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From “working with the market” to “challenging the market” in EU product law? Ethical aspects of right-to-repair

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*Festskrift till
Charlotta Zetterberg*

Vikten av miljöretten och
vikten av att vikta rätt

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Redaktörerna framför sitt tack till *Emil Heijnes Stiftelse för rättsvetenskaplig forskning* för ekonomiskt stöd som möjliggjort utgivningen av denna festschrift.

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From “working with the market” to “challenging the market” in EU product law? Ethical aspects of *right-to-repair*

Introduction

At this point in time, May 2025, everything seems to be “in a state of flux”. We know only one thing for sure (maybe!): we are at the end of the era of hyper-globalization¹, and at the end of the “neoliberalist” experiment.² Protectionism and trade tariffs are back in fashion³, as is industrial policy⁴, signalling a new era for global markets.

Therefore, this seems to be a good time to reflect upon the nature of markets: what the main principles for good governance of markets should be, and the intended outcomes of markets. In the European Union (EU), we see several indications that the discourse related to the EU Internal Market is

¹ Braw, E. 2024. Goodbye Globalization. The return of a divided world. Yale University Press.

² For some ideas on what may replace it, see Rodrik, D. 2023. On productivism. Available: <https://tinyurl.com/2lonxfc3>.

³ For an overview, see Global Trade Alert. Available: <https://globaltradealert.org/activity-tracker> (last accessed on 15.1.2025).

⁴ Millot, V. and Rawdanowicz, L. 2024. The return of industrial policies. CEPR, Available: <https://cepr.org/voxeu/columns/return-industrial-policies>.

changing in several ways. The European Green Deal has put climate transition at the core of the EU project⁵; the industrial policy initiatives adopted in the United States⁶ and China⁷ has led to a European response aimed at supporting green technologies and greater attention to security of resource supply.⁸ Mariana Mazzucato's ideas on market creation, guided by "missions" that are driven by public-interest considerations rather than pure profit-seeking, are increasingly influential in policy frameworks.⁹

In this contribution, we will discuss ethical considerations specifically in EU product law, with a special focus on rules related to right-to-repair (R2R). In the literature, the term "ethics" refer to a collection of moral principles, values, and standards, such as norms and regulations, as well as individual motivation to act in certain ways¹⁰. While much research has focused on what ethical consumption entails, the concepts of ethical products and production remain poorly defined, and the role of policy intervention in this process is underexplored.¹¹ In general, unethical products are those that harm customers or labourers, involve illegal practices, or cause environmental damage.¹² Karimzadeh and Boström emphasize that ethical considerations for sustainable socio-economic systems must go beyond refining consumption to reducing it, and policy frameworks must help shifting pro-

⁵ European Commission. 2023. Commission welcomes completion of key 'Fit for 55' legislation, putting EU on track to exceed 2030 targets. Available: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4754.

⁶ Under the Inflation Reduction Act; cf. Stokes, B. 2024. EU-US Relations After the Inflation Reduction Act, and the Challenges Ahead. European Parliamentary Research Service. doi:10.2861/385275.

⁷ Mariotti, S. (2024). "Open strategic autonomy" as an industrial policy compass for the EU competitiveness and growth: The good, the bad, or the ugly?. *J. Ind. Bus. Econ* <https://doi.org/10.1007/s40812-024-00327-y>.

⁸ Hermwille, L. and Leipprand, A. 2024. Net-Zero Industry Act: The EU Commits to an Active Industrial Policy. Wuppertal Institute. https://wupperinst.org/fa/redaktion/downloads/misc/Net-Zero_Industry_Act_-_The_EU_Commits_to_an_Active_Industrial_Policy.pdf.

⁹ Mazzucato, M. 2019. Governing Missions in the European Union. Report: European Commission. Available: <https://www.ucl.ac.uk/bartlett/public-purpose/sites/public-purpose/files/governing-missions-report.pdf>.

¹⁰ Kamila, M.K., Jasrotia, S.S. 2023. Ethics in product marketing: a bibliometric analysis. *Asian J Bus Ethics* 12, 151–174. <https://doi.org/10.1007/s13520-023-00168-3>.

¹¹ Garlet, T.B., de Medeiros, J.F., Ribeiro, J.L.D., Gattermann, P.M. 2024. Understanding ethical products: Definitions and attributes to consider throughout the product lifecycle, *Sustainable Production and Consumption*, Vol. 45, p. 228–243. <https://doi.org/10.1016/j.spc.2024.01.010>.

¹² Kamila, M.K., Jasrotia, S.S. 2023. Ethics in product marketing: a bibliometric analysis. *Asian J Bus Ethics* 12, 151–174. <https://doi.org/10.1007/s13520-023-00168-3>.

duction cultures and systems in favour of post-growth alternatives.¹³ Here, we define ethical considerations in product policies as interventions that include “fairness” norms, and encourage infrastructures, business strategies and consumption patterns that prioritise environmental and social aspects, even without direct major economic benefits.

The next section discusses the issue of ethics in product law, and in the subsequent section, we delve into the normative arguments used for R2R and related policies. In the final section, we discuss the potential for even more radical approaches, such as exnovation – standing for the termination of unsustainable infrastructures, technologies, products and practices – to limit unsustainable industrial practices¹⁴.

Ethics and product law

An important question is whether ethical issues such as “fairness” can become leading principles for the markets of the future? There are signs of such tendencies emerging. In the area of trade policy, we see many nations adopting policies that are trade-restrictive, based on “values” and “beliefs”, responding to increasing awareness that unregulated trade has negative impacts on the environment, workers’ rights and rights of vulnerable people, in particular Indigenous Peoples.¹⁵ The EU and several of its member states are leading legal developments in this area by adopting policies on sustainability reporting¹⁶, sustainability due diligence¹⁷ and trade of deforestation-free products¹⁸ that compel large EU companies, and non-EU companies

¹³ Karimzadeh, S. and Boström, M. 2023. Ethical consumption in three stages: a focus on sufficiency and care. *Environmental Sociology*, 10(1), 1–11. <https://doi.org/10.1080/23251042.2023.2277971>.

