



# **EUROCHAMBRES POSITION ON THE RIGHT TO REPAIR**

## Eurochambres position on Right to Repair proposal

**Promoting repair has the potential to drive the sustainable transition towards a more resource efficient economy. However, businesses must have a say on the conditions linked to repairing the products. Achieving higher rates of reparability will require significant changes to existing policy frameworks and the careful consideration of the market prices resulting from such choices. Financial and non-financial incentives are needed to facilitate businesses' day-to-day operations and reduce potential delays in the provision of reconditioned goods.**

### 1. Executive summary

The chambers' network commitment to a green, digital, resource efficient and circular economy directly intersects with the proposed right to repair legislation. This relevance is manifold.

Firstly, most companies have CSR commitments which encourages companies to adopt environmentally conscious practices. These practices extend to the concept of reparability, thereby aligning with the broader trend of producing and delivering eco-friendly products. As businesses within our network grow more ecologically aware, the "right to repair" becomes more relevant because it underscores sustainable production and consumption patterns.

Secondly, chambers' members have indicated that the proposal poses practical implications for business strategies and operations. In many cases, reparability may not be the most sustainable solution and the purchase of a more modern device can be preferable to the repair of an old device if, for instance, the new device consumes significantly less energy, water or other type of resources. Longer product lifespan may look enticing for durability purposes but sometimes replacement of inefficient product is more sustainable.

Chambers have also noticed that the fast pace of technological developments induces many consumers to replace products even if such product is functioning quite well based on its technical specifications. Legislation should only be put forward when no other means are available and unnecessary burdens or costs should be kept to a minimum.

The chamber network advocates for a bottom-up approach, encouraging businesses to voluntarily commit to sustainability. We believe in fostering a secure business environment that prioritises efficient processes and resource allocation, rather than implementing prescriptive measures from the top down. This approach empowers businesses to take the initiative in their sustainability efforts while ensuring that the marketplace remains adaptable and responsive.

Finally, it is imperative to foster the role of consumers in the field of circular economy. This goal requires the implementation of strategic policies that encompass awareness-raising measures for the repair culture and the improvement of consumer knowledge about existing legal guarantees and financial incentives.

### 2. Eurochambres main recommendations

#### 2.1 Scope and level playing field

- In general, the proposal must ensure a proper balance between its circularity objectives and the need to provide quality, reliable and safe products to consumers. Repairability, especially if performed by third parties, should not come at the expense of producer or seller reputation and the overall user experience.
- The chamber network appreciates that the proposal commendably places a greater emphasis on voluntariness compared to the initial considerations in the consultation process. Eurochambres welcomes the narrowed scope of product categories affected and the maintained link to relevant product specific regulations listed in Annex II.,
- The implications of the proposal for small traders are significant. The burden can be substantial since they may be unable to carry out the repairs themselves. The bureaucratic effort (taking back items, shipping, setting a deadline, claims for compensation/replacement, loss of use, etc.) will cause an increased liability for SMEs. A simplified regime for smaller market operators should be envisaged.
- The procedure for handling imported goods entering the internal market via individual e-commerce purchases must be clarified to ensure equitable competition with EU-based retailers. Failure to do so could risk skewing the competitive landscape to the detriment of domestic companies.
- Depending on the design of the product, new specifications for the guarantee and repairability of products will affect existing business processes, particularly if relevant parts need to be accessible for repairs in the long-term, not to mention the costs linked to storing these parts. Companies will have to provide the necessary infrastructure for repairs (communication with the customer, receipt of the goods, commissioning the repair shop, billing, etc.). This may result in considerable logistical and financial efforts for companies and can ultimately lead to a global competitive disadvantage for European manufacturers. Moreover, the demand for repair could undermine a functioning secondary market for certain products.

