

Contribution to triologue on repair

Art. 4: Make European Repair Information Form voluntary

We support the EP's position to make the European Repair Information Form voluntary, this will limit unnecessary costs and administrative burdens for SMEs.

We also support that a repairer is allowed to charge costs in case the assessment of the defect involves costs, like an assessment of a defective washing machine. However, an assessment in the store may also involve costs that the repairer should be allowed to charge.

We support the EP's proposal to provide the '*maximum price expected*', because during the repair unforeseen costs may be uncovered.

ART. 5(1): ENSURE LEGAL CERTAINTY BY MAINTAINING LINK WITH REPARABILITY REQUIREMENTS IN EU LAW

This will provide clarity and legal certainty. Based on thorough product assessments under the Ecodesign Directive it is clear what type of spare parts need to be available, to whom and for how long. It is also important to note that this proposal is about repair for consumers e.g. "refrigerating appliances with a direct sales function" in Annex II seems out of scope.

Art. 5(1): price of repair should reflect costs made

EuroCommerce is concerned about the Council wording that repair should be done 'for a reasonable' price. We support that products covered by reparability requirements in EU law should be more easily repairable, but the cost of repair depends on the defect and on the product. The price of repair should reflect the costs made and allow for a margin to make repair services attractive for businesses to offer. A competitive repair market will ensure prices are low.

Art. 5(2): support EP's position that the authorised representative needs to have the mandate and resources to fulfil its obligations

Art. 5(2): distributors should be removed from the obligation to repair

A distributor has not made the product nor has the technical information about the product. They are dependent on the producer for repair instructions, spare parts, etc. Therefore, a distributor cannot fulfil the obligations of the producer and should not be held responsible when a producer fails to fulfil its legal obligations.

ART. 5(3): ACCESS AND AVAILABILITY TO SPARE PARTS NEEDS TO BE PROPORTIONATE AND SUSTAINABLE

EP proposal Art. 5(3) “producers shall ensure that independent repairers, **rem manufacturers, refurbishers and end-users** have access to **all** spare parts and **all** repair-related information and tools, **including diagnosis tools, at a reasonable and non-discriminatory cost for a period corresponding to at least the expected lifespan of the product.**”

EuroCommerce disagrees with the proposed *text highlighted in red* above. Access to and availability of spare parts must be both proportionate and sustainable. Some spare parts may pose risks outside a professional environment when not properly handled. It is important that there is a product-specific assessment of what spare parts should be kept available and for how long. Some products could be made from thousands of spare parts, and it does not make economic or environmental sense to have to have all of them produced and ready. Also, the concept of expected lifespan is too broad and subjective. In the Ecodesign Directive, it is possible to define what relevant spare parts are needed for reparability and for how long (depending on product) and for this reason it is important that a link is maintained. It is unclear what ‘diagnosis tools’ means and it could involve trade secrets and IP rights. We suggest to remove this or make it optional.

EuroCommerce supports:

- the possibility that the producer may offer a refurbished product instead of a repair;
- providing the loan of a replacement good is optional because availability will depend on the product and moment in time. Making it optional will also allow producers to meet consumer preferences better and create a competitive market.

Art 5(3b) & Article 9a(6), point (b): prohibition to impede repair conflicts with ESPR product parameters

EuroCommerce acknowledges that repair is important, but it is not always the most important product parameter. The provision below would also conflict with Annex I on product parameters in the proposed Ecodesign for Sustainable Products Regulation (ESPR), that already takes into account the reparability of a product as one out of many parameters that are considered relevant when designing a product. Therefore, we suggest to delete the texts proposed by the EP below.

Article 5(3b)

(3b) Producers shall not impede the repair by any contractual, hardware or software technique.

Article 9a(6), point (b)

(b) prohibiting any contractual, hardware or software technique that could prevent or limit repair and prohibit the refusal to repair a good that has been previously repaired by an independent repairer, non-professional repairer or end-user.

Art 7a (new): support EP's proposal for measures supporting SMEs

ART 9A(1-2)(NEW): SUPPORT EP'S PROPOSAL FOR MEMBER STATES' MEASURES PROMOTING REPAIR

EuroCommerce calls on EU institutions to make repair the most attractive option for consumers and businesses, and establish a culture of repair and reuse in Europe. The Commission has made an encouraging first step, but in our view, a circular economy can only be established in combination with (financial) incentives, which are now missing in the legislative proposal.

Art 9a(5): concerns about liability for non-conformity after repair

Member States shall ensure that the provider of a repair shall be liable for any lack of conformity for the repaired part or parts, aspects or feature of the good, which exists at the time when the consumer received the repaired good and which becomes apparent within a minimum period of at least twelve months of that time.

The Commission initiative on promoting repair is not fit for purpose of introducing a new horizontal type of liability for a 'provider of repair'. In addition, 'any lack of conformity' is very broad and could lead to unforeseen consequences and would probably require additional guidance. It is not clear what it means and what it covers e.g. wear and tear, different colour, etc. It may be clearer to limit the liability to the repair service provided.

Art. 9a(6) (new) point a: Legal consistency: ban misleading practices under the UCPD not under repair

EuroCommerce has serious concerns about the EP's proposal to ban certain practices for consumers via this proposal. To preserve legal consistency banning misleading practices should be done under the Unfair Commercial Practices Directive and we believe in this case it is already covered by the UCPD. The way the ban is formulated would also allow diverging interpretation by Member States.