¹⁴ Heyen, D.A., Hermwille, L., Wehnert, T. 2017. Out of the Comfort Zone! Governing the Exnovation of Unsustainable Technologies and Practices | *GAIA* 26/4: 326 – 331. Available: <https://d-nb.info/1150292326/34>.

¹⁵ Olson, S., Denmark, L., Harper, X., Howlet, M. 2024. Trade and values: navigating the intersection of policy and principles. World Economic Forum, White Paper, November 2024. Available: https://www3.weforum.org/docs/WEF_Trade_and_Values_2024.pdf.

¹⁶ Most notably through Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting.

¹⁷ Most notably through Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859.

¹⁸ Primarily through Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the

with significant operations within the EU, to report on and address sustainability and social impacts within their businesses and supply chains.

Scholars argue that the EU has emerged as a green ‘moral intervener,’ positioning itself as a global standard-setter for environmental and sustainability practices, a climate diplomat and a technical expert¹⁹, and the EU’s longstanding approach of ‘expediency above principles’ is changing towards more value promotion.²⁰ However, this value promotion for environmental and social sustainability have been identified as derivative for the objectives for prosperity and security.²¹ While we acknowledge the potential underlying geopolitical agenda behind these measures, we contend that recent policy developments cannot fully be explained by the pursuit of efficiency gains or resource security, but are also driven by ethical considerations.

There has always been rules to forbid certain products (e.g., drugs and pornographic material), and certain business practices (e.g., marketing of unhealthy food and animal testing). However, recently we have seen several legal initiatives aimed at addressing market practices that promote profit acquisition but are considered undesired at the same time in legislative frameworks due to their support of unsustainable production and consumption patterns. Despite significant resistance from the industry²², recent EU product policy interventions challenge the market to develop more sustainable business practices. This represents a subtle and often overlooked policy shift, as the official communication materials from EU institutions continue to emphasize the potential for economic growth and job creation associated with these measures to secure public acceptance.²³

One such challenged unethical production practice is *product destruction*, which is when “*retailers or manufacturers dispose of viable consumer prod-*

Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010.

¹⁹ Almeida, D.V., Kolinjivadi, V., Ferrando, T., Roy, B., Herrera, H., Gonçalves, M.V., Van Hecken, G. 2023. The “Greening” of Empire: The European Green Deal as the EU first agenda, *Political Geography*, Vol. 105, <https://doi.org/10.1016/j.polgeo.2023.102925>.

²⁰ Zhang, Y., and Rabe, W. 2024. Explaining the EU’s policy shift toward China: an institutional approach. *Journal of European Integration*, 1–21. <https://doi.org/10.1080/07036337.2024.2432329>.

²¹ Ibid.

²² Ozturkcan, S. 2024. The right-to-repair movement: Sustainability and consumer rights. *Journal of Information Technology Teaching Cases*, 14(2), 217–222. <https://doi.org/10.1177/20438869231178037>.

²³ See e.g. the discussion in: Proposal for a Regulation of the European Parliament and of the Council establishing a framework for setting ecodesign requirements for sustainable products, COM/2022/142 final.

ucts such as unsold goods or customer returns”.²⁴ It is especially common for textiles, but also for cheap electronics, cosmetics, and hygiene products.²⁵ Product destruction is a rather extreme manifestation of “linearity” in our current production-consumption system based on exploitation of resources and vulnerable people.²⁶ Cheap mass production and quick turnover of products coupled with a culture of online purchase and merchandise returns has left producers with increasing amounts of unsold items.

In the last couple of years, there has been increasing evidence that product destruction is a common practice, especially in the textiles sector.²⁷ Some EU Member States have adopted policies to stop the practice, not least France through its partial ban on product destruction.²⁸ The EU has, through the ESPR, banned product destruction of textiles and footwear, and there will be reporting requirements about product destruction of other product groups.²⁹

The discussion around product destruction contains several ethical dimensions, including the wastefulness of a practice that comes with no benefit to society³⁰, the undermining impact of business models that *de facto* institutionalise social and environmental harm and hold back progress on the sustainable development goals (SDG)³¹, the contribution of this practice to global greenhouse gas emissions³², and how the practice is related to potentially unethical consumer behaviours like “frequent e-returns”.³³

²⁴ Roberts, H., Milios, L., Mont, O., Dalhammar, C. 2023. Product destruction: Exploring unsustainable production-consumption systems and appropriate policy responses. *Sustainable Production and Consumption*, vol. 35 p. 300–312. On page 300. <https://doi.org/10.1016/j.spc.2022.11.009>.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Pourhejazy, P. 2020. Destruction decisions for managing excess inventory in E-commerce logistics *Sustainability*, 12 (20), p. 8365. <https://doi.org/10.3390/su12208365>.

²⁸ Ibid.

²⁹ Ecodesign for Sustainable Products Regulation, 2024/1781, Article 20.

³⁰ See: European Environmental Bureau et al. 2023. Open letter to Members of the European Parliament. Available: <https://eeb.org/wp-content/uploads/2023/05/letter-on-the-destruction-of-unsold-goods-May-2023.pdf>.

³¹ Bocken, N. M.P. and Short, S. W. 2021. Unsustainable business models – Recognising and resolving institutionalised social and environmental harm, *Journal of Cleaner Production*, Volume 312, 127828. <https://doi.org/10.1016/j.jclepro.2021.127828>.

