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‘Right to Repair’ Directive: don’t unravel the Commission proposal

Executive summary

The proposed ‘Right to Repair’ Directive creates a positive new framework to enable more European consumers to access high-quality, safe repairs.¹

Our members perform millions of repairs annually. Their repair facilities across Europe help promote sustainable consumption, reduce ICT products’ environmental impact, deliver real consumer benefits, and create high-skilled jobs.

DIGITALEUROPE supports the proposal’s proportionate drive to encourage even more repairs. However, we are deeply concerned by the European Parliament’s report, which undermines the Commission’s approach by removing the link to the ecodesign framework, which sets out rules for the reparability of devices at the product category level.

To create the most effective framework, we suggest some key priorities for trilogues:

- ▶ Maintain the crucial link to the ecodesign framework to ensure repairs are carried out safely and successfully whilst safeguarding legal certainty and consistency;
- ▶ Allow for the replacement of defective products with refurbished ones. This would capture the sustainability benefits whilst also giving consumers a quicker solution; and
- ▶ Keep the current system of seller liability, which works well because the consumer knows exactly who to turn to when they have problems with their device, and the seller can easily check whether the device is still covered by the legal guarantee.

¹ COM(2023) 155 final.



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Maintaining the link with the ecodesign framework

We support the European Commission's proposal for new repair obligations for manufacturers outside the legal guarantee, linked to existing product-specific repairability requirements. Ensuring consistency with existing EU policies is key. This includes a necessary alignment of the duration of obligations under the proposal with the existing and future ecodesign requirements and the periods set for the provision of spare parts.

We are deeply concerned by the European Parliament's proposal to remove this link. Repair obligations should only apply when there are existing repairability requirements on specific product categories within the ecodesign framework. Annex II will expand over time as the Commission develops more ecodesign requirements to cover specific product categories. Several are currently being developed.

Ecodesign requirements are developed by experts and reflect consumer expectations for each product category as well as product-specific characteristics, such as spare parts that are most likely to fail. These timelines and obligations give us legal certainty and avoid the overproduction, overstocking and wastage of spare parts – outcomes that would undermine the environmental objectives of this proposal.

Availability of spare parts, tools and repair information

The Parliament's text also introduces a universal obligation for manufacturers of products covered by Annex II to provide all spare parts, tools and repair information to all actors, including end-users, for the entire expected lifetime of a product. This conflicts with the ecodesign framework, which already defines which parts, tools and information must be made available to whom and for how long by product category.

These provisions *must* be handled within the ecodesign framework at the product-category level to consider the most sustainable solution, consumer safety and IP protection, which varies significantly between different types of products.

Manufacturers already make available spare parts, tools and repair information, including, where appropriate, to end-users. However, not all repairs can be carried out safely and successfully by consumers themselves, as they could compromise a device's integrity or functionality and, in some cases, put consumers' safety at risk. For example, if a cooling fan in a device is not installed correctly, there is a risk of overheating and fires. Similarly, if refrigerator coolant is not installed correctly, there is a risk of leakage of harmful chemicals which are not supposed to come into contact with humans.

Not all tools and information are relevant for all audiences – some should only be available for professional repairers under certain conditions, in order to ensure that repairs are carried out safely, and to protect sensitive business information and trade secrets.

Recommendation: Provisions on repairability and the availability of spare parts, tools and repair information *must* be handled within the ecodesign framework to ensure consistency and coherence.



Introducing a role for refurbished products

The major missing element from the Commission's proposal is a role for the replacement of defective products with refurbished ones, both within and outside of the legal guarantee.

In many instances, replacement with refurbished products is more sustainable and offers a better solution than repair in terms of speed, logistics, cost and customer-friendliness. In those cases, manufacturers and sellers, with the consumer's agreement, should have the flexibility to replace with refurbished products.

