



# COMMENTS

## ON THE REVIEW OF THE DRAFT ACT ON ECODESIGN REQUIREMENTS FOR MOBILE PHONES, SMARTPHONES, CORDLESS PHONES AND TABLETS

Brussels, 28/09/2022

Following the release of the European Commission's draft proposals for a new ecodesign regulation on mobile phones, cordless phones and tablets on 31 August 2022, the environmental stakeholders hereby submit their views.

We support the following aspects of the proposed ecodesign regulation:

- ▶ OS update requirements.
- ▶ Bundling restrictions.
- ▶ Faster availability of spare parts after product launch.
- ▶ Inclusion of SIM tray / memory card tray to list of spare parts.
- ▶ Compulsory justification for any rejection of professional repairer information requests.
- ▶ Spare part delivery time of 5 days.
- ▶ Information on the maximum price of spare parts.
- ▶ Additions to the revision clause.
- ▶ Definition of free access website.
- ▶ Inclusion of refurbishers within the definition of professional repairers.

However, we observe that there has been a reduction in ambition in the regulatory requirements specified in this recent draft which is incompatible with the intentions of the European Green Deal and will translate to lost savings. Overall the proposed measures are anticipated to deliver a 33% reduction in the life cycle primary energy consumption energy use from phones and tablets (including production). Given the EU has a climate target to reduce emission by 55% by 2030, the proposals should be more ambitious. Therefore, we propose the following changes:

- ▶ Timeliness of implementation: All entry into application of requirement dates should be harmonised at a maximum of 6 months.
- ▶ Duration of after sales support: Availability of spare parts, conformity updates and repair information should be mandatory for 7 years after placement of the last unit of a model on the market.
- ▶ Procedure for authorisation of spare parts replacement: ban Software practices which limit restoration of the device's functionalities and degrades user experience.
- ▶ Display disassembly specification: Delete clauses specifying that end-users' repair operations should take place in a workshop environment and with the skills of a generalist.
- ▶ Maximum spare part price: Increasing the price of spare parts beyond the maximum published price should be prohibited. The published maximum spare part price should be reasonable and proportionate.

- ▶ Tablet drop test: Specify minimum tablet drop test requirements at either F or G level in line with the previous labelling proposal (50 or 100 falls without defect).
- ▶ Fastener definition: Revise fastener definitions to define three different types (reusable, resupplied and removable).
- ▶ Exemptions: Tighten or remove the exemption for smartphones for high security communication. Remove the upper limit on slate tablet screen size. Remove the reference to analogous OS in the slate tablet definition.
- ▶ OS updates: Define the timeframe for fixing downgrades in OS performance due to updates as maximum 1 month. Change voluntary wording on update availability to regulatory. Change the definition of 'security updates' to 'conformity updates' to include corrective updates. Pledge for providing conformity updates and functionality updates separately, so the owner of the device can accept or refuse functionality updates.
- ▶ Data deletion: Explicit and comprehensive definitions of personal data to be deleted.
- ▶ Repair information: Limitations which imply repairers cannot use repair information until after OEMs stop providing it must be removed. To increase access to repair information and decrease cost of repairs, such information should have to be provided free of charge.
- ▶ Burden of proof on professional repairers: Adjust existing wording to reduce the burden of registration for repair information on professional repairers.
- ▶ Impacts of different charging approaches: Clarify text to ensure clear communication.
- ▶ Battery endurance / repair trade off: increase ambition to encourage disassembly and longer lasting products.
- ▶ Information on compatible common chargers: specifics of compatible adapters should be communicated to consumers.

## WE STRONGLY SUPPORT THE FOLLOWING PROVISIONS

### OS UPDATE PERFORMANCE DOWNGRADES AND ALLOWING OS UPDATE ROLLBACK FOR SMARTPHONES

The combination of preventing OS performance downgrades and allowing OS update rollback to any previous versions makes an important contribution to reducing the premature obsolescence of smartphones and tablets [Annex II.B.1.1.2.(6).(g)] and tablets [Annex II.D.1.1.2.(5).(g)].

### BUNDLING RESTRICTIONS

We support the restrictions on bundling of parts listed for provision as spare parts [Annex II.A.1.1.(1).(e) - Annex II.B.1.1.(1).(e) - Annex II.C.1.1.(1).(c) - Annex II.D.1.1.(1).(e)].

### REDUCED DELAY FOR AVAILABILITY OF SPARE PARTS REQUIREMENTS

We support switching from '6 months after placement on the market of the product' to 'from 1 month after' [Annex II.A.1.1.(1).(c).(i) - Annex II.B.1.1.(1).(c).(i) - Annex II.C.2.1.(1).(a-b-d) - Annex II.D.1.1.(1).(c).(i)].

### SPARE PART DELIVERY TIME

We support keeping the previously suggested 5 days maximum delay for the delivery of spare parts [Annex II.A.1.1.(3).(a) - Annex II.B.1.1.(3).(a) - Annex II.C.2.1.(4).(a) - Annex II.D.1.1.(3).(a)].

