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Legal Guide to Refurbishment

An overview of legal obligations in the sector

published in
collaboration with
CMS Francis Lefebvre

EDITO

The year 2026 marks a turning point for the circular economy in Europe. While refurbishment has established itself as an essential alternative for consumers concerned about their purchasing power and environmental footprint, the legislative framework has become more complex to ensure transparency, sustainability, and fair trade.

For this third edition of the Legal Guide to Refurbishment, Recommerce, in collaboration with CMS Francis Lefebvre, offers a comprehensive overview of the new rules that now structure our industry. This guide focuses on four major enjeux:

Consumer protection: In a mature market, trust is based on clarity. We review the strict framework for price communication, the crucial obligation to erase data for user safety, and the alignment of legal compliance guarantees between new and refurbished products.

Product sustainability: The entry into force of the "Right to Repair" directive and new regulations on eco-design and batteries are redefining responsibilities. Manufacturers are now required to facilitate repair and reuse, prohibiting software or hardware practices that hinder the activity of independent refurbishers.

Traceability: Innovation is at the heart of this edition with the arrival of the Digital Product Passport. Coupled with rigorous record-keeping, this tool ensures unprecedented tracking of a product's life cycle, from their initial release on the market to their multiple "second lives."

Taxation: Finally, we decipher the complex mechanisms of margin VAT and eco-contributions. Mastering these tax aspects is essential to combat fraud and ensure healthy competition between all players.

This guide aims to help industry players understand the changing but necessary regulations that will make refurbished goods the standard of tomorrow.

Recommerce™ refers only to the applicable legislation as commonly interpreted on the date of publication of this guide. Recommerce™ is not mandated by any authority to publish this guide.

SUMMARY

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I. Consumer Protection

1. Consumer information

a. Regulation of price communication

While refurbished products offer the primary benefit of lower pricing, such claims are regulated by Omnibus Directive 2019/2161.⁽¹⁾ This directive amends a set of directives⁽²⁾ relating to consumer protection, particularly with regard to price indication, misleading commercial practices, and unfair terms.

Any communication about a price reduction must now indicate the previous price applied to the **same product** for a specified period before the reduction was applied.

! It is therefore **prohibited to directly compare the price of a refurbished product with the price of its new equivalent** without specifying the nature of the two products being compared.

FORBIDDEN



-45%

€669.99

instead of

~~€1,219.99~~

AUTHORIZED



available from

€669.99

instead of

€1,219.99
(new price)

Furthermore, in case of a price reduction, the previous price displayed must be the **lowest price** for the same product **over the last 30 days** (Article 2 of Directive 2019/2161).

(1) Directive (EU) 2019/2161 of November 27, 2019 on better enforcement and modernization of Union consumer protection rules.

(2) Amends the following directives: 1. Directive 93/13/EEC of April 5, 1993, on unfair terms in consumer contracts, 2. Directive 98/6/EC on consumer protection in the indication of the prices of products offered to consumers, 3. Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market, and 4. Directive 2011/83/EU on consumer rights.

Example: A refurbished smartphone is offered at a **price of €419 on January 5**, then at a price of **€479 on January 15**. **On February 1, the same product is now offered at a price of €377**. If the seller decides to run a marketing campaign to sell this product, the product page must therefore display a **reduction compared to the price of €419 on January 5, which is the lowest price offered** for this product over the last thirty days, i.e., a reduction of approximately 10%. The seller cannot display a discount of approximately 20%, which would correspond to a reduction from the price of \$479 on January 15.

TO DO



Sales!

-10%

€377 *

*Lowest price offered in the last 30 days

A broadly interpreted scope of application

In order to protect consumers, the Commission interprets price reductions broadly. These may include non-measurable price reductions, such as the use of marketing terms like "**sale prices**" or "**special offers**," provided that the communication creates "**an impression of a price reduction**" for the consumer.⁽³⁾

Communication that contravenes these obligations may be considered a **misleading practice** within the meaning of Directive 2005/29. The amended directive stipulates that any commercial practice that contains "false" information or that "misleads or is likely to mislead the consumer, even if the information presented is factually correct," particularly with regard to price, the method of calculating the price, or the existence of a specific price advantage, is a misleading practice (Article 6 of Directive 2005/29). This type of practice may be punishable by criminal penalties.

(3) Commission Communication — Guidelines on the interpretation and application of Article 6a of Directive 98/6/EC on consumer protection in the indication of the prices of products offered to consumers.



