

Repair Promotion



Advisory Report Repair Promotion

TO THE MINISTER OF ECONOMIC AFFAIRS AND CLIMATE POLICY

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The Social and Economic Council of the Netherlands

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Content

Advisory report	7
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Annex	
1. Explanatory memorandum	13
2. Composition of the Committee for Consumer Affairs (SER/CCA)	29



Advisory Report

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Dear Mrs. Adriaansens,

The European Commission intends to publish a proposal for a Directive on the “right to repair” before the end of 2022. With the proposal for a Directive, the European Commission wants to promote the transition to a circular economy and reconcile consumer protection with its sustainability ambitions.

Your Ministry has asked the Committee for Consumer Affairs (CCA) of the Social and Economic Council (SER) to present considerations in preparation for determining the position of the Netherlands on this matter.

The CCA advises on measures that affect the position of consumers and the business sector to a significant extent. Creating widespread prosperity (people, profit, planet) is central to the work of the SER. The SER is not only concerned with material and social progress, but also with integrating relevant transitions into its work. This is also highlighted in the recent SER exploratory study entitled ‘Balanced management of the raw materials transition and the energy transition for widespread prosperity’ (*Evenwichtig sturen op de grondstoffentransitie en de energietransitie voor brede welvaart*).¹ Promoting repairs is one of the tools to further accelerate the raw materials transition.

¹ SER (2022) Exploratory study: *Evenwichtig sturen op de grondstoffentransitie en de energietransitie voor brede welvaart* (Balanced management of the raw materials transition and energy transition for widespread prosperity).

The CCA is consequently in favour of this move, in which consumer protection is better integrated into sustainability policy. A legal right to repair in the Netherlands during the conformity period² is already in place. This is why we prefer to talk about measures aimed at promoting repair. The greatest gains in prosperity are likely to be achieved through an integrated package of measures.

The CCA is of the opinion that measures promoting product repairs, for example, by making available repair-related information (such as technical information for the benefit of repairers and/or repair instructions for consumers) as well as spare parts, can serve the sustainability ambitions of the European Commission and the Netherlands. Repairs can help extend the life span of a product so that fewer new products will need to be produced. However, there is no "one size fits all" solution: measures do need to be proportionate and appropriate. It is also important that these measures contribute to accelerating the transition to a circular economy.

The following considerations can assist in the effectiveness and practicality of the forthcoming proposal for a Directive and make sure it is consistent with other European and national policies:

- **Assessment framework.** Manufacturers, traders, suppliers, retailers and consumers alike need integral insight into the relevant considerations, whether repairs contribute to sustainability, whether repairs are financially attractive, and whether repairs are actually feasible.
- **Financial remedies and incentives.** Laws that aim to promote repairs will lead to more repairs more quickly if the costs to businesses and consumers relating to repairs are remedied. Sustainable choices do not always pay off immediately and replacing a product is sometimes more tempting than repair. On top of that, the cost of damage to the environment is not yet always factored into prices. Measures, such as (government) vouchers for consumers that reimburse repair costs up to a certain amount after the conformity period, or fiscal incentives for manufacturers, could help make repairs more attractive.
- **Oversight.** The promotion of repairs stands to benefit from proper oversight of compliance with the obligations stemming from the Directive as well as those from related legislation. In this respect, it is also important that authorities collaborate with each other.

2 Other European countries do cite a statutory warranty period of (a minimum of) two years. No predetermined fixed period (conformity period) applies in the Netherlands, contrary to most other European countries where this is the case.

The proposal for the Directive has to be enforceable. Thereby, it is important that obligations are placed under the responsibility of the actor who is capable of fulfilling these obligations. This also applies to actors operating in the platform economy.

The proposal for a Directive should be consistent with other laws and legislative proposals. This is certainly the case for the (proposals for the) Ecodesign Regulation, the Data Regulation, the Digital Services Act and the Directive to strengthen the position of consumers for the green transition. Consistency with laws and regulations protecting intellectual property rights and trade secrets is also important.

These considerations for promoting repair are substantiated in more detail in Annex 1.

Once a concrete proposal for a Directive has been published, the CCA would be happy to provide additional advice if and when required.

Yours sincerely,

dr. Steven van Eijck
Chair of the Committee for Consumer Affairs



Annex

1 Product repairs

In this section, we briefly outline the *Hoe*. What counts here is whether a product is defective during or after what is known in the Netherlands as the conformity period. This distinction is important because the applicable rights and obligations with regard to repairs vary from period to period.

