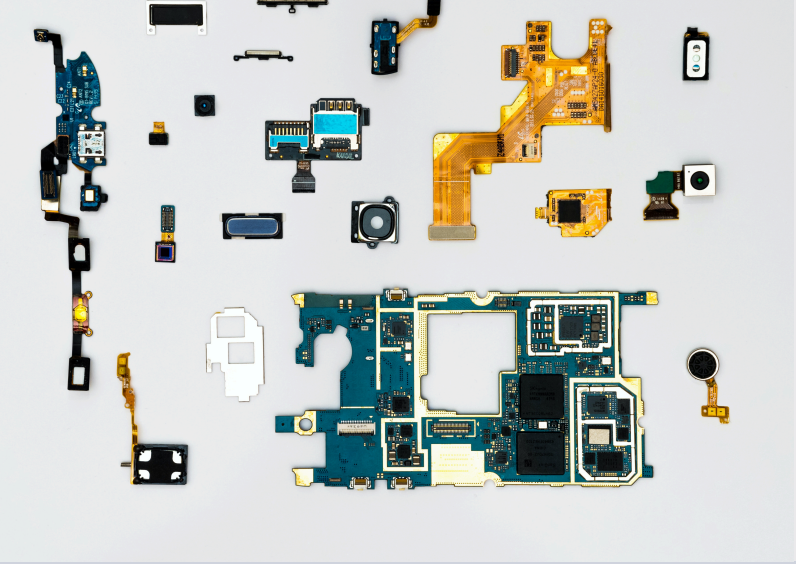

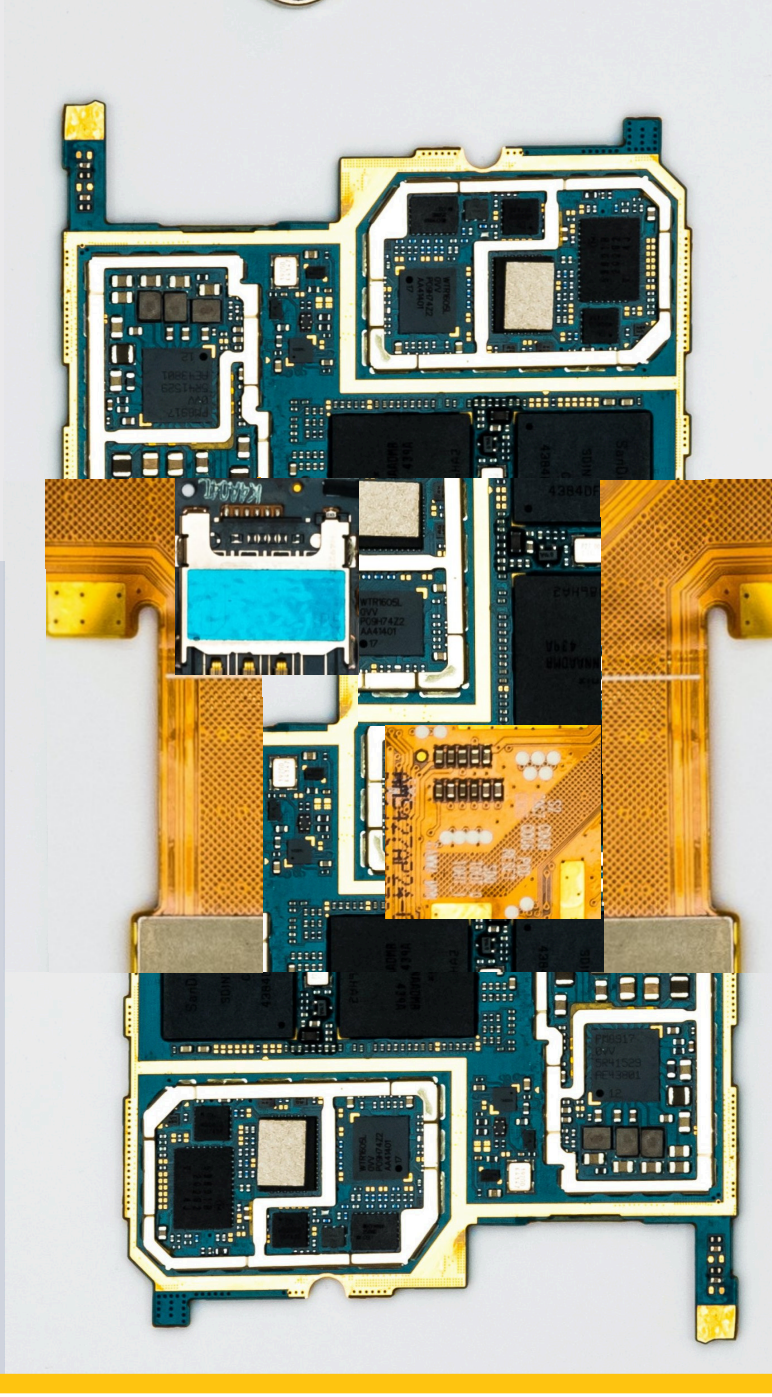

European
DIGITAL SME
Alliance

Response to the Right to Repair Directive

WHY IT MATTERS FOR DIGITAL SMEs

The repair and maintenance of products involves a complex value chain: digital SMEs participate in all its levels. To realise a Right to Repair and support the objectives of the European Green Deal, the needs, points of views and impacts to digital SMEs must be taken into consideration. That is because digital SMEs are key in providing essential software and hardware tools in the aftersales markets, effectively making the Right to Repair a reality for European consumers as well as for other small businesses.

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European DIGITAL SME Alliance

EXECUTIVE SUMMARY

The European Commission has issued a proposal on the Right to Repair Directive, with the aim to support the European Green Deal by making it easier for consumers to repair products instead of replacing them. Sellers of goods will be required to offer repair services on a defective good within the timeframe of the two-year legal guarantee, except from cases when repair is more expensive than replacement. Moreover, the proposal introduces measures that go beyond the legal guarantee for certain products, as well as the establishment of a European Repair Information Form and of matchmaking platforms that help consumers access services provided by repairers.

DIGITAL SME welcomes the Directive as a first step towards realising the Right to Repair, but highlights the lack of ambition. In this Response to the Right to Repair Directive, DIGITAL SME lays down five key asks that could lead to unlocking the ecosystem of aftersales markets for consumers and for digital SMEs. To achieve this, it is important that the scope of the Right to Repair extends not only to consumers but also to other businesses. Furthermore, repairability should be embedded in product development by design and spare parts