



**Independent  
Retail Europe**

**PROPOSAL FOR A DIRECTIVE ON COMMON RULES  
PROMOTING THE RIGHT TO REPAIR AND REUSE  
- COMMENTS OF INDEPENDENT RETAIL EUROPE -**

**JULY 2023**



## **EXECUTIVE SUMMARY**

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Independent Retail Europe welcomes the proposal on a Directive for common rules on repair and reuse. Indeed, since consumers are more and more eager to consume in more sustainable ways, retailers see new business opportunities in providing repair services. Independent retailers are aware of their linking role between manufacturers and consumers by giving valuable customer advice.

We support a general obligation on manufacturers to repair goods outside of the legal guarantee upon consumer requests. They alone can conceive their products in a way that enables repair. They know their products best and should be responsible for offering a repair possibility. However, such an obligation should be without prejudice to consumers to choose alternative repair services (against remuneration).

The EU Commission refrained from introducing new provisions on the legal or commercial legal period, contrary to the considerations made during the consultation period. We highly appreciate this choice. Extending the legal period would most likely increase consumer prices since manufacturers will take account of the additional entrepreneurial risk. Commercial guarantees are a voluntary offer by traders, in addition to the legal guarantee. Retailers who invest in carefully selecting reputable producers should continue to be compensated for the additional effort they make.

For a dynamic repair market, market access as well as access to spare parts is crucial. We call upon the co-legislators to be more ambitious in that regard. Unfortunately, the current proposal (and the proposed Regulation on eco-design requirements) fails to address these points satisfactorily.

We highly welcome the stand-alone legal text regarding common rules on repair. The spirit of these legal provisions should however be reflected in the proposed amendment to the Sales of Goods Directive. Clarifying provisions would be very much appreciated in that regard.

## **COMMENTS OF INDEPENDENT RETAIL EUROPE ON PROMOTING THE RIGHT TO REPAIR AND REUSE**

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### **1. The maximum harmonization clause (Article 3) must be supported**

The proposal intends to create a single market for repair services. We fully support this objective. In that regard, Article 3 of the proposal on a maximum level of harmonisation will provide a level playing field between Member States and between competing repair services providers operating across borders. Obstacles in the internal market will lead to unnecessary administrative costs and burdens for businesses. Therefore, Article 3 needs to be maintained and should not be significantly amended during the further legislative process.

### **2. The obligation to repair (Article 5) requires further clarification**

We highly appreciate that the obligation to repair a product upon consumer request and outside of the legal guarantee period addresses first and foremost the producer (Article 5). Indeed, the producer is the only economic operator who will be able to conceive a product in a way that it can technically be repaired and it will also know the product best. The economic operator who produces a product should therefore also be the operator responsible for the repair. **The proposal should however explicitly clarify that this obligation shall not prevent consumers from choosing alternative (independent) retail services if they wish to do so.** The overall objective should be to increase the number of independent repairers by facilitating market access for independent repairers and boost market liberalisation.

Art. 5(2) of the Commission proposal establishes a cascade of responsibility for the repair of goods, which broadly reflect the respective roles of economic operators throughout the supply chain and is visibly inspired from other product legislation. For instance, if the manufacturer obliged to repair has its registered office outside the Union, its authorised representative in the Union shall fulfil its obligation. If the manufacturer does not have an authorised representative in the Union, the importer of the product in question shall fulfil the manufacturer's obligation. However, contrary to other product legislation, art. 5(2) attributes to the distributors a residual liability on behalf of the manufacturer or importer, as it states that If there is no importer, the obligation to repair should fall on the distributor of the goods in question. This provision raises many issues, precisely because it departs from the approach used in other product legislation (including the Product Liability Directive) and therefore fails to consider properly the role of distributors and intra-supply chain relations.

First of all, it must be clarified that when the product was made available on the EU market by a distributor established in the EU, there was necessarily either a manufacturer established in the EU, or its authorised representative or an importer. In the absence of these entities, the distributor is already considered as the importer. The residual responsibility attributed to distributors therefore does not make sense when the importer is still operating on the EU market, but only if - likely several years after the consumer acquired the product - the authorised representative or importer are no longer in operation (e.g. because of bankruptcy). **Imposing to distributors a repair responsibility due to the default (possibly several years earlier) of an importer over whom they exert no-control, and for products on which they have no control on the conception, is completely disproportionate.** Indeed, the distributor cannot provide all repair services for the multitude of products offered to consumers over time. He/she neither has the necessary special knowledge nor can he/she ensure the supply of spare parts himself. As a reaction to the repair obligation, distributors would likely be forced to reduce their product range in order to be able to fulfil the obligations at all. The provision is therefore likely to severely restrict consumer choice. Even if third-party repair shops are able to carry out the repair on the specific product at the consumer's expense, distributors would be burdened with the handling costs which should normally fall on the manufacturer (or its representative or importer in the EU). This would be out of all proportion. **Moreover, this obligation would be impossible to enforce on distributors established outside of the EU but selling (online) to EU consumers.** It would therefore create a strong competitive disadvantage for EU brick&mortar shops vs non-EU sellers.