During the conformity period, the buyer is entitled to expect a working product. During this period, a ‘warranty’ based on the Dutch Civil Code is in force. Apart from this, there may also be retail warranty and/or manufacturer's warranty. These may also still be applicable after the conformity period. A retail warranty and manufacturer's warranty are sometimes given to or bought by the consumer when purchasing a product.¹

Under the forthcoming proposal for a Directive “*on the Right to Repair, headed Sustainable consumption of goods - promoting repair and reuse*”², a variety of measures that encourage repairs may be included. The term “right to repair” is often used by the European Commission as an umbrella term for these measures. A right to repair is already currently in place in the Netherlands. To avoid confusion, we refer to the forthcoming proposal as the “Repair Proposal”.

Repair or replacement during the conformity period

At present, a consumer-buyer is already entitled to the free repair of a non-compliant product.³ The right to free repairs based on the Dutch civil code applies during the conformity period.⁴ In this situation, a consumer can also request a replacement instead of a repair. In the Netherlands, the length of this period depends on the type of product and what a buyer may reasonably expect from this at the time of purchase. Provided this can be deemed reasonable, the retailer is obliged within this period to repair or replace the product if the product fails to be in compliance with the agreement. If the non-compliance with what was agreed manifests itself within one year after transfer, it is deemed that the product did not comply with the agreement upon delivery. It is then up to the retailer to prove that

¹ <https://www.consuwijzer.nl/garantie-reparatie-geld-terug/gekocht-maar-kapot/garantie>

² <https://circulareconomy.europa.eu/platform/en/news-and-events/all-news/public-consultation-and-call-evidence-open-legislative-initiative-right-repair>

³ See Dutch Civil Code, Book 7, articles 18, 18a and 21. These provisions in the Dutch Civil Code implement the European Consumer Sales Directive (Directive 2019/771 on certain aspects of contracts for the sale of goods OJ L136/28 dated 22/5/2019).

⁴ Other European countries do cite a statutory warranty period of (a minimum of) two years. No predetermined fixed period (conformity period) applies in the Netherlands, contrary to most other European countries where this is the case.

this was not the case (reversal of burden of proof)⁵. During this period, the retailer must also provide digital updates, which include security updates.⁶

At present, consumers often opt for a replacement over a repair.⁷ If the consumer repairs a product themselves or has it repaired by someone else, under certain circumstances, the legal warranty based on the Dutch Civil Code on the product is voided and along with that, the statutory obligations for the retailer are voided as well.

Repairs after the conformity period

Once the conformity period has lapsed, retailers are no longer under a legal obligation to repair products. In some cases, however, the product can still be repaired in exchange for payment or the consumer can do it themselves or have it done. However, it may also be the case that the consumer is unable to repair the product (or have it repaired), even for a fee, e.g. because the repair calls for specific skills, it is unsafe, e.g. due to the presence of hazardous substances, certain parts are not (or no longer) available, specific tools are needed, a dust-free and/or climate-controlled room is required, or because there are other technical limitations that prevent the product from being repaired (by a consumer or arbitrary third party), or because no information is available on how to repair the product.⁸ Also, over time, it could be the case that a repair is no longer justified due to sustainability considerations (e.g. energy usage of the product is too high. Also, the costs of repair (often labour-intensive) may not be offset by the extended service life of the product that can be procured that way. This becomes even more of a factor if it can be expected that after repairing one part, other parts are likely to soon break down because the product is past its expected service life.

Warranty during and after the conformity period

A retail and/or manufacturer's warranty may be applicable supplementary to the legal conformity period. In this case, the retailer or manufacturer sets the conditions under which this warranty applies. In certain cases that falls outside the legal conformity warranty, the consumer will then still be able to have their product repaired free of charge as long as this falls within the conditions of this

⁵ See Dutch Civil Code, Book 7, article 18a, paragraph 2.

⁶ See Dutch Civil Code, Book 7, article 18 paragraph 4.

⁷ See: A. Cerulli-Harms et al., *Behavioural Study on Consumers Engagement in the Circular Economy, Final Report for DG Justice European Economy*, December 2018. https://ec.europa.eu/info/sites/default/files/ec_circular_economy_final_report_0.pdf

⁸ Evelynne Terryn, *A right to repair? Towards sustainable remedies in consumer law*, European Review of Private Law 4-2019 [851-874].

supplementary warranty (e.g. damage that is not the fault of the retailer/manufacturer, such as fall damage). This is an additional service whereby whoever issued the commercial warranty usually chooses who repairs the device; this could be either the manufacturer or an eligible third party.

