

Proposal COM(2023) 155 of 22 March 2023 for a **Directive** on common rules **promoting the repair of goods** and amending Regulation (EU) 2017/2394 and Directives (EU) 2019/771 and (EU) 2020/1828

EUROPEAN RIGHT TO REPAIR

cepPolicyBrief No. 10/2023

LONG VERSION

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A. Key elements of the EU proposal

Unless otherwise indicated, article numbers refer to Commission Proposal COM(2023) 155.

1 Context and Objectives: A European Circular Economy

1.1 Objectives of the European Right to Repair

- ▶ In its “Circular Economy Action Plan”, the Commission announced numerous measures to gradually transform the “linear throwaway society” into a circular economy and thus decouple resource use from economic growth [COM(2020) 98, see [cepPolicyBrief 5/2020](#)]. For this purpose, it wants to introduce a European “right to repair” [see [cepInput 5/2022](#)].
- ▶ A circular economy aims to conserve resources, avoid or reduce waste wherever possible and channel materials back into the economic cycle throughout the entire lifecycle of a product – design, production, demand and use as well as waste management [Circular Economy Action Plan COM(2015) 614, p. 2–4, see [cepPolicyBrief 6/2016](#)].
- ▶ The “right to repair” proposed here [COM(2023) 155] includes
 - the adoption of a new Directive (Repair Directive),
 - the amendment of the Sale of Goods Directive [(EU) 2019/771, see [cepPolicyBrief 3/2018](#) and [cepInput 5/2022](#)],
 - the amendment of the Representative Actions Directive [(EU) 2020/1828, see [cepPolicyBrief 28/2018](#)] to allow representative actions against a breach of the provisions of the Repair Directive, and
 - the amendment of the Consumer Protection Authorities Cooperation Regulation [(EU) 2017/2394] so that the provisions of the Repair Directive form part of the “Union law protecting consumer interests”, thereby enabling and regulating cooperation and coordination between national consumer protection authorities and the Commission.
- ▶ The Repair Directive aims to reduce waste, greenhouse gas emissions and demand for primary raw materials derived directly from nature, and make it easier for consumers to have products repaired [p. 1].
- ▶ So far, in the ongoing legislative process, the Rapporteur of the lead Committee on Internal Market and Consumer Protection (IMCO) of the European Parliament (EP) has published its draft report on the Repair Directive, which took place on 26 June 2023 (IMCO draft report).
- ▶ The European “right to repair” is intended to strengthen the circular economy in combination with
 - the requirements of the Ecodesign Directive [2009/125/EC; see [cepPolicyBrief](#)] and the planned Ecodesign Regulation [COM(2022) 142, see [cepPolicyBrief 10/2022](#)] on the supply side and
 - stronger consumer rights [COM(2022) 143, see [cepDossier 4/2022](#)] on the demand side.

1.2 Context: Ecodesign Requirements

1.2.1 The Ecodesign Directive

- ▶ The currently applicable Ecodesign Directive [2009/125/EC; see [cepPolicyBrief](#)]
 - covers “energy-related” products, i.e. [Ecodesign Directive, Art. 2 (1)]
 - energy-using products – e.g. light bulbs, dishwashers, washing machines and vacuum cleaners – and
 - products whose “use affects the consumption of energy in some way”, e.g. windows;
 - sets out requirements for the environmentally sound design (“ecodesign”) of specific products and product groups in order to reduce the consumption of energy and natural resources [Ecodesign Directive, Art. 2 (23)].
- ▶ The ecodesign requirements primarily relate to the energy consumption of products, but also include aspects with “significant environmental impact” such as reparability requirements [Ecodesign Directive, Art. 15 (6) in conjunction with Annex I].
- ▶ “Ecodesign requirements for reparability” (“repair requirements”)
 - are laid down by the Commission in the form of so-called implementing measures, inter alia for
 - household washing machines and tumble dryers [Regulation (EU) 2019/2023], dishwashers [Regulation (EU) 2019/2022] and refrigeration appliances – such as refrigerators – [Regulation (EU) 2019/2019 and Regulation (EU) 2019/2024] and vacuum cleaners [Regulation (EU) No 666/2013];
 - electronic displays – e.g. televisions – [Regulation (EU) 2019/2021] and servers and data storage products [Regulation (EU) 2019/424];
 - welding equipment [Regulation (EU) 2019/1784];

- smartphones and other mobile phones, cordless phones and tablets [Regulation of 16 June 2023, C(2023) 3538];
- include specifications on
 - access to certain spare parts,
 - the interchangeability of certain components and
 - access to repair information and special tools.

1.2.2 The Planned Ecodesign Regulation

- ▶ The planned Ecodesign Regulation [COM(2022) 142, see [cepPolicyBrief 10/2022](#)] is intended to replace the Ecodesign Directive 2009/125/EC and provides for the ecodesign of potentially almost all products placed on the market or put into service in the EU internal market – regardless of whether they are produced in the EU or imported.
- ▶ The Ecodesign Regulation aims to establish ecodesign requirements not only for energy efficiency, but also for other product characteristics – such as reparability, durability and the proportion of recycled content [Ecodesign Regulation, Art. 5 (1)].
- ▶ The Commission will now lay down concrete ecodesign requirements for products and product groups in so-called delegated acts [Ecodesign Regulation, Art. 6 and Art. 7].

