

Right to Repair - What You Should Know

03.17.2021

On March 1, 2021, the Ecodesign Directive (2009/125/EC) entered into force across the European Union. This Directive, which was adopted by the European Commission, implements certain “right to repair” legislation. Companies selling refrigerators, washing machines, dishwashers, and displays (including televisions) in the European Union must now comply with the “right to repair” legislation, which sets out rules on reparability, availability of spare parts and access to certain product maintenance information. For light sources and associated control gears, such as light bulbs, the “right to repair” legislation enters into force on September 1, 2021.

The Directive applies to products on the European Union market, regardless of where they are manufactured. “Placing a product on the market” is defined in the Directive as making a product available for the first time on the market with a view to its distribution or use within the European Union, whether for reward or free of charge and irrespective of the selling technique. While the language is broad, the Directive likely applies once the product is placed for sale on the market. The legislation is part of a larger effort by the European Union to cut its environmental footprint by increasing the lifespan of products and reducing waste and excess manufacturing of consumer products due to “planned obsolescence” (consumer goods that rapidly become obsolete and therefore require replacing, achieved by frequent changes in design, termination of the supply of spare parts, and the use of nondurable materials).

How does the Right to Repair Legislation Work?

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To promote “repairing over replacing”, manufacturers, importers or authorized representatives must make certain spare parts available for a minimum period of time after the product is no longer available for sale to European Union customers. The specific product and spare part determines the requisite period of time, and to whom, the spare part must be made available. For household dishwashers, the minimum period is 7 years for most spare parts (a list of spare parts is set forth in the legislation, which can be found here). Notably, the manufacturers, importers or authorized representatives must only provide such spare parts to professional repairers, and as such the legislation does not guarantee consumers or educational initiatives, such as repair cafes, with access to key replacement parts and repair information. However, for other specified spare parts, the minimum period for availability is 10 years, and such parts must be made available to both consumers and professional repairers. The legislation also requires delivery of a spare part within 15 working days following a request for such spare part.

Additionally, the legislation requires the following:

- Manufacturers, importers or authorized representatives must ensure that spare parts can be replaced with the use of commonly available tools and without permanent damage to the product;
- Manufacturers, importers or authorized representatives must provide professional repairers (not consumers or other end-users) with access to repair and maintenance information; and
- A list of the spare parts and the procedure for ordering them must be displayed on a free access website by the manufacturer, importer or authorized representative.

Notably, this legislation does not regulate electronic goods such as smartphones or computers. However, many expect this to change in the near future. On November 25, 2020 the European Parliament approved measures to extend enhanced “right to repair” laws for electronic goods, including smartphones, tablets and laptops. The vote mandates that the European Union develop mandatory labeling requirements, to provide clear, immediately visible and easy-to-understand information to consumers on the estimated lifetime and reparability of a product at the time of purchase. The European Commission has been tasked with developing legislation according to those instructions, with the intent to publish the rules in 2021.

What Effect Will This Have On United States Businesses?

United States businesses making these products available to European Union customers for sale must determine whether they can currently provide spare parts for the requisite time periods. If not, such companies will likely need to rework their supply chain to ensure access to adequate amounts of spare parts or undertake redesigns of their products so that the underlying parts can be easily replaced, with standard tools and readily available spare parts. Additionally, companies should plan and budget well in advance to account for potential product redesigns and the provision of readily available spare parts. This should include an analysis of the product

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supply chain and relevant commercial agreements with suppliers of product parts to determine whether current agreements provide for a foreseeable increase in demand or whether additional steps should be taken now to ensure adequate supply of spare parts.

What's Next?

The “right to repair” movement is catching steam in the United States. On November 4, 2020, Massachusetts passed a ground-breaking “right to repair” law for the automotive industry which requires car makers to provide independent mechanics access to the same diagnostic tools used in dealerships. Additional “right to repair” bills have been introduced in several U.S. state legislatures, attracting widespread support. New Jersey, Delaware, Florida, Massachusetts, Maryland, Montana, Nebraska, Oklahoma, New Hampshire, New York, Oregon, South Carolina, Vermont and Washington are currently introducing and debating the potential laws. While some states have proposed “right to repair” legislation limited to the automotive industry, others are taking a more expansive approach and proposing the “right to repair” in sectors like consumer technology and medical and agricultural equipment.

The “right to repair” is a rapidly developing area with global legislative shifts occurring frequently. Product manufacturers must stay apprised of these developments not just in the United States but any market in which they sell products.