. Repairers will need to have access to spare parts and any other such means mentioned to effect repairs and the question raised here is how can such access be enforced. The recital here seems to imply that the consumer/repairer will need to rely on the Eco-design regulations to enforce access to spare parts and/or repair and maintenance information. There are stipulations in regard to obligations of manufacturers/importers/dealers to provide such access in the proposal for the ESPR (Chapter VII Obligations of economic operators); and it does propose that the Member States lay down penalties (Article 68) for infringements of the Regulation. It may be useful to stipulate here also that consumer/repairer are not further stymied by the assertion of data protections rights by the producer.

However, there should be more guidance, stricter terminology, and further and better particularity in how such access is enforced by way of the ESPR or by this directive or by any other legislation (e.g. GDPR); for reasons of clarity, efficacy and in keeping with the mechanism of maximum harmonisation of the legislative proposals.

Recital 16 then elaborates on the limits and the nature of the Article 5 obligation, by stating that it should be limited to those products for which and to the extent any reparability requirements are provided for in Union legal acts. It goes on to clarify that ‘reparability requirements’ in this legislative context means it does not oblige producers to repair defective goods, but to ensure that goods are repairable. It says: ‘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, eco-design requirements may apply only to certain components of the goods, or a specific period may be set to make spare parts available’.

There could be scope for confusion or contention as to the nature of the defect of the good between the parties- is it due to non-conformity of contract or not, (if within the liability period). If it is a non-conformity defect, the consumer rights may lie with the seller only with the remedy of free repair or a replacement per SGD; otherwise, if it is not due to a non-conformity the consumer must contact and request repair by the producer but may have to pay for repair, if it is repairable.

*Entry re Recital 11 – “Directive (EU) 2019/771 imposes an obligation on sellers to repair goods in the event of a lack of conformity which existed at the time that the goods were delivered and which becomes apparent **within the liability period**. Under that Directive, consumers are not entitled to have defects repaired which fall outside that obligation. As a consequence, a large number of defective, but otherwise viable, goods are prematurely discarded. In order to encourage consumers to repair their good in such situations, this Directive should impose an obligation on producers to repair goods to which reparability requirements imposed by Union legal acts apply. That repair obligation should be imposed, upon the consumer’s request, on the producers of such goods, since they are the addressees of those reparability requirements. That obligation should apply to producers established both inside and outside the Union in relation to goods placed on the Union market. “*

In addition, it will be important to clarify the ‘liability period. It appears to be the EU 2-year guarantee period. If this is the case, what will be the liability period for goods purchased from Irish traders (i.e. does it refer to the 1-year period relating to the reversal of proof, as set out in the CRA where the burden of proof is on the trader to prove that a good was in conformity at the time of delivery. Or, does it remain the 6 year time period per the Statute of Limitations Act and applicable under the CRA for a consumer to pursue a remedy

There could be scope for confusion on the part of the consumer as to the nature of the defect of the good- is it due to non-conformity of contract or not, (if within the liability period). If it is a non-conformity defect the consumer rights lie with the seller otherwise if it is not due to a non-conformity the consumer must contact and request repair by the producer but may have to pay for repair.

Article 6 Information on obligation to repair (and associated Recitals)

Member States shall ensure that producers inform consumers of their obligation to repair pursuant to Article 5 and provide information on the repair services in an easily accessible, clear and comprehensible manner, for example through the online platform referred to in Article 7.

Recital 20 - In order to increase the consumer awareness on the availability of repair and thus its likelihood, producers should inform consumers of the existence of that obligation. The information should mention the relevant goods covered by that obligation, together with an explanation that and to what extent repair is provided for those goods, for instance through sub-contractors. That information should be easily accessible to the consumer and provided in a clear and comprehensible manner, without the need for the consumer to request it, and in line with the accessibility requirements of Directive 2019/882. The producer is free to determine the means through which it informs the consumer.