1.3 Context: Empowering Consumers for the Green Transition

- ▶ The Commission wants to enable consumers to make environmentally sustainable purchasing decisions by “empowering consumers for the green transition” [COM(2022) 143, see [cepDossier 4/2022](#)].
- ▶ According to the Commission, consumers make unsustainable purchasing decisions mainly due to misleading environmental claims (“greenwashing”), premature product failure (“early obsolescence”) and the use of unreliable and non-transparent sustainability labels [COM(2022) 143, p. 1–2].
- ▶ The proposal on “empowering consumers for the green transition” [COM(2022) 143] provides for
 - the Unfair Commercial Practices Directive [EC 2005/29] to be amended to include further safeguards, in particular on environmental claims, sustainability labels, durability of products and software updates [COM(2022) 143, Art. 1];
 - the Consumer Rights Directive [(EU) 2011/83] to be amended and the information requirements extended; in particular, consumers will be informed about the durability and reparability of products and the availability of software updates [COM(2022) 143, Art. 2].
- ▶ In addition, work is currently under way at EU level on an EU Repair Index, which in future will show the reparability of a product [see also [ceplnput 5/2022](#), p. 10].
 - The EU Repair Index is not regulated in the proposal on “empowering consumers for the green transition” but is already included in the list of information requirements [COM(2022) 143, Art. 2 No. 3].
 - For smartphones and tablets, product information on energy efficiency and, if applicable, on the consumption of other resources during use will be indicated on an “energy label” [Energy Labelling Regulation (EU) 2017/1369]. The energy label will be extended by [Delegated Regulation C(2023) 1672 of 16 June 2023, Annex II and III]
 - information on battery life, resilience to accidental dropping and protection provided against dust and water ingress;
 - a “repair index” indicating the reparability of the product on a scale from “A” (most repairable) to “E” (least repairable).

2 Scope and Degree of Harmonisation

- ▶ The Repair Directive applies to goods purchased by consumers where a defect occurs or becomes apparent outside the warranty period under the Sale of Goods Directive [(EU) 2019/771] [Art. 1 (2)].
- ▶ “Goods” within the meaning of the Repair Directive – hereinafter also referred to as “products” – [Art. 2 No. 8 in conjunction with Art. 2 No. 5 Sale of Goods Directive]
 - are basically all movable tangible items except water, gas and electricity;
 - may contain digital content or digital services that are necessary for their functions.
- ▶ Member States may not maintain or introduce national provisions that diverge from the provisions of the Repair Directive – so-called full harmonisation [Art. 3].

3 Key Terms

- ▶ “Producer” within the meaning of the Repair Directive is any natural or legal person who manufactures products or has products designed and manufactured and markets them under its own name or trademark. If there is no such person and no importer, then the person who places the product on the market or puts it into service is considered to be the producer. [Art. 2 No. 4 in conjunction with Art. 2 No. 42 of the Commission Proposal for the Ecodesign Regulation COM(2022) 142]
- ▶ “Repairer” within the meaning of the Repair Directive means any natural or legal person providing repair services on a commercial basis, including producers and sellers, as well as independent repair service providers [Art. 2 No. 2].

4 Obligation to Repair

- ▶ An obligation to repair applies to
 - producers of products under Annex II, for which repair requirements already exist under the Ecodesign Directive – such as washing machines and vacuum cleaners – to the extent provided for by the repair requirements [Art. 5 (1) in conjunction with Annex II];
 - other producers, if the Commission adopts delegated acts [Art. 15] to bring relevant products, for which repair requirements have been laid down in other EU legislation, within the scope of the Repair Directive [Art. 5 (4) in conjunction with Annex II].
- ▶ Under this obligation, producers must – in the event of a defect outside the warranty period – repair these products or have them repaired at the consumer’s request “for free or against a price or another kind of consideration”, as long as repair is not impossible [Art. 5 (1)].
- ▶ Independent repairers must be given access to spare parts, repair-related information and tools for these products in accordance with the specified repair requirements [Art. 5 (3)].
- ▶ Producers outside the EU must fulfil their obligation to repair via an authorised representative in the EU, or via the importer or distributor of the product [Art. 5 (2)].
- ▶ Producers must inform consumers of their obligation to repair [Art. 6].
- ▶ IMCO Draft Report:
 - An obligation to repair applies to producers of Annex II products – irrespective of the repair requirements under the Ecodesign Directive or planned Ecodesign Regulation [Amendment 27].
 - Producers cannot refuse repair on purely economic grounds, such as cost [Amendment 27].
 - The repair must be carried out within 15 calendar days after the producer has access to the product; the consumer shall receive a replacement product during this period [Amendment 28].
 - Producers must allow independent repairers and consumers to have access to all spare parts and repair-related information and tools, at “reasonable” prices, for a period corresponding to at least the expected lifespan of a product [Amendment 30].
 - Producers must make available on their websites all information on repair – such as the cost of spare parts – for all products listed in Annex II [Amendment 31].
 - The Commission itself can add new products to the scope of the Repair Directive [Annex II] by means of delegated acts, in light of “legislative or market developments” [Amendment 32 on Art. 5 (4)].
 - Other products, such as bicycles and batteries, are to be included in Annex II of the Repair Directive [Amendments 69 and 70].

5 Repair Information

- ▶ Repairers must
 - provide the consumer, upon request, with the “European Repair Information Form” as set out in Annex I (“repair form”) [Art. 4 (1)];
 - not submit the repair form if they are not obliged to repair and do not intend to provide the corresponding repair service [Art. 4 (2)].
- ▶ The costs incurred in providing the repair form may be passed on to the consumer by the repairer, but the consumer must be informed of the costs in advance [Art. 4 (3)].
- ▶ The repair form must include, in addition to the identity and address of the repairer, the repair conditions, such as [Art. 4 (4)]
 - the nature of the defect and the suggested type of repair;

- the price [IMCO Draft Report, Amendment 25: which includes, for example, the cost of spare parts, labour costs and the cost of operating the repair facility] or, if this cannot be calculated, the manner in which the price is calculated and the [IMCO Draft Report, Amendment 25: expected] maximum price;
- the duration of the repair;
- the availability of replacement products during the repair and, if applicable, the costs thereof.
- ▶ The specified conditions of repair [Art. 4 (5)]
 - cannot be altered for 30 days after the consumer receives the repair form;
 - form part of a repair contract if one is concluded within the 30-day period.