Art. 9a(6) (new) point b: repairer should not be obliged to repair

The second part of point b goes too far "(...) prohibit the refusal to repair a good that has been previously repaired by an independent repairer, non-professional repairer or end-user." As this prohibition is not specific it would oblige any repairer to repair a product. It would be disproportionate and excessive to oblige any repairer to enter into a contract with a consumer that would also entail the earlier mentioned new liability for any lack of non-conformity of the repaired part. It could also force a repairer to accept a request that he believes he cannot do properly or safely.

Art. 10 Commercial guarantees should not include the right to repair

EuroCommerce is concerned about this suggestion by the EP. The commercial guarantee is a voluntary agreement between the retailer and the consumer, and is subject to freedom of contract. It is not up to the legislator to define what should be in a commercial guarantee. In addition, a commercial guarantee can be about anything that is not covered by the legal guarantee, so it may not always make sense to include repair by default. Also, Art 17 of the Sales of Goods Directive already provides that if the manufacturer offers the consumer a commercial "guarantee of durability", he is liable for subsequent improvement [i.e. repair] or replacement delivery in accordance with Art 14 of the Sales

of Goods Directive. The obligation to provide a summary of ‘*conditions of the commercial guarantee is provided in a clear and precise manner*’ is creating additional unnecessary administrative burdens and is contradictory at the same time.

Art. 11: EuroCommerce rejects a minimum maximum fine of 4 % of the turnover

Such high maximum fines should be linked to the impact of non-compliance. In this case, when a producer would not fulfil its obligation under this proposal, a consumer would be entitled to a new product (legal guarantee) or in the worst-case scenario have to buy a new product (Article 5). No fundamental rights are breached, therefore, such a high maximum fine is not justified.

ART. 12: DO NOT FURTHER FRAGMENT THE SINGLE MARKET BY DIVERGING LEGAL GUARANTEE AFTER REPAIR – HARMONISE AT 6 MONTHS

We are very concerned about the Council’s position to extend the legal guarantee after a repair with a minimum of six months. Already the minimum harmonisation of the legal guarantee is deterring traders from selling cross-border and confusing cross-border consumers, and by now adding further complexity by allowing minimum harmonisation of the extension of the legal guarantee after a repair will worsen this situation. EuroCommerce could support an extension of the legal guarantee of the repaired part by 6 months and the extension should be limited to conformity periods in Article 10(1) of the Sale of Goods Directive (and does not affect Member States who have a diverging conformity period (Art. 10(3)), specifically Netherlands and Finland which have a conformity period equal the expected life span of a product).

ART. 12: CONSUMER SHOULD NOT GO DIRECTLY TO PRODUCER FOR REPAIR → THIS UNDERMINES THE POSITION OF THE SELLER & LEGAL FRAMEWORK

Article 12, first paragraph, point (2)(c), amending provision, first paragraph

3a. In the event that the consumer chooses for repair as the remedy to have the goods brought into conformity, the consumer may also directly request the producer to bring the goods into conformity. A fulfilment of this request by the producer is deemed to discharge the seller from its liability pursuant to Article 10.

This new approach would undermine the current system of legal guarantee law (with often clear distribution of responsibilities) according to which the seller is responsible as the consumer's *contractual* partner, and also the well-functioning systems of commercial guarantees. It is important to note that often the producer and the seller have no direct contractual relationship. It would become very confusing for the consumer who to turn to in case of a non-conformity. It would also make it more difficult for the seller to understand more structural issues with products offered that may be relevant to know.

It would be extremely difficult for the seller to check whether a consumer already went directly to the producer, if neither the consumer nor producer would inform the seller. On top, the seller would only be discharged *when* the producer would fulfil the request. Meaning, if the producer would refuse or would not repair the product properly, the seller would still be liable to repair. It would make more sense that the manufacturer would become liable to repair the product after a request of the consumer, regardless of how the manufacturer fulfils the request.

It seems that the repair by the manufacturer at the request of the consumer is not intended to create a new *legal contractual relationship* between the consumer and the manufacturer, but rather that the manufacturer is deemed to be the seller. This can be understood that the manufacturer acts as a "vicarious agent" of the seller with the consequence that e.g. the seller bears the risk that the manufacturer does not carry out the repair within a reasonable period of time or perhaps not at all. In this case, the consumer could demand that the (original) seller terminates the contract, even if the seller himself would have been able to repair the product.

Art. 12: no obligation to provide a replacement good on loan

EuroCommerce believes that such an obligation may be excessive and less sustainable. It could lead to high costs for sellers to have an infrastructure in place of loan goods, and the stocking and moving around of these goods will have an environmental impact.

In addition, if a seller has provided a replacement good on loan, one would expect that this would lead to an extension of what is considered *a reasonable period of time*.

Article 12, first paragraph, point (3)(a), amending provision, first paragraph ‘

1. Repairs shall be carried out:

(a) free of charge;

(b) within a reasonable period of time from the moment the seller has been informed by the consumer about the repair;

(c) without any significant inconvenience to the consumer, taking into account the nature of the goods and the purpose for which the consumer required the goods; and

(ca) depending on the specificities of the relevant product-category, in particular of its permanent availability for the consumer, the seller shall provide the consumer free of charge with a replacement good, including a refurbished good on loan if the repair cannot be completed during the period referred to in point (b).

Art 16 & 17: Need of sufficient transition period

Assuming that the proposal will increase repair of products across Europe, sellers and producers need enough time to take the necessary measures to fulfil consumer demand. This includes the relevant infrastructure to process defective products, making (contractual) arrangement with suppliers and repairers and ensuring the availability of, when relevant, refurbished products and replacement products on loan. Therefore, we support the Council’s amendment below:

Article 17(1), third subparagraph

Member States shall apply those measures from [24+ 6 months from the entry into force].