

Our position

Response to the consultation on the Proposal for a Directive on common rules promoting the repair of goods

AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €3.7 trillion in 2022, directly supports more than 4.9 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

Executive summary

The European Commission's proposal to promote the repair of goods is practical, proportionate and ambitious. It can help achieve sustainable consumption by increasing the repair and reuse of viable defective goods while securing high skilled jobs.

The proposal contains positive initiatives that would further enhance a true circular economy, such as the decision to apply a market-driven and product-specific approach to repairs outside the legal guarantee, the focus on consumer purchases (B2C) rather than business-to-business (B2B) and the choice to maintain the two-year minimum legal guarantee.

Nevertheless, the proposal could be improved in several ways:

- Increase harmonisation and secure consistency with other EU regulations;
- Recognise the role for replacement with refurbished products;
- Ensure B2B transactions are out of scope; and
- Avoid proliferation of multiple online repair information platforms per country.

Introduction

The Commission's ambition to encourage sustainable use of goods and decrease waste is fully in line with the Green Deal objectives. Likewise, industry's top priority is to create products that are secure, durable and safe for consumers. To this aim, industry adheres to international regulations and develops products that have longevity and ensure consumer safety. It also strives to ensure that qualified and authorised professionals can repair products while maintaining their built-in safety features. Nonetheless, safety and security are key concerns, and any regulations regarding repairs should not interfere with these essential considerations. Products consist of many parts that can be dangerous if handled incorrectly, posing a risk to both the repair professional and the consumer.

The proposal rightly focuses on product-specific repairability requirements covered by the Ecodesign framework for the new repair obligations outside of the legal guarantee and aligns with the timeframe required to provide spare parts. This approach is essential to avoid inconsistencies and potentially contradictory requirements in these different pieces of legislation.

Also, the Commission's market-driven approach to the price of repairs outside the legal guarantee would ensure repair businesses are still able to make a profit. In addition, the proposal rightly allows for replacement when the cost of repair is equal to or more expensive than a new product. This makes sense particularly for products with very low defective rates.

Finally, the decision not to extend the two-year legal guarantee is positive, as it would have no effect on the expected lifetime of a product, would not change the number of defects identified and could drive up prices. In fact, and as highlighted in the Commission impact assessment accompanying this proposal, the vast majority (96%) of defects are discovered during the first two years after purchase. A two-year minimum guarantee allows for sufficient time to find and address these issues. In addition, repair obligations should only apply to new devices but not refurbished or second-hands ones. The Sales of Good Directives already recognises that second-hand goods should not be expected to have the same lifespan as a new device or require further repairs.

Below are key recommendations to improve the proposal to ensure it meets its full potential.

Increase harmonisation and consistency with other EU regulations

Fragmentation can result in increased costs for businesses operating across different Member States due to the need to comply with different national regulatory regimes. It is also detrimental for consumers, as highlighted in the Commission's impact assessment: 'Differing national rules and resulting differences in market practices result in low transparency on repair conditions, dissuading consumers from accessing repair services across borders as in the absence of harmonized rules complexity in cross-border transactions is even higher than in a national context'. To be fully effective, the proposal needs a full harmonisation clause to ensure it aligns with the way Member States would transpose the directive into their national legislation, as currently laid down in article 3.

The proposal correctly ensures consistency with existing and emerging policies in the EU that promote increased repair options (eg the Ecodesign Directive, Battery Regulation and Sale of Goods Directive) as it avoids new, duplicative, overlapping or contradictory requirements. In fact, the proposal should ensure that the duration of repair matches the rules for providing spare parts, as referenced in the product-specific 'Lots' regulations under the Ecodesign Directive.

Recognise the role for replacement with refurbished products

While the option of mandating repair as the primary solution under legal guarantee makes sense, additional flexibility to provide the most suitable option would benefit both the environment and the consumer. The definition of 'repair' should be amended to include and recognise the solution of replacement with refurbished products for defective products within or outside the legal guarantee period.

In some cases, it is better to replace a defective product with a refurbished one instead of repairing it because it is faster, cheaper, more sustainable and better for customers. To make this possible, manufacturers and sellers should be allowed to replace defective products with refurbished ones when it makes sense. This is important for creating a true circular economy so defective products can be collected and repaired at the same time. It also means that customers can get a solution quickly instead of waiting for their products to be shipped for repair. The defective product or component can then be fixed and sold as a refurbished product. This would encourage consumers to choose repair over replacement, as highlighted by the Commission's impact assessment.¹

Ensure B2B transactions are out of scope

The directive should explicitly exclude B2B transactions because businesses usually need customised commercial arrangements for repair to meet their critical operational requirements. Maintenance and repair in the B2B sector are already well established and function efficiently. These services offer specific solutions such as take-back schemes, reverse logistics, leasing and servicing models that are customised to meet business needs.

Avoid proliferation of multiple online repair information platforms per country

¹ "Even in case consumers find a suitable service and the price is acceptable, the repair process itself may require too much hassle. Repair takes time and that time is even longer where spare parts need to be ordered. Time matters to consumers because during repair they are deprived of the product". https://commission.europa.eu/system/files/2023-03/SWD_2023_59_1_EN_impact_assessment_part1_v5.pdf

The current proposal allows for the creation of multiple platforms within each country, which could result in different platforms for various regions or types of products. This would make it difficult for companies to register and could confuse consumers. The directive should limit platforms to one per Member State to avoid fragmentation and enhance the consumer experience.

To ensure safe, secure and reliable repair for consumers, national online repair platforms should limit the registration to repairs performed by original equipment manufacturers (OEMs), authorised service providers and qualified independent repair providers. This is essential to provide customers with repair services that ensure high quality of repairs, safeguard customers' privacy and security, and protect customers from injury. This would also support OEMs' legitimate efforts to protect their intellectual property and the security of their ecosystems.

Conclusion

The Proposal for a Directive on common rules promoting the repair of goods is an opportunity for the EU to transform Europe's current consumption into sustainable practices by increasing repair and reuse of viable defective goods. The Right to Repair policy interventions should be proportionate and well-informed by robust and independent science and applicable across EU Member States. During the ordinary legislative process, EU co-legislators should engage with industry stakeholders to avoid negative outcomes for European competitiveness, international trade and consumer choice for sustainable product offers, as well as to achieve the ambition of the European Green Deal.