

The Consumer Voice in Europe

DURABLE AND REPAIRABLE PRODUCTS

Changes needed for a successful path towards the green transition



Contact: Patrycja Gautier – consumer-rights@beuc.eu
Isabel Lopez-Neira – sustainability@beuc.eu

BUREAU EUROPÉEN DES UNIONS DE CONSOMMATEURS AISBL | DER EUROPÄISCHE VERBRAUCHERVERBAND
Rue d'Arlon 80, B-1040 Brussels • Tel. +32 (0)2 743 15 90 • www.twitter.com/beuc • www.beuc.eu
EC register for interest representatives: identification number 9505781573-45



Co-funded by the European Union

Ref: BEUC-X-2021-061 - 28/06/2021

Table of Contents

1. Introduction	4
2. Guarantee rights.....	4
2.1. Longer legal guarantees for durable goods	4
2.2. Joint and several producer – seller liability	6
2.2.1. Background.....	6
2.2.2. BEUC recommendation	7
2.3. Reversal of the burden of proof.....	8
2.4. Transferability	8
2.5. Incentives promoting repair	9
3. Towards a EU right to repair.....	10
3.1. “Right to Repair” and its importance for the green transition	10
3.2. Consumer information to make sustainable choices	10
3.3. Durability and repairability by design.....	12
3.4. Enabling repairs and their accessibility for consumers.....	14
3.4.1. Spare parts - setting new legal requirements obliging manufacturers to make them available at a reasonable cost.....	14
3.4.2. Repair manuals and instructions	15
3.4.3. Repair services – measures to improve their quality, availability, and accessibility	16
3.4.4. Intellectual Property rights.....	18
3.5. Software obsolescence – need to make updates available and well designed	18
3.5.1. The importance of updates for (smart) product durability.....	18
4. Tackle unfair commercial practices related to premature product failures ...	20
4.1. Examples of enforcement cases by BEUC members of premature obsolescence	22
5. Conclusions	24

Why it matters to consumers

Consumers want to buy more durable and repairable products since this is better, both for the environment and their pockets. For consumers to make informed decisions about what products to buy based on their environmental performance, they need reliable information on durability and repairability. Moreover, many consumers are frustrated when the products do not live up to their expectations or fail shortly after the legal guarantee period runs out. This means that product design must be improved, and new consumer rights need to be established to enhance product durability.

Summary

The EU's Circular Economy Action Plan¹, published in March 2020, announced several legislative and non-legislative initiatives that are supposed to enable the urgently needed green transition of the European economy.

BEUC welcomes these upcoming initiatives. Most importantly, the ones that have a potential to improve the durability and repairability of products, which is essential to fulfil the goals of the European Green Deal². BEUC calls on the EU to put effective measures in place that would make a real difference in this area for the benefit of consumers and the environment.

BEUC recommends that:

In the context of legal guarantee rights:

- Legal guarantee periods for durable goods (e.g., household appliances) should last longer than the current two years, foreseen as a minimum period in the Sales of Goods Directive³: for certain products, the Eco-design Directive's⁴ implementing measures already include durability requirements that must be met by manufacturers. These durability requirements can be a suitable basis for establishing longer legal guarantee periods than 2 years, such durability requirements should be systematically introduced for different product groups. By linking product law requirements and consumer contract law in this way, **longer and product-specific, mandatory guarantee periods for durable goods should be established.**
- In support of this scheme, a new **mandatory 'guaranteed lifespan label'** should be introduced in order to make the information on product duration/lifespans, covered by the legal guarantees, comparable and accessible for consumers.

¹ https://ec.europa.eu/environment/circular-economy/pdf/new_circular_economy_action_plan.pdf

² Communication from the Commission: the European Green Deal ([COM\(2019\) 640 final](#))

³ Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods

⁴ Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of Ecodesign requirements for energy-related products.

- For all types of products, **producers should be able to voluntarily offer a guarantee that stretches beyond the duration of the legal guarantee periods** by unilaterally declaring on the label a longer 'guaranteed lifespan' than the minimum required by legal obligations.
- To increase consumer confidence and avoid confusion as to who is the responsible party vis-à-vis the consumers, producers and sellers should be **made jointly and severally liable** under the legal guarantee scheme.

In the context of Eco-design:

- The **revision of the Ecodesign Directive**⁵ should systematically include durability and reparability criteria (such as the availability of spare parts, repair information and software updates) in the Ecodesign implementing measures. Moreover, the scope of the Directive should be extended beyond energy-related products and cover, for instance, textiles and furniture.

In the context of the right to repair:

- Targeted measures should be introduced that would **promote repair** (e.g., expansion of the guarantee period after repair/replacement, fixed deadlines to conduct repairs, obligation to provide replacement goods in certain situations).
- New information requirements on **reparability, availability of spare parts and updates** should be explicitly introduced in EU consumer legislation.
- **Repair services** need to be accessible and affordable for consumers and of better quality.
- The EU shall consider developing an **EU repair index**. Such an index has a great potential to clearly inform consumers about how "repairable" products are by displaying a reparability score.
- The European Commission should assess how different **intellectual property rights** would apply vis-à-vis the "right to repair" products and, where necessary, to provide targeted exceptions and limitations to such rights enabling the reparability of products in compliance with the law.
- For **connected products**, software updates should be provided by manufacturers and service providers for a minimum period of time corresponding to the expected lifespan of the product.

In the context of the Unfair Commercial Practices Directive (UCPD):

- The UCPD should **ban specific practices** that could lead to **early product failures**, limit the possibility of repair or mislead consumers about product durability.

⁵ The revision of this Directive is foreseen in Q4 2021 in the framework of the Sustainable Product Initiative.

1. Introduction

Consumer research and testing shows that many products today do not live up to consumers' expectations as they are not lasting as long as they reasonably could and should. This is putting an avoidable strain on people's pockets and the environment.

While some measures have been taken to improve the design of products in recent years⁶, more efforts need to be undertaken to make sure that products become sustainable. This means products need to be resource efficient, durable, repairable, easy to maintain, upgradeable, reusable, easy to remanufacture⁷ and to recycle. To this aim, the EU must improve the current situation by adapting existing instruments and, where necessary, introducing new ones in order to put consumers at the centre of the green transition.

In the second Circular Economy Action Plan⁸, published in March 2020, the European Commission announced that it will work towards establishing a new 'Right to Repair'. This commitment was confirmed again in the new Consumer Agenda published in November 2020. BEUC welcomed these announcements. In our view, this new right can be an important tool to reach better resource efficiency and a more circular economy.

In this paper we will elaborate on what needs to be put in place **to ensure that products become more durable** and what should be addressed under **consumers' new 'Right to Repair'**. This requires a holistic approach to improving the design of products, service availability and quality as well as consumer information and consumer rights.

2. Guarantee rights

2.1. Longer legal guarantees for durable goods

Under the recently revised Sale of Goods Directive⁹, the legal guarantee period is set at the minimum of two years. Unfortunately, only a limited number of Member States¹⁰ currently go beyond this minimum. This is disappointing, especially in the light of the need to reach more sustainable production and consumption and circular economy goals.

