

The Consumer Voice in Europe

## SUSTAINABLE CONSUMPTION OF GOODS – PROMOTING THE RIGHT TO REPAIR AND REUSE<sup>1</sup>

Accompanying paper to BEUC response to the public consultation



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## 1. Introduction

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The European Commission has announced its plans to introduce a “right to repair” with the aim of making repairs more accessible for European consumers. BEUC welcomes this important commitment, urgently needed to facilitate our transition towards a more circular economy.

In order to introduce a comprehensive “**right to repair**”, the European Commission has foreseen a number of initiatives aiming at: (1) improving products’ designs to make them more durable and repairable (Sustainable Products Initiative<sup>1</sup>, New design requirements for electronics<sup>2</sup>, Batteries Regulation<sup>3</sup>); (2) Improving consumer information on durability and repairability aspects and fighting misleading commercial practices leading to premature product obsolescence (proposal for empowering the consumer for the green transition<sup>4</sup>) ; (3) Revising the EU Sales of Goods Directive<sup>5</sup> and; (4) Establishing a new consumer right to claim repair (for situations falling outside of the scope of legal guarantees) via a proposal on the right to repair<sup>6</sup>.

In this document, we would like to list BEUC’s recommendations for the last of the above-mentioned initiatives, the upcoming **proposal on the right to repair** (foreseen currently for Q3 2022).

## 2. Revision of the Sales of Goods Directive

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Various recent studies have rightly identified the Sales of Goods Directive as a tool with the highest potential within the EU consumer law landscape, to improve the durability of products and promote repair.

The European Commission is therefore now considering targeted amendments to the Directive focused on promoting the sustainable use of products.

### 2.1. Expanding legal guarantee periods for more durable goods

Under the EU sales law, European consumers have the right to have their faulty products repaired free of charge (remedy of repair under the legal guarantee scheme). The period for which this right applies (two years in most countries) is however not appropriate for many types of more durable goods (e.g., white goods, electronics etc) and does not properly reflect their real-world lifespans.

BEUC recommends therefore to introduce **longer legal guarantee periods for more durable products**, which could be established via the product specific legislation.

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<sup>1</sup> [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12567-Sustainable-products-initiative\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12567-Sustainable-products-initiative_en)

<sup>2</sup> [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12797-Designing-mobile-phones-and-tablets-to-be-sustainable-ecodesign\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12797-Designing-mobile-phones-and-tablets-to-be-sustainable-ecodesign_en)

<sup>3</sup> Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL concerning batteries and waste batteries, repealing Directive 2006/66/EC and amending Regulation (EU) No 2019/1020

<sup>4</sup> [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12467-Consumer-policy-strengthening-the-role-of-consumers-in-the-green-transition\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12467-Consumer-policy-strengthening-the-role-of-consumers-in-the-green-transition_en)

<sup>5</sup> Directive (EU) 2019/771 on certain aspects concerning contracts for the sale of goods

<sup>6</sup> [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13150-Sustainable-consumption-of-goods-promoting-repair-and-reuse\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13150-Sustainable-consumption-of-goods-promoting-repair-and-reuse_en)

Concretely, Eco-design implementing measures should serve as a tool to introduce **product-specific guarantee periods**, established on the basis of their lifespans.

Allowing for a differentiation between the guarantee periods and therefore better reflecting the characteristics of a particular product would be, in BEUC's view, the most beneficial both from the sustainability and fairness perspective.

Moreover, such expansion of the legal guarantee periods would not only facilitate access to repairs but also create an incentive for sellers and producers to offer more durable goods to consumers.

The need to introduce longer legal guarantee periods for certain product categories was also recently recognised by the IMCO Committee (European Parliament), which on 16 March 2022 approved (with wide political support) a motion for a resolution on the right to repair<sup>7</sup>.

## 2.2. Better information about the duration of the guarantee

In order to better inform consumers about the length of the guarantee period covering a specific product and therefore also indirectly about its durability, BEUC recommends the EU to introduce a **new mandatory EU label: 'guaranteed lifespan label'**<sup>8</sup> for all products whose lifespan is two years or exceeds two years<sup>9</sup>.

In BEUC's view, this new label should not distinguish between the type of guarantee (legal guarantee, commercial guarantee) but instead always display the highest number of years for which a product is covered by one of them. Legal guarantee periods should always be displayed on this label as a required minimum.

Such a label would not only allow to better inform consumers about the duration for which their products are covered by a guarantee but would also incentivise producers and sellers to offer commercial guarantees more often which would give them a competitive advantage in the eyes of consumers.