Allowing replacement with refurbished products is key to achieving a viable circular economy. Refurbishment involves repairing, cleaning or restoring the performance of a used product. This solution allows for defective products to be collected, transported and repaired at the same time, ensuring greater efficiency. It also minimises disruption for consumers as they can have a quick solution rather than waiting for their product to be shipped to a repairer, repaired and returned individually. The defective product or component is then repaired and redeployed as a refurbished product at a later date to another customer or sold on at a lower price point.

Creating a legislative framework to promote the use of refurbished products is crucial, especially given the many returned products due to the 'right to withdrawal'.² Returned products require an inspection and potential testing to determine if the product can be resold as new or refurbished. However, in many cases, manufacturers cannot prove that a product has not been used, necessitating its sale as a refurbished product or disposal. It is imperative to use this legislation to promote products' reuse.

Recommendation: Introduce flexibility for manufacturers and sellers to offer consumers a replacement with a refurbished product. This should be possible

² The Consumer Rights Directive (Directive 2011/83/EU) gives consumers a 14-day withdrawal period to change their minds about purchases made online without giving any reason.

within and outside of the legal guarantee.³ Where the consumer agrees to this solution, the repair obligations should be considered fulfilled.



Ensuring safety and cybersecurity

Consumer safety warnings

The Parliament text prevents manufacturers from carrying out measures which may ‘induce consumers to think’ that there may be a safety risk if they try to repair their product themselves.⁴

Manufacturers should be able to warn consumers about safety risks. Not all repairs can be carried out safely and successfully by consumers themselves.

Most electronics are highly complex and contain components that may pose an electrical shock or fire risk. Improper handling of such components can lead to severe injuries, such as burns or blindness, or property damage. This is recognised by the Joint Research Centre (JRC), which has noted that electronic repairs require ‘appropriate technical skills that most consumers do not have. If a product is not properly repaired, consumer safety could be compromised.’⁵

Recommendation: Remove the reference to safety in the Parliament text. *‘Banning practices that induce consumers to think that their good cannot be repaired due to previous repair or inspections by an independent repairer, non-professional repairer or end-users, or by inducing that it may generate risks related to safety’*

Part pairing to protect privacy and cybersecurity

Cybersecurity and privacy concerns need to be considered as seriously as physical safety. With connected devices, unauthorised access and the introduction of non-original parts increase vulnerability to cyberattacks, privacy violations and loss of sensitive data.

The Parliament text states that ‘producers shall not impede the use of original or second-hand spare parts, compatible spare parts and spare parts issued from 3D-printing, by independent repairers when those spare parts are in conformity with requirements under national or Union law.’⁶ There should be a

³ In Art. 12 and Art. 5 of the proposal, respectively.

⁴ Art. 9a(6)a of the Parliament text.

⁵ P. 132, JRC technical report, *Analysis and development of a scoring system for repair and upgrade of products*, 2019, available at https://publications.jrc.ec.europa.eu/repository/bitstream/JRC114337/jrc114337_report_repair_scoring_system_final_report_v3.2_pubsy_clean.pdf.

⁶ Art. 5(3)b of the Parliament text.

limitation on the use of compatible but unknown spare parts that could impact the user's privacy or the product's cybersecurity, such as components used to unlock a device (for example, fingerprint or facial ID sensors). These sensors collect biometric data and connect to the secure part of the device to unlock it. Forcing security or privacy-sensitive systems such as these to allow unknown spare parts would undermine the device's security and the user's privacy.

In a similar fashion, the Parliament establishes a ban on any contractual, hardware or software technique that could prevent or limit repair.⁷ Many products include so-called technological protection measures (TPMs), which provide legitimate protection for original copyrighted content. By prohibiting hardware- or software-based techniques like TPMs, repairers and end users would have access to business secrets, the necessary technical information to retroengineer products and the ability to reproduce intellectual property freely. As such, rules should provide an exemption for the protection of trade secrets and intellectual property.