#### 2.2 Clarification of repairability rules and support for companies

- Whether a new purchase or repair is preferable from a sustainability point of view can only be decided once the company compares the two options on a case-by-case analysis. The trader is best placed to assess which remedy is the most appropriate.
- The potential lack of, or limited, know-how and expertise required for repairs is another significant concern. Technicians are increasingly being recruited from competing sectors, further exacerbating the already significant skills shortage in the repair industry.
- Shipping overseas is not a viable or sustainable alternative solution. It is worth noting that it is legally impermissible to repair non-functioning devices, referred to as "electronic waste," in third countries. Such devices cannot be transported outside the internal market. Finally, the potential risk of 'repair tourism' should not be neglected.
- When considering a Europe-wide claim, it's important to understand that devices shipped with batteries are classified as hazardous goods and should be handled appropriately. Businesses highlight that if every individual has the potential right to repair products, the safety aspect cannot be overlooked.
- EU lawmakers must carefully consider the scenario wherein product requirements have changed during the repair period and replacing parts no longer comply with these elevated standards.
- Incentives must be provided to reduce the cost of repair and foster the uptake of

sustainability measures. For instance, reduced VAT rates or other fiscal incentives for companies focusing their efforts on more circularity are crucial.

### 2.3 Definitions and scope

- Retailers all over Europe are particularly concerned that this obligation to repair would also affect them especially due to the broad definition of “producer” in the proposal. At least a clear delineation of responsibility to “actual producers” is urgently needed for macroeconomic and environmental reasons. Retailers should not be obliged to stockpile huge amounts of spare parts for many years as a precaution, which would ultimately be scrapped due to lack of demand from consumers. The objective of the proposed directive is primarily to bolster consumer protection, and as such, it focuses solely on products procured by consumers. However, there are certain inconsistencies in the directive's structure. Specifically, art. 5(1) restricts repair obligations to products that meet the reparability criteria established in the Union legal acts enumerated in Annex II of the Directive. Yet, Annex II includes legislation that applies not only to B2C businesses but also B2B ones. Chambers propose that a clear demarcation be made between B2C and B2B relationships. The latter are typically regulated by specialized agreements or service contracts drawn up between two commercial entities which can vary significantly from consumer applications. To align with art. 1, we suggest that Annex II be revised to exclude B2B products from the Directive's scope.

### 2.4 European Repair Information Form

- Furthermore, it is highly doubtful whether a legal obligation to use a standardised EU-wide form for repair cost estimates can improve consumers' willingness to repair. The measures should not result in unnecessary coercion for businesses and, moreover, without added value for consumers. The introduction of a compulsory European repair information form should be discarded.

### 2.5 The role of consumers

- Consumer rights have been strengthened by the Sales of Goods Directive (SGD), e.g., by extending the reversal of the burden of proof to 1 year and an update obligation for goods with digital elements. As far as knowledge of existing rights is concerned, consumer organisations should provide extensive information on these rights.
- It is important to remember that every consumer already has a right to free repair: in the case of defects in the purchase of goods, the SDG gives the consumer the right to require the seller to repair the goods if a defect present at the time of delivery becomes apparent within two years. Similarly, in many cases, repairs can be carried out to the satisfaction of the customer on the basis of commercial guarantees. However, it is important to highlight that consumers usually prefer the replacement of the product.
- Awareness-raising measures for a culture of repair and especially incentives in financial form are preferable to further regulatory measures in the area of EU consumer rights. Measures such as the highly successful Austrian repair bonus<sup>1</sup> brought a win-win situation both for consumers and enterprises through financial support of repairs. Such

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<sup>1</sup> The Austrian Ministry for Climate Protection, promotes the repair of electrical and electronic devices that are usually used in private households with the repair bonus. The repair bonus is financed with funds from the "Next Generation EU" and has a total funding volume of 130 million euros until 2026. Since 26 April 2022, private individuals can apply for a repair voucher that covers up to 50 per cent of the repair costs and/or up to 30 euros for obtaining an estimate (maximum 200 euros in total) for their electrical and electronic equipment.

- experiences could potentially serve as a model for other Member States to follow.
- The EU framework should encourage consumers to make more sensible decisions and take more responsibility for their purchases through appropriate awareness-raising measures.
  - It is also important to mention that the lifespan of a product is often influenced by factors that lie outside the manufacturers' sphere of influence. Studies show that while consumers are aware of the proper cleaning and maintenance of household appliances, these simple processes are comparatively rarely carried out; only 1/3 of the respondents clean and maintain their household appliances regularly<sup>2</sup>.
  - Yet proper cleaning and care would be important in order to make full use of the appliance's lifespan. In addition to the operating instructions, video instructions are also available for consumers to facilitate maintenance. This situation, which can surely be applied to consumers in other Member States, shows that the awareness of consumers still needs to be raised. The focus exclusively on manufacturers is therefore not justified.

