

## Position paper on promoting sustainable consumption and repair and reuse

Ecommerce Europe welcomes the opportunity to provide its feedback to the public consultation on the sustainable consumption of goods and the promotion of reuse and repair.

Re-thinking the way we produce and consume products represents a crucial driver for the transition to a circular economy. Achieving long-lasting changes will require the contribution of all actors, as well as ambitious policy changes.

This initiative meshes with several other EU initiatives and proposals each contributing in their own way to the promotion of reuse and repair. Therefore, it is crucial to ensure that all these building blocks are aligned and that the right initiative is used to achieve specific desired results. We strongly encourage the European Commission to adopt a clear and holistic plan that can create real changes in the way we produce and consume products in the EU.

**We believe that the initiative, as it is approached in the public consultation, does not sufficiently address the scale and complexity of the question of promoting repair and reuse.** We are concerned that the current approach focuses exclusively on the tools (a “Right to Repair” for consumers), rather than on the objectives of the initiative.

### Key Recommendations

This initiative should pursue two complementary objectives, developed further in this paper:

1. The development of a full-fledged European market for repair services and for second-hand, repaired and refurbished products. Our priority should be ensuring better **design**, facilitating **repair and access to spare parts**, as well as ensuring the growth of both the **repair services market** and the **second-hand and refurbished products markets** in the EU;
2. A long-lasting shift towards repair and reuse. We recommend focusing on the objective of fostering **affordable, sustainable, quality** repair services and balanced responsibility throughout the supply chain, rather than focusing on a single angle such as consumer policy.

## Creating a European market for repair and second-hand and refurbished products

Ecommerce Europe welcomes the European Commission's intention to promote reuse and repair, but we believe that the approach laid down in the Call for evidence and the public consultation fails to address the wider context and upstream challenges to the implementation of a "right to repair" for consumers.

While we understand that this initiative is meant to complement other upcoming proposals, we still believe that a much more comprehensive and ambitious approach should be adopted. Without the right conditions in place, we risk in practice creating a new right for consumers that could be under-used – and therefore not have the impact required – but also be difficult to implement.

We believe that the following points should be considered:

a) *Ensuring better product design for reuse and repairability*

Facilitating repair and reuse predominantly relies on ensuring better design for durability and repairability of products and ensuring the flow of information across value chains. In that sense, Ecommerce Europe welcomes the European Commission's intention to revise the eco-design directive.

Product-specific eco-design requirements are a key aspect of a right to repair. We welcome the Commission's objectives to consider aspects such as product durability, upgradability, reparability but also ease of maintenance and refurbishment. We encourage the Commission to continue exploring the feasibility of mandating product-specific design requirements that would cover issues such as design for easier dismantling and repair, availability of spare parts, access to repair and maintenance information under the framework of the Regulation on Ecodesign for Sustainable Products.

b) *Facilitating repair, access to spare parts and information for repair*

There are challenges with spare parts supply and permissibility of repair in the EU that also need to be addressed.

Those legal and market impediments create real barriers to the development of repair services for consumers in the EU. Facilitating access and fostering competition in a growing market for repair services is a pre-condition to ensuring consumer access. Facilitating repair also plays an important role in facilitating refurbishment and the growth of the refurbishing market.

Certain legal impediments are far from new and have already been discussed at EU level in the past with the introduction of a "repair clause"<sup>1</sup> in the EU Regulation on Community design, as well as the Design Directive. However, as these rules coexist with national Intellectual Property and Contract law and as few countries have adopted "repair clauses", this has had little effect.

