

Observations from Video Games Europe to the European Commission proposal for a Directive on common rules promoting the repair of goods, and to subsequent reports in the European Parliament

Transparency register ID: 20586492362-11

August 2023

Introduction

1. Video Games Europe shares the European Commission's conviction that addressing climate change is one of the most critical challenges of the 21st and is committed to contributing to the EU green transition, and launched in 2019 the UNEP-facilitated [Playing for the Planet Alliance](#), encouraging studios and players across the globe to learn more about the impacts of climate change through in-game content. Our members also provide guidance to help studios reduce their environmental impact, and some have developed internal training tools to explain global warming and its causes, lay out the stakes of inaction, and provide specific insights and advice to employees based on their role ([learn more here](#)).
2. Video Games Europe welcomes the publication by the European Commission of its proposal for a Directive on common rules promoting the repair of goods, and supports the objective of the proposal to encourage repairs to promote more sustainable consumption of goods.

Executive Summary:

- **On pre-determining the consumer's remedy to favour repair over replacement during the legal guarantee period** – [See pages 2-3](#)

Under the [Games Consoles Voluntary Agreement](#), console manufacturers offer consumers the possibility to repair and/or refurbish consoles in authorised and qualified repair centres during and beyond the commercial guarantee period, thus ensuring access to repair over the entire lifecycle of a console. By having a pool of refurbished goods that they can immediately provide to consumers returning a good, console manufacturers have established a process for repairs that cater for the needs for greater circular economy (as efforts will be made for the damaged console to be refurbished for future re-use) and shorter delays for consumers (who will enjoy an immediate solution). **Therefore, Video Games Europe encourages co-legislators to consider a replacement by a refurbished good as equal to a repair under this proposal.**

- **On the provision of a loan for replacement during repair period** – [See pages 3-4](#)

Video Games Europe notes the suggestion made by the main rapporteurs in the ENVI and IMCO Committees on the proposal to provide a loan for replacement to consumers during time for repairs. We believe such a loan would prove impractical for consumers, manufacturers, retailers but also from a circular economy perspective. **Instead, Video Games Europe would suggest again to encourage co-legislators to consider a replacement by a refurbished good to be equal to a repair**, as it would allow for a quick solution for consumers whilst ensuring that the replacing good is not having a detrimental environmental impact by being produced anew.

- **On establishing maximum time limit periods to perform repairs** – [See pages 4](#)

Video Games Europe welcomes the decision from the European Commission to refrain from establishing maximum time limit periods for repairs, and **encourage co-legislators to favour the notion of "reasonable period of time", as established in Directive (EU) 2019/771**, which is clear enough in its Recital 55 that such period should be limited to its minimum. Manufacturers may not be in full control of factors surrounding the reception of damaged goods (shipping issues, strikes, delay for the consumer to actually ship the good, etc.) and therefore flexibility should be foreseen.

- **On extending the length of the legal guarantee** – [See pages 4-5](#)

Video Games Europe welcomes the decision from the European Commission not to extend the length of the legal guarantee period as evidence from the impact assessments surrounding the Sales of Goods Directive

([Directive \(EU\) 2019/771](#)) and of this proposal shows that such extension would lead to significant financial losses for EU companies against very little positive impact in terms of job creation and environmental impact.

- **On the pricing of the new right to repair** – [See page 5](#)

Video Games Europe welcomes the proposal's market-based approach regarding pricing for repairs. As noted by the European Commission in its impact assessment of the proposal, regulating the prices of repair could be detrimental to independent repairers, as 'if the price were to be regulated, all the repair demand would be channeled to the producer and the independent repairers would be foreclosed'. **Therefore, Video Games Europe encourages co-legislators to follow a similar approach.**

- **On further alignment and coherence with existing EU acquis** – [See page 6](#)

Video Games welcomes the willingness of the European Commission to ensure coherence with the existing EU legislative acquis and is concerned that some suggestions put forward by recent developments in the European Parliament could lead to legal uncertainty, namely on the inclusion of batteries as part of products to be covered by the proposal, and for the introduction of a direct liability for producers. **Video Games Europe would encourage for a proper impact assessment of such new provisions and encourage co-legislators to channel such provisions in adequate instruments to avoid legal uncertainty**, such as within the Batteries Regulation ([Regulation \(EU\) 2023/1542](#)).