Longer guarantee periods provide an important incentive for sellers and producers to offer more durable goods and increase the chance of getting them repaired instead of being replaced with a new good prematurely. Whilst it is positive that "durability" has been introduced as a new objective requirement for contractual conformity via the recent revision of the Sales of Goods Directive, this change is not sufficient as the guarantee period only lasts for two years (in most countries). Moreover, legal guarantees are only binding on the seller and don't have any direct impact on the producer.

⁶ For instance, EU legislation on Ecodesign and energy efficiency have helped eliminate the least performing products from the market by setting minimum mandatory requirements implemented through product-specific regulation (https://ec.europa.eu/energy/topics/energy-efficiency/energy-efficient-products/list-regulations-product-groups-energy-efficient-products_en?redir=1).

⁷ where a used product is returned (or collected through take-back schemes such as leasing or deposits), followed by a process of product disassembly, cleaning and rebuilding the product to specifications of the original manufactured product: <https://beedie.sfu.ca/sms/admin/DocLibrary/ic/aa3d4ffd2083bdbbbb4521e9a5e09df5e.pdf>

⁸ https://ec.europa.eu/environment/circular-economy/pdf/new_circular_economy_action_plan.pdf

⁹ Directive 2019/771 on certain aspects concerning contracts for the sale of goods, published in the official journal on 22nd May 2019.

¹⁰ For an overview on which countries are currently applying longer legal guarantee periods, see the table in the annex to the following BEUC paper: https://www.beuc.eu/publications/beuc-x-2016-053_csc_beuc_position_paper_on_tangible_goods_proposal.pdf

The introduction of a framework for a voluntary commercial guarantee of durability¹¹ (which requires the producer providing this guarantee to be directly responsible towards the consumer for repair and replacement under the same conditions as within the legal guarantee scheme) as stipulated in the new Sales Directive, will have a very limited practical importance. This type of guarantee remains a voluntary instrument that will depend on the good will and commercial gesture of the producer.

Instead, below we explain how the existing legal guarantee scheme could be strengthened to better reflect different product lifespans:

First, for durable products such as white goods, legal guarantee periods should be expanded. Due to different characteristics of specific product categories, the general provisions of the EU sales law which stipulate the same guarantee period for all goods, might not be appropriate. For this purpose, specific measures should be taken by product specific legislation.

Durability requirements should be systematically introduced in the Ecodesign implementing measures or other product legislation and become the basis for establishing the legal guarantee period^{12,13}.

Moreover, for all types of products, producers should be able to **voluntary offer a guarantee that stretches beyond the duration of the legal guarantee periods** via a declaration about the longer lifespan of a product¹⁴.

Finally, in order to make the information on product lifespans and the duration of the legal guarantee comparable, accessible and understandable, a **mandatory 'guaranteed lifespan label'**¹⁵ **should be introduced at EU level for all products whose lifespan is two years or exceeds two years**¹⁶.

The graphs below illustrate hypothetical examples of the above-described concept for guarantee timelines for four different products. In this example: products A and B are not covered by the Ecodesign Directive while products C and D are durable products for which the legal guarantee period of 7 years was established under the Ecodesign implementing measures.

Producers of products A and C decided to stick to the minimum requirements when informing about their products' lifespans, but producers of products B and D wanted to

¹¹ Art. 17 of the Directive 2019/771.

¹² Such link between EU sales law and product policy legislation has been already analysed in the literature and various studies. For example, the [European Parliament Impact Assessment Study from 2017](#) (PE 610.999), which assessed different policy options for the lifespan guarantees on the basis of the substantive amendments tabled at the time to the proposed online sales and digital content directives concluded that, option 4 (binding technical standards for the duration of lifespan) had *"by far the largest potential to contribute to the emergence of sustainable pan-European products. The objective of strengthening the single market for durable goods would therefore be best achieved under this option"*.

¹³ The currently ongoing Impact Assessment studies, especially the one preparing the legislative proposal on Sustainable Product Initiative, should investigate these aspects and the potential links between EU consumer sales law and product policy instruments.

¹⁴ If a declaration about a longer lifespan expanding the legal guarantee period was done by a producer, the seller shall have the right to pursue remedies against him/her (in respect of the right of redress principle as regulated in the art. 18 of the Directive 2019/771).

¹⁵ An obligation to ensure that a product is accompanied by such a label could fall on the producer or in a broader sense on a supplier, like it is the case for the EU energy label. A supplier is defined in the EU Energy Labelling Framework Regulation (Regulation 2017/1369) as: a manufacturer established in the Union, the authorised representative of a manufacturer who is not established in the Union, or an importer, who places a product on the Union market.

¹⁶ A general exception from the obligation to carry such an EU label could be introduced for products with lifespans shorter than two years, which is justified by their composition and purpose.

differentiate themselves on the market and therefore voluntarily indicated longer lifespans for their products on the dedicated label.



2.2. Joint and several producer – seller liability

2.2.1. Background

Under EU consumer law¹⁷, the seller is the only party liable to the consumer for any product's lack of conformity under the legal guarantee right. This construction originates in the legal traditions of Member States and the principle of 'relativity of contract' (also called 'privity of the contract'), according to which a contract can generate rights and obligations only to the parties of such agreement (hence not the producer who does not have a direct contract with the consumer). However, over time, various exceptions to this rule have already been made both in tort and contract law leading to a number of Member States introducing various forms of *direct* liability for producers¹⁸.

It has been a long-standing BEUC demand to introduce direct producer liability¹⁹ but member states reticence to harmonise this area of law did not allow progress at EU level to ensure all consumers are protected. In the light of the current efforts to shift towards a more circular economy, this is now more important than ever. This is because **an EU-wide direct producer liability would create a real incentive to produce more durable goods** and effectively tackle the issue of premature obsolescence. This is even more pertinent at a time when products are becoming increasingly sophisticated and complex, and sellers have no influence on the product quality and durability or the potential design flaws.

There are **many important arguments in favour** of making producers liable for product defects as it would:

¹⁷ Both under Directive 1999/44/EC and the new sales directive (Directive 2019/771).

¹⁸ European Perspectives on Producers' Liability: Direct Producers' Liability and the sellers right of redress: comparative report, 2009, Martin Ebers, André Janssen and Olaf Meyer.