CCPC Response:

This requirement on the producer to provide information on the obligation to repair is welcome. It affords a wide discretion to the producer in how to achieve this: ‘...The producer is free to determine the means through which it informs the consumer’ per recital 20.

However, it is surprising that this directive does not stipulate that such information ought to be set out in a durable medium as per the requirement for the European Repair Information Form; [which is set out in Annex I on a durable medium within the meaning of Article 2 (11) of Directive 2019/771/EU]. It could also clarify when this duty first occurs- if its pre contractual to the sale transaction of the good.

Information for the consumer should be clearly laid out and easily assessable to the consumer prior to entering a contract. However, as in most cases, a consumer will purchase from a trader/shop or online trader (ie. not directly from the manufacturer). Therefore, it would seem sensible for an obligation on the manufacturer to provide the information via the trader/seller (potentially when providing information on the description of the product) as the seller /trader will have the contract and the direct contact with the consumer.

Article 7 Online platform for repair and goods subject to refurbishment (and associated Recitals)

1. Member States shall ensure that at least one online platform exists for their territory that allows consumers to find repairers. That platform shall:

(a) include search functions regarding goods, location of repair services, repair conditions, including the time needed to complete the repair, the availability of temporary replacement goods and the place where the consumer hands over the goods for repair, availability and conditions of ancillary services, including removal, installation and transportation, offered by repairers, and applicable European or national quality standards;

(b) enable consumers to request the European Repair Information Form via the platform;

(c) allow for regular updates of contact information and services by repairers;

(d) allow repairers to indicate their adherence to applicable European or national quality standards;

(e) enable accessibility through national websites connected to the Single Digital Gateway established by Regulation (EU) 2018/1724.

(f) ensure accessibility for persons with disabilities

2. Member States shall ensure that the online platform also includes a search function by product category to find sellers of goods subject to refurbishment and purchasers of defective goods for refurbishment.

3. Registration on the online platform for repairers, as well as for sellers of goods subject to refurbishment and for purchasers of defective goods for refurbishment, shall be voluntary. Member States shall determine the access to the platform in accordance with Union law. The use of the online platform shall be free of charge for consumers.

Recital 21 - In order to encourage repair, Member States should ensure that for their territory at least one online platform exists which enables consumers to search for suitable repairers. That platform may be an existing or privately operated platform, if it meets the conditions laid down in this Directive. That platform should include user-friendly and independent comparison tools which assist consumers in assessing and comparing the merits of different repair service providers, thereby incentivising consumers to choose repair instead of buying new goods. While that platform aims at facilitating the search for repair services in business-to-consumer relationships, Member States are free to extend its scope also to include business-to-business relationships as well as community-led repair initiatives.

Recital 22 - Member States should ensure that all economic operators that may provide repair services in the Union have easy access to the online platform. Member States should be free to decide which repairers can register on the online platform as long as access to that platform is reasonable and non-discriminatory for all repairers in accordance with Union law. Enabling repairers from one Member State to register on the online platform in another Member State in order to provide repair services in areas that the consumer searched for should support the cross-border provision of repair services. It should be left to Member States' discretion how to populate the online platform, for instance by self-registration or extraction from existing databases with the consent of the repairers, or if registrants should pay a registration fee covering the costs for operating the platform. To guarantee a wide choice of repair services on the online platform, Member States should ensure that access to the online platform is not limited to a specific category of repairers. While national requirements, for instance, on the necessary professional qualifications, continue to apply, Member States should ensure that the online platform is open to all repairers that fulfil those requirements. Member States should also be free to decide whether and to what extent community-led repair initiatives, such as repair cafés, may register on the online platform, taking account of safety considerations where relevant. Registration on the online platform should always be possible upon repairers' request, provided they fulfil the applicable requirements to access the online platform.

Recital 23 - Member States should ensure that consumers have easy access to the online platform allowing them to find suitable repair services for their defective goods. The online platform should also be accessible to vulnerable consumers, including persons with disabilities, in accordance with applicable Union law relating to accessibility.