3 Circular economy and consumer rights

The Repair Proposal will form part of a broader package of legislative proposals from the European Commission stemming from the “*Circular Economy Action Plan*” that aims to advance the transition to a circular economy.

The transition to a circular economy seeks to substantially reduce the use of ‘new’ (primary) raw materials, to use raw materials in a radically more efficient way and to reuse raw materials and materials while retaining as much of their value as possible.⁹ By extending the service life of products by means such as repairs, the amount of raw materials that are being used in the economy can be greatly reduced. This is sorely needed: every year, more raw materials are used than can be accommodated within the planet's limits. Not only does the extraction and processing of raw materials release high levels of greenhouse gases, the linear use of raw materials can also lead to the loss of biodiversity, a polluted living environment, poor working conditions and other abuses within the supply chain.¹⁰

Repairs, where appropriate, are an important strategy to extend the service life of products and thereby greatly reduce the amount of primary raw materials needed by the economy. At the moment, circular economy policies in the Netherlands still tend to focus heavily on low-grade recycling whereby waste streams of certain products are no longer recycled into raw materials that can be (re)used in similar products, because they are too contaminated, mixed or discoloured, among other things.¹¹ However, low-grade recycling is relatively low on the ‘R ladder’.¹² By directing efforts higher up the R ladder through the promotion of repairs, more

⁹ SER (2022) Exploratory study: *Evenwichtig sturen op de grondstoffent transitie en de energietransitie voor brede welvaart* (Balanced management of the raw materials transition and energy transition for widespread prosperity).

¹⁰ In the advisory opinions “*Werken aan een circulaire economie: geen tijd te verliezen*” (Working towards a circular economy: no time to lose) and *Financiële instrumenten voor een circulaire economie* (Financial instruments for a circular economy), the SER accordingly made recommendations aimed at accelerating the transition to a circular economy.

¹¹ PBL (2021) *Integrale Circulaire Economie Rapportage 2021* (Integral Circular Economy Report 2021).

¹² The R ladder is a tool to rank measures that advance a circular economy. The higher a measure is on the ladder, the more it contributes to a circular economy. See also: PBL (2021) *Integrale Circulaire Economie Rapportage 2021* (Integral Circular Economy Report 2021).

environmental gains can be achieved.¹³ This is because repairs, where appropriate, extend the service life of a product, thereby not only avoiding waste (as is done with high-quality recycling), but also eliminate the negative environmental impacts of producing a new product. The practicability of repairs as a sustainability strategy is in part determined by the product group: there is no "one size fits all". It is a matter of weighing up the effectiveness of repairs in the assessment of the legislative proposal. This will be discussed in more detail in paragraph 5.1.

With the Repair Proposal, the European Commission wants to promote the transition to a circular economy and reconcile consumer protection with its sustainability targets. The CCA is consequently in favour of the move whereby consumer policy creates more scope for such ambitions. In the long term, sustainability is ultimately in the interest of both consumers and the business sector.

Consumer rights can strengthen the circular economy by supporting consumers in making sustainable choices and by facilitating business models that reward sustainable choices. At present, a replacement is often the first resort, the primary remedy, when a product is not (or no longer) satisfactory. Repairs are rarely carried out because information on repairs is lacking, because products are designed to be difficult to repair, because spare parts are not standardised, because the cost of repairs tends to be high (especially labour costs), or because repairs can only be done by the manufacturer itself.¹⁴

4 Ways to promote the choice for repairs

Table 1 below takes stock of what options are available in principle to promote the choice to repair instead of replace a product. Here, a distinction was made between general measures and measures specifically geared towards the conformity period and the post-conformity period, respectively. With this, the options listed by the European Commission in the request for input for an impact assessment of a directive proposal on the right to repair have also been included¹⁵. The purpose of the table is to place these options in a broader context; the options listed in the table will not be discussed separately.

13 SER (2018) Exploratory study: *Financiële instrumenten voor een circulaire economie (Financial instruments for a circular economy)*.

14 Evelynne Terry, *A right to repair? Towards sustainable remedies in consumer law in European Review of Private Law* 4-2019 [851-874], 2019

15 See: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13150-Sustainable-consumption-of-goods-promoting-repair-and-reuse_en.