The Consumer Rights Directive already contains an information obligation for traders to remind consumers about the existence of the legal guarantee for conformity of goods. In addition, the recently published proposal on empowering consumers for the green transition through better protection against unfair practices and better information<sup>10</sup>, attempts to introduce a new information obligation on traders concerning the existence and duration of the commercial guarantee of durability. These provisions however do not define the format in which such information should be provided to consumers, while in fact this has a very high practical importance. The label proposed by BEUC, would allow consumers to have access to this information in an understandable and harmonised way. It would also prevent any consumer confusion between the legal (mandatory) and the commercial (voluntary) guarantees.

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<sup>7</sup> This motion for a resolution is now scheduled for a plenary vote on the 7<sup>th</sup> April 2022. It can be found here: [https://www.europarl.europa.eu/doceo/document/B-9-2022-0175\\_EN.html](https://www.europarl.europa.eu/doceo/document/B-9-2022-0175_EN.html)

<sup>8</sup> 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.

<sup>9</sup> 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.

<sup>10</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52022PC0143>

### 2.3. Direct producer liability

It has been a long-standing BEUC recommendation to introduce a **direct producer liability** within the legal guarantee scheme.

This new direct producer liability should not replace the seller's liability. Instead, **both the producer and the seller should be liable (jointly and severally liable)** towards the consumer. This would allow consumers to decide towards whom to direct their 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 would 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.

### 2.4. Reversal of the burden of proof

In order for consumers to be able to use their legal guarantee right in practice and therefore successfully claim repairs for their faulty products, 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. Providing such type of evidence can be extremely difficult for consumers and require costly technical tests, which are in most cases out of their reach. If we want to facilitate consumers' access to repairs, **the reversal of the burden of proof should last as long as the legal guarantee itself.**

### 2.5. Hierarchy of remedies

The current Sales of Goods Directive provides for a set of remedies that consumers might claim in case their product turns out to be faulty. In the first place, they are allowed to choose between repair and replacement.

**BEUC recommends that this choice is kept.** Even if repairs are a more sustainable choice, they cannot provide a solution for all types of products' non-conformities.

Instead of making repair the only primary remedy, **BEUC recommends introducing new measures to encourage repairs** by: (1) Limiting the possibility for traders to refuse repairs by adapting the so called 'proportionality test'<sup>11</sup>; (2) Excluding replacements in cases of minor defects; (3) Introducing an obligation to carry out the repair within a fixed time limit of 15 days and; (4) By introducing an obligation for traders to provide consumers with a temporary replacement product, if a repair causes an inconvenience to consumers.

Moreover, it needs to be also underlined that replacement as a remedy does not need to have a negative implication for the environment. The seller (and producer) should be encouraged to repair or refurbish the faulty product and to reintroduce it on the market at a lower price.

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<sup>11</sup> Under the Sales of Goods Directive, the consumer's choice is restricted when the chosen remedy is impossible or imposes disproportionate costs compared with the other remedy. The European Commission is currently considering introducing a new clarification that the costs for replacement are disproportionate if they are higher or equal to the cost of repair.

## 2.6. Obligation to provide software updates

In order to increase the durability of connected products, increasing the time periods for which the software updates are available, is key.

The latest revision of the Sales of Goods Directive has already introduced an obligation on the sellers to provide updates, including security updates, for goods with digital elements for the periods of time that consumers can reasonably expect given the type and purpose of the goods (art. 7 (3) Directive 2019/771), which is often understood as the period for which the seller is liable for the lack of conformity unless consumers' reasonable expectation could extend beyond that period (recital 31 of the Directive 2019/771).

However, in BEUC's view, these **provisions need to be further strengthened**. The current obligation to provide updates, which in most cases lasts only two years, is certainly not sufficient for many types of more durable goods with digital elements. On top of that, sellers are also not well placed to fulfil this obligation, which should rather fall on producers. BEUC's recommendations for the amendments to the Sales of Goods Directive, namely, to expand the legal guarantee periods for more durable goods and to introduce joint and several liability of the seller and the producer, would remedy the above-mentioned weaknesses of the current obligation to provide software updates.

## 2.7. Extension of the guarantee period after repair

The European Commission is currently considering proposing an extension of the legal guarantee period, in cases where the product was subject to repair. Similar measures already exist in several EU countries<sup>12</sup> and could be introduced also at EU level.

BEUC would welcome such an extension but **only as an additional measure** incentivising consumers to opt for repairs when exercising their legal guarantee right.

In case of more durable products, legal guarantee periods should, in a first place, be expanded to better reflect their lifespans.

## 2.8. Guarantee rights for second-hand goods

According to the current text of the Sales of Goods Directive, member states have a possibility to shorten the guarantee periods applicable to the second-hand goods, which however cannot be shorter than one year (art. 10 (6) Directive 2019/771). Several Member States have used this regulatory choice when transposing this directive into their national legislation.

In order to incentivise the second-hand market, **BEUC recommends deleting this regulatory choice from the directive**.

## 2.9. 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 is already the case in many Member States but should now be introduced also at the EU level.