6 Online Platform for Repairs

- ▶ Member States must ensure that there is at least one online platform through which consumers can find a suitable repairer (“matchmaking platform”), e.g. by means of [Art. 7 (1)]
 - a search function that filters according to product, location of the repair service provider, repair conditions – e.g. duration, temporary replacement products and place of handover of the defective product – and any additional services, such as installation or transport;
 - the option of requesting the repair form;
 - the voluntary indication by repairers of their adherence to applicable European or national quality standards.
- ▶ This online platform must also include a search function for finding sellers of refurbished products and buyers of defective products for refurbishment [Art. 7 (2)].
- ▶ Registration on the online platform must be voluntary for repairers as well as for sellers of refurbished products and buyers of defective products for refurbishment. The use of the online platform must be free of charge for consumers. [Art. 7 (3)]

7 IMCO Draft Report: National Measures

IMCO Draft Report [Amendment 38]:

- ▶ Member States must take national measures to promote repairs. These may include “repair vouchers or national repair funds”.
- ▶ Member States must inform the Commission of the measures they have taken 12 months after entry into force of the Directive.

8 Enforcement and Mandatory Nature of the Rules

- ▶ Compliance with the Repair Directive will be ensured in particular
 - by national provisions allowing public bodies, consumer protection or environmental protection organisations and professional associations with a “legitimate interest” to bring actions before the courts [Art. 8];
 - by the possibility of proceeding against a breach of the provisions of the Repair Directive by means of a representative action [Art. 13].
- ▶ The provisions of the Repair Directive have a “mandatory nature”:
 - Any contractual agreement which, to the detriment of the consumer, excludes, derogates from or varies the effect of a consumer right under the Repair Directive will not be binding on the consumer [Art. 10 (1)].
 - However, repairers are allowed to offer contract arrangements that go beyond the protection provided for in the Repair Directive [Art. 10 (2)].
- ▶ Member States must lay down rules on penalties applicable to infringements of the requirements concerning the repair form [Art. 4], the producer’s obligation to repair [Art. 5] and the information on the obligation to repair [Art. 6] [Art. 11 (1)].
- ▶ IMCO Draft Report [Amendments 40–41]:
 - Member States must impose fines for infringements, the maximum amount of which must be at least 4% of the seller’s or producer’s annual turnover in the Member State(s) concerned.
 - If the annual turnover is unknown, the maximum fine must be at least two million euro.

9 Repairs during the Warranty Period

9.1 Current Sale of Goods Directive

- ▶ The Sale of Goods Directive [(EU) 2019/771] regulates sales contracts between commercial sellers and consumers [see [ceplnput 5/2022](#), p. 4 et seq.].
- ▶ The warranty rights in favour of consumers are key. For example, the Sale of Goods Directive establishes a two-tier system if a product was defective at the time of delivery [Sale of Goods Directive, Art. 10–16]:
 - Stage 1: Consumers can first require repair or replacement of the product. Consumers generally have the choice during the warranty period whether a defective product is to be repaired or replaced (choice).
 - Stage 2: Only then is a reduction in the purchase price or withdrawal from the contract possible.

9.2 Amendment of the Sale of Goods Directive

- ▶ The Commission Proposal would remove the consumer’s choice within the warranty period and give preference to the repair of a defective product over replacement, as long as the repair is not more expensive than replacement of the product (“repair before replacement” principle) [Art. 12].
- ▶ IMCO Draft Report:
 - In the event of a defective delivery, the consumer may also request the producer to bring the goods into conformity with the contract. In this case, the seller must be discharged from liability [Amendments 46 and 50].
 - Within the warranty period, repair of a defective product must be preferred to replacement unless repair is more expensive than replacement of the product, factually or legally impossible and would create “significant inconvenience” to the consumer [Amendment 45].
 - Repair must take place free of charge within 15 days after the seller has been informed about the repair. The seller must provide the consumer with a replacement product on loan for the duration of the repair. [Amendment 48]

10 Transitional Provisions and Transposition into National Law

- ▶ The Repair Directive enters into force 20 days after its publication in the Official Journal of the EU [Art. 18].
- ▶ The obligation to repair only applies to contracts for the provision of repair services concluded two years [IMCO Draft Report, Amendment 53: one year] after entry into force of the Repair Directive [Art. 16 (1)].
- ▶ The principle of “repair before replacement” only applies to sales contracts concluded two years [IMCO Draft Report, Amendment 54: one year] after entry into force of the Repair Directive [Art. 16 (2)].
- ▶ The Repair Directive must be transposed into national law within two years [IMCO Draft Report, Amendment 55: one year] after entry into force [Art. 17 (1)].