Background information

On pre-determining the consumer's remedy to favour repair over replacement during the legal guarantee period

3. Console manufacturers¹ recognise the importance for consumers to have access to durable goods that can easily be repaired in a safe, secure and reliable manner. Under the [Games Consoles Voluntary Agreement](#), console manufacturers offer consumers the possibility to repair and/or refurbish consoles in authorised and qualified repair centres during and beyond the commercial guarantee period, thus ensuring access to repair over the entire lifecycle of a console².
4. Main characteristics of the repair and refurbishment process undertaken by console manufacturers can be described as follows:
 - i. All console manufacturers have at their disposal a stock of refurbished goods which may, in cases of return within the manufacturer's commercial guarantee period, be offered to consumers as a replacement at the point-of-sale to ensure a fast resolution, or as a solution when repair is not technically or economically possible on the consumer's unit.
 - ii. Then, returned consoles from consumers are sent to authorised repair centres for assessment, where operators carry out diagnostic and refurbishment operations. Refurbished goods are kept for resale or for consumer replacements as outlined above. Consoles beyond economic repair are, when feasible, harvested for reusable spare parts before being sent to secure recycling facilities for environmentally sound disposal.
 - iii. Alternatively, if the console is sent directly to the manufacturer or its authorised repair centre, repair is attempted on the same unit and returned to the consumer, with a process lasting on average less

¹ Including Sony Interactive Entertainment, Microsoft Xbox, and Nintendo.

² In addition, certain components such as the Hard Disk Drive or the External power supply are made directly available to professional repairers and end-users for a period of at least two years after placing the last unit of the Games Console on the market, thus encouraging more circular solutions for end-users to have their devices repaired.

than 14 working days³. If repair is not possible, the pool of refurbished console stocks ensures there is a solution for every consumer who has requested repair.

5. The above ensures that consumers are offered repairs or refurbishment without cost when provided within the period of the commercial guarantee, and at a reasonable price beyond that period, which would always be below the price required to buy a new good⁴. The whole process put in place by console manufacturers both prior to and under the Games Console Voluntary Agreement therefore favours repair and reuse over replacement by new goods and contributes to a more circular economy, as it is substantially cheaper for consumers to get their consoles repaired or replaced by a refurbished one⁵ rather than buying a new one.
6. Video Games Europe is concerned by the suggestion to always favour repair over replacement without making a distinction between replacement and refurbishment, as this could result in an increase to the cost of goods contrary to the interests of consumers, especially in cases where replacement by a refurbished good would be cheaper than repair⁶. To ensure more flexibility for manufacturers and consumers, we believe that this Directive should also allow for the replacement of defective goods with refurbished ones. This is both beneficial for circular economy ambitions while offering a quicker solution for consumers who would otherwise need to wait for their console's repair.
7. Video Games Europe welcomes the decision from the European Commission to pre-determine the consumer's remedy to favour repair over replacement only when the repair cost is less than or equal to the replacement cost. **However, Video Games Europe suggests that replacement by a refurbished good should be considered equal to repair. This measure, which has already been proven successful by the repair and refurbishment activities of console manufacturers, best achieves the circular economy objectives of the proposal whilst ensuring flexible and quick solutions for both consumers and manufacturers.**

On the provision of a loan for replacement during repair period

8. Video Games Europe notes the ambition of the main rapporteurs on the proposal in the IMCO and ENVI Committees of the European Parliament to include an obligation for providing a loan for replacement to consumers during time for repairs. Whilst Video Games Europe welcomes the willingness from co-legislators to encourage a more sustainable consumption of goods, we believe such a loan would prove impractical:
 - i. For consumers: Providing for a loan will create additional shipping costs to consumers as, in addition to sending their malfunctioning device to the manufacturer, they will need to ship their loaned device back to the manufacturer.
 - ii. For manufacturers: Offering for a loan for replacement can be problematic and open the door for potential fraud. Manufacturers expect such loaned devices will often not be returned (lost, theft) or returned in a poor condition (due to damage during shipping, or damage due to voluntary or involuntary mishandling of the good by consumers who would be less precautious of the device as it is not theirs). This would likely impact overall price of the good or of its repair, as the manufacturer would need to cover for the losses. Further, manufacturers fear that such provision could be used by organised crime as a manner to further deceive consumers through phishing attempts.

³ Depending on the repair performed and the country in which the repair has been requested, the length of the process can be further lowered to 6 to 7 working days.

⁴ Pricing can vary depending on the repair or refurbishment operations that must have been performed. The cost of such operations never exceeds 60% of the original price of the product, based on publicly available pricing at the time of writing.

⁵ Which would be in itself a console that has been repaired and properly reset to factory settings.

⁶ In such cases, consoles manufacturers currently favour refurbishment over repair, where most affected parts of the consoles would be sent to secure recycling facilities and replaced by new parts.