³² Duhoux, T., Lingås, B. D., Mortensen, F. L. 2024. Volumes and destruction of returned and unsold textiles in Europe’s circular economy. ETC CE Report 4. Available: <https://www.eionet.europa.eu/etcs/etc-ce/products/etc-ce-report-2024-4-volumes-and-destruction-of-returned-and-unsold-textiles-in-europes-circular-economy>.

³³ Davison, T. 2024. The Environmental Impact of Returning Online Products. Cleanhub. Available: <https://blog.cleanhub.com/e-commerce-returns-environmental-impact>.

Another example of a practice that underpins the linear economy and has come to be considered unethical is *planned obsolescence*³⁴, which is in French law defined as: “A group of techniques through which a manufacturer or a marketer seeks to deliberately reduce the life cycle of a product in order to increase its replacement rate.”³⁵ Deliberate, planned obsolescence is rare, whereas premature obsolescence – where products fail earlier than expected – is quite common. This is in most cases due to “top down” conditions imposed on designers, including cost pressures (which may lead to less robust components), rising product complexity, and the increasing speed of the innovation cycle (which may allow for less time to test the robustness of design choices).³⁶

The policy response to planned and premature obsolescence have included: 1) criminalization of planned obsolescence in France; 2) several EU Member States have introduced longer legal guarantee periods in consumer law; 3) the EU has increasingly adopted rules under the Ecodesign Directive to incentivize longer lifetimes, and; 4) EU has recently introduced mandatory information under the Energy Labelling Regulation for mobile phones and tablets, that act as “proxies” for lifetime (e.g., how well a phone performs in a “drop test”).³⁷

A further ethical concern that has been the focus of recent policies has been the use of *false or misleading green claims* by companies, and the existence of eco-labelling schemes that have deficiencies, for instance with regards to transparency and verification procedures. The European Commission has addressed this through a proposed Green Claims Directive,³⁸ and the legislators have adopted the Directive on empowering consumers

³⁴ For more details see: McVeigh, M.K., Dalhammar C., Richter, J.L. 2019. Planned obsolescence. Built not to last. Brussels: European Liberal Forum & Fores. Available: https://liberalforum.eu/wp-content/uploads/2021/07/Planned-Obsolescence_84p_110x178.pdf.

³⁵ French Consumer Code Articles L441-2.

³⁶ Longmuss, J. and Poppe, E. 2017. Planned obsolescence: who are those planners?, in Product Lifetimes And The Environment 2017 Conference Proceedings. Available: <https://ebooks.iospress.nl/volumearticle/47873>.

³⁷ Maitre, E. and Dalhammar, C. 2016. Regulating planned obsolescence: a review of legal approaches to increase product durability and reparability in Europe. Review of European, Comparative & International Environmental Law (RECIEL) 25(3), 378–394. <https://doi.org/10.1111/reel.12182>; Michel, A. 2023. Premature Obsolescence, in Search of an Improved Legal Framework. Intersentia. ISSN: 9781839703751; Dalhammar, C. and Richter, J.L. 2024. New EU Ecodesign criteria supporting longer product lifetimes: when is lifetime extension preferable for reducing environmental impacts? 12th International Conference on Energy Efficiency in Domestic Appliances and Lighting (EEDAL'24) City of Kitakyushu.

³⁸ Proposal for a Directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims (Green Claims Directive). COM/2023/166 final.

in the green transition.³⁹ The latter strengthened the ability of consumers to make informed sustainable purchases, by protecting them against unfair commercial practices such as greenwashing, premature failure of goods, and unreliable sustainability labels.⁴⁰ The first aims to set requirements for environmental claims and labels, introducing verification requirements before these claims can be made.

Another phenomenon that has been the focus of an increasing number of legal initiatives in recent years: *right-to-repair*. The key goal of R2R is to remove the barriers that currently limit the freedom of consumers to repair the products they own and that are increasingly considered unethical. As iFixit has put it: “*If you can’t fix it, you don’t own it*”.⁴¹ De Vries and Abrahamsson note that R2R is – all at once – a social movement, a design principle, and a regulatory ideal.⁴² In the next sections, we will delve deeper into the ethical aspects of R2R policies.

Right-to-repair (R2R) and market interventions

R2R, as a policy objective, is a relatively recent phenomenon⁴³, driven by increasing societal demand⁴⁴ and the emergence of the circular economy (CE) as a distinct area of environmental policy. Repair is – together with other ‘R’ strategies like remanufacturing and re-use – one of the key strategies to support longer product lifetimes, and longer product lifetimes is considered as a key enabler to save resources. Apart from being an environmental strategy, R2R is also seen as an important objective in consumer policy, as manufacturers often make use of different strategies to impede

³⁹ This Directive amends the European Consumer Rights Directive and the Unfair Commercial Practices Directive (UCPD).

⁴⁰ There are several related, important legislative initiatives, most notably the Directive on empowering consumers in the green transition (EU) 2024/825 of the European Parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU. For an analysis, see Keirsbilck, B. 2024. Empowering Consumers for the Green Transition: Overview of Directive (EU) 2024/825. *EuCML Issue 5/2024*, 205–217.

⁴¹ iFixit. 9.11.2010 <https://www.ifixit.com/News/14266/self-repair-manifesto> (accessed: 15.1.2025).

⁴² De Vries K., and Abrahamsson, S. 2023. A digital right to repair?: How new EU legislation could open up data and software in connected products to enhance their lifespan. *Hållbarhet ur ett rättsligt perspektiv* / [ed] Mattias Dahlberg; Therése Fridström Montoya; Mikael Hansson; Charlotta Zetterberg, Uppsala: Iustus förlag, p. 292. Available: <https://journals.uu.se/DeLege/article/view/513/463>.