¹⁹ See for example, BEUC position paper on the proposal for a directive on certain aspects concerning contracts for distance sales of goods, [BEUC-X-2016-053](#)

- incentivise the producer to design better quality and more durable products;
- impose a liability on the party which is in most cases responsible for the product defect and thus reflect the reality of today's markets;
- make more sense for consumers, who often find the current system counter intuitive;
- put the responsibility on the producer who is generally better placed than the seller to address the defect;
- allow consumers to choose whether to direct a claim against a seller or producer, which would increase consumer protection and encourage more consumer confidence on the market;
- be more in line with consumers' legitimate expectations for quality according to the producer or brand's reputation;
- ensure better redress, in cases where the producer is more accessible than the seller, e.g., when the purchase was made in another Member State, or in cases where the seller becomes insolvent;
- avoid unnecessary legal proceedings (i.e., several court proceedings between different suppliers in the distribution chain, seeking redress from one another);
- lift the practical difficulties to launch collective redress proceedings on the basis of the legal guarantee right. Currently, it is often the case that hundreds of retailers sell the same defective product, making a collective action against a single seller inefficient. It would be much easier if a collective claim could be aimed towards the producer of the good in question directly. This would also create additional pressure on producers to make better quality products.

An important recent example of the limitations that the current system brings is the **Dieselpgate scandal**. Defeat devices were installed by the car producer itself without any involvement (or even the knowledge) of the sellers. However, since there is no direct claim against Volkswagen available under the EU Sales Directive, consumer court actions had to be launched against different sellers separately, which does not create a sufficient deterrent effect for the future, both for Volkswagen or any other car producer. Most of the collective redress cases against Volkswagen therefore had to be launched on different legal bases, e.g., national tort law, Unfair Commercial Practices Directive.

2.2.2. BEUC recommendation

BEUC recommends introducing **joint and several liability of the seller and the producer** in the Sales of Goods Directive or by means of a separate instrument leading to the same result.

The producer should be made liable for all non-conformities for which they are ultimately responsible, most importantly if the sold good (1) is not fit for the purposes for which a good of the same type would normally be used²⁰, (2) be of the quantity and possess the qualities and other features, including in relation to durability, functionality, compatibility and security normal for goods of the same type and which the consumers may reasonably expect²¹.

²⁰ Art. 7 (1)(a) Directive 2019/771.

²¹ Art. 7 (1)(d) Directive 2019/771.

This new **direct producer liability** should not replace the seller's liability. Instead, both the producer and the seller would be liable (jointly and severally liable) towards the consumer for the time period indicated on the EU lifespan label. This would allow consumers to decide towards whom to direct the claim. This decision could be based on geographical accessibility, the financial situation of the relevant party (e.g., big multinational producer vs a small local seller) or on the type of defect (e.g., consumers and their representatives might want to seek justice by directly targeting the party responsible for a product design flaw).

Such a system would incentivise producers to invest in making their products more durable but also provide consumers with an additional and alternative route to obtain redress. It would also reflect market realities much better: today's traders typically do not have any influence on the contractual conformity of the product and cannot repair it.

Both the seller and the producer against whom a consumer directs his/her claim, should have the right to pursue remedies against another person or persons in the chain of transactions, who was responsible for the product non-conformity due to their action or omission (so called 'right to redress' as currently regulated in art. 18 of the Directive 2019/771). However, they should remain the only parties directly liable towards the consumer.

The seller and the producer should also have the right to pursue such remedies against each other if only one of them is to blame for the product non-conformity.

2.3. Reversal of the burden of proof

Consumers should not be required to prove that a product's lack of conformity, including in relation to its durability, existed already at the time of its delivery. If this burden falls on consumers, it is often extremely difficult (if not impossible) due to the increasing complexity of goods (for example connected goods and goods with inbuilt AI systems), the need for technical expertise, the costs and unavailability of such expertise etc. for consumers to exercise their guarantee right and therefore risks rendering it completely useless.

The reversal of the burden of proof should therefore last as long as the legal guarantee itself. However, under certain limited circumstances, the burden of proof could be on the consumer in line with the case law of the CJEU²².

2.4. Transferability

In order to boost the second-hand market, it is also important to make the legal guarantee against the initial seller and the producer **easily transferable** to the next buyer. This measure, in addition to providing longer guarantees for more durable products, would significantly raise the confidence of consumers in the second-hand market which would lead to a stronger re-use culture and less unnecessary waste.

²² Judgment of the Court of 4th June 2015, [C-497/13](#), Faber vs Autobedrijf Hazet.

2.5. Incentives promoting repair

Additional measures can promote repair as a remedy within the legal guarantee scheme.

An extension of the legal guarantee period for at least six months, in cases where the product was subject to repair²³ (like it was recently introduced in France²⁴) could be considered. Similar measures already exist in several EU countries²⁵ and could be introduced also at EU level to promote repair among consumers.

An obligation to carry out the repair within a fixed time limit of 15 days could be also introduced. The currently stipulated provision of the repair within a 'reasonable time' is vague: consumers do not know when they can expect their product to be repaired and traders do not know how much time they have to do it.

If the repair causes inconvenience, traders could be required to provide consumers with a **temporary replacement product** with one of the same quality, until the repair is carried out in a satisfactory manner.

- **Longer and product-specific, mandatory guarantee periods for durable goods should be established.**
- In support of this scheme, a new **mandatory 'guaranteed lifespan label'** should be introduced in order to make the information on product duration/lifespans, covered by the legal guarantees, comparable and accessible for consumers.
- For all types of products, **producers should be able to voluntary offer a guarantee that stretches beyond the duration of the legal guarantee periods** by unilaterally declaring on the label a longer 'guaranteed lifespan' than the minimum required by legal obligations.
- Producers and sellers should be **jointly and severally liable** under the legal guarantee scheme.
- The **reversal of the burden of proof** on the trader/producer should be equal to the length of the legal guarantee period.
- Additional measures should be introduced that would **promote repair** (e.g., expansion of the guarantee period after repair/replacement, fixed deadlines to conduct repairs, obligation to provide replacement goods in certain situations).

²³ To be most efficient, such prolongation should apply to the entire product and not just to its repaired part.

²⁴<https://circulareconomy.europa.eu/platform/sites/default/files/anti-waste-law-in-the-daily-lives-of-french-people.pdf>

²⁵ New guarantee after the repair or replacement exists already in Austria, Croatia, Denmark, Estonia, Greece, Slovenia and was also recently introduced in France. In Hungary, Poland, Portugal, Slovakia and Spain a new guarantee is given after the product was replaced.

3. Towards an EU right to repair

3.1. “Right to Repair” and its importance for the green transition

In the second Circular Economy Action Plan²⁶, published in March 2020, the European Commission announced that it will work towards establishing a new ‘Right to Repair’. This commitment was confirmed again in the new Consumer Agenda published in November 2020. BEUC welcomed these announcements.

Ensuring the reparability of products when they fail is critical for a resource-efficient circular economy, and such a ‘right to repair’ for consumers requires a holistic approach. This includes measures linked to product design, consumer information, repair services and guarantee rights. The right to repair is much broader than (and therefore should not be confused with) the contract law remedy of repair which is available to consumers in certain cases of products non-conformity during the legal guarantee period.

In the following sections, we expand on certain aspects of the right to repair. First, we discuss the importance of point-of-sale information for consumers on durability and repair. We then focus on the essential steps needed in terms of durability and repair by design. Beyond improving the physical design of products, such as the ease of taking a product apart (ease of disassembly) for repair or to replace a component, the Ecodesign Directive can also set minimum requirements that ensure access to spare parts and repair information.