Example in France of Misleading commercial practices penalties

Standard offence

2 years imprisonment
and €300,000 fine for
individuals
€1,5 million fine for a
legal entity

Offence committed using public communication or digital electronic means

5 years imprisonment and €750,000 fine for individuals

€3,75 million fine for a legal entity ⁽⁴⁾



In a decision dated September 26, 2024, the Court of Justice of the European Union (CJEU)⁽⁵⁾ clarified that **the price reduction announced by a professional must be effectively determined on the basis of the previous price**. Thus, a price advertisement mentioning a "previous price" for information purposes, without such a reduction being actually determined on the basis of that price, would mislead consumers, as advertisements presented in this way do not correspond to actual price reductions.

b. Obligation to provide transparent information

According to French regulations, in order to be classified as refurbished, a product must be **tested for all its functionalities** so that it offers consumers the expected safety and usability.⁽⁶⁾ *Between 2020 and 2021, checks on the sale of refurbished products in 84 establishments in France (physical stores or online sales sites) showed that this was not always the case.*⁽⁷⁾

Products may be described as "second-hand," but must undergo testing and repairs to ensure safety and usability in order to be classified as "refurbished."



The expressions "new condition," "like new," or any other equivalent wording are prohibited when referring to refurbished products.⁽⁸⁾

(4) Article L. 132-2 of the Consumer Code.

(5) CJEU, September 26, 2024, Case C-330/23.

(6) Definition of "refurbished product" Article R. 122-4 of the Consumer Code.

(7) <https://www.economie.gouv.fr/dgccrf/laction-de-la-dgccrf/les-enquetes/produits-reconditionnes-quels-engagements-vis-vis-du>

(8) Article R122-5 of the Consumer Code.

Finally, regardless of whether they sell used or refurbished goods, professional sellers are always subject to a **pre-contractual information obligation**, particularly regarding the essential characteristics of the goods sold,⁽⁹⁾ which requires them to provide consumers with all the information they need to understand exactly what condition the product they are buying is in (in particular, the exact condition of the product or any repairs it has undergone).



In France, the DGCCRF⁽¹⁰⁾ has therefore tightened its investigation into smartphones and touchscreen tablets, which represent a major share of the refurbished market. Its agents have checked in particular:

- The reality of the functional tests required by regulations in order to present a product as refurbished;
- Whether consumers are properly informed about the condition and performance of products presented as refurbished;
- In all cases, consumers must be provided with clear information on the performance of the product after refurbishment.

The purpose of this information requirement is to enable consumers to make an informed choice between refurbished products, particularly in comparison with new products.

Example 1: It is prohibited to display a claim such as "Tablet like new" on the product page or in an online store for a refurbished product.

FORBIDDEN

GRADE A+
LIKE NEW



Example 2: A product page for a smartphone displaying "Grade A+" or "Very good condition" must be accompanied by specifications corresponding to the characteristics of the grades and conditions used by the refurbisher. These specifications must be made available to consumers.

Example 3: A product page displaying "45 checkpoints" must be accompanied by a detailed list of these checkpoints.

(9) Article L111-1 of the Consumer Code.

(10) <https://www.economie.gouv.fr/dgccrf/laction-de-la-dgccrf/les-enquetes/smartphones-tablettes-tactiles-les-produits-reconditionnes>



2024 DGCCRF inspections relating to the sale of second-hand goods and refurbished products ⁽¹¹⁾

In a report published on October 21, 2025, the DGCCRF revealed that 30% of refurbished electronic retailers inspected in 2024 were non-compliant. More than 340 establishments were inspected. Several breaches were identified, mainly relating to consumer information.

Thirty percent of the establishments inspected in connection with the sale of refurbished electronic products were subject to corrective or punitive measures. Compliance orders, administrative fines, and warnings were issued for failure to provide consumer information.

The main breaches identified concern:

- The lack of consumer information on the existence and terms of the legal guarantee of conformity (in particular the applicable time limit and conditions of application);
- Confusing information about the actual condition of refurbished products, which must be accurate and clearly distinguish refurbished products from new products. In this regard, consumers must verify that they have information about the condition of the battery, the tests performed on the product, and the quality of the accessories supplied. Simply describing the equivalent new product does not allow consumers to make an informed choice;
- Failure to erase personal data, requiring the implementation of a comprehensive internal process to ensure that all data contained in the products is completely erased.