⁴³ One reason for this is that in the past, many products were often repaired.

⁴⁴ Marikyan, D., Papagiannidis, S. 2024. Exercising the “Right to Repair”: A Customer’s Perspective. *J Bus Ethics* 193, 35–61. <https://doi.org/10.1007/s10551-023-05569-9>.

consumers' opportunities to repair their devices.⁴⁵ R2R strategies also have the potential to expand the “politics of repair beyond repair” to challenge the linear functioning of the market⁴⁶.

At the moment, R2R is not legally defined. Sällberg has proposed the following definition:⁴⁷

“The allocation and distribution of funds, resources, and information, through legislative intervention, towards independent parties, be they people or businesses, to encourage repair, of both hard- and software, to maximise the lifespan of products to support sustainability objectives and help consumers economically.”

However, legal barriers impeding consumer repairs are found in many areas of law, including chemical law, product legislation, and intellectual property rights.⁴⁸ Thus, from a legal perspective, strategies to enforce R2R include both changes to existing legislative frameworks, and the adoption of new laws. There is especially interest for adopting public policies that make it more economically beneficial for consumers to decide to repair their products.⁴⁹ For instance, repair vouchers have been implemented in Austria and Germany to subsidize repairs through public funding.⁵⁰ In France, a repair

⁴⁵ It is quite common that producers adopt strategies that impede consumer repairs; cf. Dalhammar, C., Milios, L., Richter, J.L. 2021. Increasing the lifespan of products: Policies and consumer perspectives. Report: Swedish Energy Agency Report Series. Available: <https://energimyndigheten.a-w2m.se/Home.mvc?ResourceId=201400>. For a more thorough discussion of how manufacturers adopt strategies to impede repairs see Grinvald, L.C. and O. Tur-Sinai. 2019. Intellectual Property Law and the Right to Repair. *Fordham Law Review* 88(1). Available: <https://ir.lawnet.fordham.edu/flr/vol88/iss1/3>.

⁴⁶ Lloveras, J., Pansera, M., Smith, A. 2024. On ‘the Politics of Repair Beyond Repair’: Radical Democracy and the Right to Repair Movement. *J Bus Ethics*. <https://doi.org/10.1007/s10551-024-05705-z>.

⁴⁷ Sällberg, T. 2024. You repair what you sow: A study on the definition of, and policies proposed for realising right-to-repair. Thesis, Lund University, on p. 47. Available: <http://lup.lub.lu.se/student-papers/record/9161912>.

⁴⁸ Svensson-Hoglund, S., Richter, J.L., Maitre-Ekern, E., Russell, J.D., Pihlajarinne, T., Dalhammar, C. 2021. Barriers, enablers and market governance: A review of the policy landscape for repair of consumer electronics in the EU and the U.S. *Journal of Cleaner Production* Vol. 288. <https://doi.org/10.1016/j.jclepro.2020.125488>.

⁴⁹ Meyer, K. and Molnár, M. 2024. A comprehensive overview of the current repair incentive systems: repair funds and vouchers (12.2.2024), <https://runder-tisch-reparatur.de/repair-funds-europe/> (accessed: 15.1.2025).

⁵⁰ Dalhammar, C., Hartman, C., Larsson, J., Jarelin, J., Milios, L., Mont, O. 2022. Moving away from the throwaway society. Five policy instruments for extending the life of consumer durables. *Mistra Sustainable Consumption, Report 1:12E*. Chalmers University of Technology. Available: https://research.chalmers.se/publication/528688/file/528688_Fulltext.pdf.

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fund was introduced in 2022, providing rebates on repairs, funded through a producer responsibility scheme.⁵¹

Another crucial barrier to R2R is financial. Patents or copyright on spare parts or software allow manufacturer to charge a high price for spare parts even if they are legally mandated to supply them. Thus, ensuring access to spare parts does not ensure lower cost of repair. The newly adopted Directive on common rules for repair requires spare parts and tools to be offered at a “reasonable price” that does not deter repair.⁵²

Table 1 outlines some legal interventions in Europe to support consumer repairs.

Goal of intervention	EU laws	EU Member State laws
Promoting design of repairable products Access to spare parts Software updates	Ecodesign Directive Battery Regulation	French Repair Index
Consumer rights	The Directive on repair of goods, establishes some consumer rights to R2R	Guarantees on repairs
Economic support for consumer repairs	Some EU rules have provisions on fair, reasonable, and indicative pricing of repairs/spare parts	Repair vouchers (AT, DE) Repair funds (FR) Tax deductions on repairs (SWE)
Provisions of information on repairability	Directive on Empowering Consumers in the Green Transition Energy Labelling Regulation	French Repair Index

⁵¹ Dalhammar, C. and Maitre-Ekern, E. How Can We Persuade Consumers to Purchase More Sustainable Products? A Review of European Legal Developments. In: Santos Silva et al. (eds.) Routledge Handbook of Private Law and Sustainability. 1st ed, Routledge.

⁵² Art. 5 in Directive (EU) 2024/1799 of the European Parliament and of the Council of 13 June 2024 on common rules promoting the repair of goods and amending Regulation (EU) 2017/2394 and Directives (EU) 2019/771 and (EU) 2020/1828, OJ L, 2024/1799, 10.7.2024.

Additionally, both the EU and the US (at federal and state levels), have laws and court decisions that restrict producers from using intellectual property rights or consumer contracts as means to preclude consumer repairs.⁵³

Increasingly, R2R is denoted as a “consumer right”⁵⁴. The exact meaning of this right is not settled, but it is clearly related to issues of product ownership and consumer sovereignty⁵⁵ that may conflict with other rights, most notably with the intellectual property rights of manufacturers. A repeated recommendation from legal scholars is to restrict manufacturers’ legal scope when this impedes consumer repairs.⁵⁶ In this way, policy frameworks also intervene in unfair market dynamics and prioritize certain rights over others.