For consumers to exercise their right to repair, dedicated services need to be accessible, affordable and of good quality for consumers. To that end, we introduce possible measures to improve consumers’ experience of repair services. We highlight how intellectual property rights can pose barriers for repair and we also discuss software aspects that need to be considered to ensure the functionality and security of our products, as well as their repair.

3.2. Consumer information to make sustainable choices

Today, consumers do not know much about the different lifespans of products. Even though consumer organisations increasingly incorporate this aspect into their product testing, there is no comparable information available at the point of sale.

According to a Commission’s behavioural study from 2018²⁷, consumers lack information on product durability and reparability whilst such information is potentially very influential on their purchase decisions. The study also showed consumers would be ready to pay more for more durable/repairable products²⁸.

²⁶ https://ec.europa.eu/environment/circular-economy/pdf/new_circular_economy_action_plan.pdf

²⁷ https://ec.europa.eu/info/sites/info/files/ec_circular_economy_final_report_0.pdf

²⁸ See for more information page 12 of the above-mentioned study.



Our members' experience and research confirm these findings. Consumers are also concerned about their wallets and increasingly realise that purchasing durable products

2018 Behavioural Study on Consumer Engagement in the Circular Economy:

Consumers are almost three times more likely to choose products with the highest durability and more than two times more likely to choose products with the highest repairability ratings. The impact was the strongest when durability and repairability information were presented together.

pays off in the long run. A recent study conducted by BEUC member vzbv²⁹ confirmed that in four product groups alone, consumers in Germany could save €3.67bn per year if products lasted longer.

In order to help consumers make more sustainable choices, but also to create the conditions for companies to compete on better quality and durability criteria, **new information requirements covering**

repairability, availability of spare parts and updates should be added to EU law. This can be done, for example, by amending the Consumer Rights Directive³⁰ (e.g., by adding these new information requirements to the list of pre-contractual information) and the Unfair Commercial Practices Directive³¹ (e.g., to be included explicitly amongst the information related to the main characteristics of a product).

Finally, BEUC recommends the EU to also consider developing an **EU repair index**³² to better inform consumers about how repairable products are. This index should complement the guaranteed lifespan label and could eventually become a broader sustainability/durability index. The European Commission should ensure that this type of information is relevant, comparable, and reliable.

Independent consumer organisations should be involved in the development of this mandatory index, relevant indicators and the methodology used for its development.

BEUC recommends that new information requirements on **repairability, availability of spare parts and updates** are explicitly mentioned in the EU consumer legislation.

The EU shall also consider developing an **EU repair index**.

²⁹ For more information, see: <https://www.vzbv.de/pressemitteilung/studie-zu-langlebigkeit-von-produkten-qualitaet-zahlt-sich-aus>

³⁰ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council.

³¹ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council.

³² A repair index was already introduced in France and will progressively appear in France as of 2021 on five selected product groups (smartphones, computers, TVs, washing machines and lawn mowers). In 2024, it will most probably transform into a broader durability index.

3.3. Durability and repairability by design

The European Commission estimates that 80% of products' environmental impact is determined at their design phase.³³ Likewise, their durability is closely related to the way they are designed. Short-living products are often synonymous with poorly designed items that break too quickly and are difficult to repair. Building products that are designed to last is therefore not only important to protect consumers against the burdens of premature obsolescence, but also to limit the negative environmental impact from the unsustainable use of resources and the creation of excessive waste.

Consumer research and testing has demonstrated that **the design of products often makes them difficult or impossible to repair** and consequently shortens their lifespan. On their 'Trop vite usé' platform, Belgian consumer group Test Achats indicates that 82% of consumer repair attempts failed even though most of the reported products were less than three years old³⁴. A similar outcome was observed in Italy by consumer group Altroconsumo when testing how repairable smartphones and tablets currently are³⁵. They found that most ICT products are not designed to be repairable, as spare parts are often unavailable and it is frequently impossible to safely open them. Based on consumer survey data collected through the PROMPT [project](#), the largest proportion of respondents in most countries³⁶ indicate that they consider repair too expensive (25-37%). Other barriers include difficult diagnosis, lack of information on repair procedure and repair time needed.

The PROMPT project, conducted jointly with our member organisations Test Achats, OCU, Stiftung Warentest, UFC-Que Choisir and Consumentenbond, is examining the different aspects contributing to premature obsolescence³⁷. Its major output will be the development of an independent testing programme that can assess the lifespan of consumer products, focused on smartphones, TVs, washing machines and vacuum cleaners.

Consumers experience premature failures with many different types of products. The dominant business model in the fashion industry, for example, is that of offering cheap, low-quality and short-lasting items to consumers, while encouraging them to frequently discard and buy new ones³⁸. As reported by the European Environment Agency, "in the past decades, the price of clothes has fallen relative to inflation, and each item is used less than in the past"³⁹. This model is responsible for substantial environmental and social damage throughout the whole supply-chain and calls for prompt corrective action, to ensure that clothes are designed to be of good quality, long-lasting and, when necessary, easily repairable.

To address these shortcomings, the European Commission can make use of the **Ecodesign Directive**, the EU law setting rules to improve the environmental performance of products from the design stage.

Initially, Ecodesign rules focused on setting energy-efficiency criteria. Overtime however, durability and reparability requirements started playing an increasingly important role and some implementing Regulations started establishing minimum lifetime requirements for certain key components (although these so far only exist for lamps and vacuum cleaners). In 2019, the European Commission adopted five Ecodesign implementing Regulations

³³ https://ec.europa.eu/environment/circular-economy/pdf/new_circular_economy_action_plan.pdf

³⁴ <https://www.test-achats.be/trop-vite-use>

³⁵ <https://www.altroconsumo.it/hi-tech/smartphone/news/riparazione-telefoni-e-tablet>

³⁶ Including data from DE, FR, BE, ES, IT and PT consumers.

³⁷ PROMPT is a H2020-funded research project set to develop a Premature Obsolescence Multi-stakeholder Product Testing Programme. Alongside national consumers organisations, the consortium includes umbrella consumer groups (BEUC, ANEC, ICRT), research institutes (IZM, Delft University of Technology) and repair companies and platforms (R.U.S.Z. and iFixit GmbH). Project website: <https://prompt-project.eu/>

³⁸ <https://news.un.org/en/story/2019/03/1035161>

³⁹ <https://www.eea.europa.eu/themes/waste/resource-efficiency/textiles-in-europe-s-circular-economy>

promoting consumer product durability and repair by, for example, making spare parts available over a long period of time after purchase (e.g., 10 years for household dishwashers) and making spare parts replaceable with the use of commonly available tools.⁴⁰ While these measures are extremely important from the perspective of durability and reparability by design, they are limited in scope as they only apply to a restricted amount of household electrical appliances and are not systematically applied. It is therefore of utmost importance that **the existing durability and reparability requirements under the Ecodesign instruments are not only strengthened but also systematically extended to other products.**

To make this possible, the Ecodesign Framework Directive and its implementing tools, including the Methodology for Ecodesign of Energy-related Products (MEErP) and the Ecodesign and Energy Labelling Work Plan, should be reformed. While over the past ten years they have brought better performing products to the market and extensive financial benefits to consumers, not enough product groups and sustainability criteria are yet covered by the Ecodesign legislation. In order to unlock the full potential of the Ecodesign instruments, their scope must be extended to non-energy related products (such as textile and furniture) and durability, reparability and upgradability requirements must be introduced across product groups. The European Commission should also progress with the revision of existing implementing measures to keep pace with technological advancement, as well as with the adoption of new implementing Regulations for additional consumers relevant products (such as ICT products and small domestic appliances).