B. Legal and political context

1 Legislative Procedure

22 March 2023 Adoption by the Commission

Open Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

2 Options for Influencing the Political Process

Directorates General: DG Justice and Consumers

Committees of the European Parliament: Internal Market and Consumer Protection, Rapporteur: René Repasi (S&D Group, DE)

Federal Ministries: Environment, Nature Conservation, Nuclear Safety and Consumer Protection (lead)

Committees of the German Bundestag: Committee for the Environment, Nature Conservation, Nuclear Safety and Consumer Protection (lead)

Decision-making mode in the Council: Qualified majority (acceptance by 55% of Member States which make up 65% of the EU population)

3 Formalities

Legal competence: Art. 114 TFEU (Internal Market)

Type of legislative competence: Shared competence (Art. 4 (2) TFEU)

Procedure: Art. 294 TFEU (ordinary legislative procedure)

C. Assessment

1 Economic Impact Assessment

1.1 Reparability in the Context of the Circular Economy

In the long term, the EU Commission is aiming to establish a circular economy, which also involves using products for longer by repairing them. If longer use also reduces demand for products, this will bring down the rate of material use and resource consumption as well as greenhouse gas emissions. For example, using a television set for ten years instead of five can save about 600 kilograms of greenhouse gases.¹ The emission of pollutants that arise during production and are carried into the soil, air and water can also be reduced by way of a circular economy.² In addition, repair-friendly product design can have positive effects beyond mere reparability: Better reparability makes it easier to separate and recycle components, which simplifies material recovery. Better recyclability ensures that materials can be used for as long as possible and supports the overall goal of a circular economy.

However, product repair requirements can also have negative effects. In the long term, the Commission wants almost all physical products to be durable, reusable and also repairable. In addition, the use of substances of very high concern is to be reduced. Furthermore, products will be recyclable, and the proportion of secondary raw materials recycled from waste ("recycled content") is to be increased. At the same time, the use of materials is

¹ Umweltbundesamt (2016), Einfluss der Nutzungsdauer von Produkten auf ihre Umweltwirkung: Schaffung einer Informationsgrundlage und Entwicklung von Strategien gegen „Obsoleszenz“, Text 11/2016, p. 249 et seq.

² Schwind, S. / Reichert, G. (2021), Zero Pollution Action Plan, [cepPolicyBrief 20/2021](#).

to be reduced in accordance with the waste hierarchy^{3,4}. But these requirements may be very difficult or impossible to achieve all at the same time – and may in fact give rise to trade-offs: Smartphones, for example, can be glued together to keep out dust and water and make them more durable, but this may also prevent them from being easily unscrewed and thus repaired by non-professionals – thereby rendering repair more difficult or preventing it altogether. In addition, contrary to the waste hierarchy, material use may increase if products are individually screwed rather than glued together. The Commission should disclose such trade-offs when setting ecodesign requirements for reparability, as well as conduct transparent life-cycle analyses to examine and weigh up which requirements provide the greatest overall benefit for a circular economy. In order to avoid a negative impact on the environment, and on consumers and producers, the European “right to repair” should be supported by market-based incentives. Thus resource consumption can also be reduced using the instrument of “extended producer responsibility” or the pricing of primary raw materials.⁵ In this way, the negative effects of resource consumption will be priced into product design (“internalisation of negative external effects”) and producers can decide for themselves how to make a product more suitable for the circular economy – for example, by designing it to be more repair-friendly, more recyclable or even more durable.

Better reparability and the resulting longer use of products can also inhibit companies’ willingness to innovate and thereby slow down technological progress. The speed with which innovations spread on the market can also be slowed down by a longer product life. The Commission assumes that the losses incurred by companies due to reduced sales and lower production rates will simply reflect business revenues being transferred to “consumer welfare”.⁶ Irrespective of the question of what exactly “consumer welfare” encompasses, the costs of complying with the ecodesign regulations have not been taken into account here, although the producer’s obligation to repair is directly linked to the ecodesign requirements on reparability. In this respect, the Commission’s claim that corporate revenues will simply be transferred to “consumer welfare” falls short. In addition, compliance with ecodesign requirements may make products more expensive, for example because product design has to be changed or companies simply price in the lost revenue.⁷ Although almost 80% of EU citizens would prefer digital devices that are easier to repair and where the battery can be replaced more easily, only a quarter of them are willing to pay more for increased reparability.⁸

1.2 Obligation to Repair

The proposed Repair Directive provides for an obligation to repair after the warranty period, initially only for a very limited group of products – namely those for which repair requirements already exist under the Ecodesign Directive and which are listed in the Annex to the Repair Directive. In the long term, however, the Commission is planning to establish ecodesign requirements for almost all physical products, which are likely to include ecodesign requirements regarding reparability.⁹ Consequently, an obligation to repair may arise in the future for a much larger number of products and thus also for many more producers.

However, even among the so far limited selection of products, it is evident that repair does not always automatically make ecological sense. Factors relevant to deciding when a repair is preferable to a new purchase include the increase in energy efficiency of the new product compared to the old one, energy consumption during manufacture of the new product and the actual use by the consumer.¹⁰ Thus, using washing machines for longer is usually more advantageous from an environmental point of view¹¹ whereas in the case of refrigerators and freezers, a new purchase may already be worthwhile after just five years, as, depending on the energy efficiency of

³ The “EU waste hierarchy” stipulates that waste should first be (1) primarily prevented, then (2) prepared for reuse, and only then (3) recycled or (4) recovered in some other way, and finally (5) disposed of. Waste Framework Directive 2008/98/EC, Art. 4; see [cepPolicyBrief 3/2016](#).

⁴ European Commission (2022), Communication COM(2022) 142 of 30 March 2022 for a Regulation establishing a framework for setting ecodesign requirements for sustainable products and repealing Directive 2009/125/EC, see [cepPolicyBrief 10/2022 Long Version](#), p. 5 and 9 et seq.

⁵ See Schwind, S. / Reichert, G. (2022), Ecodesign of Products, [cepPolicyBrief 10/2022 Long Version](#), p. 10 et seq.

⁶ European right to repair COM(2023) 155, p. 9 et seq. The Commission calculates here that – over the next 15 years – the adjustment costs to producers of € 8.1 million and administrative costs of € 69.8 million would be offset by savings to consumers of € 176.5 million. See European Commission (2021), Commission Staff Working Document SWD(2023) 59 of 22 March 2023, Impact Assessment Report accompanying the document Proposal for a Directive on common rules promoting the repair of goods and amending Regulation (EU) 2017/2394, Directives (EU) 2019/771 and (EU) 2020/1828 [“Impact Assessment”], p. 53.