Recital 24 - The search function based on products may refer to the product type or brand. Since repairers cannot know the specific defect before a request to repair has been made, it is sufficient that they provide on the online platform generic information on key elements of repair services to enable consumers to decide whether to repair the good in question, in particular the average time to complete repair, the availability of temporary replacement goods, the place where the consumer hands over the goods for repair and the availability of ancillary services. Repairers should be encouraged to regularly update their information on the online platform. In order to build consumer confidence in the repair services available on the online platform, repairers should be able to demonstrate their adherence to certain repair standards.

Recital 25 - In order to facilitate obtaining the European Repair Information Form, the online platform should include the possibility for consumers to directly request that form from the repairer through the online platform. This possibility should be displayed in a prominent manner on the

online platform. To create awareness of national online repair platforms and to facilitate access to such platforms across the Union, Member States should ensure that their online platforms are accessible through relevant national webpages connected to the Single Digital Gateway established by Regulation (EU) 2018/1724 of the European Parliament and of the Council. To raise consumer awareness of the online platform, Member States should undertake appropriate steps, for instance sign-post the online platform on related national websites or carry out communication campaigns.

Recital 26 - In order to promote sustainable consumption of goods in situations outside the liability of the seller, the online platform should also promote goods subject to refurbishment as an alternative to repair or to buying new goods. To that end, the online platform should include a functionality allowing consumers to find sellers of goods subject to refurbishment or businesses buying defective goods for refurbishment purposes, in particular by enabling a search function per product category. Such sellers of goods subject to refurbishment or purchasers of defective goods for refurbishment should have access to the platform based on the same principles and technical specifications applicable to the repair functionality.

CCPC Response:

Finding repair services for both national and Union markets is a key innovation that will boost the benefits and efficacy of the repair regime. It is further facilitated by the provision that 'Member States shall ensure that the online platform also includes a search function by product category to find sellers of goods subject to refurbishment and purchasers of defective goods for refurbishment'. This could be further expanded by the provision of a search function to include a brand category for the consumer's ease of reference and findability.

It might also be useful for the article/recital to align better. Currently the recital 23 says "The online platform should also be accessible to vulnerable consumers, including persons with disabilities, in accordance with applicable Union law relating to accessibility." While the article only mentions people with disabilities it could have added "ensure accessibility for persons with disabilities "

The Article plus the recitals stipulate many requirements in regard to the purpose and functionality of proposed platform and yet is silent on any EU or national regulatory oversight and makes no mention of the Digital Services Act.

Article 8 Enforcement (and associated Recitals)

1. Member States shall ensure that adequate and effective means exist to ensure compliance with this Directive.
2. The means referred to in paragraph 1 shall include provisions allowing one or more of the following bodies, as determined by national law, to take action under national law before the courts or competent administrative bodies of the Member State to ensure that the national provisions transposing this Directive are applied:
 - (a) public bodies or their representatives;
 - (b) organisations having a legitimate interest in protecting consumers or the environment;
 - (c) professional organisations having a legitimate interest in acting.

CCPC Response:

It is noted that the amending directive provides wide discretion to the M/S to deploy its own national compliance/legal framework/enforcement measures and in terms of designating the national enforcer. There is no associated recital. It is silent on intra-union enforcement in the internal market. It raises some enforcement questions such as can an aggrieved consumer of a member state contact the national enforcer of the other member state where the good was purchased or does he contact his own national enforcer in the first instance. It is difficult to see how NGO's, who would not be members of the CPC network, can effectively enforce across the internal market. The lack of harmonisation under this heading could provide opportunity for forum shopping by unscrupulous producers to delay and deny consumers asserting their litigation/remedial rights.

Surprisingly there is no specific mention here of ADR/ODR referrals/bodies/processes etc.