### 3. Detailed comments on the proposal

#### 3.1 Definitions of “producer”, the role of retailers (Art. 2) and implication on the obligation to repair (Art. 5)

With regard to the term "producer", the proposal refers to the definition of art. 2 no 42 of the Regulation on Ecodesign for Sustainable Products. Since there is currently no Ecodesign Regulation (yet), but this matter is currently regulated in a Directive, we assume that this is a reference to the future Regulation, which is still being negotiated.

In the relevant proposal of the Commission for the Ecodesign Regulation (Com(2022) 142 final only this is publicly available, it may also have changed in the course of the negotiations in the meantime), "manufacturer" is defined as follows:

*(42) ‘manufacturer’ means any natural or legal person who manufactures a product or who has such a product designed or manufactured, and markets that product under its name or trademark or, in the absence of such person or an importer, any natural or legal person who places on the market or puts into service a product*

The definition is so decisive because, according to art. 5 of the proposal, the obligation to repair should fall on “producer”. According to this definition, however, all retailers would bear the risk if the producer - for whatever reason - ceases to operate.

This definition of "producer" would burden all dealers with the risk of having to stock spare parts for a huge range of products from a wide variety of manufacturers in the event that one of these manufacturers no longer exist and customers - perhaps after many years - turn to them to assert their claim for repair. This cannot be seriously intended. Apart from the immense effort for the dealers, it would above all contradict the objective of sustainability if spare parts had to be produced on a large scale to ensure a very long-term stock at all retailers in Europe, which would then probably be scrapped due to a lack of corresponding demand by consumers.

The same problem arises under art. 5(2) in cases where the non-EU-producer has not nominated an authorised representative. The envisaged cascade of liability which, in the

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<sup>2</sup> <https://presse.feei.at/news-nachhaltigkeit-bei-haushaltsgeraeten-sehr-gefragt?id=171396&menueid=18891&l=deutsch&tab=4>

absence of the appointment of an authorised representative by the non-EU manufacturer, in turn places the obligation on every retailer in the supply chain, starting with the importer, is in any case inappropriate either.

The problem caused by the broad definition of "producer" is also apparent when looking at the obligation to provide information on the right of repair (art. 6). Considering that importers and retailers - i.e., those who sell goods to consumers and regularly offer a wide range of products from various manufacturers - are also covered, the question arises as to how EU dealers should comply with the duty to inform. Should they always inform that, if there is no manufacturer of the goods in question, they have a duty to repair to the extent of the respective product-specific eco-design implementing regulations? It is probably inevitable that consumers would ask themselves when "there is no manufacturer" or confusion would arise as to who really has the obligation to repair.

Another interpretation could be that these information obligations should only apply to the respective retailers when the case arises that there is no (longer) a producer. This would mean that tens of thousands of traders would have to observe whether manufacturers of the goods they sell have ceased operations for whatever reason. If this is the case, it will probably be difficult for a retailer to fulfil the repair obligation, especially since spare parts will then also be difficult to obtain or access. The fact that all retailers should be obliged to keep spare parts for all the goods they sell available for an extraordinarily long period of time "just in case" would be a cost that cannot be objectively justified and must therefore be rejected in any case.

In view of the complex challenges described above by the broad definition of "producer", we strongly advocate EU lawmakers to reconsider it. Furthermore, it is not clear from the wording used in art. 5 (2) that non-EU manufacturers are obliged to appoint an "authorised representative". Therefore, such an obligation must be clearly expressed in the text.

EU lawmakers should also keep in mind that the scope of application will gradually expand by extending the Annex to include a large number of products and thus also the circle of manufacturers.

### **3.2 European Repair Information Form (Art. 4)**

According to Art 4, undertakings carrying out repairs shall provide consumers, at their request, with a form on a durable medium containing the core information referred to in paragraph 4, prior to the conclusion of a corresponding contract for the repair of a good.