should be widely accessible for a fair price. Finally, the Right to Repair must take into consideration the developments of the digital transition. The European Commission and the co-legislators must also promote the Right to Repair Software and the Right to Innovate. Therefore, key parameters of openness, such as access to data and the disaggregation of software and hardware are essential in order to allow for digital SMEs to develop innovative and sustainable solutions in the secondary markets.

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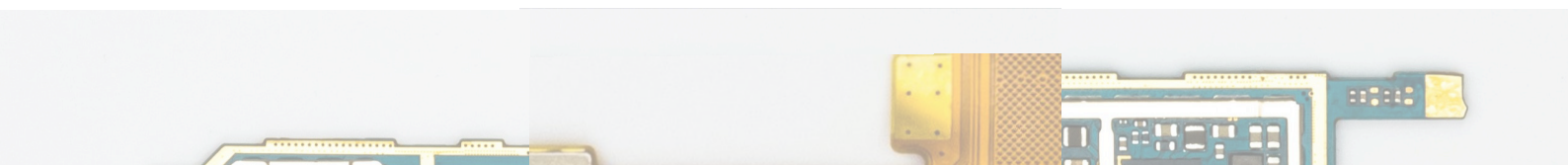


Introduction

In March 2023, the European Commission adopted a new proposal on common rules promoting the repair of goods in the Single Market. The aim of the 'Right to Repair' initiative is to facilitate the repair of goods for consumers to reduce waste and support the objectives of the European Green Deal.

Specifically, the proposal will connect consumers and repairers/sellers through an online matchmaking repair platform. The intended tool will enable searches by location and quality standards, helping consumers find attractive offers, and boosting visibility for repairers.

Furthermore, a European quality standard for repair services will be included, helping consumers in identifying repairers who commit to a higher quality of reparation standards. This "easy repair" method will be accessible to all repairers across the EU.

The members of the European DIGITAL SME Alliance are key actors in realising a Right to Repair. Europe's digital SMEs are developing software and hardware solutions that can enhance and extend the lifecycle of products. Therefore, digital SMEs can help build an ecosystem of after-sales market that will promote sustainable digital solutions.

DIGITAL SME welcomes the Directive as a step in the right direction. The obligation for Member States to create national online platforms for repairers as well as the introduction of a European Repair Information Form are essential.