Therefore, the repair obligation under article 5 should under no circumstances be extended to distributors. Instead, the Directive should use the same model as the cascade liability under the recently proposed revised Product Liability Directive, and which gives distributors an obligation to communicate to the consumer the name of the operator which supplied them the product, when the manufacturer, its authorised representative or the importer cannot be identified.

**The cascading of responsibility for the repair of the goods should also be further aligned with the cascading of liabilities in the proposed Product Liability Directive when it comes to the responsibility of marketplaces.** Excluding market places from the equation will lead to a legal loophole, where products that are shipped directly from a seller established outside the Union to the consumer for a product where there is no EU-based authorised representative or importer (which happens frequently via market places), will result in a de facto exemption from the obligation to repair for those products and producers (as consumers will have no means to enforce the provision on sellers based outside of the EU). Such a situation would put EU manufacturers/sellers at a disadvantage compared to non-EU manufacturers/sellers. Moreover, these are the products where an obligation to repair is most often needed.

Regarding the legal definition of the producer, Article 2.4 of the proposal refers to the Article 2 point (42) of the proposed [Regulation on eco-design](#). The proposed eco-design Regulation defines the manufacturer as follows: *"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"*. In certain cases, the definition could be interpreted as covering retailers who rent devices (included in the notion "putting into service"). **We propose to clarify this aspect through an alignment of the definition of a manufacturer with Article 8.3 of the recently adopted [General Product Safety Regulation](#).** When renting a device, the obligation to repair should still be on the manufacturer and not on the distributor.

Article 5(1) further establishes that Member States can decide that producers shall repair a good *"for free or against a remuneration"*. Reading Article 5(1) in conjunction with the maximum harmonisation clause of Article 3, we understand that Member States cannot oblige manufacturers to provide a repair exclusively for free, but only to repair the goods (either for free or against remuneration). This is also clear from Recital 12. We invite the Commission and the co-legislators to ensure that this interpretation is retained in the final Directive. Indeed, whilst we agree that a repair should be for free within the legal guarantee period, legislation cannot oblige to offer free repair outside the legal guarantee. Any free repair should always remain at the discretion of the manufacturer (or operator responsible for the repair). A dynamic and well-functioning repair market with a variety of competing repair service providers can only be built on a commercially viable/attractive business model. Actors need in principle to be able to levy fees for their services (either directly through a fee for the repair or indirectly through a higher purchasing price). **The possibility to levy fees should not be left to the discretion of Member States, but should remain a choice of the operator responsible for the repair.**

**Our position in summary:**

- ➔ The residual liability of distributors (article 5(2) for repair outside of the legal guarantee should be deleted: they have no means to fulfil it if the manufacturer/importer disappear from the market
- ➔ The cascade of obligation should be further aligned with the cascade of liability under the Product liability Directive
- ➔ The definition of manufacturer used in article 2(4) should be aligned with the definition of the manufacturer in article 8 of the new General product Safety Regulation
- ➔ It should be clear that article 5(1) does not allow Member States any discretion as to the possibility for the manufacturer to levy repair fees.

### 3. Assessing the economic viability of a repair: Amending the Sales of Goods Directive

The proposed amendment to the Sales of Goods Directive (Article 12) establishes that “*where the costs for replacement are equal or greater than the costs of repair, the seller shall repair the goods*”. First and foremost, we welcome the recognition by the Commission proposal that the characteristics of products are an important factor when deciding on whether to replace or repair a product. Where it makes sense to repair high-end products with a long life cycle, repair costs for products of lower quality may easily be non-viable economically.

#### **We would like to express our opposition to an amendment of the Directive on the Sale of Goods.**

In the case of a defect in a product, we are in favour of retaining consumers' right to choose between repair and replacement. Consumers often choose a replacement for various reasons, especially when it comes to smaller items. This is a simple and quick solution, especially for consumers, when they immediately need to have a functioning device again (which is important for particular goods. e.g. replacing a malfunctioning fridge or washing machine for a family with small children) and do not run any risk regarding the success of the repair (e.g. risks of successive malfunctions of a product with a defect). Larger and more expensive products and those on which consumers store their data are already frequently repaired.