Table A.1 Options to promote repairs instead of replacements

	Type of measure and comment
General	
Repairability part of product design requirements.	Ecodesign regulation. The European Commission has factored this into new rules for a number of product groups and plans to extend this to several more product groups.
Legally required information of product repairability (repair label).	A repairability score may be part of the Ecodesign rules. The European Commission also wants to include this as part of the new Ecodesign regulation. This could give manufacturers an incentive to pay more attention to the reparability aspect when designing products. In this respect, lessons can potentially be learned from the development of and experience with existing labels, such as the European energy labels that have already been introduced ³ . Research could be carried out into the extent to which the French repair label is compatible with the Dutch framework.
More widespread availability of information on repairs, tools, spare parts for repairers who are not affiliated with the manufacturer and/or for consumers.	This could take the form of an obligation that is imposed on manufacturers. It is important in this regard to consider the issue of liability (of the various actors) during the conformity period. The manufacturer and retailer cannot be held liable for repair work carried out by consumers themselves or third parties chosen by the consumers (except in the case of errors made by the manufacturer/retailer in attached repair instructions). Likewise, it is important to respect – when providing technical information – the relevant legal protection regarding intellectual property and trade secrets. The right to repair may also be in conflict with product liability. A closer look should be taken at what lessons can be learned from the experience in the automotive sector, which has such an arrangement for the aftermarket.
Standardisation of (spare) parts	In the EU, agreement was recently reached to standardise the standards for chargers through the amendment of Directive 2014/53/EU on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment. Consideration could be given to applying such standardisation to a wider range of products, for example, through Ecodesign regulations.
Consumer information campaigns to promote the choice for repairs over replacements.	Accompanying measures that Member States can implement themselves possibly aligned with or supported by the EU aimed at changing consumer behaviour and the importance of social norms in this (see frame in paragraph 2).

Specific to the conformity period	
Extension of the legal warranty period during which the right to free repairs can be invoked by consumers for new products that consumers want to repair, or on second-hand and repaired products ^{b,*}	It is not relevant for the Netherlands due to the use of a deviating conformity period ^c .
Curtailing the right of choice for consumers to opt for a replacement.*	Amendments to the Consumer Sales Directive. The current rules give consumers a choice between repairs and replacements. Insofar as repairs are possible and can thus be requested from the retailer, the choice of the consumer for replacement can be restricted (a repair is the preferred option, unless...).
Restricting the retailer's grounds for refusal for repairs if the consumer requests this.	Under the current rules, the consumer can opt for a repair and the retailer has to grant this request ^d , provided that the repair can be done and also be expected of the retailer ^e .
Specific to after the conformity period	
Extension to the consumer's right to repair ^{**}	Here, the options are for repair to be free of charge for the consumer, for the consumer to pay for it in part, or for the costs to be borne entirely by the consumer. In doing so, differences in national policies regarding the warranty period also need to be taken into account.
Repairability compensation	A form of compensation could further incentivise repairs. Examples of this kind of compensation include extending low VAT rates or issuing repair vouchers. Potential flanking policies at Member State level within European frameworks.
<p>a https://www.ecologie.gouv.fr/changes-en-vigueur-au-1er-janvier-2022</p> <p>b The statutory conformity period in the Netherlands also extends to the sale of second-hand goods or goods repaired by a commercial retailer. This one is therefore also not directly relevant with regard to the Netherlands.</p> <p>c It may be indirectly relevant however due to a more level playing field, given that many other Member States do currently impose a statutory two-year warranty period.</p> <p>d Dutch Civil Code, Book 7, Article 21, paragraph 1.</p> <p>e Idem, paragraph 4.</p>	
*The options listed by the European Commission in the impact assessment. Source: SER Secretariat	

This table illustrates that the range of possible options presented by the European Commission for the right to repair covers only part of the possible measures that could promote repairs. In order to promote repairs, policies are needed in far more areas than just consumer rights. Probably the greatest gains in prosperity can be achieved through an integrated package of measures that extend the service life of products. This is evident in the R ladder, which ranks different circular economy strategies (Figure 1). The higher a strategy ranks on the R ladder, the more it contributes to extending service life. Repairs are ranked roughly in the middle of the R ladder (R4). Other strategies, such as making products obsolete (R0: refuse), intensifying product use (R1: rethink), manufacturing products more efficiently (R2, the Ecodesign decree provides for this) or reusing products (R3) contribute more to extending the service life. A circular economy, however, calls for

commitment to all these strategies. After all, which strategy is the most appropriate also depends on the product group.