Recommendation: Add a derogation to the European Parliament text to consider cybersecurity and privacy. *'producers shall not impede the use of original or second-hand spare parts, compatible spare parts and spare parts issued from 3D-printing, by independent repairers when those spare parts are in conformity with requirements under national or Union law **and do not pose a risk for user's safety and privacy or the device's security.**'*

Similarly, add protection for trade secrets and intellectual property. *'Producers shall not impede the repair by any contractual, hardware or software technique, **subject to applicable rules on the protection of trade secrets as defined in Article 2 point 1 of Directive (EU) 2016/943, the protection of copyrighted works as defined in Article 6 of Directive (EC) 2001/29 and in Article 7 of Directive (EC) 2009/24 and the protection of intellectual property rights under national and Union law.**'* A similar protection should be added to Art. 9a(6)b as proposed by the Parliament.



Legal framework

Direct producer liability

The Parliament proposes creating a direct producer liability. This is at odds with the well-established seller legal guarantee and contradicts the legal system in the European Economic Area (EEA), where consumers only have a legal relationship with the seller. Only in rare circumstances can the consumer make a claim against the producer, such as in the case of personal injury or death

⁷ Art. 5(3)b and Art. 9a(6)b of the Parliament text. The amendment in Art. 9a is even more concerning because it applies to all products and not just products listed in Annex II.

under the Product Liability Directive.⁸ A producer's liability would change this whole system.

Under the current system, the consumer who purchases a defective product turns to the seller, who will repair or replace the product. This works well because the consumer knows exactly who to turn to, and the seller can easily check whether the device is still covered by the legal guarantee. There are well-established mechanisms so the seller can turn to the producer to claim reimbursement for the repair or replacement cost.

The Parliament proposal would circumvent the contractual relationship the seller has with the producer to handle the repair of defective products. It would remove the possibility of the seller repairing more efficiently and at lower costs. Under the Sale of Goods Directive, determining financing of this seller guarantee between the seller and producer is left to market forces (B2B negotiations).⁹

Bringing the producer into the relationship between the consumer and the seller will require all producers to put in place a mechanism to deal with repair claims from consumers. It would be costly, inefficient and unnecessary.

It will also create a confusing and unsatisfactory experience for consumers. For example, if the consumer contacts the producer to repair a defective product and the repair is impossible, the producer would then send the product back to the consumer, who will then send it to the seller to have the product replaced or refunded.

Recommendation: The current framework works well and should not be changed. In the rare situation where the consumer may contact the producer directly, the producer should make their best effort to direct them towards the seller.

Length of legal guarantees

The Parliament proposes a 12-month extension to the legal guarantee following repair within the legal guarantee period.

An extension of the legal guarantee period would have no bearing on the expected lifetime of a product, would not change the number of defects identified and could drive up prices.

The recently revised Sale of Goods Directive establishes a minimum two-year legal guarantee for products covering defects that existed at the time of purchase.¹⁰ The vast majority of consumer claims received due to product non-

⁸ Council Directive 85/374/EEC.

⁹ Directive (EU) 2019/771.

¹⁰ Directive (EU) 2019/771.

conformity happen in the first two months after the purchase: the Commission's impact assessment confirms this figure at 96 per cent.¹¹ As such, a two-year minimum guarantee allows sufficient time to cover these issues.

It is also important to recognise the commercial options already on the market, which provide consumers with additional protection, should they desire it. Our sector has seen the widespread introduction of commercial guarantees, extended service plans and services covering accidental damage, which provide consumers with the choice of purchasing extra levels of protection. These service plans are used competitively between manufacturers as well as third parties, to extend the period of coverage or the scope, e.g. accidental damage, theft or loss.

Compromise suggestion: In order to boost consumer trust in repairs, the repairer, regardless of who carries it out, provides the consumer with a one-time six-month legal guarantee of conformity on the repair.

Role of fulfilment service providers

In situations where the producer required to repair is not established in the EU, the repair obligations fall on various other actors, such as (in this order of priority) on the producer's authorised representative, the importer or the distributor established in the EU.