Seeing R2R as a “right” may comprise different perspectives⁵⁷, such as:

1. fairness and justice perspectives, whereby the consumer is provided with certain rights vis-a-vis a manufacturer or seller, including the right
 - a) to know how repairable a product is and what spare parts are available at the time of purchase,
 - b) to expect that a product is built to be reasonably “repairable”,
 - c) to choose the repairer (not being restricted to repairers authorized by a manufacturer),
 - d) to have access to some spare parts, tools and manuals themselves (do-it-yourself),
 - e) to have access to repair services or spare parts at reasonable costs,
 - f) to have their products repaired adequately, ensured by statutory warranties for repair services.
2. fair competition, whereby repairers outside a manufacturers’ network of authorized repairers have certain rights that ensure they can

⁵³ Svensson-Hoglund, S., Richter, J.L., Maitre-Ekern, E., Russell, J.D., Pihlajarinne, T., Dalhammar, C. 2021. Barriers, enablers and market governance: A review of the policy landscape for repair of consumer electronics in the EU and the U.S. *Journal of Cleaner Production* Vol. 288. <https://doi.org/10.1016/j.jclepro.2020.125488>.

⁵⁴ See e.g., Directive on Common Rules Promoting the Repair of Goods.

⁵⁵ Perzanowski also stresses that R2R is about “reclaiming” the things we own, in Perzanowski, A. (2021). *The Right to Repair. Reclaiming the Things We Own*. Cambridge Univ Press.

⁵⁶ Grinvald, L.C., Tur-Sinai, O. 2019. Intellectual Property Law and the Right to Repair. *Fordham Law Review*. Available: <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=5618&context=fldr>.

⁵⁷ In its resolution on right to repair (R2R), the European Parliament stressed three key types of R2R: 1. A right to repairable products: this implies issues like provision of spare parts, manuals etc. by manufacturers. 2. Right to information at the time of purchase, but also about repair services. 3. Using consumer law to strengthen consumer rights, during and after warranty periods. See: https://www.europarl.europa.eu/doceo/document/TA-9-2022-0126_EN.html.

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compete on the aftermarket, such as access to tools, repair manuals, spare parts and software diagnostics.

Exactly what R2R is, then, remains “under negotiation”.⁵⁸ New developments, such as France’s introduction of a reparability index, for instance, implies that consumers’ right to know about the reparability of their products could be seen as part of a R2R. R2R policies indeed appear to mix elements of consumer and environmental protection. It has been argued that R2R is primarily seen as a consumer policy and ownership rights in the US, whereas it is more often presented as part of environmental policy, and especially circular economy policy, in the EU.⁵⁹ Yet, EU policies have lately introduced increasing elements of consumer protection in R2R-related policies. While EU legal frameworks aim to bring about open competition to all stakeholders in the repair sector by forcing more equal access to repair, EU rules largely exclude non-professional self-repairs.⁶⁰

Timescales are also significant in R2R laws, and different approaches have been adopted, such as⁶¹:

- mandating a specific period (in years) during which a consumer or independent repairer may have the right to access spare parts, software updates, etc.,
- granting consumers R2R rights within a warranty period, and restricting those after the period has passed,
- imposing the provision of spare parts within a given number of working days⁶², thus ensuring that repair can be arranged quickly and deterring the choice to replace a broken item with a new one.

The main purpose of consumer rights is to protect the interests of consumers. The traditional approach includes product safety, right to informa-

⁵⁸ Dalhammar et al. (forthcoming). What is right-to-repair (R2R) and how can we realize it through legal interventions?

⁵⁹ Svensson-Hoglund, S., Richter, J.L., Maitre-Ekern, E., Russell, J.D., Pihlajarinne, T., Dalhammar, C. 2021. Barriers, enablers and market governance: A review of the policy landscape for repair of consumer electronics in the EU and the U.S. *Journal of Cleaner Production* Vol. 288. <https://doi.org/10.1016/j.jclepro.2020.125488>.

⁶⁰ Ibid.

⁶¹ See e.g.: Directive (EU) 2024/1799 on common rules promoting the repair of goods and amending Regulation (EU) 2017/2394.

⁶² This applies for several product groups, such as white goods, regulated through Commission Regulations under the Ecodesign Directive (while the Ecodesign Directive has been recently replaced by the Ecodesign for Sustainable Products Regulation, the Regulations are still in force).

tion, and right to redress, however, lately new issues (e.g., implications of e-commerce), and the aim to move towards more sustainable consumption patterns, have influenced the ideas on consumer protection.⁶³ R2R not only supports consumer rights, but also is integral to advancing consumer welfare, by offering consumers financial relief and broadening their choices in the marketplace⁶⁴.

Regarding the rights of independent repairers in aftermarket competition, this can be considered part of “fair competition” that it is a stated policy objective in most countries and within the EU.⁶⁵ Competition policy and law have frequently been used to prevent larger industrial actors from leveraging their bargaining power and intellectual property rights to impose conditions that create market barriers for smaller repair providers.⁶⁶

Moreover, a differentiation can be made between R2R in relation to *physical objects* vs. *digital rights*. While physical objects may include spare parts and tools, digital rights can relate to software updates and software diagnostics, or indeed the right of manufacturers to refuse software updates and impose digital locks on devices, as well as, issues related to personal data.⁶⁷ Granting consumers and independent repairers physical rights may not be enough to repair a product effectively if the digital locks and lack of software updates impede functionality. A digital R2R could also empower consumers in other ways, e.g., by granting them the right to refuse upgrades of software, or even the right to request downgrades.⁶⁸

A digital R2R is however complex, for several reasons, such as:⁶⁹

⁶³ Cf. Consumers International. Consumer Protection: Why it matters to you. A practical guide to the United Nations guidelines for consumer protection. Available: <https://www.consumersinternational.org/media/2049/un-consumer-protection-guidelines-english.pdf>; https://unctad.org/system/files/official-document/ditccplpmisc2016d1_en.pdf.