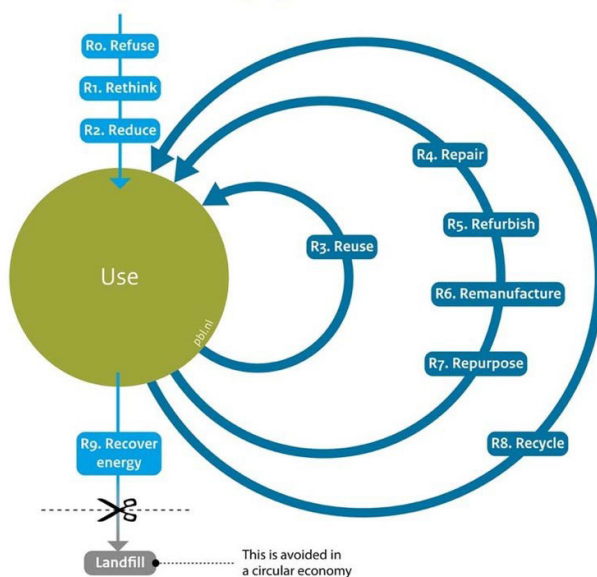
Furthermore, it is important to reiterate that consumers already have a right to repair free of charge during the conformity period. In order to promote the choice for repairs over replacements during the conformity period, it makes sense that there are two options for amending the current regulations: restricting the consumers' choice for a replacement product. restricting the retailer's grounds for refusal for repairs.

The first option effectively implies a restriction of the rights of consumers. The second option is not feasible because repairs can already be denied under current consumer law only when repairs are impossible or cannot be expected of the retailer.

Figuur 2.1

The R ladder

Circular economy: more than recycling



Source: Netherlands environmental assessment agency (PBL)

The European Commission is expected to present its legislative proposal in Q4, 2022; it is only then that we will know what the European Commission is proposing

in concrete terms and will be able to assess the impact this will have on consumers, manufacturers and retailers.

5 Considerations for the (European) repair policy

Promoting repairs can advance the circular economy, contribute to the sustainability ambitions of industry and accommodate changing consumer needs. Whether repairs in a specific case actually lead to achieving these goals at a given point in time during the life cycle of a given product hinges on a large number of factors. There is no “one size fits all” solution. We provide the following considerations when defining policy on promoting repairs to ensure that repairs are effective, feasible, and consistent and integral in relation to other (ongoing) policies.

5.1 Effectiveness

The forthcoming Repair Proposal to promote repairs (“right to repair”) will be part of efforts to achieve ambitions for a cleaner and more competitive Europe with a circular economy. In the vast majority of cases, repairing a product can prevent it from going to waste. The challenge is to ensure that when a product is defective, consumers and business actors want, can and will choose to have it repaired. Four elements are key here: an insightful assessment framework, useful information, financial incentives and effective oversight.

- An insightful integrated assessment framework is needed
Manufacturers, traders, suppliers, retailers and consumers stand to benefit from an insightful consideration framework that enables them to make sustainable choices. Repairs can best be promoted with clear information about the options for repairs and whether those repair costs are reasonable – also relative to replacing a broken product for a non-EU product.

Whether actors choose repairs over replacements will depend heavily on several factors, of which the environmental impact is part of, but certainly not the only one. From a sustainability viewpoint, it is almost always better to repair a product and not to replace it, as the production of a new product often causes a lot of environmental pollution. In some cases, however, it is better not to repair the product, for example when it comes to old freezers, refrigerators or clothes dryers. This is because, in these cases, a new appliance is much more energy efficient when used, which outweighs the environmental pollution caused during manufacture. Whether actors opt for repair is largely dependent on the costs and the remaining expected service life of a product after it has been

repaired. Hence, it is important to ensure that manufacturers, suppliers and consumers have the opportunity to approach these considerations in an integral manner.

A number of tools already exist for this purpose, such as life cycle analysis (LCA), which draws up a sustainability analysis of a product over its entire life cycle, i.e. from production to use to waste, based on scientific considerations.¹⁶ On the basis of this method, Milieu Centraal offers insight to consumers on when it is better for the climate to repair an appliance, and when it is not.¹⁷ Insights on what is the best strategy to promote sustainability may vary per product group. The further drafting of the legislative proposal of the Ecodesign Regulation according to product groups may provide leads for an integral assessment framework for the promotion of repairs.