## **ADDITIONS TO REVISION CLAUSE**

We support including smart wearables in scope; greater stringency on battery endurance in cycles; feasibility of defining a standardised battery; requirements to enable repair with used and third-party spare parts; additions to the list of spare parts, of spare parts availability per target group (professional repairers, end-users) and of repair information; revisions to the reparability score to include durability aspects [Article 8].

## **DEFINITION OF FREE ACCESS WEBSITE**

Clearly specifying that no payment can be charged and that no personal information is provided including email address or phone number when accessing free access websites is welcomed [Annex I.(27)].

## **INCLUSION OF REFURBISHERS IN THE DEFINITION OF PROFESSIONAL REPAIRERS**

We support the inclusion of those who repair 'with a view to the subsequent resale of the repaired device' [Annex I.(6)] in the definition of professional repairers.

## **WE SUPPORT, BUT HOPE FOR MORE AMBITION**

### **INCLUSION OF SIM TRAY / MEMORY CARD TRAY IN LIST OF SPARE PARTS MADE AVAILABLE FOR BOTH PROFESSIONAL REPAIRERS AND ENED-USERS**

The extension of the list of spare parts that manufacturers will have to make available to professional repairers is welcome [Annex II.A.1.1.(1).(a).(xv) - Annex II.B.1.1.(1).(a).(xv) - Annex II.D.1.1.(1).(a).(xv)] and end-users [Annex II.A.1.1.(1).(d).(iii) - Annex II.B.1.1.(1).(d).(iii) - Annex II.D.1.1.(1).(d).(iii)]. However, [Right to Repair Europe actively supports the end of the distinction between professional repairers and end-users in terms of access to spare parts and repair information: all the parts currently listed for professional repairers should be made available to everyone, together with repair information necessary to conduct repair operations as safely as possible](#). This distinction is purely discriminatory and based on unsubstantiated safety issues. Analysis of data from community repair initiatives shows that the range of repairs performed by end users at repair cafes is wide, requiring access to all the same spare parts used by professional repairers<sup>1</sup>. Many of the spare parts that are only on the professional repairers' list are currently made accessible to end-users by certain manufacturers or available on certain online platforms (see Annex II of this position paper). This access has created no noticeable issue so far. As such reports do not exist, a distinction between professional repairers and end-users should not be made in any of the Commission's Ecodesign material efficiency requirements.

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<sup>1</sup> <https://openrepair.org/open-data/insights/mobiles/>

## COMPULSORY JUSTIFICATION FOR ANY REJECTION OF PROFESSIONAL REPAIRER INFORMATION REQUESTS

In a context where professional repairers have to provide evidence of their professional status to manufacturers before accessing repair and maintenance information, requiring manufacturers to motivate their rejection is necessary [Annex II.A.1.1.(2).(b) - Annex II.B.1.1.(2).(b) - Annex II.C.2.1.(3).(b) Annex II.D.1.1.(2).(b)]. However, as explained previously, Right to Repair Europe supports access to spare parts and repair information for everyone. **These provisions, allowing manufacturers to delay access to repair and maintenance information, provide no added-value and are a barrier to efficient repair operations.** They should, therefore, be deleted.

## EXPECTED MAXIMUM PRE-TAX SPARE PART PRICE

Whilst we support the intention of the text in Annex II.A.1.1.(4), Annex II.B.1.1.(4), Annex II.C.2.1.(5) and Annex II.D.1.1.(4) specifying that the maximum price of spare parts should be indicated on free access websites, **the effectiveness of this requirement has been greatly reduced by the edits in the recent draft which now allow for manufacturers to exceed the maximum published expected maximum pre-tax spare part price.** The previous stipulation (below) which has been deleted in this draft shall be reinstated to ensure that the stated price is not exceeded. Otherwise there is nothing preventing manufacturers from stating a misrepresentative price on the website. In the same spirit, the term 'expected' should be removed from the provision.

Also, it should be ensured that the published maximum spare part price corresponds to a reasonable market rate for comparable spare parts. Otherwise, risks exist that manufacturers will publish high spare part prices, potentially higher than the price of the devices.

**Change needed:** Reinstating the previous text to ensure requirements on maximum price have an impact and remove the term "expected" in Annex II.A.1.1.(4), Annex II.B.1.1.(4), Annex II.C.2.1.(5) and Annex II.D.1.1.(4):

During the period referred to in point 1(a) and (b), manufacturers, importers or authorised representatives shall indicate an ~~expected~~ maximum pre-tax price at least in euros for spare parts listed in points 1(a) and (b), including the pre-tax price of fasteners and tools, if supplied with the spare part, on the free access website of the manufacturer, importer or authorised representative. Where spare parts listed in point 1(a) and (b) are made available to end-users, the ~~expected~~ maximum pre-tax price refers to the price for professional repairers and end-users. **The stated maximum pre-tax price shall not be increased after it has been published on the website and it should be reasonable and proportionate.**

## CHANGES NEEDED FOR APPROPRIATE REGULATORY AMBITION

### TIMELINESS OF IMPLEMENTATION

An unnecessary delay has been added in the implementation of the availability of spare parts to users (Recital 15). For some spare parts, the entry into application has been delayed by an additional 6 months, to

18 months in total from the point of entry into force of the regulation. This relaxed timing has been applied to:

- ▶ Making available batteries, back covers, display assembly, charger and SIM as spare parts to end users
- ▶ Availability of repair information for these parts to users.
- ▶ Disassembly requirements for batteries and displays (even although displays are to be repairable in a workshop environment).
- ▶ Battery endurance requirements.