⁶⁴ Lloveras, J., Pansera, M., Smith, A. 2024. On ‘the Politics of Repair Beyond Repair’: Radical Democracy and the Right to Repair Movement. *J Bus Ethics*. <https://doi.org/10.1007/s10551-024-05705-z>.

⁶⁵ Svensson-Hoglund, S., Richter, J.L., Maitre-Ekern, E., Russell, J.D., Pihlajarinne, T., Dalhammar, C. 2021. Barriers, enablers and market governance: A review of the policy landscape for repair of consumer electronics in the EU and the U.S. *Journal of Cleaner Production* Vol. 288. <https://doi.org/10.1016/j.jclepro.2020.125488>.

⁶⁶ See especially: Grinvald, L.C. and O. Tur-Sinai. 2019. Intellectual Property Law and the Right to Repair. *Fordham Law Review* 88(1). Available: <https://ir.lawnet.fordham.edu/flr/vol88/iss1/3>.

⁶⁷ De Vries K., and Abrahamsson, S. 2023. A digital right to repair?: How new EU legislation could open up data and software in connected products to enhance their lifespan. Available: <https://journals.uu.se/DeLege/article/view/513/463>.

⁶⁸ Ibid.

⁶⁹ Ibid.

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- Digital repair may require unique expertise,
- Hardware and software issues are usually related,
- Many devices are connected devices (not stand-alone ones), which may blur the division between producers and consumers and increase vulnerabilities from a data security perspective.

It should also be noted that many national rules on consumer guarantees make distinctions between products that have digital content and those that do not. For instance, in Sweden the legal guarantee for consumer goods – and the associated right to redress – is three years for most goods. For goods with digital parts, the period may be extended based on the terms of the agreement.⁷⁰

R2R also may have different implications depending on the actors involved. *Consumers* are likely to benefit a lot from the rights discussed above. However, there may be different types of consumers, and this may influence the nature of the R2R. For instance, in business-to-business transactions, it can be more relevant to make contractual arrangements between seller and buyers, also related to product and software updates, and repairs. For Business-to-consumer transactions, consumers are primarily protected by the general regulatory framework for consumer protection. Moreover, European citizens currently have different access to repair information, depending on national rules, e.g., due to the French repair index, French consumers have more information about product repairability than consumers in other EU countries. Furthermore, R2R may mainly benefit consumers in markets with R2R policies and laws. For instance, in some developing countries, manufacturers may have to pay huge sums for certification of spare parts, and consumer laws – e.g., on liability for repairs – may also discourage the development of repair offerings.⁷¹

Secondly, *independent repairers* will also benefit from R2R as they can access the aftermarket and compete better with original equipment manufacturer (OEM) repair services, as access to spare parts and tools will lower repair costs for them. However, not all policies supporting R2R are promot-

⁷⁰ Swedish Consumer Act [Konsumentköplag (2022:260)] Chapter 4, sections 4–5 and 14. Thus, the right to software updates is a minimum of three years after the consumer received the good, but if the product is a digital service, or hardware where digital add-on services are part of a service contract (in addition to the sales of the hardware), updates should typically be available for as long as the agreement is in force.

⁷¹ We have got this information from manufacturers of electronic products. A main problem is that outside the EU (with its CE marking the EU has one agreed standard for product safety), product manufacturers may need to launch different testing programs for each market they enter, and pay for product and spare part certification, which can be (prohibitively) expensive.

ing “competitive neutrality”: In Vienna and Graz, consumers can use repair vouchers at local repairers to subsidize a significant part of the cost of repair. These vouchers can only be used at local repairers servicing at least three brands.⁷² Thus, the policy specifically aims at supporting small, independent repairers, which may be seen as a breach of fair competition. A counter-argument is that small, independent repairers need more policy support than authorized service providers serving large brands, and their existence is vital for providing fair repair prices.⁷³

Potentially, *manufacturers* are the ones that will lose out the most as R2R policies progress, as both profit from repair services and new product sales are expected to decrease for them. But R2R may also offer business opportunities by extending profit margins and brand loyalty with aftersales services.⁷⁴

We argue that recent R2R policies demonstrate the increasing influence of ethical considerations on product policy and law. First, R2R pertains to rights and sovereignty of consumers, and prioritizes consumer interests over other rights – most notably intellectual property rights of the industry – which have traditionally been strongly protected by (EU) law. Second, R2R laws and policies seek to increase producers’ responsibilities, beyond existing responsibilities in consumer law and in accordance with producer responsibility rules, both in terms of *coverage and time*. With coverage, we mean that producers have obligations they did not have previously, such as a mandate to provide spare parts for repair, and software updates. With time, we mean that producers now have obligations that extend longer after a product is put on the market than before, when it was limited to the legal guarantee or commercial warranty; e.g., provision of spare parts for at least ten years in some cases.⁷⁵

⁷² See discussion in Dalhammar, C., Hartman, C., Larsson, J., Jarelin, J., Milios, L., Mont, O. 2022. Moving away from the throwaway society. Five policy instruments for extending the life of consumer durables. Mistra Sustainable Consumption, Report 1:12E. Chalmers University of Technology. Available: https://research.chalmers.se/publication/528688/file/528688_Fulltext.pdf.