As mentioned in the reply to Article 5; there need to be clarity and better provision around enforcement of the obligation of producers to deliver up spare parts; information to consumers and/or repairers/refurbishment service providers. In addition, will consumers with a cross-border dispute relating to 'right to repair' be able to use the ECC network to have their issues resolved.

Article 9 Consumer Information (and associated Recitals)

Member States shall take appropriate measures to ensure that information on the rights of consumers under this Directive, and on the means to enforce those rights, are available to consumers, including on national websites connected to the Single Digital Gateway established by Regulation (EU) 2018/1724.

CCPC Response:

Supporting this aim will also be a role for the CCPC to address who as part of its corporate mission imparts consumer rights information by way of digital platforms, Contacts teams including its call centre, seminars to stakeholders including business representatives etc.

The key issue is to have clear information for consumers and as 'upfront' as possible when consumers are purchasing the goods, in relation to the 'Right to Repair'. There is a proposal to have some extra information included under the CRA 'Right to Info' list of information for traders to provide prior to contracting. It will be important for consumers to have information as regards:

- *In what situations will Right to Repair be an option for the consumer*
- *It is not 100% clear if the same 'right to repair' rules/options apply where the goods are faulty/non-conforming -v - where the issue is normal wear & tear, misuse or accidental damage to the product by the consumer. The consumer may have to pay for the Repair Information form if the costs involved in assessing the repair issue where there is no non-conformity with the product to be repaired*
- *What products are going to be covered by the 'right to repair' (seem limited to some white /electrical goods and mobile phones/tablets at the outset).*
- *What are the steps for consumers to take when availing of this option as opposed to or in addition to pursuing the trader under CRA Rights?*

- *There is a need for clear information as to next steps of pursuing the new right to repair, including who to contact first and what can consumers can do up to the end point of potentially reverting to seller under CRA rights (if applicable) or to SCP application against the repairer (for example, the proposal or suggestions are to make the trader/seller and the manufacturer both liable or responsible for the right to repair. This is obviously positive however, we need to be sure that consumers do not continue to be passed between the seller /manufacturer as is the case in many white goods complaints- e.g. the shop telling the consumer to contact the number on their guarantee to pursue under the guarantee)*

Article 10 Mandatory nature

1. Unless otherwise provided in this Directive, any contractual agreement which, to the detriment of the consumer, excludes the application of national measures transposing this Directive, derogates from them, or varies their effect, shall not be binding on the consumer.

2. This Directive shall not prevent the repairer from offering to the consumer contractual arrangements that go beyond the protection provided for in this Directive.

CCPC Response: *This anti-circumvention measure is necessary to ensure that the trader cannot disapply the amended rules on repair and ensures strict adherence to same for the benefit of the consumer and the ‘green transition’.*

Article 11 Penalties

1. Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to Articles 4, 5 and 6 and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective proportionate and dissuasive.
2. Member States shall, by 24 months from the entry into force notify the Commission of the rules and of the measures referred to in paragraph 1 and shall notify it without delay of any subsequent amendment affecting them.

CCPC Response:

It is anticipated that the amending directive to the SGD will be transposed into the domestic statute that transposed SGD; the Consumer Rights Act 2022 and which in turn will amend the Consumer Protection Act 2007 to provide for the application of certain enforcement measures contained there; further transpositions can be made this way in the event of stricter penalties decreed by the EU institutions.

Article 12 Amendment to Directive (EU) 2019/771 (and associated Recitals)

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.’

Recital 28 - In order to promote repair within the liability of the seller as established in Directive (EU) 2019/771, the harmonised conditions under which the choice between the remedies of repair and replacement can be exercised should be adapted. The principle established in Directive (EU) 2019/771 to use the consideration whether the remedy chosen would impose costs on the seller that are disproportionate as compared to the other remedy, as one of the criteria to determine the applicable remedy, should be maintained. The consumer remains entitled to choose repair over replacement, unless repair would be impossible or it would impose disproportionate costs on the seller as compared to replacement. However,

where the costs for replacement are higher than or equal to the costs of repair, the seller should always repair the goods. Hence, the consumer is entitled to choose replacement as a remedy only where it is cheaper than repair. Directive (EU) 2019/771 should therefore be amended accordingly.