It raises concrete challenges for the development of repair services. In practice, national contract and IP laws create barriers to accessing repair services and conducting repairs. They can prevent any repair that is not performed by the manufacturers, restricting considerably who can offer these services and therefore businesses and consumers' ability to choose. There are also significant challenges regarding the supply of spare parts. Patented spare parts also cannot be legally replicated, and are protected as long as a "repair

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<sup>1</sup> [EU Regulation 6/2002 "on Community designs"](#) – Introduces a "repair clause" for designs registered with the Office for Harmonization of the Internal Market (OHIM). Important: the EU system coexists with national protection systems. The repair clause in this Regulation reads as follows (recital 13): "*It is appropriate **not** to confer any protection as a Community design for a design which is applied to or incorporated in a product which constitutes a component part of a complex product upon whose appearance the design is dependent and which is used for the purpose of the repair of a complex product so as to restore its original appearance.*" And [Directive 98/71/EC aka "Design"](#) – Leaves the choice to Member States whether to add a repair clause in their national law or not. However, Member States cannot remove any pre-existing repair clause.

clause” does not apply. Similarly, there are limitations to the circulation of copyrighted repair information and manuals across the value chain, which also impacts the provision of repair services.

We understand that there are some concerns attached to opening further access to repair, but **we believe that a balance can be found between protecting manufacturers’ and brands’ IP rights and trade secrets, as well as consumers’ experience and safety while opening the repair services market.**

We also acknowledge the fact that requirements to keep spare parts for a defined period can be problematic both for manufacturers and sellers. The Delegated Act under the Sustainable Product Initiative could potentially address this from a product-specific angle, in concertation with the industry.

We also urge the European Commission to address other types of practices creating barriers to repair, such as the use of software pairing and serialisation of essential components. It is critical that third party repair and service providers be given access to all necessary information to carry out repairs, beyond tools and manuals.

### *c) Supporting the emergence of independent repair networks*

The recommendations described above would have a beneficial effect on the development of repair services in the EU. We believe that repair services must be easily accessible and affordable, whether it is sellers (because they are taking charge during the legal guarantee period when the damage is due to a product defect or buyers (beyond the legal guarantee, or in case the defect are caused by the consumer during the legal guarantee).

Moreover, the development of independent repair networks in the EU is important from a cross-border perspective. As cross-border e-commerce continues to grow, the objective is to limit reverse logistics and returns and encourage the use, for example, of repair services located in the consumer’s country.

A new legal obligation to prioritize repair would mechanically create an initial form of incentive, but only if repair, including the reparability assessment and possible testing of the product, is a more affordable option than replacement. We also encourage the Commission to assess and clarify the question of costs and liability for repairs when independent approved repair services are involved. Legal certainty would be beneficial for the supply chain and independent repairers. This obligation would also have an impact on the consumer, detailed below in the paper.

To complement the point developed above on striking the right balance when opening access to repair, it is also crucial to consider the role of standards for repair services, to maintain high-level quality of repairs and consumer protection. Standardisation bodies can play an important role in establishing product assessment principles and methods to facilitate testing and avoid further damaging products while ensuring consumer safety.

Finally, we encourage Member States to follow recent examples of tax-based incentives for repair services. Certain countries, most recently Sweden for example, have decided to reduce the VAT rate for repair services for certain product categories to boost repairs.

### *d) Supporting the growth of second-hand and refurbished products markets*

Finally, we strongly believe that the Commission’s approach does not sufficiently address the question of reuse. This initiative has the opportunity to create the right legal conditions for the growth of the second-hand and refurbished market.

To allow for these markets to grow, policymakers can act on two levels. Firstly, by harmonising rules to create a single market for “waste” (intended for preparation for reuse, repair, refurbishment or recycling) and recycled and secondary (raw) material. As already laid down in our recent [position paper on the Waste Framework Directive](#), we strongly encourage the European Commission to explore the possibility of

harmonising legislation and key definitions such as, but not limited to waste, by-products, secondary (raw) material, preparation for reuse, refurbishment and so on. This would facilitate the cross-border supply of necessary products and materials for the refurbishing industry and would facilitate the exchange of second-hand goods. The EU and the Member States should also foster the growth of those markets through financial or tax-based incentives for refurbished and repaired products, second-hand products or for cases such as charity donations of unsold goods.