The justification for this change is that these requirements “entail the most significant design changes”, but this additional delay is entirely unjustified for the following reasons:

- ▶ All spare parts must be treated equally as they are all part of the same phone design. If the manufacturers can make some parts available within 12 months from the entry into force of the regulation, they can make all parts available for the same design in this time frame.
- ▶ The smartphone industry is agile in its design cycles, releasing new phone models on an annual basis. Manufacturers already know of these requirements in 2022 and would have at least until the beginning of 2025 to release any redesigned products to the market.

There is clearly no justification for complicating the text of the regulation in this way by allowing for an additional 6 months for the provision of certain parts. Further, we believe that 6 months, as per the original preparatory study proposal, is sufficient.

**Change needed:** All entry into application of requirement dates should be harmonised at a maximum of 6 months.

## AVAILABILITY OF SPARE PARTS, CONFORMITY UPDATES AND REPAIR INFORMATION

**Availability of spare parts** [Annex II.A.1.1.(1).(a) - Annex II.A.1.1.(1).(b) - Annex II.A.1.1.(1).(d) - Annex II.B.1.1.(1).(a) - Annex II.B.1.1.(1).(b) - Annex II.B.1.1.(1).(d) - Annex II.C.2.1.(1).(a) - Annex II.D.1.1.(1).(a) - Annex II.D.1.1.(1).(b) - Annex II.D.1.1.(1).(d)]: The number of years during which spare parts will have to be available for professional repairers and end-users is not consistent throughout the proposal. Also, they do not fit with access to repair and maintenance information where a 7 year availability is suggested. This will lead to situations where end-users and professional repairers can have access to repair information, but not to the spare parts necessary for the repair operations to be conducted. [Right to Repair Europe suggests streamlining all these different provisions and stating that spare parts should be available to everyone for 7 years, for all products in scope.](#)

**Change needed:** At every occurrence of the provision ‘for a minimum period from one month after the date of placement on the market until X years after the date of end of placement on the market’, replace X by 7.

**Availability of conformity updates** [Annex II.A.1.1.2.(6) - Annex II.B.1.1.2.(6) - Annex II.D.1.1.2.(5)]: [We believe that the proposal should be more ambitious and request update availability of 7 years for conformity updates and 5 years for functionality updates as the regulatory minimum.](#) More details in section ‘Operating system (OS) updates’.

## REMOTE AUTHORISATION FOR SPARE PARTS REPLACEMENT

**Comments** ■ On the review of the draft act on ecodesign requirements for mobile phones, smartphones, cordless phones and tablets 5

Software is increasingly hampering independent repair, for example through part-pairing. It further threatens consumers' freedom to exercise their right to repair their devices themselves. This happens with all types of parts, including batteries. **The use of part-pairing and remote authorisation by manufacturers can lead to unnecessary barriers to repair, including preventing the reuse of OEM parts not distributed directly by the manufacturer.** Also, we are not aware of any cases of data breach or data being compromised resulting from a part replacement.

In this context, we recommend amending the provisions to ban part pairing for all spare parts replacement in all repair cases.

#### **Changes needed:**

Delete clauses Annex II.A.1.1.(2).(e).(xi) - Annex II.B.1.1.(2).(e).(xi) - Annex II.C.1.1.(3).(e).(xi) & Annex II.D.1.1.(2).(e).(xi).

Replace clauses Annex II.A.1.1.(2).(g) - Annex II.B.1.1.(2).(g) - Annex II.C.2.1.(3).(g) - Annex II.B.1.1.(2).(f) by: **Software shall not be used to limit the device's functionalities restoration during or after the replacement of spare parts or of its key components.**

**NB:** Suggested amendments are written in bold and text to be removed is strikethrough. This system will be used throughout this document.

## **DISPLAY DISASSEMBLY SPECIFICATION**

Environment and skills for display disassembly are inappropriate: We recommend that the clause specifying the need for a workshop environment for display replacement be deleted and that the skill levels be changed from generalist to layman. The intention of detailing separate disassembly requirements for the display is to widen the potential repair scenarios and **specifying a workshop environment significantly narrows the possibilities.**

**Changes needed:** Delete clauses Annex II.A.1.1.(5).(d).(iii), Annex II.B.1.1.(5).(d).(iii), Annex II.C.2.1.(6).(c).(iii) and Annex II.D.1.1.(5).(d).(iii). We also suggest replacing the clauses mentioning that "the process for replacement [for a display] shall, as a minimum, be able to be carried out by a generalist." by "The process for replacement shall be able to be carried out by a layman" [Annex II.A.1.1.(5).(d).(iv), Annex II.B.1.1.(5).(d).(iv), Annex II.C.2.1.(6).(c).(iv) and Annex II.D.1.1.(5).(d).(iv)].