- Compensation for costs

Compensation from the government for repair costs can make repairs more appealing than replacements.

The costs of environmental damage are not yet always factored into prices. This means that sustainable choices do not always (immediately) pay off and sometimes a replacement is more appealing than a repair. Moreover, repairs take time, while replacements are often possible immediately.

A number of other countries are now already opting to reduce the costs of repairs. Sweden, for instance, gives fiscal concessions for products that can be repaired.¹⁸ While in Austria and Germany, initiatives are in place where consumers receive vouchers from the government that compensate up to 50% of repair costs for repairs costing up to around 100 euros.¹⁹ In the Netherlands, there are no such far-reaching policy measures in place as yet. However, the Netherlands does recognise the importance of measures, such as repairs, that are ranked higher on the R ladder. Under the Circulaire Ambachtscentra project

¹⁶ LCAs are used, among others, by the Netherlands Environmental Assessment Agency (PBL) and the National Institute for Public Health and the Environment (RIVM) in making sustainability analyses. The LCA adopted by Milieu Centraal is the ReCiPe method that was developed by RIVM, see also: RIVM (2016) *a harmonized life cycle impact assessment method at midpoint and endpoint*, via <https://www.rivm.nl/publicaties/recipe-2016-a-harmonized-life-cycle-impact-assessment-method-at-midpoint-and-endpoint>

¹⁷ Milieu Centraal (2022) *Repareren of vervangen (Repair or replace)* <https://www.milieucentraal.nl/energie-besparen/apparaten-in-huis/repareren-of-vervangen/>

¹⁸ <https://www.skatteverket.se/privat/fastigheterochbostad/rotochrutarbete.4.2e56d4ba1202f95012080002966.html> See for the Netherlands: https://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/zakelijk/btw/tarieven_en_vrijstellingen/diensten_9_btw/diensten_met_9_btw

¹⁹ See Position Paper Reuse, reduced taxation to support re-use and repair, 9 March 2017, https://www.rreuse.org/wp-content/uploads/RREUSE-position-on-VAT-2017-Final-website_1.pdf

(Circular Artisan Centres project), subsidies are given to repair workshops.²⁰ The Netherlands also maintains a low VAT rate for a limited number of repairers.²¹ Concern for costs to consumers and the business sector is important. Measures aimed at promoting repairs will be more effective if they are complemented by measures that do something about these costs. The Netherlands can also decide to take measures itself to do this, such as extending the low VAT rate to a wider range of repair work. However, these should be in line with European rules on the harmonisation of the VAT rate basis.²²

- An obligation to provide information alone is insufficient
If the Repair Proposal only results in an obligation to provide more general information, this will not help consumers and the business sector any further. However, specific instructions that enable more people and businesses to repair products are important, as is the obligation for manufacturers to effectively have spare parts available where they can reasonably be expected to do so. Consumers do not have the time, knowledge and room to digest and evaluate information in its current form. An even greater amount of information could even lead to poorer choices.²³

Independent providers of repair services would benefit from specific information that could enable them to repair a product.²⁴ Consider the provision of manuals and assembly instructions. When it comes to smart devices, it is essential that independent providers of repair service also have access to data that is needed to repair those devices. In this context, see the European proposal for the Data Act.²⁵ In addition, (spare) parts also need to be available to providers of repair services. Just how long parts need to be available and where they are stored will vary from one part to the next. Manufacture,

20 See Uitvoeringsprogramma *Circulaire Economie 2021-2023* (Circular Economy Implementation Programme 2021-2023)

21 These concern the repair of bicycles, shoes and leather goods, as well as clothing and household linen. See: https://www.belastingdienst.nl/wps/wcm/connect/bldcontentnl/belastingdienst/zakelijk/btw/tarieven_en_vrijstellingen/diensten_9_btw/diensten_met_9_btw

22 The recent amendment of the EU VAT directive has made it possible to bring repairs of electrical appliances under the low VAT rate. The Dutch government has not yet taken the decision to adopt this.