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<sup>12</sup> New guarantee after the repair or replacement exists already in Austria, Croatia, Denmark, Estonia, Greece, Slovenia and was also recently introduced in France and Portugal. In Hungary, Poland, Portugal, Slovakia and Spain a new guarantee is given after the product was replaced.

This measure, combined with 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.

### 3. A new consumer right to claim repair

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The European Commission is considering establishing **a new consumer right to claim repair** for situations that are not covered by the current legal guarantee framework.

BEUC welcomes this initiative in principle and recognises the strong need to facilitate consumers access to repair in order to prolong the useful lifespan of products. However, in BEUC's view, **the priority should be given to amending the existing EU legal guarantee rights**. Most importantly, the legal guarantee periods for durable goods should be expanded and the possibility to hold producers directly liable should be introduced into the Sales of Goods Directive<sup>13</sup>.

It is crucial that the fact that the Commission pursues its idea to introduce a new right to claim repair does not mean that the much-needed changes to the legal guarantee rights will be put on the side, which de facto would mean consumers will have to pay for repair even when durable goods fail too early.

#### 3.1. Scope of the new consumer right to claim repair

The scope of the new consumer right to claim repair will most probably cover defects that do not fall under the scope of the legal guarantee framework, including the defects caused by the consumer.

BEUC supports this idea as an easier access to repairs should be always available regardless of the type of the defect.

It should be stressed however, that the real right to repair should not be limited to the new right to claim repair. It should also include other important elements such as the spare parts and repair manuals' availability, the need for a competitive market in this sector and affordable prices for spare parts and repairs by reducing VAT etc.

#### 3.2. Time periods to be covered by the new consumer right to claim repair

Like in the case of the legal guarantee periods, BEUC recommends that the periods to be covered by the new consumer right to claim repair are product-specific and based on the product lifespan.

#### 3.3. Producer and seller jointly liable under the 'right to repair'

Like in the case of the legal guarantees, BEUC recommends introducing the joint producer-seller liability for the new consumer right to claim repair. Involving the producer is important as this is the party in most cases responsible for the issues with the product and which is also better placed to repair them effectively. On the other hand, sellers might be more accessible to consumers in some cases. The best option is therefore to leave the choice to consumers to whom they direct their claim.

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<sup>13</sup> 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

### 3.4. Should consumers be charged for repairs under the new 'right to repair'?

It is crucial that consumers can claim **repairs free of charge during the legal guarantee period** which, as we explained above, **should be expanded for certain more durable goods**.

An argument often being raised, that allowing consumers to claim free repairs for longer than two-years would raise prices is in our view not accurate. According to the study<sup>14</sup> conducted by our French member UFC Que Choisir, raising the duration of legal guarantees from two to five years would not cause any significant price increases. The study estimated that the price increases could only range between 1% and 2.9%. In view of the economic gains (free repairs, lower rates of product replacements, boosted second-hand sales) and also the environmental gains (reduction of waste) they may prove to be a sustainable approach for consumers.

Moreover, if products are made more durable, it could bring very significant savings to consumers. A recent study<sup>15</sup> conducted by BEUC's German member vzbv confirmed that in four product groups alone, consumers in Germany could save €3.67bn per year if products lasted longer.

On the other hand, **for defects falling outside of the scope of these expanded legal guarantee rights**, e.g., defects caused by a consumer mishandling the product, **it is understandable that consumers would be asked to cover the costs of the repair**. The costs of repair should however remain economically reasonable and do not render the repair unattractive to consumers. Independent repair markets shall be promoted to render better repair options available to consumers.

### 3.5. Consistency with the legal guarantee framework

An important factor in Commission's considerations should be to avoid any unnecessary consumer confusion about different rights available to them (which defects are covered, who is liable, for how long, which remedies are available etc).

Whenever possible these two rights should therefore be aligned, e.g., producers and sellers should be jointly liable under both of these schemes, periods for which the right is available for certain types of goods should be defined on the product-specific basis via the Ecodesign implementing measures etc.

Otherwise, it can be very confusing for consumers if for example, only sellers are responsible for repairs under the legal guarantee scheme and only producers are responsible for repairs under the new consumer right to claim repair.

#### **Relevant BEUC papers:**

- BEUC [position paper](#) on "Durable and repairable products: Changes needed for a successful path towards the green transition".
- Joint BEUC and ANEC [position paper](#) on "Making more sustainable products the new normal. Consumer recommendations for a meaningful EU Sustainable Product Initiative".

<sup>14</sup> <https://www.quechoisir.org/dossier-de-presse-extension-a-2-ans-de-la-garantie-legale-une-information-du-consommateur-loin-d-etre-garantie-n12641/>

<sup>15</sup> For more information, see: <https://www.vzbv.de/pressemitteilungen/studie-zu-langlebigkeit-von-produkten-qualitaet-zahlt-sich-aus>

