EUREFAS position paper on ecodesign requirements for mobile phones, cordless phones and slate tablets

EUREFAS - the European Refurbishment Association welcomes the proposal of ecodesign requirements for mobile phones, cordless phones and slate tablets setting up ambitious principles of durability, reusability and reparability at the design and manufacturing stages.

The text will be a powerful tool for improving those products' circularity and environmental footprint, by:
- Defining professional repairers in a way covering both repair services and refurbishment to solve the common challenge they face regarding reparability;
- Aiming at opening the after sales market by making much needed spare parts and repair and maintenance information available, at a proportionate price and within decent delivery delays,
- Requiring transparency on spare parts pricing, which is critical to ending existing discriminatory practices,
- Improving design for easier disassembly and better reliability,
- Mandating software maintenance durability, which together with hardware, is the pillar for extending the lifespan of electronics.

However, we would like to raise some concerns about the negative impact of some key provisions for repair and refurbishment, which, contrary to its spirit, strongly risk hampering the text's circularity ambitions.

For the sake of readability:
- **Eurefas' comments refer to the Smartphones section of Annex 1 & 2, but they also apply to the other products addressed.**
- **As Eurefas is the European refurbishers association, we only address provisions impacting professional repairers, and not end users.**
- **A modified version of the regulation, including our suggestions, is attached to this paper as an annex**

Criteria to access repair and maintenance information and decent delivery time of spare parts, remain in OEMs' hands

EUREFAS is concerned that the provisions of points (2) and (3) of paragraph 1.1 of the "design for "repair and reuse" section will be an obstacle to raising the circular economy of the targeted products.

By leaving manufacturers free to set registration criteria for a professional repairer to access repair and maintenance information, and spare parts, the text doesn't change the current status quo. Today, electronics OEMs do reserve access to such key elements to their exclusive network of approved repairers. Access to spare parts and good knowledge of products being critical to offer competitive

and qualitative repairs, such discrimination is one of the main existing blockers to the growth of more repair and reuse.

Although the text states manufacturers may require professional repairers to demonstrate they fulfill the criteria in point 2 (a), it does not limit their possibility to arbitrarily impose other criteria. We thus recommend the Commission to replace "may require the professional repairer to demonstrate that " by "should be limited to requiring" in point 2 (a).

Furthermore, even if manufacturers only establish these two criteria, the notion of "technical competence" is too vague to be objective. EUREFAS therefore suggests that access to repair information and spare parts should only be granted to professional repairers listed in official registration systems created by member states. In the meantime, if there is not such a system, every professional repairer should have access to them.

Software blockers will be increasingly damaging for repair and reuse

Software is increasingly used to prevent independent repair, for example through part-pairing: spare parts, such as batteries or display assemblies, are being attributed a unique serial number, which is paired by manufacturers to a unique unit of a device using software. If any of these parts need replacement, they are not accepted, or lose some of their functionalities, unless paired to the device via remote authorization by the manufacturer. Currently, this authorization is reserved to the manufacturers' repair network only which is a huge blocker to independent repair and refurbishment. This happens with all types of parts, even those, such as batteries, that can't contain nor lead to user identification or data security breaches.

Moreover, refurbishers owning the devices they repair, there is no end user involved in a part replacement happening in a refurbishment process. Allowing OEMs to provide remote authorization directly to the end-user only (as stated in point *2 (g)*) will thus exclude refurbishers from any possibility of replacing parts that are relevant for user identification.

In this context, EUREFAS urges the Commission to amend the provisions at point *2 (e.xi)* and *2 (g)*, in order to:
- Ban part pairing for non-data sensitive spare parts replacement in all repair cases
- Ensure that manufacturers will always provide remote authorization to refurbishers for data sensitive spare parts, as there are no user identification or data security risks in refurbishment, the phone or tablet always being on factory settings (see modification proposal in Annex).

The use of third party parts is not yet legally recognized

EUREFAS fully understands and supports the intended goal of ensuring professional repairs have a better access to generic spare parts and price transparency. However, as prices are not regulated, refurbishers have no choice but to often use compatible or second-hands spare parts, which are nowadays mostly of the same quality and with the same technical specification as OEMs' parts, while being more affordable.

We plead for the law to finally recognize officially the use of these parts, in order to forbid manufacturers to prevent or limit the use of these parts, through part pairing for example.

To do this, we recommend that spare parts' schematics fall into the public domain at the date of end of placement of the device on the market. This would enable the large-scale emergence of European players for spares production, with a healthy competition on prices.

Software updates will not be properly provided, and not for long

We are concerned that the proposed provisions will have low impact as:

- They do not mandate the provision of software updates. It will remain at the goodwill of the manufacturers (see 6(a); *6.(b)* & *6.(c)*), as no European legislation currently requires the provision of updates outside the warranty period.

- The distinction between security and functionality updates is inoperative and counterproductive:

  - Inoperative because it does not take into account corrective updates (bug fixes), which often have nothing to do with security updates (patching security breaches), but are nevertheless essential for the proper use of the device.

  - Counterproductive because the improvement of functionalities or the setting up of new ones (i.e. functionality updates) can contain security elements to ensure proper protection of this new functionality, without the latter being essential. As the proposed definitions of updates are too subjective (definitions *(35) & (36)*: "*whose main purpose is...*"), the manufacturer could easily make a security update look like a functionality one, and thus only make them available for 3 years, even if the text removes the voluntary aspect mentioned above.

- The text leaves manufacturers free to insert whatever they want in "operating system updates" (see 6*.(f)*). Using the same reasoning as above, this will lead to :

  - An effective duration of supply of "OS updates" of 3 years;

  - Making the device potentially less efficient: new functionalities will be systematically provided with essential security and bug-fixing elements. The next point (see *6.(g)*) will not prevent "OS updates" from having a negative impact on the performance of the asset, as some security updates, although essential, have an unavoidable negative impact on performance. Manufacturers, as already stated, will again claim that OS updates are security updates.

We therefore urge the Commission to :

- Separate updates into two categories, as mentioned in the article 7 of 2019/770 & 2019/771 directives:

  o Conformity updates : Those necessary to maintain the conformity of the device, fixing bugs and/or patching security breaches already there (security + corrective updates).

  o Functionality updates : Those not necessary to maintain the conformity of the device, which can either install new functionalities or improve existing functionalities. They may have a negative impact on device performance (bugs, slowness, etc.).

- Require manufacturers to provide updates separately, so that consumers can receive conformity updates after the date of end of placement on the market for 7 years, and can refuse functionality updates that may have a negative impact on device performance.
- Alternatively to the two previous proposals, as a fallback, but much less impactful: mandate manufacturers to provide OS updates for at least 7 years after the end of placement on the market. This implies maintaining provision *6.(g)*.

Other concerns

Beyond these crucial issues, other provisions can be improved in order to generalize the repair and reuse of smartphones and tablets:
- The tools needed for disassembly and repair should remain basic and not depend on those that manufacturers could supply with the product or spare part, as these tools are often disproportionately heavy, substantial and expensive, with no reason to do so (see Apple repair program in the US – where the toolkit for SE battery change is 36kg and costs $118).
- The availability period of OEMs' spare parts and of repair information should be more ambitious and extended to 7 and 10 years respectively, after the date of end of placement on the market. This is essential if we want the consumer electronics sector to be sustainable and limit the purchase of new products in the medium and long term.
- Other provisions can be improved, clarified and supplemented to make them fully effective and impactful. For more details, see our modified version of the regulation, including our suggestions, attached to this paper as an annex**.**