⁷ The extent to which companies can add these costs to the price of the product depends on many different factors, such as competition in the sector, consumer price sensitivity in relation to the product and possible alternatives.

⁸ Eurobarometer (2020), [Attitudes towards the Impact of Digitalisation on Daily Lives](#), p. 23.

⁹ See Schwind, S. / Reichert, G. (2022), Ecodesign of Products, [cepPolicyBrief 10/2022](#).

¹⁰ Öko-Institut (2016), Fragen und Antworten zu Obsoleszenz, p. 12.

¹¹ Umweltbundesamt (2016), [Lifetime of electrical appliances becoming shorter and shorter](#).

the old appliance, the energy consumption during manufacture is amortised after only 0.7 to 2.5 years if a product of the highest energy efficiency level is purchased instead. Higher levels of reparability, on the other hand, are supported by the fact that future energy efficiency improvements are likely to be less significant. Under these circumstances, the optimum use phase will be correspondingly longer from an ecological point of view.¹²

The obligation to repair is intended to help reduce waste, greenhouse gas emissions and the demand for primary raw materials obtained directly from nature. While better reparability can extend the life of a product and thus support these goals, this will only be the case if consumers actually make use of the option to repair. The Commission is trying to address this problem by reducing the barriers to reparability. The producer's obligation to repair at the consumer's request could in principle make it easier for consumers to have their products repaired, as they would have a direct point of contact. In addition, being able to contact the producer of the product directly may give customers more confidence in the service.¹³ At the same time, producers only have to carry out the repair if it is not "impossible", although there is no specification of when a repair no longer needs to be carried out. It is unclear whether a repair is "impossible" if it is technically possible but very expensive or if success of the repair cannot be guaranteed. It is also unclear whether the producer must guarantee that the product will look the same after the repair as it did before. The term "impossibility" needs to be defined more precisely in this regard. A restriction which says that producers may not refuse a repair on the basis of price makes sense. Consumers can find out about the – expected – cost of repair by means of the repair form. Since the producer can charge the consumer for the repair, it should be up to the consumer to decide whether to opt for a repair or whether it is too expensive.

Developing a repair infrastructure is costly. Spare parts sometimes have to be kept in stock for long periods of time. In addition, transport costs are incurred if the products needing repair cannot be repaired on site but have to be taken to special workshops. Furthermore, staff have to be trained to repair not only new products but also older ones. It may therefore be appropriate for producers not to have to carry out the repairs themselves, but to be able to subcontract them. If independent repair companies can repair the products, finding a suitable repair company will be easier. Not every town will have a producer's representative or a repair shop licensed by the producer. Products such as mobile phones, which are in daily use, will have to be sent in, increasing repair time and thus making repair less attractive. The additional option of going to an independent repair shop will simplify the repair process for consumers and thus increase the likelihood that they will opt for a repair. However, due to short innovation cycles, complex product design and a variety of different brands and models, it often takes specific expertise to repair a product.¹⁴ There is therefore a risk that improper repair by independent repairers who are not familiar with the product could damage the product.¹⁵

The lead IMCO committee in the European Parliament (EP), on the other hand, is planning to remove the link between the repair requirements under the Ecodesign Requirements and the Repair Directive. This divergence from the Commission's proposal would have several far-reaching consequences:

- The Commission itself could include new products in the Repair Directive by means of delegated acts, independently of the repair requirements adopted in the ordinary legislative procedure by the two EU legislative bodies – EP and Council. As the link to repair requirements should be decoupled, all components of products covered by the Repair Directive would have to be repaired, and repair-related information provided on all of them. This would hugely expand the scope of the Repair Directive.
- To ensure that this does not result in the compulsory disclosure of trade secrets, it should be clarified what "all" spare parts as well as "all" repair-related information includes. For example, whether this actually includes all the individual parts of a product or only certain individual parts.

¹² Öko-Institut (2016), Fragen und Antworten zu Obsoleszenz, p. 13. Not only can defective products be repaired but defective product components can also be replaced by newer and more efficient follow-up products. Here, however, gains in efficiency are limited because the new components must retain backward compatibility [see Schwind, S. / Reichert, G. (2022), Ecodesign of Products, [cepPolicyBrief 10/2022 Long Version](#), p. 9]. which could counteract the problem of reduced innovation capability (see section C.1.1), but this approach ties up resources which cannot be used for the development of new products.

¹³ Impact Assessment, p. 95. The Commission's public consultation on promoting repair and reuse showed that the majority of participating stakeholders, of which 51% represent EU citizens, would prefer a repair by the producer. It must be noted that this is not a representative survey.

¹⁴ Öko-Institut (2020), Internalisierung von externen Kosten: Die Sicht von Betroffenen – Zwei Fallstudien in den Themenfeldern Reparieren und Sanieren, p. 14.

¹⁵ Svensson, S. / Richert, J. L. / Maitre-Ekern, E. / Pihljarinne, T. / Maigret, A. / Dalhammer, C. (2018), The Emerging "Right to Repair" legislation in the EU and the US; Going green CARE INNOVATION 2018., para. 5.1.

- It is also questionable whether consumers, who will also be given access to all spare parts and repair-related information, will be able to repair the products just like that. The Commission not only wants to ensure that products are repairable, but also that they have a long shelf life. As already mentioned, these two things can conflict with one another. The risk in this case is that, although consumers will have access to the spare parts and tools, the effort of repairing the product themselves will still be very high.
- Furthermore – precisely because it is not always possible to meet all the requirements placed on a sustainable product at the same time – there would be a risk that reparability under the Repair Directive would conflict with possible future ecodesign requirements for the product. The exact meaning of reparability in the context of the Repair Directive will have to be clarified if it is to be considered independently of the ecodesign requirements.