⁷³ van der Velden, M., Maitre-Ekern, E., Wanja, D.K. 2024. The Role of Independent Repair in a Circular and Regenerative Economy. *Circ.Econ.Sust.* 4, 2981–3006. <https://doi.org/10.1007/s43615-023-00304-y>.

⁷⁴ Sabbaghi, M., Esmailian, B., Cade, W., Wiens, K., Behdad, S. 2016. Business outcomes of product reparability: A survey-based study of consumer repair experiences. *Resour. Conserv. Recycl.* 109, 114–122. <https://doi.org/10.1016/j.resconrec.2016.02.014>.

⁷⁵ As an example, ecodesign requirements for fridges require that some spare parts are available for 10 years after placing the last unit on the market, see Annex II, 3 a) in Commission Regulation (EU) 2019/2019 of 1 October 2019 laying down ecodesign requirements for refriger-

The R2R framework has the potential to democratize markets that challenge OEMs hegemony over repairs and may even serve as an opportunity to advance post-growth concepts in market – provided it is implemented effectively and resists industry lobbying pressures.⁷⁶

The future: Phasing out unethical products and business practices?

Some scholars argue that environmental policies have become post-political, serving as managerial measures aimed at technical adjustments rather than driving structural transformation or markets, or challenging capitalism.⁷⁷ Others argue that post-growth practices within the production systems remain marginalized by the dominant economic system wired towards profit, shareholder values, capital accumulation, market competition, consumerism, and rapid turnover of products as well as a dominant ideological mindset favouring green.⁷⁸ Moreover, Niskanen and McClaren find that the current discourse on R2R does not sufficiently challenge the fundamentals of current productivist and consumerist presumptions of the market and mainly targets consumer choice within this context.⁷⁹

Through “*regulatory choice editing*”⁸⁰ – i.e. by imposing mandatory requirements on various environmental aspects such as energy efficiency, toxic substances, product lifespan, and repairability, and by banning illegal practices – the EU and its Member States aim to progressively remove the

erating appliances pursuant to Directive 2009/125/EC of the European Parliament and of the Council and repealing Commission Regulation (EC) No 643/2009.

⁷⁶ Lloveras, J., Pansera, M., Smith, A. 2024. On ‘the Politics of Repair Beyond Repair’: Radical Democracy and the Right to Repair Movement. *J Bus Ethics*. <https://doi.org/10.1007/s10551-024-05705-z>.

⁷⁷ Zhang, Y., and Rabe, W. 2024. Explaining the EU’s policy shift toward China: an institutional approach. *Journal of European Integration*, 1–21. <https://doi.org/10.1080/07036337.2024.2432329>.

⁷⁸ Karimzadeh, S., & Boström, M. (2023). Ethical consumption in three stages: a focus on sufficiency and care. *Environmental Sociology*, 10(1), 1–11. <https://doi.org/10.1080/23251042.2023.2277971>.

⁷⁹ Niskanen J, McLaren D. The Political Economy of Circular Economies: Lessons from Future Repair Scenario Deliberations in Sweden. *Circ Econ Sustain*. doi: 10.1007/s43615-021-00128-8.

⁸⁰ This should be mixed up with the type of choice editing applied in behavioural economics (“nudging”); see Dalhammar, C. and Maitre-Ekern. 2024. How Can We Persuade Consumers to Purchase More Sustainable Products? A Review of European Legal Developments. In: Santos Silva et al. (eds.) *Routledge Handbook of Private Law and Sustainability*. 1st ed, Routledge, see also: European Commission. 2022. Press release: Green Deal: New proposals to make sustainable products the norm and boost Europe’s resource independence. Brussels. Available: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_2013. Accessed: 15.1.2025.

most unsustainable products and practices from the market. However, effective market surveillance and strict controls over the influx of illegal products via e-commerce are essential to achieve tangible results, but human and financial resources dedicated to market surveillance remain insufficient.⁸¹

The question is how we can go further? The policy responses related to right-to-repair and product destruction are signs of policy measures that *challenge the linear market logic* and go beyond technological fixes. They could also be the start of a revitalization of the discussion on the *ethical limits of certain market practices*. Policymakers have signalled that corporations should not use intellectual property rights to impede consumer repairs, and that putting a product on the market also entails an obligation to take responsibility for spare parts for many years after it is sold. There is an opportunity here to start a wider discussion on what it means to do business and take responsibility for the stuff being sold, and the responsibilities towards consumers.

This discussion is also taking place in relation to rules on e.g. corporate sustainability due diligence that contribute to establishing new norms for conducting business and require companies to look not just within their own operations, but also that of their subsidiaries and business partners. Although the texts in the directives related to supply chain reporting and due diligence that was finally adopted⁸² might not reflect the initial ambitions of the European Commission, the existence of hard rules about the minimum expected of large companies is significant, nonetheless.

Bans are emerging as potentially very effective tools to remove unethical yet profitable business models. After the prohibition of incandescent light bulbs and of some single-use plastics products⁸³, product destruction has now been targeted by EU legislators. The partial ban on product destruction in the Ecodesign for Sustainable Products Regulation for textiles and shoe wear implies that this practice is now the producers' problem: they must deal with it and cannot destroy unsold items anymore. Moreover, the rules will require better monitoring of textiles flows, making it difficult to ship excess volumes to poorer countries, unless it is ensured that those goods are actually re-used. Such rules should force producers to adapt their business

⁸¹ See e.g.: Nordic Council of Ministers. 2021. Effect of market surveillance in securing savings of ecodesign and energy labelling. Publication no 2021:522. Available: <https://www.norden.org/en/publication/effect-market-surveillance-securing-savings-ecodesign-and-energy-labelling>.

⁸² See footnotes 16 and 17, above.

⁸³ Directive (EU) 2019/904 of 5 June 2019 on the reduction of the impact of certain plastic products on the environment, OJ L 155, 12.6.2019, p. 1.