The Parliament proposes introducing fulfilment service providers into the hierarchy. Fulfilment service providers should not be held liable where producers fail to comply with requirements set out in EU law. Their inclusion in the hierarchy also fails to recognise their lack of technical know-how to undertake repair.

Recommendation: Maintain the hierarchy as it was initially proposed by the Commission. Fulfilment service providers have no technical know-how to repair products.

Products not intended for sale in Europe

The Parliament states that 'producers shall not refuse to service or repair a device that was bought or previously repaired outside of their authorised service or distribution networks.' This would appear to entail an obligation to repair devices even if they were never intended for sale in the EEA.

Such products may not meet EU product safety requirements, and importantly producers may not have access to spare parts for products because they were

¹¹ SWD(2017) 354 final.

never meant for sale in Europe. It should be clarified that in such situations, it should remain at the manufacturer's discretion whether to repair these products.



Information requirements

Online repair information platform

Each Member State must create an online repair platform to connect consumers with repairers, sellers and purchasers of refurbished goods in their area.¹² We welcome this voluntary initiative to help consumers find attractive repair offers.

To avoid fragmentation, we recommend limiting the total number of platforms. The Commission text opens the possibility of multiple platforms per country, and there is a danger that platforms would be made for specific regions or product categories, creating an administrative burden for companies wishing to register and confusion for consumers.

Recommendation: Focus on making the platforms simple and easy to use to ensure successful uptake by industry and consumers. Where there are existing platforms in place, avoid duplication and unnecessary changes.

It is also vital that consumers can trust repairs offered on these platforms. Once the new European quality standard for repairs is developed, only those repair services which meet this standard should be able to register and offer their services.

Repair information form

Consumers should have clear and accurate information on manufacturers' repair obligations and services. We, therefore, support the introduction of the repair information form.

Where costs are associated with examining the product and identifying the repair needed, it should be possible to pass those costs on to the consumer. Repairs outside of the legal guarantee are needed for a variety of reasons, including the consumer's use of the product, and it is therefore appropriate that the consumer bears those costs.

Recommendation: Allow costs associated with the repair information form to be passed onto the consumer, as originally foreseen in the Commission's proposal.

¹² Art. 7 of the proposal.

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About DIGITALEUROPE

DIGITALEUROPE is the leading trade association representing digitally transforming industries in Europe. We stand for a regulatory environment that enables European businesses and citizens to prosper from digital technologies. We wish Europe to grow, attract, and sustain the world's best digital talents and technology companies. Together with our members, we shape the industry policy positions on all relevant legislative matters and contribute to the development and implementation of relevant EU policies, as well as international policies that have an impact on Europe's digital economy. Our membership represents over 45,000 businesses who operate and invest in Europe. It includes 106 corporations which are global leaders in their field of activity, as well as 41 national trade associations from across Europe.

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National Trade Associations

Austria: IOÖ	Germany: bitkom, ZVEI	Romania: ANIS
Belgium: AGORIA	Greece: SEPE	Slovakia: ITAS
Croatia: Croatian Chamber of Economy	Hungary: IVSZ	Slovenia: ICT Association of Slovenia at CCIS
Cyprus: CITEA	Ireland: Technology Ireland	Spain: Adigital, AMETIC
Czech Republic: AAVIT	Italy: Anitec-Assinform	Sweden: TechSverige, Teknikföretagen
Denmark: DI Digital, IT BRANCHEN, Dansk Erhverv	Lithuania: Infobalt	Switzerland: SWICO
Estonia: ITL	Luxembourg: APSI	Turkey: Digital Turkey Platform, ECID
Finland: TIF	Moldova: ATIC	Ukraine: IT Ukraine
France: AFNUM, SECIMAVI, numeum	Netherlands: NLdigital, FIAR	United Kingdom: techUK
	Norway: Abelia	
	Poland: KIGEIT, PIIT, ZIPSEE	
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