However, repair is not always the better option, even from a sustainability point of view. This depends, for example, on the complexity of the repair. The production and storage of spare parts over many years must be taken into account when calculating the environmental impact, as must the packaging and shipping of the defective item to the manufacturer or a contracted repair centre. In addition, the warehousing of spare parts is always associated with surpluses that are no longer needed at a certain point and have to be disposed of. **Therefore, giving priority to repair, especially in the case of small appliances, is neither economical nor associated with any particular advantages for the environment.**

Whilst we support a general obligation to repair for the manufacturer when it is economically viable, the Sales of Goods Directive (SGD) addresses exclusively the contractual relation between sellers (retailers) and consumers. However, in practice it is the manufacturer only, who will be able to assess whether a product is worth repairing or not. Most retailers are not able to make this assessment. Consequently, retailers will usually have to send the product to the manufacturer to make the

assessment, which will take a considerable amount of time and will further decrease customer satisfaction. Potential costs for transport, warehousing or for renting an intermediate product might occur. Since the Sales of Good Directive addresses the contractual relation between consumer and trader, these costs might occur at the sole expense of the trader. **The choice of legal instrument to introduce the proposed cost-benefit analysis for repairs is hence not ideal.** Preferably, EU legislators should consider enhancing common rules on repair and reuse outside of the scope of the Sales of Good Directive. In our view, any amendment of the SGD will imply costs and administrative burdens for the retailer. **During the legal guarantee, it should be clear that manufacturers are ultimately and solely responsible for ensuring that their goods will be repaired without causing any additional costs for the consumer. Any amendment must carefully consider the consequences on the various parties.**

If, however, legislators nevertheless decide to opt for amending the Sales of Goods Directive, we invite them to take into account the following concerns.

The proposed amendment to **the Sales of Goods Directive obliges the seller to repair the product where the costs for replacement are equal or greater than the costs of repair. The provision refers exclusively to the seller.** However, in practice the seller may often be a retailer and not the manufacturer of the product itself. In such a case, although the consumer will turn to the retailer in case of defects within the legal guarantee, in practice the retailer will need to send the good back to the manufacturer, as the retailer will often not be capable of assessing the issue, nor be entitled by the manufacturer to repair the product.

Therefore, both options, replacement and repair, should always continue to exist on an equal footing. Already today, companies and consumers often opt for the most efficient way of remedying the defect and find a practical solution that meets the interests of the consumer. For this reason, consumer satisfaction regarding the practical handling of warranty cases has been very high for a long time.

**Therefore, we explicitly call on the co-legislator to withdraw article 12 of the Commission proposal amending the sales of good Directive,** as it is clear it will create considerable issues, that it does now always lead to more sustainability (especially for smaller products), and as it will likely create a strong backlash from consumers facing long delays for the evaluation and repair of a new product for which they have no immediate replacement (in particular in case of truly necessary products, e.g. fridges, freezers, washing machines, etc.).

**Should article 12 nonetheless be kept, and although it would solve none of the above mentioned problems, at the very least, the co-legislator should clarify Article 12 as follows:** “In derogation from the first sentence [...] the seller shall ensure that the product is repaired in order to bring it into conformity”. This will ensure that sellers that are not manufacturers are not responsible for repairing the good, nor for making the assessment as to the cost efficiency of the repair, but must ensure that the manufacturer will make the necessary arrangement for the good to be repaired.

If not clarified as suggested above, the amendment could be interpreted as an obligation for retailers to make a cost-benefit analysis of the repair that will be at the cost of the retailer. Many retailers will

not be able to make such an assessment (and will therefore need to consult with the manufacturer), since the manufacturer and not the retailer is directly responsible for the defects.

Moreover, we invite the co-legislators to refrain from further amending Article 13 of the Sales of Goods Directive and to ensure that non-economically viable repairs are not mandatory.

**Our position in summary:**

- ➔ Article 12 should be withdrawn, as amending the sales of goods Directive is not the right instrument to boost repair – especially as the seller is most of the time not the manufacturer/producer, and is therefore entirely dependent on the manufacturer for any possible repair.
- ➔ Mandatory repair may cause significant inconvenience to consumers. This should be avoided.
- ➔ If Article 12 is maintained, it should clarify that the seller's responsibility is to ensure that the product is repaired, (and not that the seller must repair the product – as in practice this will be done by the manufacturer/producer)

#### 4. The Directive fails to address the “sine-qua-non” elements for a dynamic European repair market

A truly competitive, dynamic and well-functioning European Repair Market requires both, unrestricted market access and easy access to spare parts. Unfortunately, both elements are restricted by the delegated acts to the eco-design Regulation, as referred to in Article 2.10, Recital 14 and Annex II.

Controlling the cost of repair is the key element for the success. Indeed, the decision whether to replace or repair products is highly influenced by the cost. The proposal should therefore guarantee that affordable spare parts can be obtained. Labour cost is also a major obstacle to make repair the preferred option. Financial incentives, such as a reduced VAT rate, should be foreseen to counter these issues.

