

# Right to Repair Directive

**Summary:** The European Commission has issued a proposal for a Directive on Common Rules Promoting the Repair of Goods which aims to encourage repair ahead of the replacement of defective goods. The proposal includes obligations on sellers in case of defects developed outside the legal guarantee period, as well as after.

The ultimate objective of the proposed Directive is to reduce product waste, increase circularity by reducing the amount of repairable goods being discarded, and strengthen consumer protection. Eurobarometer data suggests that 77% of EU consumers would opt to repair their faulty products but face obstacles due to repair costs and lack of services provided.

**Key Words:** Repair, Replacement, Circular Economy, Environment, Sustainability, Aftersales, Consumer Rights

## General Comments

Encouraging the use of repair ahead of replacement poses several benefits from an environmental and economic perspective. Waste represents not only a loss of resources, but also leads to environmental degradation, processing and transportation costs, and spatial challenges. This is especially the case in Malta, given the extremely limited land available for waste disposal and processing. Repair also presents a more efficient use of resources, promotes secondary markets, and extends the lifespan of products. It is consequently in the interest of all actors, including businesses, to introduce measures which minimise waste where possible.

The proposed Directive must, however, ensure a proper balance between such 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. Furthermore, the proposed directive may potentially create a disproportionate impact on small businesses which may not be able to absorb the costs of complying with repairability requirements for their products or to outsource such services.



### 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 directly amends the Sales of Goods Directive (EU Directive 2019/771) and requires customers to only choose replacement when it is the cheaper option. 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, for instance, clarifying whether the cost calculation is limited to the parts or components being repaired or whether it includes labour and other costs.

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It should also be recognised that repair alone cannot be the solution in all circumstances. This is especially the case when repair is expected to take considerable time due to spare part shortages and other challenges. Sellers will face significant consumer resistance 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. While the repairs may individually cost less than replacement, consumer perception surrounding the product and the repair process will be negatively impacted. 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 behind repairs.



## 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). If this approach is applied across the board, it will introduce significant quality and safety concerns for certain categories of products, such as ones which deal with heat, chemicals, air/water tightness and so on.

Repairs in such cases must be conducted in appropriate conditions and by qualified repairers. Certain electrical and electromagnetic products also require testing after repair under Union law (Directive 2014/35/EU and Directive 2014/30/EU), meaning that repairs should not be performed by all providers. Producers should consequently be able to authorise who can repair their products in a safe and reliable manner.



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.

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



## Sensitive Information & Intellectual Property (Art. 5)

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), which is crucial to safeguard and promote continued R&D by companies.



## B2B Repair Services (Art. 1 & Annex II)

While the proposed Directive limits its scope to products purchased by consumers, Annex II refers to products which would typically be used in business activities, such as data storage and server products, refrigeration appliances with a direct sales function and welding equipment. A clear distinction must be made between B2C and B2B relationships. The latter are typically governed by dedicated agreements or service contracts between two commercial entities, which includes the repair and service needs that may differ significantly from consumer applications. In line with Art. 1, Annex II should be amended and B2B products should not fall under the scope of the Directive.



## Obligation to Repair & Price Negotiation (Art. 5)

The explanatory memorandum of the proposed Directive argues that repair services ‘could become an additional source of revenue’ for producers and that the latter would be incentivized to reach an agreement on price with consumers to perform repair services. This assumes a level of negotiation between the producer and consumer. However, Art. 5 on the obligatory repair of certain goods does not consider situations where such an agreement on price is not found.



It is naturally the responsibility of producers offering the repair services to calculate the appropriate cost of repair given labour and part costs, which consumers might not be prepared to pay. It should be explicitly guaranteed within the text that should consumers not be willing to pay the repair price, it will be considered as a withdrawal of the request to repair, and not a failure of the producer to meet their obligations.

To compliment this and avoid unfair practices, further clarity on how repair costs should be calculated is needed, as argued in the ‘Calculating Repair vs. Replacement’ section of this paper.



**Links to more information:**

[https://mbb.org.mt/wp-content/uploads/2023/04/MBB-Policy-Brief\\_Right-to-Repair-Directive-1.pdf](https://mbb.org.mt/wp-content/uploads/2023/04/MBB-Policy-Brief_Right-to-Repair-Directive-1.pdf)

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