The European Commission announced its intention to propose to review the Ecodesign Directive⁴¹. The impact assessment to the revision process should systematically investigate the possibility of setting horizontal sustainability criteria applicable to all products, including, for example:

- Making products of better quality and less prone to wear and tear of single components that artificially shorten their lifetime;
- Defining lifetime and durability requirements;
- Making spare parts, repair services and software updates available at a reasonable cost;
- Ensuring that the various product components are easily accessible with commonly available tools;
- Making repair manuals available to consumers.

Finally, the European Commission is currently working on the revision of the 'Methodology for Eco-design of Energy-related Products' (the MEErP) which identifies potential Ecodesign requirements for a specific product group. The Commission announced the revised methodology will address more systematically the inclusion of material efficiency aspects (including reparability, upgradability and durability) in the design options. This is a step in the right direction. However, since the scope of the methodology is currently limited to energy-related products (such as TVs, computers, dishwashers and refrigerators), BEUC recommends that the preparatory study for a future Ecodesign method also investigates how non-energy using and non-energy related products could be incorporated. In line with the actions announced under the Sustainable Product Initiative⁴², it should explore, for example, the case of furniture and textiles.

⁴⁰ https://ec.europa.eu/commission/presscorner/detail/en/qanda_19_5889.

⁴¹ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12567-Sustainable-products-initiative>

⁴² The Sustainable Products Initiative (SPI) aims to make sustainable products the norm in the EU market, enhancing among others their durability, reparability, reusability, recyclability and energy efficiency. The initiative will include a revision of the Ecodesign Directive, which would need to be extended to a wider scope of products beyond energy-related ones. Additional measures to incentivise sustainable production and consumption could also be part of the initiative.

The European Commission will propose to **revise the Ecodesign Directive** in 2021. BEUC recommends that new rules systematically include durability and repairability criteria (such as, lifetime requirements, the availability of spare parts and software updates). The Directive should be extended beyond energy-related products and cover, for instance, textile and furniture.

Until the new Ecodesign rules are adopted and applicable, the European Commission should make use of the tools already at its disposal. The **new Methodology for Ecodesign of Energy-related Products** (the MEErP) should cover durability and repairability criteria for all products. This way, when developing Ecodesign criteria for a new product group, the European Commission should already systematically set up requirements aimed at prolonging products' lifetime.

3.4. Enabling repairs and their accessibility for consumers

3.4.1. Spare parts - setting new legal requirements obliging manufacturers to make them available at a reasonable cost

One of the main barriers to performing repairs is the lack of affordable, and sometimes just even available, spare parts⁴³. This can lead consumers to discarding products which could have been put back to use after a simple part replacement - an important concern for consumers, both financially and environmentally. The high cost of spare parts largely contributes to making repairs more expensive for consumers, sometimes even more than the purchase of a new product. Therefore, requirements on spare parts need to be set to materialise consumers' right to repair.

Spare parts should be available at least for a period that reflects the normal lifetime of a product and continue after the last product is placed on the market⁴⁴. As shown in the previous section, the **Ecodesign Directive** can set requirements for products that ensure access to spare parts and repair information. The European Commission already started adopting Ecodesign regulations requiring making spare parts **available over a long period of time after purchase**⁴⁵. The upcoming review of the Ecodesign Directive is an opportunity to make horizontal requirements for all products needing spare parts for repair. At the same time, a concrete information obligation should be put on traders to inform consumers about the period for which these spare parts will remain available. Without it, consumers might not be aware about these favourable changes (for more information see section 2 of this paper).

The lack of access to spare parts is also a major barrier for repair services, especially independent ones, as manufacturers can exercise a monopoly on the spare parts market, for instance restricting their access to licensed services of a specific brand⁴⁶. Producers need to be legally required to make spare parts available at a reasonable cost, for example under Fair, Reasonable and Non-Discriminatory (FRAND) terms.

Lastly, it should be investigated how **standardisation** could help ensure compatibility when replacing parts, and between the product and tools or equipment used for

⁴³ [https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/640158/EPRS_BRI\(2019\)640158_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/640158/EPRS_BRI(2019)640158_EN.pdf)

⁴⁴ https://www.beuc.eu/publications/beuc-x-2015-069_sma_upa_beuc_position_paper_durable_goods_and_better_legal_guarantees.pdf

⁴⁵ https://ec.europa.eu/energy/topics/energy-efficiency/energy-label-and-ecodesign/regulation-laying-down-ecodesign-requirements-1-october-2019_en

⁴⁶ https://prompt-project.eu/wp-content/uploads/2020/07/PROMPT_20200229_State-of-the-art-of-design-strategies-and-design-principles-in-relation-to-obsolence.pdf

maintenance. It can also minimise the number of different spare parts that need to be stocked for maintenance/repair support⁴⁷.

Spare parts are crucial for the reparability of products – they must be available and affordable both for consumers and professional repairers (including independent repair services), at least for a period that reflects the normal lifetime of a product and continue after the last product is placed on the market.

Such legal requirements for spare parts could be set through the upcoming Sustainable Product Initiative, with the review of the Ecodesign Directive and the introduction of horizontal requirements. Sectoral legislation such as ICT-specific, such as the upcoming Circular Electronics Initiative, should also set requirements for spare parts.

3.4.2. Repair manuals and instructions

While consumers are usually provided with essential maintenance instructions and tips for repairing small defects as part of a product's technical manual/user guide, companies often do not share essential information which is necessary to perform a deeper repair of a product. This is even more visible for more technically advanced products, where consumers have very small chances to repair products themselves and therefore increasingly depend on the manufacturer. Consequently, consumers may turn to the internet to find out how to repair a product themselves, where they find information which might not be reliable and could lead to a safety risk during repair or using the product afterwards. To prevent this, it is important to make relevant information available from trusted sources.

The lack of information also puts independent repair services in a disadvantaged position compared to producers' licensed repairers. As a result, consumers are provided with less choice and availability of repair services, insufficient quality and higher costs.

Repair information and instructions should become more available and easily accessible. The Ecodesign Directive should set requirements for manufacturers to make repair manuals available for consumers and for independent repairers. A corresponding pre-contractual information requirement could be also introduced into the Consumer Rights Directive (CRD)⁴⁸.