23 See, for example Minjing Peng, Zhicheng Xu and Haiyang Huang, *How does information overload affect consumers' online decision process? An Event-related potentials Study in Front. Neurosci.* 15:695852. Doi: 10.3389/fnins.2021.695852 and Lee, B. L., & Lee, W. N. (2004). *The Effect of Information Overload on Consumer Choice Quality in an On-Line Environment. Psychology & Marketing*, 21, 159-183. doi:10.1002/mar.20000

24 Independent repairers are not employed by the manufacturer or supplier, have no contractual obligations with it and do not form part of the manufacturer's distribution chain. For the definition of independent repairers in the automotive sector, see: Regulation 461/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector, Article 1, paragraph 1 under e.

25 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2022%3A68%3AFIN>

storage and transport costs of parts, as well as disposal of excess parts, are factors that must be considered in the integral assessment framework.

- **Oversight**

A strong European repair policy and legal framework stands to benefit from proper oversight of compliance with the obligations arising from the Directive as well as with the obligations arising from related legislation, such as the European Ecodesign legislation. In this respect, it is also important for authorities within Member States to cooperate with each other, as the fields of these authorities may overlap.

For instance, the Dutch Human Environment and Transport Inspectorate oversees compliance with Ecodesign requirements for lighting, heat pumps and household electronic appliances, among other things, while the Dutch Data Protection Authority (Dutch DPA) is in charge of personal data protection oversight and the Dutch Authority for Consumers and Markets (ACM) enforces consumer law, among other things. Especially in the case of smart devices, these areas tend to overlap. Actively providing companies with practice-oriented information on their obligations is needed, especially when dealing with complex legislation.

5.2 Feasibility

Measures aimed at promoting repairs must be feasible. Important elements to take into account here are: obligations ought to rest with the party who is actually in a position to implement the obligations, with the party who has actual control and influence over their implementation; and the promotion of repairs should also be directed at relevant actors in the platform economy.

- **Obligations should rest with the actor who is in a position to fulfil such obligations**

The Repair Proposal should make it clear under whom which rights and obligations should fall. In this respect, the basic premise also applies that the obligation should be placed with the actor who can exert influence and control over the product in the specific phase of the life cycle of the product, with the one who is actually capable of fulfilling the obligation. And vice versa, that, if an obligation is imposed on an actor, that actor should also be placed in a position to fulfil that obligation, for example, by the provision of repair manuals and spare parts.

As to whom consumers should be able to exercise their rights with, depends on the situation. For purchases during the conformity period, the situation should remain as it is today, where, if the product is not as one should be able to expect, the consumer has a right to repair, provided that a repair is possible and can be expected of the retailer. After the conformity period, consumers and professional parties, such as independent repairers, should, where applicable, have the option to repair products whenever possible whereby consumers themselves bear the costs of repair.

Whether it will be possible to repair a product depends on the nature of the product, the difficulty of a repair and any safety standards. It is also essential that there are enough training opportunities to make sure that there are skilled personnel who are able to carry out the repair.²⁶ Whether a product is repairable is not dependent on a legal “right to repair” of the consumer, but on the product design requirements and the type of product. Within this framework, see the European proposal on ecodesign and sustainable products. If the extent of repairability plays an important role in product design requirements, then a repair rather than a replacement would be more attractive. This is beneficial for the effectiveness of the policy.

Products must be, wherever possible, designed in such a way that they can be repaired. Constraints on this, in the form of contractual provisions that are reasonably preventable in terms of environmentally unfriendly or deliberate design choices in a product’s hardware, firmware or software, must be avoided. It may be due to safety requirements or the expertise that is required, that a consumer is not always the proper party to repair a product. This is regulated in the Ecodesign Regulation proposal. At present, it is not yet the case that all products can be designed to also be repairable (see frame below). Moreover, in the case of some products, it is questionable to what extent parties other than the manufacturer will be capable of repairing these in the near future, as in the case of smart devices. It is important that the Ecodesign Regulation and upcoming repair policies will be in line with each other, so that no rights and obligations are created for products that are not yet in fact capable of being repaired. also, leeway and time must be given to manufacturers and traders to be able to implement new requirements on repairability.

²⁶ For this purpose, the Ministry of Infrastructure and Water Management (I&W) has launched the Circulaire Ambachtscentrum (Circular Artisan Centre) as an icon project in the Circular Economy Implementation Programme 2019 - 2023, see also <https://circulairambachtscentrum.nl/>. In addition, the Ministry of I&W is currently working on a repairs register to support repairers and improve access to information on repairs and spare parts, and to help consumers find repairers. This repairs register is likely to be ready by early 2023.