e) *Adapting waste and sector-specific legislation in Member States*

We would also like to highlight complementary measures that we encourage the European Commission and Member States to consider when discussing a right to repair. Several Member States across the EU have set collection quotas for old electronic products placed on the market. In Germany for example, as of 2019 the amount of collected electronic devices has to amount to at least 65% of the average weight of electronic products placed on the market during the three previous years. As repair becomes more popular, consumers increasingly tend to keep their old devices (while sometimes still buying new ones in parallel), which can impact the collection rate. Moreover, if consumers do rapidly move towards repair with new measures being implemented, while the collection quotas would still be calculated based on the previous years where a higher amount of new products was put onto the market, obligations would be very difficult to fulfil for responsible parties.

## Creating a long-lasting shift towards product repair and reuse

Removing some of the barriers mentioned in the first part of the paper would create the right condition to facilitate the development of repair services, and therefore make this market more competitive. As a Right to Repair should rely on accessible, affordable, quality repair services for consumers, these first steps are key.

To cement long-lasting changes and allow for the market to grow sufficiently to deliver a real right to repair to consumers, policymakers should support a balanced repartition of responsibility and costs between stakeholders. It is important to keep in mind as well that consumers also play a role in the durability of the product they own, and the choice to repair. The lifespan of a product can be affected by the way the consumer handles it, and whether or not instructions are respected. It is therefore important to maintain a certain level of consumer responsibility, especially when discussing a right to repair beyond the legal guarantee period or when the defects are caused by the consumer.

In general, Ecommerce Europe supports voluntary initiatives aiming at improving consumers' awareness. Digital communication offers the opportunity to accompany the consumer better throughout the life of their product (e.g., reminders for maintenance, suggestions to improve performances...).

a) *Incentivising repair through consumer law*

o Repair as a primary remedy

Having repair as the primary remedy could support consumers' change of attitude towards repair, and potentially incentivise merchants to invest further in repair services. Our concern is that because of the legal and market barriers described before, this cannot be a standalone measure. Without facilitating easy and affordable repairs, the impact on consumers will also be greater, as repair is very likely to take longer than replacement, leaving them without the product.

We would therefore favour rules that provide some flexibility, for example allowing the manufacturer, or potentially the seller, to weigh in the decision on the best remedy under the legal guarantee period. Indeed,

certain factors beyond costs can be taken into account when deciding to replace rather than to repair (e.g. product safety after several repairs).

- Adapting rules on legal guarantee periods after repair

The Commission suggests the possibility of amending the Sales of Goods Directive and the rules on legal guarantees. We would first like to stress that the implementation of the Sales of Goods Directive is fragmented, as it only mandates Member States to provide for a legal guarantee of a minimum of two years. Some EU countries have already decided to extend the period beyond that, sometimes opting for a legal guarantee period matching the expected lifetime of a product.

This is particularly important, as it would mean that without harmonisation, certain measures suggested in the Commission's public consultation would have widely different effects from one country to another.

Ecommerce Europe has been a strong advocate of the harmonisation of the legal guarantee period under the Sales of Goods Directive. Changes to the current framework, considering the fragmented and complex landscape in the EU, would be hardly manageable.

The proposal to renew the legal guarantee period after repair would for example have a disproportionate impact in Member States where the legal guarantee has to match the expected lifetime of the product. In practice, this could mean that the legal guarantee of a product could start over again indefinitely every time a part of the product is repaired.

The renewal of the legal guarantee raises other obstacles that would require further assessment, and most likely a product-specific approach. For example, it is unclear who is liable and responsible to repair the product during its renewed legal guarantee period: the repairer - also whether it is an approved repairer or not, the manufacturer; the provider of the spare part or somebody else. This would also depend on whether we consider that the renewed legal guarantee should apply to the whole product or only the part that has been repaired in the case of new products.