## **DATA DELETION FUNCTIONS FOR REUSE**

In the data deletion provisions [Annex II.A.1.1.(6) - Annex II.B.1.1.(6) - Annex II.C.2.1.(7) - Annex II.D.1.1.(6)], there is a need for more clarity concerning the types of information that the data deletion process will delete.

Also, the clause (c) has to be very carefully written to make clear that an independent professional repairer can replace the battery and that the battery information will be accurately shown by the device even if it is not an OEM authorised repairer.

As soon as professional repairers are out of OEMs' agreed network, they cannot "read" the battery in concrete terms because of part pairing (the battery chip is linked to the device).

This is one more reason to ban part pairing, in all cases and especially for non-data sensitive spare parts replacement such as batteries. See our proposal in section '**Remote authorisation for spare parts replacement**'.

#### Changes needed:

- ▶ **Annex II.A.1.1.(6)**: From [~~12~~ **6** months after the entry into force of this Regulation], manufacturers, importers or authorised representatives shall ensure that devices include a software function that resets the device to its factory settings and erases securely by default **all personal information including but not limited to** address book, text messages, ~~and~~ call history, **pictures and settings**.
- ▶ **Annex II.B.1.1.(6)**: From [~~12~~ **6** months after the entry into force of this Regulation], manufacturers, importers or authorised representatives shall ensure that devices:
  - (a) encrypt **all** user data **including but not limited to address book, text messages, call history, browser history, pictures and settings** by default using a random encryption key;
  - (b) include a software function, that resets the device to its factory settings and erases securely by default the encryption key and generates a new one;
  - (c) record the following data from the battery management system in the system settings or another location accessible for ~~end-users~~ **the owner of the device**:
- ▶ **Annex II.C.2.1.(7)**: From [~~12~~ **6** months after the entry into force of this Regulation], manufacturers, importers or authorised representatives shall ensure, that devices include a software function, that resets the device to its factory settings and erases securely by default **all personal information including but not limited to** address book, text messages, ~~and~~ call history **and settings**.
- ▶ **Annex II.D.1.1.(6)**: From [~~12~~ **6** months after the entry into force of this Regulation], manufacturers, importers or authorised representatives shall ensure that devices:
  - (a) encrypt **all** user data **including but not limited to address book, text messages, call history, browser history, pictures and settings** by default using a random encryption key;
  - (b) include a software function, that resets the device to its factory settings and erases securely by default the encryption key and generates a new one;
  - (c) record the following data from the battery management system in the system settings or another location accessible for ~~end-users~~ **the owner of the device**:

## TABLET DROP TEST

Slate tablets are not subject to the same regulatory requirements on drop tests as mobile phones [Annex II.A.1.2.(1)] and smartphones [Annex II.B.1.2.(1)] even though the preparatory study identified drops as being the main cause of tablet defects, and drop tests as key to consumer organisation tests on tablet durability<sup>2</sup>. In addition, slate tablet drop tests have to be carried out for the energy label. Therefore, in line with the principles of energy labelling, [a regulatory minimum drop test requirement should be set at the lowest labelling class](#).

**Change needed:** In line with our position on the energy label, restore the previous energy labelling proposal for free fall reliability classes (A to G classes, from over 350 falls without defect to under 50, with test intervals every 50 falls) and specify minimum tablet requirements at either F or G level (50 or 100 falls without defect).

## FASTENER DEFINITION

[The widening of the definition of reusable fastenings \[Annex I.\(9\)\] in the new draft causes issues for the robustness of disassembly requirements in the regulation and energy label](#). The definition of reusable fastenings now directly includes non-reusable fasteners and adhesives. This causes the following issues:

- ▶ Counterintuitive deviation from the definitions of EN 45554:2020 - General methods for the assessment of the ability to repair, reuse and upgrade energy related products: Adhesives cannot usually be reused and may leave residues. EN 45554:2020 addresses the issue of removable adhesive residues as in the removable category. The draft regulation directly references adhesives as reusable but does not tackle the issue of residues. The introduction to the labelling regulation claims consistency with EN 45554:2020 (recital 9), and Annex IIIa (Transitional methods) cross references to table A.1 of EN 45554:2020 in the regulation. Yet, the definitions used in the regulatory proposals do not match. Please see the table in the annex for details.
- ▶ Disassembly stipulations on adhesives as removable fasteners are more stringent than reusable fasteners: Adhesives leaving residue are permitted as reusable fasteners but not as removable fasteners.
- ▶ The difference in environmental impact between fasteners that can truly be reused and those that need to be thrown away and replaced using new materials is disregarded in both approaches.
- ▶ The difference in scoring on the energy label between reusable and removable fasteners is 5 points to 1 point, yet the only differentiation between the two is whether non-reusable fixings are provided with the spare part or not. Because of the way the repair score is structured, fastenings have a major influence on the outcome of the repair score.

