

EUREFAS' Response to the EU Public Consultation on the Single Market Strategy

About EUREFAS

EUREFAS brings together sustainability-focused stakeholders in high-tech and electronics refurbishment across Europe. It aims to support the development of a comprehensive European market for repaired and refurbished goods, share expertise with public authorities and policymakers, and promote environmentally friendly and socially beneficial products by raising consumer awareness.

I. The Refurbishment Sector

A refurbished product is a second-hand item that is collected, tested, and repaired if necessary by a professional, ensuring it is fully functional.

Sales of refurbished products are booming in the EU. For smartphones alone, refurbished models already account for more than 20% of total sales in France and over 10% in Germany¹.

The refurbishment sector is poised to be a major player in the future economy. It combines sustainability with purchasing power by offering high-quality products at lower prices and with a significantly reduced carbon footprint compared to new equivalents.

The sector presents a unique opportunity to merge economic and ecological benefits in Europe by creating local jobs, enhancing strategic autonomy by bringing value back from the manufacturing of tech devices (mainly outsourced outside Europe), and reducing dependence on raw materials and their global supply chains.

II. Rethinking the Single Market for Circular Business Models like Refurbishment

A. Current Internal Market Challenges for Second-Hand and Refurbishment

Despite its undeniable benefits, the European refurbishment sector, and the broader second-hand market, face a glass ceiling in development due to current internal market rules.

The Internal Market rules, designed with new products in mind, fail to provide a secure legal framework for professionals dealing with used products. The Circular Economy Action Plan, implemented during the current mandate, did not address these challenges, focusing solely on product reparability.

Professionals selling second-hand products cannot fully comply with the current Internal Market's economic operator rules:

- They are not manufacturers, as they don't design, modify, or redesign products, and thus should not be required to manage product conformity. Unfortunately, the current framework does not protect refurbishers from being considered manufacturers.
 - Refurbishment involves selling a second-hand product with a warranty on its functionalities. Refurbishers test all functionalities and repair defective parts if

¹ 6th edition of the "used mobile phone market" barometer, by Kantar & Recommerce, 2023

needed. Repairs do not lead to substantial modifications, as refurbishers only restore defective parts to their intended use.

- However, the definition of substantial modification does not explicitly exclude refurbishment. A modification is substantial if it "changes the product in a manner not foreseen in the initial risk assessment." Since manufacturers' assessments cover only their spare parts, this creates a risk that any repair using a compatible (non-original) spare part could be considered substantial. Most electronic product repairs use compatible spare parts, as original parts are often unavailable or priced unfairly.

They also cannot fully comply with distributor or trader obligations because:

- They lack access to initial product documentation, making it impossible to provide all required product information.
- They have no relationship with the initial manufacturer or other economic operators involved in the first sale, so they cannot verify the manufacturer's compliance.

Additionally, second-hand products cannot meet new product requirements (e.g., robustness or reparability) because:

- Part of their lifespan has already been consumed through wear and tear.
- They may have been designed under different regulations.
- Little to no initial product information is available.

This situation creates several issues that put these businesses at risk: Product requirements for second-hand/refurbished products, and refurbishers' liability are unclear. For example, what happens when a refurbisher repairs a phone before selling it? Such cases are not addressed in the law and could result in the refurbisher being considered the manufacturer or first distributor.

B. EUREFAS Proposed Solution

First, a horizontal and cross-legislative definition of refurbishment is needed. EUREFAS proposes: *"Refurbishment means the testing and, if needed, the maintenance or repair of a second-hand good or waste by a professional before making it available on the market. Refurbishment may also include improving the aesthetics of the good."*

It should also be clear that refurbishment does not constitute a substantial modification. A process in which a product is modified substantially should be renamed as remanufacturing.

Finally, EUREFAS advocates for creating a specific legal regime for economic operators dealing with second-hand products, clarifying their liability for each product's or information's requirements, as well as any rules applying to economic operators.

Second-hand economic operators, such as refurbishers, should be responsible for:

- Product compliance with information requirements when the information is or has been publicly disclosed by the former economic operator.
- EU requirements, including liability, on specific new components, consumables, or spare parts they choose to insert in the product.
- Specific requirements for second-hand products and refurbishment processes, only if these requirements are specific to second-hand products and adapted to their characteristics. For example, compatible, used and refurbished spare parts must be officially recognized by law and their use must not be infringed by intellectual property law and not considered as altering product's safety, as long as they meet quality and safety standards that could be specified in vertical legislations.

- Not being considered the manufacturer and not being liable for unfair practices or commercial communication made by former economic operators on the product.

III. Need for One-Stop-Shop Extended Producer Responsibility (EPR) system to improve the Free Movement of Used Devices

EUREFAS believes that the lack of uniformity in WEEE management systems, leading to diverse national systems, is outdated given that most companies operate in multiple countries today. This diversity incurs significant administrative costs, both direct and indirect. These costs are particularly burdensome for SMEs, which make up the majority of our sector, and can hinder their development or prevent them from investing in markets where the WEEE management system is too complex.

Therefore, EUREFAS advocates for an ambitious one-stop-shop solution that facilitates single registration and reporting across all Member States for companies operating across borders, either through a unique EU register and reporting system or through the automatic sharing of registration and reporting data.

Such a system could allow a product to pay its EPR fee once, even if it is refurbished and sold multiple times within the Internal Market. Currently, a refurbished product may incur multiple EPR fees when changing Member States, hindering the development of the reuse market.

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Refurbishment Sector Overview: Refurbished products, which are second-hand items collected, tested, and if needed repaired by professionals, are gaining traction in the EU. For instance, refurbished smartphones account for over 20% of sales in France and 10% in Germany. This sector is set to play a significant role in the future economy by offering sustainable, high-quality products at lower prices with reduced carbon footprints. It also presents opportunities for reindustrialisation, local job creation, strategic autonomy by reclaiming value from outsourced tech manufacturing, and reduced reliance on global raw materials.

The European refurbishment and second-hand markets face development barriers due to current Single market rules, which are tailored for new products. They do not provide a secure legal framework for professionals dealing with used products.

- Refurbishers can't comply with any classic economic operator rules as they lack access to initial product documentation and relationships with original manufacturers or the previous consumer, complicating compliance with distributor or trader obligations
- Refurbishment is not clearly defined, and definition of substantial modification does not exclude refurbishment, which poses the risk to consider refurbishers as manufacturers.
- Second-hand products also cannot meet new product requirements due to wear and tear, outdated design regulations, and limited initial product information.

EUREFAS proposed solution:

- We call for a clear, cross-legislative definition of refurbishment, excluding it from substantial modification processes, which should be considered as remanufacturing.

- A specific legal regime for second-hand economic operators is needed, clarifying their liability and responsibilities. Refurbishers should be accountable for providing only publicly available product information, EU requirements on spare parts they have replaced, and eventually specific second-hand or refurbishment product requirements that could be set. They should not be considered manufacturers or liable for previous operators' practices.

Simplifying Extended Producer Responsibility (EPR): EUREFAS advocates for a one-stop-shop EPR system to streamline registration and reporting across Member States, reducing administrative burdens, especially for SMEs. This system would allow a product to pay its EPR fee once, even if refurbished and sold multiple times within the Internal Market, fostering the reuse market's growth.