CCPC Response:

There may be an issue around costs assessment on whether ‘costs of replacement are equal to or greater than repair’. The recital seems to indicate that the seller makes this decision. More guidance in the recital could be provided in the assessment in terms of cost of repair being broken down/compartimentalised into cost of labour and cost of materials/spare parts to ascertain the repaired good’s comparative price against the replacement cost.

Article 13 Amendment to Directive (EU) 2020/1828 (and associated Recitals)

In Annex I to Directive (EU) 2020/1828, point 67 is added:

‘67. Directive (EU) xx/xx of the European Parliament and of the Council of x on common rules promoting the repair of goods and amending Regulation (EU) 2017/2394, Directives (EU) 2019/771 and (EU) 2020/1828 (OJ L xx)’.

Recital 29 - In order to enable the enforcement of the rules set out in this Directive by means of representative actions, an amendment of Annex I to Directive (EU) 2020/1828 of the European Parliament and of the Council¹⁶ is necessary. For competent authorities designated by their Member States to cooperate and coordinate actions with each other and with the Commission in order to enforce compliance with the rules set out in this Directive, an amendment of the Annex to Regulation 2017/2394 of the European Parliament and of the Council Article 14: Amendment to Regulation (EU) 2017/2394 is necessary.

CCPC Response:

This is a straightforward amendment to the annex to the consumer collective redress directive

Article 14 Amendment to Regulation (EU) 2017/2394 (and associated Recitals)

In the Annex to Regulation (EU) 2017/2394, the following point 27 is added:

‘27. Directive (EU) xx/xx of the European Parliament and of the Council of x on common rules promoting the repair of goods and amending Regulation (EU) 2017/2394, Directives (EU) 2019/771 and (EU) 2020/1828 (OJ L xx)

Recital 29 - In order to enable the enforcement of the rules set out in this Directive by means of representative actions, an amendment of Annex I to Directive (EU) 2020/1828 of the European Parliament and of the Council 16 is necessary. For competent authorities designated by their Member States to cooperate and coordinate actions with each other and with the Commission in order to enforce compliance with the rules set out in this Directive, an amendment of the Annex to Regulation 2017/2394 of the European Parliament and of the Council Article 14: Amendment to Regulation (EU) 2017/2394 is necessary.

CCPC Response:

This is an amendment to the CPC Regulation which aims to facilitate enforcement of the repair remedy across the Union.

The CPC network may be particularly useful to asset pressure on producers located in other member states render requisite spare parts, codes, manuals, diagnostics to repairers or provide the necessary repairs to their goods sold in other Member States that are entitled to be repaired under the new amendment. The CCPC as a competent authority and a SLO will have important role in this regard. As competent authorities under the CPC regulation can also take enforcement action against producers in the event of a breach of consumer protection law, including the right to repair, encompassed by the CPC Regulation.

Article 15 Exercise of the delegation (and associated Recitals)

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 5(4) shall be conferred on the Commission for a period of six years from [one month after the entry into force of this act]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the six-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Article 5(4) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State acting in accordance with the principles laid down in the Inter-institutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 5(4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Recital 17 - To ensure legal certainty, this Directive lists in Annex II relevant product groups covered by such reparability requirements under Union legal acts. In order to ensure coherence with future reparability requirements under Union legal acts, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of in particular adding new product groups to Annex II when new reparability requirements are adopted. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the

preparation of delegated acts, the European Parliament and the Council should receive all documents at the same time as Member States' experts, and their experts systematically should have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

CCPC Response:

It is noted that the Commission reserves delegated powers to adopt acts governing products that will be subject to reparability requirements, by way of their listing in Annex II. Curiously there is no mention above of the Commission conferring on these delegated matters with national ministerial departments or competent authorities.