**Changes needed:** In order to clearly delineate the different types of fasteners on the basis of reparability and environmental impact, avoid counterintuitive definitions and facilitate a more effective and granulated scoring approach, we propose the following definitions [Annex I.(9)]:

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<sup>2</sup> Schischke, K., Clemm, C., Berwald, A., Proske, M., Dimitrova, G., Reinhold, J., Prewitz, C., Durand, A., Beckert, B., Ecodesign preparatory study on mobile phones, smartphones and tablets, Final report, Fraunhofer IZM, Fraunhofer ISI and Vito, Brussels, Belgium, February 2021, ISBN 978-92-76-31461-5, DOI 10.2873/175802



- ▶ **Reusable fastener:** A removable fastener that can be reused in the reassembly for the same purpose without causing damage or leaving residue which precludes reassembly. Screws and other connectors such as, but not limited to, snap-fits and clips shall be classified as reusable fasteners, unless they cause damage either to the product or to the fastener itself during the disassembly or reassembly process in a way that makes their reuse impossible. (labelling score = 5)
- ▶ **Resupplied fastener:** A fastener that cannot be completely reused, but that is supplied at no additional cost with the spare part which it is intended to connect or fix. Adhesives shall be considered resupplied fasteners if they are supplied with the spare part in a quantity that is sufficient for the reassembly at no additional cost, unless the removal process for the original adhesive, using commercially available tools with a reasonable level of effort, does not allow the full removal of the residues and risks precluding the reassembly of the product. (labelling score = 3)
- ▶ **Removable fastener:** A fastener that is not reusable or resupplied but can be removed without causing damage or leaving residue which precludes reassembly. Adhesives that are not reusable or resupplied fasteners shall be considered removable fasteners unless their removal process, using commercially available tools with a reasonable level of effort, does not allow the full removal of the residues and risks precluding the reassembly of the product. (labelling score = 1)

As suggested by the Council of the European Union for the revision of the battery regulation [2020/0353(COD)], some adhesives should be excluded<sup>3</sup>: 'A portable or LMT battery is readily removable where it can be removed from an appliance or a light mean of transport without the use of specialised tools, thermal energy, or solvents to disassemble'. The requirements on battery disassembly should similarly clearly differentiate between adhesives and reusable fasteners, incentivising assembly approaches without adhesives. [Batteries disassembly requirements should reference reusable fasteners to ensure ease of user disassemblability in line with the intention of the endurance-disassembly trade off in the regulation.](#)

## NEW EXEMPTIONS

There are the following issues with the new exemptions included in the draft text (Article 1):

- ▶ **Smartphones designed for high security communication:** The definition in Article 2.1.(3) is [insufficiently robust to define this segment in a way that it only exempts phones designed to be dedicated to high security applications](#). Just because a phone is approved by a member state to transmit, process or store classified information does not mean it has been designed for this purpose. A member state could choose to put any type of phone on this list. There is no way to prove that the phone is intended only for professional users and many phones could be designed to detect physical intrusion to the hardware for warranty purposes anyway. We suggest this definition be considerably tighter or if it cannot be tightened, the exemption should be removed.
- ▶ **Slate tablets over 17.4 inches:** An upper screen-size limit has been introduced to the definition of slate tablets [Article 2.1.(5).(a)], which means that larger [tablets used for drawing purposes such](#)

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<sup>3</sup> Presidency of the Council of the European Union, 2020/0353(COD), 7103/1/22 REV 1, Proposal for a Regulation of the European Parliament and of the Council concerning batteries and waste batteries, repealing Directive 2006/66/EC and amending Regulation (EU) No 2019/1020 - General approach

as those by Wacom, XP-PEN, HUIION and ViewSonic<sup>4</sup> would be excluded from scope. There is no reason why these tablets would be unable to meet the requirements.

- ▶ **Slate tablets with their own OS:** The change in the definitions means that tablets with an OS that is not analogous to a smartphone OS would not be considered slate tablets and would therefore not come under scope of the regulation. The OS in Apple products is different for phones (iOS) and tablet devices (iPadOS) and therefore [this change would mean that the iPad is considered exempt from the tablet requirements<sup>5</sup>](#).

**Change needed:** Tighten or remove the exemption for smartphones for high security communication. Remove the upper limit on slate tablet screen size. Remove the reference to analogous OS in the slate tablet definition.

## OPERATING SYSTEM (OS) UPDATES

**Preventing OS update performance downgrades and allowing OS update rollback:** We strongly support the addition in the smartphone [Annex II.B.1.1.2.(6).(g)] and tablet [Annex II.D.1.1.2.(5).(g)] requirements that if there is a variation in performance with an OS update, this needs to be fixed within a reasonable time frame. However, [the time frame for fixing downgrades in performance lacks definition and should be defined as maximum 1 month. We also consider that these clauses should apply to all mobile phones, not just smartphones and tablets.](#)

**Software updates nomenclature:** The distinction between security and functionality updates is inoperative and counterproductive as it does not consider corrective updates (bug fixes), which often have nothing to do with security updates (patching security breaches) but are nevertheless essential for the proper use of the device. Moreover, the improvement of functionalities or the setting up of new ones (i.e. functionality updates) can contain security elements to ensure proper protection of this new functionality, without the latter being essential. As the proposed definitions of updates are too subjective (definitions (35) & (36): "whose main purpose is..."), manufacturers could easily make a security update look like a functionality one, and thus only make them available for 3 years, even if the text removes the voluntary aspect mentioned above. Security updates therefore should be called conformity updates.