1.3 Repair Information

The repair form is basically a cost estimate that can provide consumers with a – standardised – overview of repair costs. Thus – in theory – overpriced repairs can be avoided because consumers can compare costs more easily. However, the repair form could also increase the cost of repairs due to the additional expense for administrative costs incurred most notably by repair businesses, 99.7% of which are currently small and medium-sized enterprises (SMEs)¹⁶. It is therefore questionable whether the repair form really needs to be standardised throughout the EU, as many repairs take place locally¹⁷ and will probably only rarely take place across borders. On the other hand, the Repair Directive is mainly aimed at producers. Uniform EU requirements will make it easier for them to fulfil their obligation to repair, as they will not have to meet different requirements for the same product in the different Member States. In order to minimise the administrative burden, independent repairers that are SMEs should be exempted from the obligation to provide the repair form if the consumer requests it.

The obligation to indicate a maximum price may protect consumers from high costs but, independent repairers may not be willing to perform complex repairs for which they cannot estimate a maximum price in advance. This in turn would detract from the objective of providing consumers with easier access to repairs but may be counteracted by requiring only an indication of the expected maximum price, as proposed by the IMCO draft report. Furthermore, the Commission proposal fails to indicate whether a repair is “impossible” and may therefore be refused by the producer if the maximum price cannot be estimated.

1.4 Matchmaking Platform for Repairs

The matchmaking platform makes it easier for consumers to find a suitable repair company because, for example, repair companies can be found more quickly and the voluntary confirmation of compliance with quality standards can strengthen confidence in the repair. This reduces search and transaction costs, and the time saved makes it more likely that a repair will actually be carried out. It should be noted that an increase in repair numbers could also lead to a lower quality of repair because less time will be spent on the repair per product, and that cheaper, lower quality spare parts will be used to increase profits.¹⁸ The fact that consumers can check directly via the matchmaking platform whether the repairer has committed to certain national or European quality standards reduces the likelihood that such a drop in quality will occur.

1.5 Measures Taken by the Member States

The IMCO draft report provides for Member States to establish financial incentives to encourage repairs. Since the positive effects of the improved reparability of products will only materialise if consumers actually opt for repair, financial support by the respective Member States may increase the demand for repairs. Ultimately, it will depend on the specific design of the national measures. In Austria, for example, 50% of the costs of repairing electrical and electronic products are covered up to € 200 (“repair bonus”).¹⁹ Similarly, in the German federal state of Thuringia, it is possible to apply for a contribution to the cost of repairing “household electrical appliances” of up to € 100 per year per person.²⁰ France has had a repair index indicating the reparability of products

¹⁶ Impact Assessment, p. 73.

¹⁷ Öko- Institut (2020), Internalisierung von externen Kosten: Die Sicht von Betroffenen – Zwei Fallstudien in den Themenfeldern Reparieren und Sanieren, p. 14.

¹⁸ Svensson, S. / Richert, J. L. / Maitre-Ekern, E. / Pihlajarinne, T. / Maigret, A. / Dalhammer, C. (2018), The Emerging “Right to Repair” legislation in the EU and the US; Going green CARE INNOVATION 2018.

¹⁹ Bundesministerium Klimaschutz, Umwelt, Energie, Mobilität, Innovation und Technologie, Förderaktion Reparaturbonus, <https://www.reparaturbonus.at>.

²⁰ Verbraucherzentrale Thüringen, Reparaturbonus, <https://www.reparaturbonus-thueringen.de/>.

since 2021.²¹ Incentives to encourage repairs may be useful provided they cannot be abused. In Austria, for example, the repair bonus had to be revised due to frequent cases of fraud.²²

1.6 Repairs during the Warranty Period

The obligation to give preference to repair over the replacement of a product during the warranty period restricts consumer rights. The planned “right to repair” thus becomes an “obligation to repair”, which curtails current consumer choice. The effect of the resulting restrictions varies enormously – depending on whether the product is a defective mobile phone, a refrigerator or a welding machine. A mobile phone and a refrigerator – unlike a welding machine – fulfil essential functions in daily life. The obligation to repair will result in high costs to consumers. In addition, users of the product will have to do without it for longer than would be the case if the defective product were replaced. Currently, 68% of consumers prefer replacing a defective mobile phone to repairing it. In the case of refrigerators, 60% of consumers prefer replacement.²³ Allowing for a replacement product to be provided on loan makes repair more attractive but many questions remain open here: On the one hand, the nature of the substitute product is not specified. It is unclear, for example, whether the seller only has to provide a product that fulfils the same function or whether it has to be the same model of the product in question. In the case of products such as smartphones, tablets and laptops, there is no indication of how to ensure that data, generated while using the device on loan, is completely deleted. This requirement will mean a lot of extra work for sellers, most notably small businesses.