- iii. For retailers: Providing for a loan would require retailers to have a stock of multiple devices for replacement, implying they should invest in space and adequate conditions for storage and handling of such loaned devices. Retailers would also be exposed to the issues laid out above for manufacturers (good not being returned, or returned in poor conditions).
 - iv. This obligation also conflicts with the EU's circular economy and net-zero objectives, as such a provision will require additional shipping cycles and packaging materials as the manufacturer/retailer will need to ship the replacement device and then the repaired devices.
9. **Instead of the above, and as suggested in the preceding section, Video Games Europe would suggest co-legislators to allow for replacement with a refurbished good as a remedy to the consumer instead of providing for a loan, as it would allow for a cost-effective and time-effective solution whilst preserving the environmental ambitions of the proposal.**

On establishing maximum time limit periods for repairs during and beyond the legal guarantee period

10. Game consoles are complex electronic goods which often require thorough knowledge and skills to repair efficiently. Operators in authorised repair centres have access to the necessary information and are adequately trained to perform such repairs, meeting the required quality and safety standards expected by the consumer and required by European law⁷. From the consumer's perspective, the high level of expertise of such repair centres also allows for faster processing of their defective goods and out-of-warranty repairs, with a process lasting on average less than 14 working days⁸.
11. However, in some occasions, some defective goods may require difficult repairs which could lead to a longer repair process, further impacting the consumer especially if repair is favoured over replacement in all circumstances. In addition, there are factors outside of the manufacturer's control, such as postal delays and shipping issues, strikes, time it takes consumer to drop off the good, etc. that will most likely impact the ability of the manufacturers to meet its legal obligations should the maximum time limit to perform a repair be limited to a precise number of days⁹.
12. The current text of the Sales of Goods Directive ([Directive \(EU\) 2019/771](#)) already establishes in its Article 14(1b) that repairs or replacement shall be carried out "within a reasonable period of time". Recital 55 further clarifies that "*what is considered to be a reasonable time for completing a repair or replacement should correspond to the **shortest possible time necessary** for completing the repair or replacement*"¹⁰. Video Games Europe believes that such an approach is preferable to fixed periods as it provides flexibility for unforeseen issues whilst still ensuring delays for repairs are kept to a minimum.
13. **Therefore, Video Games Europe welcomes the decision from the European Commission to refrain from establishing maximum time periods for repairs, and encourage co-legislators to favour the notion of "reasonable period of time", as established in Directive (EU) 2019/771.**

On extending the length of the legal guarantee period

14. Video Games Europe welcomes the decision from the European Commission not to extend the length of the legal guarantee period. The recently revised Sales of Goods Directive which established a minimum

⁷ [Directive 2001/95/EC](#) on general product safety

⁸ Depending on the repair performed and the country in which the repair has been requested, the length of the process can be further lowered to 6 to 7 working days.

⁹ In addition, a tight time limit of 15 calendar days could lead to a situation where a manufacturer would be *de facto* required to use more carbon intensive shipping options (such as air freight)

¹⁰ Emphasis added.

two-year legal guarantee period for goods with defects that existed at the time of delivery remains sufficient. There is insufficient evidence to require a change from the position then endorsed by the European Commission and other EU institutional bodies. The European Commission's impact assessment in the review of that Directive found that 96% of problems with defective goods are discovered within the first two years from purchase.¹¹ Video Games Europe does not consider that capturing the remaining 4% by extending the legal guarantee period to the benefit of a small minority of consumers outweighs the disadvantage which would apply to all consumers, being the higher cost of goods without any impact on the actual expected lifespan of the good. Retailers would also need to plan for a potentially much longer time period for accepting returns and undergoing repair or replacement.

15. The impact of extending the length of the legal guarantee, or to restart it after a first repair, has also been estimated by the European Commission to have only very limited positive environmental, economic, or social impact. In its impact assessment accompanying the publication of the proposal, the European Commission estimates that extending the length of the legal guarantee would lead to an increase of only 0.3% of CO2 savings and of less than 0.01% of resource/waste savings over 15 years compared to the current framework. As for restarting the legal guarantee after a first repair, the savings are estimated only at around 2% increase when compared to the baseline scenario. As for economic and social impact, the impact assessment estimates that both options would lead to more financial loss than gains, for only minimal increase of jobs in the repair sector (+1400 jobs only over 15 years across the EU)¹².
16. **Considering the above, Video Games Europe welcomes the decision from the European Commission not to extend the length of the legal guarantee, and encourage both co-legislators to adopt the same approach.**