- Offering repairs beyond the legal guarantee period

As mentioned previously in this paper, it is important to incentivise repair services. Therefore, while promoting repair as a remedy for product defects under legal guarantee would encourage sellers and manufacturers to invest in repair services – providing that the cost of repair is affordable - offering free repair beyond that point could impact disproportionately the repair service market by failing to account for the labour and material costs. We would therefore advocate for the cost to repair to be shared fairly.

Moreover, there is a risk that free repair beyond the legal guarantee period could negatively impact how consumers care for their products as it would be easier to have the product repaired or replaced.

- Right to repair

As detailed above, measures on providing a right to repair for products not covered in the current directive cannot be stand-alone measures. If providing repair services in the EU does not become more accessible and affordable, a right to repair could have a disproportionate impact on companies.

As mentioned above, a Right to Repair should correspond to a consumers' right to choose an accessible, affordable, quality repair service, depending on the situation in which the consumer finds themselves before or beyond the legal guarantee period. This means that repair should be incentivised and affordable for stakeholders across the chain.

As mentioned throughout this paper, this requires a balanced distribution of the costs and responsibilities of the repair, as well as a product-specific approach. The best repair options can vary from one product or

situation to another. The manufacturer can be in a better position to perform the repair, but it could also be beneficial not to send the product back and have it repaired by the consumer or the sellers when approved services are available. The cost and the responsibility (e.g., for the legal guarantee after repair) need to be adapted to these different circumstances.

We strongly encourage the European Commission to assess all repair options to understand the economic and environmental impact and to ensure a balanced approach.

- Role of the commercial guarantee

In addition, we would like to highlight the role that commercial guarantees could play. Commercial guarantees are advantageous for consumers and represent a tool for companies to make sustainable products more attractive and competitive. We would therefore advocate for rules that could allow companies to maintain these differences.

- b) *Promoting second-hand and refurbished goods*

Finally, we would like to call on the Commission to propose more ambitious measures for the development of the second-hand and refurbished market.

- Replacement of defective products with refurbished goods

We would like to express our concern regarding the possibility to exchange defective goods for refurbished products. While we support the idea in theory, we worry this could distort consumer expectations. Refurbished products are by no means meant to be of not equivalent quality to new products. Refurbished products mean they have been tested – and repaired if needed - to ensure that core functionalities are in order before being (re)placed back on the market. This means that more often than not, a refurbished product will still show aesthetical marks or signs of degradation – which do not affect its core functionality. A consumer sending a new product for repair will most likely expect the same product to be sent back to them. While we support this option in principle, it seems more realistic to make it an optional choice for consumers.

- The legal guarantee period for refurbished goods

While we support the objective to incentivise the purchase of second-hand and refurbished products, we do not think that setting the same legal guarantee as for new products would be the right solution. The question of legal guarantee for a refurbished product can be complex, and should therefore be differentiated from the discussion on new products. A longer legal guarantee period, for example two years, would have a disproportionate impact on the sector. We believe that it is important at this stage to encourage the growth of the refurbishing market to increase the availability and affordability of products.

The allocation of liability, as well as the quality of the refurbishment, would also have an impact on the extension of the legal guarantee. We encourage the European Commission to assess these impacts to propose a balanced set of measures, including propositions detailed in this paper.

We do however support the promotion of second-hand and refurbished products, and the harmonisation of the legal guarantee period for these products (except for peer-to-peer second-hand sales). As no legal definition of “refurbished product” exists, these products are considered second-hand products under current Consumer Law, with corresponding limitations to consumer rights. A variety of commercial definitions and limited guarantees have appeared over time, leading to confusion and lack of trust from many consumers. To avoid further fragmentation and foster trust, the EU should take the lead in defining a European harmonised legal framework, including definitions, quality standards and related contractual rights on refurbished products. This would further open a market already expanding due to high consumer demand.