

## EVIA position on the Commission proposal for a directive with regards to empowering consumers for the green transition

26 May 2022

The European Ventilation Industry Association (EVIA) welcomes the opportunity to provide comments to the Commission proposal for a directive amending Directives 2005/29/EC (Unfair Commercial Practices Directive) and 2011/83/EU (Consumer Rights Directive) that was published as part of the Sustainable Products Initiative (SPI) on 30 March 2022. EVIA is a staunch supporter of the EU legislative framework that protects consumers against misinformation and unfair practices, and we fully understand the need for an adaptation of the existing rules to better reflect the transition towards a sustainable economy.

Given the importance of this proposal in relation to the other initiatives presented as part of the SPI package, we would like to offer various recommendations in order to further strengthen consumer protection from the perspective of the ventilation industry. The table below depicts the Commission proposal on the left side and the EVIA recommendations on the right one.

### Amendments to Directive 2005/29/EC (Unfair Commercial Practices Directive)

Commission proposal published on 30 May 2022	EVIA recommendations
<p><u>Article 1(1)</u>  <u>Amendment to Directive 2005/29/EC - Article 2 – Definitions</u>            (u) ‘recognised excellent environmental performance’ means environmental performance compliant with Regulation (EC) 66/2010 of the European Parliament and of the Council*, with national or regional EN ISO 14024 type I ecolabelling schemes officially recognised in accordance with Article 11 of Regulation (EC) 66/2010, or top environmental performance in accordance with other applicable Union law;</p>	<p>(u) ‘recognised excellent environmental performance’ means environmental performance compliant with Regulation (EC) 66/2010 of the European Parliament and of the Council*, with national or regional EN ISO 14024 type I ecolabelling schemes officially recognised in accordance with Article 11 of Regulation (EC) 66/2010, or top environmental performance <b>representing achievement of the top three populated classes of performance</b> in accordance with other applicable Union law;</p>

	<b>Justification</b> <i>See below</i>
<p><u>Article 1(1)</u>  <u>Amendment to Directive 2005/29/EC - Article 2 – Definitions</u>            (10) Excellent environmental performance can be demonstrated by compliance with Regulation (EC) No 66/2010 of the European Parliament and of the Council, or officially recognised ecolabelling schemes in the Member States, or compliance with top environmental performance for a specific environmental aspect in accordance with other applicable Union laws, such as a class A in accordance with Regulation (EU) 2017/1369 of the European Parliament and of the Council. The excellent environmental performance in question should be relevant to the claim. For example, a generic claim ‘energy efficient’ could be made based on excellent environmental performance in accordance with Regulation (EU) 2017/1369. By contrast, a generic claim ‘biodegradable’ could not be made based on excellent environmental performance in accordance with Regulation (EC) No 66/2010, insofar as there are no requirements for biodegradability in the specific EU Ecolabel criteria related to the product in question.</p>	<p>(10) Excellent environmental performance can be demonstrated by compliance with Regulation (EC) No 66/2010 of the European Parliament and of the Council, or officially recognised ecolabelling schemes in the Member States, or compliance with top environmental performance for a specific environmental aspect in accordance with other applicable Union laws, such as a class <b>A-B-C</b> in accordance with Regulation (EU) 2017/1369 of the European Parliament and of the Council. The excellent environmental performance in question should be relevant to the claim. For example, a generic claim ‘energy efficient’ could be made based on excellent environmental performance in accordance with Regulation (EU) 2017/1369. By contrast, a generic claim ‘biodegradable’ could not be made based on excellent environmental performance in accordance with Regulation (EC) No 66/2010, insofar as there are no requirements for biodegradability in the specific EU Ecolabel criteria related to the product in question.</p> <p><b>Justification</b>            Generic environmental claims, i.e., those not contained in a sustainability label (for example, ‘energy efficient’), will be banned unless recognised excellent environmental performance can be demonstrated. The product would need to be compliant with an EU Ecolabel, Member State officially recognised ecolabelling schemes or in compliance with top environmental performance for a specific environmental aspect in accordance with other applicable Union laws.</p> <p>In the context of heating, ventilation, air conditioning (HVAC)/Technical Building Systems (TBS), many products are covered</p>