BEUC recommends that consumers and independent repairers have a right to access repair information and instructions from manufacturers. The Ecodesign Directive should set requirements for manufacturers to make repair manuals available for consumers and for independent repairers. A corresponding pre-contractual information requirement could be also introduced into the Consumer Rights Directive.

⁴⁷ https://prompt-project.eu/wp-content/uploads/2020/07/PROMPT_20200229_State-of-the-art-of-design-strategies-and-design-principles-in-relation-to-obsolescence.pdf

⁴⁸ [Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights](#)

3.4.3. Repair services – measures to improve their quality, availability, and accessibility

Consumer research and testing has found that the trustworthiness, quality and pricing of repair services differs considerably. **Examples of unprofessional service** include⁴⁹ unnecessary replacement of components that are in a good state, being charged for parts that have not actually been replaced, or even being refused consumers' right to fill in a complaint form⁵⁰. Services may also perform more diagnostics and repairs than really needed, leading to consumers paying high amounts for a repair, sometime even higher than the cost of purchasing a new device⁵¹. In order to boost consumer confidence in repair services and to limit any negative consequences of repairs being unsuccessful and/or of poor quality, the EU should consider introducing the relevant liability rules protecting consumers.

The disparity of service is a major issue for consumers, who spend significant time and money on these repairs. Consumer research and testing has also shown that consumers do not necessarily get a better service from repairers licensed by manufacturers compared to independent repair services. In 2020, Stiftung Warentest tested ten mobile phone repair services in Germany: four online services, four on-site repair shops and two manufacturers services⁵¹. While one of the online services was very professional, for the others various issues were experienced, including long waiting times, the repair costing more than buying the same phone new, and in some cases, devices were even returned with further damage. In addition, while consumers are often provided with a replacement car when their vehicle needs to be repaired, this is usually not the case with household appliances or electronic devices.

Improving repair options and service quality is critical for consumers, particularly in a context of economic crisis as well as of increasing demands for sustainable consumption. Several measures can be envisaged. In order to improve repair services, we encourage:

- More focus at national level into staff training. Training can also help attract more people to work in this sector and develop the repair services offer. Promoting repairs can also create new business opportunities, for instance in the scope of economic post-COVID recovery programmes.

Repair services could also be encouraged by tax incentives, for instance lower VAT rates for repair services. Austria set a precedent in 2020: the governing coalition has agreed on a reduction of VAT (from 20 to 10%) on 'small repairs' for bikes, clothing and shoes⁵². In addition, several Austrian federal states as well as the city of Graz have also implemented a 'repair bonus' funding up to 50% of the total cost of a repair, up to a maximum of €100. This only applies to large and small electrical appliances from commercial establishments and consumers must apply to be reimbursed once the repair is done and an invoice has been paid:

- In parallel, initiatives raising **repairability by design will make it easier for services to diagnose and repair** (e.g., through easier disassembly such as avoiding sealed or glued components together)⁵³, and hence we expect costs to be significantly **more affordable**. This would help address one of the major barriers

⁴⁹<https://www.ocu.org/organizacion/prensa/notas-de-prensa/2012/http-www-ocu-org-tecnologia-y-comunicacion-hasta-138-euros-por-conectar-un-cable-s578364-htm>

⁵⁰<https://www.test.de/Kundendienste-fuer-Waschmaschinen-Die-Blaumann-Lotterie-5157127-0/>

⁵¹ <https://www.test.de/Smartphone-Reparaturdienste-Alle-sind-teuer-nur-einer-repariert-tipp-topp-4830658-0/>
⁵² <https://repair.eu/news/austria-makes-repair-more-affordable/>

⁵³ <https://www.which.co.uk/news/2015/06/are-washing-machines-built-to-fail-406177/>

for consumers to repair, which is the high cost of repair⁵⁴. Better information for consumers on repairability at point of sale can also create a culture of opting for more repairable products. Easier access to documentation, like repair manuals and schematics – not always made available by the manufacturer – is also key for services to repair more efficiently.

- Competition between the independent repair centres and licenced repairers using the OEM (Original Equipment Manufacturer) parts, should be also stimulated. More competition in after sales services will improve the consumer experience and make these services more affordable. Intellectual Property rights create barriers for independent repair services, as further developed under section 5.5 of this document.
- Besides quality, the **availability and easy access** of repair services for consumers is a key factor to improve. Most European consumers try to repair their products; however, they still face considerable barriers to repair, one of them being the effort needed often to arrange having their products repaired⁵⁵. To this end, better information for consumers on how to find good repair services, such as a directory at city or local level, is key.
- Consumer organisations need support to continue monitoring the quality of repair services, e.g., via mysterious shopping or comparing the quality and prices of different repair services.
- In parallel, authorities should ensure appropriate service is delivered, fining businesses if needed.

Consumers need to have access to better quality repair services. The availability and performance of these services can be improved through staff training, tax incentives or better access to repair information.

To boost consumer confidence in repair services, the EU should consider introducing liability rules that would protect consumers from unsuccessful/poor quality repairs.

In addition, regulation leading to more sustainable – and repairable – products, will also make it easier and more affordable for services (and consumers) to repair.

⁵⁴ These results are included in PROMPT's public deliverable D2.4, p.24 (https://prompt-project.eu/wp-content/uploads/2020/07/PROMPT_20200229_State-of-the-art-of-design-strategies-and-design-principles-in-relation-to-obsolescence.pdf).

⁵⁵https://ec.europa.eu/info/live-work-travel-eu/consumers/sustainable-consumption_en#behaviouralstudyonconsumersengagementinthecirculareconomy

3.4.4. Intellectual Property rights

If the reparability and availability of spare parts is not foreseen by the manufacturer, any attempt to repair the product or reproduce the spare parts by an independent service provider or the consumer could breach the proprietary rights of the manufacturer. Therefore, it is extremely important that an assessment how the different intellectual property (IP) rights would interact with the Right to Repair is made and, where appropriate, to consider including specific exceptions in such Intellectual Property rights regimes to ensure that those seeking to repair products or to provide repair services can do so in compliance with the law.

Devices with embedded software may also challenge traditional notions of ownership. Although consumers may think that they are the owners of their smart devices, they are actually only granted a limited license to the embedded software within the device. Further to this, IP law can raise legal barriers to the reparability of products due to the complex relationship between patent law, trademark law, copyright law and design law, which protect different components and characteristics of products⁵⁶.

The EU should assess how different intellectual property rights would apply vis-à-vis the right to repair products and, where appropriate, to provide the necessary exceptions and limitations to such rights enabling the reparability of products in compliance with the law.

3.5. Software obsolescence – need to make updates available and well designed

3.5.1. The importance of updates for (smart) product durability

Software updates for connected devices come in large numbers and concern various issues (security, functionality, resolving a bug, etc...).