**Update availability:** The proposal suggests update availability of 5 years for security updates and 3 years for functionality updates as the regulatory minimum [Annex II.A.1.1.2.(6) - Annex II.B.1.1.2.(6) - Annex II.D.1.1.2.(5)], and encourage longer provision via the reparability index. We note that the lowest class for software updates in the repair index specifies 5 years security and 3 years functionality update availability, underlining this as the intended minimum requirement of the regulation. We believe that the proposal

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<sup>4</sup> MarketWatch. (2022, August 29). Drawing tablet market size 2022-2030: Trends, CAGR status, developments strategy, competitive landscape and growth factors by top players. MarketWatch. Retrieved September 13, 2022, from <https://www.marketwatch.com/press-release/drawing-tablet-market-size-2022-2030-trends-cagr-status-developments-strategy-competitive-landscape-and-growth-factors-by-top-players-2022-08-29>

<sup>5</sup> Goode, L. (2019, June 9). iPadOS isn't just a name. it's a new direction for Apple. Wired. Retrieved September 13, 2022, from <https://www.wired.com/story/ipados-more-than-just-a-name/>

should be more ambitious and request update availability of 7 years for security updates (preferably named conformity updates as explained earlier) and 5 years for functionality updates as the regulatory minimum. Also, **the new wording means that there is no obligation on manufacturers to provide functionality or conformity updates. The decision to provide updates or not has been delegated to the manufacturer and is therefore voluntary.** This is clearly an inappropriate approach for an ecodesign regulation.

For mobile phones [Annex II.A.1.1.2.(6).(f)], smartphones [Annex II.B.1.1.2.(6).(f)] and slate tablets [Annex II.D.1.1.2.(5).(f)], it is suggested that 'an operating system update may combine a security and a functionality update'. This is a practice that has been known to degrade the performances of devices, notably because the generally dispensable functionality updates are heavier than the necessary security updates (preferably named conformity updates as explained earlier). They slow down the functioning of devices and reduce the storage space available, ultimately pushing consumers to replace their products when new applications cannot be installed anymore. The performance guarantee provided by Annex II.B.1.1.2.(6).(g) for smartphones and Annex II.D.1.1.2.(5).(g) for tablets might prevent the slowing down of devices' functionality, but they will not prevent the dispensable usage of storage space. **The bundling of functionality and conformity updates should, therefore, be strictly banned.**

#### Changes needed:

- ▶ Define the time frame for fixing downgrades in OS performance due to updates as maximum 1 month.
- ▶ Amend clauses Annex I.(35) and Annex I.(36) as follows:
  - (35) 'security **conformity** update' means an operating system update, including security patches **or bugs fixes**, if relevant for a given device, whose main purpose is to **keep the good in conformity, by providing** enhanced security or **corrective measures** for the device;
  - (36) 'functionality update' means an operating system update **that is not necessary to keep the good in conformity, and** whose main purpose is to **improve current functionalities or** implement new functionalities;
- ▶ Change voluntary wording on update availability to regulatory:
  - *Operating system updates:*
  - (a) ~~where manufacturers, importers or authorised representatives shall provide either voluntarily or in compliance with Union legislation, security **conformity** updates or functionality updates to the operating system installed on a product model, they shall ensure that such updates are available at no cost at least until the date of end of placement on the market;~~
  - (b) ~~where, after the date of end of placement on the market of a product model, manufacturers, importers or authorised representatives shall provide either voluntarily or in compliance with Union legislation, security **conformity** updates to the operating system installed on that product model at the moment of end of placement on the market, they shall ensure that such updates are available at no cost for at least 57 years after the date of end of placement on the market;~~
  - (c) ~~where, after the date of end of placement on the market of a product model, manufacturers, importers or authorised representatives shall provide, either voluntarily or in compliance with Union legislation, functionality updates to the operating system installed on that product model at the moment of end of placement on the market, they shall ensure~~

~~that such updates are available at no cost for at least 3 years after the date of end of placement on the market;~~

- [...]
- ~~(f) an operating system update may combine a security and a functionality update.~~
- **(f) an operating system update shall provide conformity and functionality updates separately; The owner of the device has to be able to accept or refuse at least functionality updates.**

## REPAIR INFORMATION

**Pricing and limitations on use of repair information:** The draft act currently allows manufacturers, importers and authorised representatives to ‘charge reasonable and proportionate fees for access to the repair and maintenance information or for receiving regular updates of such information’ [Annex II.A.1.1.(2).(c) - Annex II.B.1.1.(2).(c) - Annex II.C.2.1.(3).(c) - Annex II.D.1.1.(2).(c)]. Right to Repair Europe would advocate for this provision to be removed to facilitate access to repair information and decrease the overall cost of repair operations. Subsequently, the current wording around repair information implying **repairers cannot use or publish the repair information they obtain from OEMs until after OEMs stop providing it** should be removed [Annex II.A.1.1.(2).(f) - Annex II.B.1.1.(2).(f) - Annex II.C.2.1.(3).(f) - Annex II.D.1.1.(2).(f)].