Article 16 Transitional provisions (and associated Recitals)

1. Article 5(1) and (2) and Article 6 of this Directive shall not apply to contracts for the provision of repair services concluded before [24 months after the entry into force].

2. Article 12 of this Directive shall not apply to sales contracts concluded before [24 months after the entry into force].

Recital 30 - In order to allow economic operators to adapt, transitional provisions concerning the application of some Articles of this Directive should be introduced. Thus, the obligations to repair and to provide related information on this obligation should apply to contracts for the provision of repair services after [24 months after the entry into force]. The amendment to Directive (EU) 2019/771 should apply only to sales contracts concluded after [24 months after the entry into force] to ensure legal certainty and to provide sellers with sufficient time to adapt to the amended remedies of repair and replacement.

CCPC Response:

The transitional time period of two years seems reasonable.

Article 17 Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [24 months from the entry into force] at the latest. They shall immediately inform the Commission thereof. When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States. Member States shall apply those measures from [24 months from the entry into force].
2. Member States shall communicate to the Commission the text of the main provisions in national law which they adopt in the field covered by this Directive and the national online platforms on repair and goods subject to refurbishment established in accordance with this Directive.

CCPC Response:

The transposition into national law may occur by way of an amending act to the Consumer Rights Act and the Consumer Protection Act.

General Comments on the Proposal

The CCPC is of the view that there should be guidance concerning the issue of liability periods for repair which is a surprising omission regarding this amendment to SGD.

Generally, the CCPC broadly welcomes Proposals purpose of promoting and supporting a repair of goods regime which will help with sustainable consumption and provide practical solutions and redress for consumers. It aligns well with the expanding EU acquis on consumer protection law matters. There may be some issues regarding goods that are irreparable or cannot be repaired safely and need to be consigned to end of life disposal

or recycling, where mention of relevant environmental laws i.e. Producer Responsibility Initiative, would legislatively align even more here with the green agenda and transition including the Circular economy Plan and the Climate action Plan

While welcoming the proposal and benefit to the environment and consumers, some consideration should be provided to encouraging or incentivising consumers to choose an option of repair where they may have a clear right to a replacement product or a full refund under CRA. Consumers may have lost confidence in a product if it becomes faulty especially within the first year or 2 years (e.g. white goods) and will look for a replacement or refund. Another issue for consumers is the time delay with repairs- e.g. delay with an engineer calling out to a faulty washing machine. It's hassle for the consumer when they could get a replacement or refund. BEUC suggest that the Repair Information Form should have a 'max' repair time rather than the 'estimated' repair time for consumers when comparing the services of repairers. The form proposes to have information on whether a replacement product is available while a repair is being carried out. This would give consumers more confidence in choosing a repair.

Costs: *While the proposal seems reasonable to encourage the repair of products, ultimately the cost of delivering this will be borne by the consumers. They may be concern regarding the impact on lower income or vulnerable groups should the overall cost of items be increased to cover the increasing obligations placed on traders/producer.*

Issue with the repair: *Should an item be repaired and subsequently fail again; will the obligation lie with the trader or the person completing the repair? Will the trader/producer be responsible for the good if the person completing the repair performed poorly. How will disputes be handled in these situations if the person completing the repair does not have a direct relationship and is acting on behalf of the trader/producer.*

Consumer Information is key: *As regards protecting consumers, there should be clear, upfront information when consumers are purchasing the goods, in relation to the 'Right to Repair'. The proposal to have extra information included under the CRA 'Right to Information' list for traders to provide prior to contracting is important. It will be important for consumers to have information as regards:*

- *What situations will the 'right to repair' option be available in relation to?*
- *What products are going to be covered by the 'right to repair'?*
- *What are the steps for consumers to take when availing of this option as opposed to or in addition to pursuing the trader under CRA Rights?*