It is highly doubtful whether a legal obligation to use a standardised EU-wide form for repair estimates can improve consumers' willingness to repair. As stated at the beginning, we support the intention of the EU Commission to contribute to a sustainable economy with the proposal. However, the measures should not result in unnecessary coercion for businesses and, moreover, without added value for consumers. The obligatory use of such a form creates additional bureaucratic work.

It is disproportional for a small repairer to provide all the necessary information in the context of preparing a cost estimate on his own business paper. Such repairer would run the risk of committing an infringement in the future, which would also be sanctioned according to art. 11. Chambers defend the voluntary, optional use of the form as the best solution. As an incentive for voluntary use of the form, it could be stipulated that the information obligations of art. 4(4) are fulfilled if the form is used properly (similar to the formulation in art. 4(6)).

### 3.3 Single Market clause (Art. 3)

All efforts to ensure full harmonisation are welcomed. This can counteract the national efforts that are already partly taking place and contributing to the fragmentation of the single market.

### 3.4 Quality & Safety of Products (Art. 5)

The proposed Directive obliges producers to supply independent repair service providers with access to spare parts and information to perform repairs on their products (art. 5.3). If this approach is applied across the board, it will introduce significant quality and safety concerns for certain categories of products e.g., those dealing with heat, chemicals or air/water tightness.

More generally, a tailored approach is necessary to distinguish between more easily repairable products and more complex products that require specialised repair services. It is unreasonable to treat both classes of products in the same way.

Not all repairs can be done by consumers themselves, as they could affect the integrity or functionality of a device. Especially with highly complex appliances, adequate skills and appropriate liability insurance are crucial. It is therefore important that repairs are carried out by professionals to ensure the integrity of the goods and to protect consumers from damage.

Consumers should also be informed of the potential risks associated with using third-party unqualified repairers which are not authorised by producers to repair their products, including privacy and cybersecurity concerns when repairing products storing personal data.

### 3.5 Sensitive Information & Intellectual Property

Access to all information on product repairability may require businesses to provide repairers with commercially sensitive information on those products, which would put European companies at a disadvantage in relation to other competitors. The current proposal makes no reference to the protection of such sensitive information such as trade secrets or intellectual property (IP) rights, both crucial to safeguard and promote continued R&D by companies. Article 5 must reflect these concerns.

### 3.6 Online platform for repair and goods subject to refurbishment (Article. 7)

We welcome the matchmaking repair platform, as it can lead to more transparency and thus increase consumers' willingness to do more repairs. Consumers can safely inform themselves on these platforms, which avoids dubious sites.

### 3.7 Calculating Repair vs. Replacement (Art. 12)

The proposal requires sellers to repair a faulty product, where the cost of replacement is equal or greater than repair. This requires customers to only choose replacement when it is the cheaper option. In this case, it should be further clarified what cost calculations are to be undertaken when making such an assessment to provide further legal certainty for businesses making repair or replacement decisions. This could include e.g., clarifying whether the cost calculation is limited to the parts or components being repaired or whether it includes labour and other costs.

Regarding the price of repairs, it should be said in principle that repairs should be encouraged



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if they make economic sense. Traders know best what the most efficient solution is, repair or replacement. Repair at any price should not be demanded, but repair should be the first solution considered before replacement.

We must recognise that repair alone cannot be the solution in all circumstances and that more flexibility is needed, especially in cases where repair is expected to take considerable time due to e.g., spare part shortages. While the repair may individually cost less than replacement, sellers will face significant consumer resistance in such situations if they are left without the product for extended periods. Other challenges will emerge if a product needs to be repaired multiple times within the guarantee period. From the seller's perspective, decisions are not based solely on the absolute cost of repair, but they also factor in aspects such as the ratio between purchase price and cost of repair, how the replacement is accounted for, the potential better performance of replacement models, customer service and the company's reputation.

Sellers and consumers would consequently benefit from more flexibility in the repair or replacement decision which takes into consideration the wider economic perspective.



Eurochambres – the association of European chambers of commerce and industry – represents more than 20 million businesses through its members and a European network of 1700 regional and local chambers. More than 93% of them are small and medium-sized enterprises (SMEs). Chambers' member businesses employ over 120 million people.

More info and previous positions on: <https://bit.ly/ECHPositions>

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