**Additional clause on provision of information on repair services:** An additional clause has been included [Annex II.A.1.1.(2).(e).(xii) - Annex II.B.1.1.(2).(e).(xii) - Annex II.C.2.1.(3).(e).(xii) - Annex II.D.1.1.(2).(e).(xii)] requiring OEMs to provide information on how to access professional repair. However, this does not mention the option of independent repairers, who can often undertake repairs beyond those of the OEM.

**Changes needed:** If these provisions must be retained, we consider it essential that the reference to the ‘use’ of these documents is removed, as using repair information once acquired is a basic right of the purchaser. We, therefore, propose the following changes to Annex II.A.1.1.(2).(f) - Annex II.B.1.1.(2).(f) - Annex II.C.2.1.(3).(f) - Annex II.D.1.1.(2).(f)] are deleted altogether: Annex II.A.1.1.(2).(c) - Annex II.B.1.1.(2).(c) - Annex II.C.2.1.(3).(c) - Annex II.D.1.1.(2).(c) - Annex II.A.1.1.(2).(f) - Annex II.B.1.1.(2).(f) - Annex II.C.2.1.(3).(f) - Annex II.D.1.1.(2).(f):

(f) “Without prejudice to intellectual property rights, third parties shall be allowed to ~~use and~~ publish unaltered repair and maintenance information initially published by the manufacturer, importer or authorised representative and covered by point (e) once the manufacturer, importer or authorised representative terminates access to that information after the end of the period of access to repair and maintenance information.”

The clauses on how to access professional repair [Annex II.A.1.1.(2).(e).(xii) - Annex II.B.1.1.(2).(e).(xii) - Annex II.C.2.1.(3).(e).(xii) - Annex II.D.1.1.(2).(e).(xii)] should also be updated as follows:

(xii) information on how to access professional repair (internet webpages, addresses, contact details). **This shall include a statement that ‘Independent repair services are also available which may be able to undertake a wider range of repairs’.**

## EXCESSIVE BURDEN OF PROOF ON PROFESSIONAL REPAIRERS

Feedback from within repairer networks has highlighted that the wording around access to repair information [Annex II.A.1.1.(2).(a) - Annex II.B.1.1.(2).(a) - Annex II.C.2.1.(3).(a) - Annex II.D.1.1.(2).(a)] currently being included in ecodesign regulations serves to restrict rather than enable repair. This is because the legislation does not limit the burden of OEM approval processes on professional repairers. As stated previously, **we would like to see greater ambition in ecodesign legislation to make repair information available to all parties, end users and professional repairers alike, and within 5 days maximum as for spare parts**. Our wish would therefore be to see these clauses deleted altogether. However, if they must be retained, we have proposed changes to make the approval process for professional repairers easier to gain access to information.

**Change needed:** We propose the following changes to the legislative wording in order to at least ensure the professional repairer access to repair information:

From [~~12~~ **6 months** after the entry into force of this Regulation], manufacturers, importers or authorised representatives shall, from one month after the date of placement on the market until **at least 7** years after the date of end of placement on the market, provide access to the repair and maintenance information to professional repairers for parts covered by points 1(a) ~~and (b)~~ in the following conditions, unless that information is made publicly available on the free access website referred to in points 1(g) and (h):

(a) The manufacturer's, importer's or authorised representative's website shall indicate the process for professional repairers to register for access to information; ~~to accept~~ such a requests, **shall be accepted by** the manufacturers, importers or authorised representatives ~~may require~~ **if** the professional repairer ~~to~~ demonstrates that:

- (i) ~~the professional repairer has the technical competence to repair [mobile phones other than smartphones / smartphones / cordless phones / slate tablets] and complies with the applicable regulations for repairers of electrical equipment in the Member States where it operates. Reference to the professional repairer is referenced in an official registration system as professional repairer, where such system exists in the Member States concerned, shall be accepted as proof of compliance with this point;~~
- (ii) **or** the professional repairer is covered by insurance covering liabilities resulting from its activity regardless of whether this is required by the Member State.

## IMPACTS OF DIFFERENT CHARGING APPROACHES

We consider it important that end-users are clearly informed on how the battery life of their product will be impacted by the charging approach that they choose such as fast charge [Annex II.A.2.(2) - Annex II.B.2.(2).(b) - Annex II.D.2.(2).(b)]. However, the current wording of the information requirement is unclear. The reference to energy use in the wireless charging of the battery [Annex II.B.2.(3).(b) - Annex II.D.2.(3).(b)] is also unclear.

**Changes needed:**

- ▶ Edit text in Annex II.A.2.(2).(i) - Annex II.B.2.(2).(b).(i) - Annex II.D.2.(2).(b).(i):

(i) ~~how impacts on~~ battery lifetime **is impacted by** related to exposing the device to elevated temperatures, state of charge, fast charging, and **any** other known adverse effects on battery lifetime;

- ▶ Edit text in Annex II.B.2.(3).(b) - Annex II.D.2.(3).(b):

(b) If wireless charging is selected, a message notifying the user that wireless charging will likely increase the mains energy used ~~in the charging of~~ **to charge** the battery.