However, DIGITAL SME highlights the lack of ambition to realise a universal Right to Repair, especially when it comes to software. DIGITAL SME outlines five key asks that need to be introduced to unlock secondary markets.

Areas of improvement

Expanding the scope: B2B markets in the Right to Repair

The scope of the Right to Repair Directive applies only to consumer purchases. DIGITAL SME recommends for the scope of the Directive should be expanded to include Business-to-business (B2B) transactions. While it has been argued that maintenance and repair in the B2B sector works well, evidence from multiple

sources points to the contrary.

For example, in the United States, farmers have turned to hacking in order to bypass the digital locks that manufacturers impose on their vehicles. [1] This practice has become increasingly popular due to the reason that manufacturers have made it impossible to perform "unauthorised" repair on farm equipment. Thus, farmers have sought for jailbreak solutions to ensure that their equipment doesn't break down at an inopportune time, which would possibly impose an existential threat to their livelihood.

Another important example comes from the healthcare sector. During the COVID-19 pandemic, hospitals worldwide reported inadequate supplies of critical equipment.[2] This shortage highlighted the refusal of manufacturers to provide information for repairing medical equipment. In this context, the medical community has argued that a Right to Repair, like the ones that consumers ought to enjoy, is crucial to bypass the technical barriers which manufacturers impose and move the medical field in a more affordable and sustainable direction.

The above-mentioned examples highlight that market failures in the B2B repair and maintenance sector can have existential implications for the livelihoods of small business owners and can also create implications for consumers in the value chain. ICT SMEs specialise in B2B solutions and therefore, the exclusion of the B2B sector from the scope of the Directive would not allow to unleash to potential of new sustainable digital solutions that SMEs could provide to manufacturers, independent repairers, and consumers.

Since a one-size-fits-all approach wouldn't benefit the diverse products and services that are exchanged in the B2B sector, DIGITAL SME calls for the European Commission to develop Delegated Acts, tailored to each B2B sector, which would lay down the obligations of B2B manufacturers concerning the Right to Repair.

Repairability by design

Repairability of products must be taken into account throughout the whole product development cycle. Therefore, product development should support modular design which would facilitate disassembly as well as modification and replacement. Therefore, it is important that the Directive also sets minimum design requirements to ensure that at least the key components of all products are easily disassembled.

[1] [1] The Guardian, Why American farmers are hacking their own tractors, March 2017
[2] [2] Shuhan He, Debbie Lai and Jarone Lee, The medical right to repair: the right to save lives, The Lancet, March 2021

To ensure repairability by design, it is also crucial that there is universal and affordable access to spare parts, repair manuals, and diagnostic tools. Currently, the Directive provides a repair option beyond the legal guarantee, but only for a very limited set of products listed in Annex II, such as washing machines, vacuum cleaners and smartphones. To this end, DIGITAL SME highlights the need to expand the Annex II list of the Directive, to include a wider range of products, such as lifts and machinery. Therefore, DIGITAL SME calls on the European Commission to make swift use of its delegated powers and expand Annex II to as many product categories as possible.

Moreover, the current approach doesn't address the issue of cost and affordability. The requirement for manufacturers to provide a repair service doesn't necessarily mean that such service will be affordable. The same argument also applies to the cost of spare parts. Currently, manufacturers determine the price of spare parts which might prevent independent repairers from gaining access to such parts and provide competitive and cost-effective services. Therefore, it is important that the co-legislators lay down additional provisions for manufacturers to provide spare parts for a fair price.

The Right to Repair Software and the Right to Innovate

In the era of Europe's digital transition, it is evident that the Right to Repair needs to include considerations of digital technologies, including considerations of software. Such considerations should deal with the ability of consumers to get but also refuse software updates from the developer. Firstly, receiving updates either for free or by being charged, is a significant business opportunity for digital SMEs. At the same time, receiving updates is an essential component of sustainable product design, because updates extend the life cycle of the product. One policy option in this regard, would be to nudge software companies to disclose what the consumer will receive in terms of updates, during the lifecycle of the product. By enhancing transparency, the sustainability of products will be improved without additional costs for developers.