Security updates

When consumers use a connected product such as a mobile phone, a smart TV or a connected toy, they may reasonably expect that it is as secure as other goods of the same type. In the latest review of the Sales of Goods Directive⁵⁷, this requirement was included in the list of objective criteria for conformity (art. 7 (1b)) which might trigger the legal guarantee right for products that do not comply with it. Moreover, many cybersecurity attacks are only possible precisely because the security protections of connected products are inadequate or outdated.

This is why it is so important that manufacturers and service providers provide the necessary security updates in a swift and efficient manner during a minimum period of time, taking into consideration consumer expectations and the expected lifespan of the product. For more durable products (e.g., smart fridges, connected and automated vehicles), security updates should be provided for the entire lifespan of the product.

⁵⁶ For an overview of the application of such rights see: Svensson Sahra et al., “The Emerging Right to Repair legislation in the EU and the US”, [https://portal.research.lu.se/portal/en/publications/the-emerging-right-to-repair-legislation-in-the-eu-and-the-us\(34ca32eb-5148-4b33-b82a-d7cfca46c672\).html](https://portal.research.lu.se/portal/en/publications/the-emerging-right-to-repair-legislation-in-the-eu-and-the-us(34ca32eb-5148-4b33-b82a-d7cfca46c672).html)

⁵⁷ Directive 2019/771 on certain aspects concerning contracts for the sale of goods, published in the official journal on 22nd May 2019.

Consumers should be informed at the time of the purchase about the expected lifespan for that specific product (for more information see section 2 of this paper). This period should also reflect the timeframe for which manufacturers will provide security updates.

According to the Cybersecurity Act (hereafter CSA), the manufacturer of *certified* devices shall make available information regarding the period during which security support will be offered to end users, in particular as regards the availability of cybersecurity updates (Art. 55 (1) b)). While we strongly support the reasoning behind this rule, it is important to point out that the certification schemes put in place by the CSA are only voluntary in their nature and anyhow are currently not available for consumer goods.

One major challenge that consumers face when purchasing a connected device is to know what they can/should do with a device the software update of which has been discontinued and is thus no longer supported by its manufacturer. The lack of security support in the form of security updates renders devices vulnerable to malicious attackers. As a consequence, consumers face serious risks such as break-ins if their smart door lock is hacked, for example.

In addition to information about the cybersecurity support policy, consumers should be informed about the different possibilities whenever the manufacturer stops supporting the product (e.g., disconnect from the internet; dispose it in a responsible way; repairability options).

Functionality updates

In addition to the challenges related to security updates, functionality updates can also be a problem for consumers. Too many functionality updates, or the lack of them, or premature termination may reduce the functionality or performance of the device considerably.

It is important to enhance and improve the transparency of software updates for consumers. At present, it is not clear whether the proposed updates are necessary to improve security, to resolve a software bug, or to install new functionalities or whether they serve other purposes. Manufacturers must explain the reason of the update (functionality, security, etc.) and its impact on the product, and importantly, must not misuse the update for example to unilaterally change the conditions of the service.

Unfortunately, connected devices wearing out too fast is often a deliberate practice by companies to encourage consumers to drop old products in exchange of newer ones. Recently, Test-Achats⁵⁸ and OCU⁵⁹, BEUC Belgian and Spanish members respectively, launched legal proceedings against Apple over the planned obsolescence of several of the tech giant's iPhone models. In their action, they accused Apple of slowing down and degrading the performance of smartphones after consumers were nudged into installing new updates without informing people of the negative effects which might appear (for more information about this case see also section 7.1).

- Updates should be provided by manufacturers and service providers during a minimum period of time corresponding to the expected lifespan of the product.
- Consumers should be informed about the different possibilities once the manufacturer stops supporting the product (e.g., disconnect from the internet;

⁵⁸ <https://www.test-achats.be/action/espace-presse/communiqués-de-presse/2020/class-action-apple>

⁵⁹ <https://www.ocu.org/tecnologia/telefono/noticias/obsolescencia-iphone6>

dispose it in a responsible way). In any case, the features of a device that in theory do not require connectivity should continue to work when the product or service is not connected to the internet (e.g., connected water kettle should still heat water if disconnected).

- Manufacturers must explain the reason of the update (functionality, security, etc.) and its impact on the product, and importantly, must never misuse the update for example to unilaterally change the conditions of the service.

4. Tackle unfair commercial practices related to premature product failures

The phenomenon of **premature obsolescence** appears when a product is discarded too early. The reasons for this can vary and different types of premature obsolescence exist, such as:

- Quality obsolescence – e.g., when one or more product functionalities fail which leads to the product breaking down or if its functional performance significantly declines over time;
- Technological obsolescence – e.g., when a new innovation prevents the product from functioning properly or if a new product outperforms the old one;
- Economic obsolescence – when a new product has lower usage costs than the old one (e.g., due to a lower energy consumption);
- Ecological obsolescence – e.g., if a new product is less harmful to the environment than the old one;
- Aesthetic, psychological, or social obsolescence – when the new product becomes more desirable and attractive even if the old one can be still functional;
- Legal obsolescence – e.g., if the old product becomes obsolete due to the new legal requirements that it does not fulfil any longer (e.g., safety standards).

On the other hand, the term planned obsolescence is used for the activities and strategies applied by traders that lead to the early product failures and can be characterised by intent. To date, France is the only country within the EU that has introduced explicit provisions prohibiting planned obsolescence into their legislation (in 2015). This practice is defined as the use of techniques by which the person responsible for placing a product onto the market aims to deliberately shorten its lifespan to increase its replacement rate. Such an offence is punishable in France by two years' imprisonment and a fine of €300,000.

At the EU level, premature obsolescence practices can be considered an unfair practice under the Unfair Commercial Practices Directive or non-conforming with the contract under the Sales of Goods Directive. However, these legal instruments have important shortcomings and do not provide sufficient means to effectively remedy any structural and reoccurring issues linked to the early obsolescence of products.

The European Commission's UCPD guidelines⁶⁰ define planned obsolescence as a commercial practice involving deliberately planning or designing a product with a limited useful life so that it will become obsolete or non-functional after a certain period of time. According to this guideline document, under art. 7, traders who fail to inform consumers that a product has been designed with a limited lifetime might, according to the specific

⁶⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0163&from=EN>

circumstances of the individual case, be considered to have omitted to provide material information. However, this approach is very limited since it focuses on mere information to consumers about the limited lifespan of a product while it would be essential to also contribute to eliminating premature obsolescence practices as such.

Even if the design flaw leading to early obsolescence was not made on purpose, the mere fact of continuing to sell a product that will very likely fail prematurely should not be allowed⁶¹. This also in the light of the negative impact on the environment that is caused by faulty products continuing to be commercialised.