	<p>by classes of performance within the energy labelling Delegated Acts under Regulation (EU) No 2017/1369 on the energy labelling framework. As such they can be expected to fall under the requirement to demonstrate ‘recognised excellent environmental performance’ by in turn demonstrating “top environmental performance in accordance with other applicable Union law,” in this case the respective energy labelling Delegated Acts. In recital (10) it is intimated that “top environmental performance” for energy labelling would be achieving Class A.</p> <p>EVIA disagrees with the intimation that only the top class of performance should be considered as “recognised excellent environmental performance.” For energy labelling, Regulation 2017/1369 requires that following a rescaling of an energy label, classes A-B should be unpopulated. This would mean that manufacturers of a Class C product, which is then the most energy efficiency product available on the market, would not be able to make a generic claim in marketing materials that the product is ‘energy efficient.’ Even when technological develop eventually sees Class B populated, such a claim would be considered as misleading under the proposed definition of ‘recognised excellent environmental performance.’</p>
<p><u>Article 1(1)</u>  <u>Amendment to Directive 2005/29/EC - Article 2 – Definitions</u>  (v) ‘durability’ means durability as defined in Article 2, point (13), of Directive (EU) 2019/771 of the European Parliament and of the Council;</p>	<p>(v) <i>‘durability’ means the ability of a product to function as required, under specified conditions of use, maintenance, and repair, until a limiting event prevents its functioning;</i></p> <p><b>Justification</b>  <i>See below</i></p>

Article 1(1)(b)

Amendment to Directive 2005/29/EC - Article 2 – Definitions

(14b) ‘durability’ means durability as defined in Article 2, point (13), of Directive (EU) 2019/771;

(14b) *‘durability’ means the ability of a product to function as required, under specified conditions of use, maintenance, and repair, until a limiting event prevents its functioning;*

**Justification**

The proposal to empower consumers proposes that Article 2(13) of the Sale of Goods Directive is used to define ‘durability’ in the amended Unfair Commercial Practices Directive (UCPD) and the Consumer Rights Directive (CRD). The Article 2(13) definition in the Sale of Goods Directive is as follows:

*“‘durability’ means the ability of the goods to maintain their required functions and performance through normal use;”*

This definition does not align with the definition proposed in Article 2(21) of the Ecodesign for Sustainable Products Regulation (ESPR) proposal. This definition is as follows;

*“‘durability’ means the ability of a product to function as required, under specified conditions of use, maintenance and repair, until a limiting event prevents its functioning;”*

The ESPR definition is well aligned with that used in the relevant CEN/CENELEC standard EN 45552:2020 – ‘General method for the assessment of the durability of energy related products,’ which was developed by CEN/CENELEC to fulfil the Commission’s standardisation mandate M/543.

Section 3.1.1.1 of EN 45552 defines durability as follows:

	<p><i>“durability – of a part of a product - ability to function as required, under defined conditions of use, maintenance and repair, until a limiting state is reached”</i></p> <p>Both the ESPR proposal and EN 45552 postdate the 2019 Sale of Goods Directive and as such can be considered to reflect the current industry and Commission consensus/interpretation of durability more accurately as a concept. Therefore, EVIA recommends that the definition of durability in the proposal for empowering consumers is replaced with the proposed definition in the ESPR proposal, for the amendments to both the UCPD and the CRD.</p>
<p><u>Annex, point 4</u> <u>Amendment to Directive 2005/29/EC – Annex I – Commercial practices that are in all circumstances considered unfair</u></p> <p>23h. Inducing the consumer into replacing the consumables of a good earlier than for technical reasons is necessary.</p> <p>(...)</p> <p>23i. Omitting to inform that a good is designed to limit its functionality when using consumables, spare parts or accessories that are not provided by the original producer.’</p>	<p>23h. Inducing the consumer into replacing the consumables of a good, earlier than <i>necessary</i>, for technical reasons.</p> <p>(...)</p> <p>23i. Omitting to inform that a good is designed to limit its functionality when using consumables, spare parts or accessories, <i>that meet the technical specifications of the original producer but</i> are not provided by the original producer.’</p> <p><b>Justification</b> EVIA notes that Annex, point 4(23i) intends to ensure that consumers do not suffer limitation or loss of functionality, should they choose to use aftermarket/third-party consumables, spare parts or accessories. This provision has the intention of improving the competitiveness of aftermarket markets, ultimately to reduce the cost of repair services</p>