On the pricing of the new right to repair

17. Under the current commercial guarantees, and according to EU law¹³, consoles manufacturers already provide repairs through their authorised repair centres, and for free, for situations covered by the guarantee¹⁴. Video Games Europe thus welcomes the European Commission decision not to fix a maximum to the price of repairs when these are performed beyond the period of the legal (or commercial) guarantee, favouring a situation where economic competition will allow for a repair sector to thrive through competitive pricing.
18. Indeed, as noted by the European Commission in its impact assessment of the proposal, regulating the prices of repair could also be detrimental to independent repairers, as 'if the price were to be regulated, all the repair demand would be channeled to the producer and the independent repairers would be foreclosed'¹⁵; therefore limiting the objective of the proposal to encourage more repairs options to be available to the consumer.
19. **Considering the above, Video Games Europe welcomes the decision from the European Commission to favour a competitive approach as regards pricing, in which the manufacturer would be able to ask for a reasonable contribution in the case of defects that arise beyond the period of the commercial guarantee, and in which independent repairers would be able to gain a competitive advantage over "authorised" repairers through lower prices.**

¹¹ European Commission (2017) [Impact assessment on the impacts of fully harmonised rules on contracts for the sales of goods](#)

¹² See pages 41 and 42 of the Impact Assessment (SWD(2023) 59 final). Available [here](#).

¹³ Sales of Goods Directive ([Directive \(EU\) 2019/771](#))

¹⁴ See for instance SIE's [PlayStation 4 legal guarantee](#) and Nintendo of Europe GmbH's [24-Month Manufacturer's Warranty – Consoles in the Nintendo Switch Family](#)

¹⁵ See page 34 of the Impact Assessment (SWD(2023) 59 final). Available [here](#).

On further alignment and coherence with existing EU legislative acquis

20. Video Games welcomes the willingness of the European Commission to ensure coherence with the existing EU legislative acquis and is concerned that some suggestions put forward by recent developments in the European Parliament could lead to legal uncertainty:
- i. **Links with Ecodesign framework:** Video Games Europe particularly supports that this Directive build this new “Right to Repair” in alignment with ongoing circular economy legislative initiatives and eco-design framework, notably regarding time periods during which such right to repair should be applicable beyond the legal guarantee¹⁶. This approach is essential to ensure consistency with existing and upcoming rules that will establish repair mandates for specific product categories. Video Games Europe encourages the co-legislators to follow this approach.
 - ii. **Batteries as part of the list of products in Annex II:** As batteries are consumables, which use chemical reactions to make them work, it is technically not possible to repair them. Degradation in battery performance is due to degradation in chemical composition. For example, charging performance of a battery can be restored by replacing a degraded battery cell or an electrolyte solution in the battery, but in such cases, the battery is “replaced”, and it should not be called “repair”. Video Games Europe therefore recommends not to include batteries as part of the goods to be covered by such a right to repair, and believes that any circular economy provisions related to batteries should be covered in the newly adopted Batteries Regulation ([Regulation \(EU\) 2023/1542](#)).
 - iii. **Introduction of a producer (rather than retailer) liability:** The suggestion to introduce a direct producer liability would bring legal uncertainty to the legal liability framework. Under EU consumer protection laws, it is always the retailer that is liable to provide the consumer with a legal remedy as this is the party the consumer is contracting with. Such an introduction would blur the lines between retailers and manufacturers and would actually not lead to any practical improvement for consumers, as they still can send their goods directly to the manufacturers for a repair.

About Video Games Europe

Video games Europe represents the video games industry in Europe and is based in Brussels, Belgium. Our membership comprises of national trade associations in 15 countries across Europe which represent in turn thousands of developers and publishers in the member states. ISFE also has direct members, the leading console manufacturers and European and international video game companies, many of which have studios with a strong European footprint. They produce and publish interactive entertainment and educational software for use on personal computers, game consoles, portable devices, mobile phones and tablets.

Video Games Europe’s purpose is to serve Europe’s video games ecosystem by ensuring that the value of games is widely understood and to promote growth, skills, and innovation policies that are vital to strengthen the video games sector’s contribution to Europe’s digital future. The video games sector represents one of Europe’s most compelling economic success stories, which enjoyed a growth in European revenues in 2020 of 22%, reaching a total market size of €23.3bn and employing some 90,000 people¹⁷. Today 51% of Europe’s population plays videogames, which is approximately 250 million people, and 54 % of the players regularly play on consoles.

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¹⁶ Such as the proposal for a Regulation on Ecodesign for Sustainable Products, and the reference to the associated Ecodesign product-specific Regulations.

¹⁷ ISFE Key Facts 2021 from GameTrack Data by Ipsos MORI and commissioned by ISFE <https://www.isfe.eu/isfe-key-facts/>.