1.7 Repair Costs

A major factor in the decision for or against a repair is still the price. No measures on this are specified in the Repair Directive or in the existing repair requirements under the Ecodesign Directive. The repair requirements for smartphones, on the other hand, stipulate that producers, importers or their authorised representatives must provide information on the indicative prices of spare parts and tools on their website one month after the product comes onto the market and for at least seven years after the product is withdrawn from the market.²⁴ Indicative prices for spare parts and tools will then have to be established for the relevant products for which repair requirements have been specified, such as smartphones and tablets. The Commission reserves the right to include the price of spare parts in the repair index in the future.²⁵ This may reduce information asymmetries and provide consumers with information about the likely cost of substitute products before they buy which will enable consumers to make informed choices. Thus, consumers for whom it is important to know what the likely repair costs are going to be, can include this in their purchasing decision. So far, this has only been available for a limited range of products. The Commission argues that, in the long run, there will also be a reduction in the price of repairs for other products, since uniform EU regulations will promote cross-border repairs and thus create competition. However, on the one hand, it is questionable how many repairs will actually take place across borders because they are often carried out locally on site – especially in the case of products such as refrigerators or washing machines. Moreover, it is unclear to what extent the positive effects of repair on the climate and the environment will be cancelled out if the products are shipped across borders. Thus, on-site repair makes sense in order to keep transport costs and greenhouse gas emissions as low as possible during transport.²⁶ On the other hand, the price of spare parts and their availability, especially in Germany, is one of the decisive cost factors when it comes to repair.²⁷ Although the existing ecodesign requirements and proposed Repair Directive contain an obligation that spare parts must be made available to independent repairers, this makes no difference to their cost. It is questionable whether the cost of repairing these products will fall by any significant amount, as the Repair Directive does nothing to change the price of spare parts either. The requirement that producers indicate, on their website, the prices of spare parts and tools for all products included in Annex II of the Repair Directive may – by reducing information asymmetries – promote the competition envisaged by the Commission. The IMCO draft report, however, also states that spare parts as well as repair information and tools must be provided, at a

²¹ On this e.g. heise (2021), Ein Reparaturindex soll in Frankreich leicht zu reparierende Elektronik fördern; see [cepInput 5/2022](#), p. 10.

²² Bundesministerium Klimaschutz, Umwelt, Energie, Mobilität, Innovation und Technologie, Förderaktion Reparaturbonus, <https://www.reparaturbonus.at/>.

²³ Impact Assessment, p. 8.

²⁴ For smartphones, see Annex II, Section B, Para. 1.1 (4) to the Regulation of 16 June 2023, C(2023) 3538 laying down ecodesign requirements for smartphones, mobile phones, cordless phones and slate tablets; https://single-market-economy.ec.europa.eu/publications/commission-regulation-eu-laying-down-ecodesign-requirements-smartphones-mobile-phones-other_en.

²⁵ Proposal for a delegated regulation on the energy labelling of smartphones and slate tablets, Art. 7 (d).

²⁶ See also IMCO Report, Amendment 5.

²⁷ European Commission, Directorate-General for Environment (2016), [Study on socioeconomic impacts of increased reparability – Final report](#), p. 19.

“reasonable” price, for the expected lifespan of the product, although, “reasonable price” and the “expected lifespan” of a product are both very vague expressions. What exactly is meant by the expected lifespan of a product should be specified more precisely. Furthermore, it should not be up to the government to decide which prices are appropriate and which are not. The ability to obtain information via company websites means that consumers can decide for themselves whether the price of spare parts is reasonable.

1.8 Provision of Software

More and more products consist not only of hardware but also of software which is just as essential for the functioning of the product. Accordingly, extending the lifespan of the physical product must also be accompanied by a corresponding extension to the provision of software if the product is to be used for longer. This point is not taken into account in the Repair Directive but the provision period for software updates is currently regulated in various other pieces of EU legislation. The proposal for the Cyber Resilience Act²⁸ contains an obligation to provide updates for a maximum of five years after the product has been placed on the market. The ecodesign requirements for mobile phones, smartphones, tablets and cordless phones, on the other hand, stipulate that updates for the operating system must be made available for at least five years after the product has been withdrawn from the market.²⁹ At the same time, the Commission’s proposal on product liability contains incentives to provide software updates for ten years.³⁰ These varying time periods complicate implementation for producers and make the information situation confusing for consumers.³¹ This problem is addressed by the lead ITRE committee in its report on the Cyber Resilience Act which proposes that producers indicate the expected lifespan of their products in which security updates will also be provided. The information on lifespan is monitored by national market surveillance authorities.³² In addition, the report of the lead ENVI committee on the Ecodesign Regulation provides that products can no longer become obsolete prematurely because, for example, software updates must be made available within a “reasonable period of time”.³³ Even if it makes sense in principle to ensure that products can also be used for longer by making software updates available for longer, the term “reasonable period of time” is too unspecific. Furthermore, the effects of providing updates for longer are not always positive. Thus, with older products, resources may in some cases be tied up in products that have not established themselves on the market. At the same time, longer use can also hamper innovation as the ability to use products for longer will lower the incentive to invest in a new product.³⁴ The precise definition of a “reasonable period of time” is therefore key.

2 Legal Assessment

2.1 Legislative Competence

Unproblematic. The EU can establish uniform warranty rights throughout the EU in order to ensure the free movement of goods in the EU internal market and to prevent its fragmentation and the distortion of competition by national requirements [Art. 114 TFEU]. It can also adopt environmental measures for the “prudent and rational” use of natural resources by creating a circular economy [Art. 191 et seq. TFEU].

2.2 Subsidiarity

Unproblematic. Uniform warranty rights, which are to apply to all products covered by the Repair Directive and placed on the market or put into service in the EU internal market, can only be enacted at EU level.

²⁸ European Commission (2022), Communication COM(2022) 454 of 15 September 2022 for a Regulation on horizontal cybersecurity requirements for products with digital elements and amending Regulation (EU) 2019/1020, Art. 10 (6); see Kotovskaia, A. / Eckhardt, P. (2023), Cyber Resilience Act, [cepPolicyBrief 1/2023](#).

²⁹ Regulation of 16 June 2023, C(2023) 3538, Annex II.