	<p>by decreasing the costs of repair across third-party and OEM repair service provision.</p> <p>However, OEMs cannot be held responsible if a product is designed to limit its functionality if the aftermarket consumables, spare parts, or accessories do not meet the technical specifications of the OEM, as it cannot verify their performance and compliance. Indeed, if the aftermarket consumables, spare parts, or accessories do not meet the technical specifications of the OEM, it is unlikely that a limitation or loss of functionality can be avoided. In this scenario the product is not explicitly designed to limit functionality, as the aftermarket consumables, spare parts, or accessories are simply not technically compatible with the product.</p> <p>Therefore, EVIA recommends that the blacklisted practice is amended to cover omitting to inform that a product is designed to limit functionality when the consumables, spare parts, or accessories meet the technical specifications of the OEM but are not provided by it.</p> <p>In addition, EVIA recommends a grammatical editorial to Annex point 4(23h) to improve readability.</p>
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### Amendments to Directive 2011/83/EU (Consumer Rights Directive)

Commission proposal published on 30 May 2022	EVIA recommendations
<p><u>Article 2(1)(a)</u>  <u>Amendment to Directive 2011/83/EU – Article 2 – Definitions</u>            (3a) ‘energy-using good’ means any good that depends on energy input (electricity, fossil fuels and renewable energy sources) to work as intended;</p>	<p>(3a) <b>‘energy-related product’ means any product that has an impact on energy consumption during use;</b></p>

	<p><b>Justification</b></p> <p>The proposal to empower consumers proposes that a new definition for an ‘energy-using good’ is introduced in an amendment to the Consumer Rights Directive. EVIA notes that that the terminology is not aligned with the Commission’s ESPR proposal:</p> <p><i>‘energy-related product’ means any product that has an impact on energy consumption during use;</i></p> <p>The definition proposed in the ESPR proposal is a useful simplification of the current definition of ‘energy-related product’ under Article 2(1) of the Ecodesign Directive, which has been in force since 2009.</p> <p><i>‘Energy-related product’, (a ‘product’), means any good that has an impact on energy consumption during use which is placed on the market and/or put into service, and includes parts intended to be incorporated into energy-related products covered by this Directive which are placed on the market and/or put into service as individual parts for end-users and of which the environmental performance can be assessed independently;</i></p> <p>EVIA recommends that consistency is maintained by using the terminology ‘energy-related product’ in the proposal to empower consumers. The definition for ‘energy-related product’ should align with the simplification proposed in the ESPR.</p>
<p><u>Article 2(2)(a)</u>  <u>Amendment to Directive 2011/83/EU – Article 5 – Information requirements for contracts other than distance or off-premises contracts</u>  (ea) for all goods, where the producer makes it available, information that the goods benefit from a commercial guarantee of durability and</p>	<p>(ea) for all goods, where the producer makes it available, information that the goods benefit from a commercial guarantee of durability and</p>



<p>its duration in units of time, where that guarantee covers the entire good and has a duration of more than two years;</p> <p>(...)</p> <p>(ec) for goods with digital elements, where the producer makes such information available, the minimum period in units of time during which the producer provides software updates, unless the contract provides for a continuous supply of the digital content or digital service over a period of time. Where information about the existence of a commercial guarantee of durability is provided in accordance with point (ea), the information on the updates shall be provided if those updates are supplied for a longer period than the commercial guarantee of durability;</p>	<p>its duration in <i>years</i>, where that guarantee covers the entire good and has a duration of more than two years;</p> <p>(...)</p> <p>(ec) for goods with digital elements, where the producer makes such information available, the minimum period in <i>years</i> during which the producer provides software updates, unless the contract provides for a continuous supply of the digital content or digital service over a period of time. Where information about the existence of a commercial guarantee of durability is provided in accordance with point (ea), the information on the updates shall be provided if those updates are supplied for a longer period than the commercial guarantee of durability;</p>
<p><u>Article 2(3)(b)</u>  <u>Amendment to Directive 2011/83/EU – Article 6 – Information requirements for distance and off-premises contracts</u></p> <p>(ma) for all types of goods, where the producer makes it available, information that the goods benefit from a commercial guarantee of durability and its duration in units of time, where that guarantee covers the entire good and has a duration of more than two years;</p> <p>(...)</p> <p>(mc) for goods with digital elements, where the producer makes such information available, the minimum period in units of time during which the producer provides software updates, unless the contract provides for a continuous supply of the digital content or digital service over a period of time. Where information about the existence of a commercial guarantee of durability is provided in accordance with point (ma), the information on the updates shall be provided if</p>	<p>(ma) for all types of goods, where the producer makes it available, information that the goods benefit from a commercial guarantee of durability and its duration in <i>years</i>, where that guarantee covers the entire good and has a duration of more than two years;</p> <p>(...)</p> <p>(mc) for goods with digital elements, where the producer makes such information available, the minimum period in <i>years</i> during which the producer provides software updates, unless the contract provides for a continuous supply of the digital content or digital service over a period of time. Where information about the existence of a commercial guarantee of durability is provided in accordance with point (ma), the information on the updates shall be provided if those</p>