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models, for instance by reducing production levels or limiting consumer returns. Policymakers could also intervene to impose a fee for returns, to disincentivize such practices.⁸⁴

Going one step further, we believe that the *principles of exnovation* – i.e. *the termination of certain technologies, products and practices*⁸⁵ – should be considered in legal and policy frameworks. There should be an ongoing, open dialogue on these matters including discussions of potential policy implications. When is it reasonable to ban some types of products, or even some types of business strategies and models that are considered unethical?

However, it should be acknowledged that (un)ethical products and modes of production lack clear definitions and form a mix of characteristics associated with organizational practices, consumer values, and product characteristics that may include aspects such as product safety, environmental impacts, fair price, and labour conditions⁸⁶. Thus, future policies need to define what unethical products and industry practices entail. A radical take on this would be to consider some level of sufficiency – the absolute reduction of resource needs – as a criterion for ethical products and businesses.

Banning certain products and business models is also difficult from a legal design perspective. Law can be a blunt instrument, as a law would have to apply to all relevant product categories, which may make it difficult to specifically regulate unethical product and production practices, such as “ultra-fast fashion” as a specific sub-category in the fashion industry. There are however some approaches that appear relevant to consider or further explore, in particular:

- *Modulated fees in producer responsibility schemes*, where producers of products that are quickly disposed of pay a higher fee than other producers.⁸⁷

⁸⁴ Roberts, H., Milios, L., Mont, O., Dalhammar, C. 2023. Product destruction: Exploring unsustainable production-consumption systems and appropriate policy responses. *Sustainable Production and Consumption*, vol. 35 p. 300–312. On page 300. <https://doi.org/10.1016/j.spc.2022.11.009>.

⁸⁵ Heyen, D.A., Hermwille, L. and Wehnert, T. 2017. Out of the Comfort Zone! Governing the Exnovation of Unsustainable Technologies and Practices | *GAIA* 26/4: 326 – 331.

⁸⁶ Garlet, T.B., de Medeiros, J.F., Ribeiro, J.L.D., Gattermann, P.M. 2024. Understanding ethical products: Definitions and attributes to consider throughout the product lifecycle. *Sustainable Production and Consumption*, Vol. 45, p. 228–243. <https://doi.org/10.1016/j.spc.2024.01.010>.

⁸⁷ Klepp, I.G., Tobiasson, T.S. Måge, J., Hvas, K.K. 2023. Briefing paper, Deployment of Targeted Producer Responsibility (TPR): Questions and Answers, March 2023, Wasted Textiles, SIFO, Available: <https://clothingresearch.oslomet.no/briefing-paper-TPR-QA>.

- *Resource-Based Corporate Taxation*: Corporate tax rates could be based on raw material and resource use, that would encourage more frugal production practices.⁸⁸
- *Making e-commerce platforms responsible for the products they sell*.⁸⁹ Many products that are bought over e-commerce are not in compliance with EU laws. Such platforms should not be allowed to act only “mediators” between consumers and producers but should have responsibilities that products sold on the platforms comply with relevant laws.
- *Financially incentivise quality consumption*. Product regulation strategies, such as those promoting R2R and addressing product destruction, can indirectly increase product costs and raise prices. While higher prices may not be considered a positive thing, they may stimulate production and consumption of higher-quality goods. Previous studies highlighted that product price and quality are key factors for influencing consumer willingness to repair or replace products.⁹⁰ If products cost more and are of higher quality, consumers are likely to adjust to this by adopting more pro-environmental behaviour.
- *Requiring companies to contribute to sustainable value creation*.⁹¹ The idea that companies should align their business objectives with long-term goals of bringing benefits to society in line with planetary boundaries is emerging.⁹² The Staff Working Document accompany-

⁸⁸ Bocken, N. M.P. and Short, S. W. 2021. Unsustainable business models – Recognising and resolving institutionalised social and environmental harm, *Journal of Cleaner Production*, Volume 312, 127828. <https://doi.org/10.1016/j.jclepro.2021.127828>.

⁸⁹ This has also been the position of some consumer NGOs, see e.g.: Taenk: <https://taenk.dk/det-kaemper-vi-for/usikre-produkter-er-ikke-forbrugernes-ansvar>.

⁹⁰ It makes more sense to invest in repairing a high-quality, expensive product, than a low-quality product, and both economic and emotional factors may play a role in the consumer decision, cf. Okada, E.M. 2001. Trade-ins, Mental Accounting, and Product Replacement Decisions. *Journal of Consumer Research*, Volume 27, Issue 4, March 2001, pages 433–446. Furthermore, we do see that when products are becoming more costly and durable, more “circular” practices emerge. This is currently the case for mobile phones and computers, where repair and refurbishment is becoming more common, and many products are used by several users during their lifetime.

⁹¹ Sjøfjell, B. 2024. Conceptualising Corporate Sustainability Law. University of Oslo Faculty of Law Research Paper 2024-13, Available: <https://ssrn.com/abstract=4865659>.

⁹² See e.g.: Villiers, C., Sjøfjell, B., Tsagas, G. 2022. Stimulating Value Creation in a Europe in Crisis. In: Sjøfjell, B., Tsagas, G., Villiers, C., eds. *Sustainable Value Creation in the European Union: Towards Pathways to a Sustainable Future through Crises*. Cambridge University Press; 3–25. <https://doi.org/10.1017/9781009243841>.

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ing the proposed Corporate sustainability due diligence included the term ‘sustainable value creation’,⁹³ but the Directive never included it.

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⁹³ European Commission. 2022. Commission Staff Working Document. Impact Assessment Report. Accompanying the Document Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and Amending Directive (EU 2019/1937’ SWD (2022) 42 final.