Secondly, consumers must also be given the ability to refuse updates, as they may find the timing or the content of the update disruptive. This must also be complimented by the ability of users to revert to an old version of a software. From the user's perspective, not every update is an upgrade. Software obsolescence refers to the phenomenon of slow down devices through "mandatory" updates,

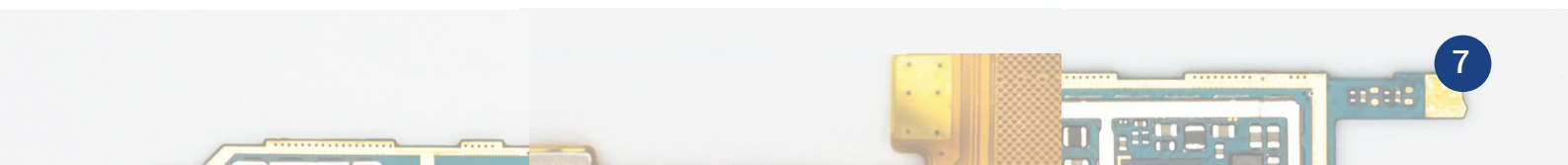
without specifying that these will interfere with the operation of the device. That's why it is important that users are also granted the right to revert to the prior version of the software as part of their Right to Repair.

Finally, in order for a genuine Right to Repair to be realised, it is essential that consumers must be able to benefit from horizontal markets. A horizontal market is a market in which consumers can purchase hardware and software components from different vendors and integrate them into one system. For horizontal markets to take place, it is necessary that a clear legal framework is set to define software and hardware disaggregation. This could grant digital SMEs the ability to develop new innovative components of software for an existing piece of hardware. This could lead to new innovative products being placed in the market which could upgrade or repair an existing product and extend its lifecycle. The principle of software and hardware disaggregation is one that also interacts with the 2014 Radio Equipment Directive. Therefore, DIGITAL SME calls on the European Commission to perform an impact assessment on the implementation of horizontal markets across Member States and issue relevant policy recommendations that would improve the applicability of the Radio Equipment Directive as well as the final text of the Right to Repair Directive.

The missing element of Open-Source Software

Europe's software industry already provides solutions that encourage repairability. In the open-source software model, a programmer openly shares the source code of the software they have created. Specifically, programmers licence their source code to grant an unlimited right of tinkering with the code, as well as copying and distributing components of that software. This allows the wider community of programmers, to identify problems, fix bags and even come up with new innovative components to the original source code.

All in all, the model of open-source software is an complementary part of a universal Right to Repair and more broadly of a Right to Innovate. DIGITAL SME highlights the need to include considerations about the advantages of open-source software in the current Right to Repair discussion. The European Commission should encourage the proliferation of open-source software applications in the market that will allow programmers in the EU and beyond to tinker with the source code, expand the lifecycle of a product and develop derivative new solutions.



For example, one policy option could be to revise current rules on Procurement to mandate the procurement of open-source software from Europe's public administration, when such solutions are available. Moreover, the European Commission can utilize financial instruments to support the uptake of open-source solutions, through the implementation of EU-funded projects or even direct grants and awards. Finally, the European Commission should develop capacity building programmes that enhance digital skills related to open-source software.

DIGITAL SME highlights that such measures must not interfere with the market competition between open source and proprietary software solutions. Both options shall remain legitimate business models, thus DIGITAL SME doesn't support law-mandated source code disclosure requirements. This section only outlines potential soft incentives that could boost an open and innovative aftersales ecosystem through the proliferation of open-source applications.

Interaction with the Data Act: unlocking the potential of after-sales markets

The European Commission published its Data Act proposal in February 2022, which was politically agreed in its final form in June 2023. The purpose of the Data Act is to remove barriers to the access of data for both consumers and businesses. DIGITAL SME highlighted during the Data Act negotiations, that the Regulation has strong implications for the realisation of a Right to Repair.

The Data Act is an essential puzzle piece to realise the Right to Repair and to provide ICT SMEs with the ability to place in the market innovative repairing solutions. The Data Act provides device owners with the right to access the data that they have generated and provide access third parties with access to that data. This is expected to allow a thriving after-sales ecosystem to develop, as independent repairers can make use of such data to offer new, innovative, and sustainable services.

In its Position Paper on the Data Act, DIGITAL SME had warned about technical and non-technical barriers that may impede the right of users to access their data from being realised. Such barriers could include complex security standards as well as the possibility of data holders to abuse trade secrets safeguards.

In this context, DIGITAL SME calls for trade secret barriers to be overridden when

a request for access to data is related to the delivery of repairing and maintenance services. This is an essential provision that will allow the realisation of the Right of Repair in the Single Market and will also further help to proliferate real-time repairing and maintenance services, which are vital in sectors such as agriculture, the lifts and automotive.