Potential obstacles hampering repairs

Research conducted by Natuur en Milieu and the Repair Café Foundation found that it has become increasingly difficult to repair appliances in recent years. When a repair is difficult or impossible, it is often because the appliance cannot be opened up or it requires specialist tools. It may also be the case that no spare parts are available, or there is no repair manual, or only a manual in, for example, Chinese.

(Source: Repaircafe.org 2016)

The obligation to make repairs should rest with the parties who are in a reasonable position to meet them. At present, this is not always the case. One example of this is the update obligation imposed on the retailer. Retailer and suppliers have been under an obligation to keep digital devices and services functioning and secure for a certain period of time and under certain conditions since the introduction of the Sale of Goods Directive and the Digital Content Directive. This applies, for example, to smart TVs and smartphones. Consumers have the right to software and security updates. That this obligation has been placed on retailer and suppliers is ineffective in practice, as they are frequently unable to provide the update themselves. In order to be able to issue an update, they would have to keep a database of available updates of all the products they supply (and their different versions) on hand with all their customers' purchase histories and their contact details linked to it so that they can inform consumers about any updates and pass them on to consumers. Nor does the retailer have any control over, or any influence on, the release of updates and/or the content of updates. The retailer relies on the manufacturer for the provision of those updates and associated information (what which update entails and the duration that updates will be available for the product). If the retailer does not receive these, then the retailer is also unable to fulfil its obligations. E.g. source code, consequently most of them do not have the right knowledge in house to fulfil this obligation. As such, this update obligation should not rest with the retailer.

5.3 Consistency and integrity

The Repair Proposal should be consistent with other (proposed) regulations, such as the European proposal for ecological design and sustainable products (Ecodesign); the European proposal for a Data Act; and the Digital Services Act. For a properly functioning internal market, it is important to opt for harmonisation

of rules at EU level in order to avoid *goldplating* and fragmentation between the Member States as much as possible. The interpretation of a right to repair not only affects the consumer and manufacturer, but also actors in the entire chain of a product. Changes call for adjustments and long-term investments. Several legislative proposals are currently ongoing, which the Repair Proposal will have to align with. This applies in any case to the following proposals:

The European Commission recently published a proposal to broaden the scope of the Ecological Design Directive. Furthermore, the Commission is proposing to replace the directive with a regulation to ensure that there is a level playing field between the Member States.²⁷ The proposed change in the law will have a major impact on consumers and manufacturers. The Ecodesign Regulation will not only standardise the terms for energy efficiency but also circularity, by addressing other environmental considerations such as material use, water consumption, waste issues, repairability and recyclability.²⁸ Furthermore, the regulation will provide for improved provision of information about a product, by introducing a digital product passport for all products that would fall under the regulation. Product information could adopt a similar form as the Energy Labelling Directive, by linking classifications to product repairability, for example.²⁹ On the basis of this regulation, manufacturers may also have to provide an indication of the service life of their product. It is important that this product information is in line with the options that the Repair Proposal will provide to consumers and repairers. For instance, there should be no requirement to repair products of which it is clear from the moment of purchase that they are not repairable. At the same time, manufacturers should be encouraged to design products so that, where applicable, they are capable of being repaired in the future.

Published in February, the proposed Data Act will make it easier for consumers and other users, such as companies, to request the data that their (smart) devices have generated. The user can also transfer data to others. It is important that this data can actually be used by (independent) repair service providers in practice, in order to facilitate the repair of smart appliances.

The proposal for the directive to strengthen the position of consumers for the green transition³⁰ that extends and revises consumer rights amends the following

²⁷ https://environment.ec.europa.eu/publications/proposal-ecodesign-sustainable-productsregulation_ And

²⁸ https://ec.europa.eu/commission/presscorner/detail/en/QANDA_22_2014

²⁹ Supplementary regulations exist for each type of product, such as for consumer electronics, household appliances, industrial products, air conditioning, professional appliances, lighting and other products including electric motors and water pumps. Not all of the supplementary regulations have been published yet.

directives: 2005/29/EU (Unfair Commercial Practices Directive) and 2011/83/EU (Consumer Rights Directive). Among other things, the amendments aim to clarify information on the sustainability of a product, such as its repairability and warranty periods. The same concerns that we also outlined earlier in 4.1 apply to information obligations.

Over the coming year, the European Commission will explore whether consumer law needs to be updated more fundamentally in response to digital developments and new European laws.

30 <https://eur-lex.europa.eu/legal-content/NL/TXT/HTML/?uri=CELEX:52022PC0143&from=EN>



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