In order to remove any legal uncertainty and allow for more effective protection of European consumers against premature obsolescence, **BEUC recommends banning specific practices that could lead to early product failures, limit the possibility of repair or mislead consumers about product durability.**

Certain commercial practices should be explicitly named as **unfair omissions of the material information** within the Unfair Commercial Practices Directive (UCPD), for example:

- not informing consumers about the expected lifespan of a product contrary to the corresponding new information obligation that would be imposed on traders and the new rules to be established in product policy instruments;
- not informing consumers about design features that make it impossible for products to be repaired (e.g., sealed parts) or to be interoperable with other devices;
- not informing consumers about product repair prices higher than justified consumer expectations;
- not providing information regarding the availability of spare parts during the entire product lifespan, which can prevent the product from being successfully repaired.

Certain practices shall be banned as **unfair in all circumstances and added to the list in the UCPD annex**, for example:

- not fixing a structural problem with the product that leads to its early failure, within a reasonable time after it became known, and continuing to sell that product;
- imposing software updates on consumers that adversely affect the quality of the device (e.g., slowing down the device or software functionalities) without providing the corresponding information about the possible adverse effects of the update to consumers.

Finally, the **non-compliance with any specific legal obligations** that can be introduced into the horizontal legislation or product policy and sector specific legislation⁶², **should always trigger individual remedies for consumers**, such as contract termination or a price reduction.

Finally, if the above-mentioned practices are included in the UCPD and represent an EU-wide infringement and a coordinated enforcement action is launched by the CPC network (the network of national consumer protection authorities) to tackle them, the recent reform of the Directive's penalties provision⁶³ would allow the authorities to place much higher fines on offending traders (up to 4% of their annual turnover) which will create an additional deterrent effect. Moreover, the newly revised redress provision in art. 11, should ensure that all EU consumers can have access to effective remedies, including compensation for damages, contract termination and price reduction.

⁶¹ For an example of such a case, see the description of BEUC's coordinated enforcement action against Nintendo Switch in section 4.1.

⁶² Such as (1) not providing the updates necessary for the correct functioning of the product during its entire expected lifespan or (2) preventing or hindering repair through software.

⁶³ Directive 2019/2161 as regards the better enforcement and modernisation of Union consumer protection rules.

BEUC recommends banning specific practices that could lead to early product failures, limit the possibility of repair or mislead consumers about product durability.

4.1. Examples of enforcement cases by BEUC members of premature obsolescence

Apple smartphones

In 2017, media reported reoccurring problems with Apple smartphones crashing after the installation of a new software update with allegations emerging that this was done deliberately to push consumers towards purchasing new phone models. Subsequently, investigations into the breach of the Unfair Commercial Practices Directive were launched in Italy and France.



In Italy, in October 2018 the [Italian Consumers and Competition Authority \(AGCM\)](#) fined [Apple](#) €10m for not informing consumers about the malfunctions that their updates could cause or about their batteries' characteristics (lifespan, maintenance, repair procedures). The authority found also that Apple exerted undue influence over consumers as, on the one hand, it induced them to install a firmware update through insistent requests to download and install updates, as well as by not providing adequate assistance to consumers who wished to restore the previous functionality of their devices (which according to the AGCM constituted an aggressive commercial practice). This decision was later [upheld by the court](#) (in June 2020).

In France, in February 2020 the French authority in charge of consumer affairs ([DGCCRF](#)) [fined Apple](#) €25m for not informing consumers that the updates they installed were likely to slow down their devices and did not allow consumers to revert to the previous version of the operating system.

In December 2020, four consumer organisations (Test Achats, Altroconsumo, DECO Proteste and OCU) announced the launch of collective actions in their respective countries⁶⁴ seeking redress for consumers affected by this misleading practice.

⁶⁴ Court actions have been already launched in Belgium, Spain (both on 2nd December 2020) and Italy (on 25th January). The action in Portugal will be also launched soon.

Nintendo Switch

Nintendo Switch is a video games console developed by Nintendo and released in March 2017. It comes with two controllers called the Joy-Con. Shortly after Nintendo Switch entered the market, a recurring technical problem with its controllers came to light – an issue commonly known as the “**Joy-Con Drift**”.



The default manifests itself by the fact that the player cannot control the movement of the game characters anymore and thus it basically makes the use of the console impossible.

In France, UFC Que Choisir has already launched a **legal action**⁶⁵ against Nintendo on the basis of French law which prohibits practices related to planned obsolescence. This action is still pending.

In December 2020, ten consumer organisations⁶⁶ launched a **coordinated enforcement action** to collect consumer testimonies and verify whether this was an EU-wide issue and to ascertain how many consumers were affected. To this date, nearly **25,000 consumer complaints** have been collected via this joint action. On 27 January 2021, BEUC submitted an external alert to the CPC network (an EU network of consumer protection authorities) and called on it to further investigate this case and take urgent measures to protect European consumers from such unfair practices.

HP printers

In December 2020, the Italian Competition and Consumer Authority (AGCM) fined HP €10m for misleading and aggressive practices. The company introduced significant limitations to the use of non-original cartridges and failed to adequately inform consumers about it. The limitations were being renewed and modified through subsequent printer firmware updates (without properly informing consumers about the effects of such updates).

The case has been also subject to a class action in the United States.

On 3 May 2021, several BEUC members (Test Achats/Test Aankoop, Altroconsumo, OCU and DECO), sent a cease-and-desist letter to HP asking it to immediately stop these misleading practices and to compensate affected consumers in their respective countries⁶⁷.

Obliging consumers to only use the original brand cartridges (which are often much more expensive) without properly informing consumers about this, might lead to some products being prematurely replaced (as it might not cost much more to buy a new printer than to buy a new set of cartridges).

⁶⁵<https://www.quechoisir.org/nos-combats-switch-nintendo-l-ufc-que-choisir-denonce-l-obsolence-programmee-des-manettes-joy-cons-n72823/>

⁶⁶ UFC-Que Choisir, Test-Achats, Consumentenbond, DECO, Consumatori Italiani per l'Europa, Forbrukerrådet, Zveza Potrošnikov Slovenije – ZPS, Spoločnosti ochrany spotrebiteľov, KEPKA, EKPIZO

⁶⁷ For more information see : <https://www.test-achats.be/hightech/imprimantes/presse/hp-printergate>

5. Conclusions

With climate catastrophe just around the corner we need to act fast and make systemic changes to the way we live, consume and produce to avoid the worst effects of it. EU consumer protection legislation - after some improvements - can become a strong instrument to make these changes happen. It can empower consumers to make more informed purchase decisions, encourage and promote more sustainable consumption and longer-lasting products. More sustainable and durable products should become the norm on the EU market.

Given the urgency of the situation, the EU should make ambitious changes to render these laws climate-proof and lead the way towards a truly green transition for European consumers.

END



This publication is part of an activity which has received funding under an operating grant from the European Union's Consumer Programme (2014-2020).

The content of this publication represents the views of the author only and it is his/her sole responsibility; it cannot be considered to reflect the views of the European Commission and/or the Consumers, Health, Agriculture and Food Executive Agency or any other body of the European Union. The European Commission and the Agency do not accept any responsibility for use that may be made of the information it contains.