<p>those updates are supplied for a longer period than the commercial guarantee of durability;</p>	<p>updates are supplied for a longer period than the commercial guarantee of durability;</p> <p><b>Justification</b> EVI suggests amendments to improve precision and clarity in the amendments to the information requirements under Article 5 for contracts other than distance and off-premise contracts and under Article 6 for distance and off-premise contracts.</p> <p>First, specification of periods of guarantee in “units of time” is insufficiently precise and could lead to economic operators providing the information in units that are misleading to consumers or indeed have less utility for the consumer. Considering that the minimum guarantee period under the Sale of Goods Directive is two years, it would be appropriate to clearly specify that the “units of time” are given in “years.”</p> <p>Moreover, we would like to repeat our recommendation to use the terminology ‘energy-related products’ in place of the proposed ‘energy-using goods,’ in order to align with the ESPR.</p>
<p><u>Article 2(2)(b)</u> <u>Amendment to Directive 2011/83/EU – Article 5 – Information requirements for contracts other than distance or off-premises contracts</u> (i) where applicable, the reparability score for the goods;</p> <p>(...)</p> <p>(j) when point (i) is not applicable, information made available by the producer about the availability of spare parts, including the procedure of ordering them, and about the availability of a user and repair manual.</p>	<p><i>No amendments</i></p> <p><b>Comment</b> EVI notes that the proposal seeks to amend the Consumer Rights Directive to include information on the reparability score for products, where available, during the conclusion of on-premises, off-premises, and distance contracts. Before reparability scoring is established for product groups under future ESPR delegated acts, it</p>

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Article 2(3)(b)

Amendment to Directive 2011/83/EU – Article 6 – Information requirements for distance and off-premises contracts

(u) where applicable, the reparability score for the goods;

(...)

(v) when point (u) is not applicable, information made available by the producer about the availability of spare parts, including the procedure of ordering them, and about the availability of a user and repair manual.

will be mandatory to provide information covering the availability of spare parts, including the procedure for ordering them, and the availability of repair and maintenance information (RMI). EVIA further notes positively that the information on spare parts and RMI is covered by material efficiency requirements that are increasingly integrated into ecodesign implementing acts under the current Ecodesign Directive.

However, EVIA questions the exemption from providing information on the detailed material efficiency, i.e., RMI and on spare parts, when a reparability score is introduced. The aim of a reparability score is primarily to graphically depict classes of performance on a scale, e.g., the energy labels A-G classification on the basis of a set of aggregated parameters, including access to RMI and spare parts availability.

This simplification is unlikely to provide sufficient granularity for the consumers to fully maximise their selection decision at the point of sale. EVIA anticipates that following the establishment of reparability scores for HVAC/TBS under the ESPR, the material efficiency requirements will continue to apply in the product-specific ecodesign legislation. This will require manufacturers to provide such information, including at the point of sale.

EVIA does not see a justification for requiring only a reparability score at the point of sale and stresses that consumers would continue to benefit from the granularity of receiving information on spare parts availability and RMI at the point of sale for all products.

## **About EVIA**

The European Ventilation Industry Association (EVIA) was established in Brussels in July 2010. EVIA's mission is to represent the views and interests of the ventilation industry and serve as a platform between all the relevant European stakeholders involved in the ventilation sector, such as decision-makers at the EU level as well as our partners in EU Member States.

Our membership is composed of more than 40 member companies and 6 national associations across Europe realising an annual turnover of over 7 billion Euros and employing more than 45,000 people in Europe.

EVIA aims to promote highly energy efficient ventilation applications across Europe, with high consideration for health and comfort aspects. Fresh and good indoor air quality is a critical element of comfort and contributes to keeping people healthy in buildings.

For more information, see [www.evia.eu](http://www.evia.eu).