³⁰ European Commission (2022), Communication COM(2022) 495 of 28 September 2022 for a Directive of the European Parliament and of the Council on liability for defective products; see Harta, L. / Mazzone, M. (2023), Product Liability, [cepPolicyBrief 2/2023](#), Long Version, p. 9.

³¹ Harta, L. / Mazzone, M. (2023), Product Liability, [cepPolicyBrief 2/2023](#), Long Version, p. 9.

³² The report by the Rapporteur of the lead Committee on the Committee on Industry, Research and Energy (ITRE) on the Cyber Resilience Act of 26 July 2023 has been published by the EP; see Amendment 73 in conjunction with recital 32a.

³³ So far in the current legislative procedure, the report by the Rapporteur of the lead Committee on the Environment, Public Health and Food Safety (ENVI) on the Ecodesign Regulation of 22 June 2023 (“ENVI Ecodesign Report”) has been published by the EP; see Amendment 91.

³⁴ See also on this Kotovskaia, A / Eckhardt, P. (2023), Cyber Resilience Act, [cepPolicyBrief 1/2023, Long Version](#), p. 14.

2.3 Compatibility with EU Law in Other Respects

With regard to the products covered by the Repair Directive, the Commission proposal contains a delegation of power to the Commission to update the scope under Annex II [Art. 5 (4)]. Annex II serves to establish the link to the repair requirements in the EU ecodesign legislation and to list the products covered by the obligation to repair. It therefore defines the scope of the Repair Directive in concrete terms. However, the proposal of the draft IMCO report [Amendment 32] goes even further, allowing the Commission to include new products in Annex II “in the light of legislative or market developments”. In other words: The Commission will therefore be able to independently determine which products fall within the scope of the Repair Directive. However, this far-reaching delegation of power to the Commission, as envisaged by the IMCO draft report, would violate the concept of reserving “essential elements” for the EU legislator.³⁵ This stipulates that the regulation of “essential elements of an area (...)” must be reserved for the EU legislator and “shall not be the subject of a delegation of power” [to the Commission] [Art. 290 (1) TFEU].

The whole purpose of granting power to the Commission to adopt “non-essential elements” by means of delegated acts [Art. 290 TFEU] is to ensure that “EU legislation”, enacted by the EU legislator – EU Parliament and Council – during the EU’s complex ordinary legislative procedure, is not overburdened by detailed technical provisions, and to facilitate fast and flexible adaptation to new developments.³⁶ The EU legislator may, however, under the proposed Directive, as a basic legislative act, delegate to the Commission the power to adopt “non-legislative acts of general application” only to “supplement or amend” certain “non-essential elements” Art. 290 (1) para. 1 TFEU]. Meanwhile, the “essential elements of an area (...) shall be reserved for the legislative act and [...] shall not be the subject of a delegation of power” [Art. 290 (1) TFEU] para. 2, sentence 2 TFEU]. The “concept of essential elements” in favour of the EU legislator aims to safeguard the institutional balance between the EU organs and prevent the primary task of the EU Parliament and the Council as EU legislator, from being eroded by the transference of legislative powers to the Commission.³⁷ This arises from the principle of democracy which states that essential decisions should be made by the directly and democratically elected legislator and not by the executive.

The inclusion of new products in the scope of the Directive by the Commission will result in extensive rights and obligations for the actors – consumers and producers – most notably in the form of the obligation to repair. Due to this far-reaching legal effect, the definition of the products covered by the Directive is clearly an “essential” regulatory element which must be regulated by the EU legislator itself within the framework of the ordinary legislative procedure, and cannot be delegated to the Commission.

D. Conclusion

Due to their longer useful life, the repair of products can in principle reduce the consumption of primary raw materials and energy, waste and greenhouse gas emissions caused by them. Therefore, the Commission’s dual approach of, on the one hand, setting requirements for the easier reparability of a product within the framework of ecodesign requirements for the environmentally friendly design of products, and, on the other hand, reducing obstacles to repairs through numerous measures of the proposed Repair Directive, is in principle understandable.

However, if we consider the environmental impact of a product over the different phases of its life cycle from the perspective of the circular economy, conflicts can arise between its improved reparability through ecodesign requirements with other environmental goals. For example, products that are designed to be particularly durable may be difficult for non-professionals to disassemble and repair. Conversely, replacing adhesive joints with screws, for example, may make a product easier to repair, but require more material. Moreover, repair is not always automatically the most ecologically sensible option, e.g. if a new refrigerator would consume significantly less electricity than the repaired old appliance. Finally, products that are usable for a very long time can inhibit the willingness of companies to innovate and consequently hamper technical progress. Ultimately, it depends on the individual case whether a product should be repaired or not.

The various measures envisaged by the proposed Repair Directive in favour of consumers are in principle suitable for reducing obstacles to repairs. For example, the obligation of producer to carry out repairs at the request and expense of consumers after the expiry of the warranty period can in principle facilitate repairs, as consumers are

³⁵ For a detailed explanation on this see Eckhardt / Reichert (2022), Europe in the Taxonomy Trap, [cepInput 2/2022](#), p. 9 et seq.

³⁶ Gellermann, M. in: Streinz, R. (2018), EUV/AEUV, 3rd Edn., Art. 290 TFEU, para. 1.

³⁷ *Ibid.*, para. 38 citing further references.

given a direct contact partner for their repair request. However, the establishment of a repair infrastructure is also associated with costs for producers. It therefore makes sense for them not to have to carry out the repairs themselves, but to be able to subcontract them. The possibility to commission independent repair companies and to find a suitable repair company via national matchmaking platforms increases the likelihood that consumers will have a defective product repaired. However, within the warranty period, the “right to” repair becomes an “obligation to” repair, as consumers should only be entitled to the repair of a defective product and no longer to its replacement if the repair is more cost-effective. This restricts consumer choice.