## BATTERY ENDURANCE/ REPAIR TRADE OFF

Unambitious battery endurance requirements: The battery disassembly requirements for mobile phones [Annex II.A.1.1.(1).(c).(ii) - Annex II.A.1.1.(5).(c).(ii)], smartphones [Annex II.B.1.1.(1).(c).(ii) - Annex II.B.1.1.(5).(c).(ii)] and slate tablets [Annex II.D.1.1.(1).(c).(ii) - Annex II.D.1.1.(5).(c).(ii)] specify that the battery has to be available and replaceable as a spare part to/by end users unless the mobile phone has a high level of ingress protection and the battery is long lasting, which is specified as battery endurance of 500 cycles at 83% rated capacity and 1000 cycles and 80% capacity. **We disagree with this trade off as we consider that even durable batteries will ultimately limit the service life of smartphones if they are not replaceable, and durability and replaceability are not mutually exclusive.** No link has been demonstrated between the endurance of a battery and its inability to be replaceable. Examples of products achieving high IP rating whilst also having removable batteries exist, as is acknowledged in the Benchmark section of the regulation. Also, when looking at models of smartphones that are currently on the market, most of them would already respect these reliability requirements, making the provision a mere maintenance of the status quo and providing no opportunity for end-users to practise such a basic do-it-yourself repair. **Right to Repair Europe, therefore, suggests deleting this alternative and allowing all end-users to replace their batteries on their own.**

**Change needed:** Delete clauses Annex II.A.1.1.(1).(c).(ii) - Annex II.A.1.1.(5).(c).(ii) - Annex II.B.1.1.(1).(c).(ii) - Annex II.B.1.1.(5).(c).(ii) - Annex II.D.1.1.(1).(c).(ii) - Annex II.D.1.1.(5).(c).(ii).

## INFORMATION ON COMPATIBLE COMMON CHARGERS

**Inadequate information on compatible chargers / adapters:** The proposed regulation specifies in vague terms that where a charger is not supplied, the information should explain the product can be powered '*with most USB power adapters and a cable with USB Type-C plug*' [Annex II.A.2.(3) - Annex II.B.2.(4) - Annex II.C.3.(2) - Annex II.D.2.(4)]. There are two issues with this text:

- ▶ The description is likely to leave the consumer uncertain of which of the USB power adapters can be used with their products.
- ▶ The use of the term "plug" is confusing as this is usually used for the point of connection with the mains supply at the charger, and not for the connection with the product.

**Change needed:** To ensure consumer confidence when purchasing products without chargers, which is the preferred choice for the environment, the specifics of compatible adapters should be communicated to consumers as follows:

For environmental reasons this package does not include a charger. This device can be powered with most USB power adapters **of minimum [XX] W rating using** and a cable with USB Type-C plug **connector. Where [XX] is the minimum power rating for satisfactory charge performance.**

## ANNEX I

The table below shows the differences between the regulatory proposal for fastener definitions and EN 45554.

Table A1: Comparison of definitions of fasteners

	Regulatory / labelling proposal	EN 45554
Reusable fastener	a fastener that can be completely reused in the reassembly for the same purpose, or, in case the fastener cannot be reused, a fastener that is supplied at no additional cost with the spare part which it is intended to connect or fix. Adhesives shall be considered reusable fasteners if they are supplied with the spare part in a quantity that is sufficient for the reassembly, at no additional cost; screws and other connectors such as, but not limited to, snap-fits and clips shall be classified as reusable fasteners, unless they cause damage either to the product or to the fastener itself during the disassembly or reassembly process in a way that makes their reuse impossible	An original fastening system that can be completely reused, or any <u>elements</u> of the fastening system that cannot be reused are supplied with the new part for the repair, reuse or upgrade process.
Removable fastener	A fastener that is not reusable, but whose removal does not entail a high risk of damaging the product or of leaving residue which precludes reassembly. Adhesives that are not reusable fasteners shall be considered removable fasteners unless their removal process, using commercially available tools with a reasonable level of effort, does not allow the full removal of the residues and entails a high risk of permanently precluding the reassembly of the product;	An original fastening system that is not reusable, but can be removed without causing damage or leaving residue which precludes reassembly (in case of repair or upgrade) or reuse of the removed part (in case of reuse) for the repair, reuse or upgrade process.



## ANNEX II – EXAMPLES OF SPARE PARTS ABSENT FROM END-USERS' LIST AVAILABLE ON THE MARKET

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- Gratis reparatie handleidingen

thuiswinkel waarborg 9.2 ★★★★★ 100.000+ beoordelingen

**iPhone 6s dock connector kopen omdat je deze graag wilt vervangen tegen een zeer scherpe prijs?** De iPhone 6s dock connector moet je vervangen bij de volgende problemen: bij het niet opladen, bij een niet werkende spreekmicrofoon, op het moment dat de oordopjes niet meer werken, als de GSM antenne kapot is en / of als er geen geluid meer uit de geluidsbox komt.

**Deze iPhone 6s dock connector is van de hoogste kwaliteit!**

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