**A proposal that fails to promote these indispensable elements will hardly have a positive impact on the attractiveness of repair services and will therefore do little to improve the development and accessibility of repair services by consumers.**

- **Access to repair services should be further facilitated**

Within the legal guarantee period, only repair service providers recognised by manufacturers can repair products. Certain repair information is only available to these repairers even after the warranty period. In view of the Directive's objective to increase the number of registered repairers that are capable of repairing a device and are granted access to the necessary spare parts, the provisions of the eco-design requirements laying down the registration process for professional repairers are often not ambitious enough.

Usually, manufacturers will be entirely responsible for and determine the process of registration as well as the application criteria for repairers. These criteria are often non-existent at the moment of placing on the market. Moreover, the manufacturer is entitled to accept or decline the request for

registration. **The lack of any transparent criteria or complaint mechanism makes the process arbitrary.** Manufacturers have an economic interest to restrict the number of repairs and the number of registered repairers. **With a view to enhancing consumers' access to repairs and further promoting the sustainable use of products, the Regulation should contribute to the development of a competitive repair market by providing free market access to potential repairers.** The Directive on common rules on repair and reuse should establish certain criteria for the eco-design requirements. To avoid excessive burdens for manufacturers and repairers alike, repairers should be able to register for categories of products of a manufacturer, not for each individual product. In addition, it would be useful to introduce an independent complaint mechanism in case a repairer is declined registration. Manufacturers, importers or their authorised representatives need to establish certain criteria for registration of repairers at the moment of placement on the market and should grant an independent dispute resolution body access to these criteria. In case applicant repairers see their registration request declined, they should have the possibility to have the decision reviewed by an independent dispute resolution body. If the independent dispute resolution body considers, based on the established criteria defining the required technical competences, that an application has been declined on insufficient grounds, it should be able to instruct the manufacturer, the importer or the authorised representative to grant the registration and thereby full access to spare parts and repair information.

The online platform proposed in Article 7 is certainly very much appreciated and a step in the right direction but does not solve the core of the problem. It facilitates the access to information whilst failing to truly liberalise market access for repairers.

Financial incentives should be favoured. A reduced VAT rate, of at least 50 %, for refurbished and repaired products and other tax incentives would create a favorable environment for repair.

- **The proposal fails to guarantee sufficient access to spare parts**

Independent retailers continuously report that spare parts are too scarce. After the end date of placement on the market, spare parts are even more difficult to obtain. In certain cases, products cannot be repaired because manufacturers stop producing or start to very selectively give access to the necessary spare parts to their own repair facilities only. The eco-design requirements for each product group will lay down the time period for which spare parts have to be commercially available to end-users or professional repairers after the date of end of placement on the market. Whilst the proposed directive on common rules on repair cannot legally address the general availability period of spare parts, it could be more ambitious in ensuring equal access for independent repairers in comparison to the manufacturer's own repair facilities.

We understand that there is little economic interest for manufacturers to continue the production of spare parts after a certain date. However, repairers cannot repair products without spare parts. Additionally, guidelines on repair should also be provided by manufacturers. In practical terms, manufacturers should provide downloadable repair manuals and make available technical instructions to enable the exploitation of 3D-printers to manufacture the components needed for repair. **After a certain date the production schemes of spare parts should be available to professional repairers to enable them to reproduce essential generic spare parts (for example by 3D printing).**



**Our position in summary:**

- ➔ Access to spare parts by independent repairers should be further boosted: introduce an obligation for producers to make available to repairers production schemes for spare parts (before they become unavailable)
- ➔ Further enlarge market access to repairers by obliging manufacturers to establish transparent criteria to become an authorised repairer, and by making refusals of such recognition subject to an independent dispute resolution body.

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Original version: English – Brussels, July 2023

*Established in 1963, **Independent Retail Europe** (formerly UGAL – the Union of groups of independent retailers of Europe) is the European association that acts as an umbrella organisation for groups of independent retailers in the food and non-food sectors.*

*Independent Retail Europe represents retail groups characterised by the provision of a support network to independent SME retail entrepreneurs; joint purchasing of goods and services to attain efficiencies and economies of scale, as well as respect for the independent character of the individual retailer. Our members are groups of independent retailers, associations representing them as well as wider service organizations built to support independent retailers.*

*Independent Retail Europe represents 23 groups and their over 403.900 independent retailers, who manage more than 759.000 sales outlets, with a combined retail turnover of more than 1,314 billion euros and generating a combined wholesale turnover of 484 billion euros. This represents a total employment of more than 6.620.000 persons.*

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