(11) https://www.google.com/url?q=https://www.economie.gouv.fr/files/files/directions_services/dgccrf/media-document/CP-DGCCRF-Marched-occasion.pdf&sa=D&source=docs&ust=1772014290513095&usq=AOvVaw1RdrEwM3EptQBOITgSg2B

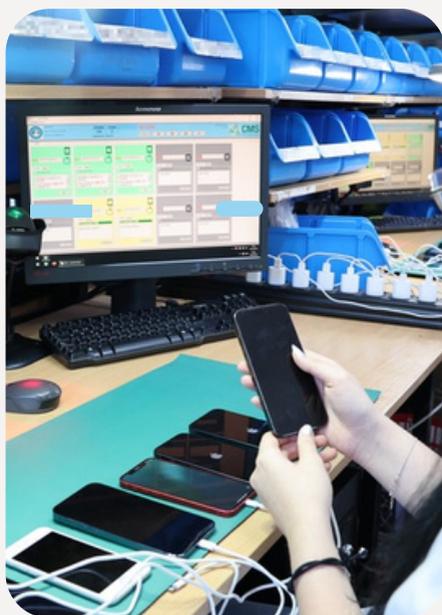
2. Data erasure

In some countries, such as France, **the law directly links the term "refurbished" to data security**. In accordance with Article R122-4 of the Consumer Code, a product can only be described as refurbished if the refurbishment process includes the **mandatory deletion of all data recorded or stored** in connection with a previous use or user, prior to the change of ownership.

Data erasure is therefore a condition for using the term "refurbished."

A practical example: in order to ensure that all links between the product and the digital identity of its former owner are permanently severed, a strict technical check is required

- *Deactivation of activation locks: Systems such as "Find My iPhone" (Apple) or "Google Lock" (Android) must be deactivated.*
- *If these locks remain in place, the former user can potentially geolocate the device remotely. Such a situation constitutes a serious violation of the new purchaser's privacy and a breach of the refurbisher's security obligations.*



The implementation of a **comprehensive and traceable internal data erasure process** is therefore essential in order to prevent any legal and reputational risks.

3. Legal warranties and commercial warranties

Consumers of refurbished products are **legally protected** in the same way as consumers of new products.

Directive 2019/771,⁽¹²⁾ on contracts for the sale of goods, clarifies this by now including second-hand products. Thus, sellers of refurbished products are obliged to **deliver goods that are in conformity** (Article 5). These products are therefore covered by a **legal guarantee of conformity**.

While the directive leaves it up to Member States to set the conditions and time limits for this conformity, the legal guarantee of conformity for second-hand products must nevertheless be for a **minimum period of one year** (Article 10.6).

As a result, in more than 14 European countries, refurbished products must be covered by a **two-year legal guarantee, the same duration as for new products**.

Furthermore, Directive 2024/1799⁽¹³⁾ amends Directive 2019/771 to provide that, **after repair of goods** under the legal guarantee of conformity, the liability period shall be **extended once for a period of 12 months**, which shall be added to the remaining period of the initial guarantee (Article 16).⁽¹⁴⁾



(12) Directive (EU) 2019/771 of May 20, 2019 on certain aspects concerning contracts for the sale of goods.

(13) <https://www.europe-consommateurs.eu/en/shopping-internet/guarantees-and-warranties.html>

(14) Directive (EU) 2024/1799 of June 13, 2024 establishing common rules to promote the repair of goods.

This period may be extended by a Member State when transposing the measure into its national law.⁽¹⁵⁾ The terms and conditions for exercising the warranty, in particular the burden of proof, may vary.



Example from France:⁽¹⁶⁾

- **If the product is defective within the first 12 months:** the law considers that the problem existed when the product was received (unless the seller proves otherwise). Consequently, the customer is entitled to repair, replacement free of charge, or a full or partial refund, without having to prove that the defect existed when the product was received.
- **If the product develops a defect after 12 months:** the customer still has the right to repair or replacement, but this time they must prove that the problem existed **when they received the product.**⁽¹⁷⁾

Used and refurbished products are also covered by the legal warranty **against hidden defects**. This means that consumers of refurbished products enjoy a level of protection equivalent to that applicable to new products with regard to the warranty against hidden defects.

(15) Deadline for transposition: July 31, 2026.

(16) Law No. 2020-105 of February 10, 2020 on waste reduction and the circular economy.

(17) Article L217-7 of the Consumer Code.

Distinguish legal warranty and commercial warranty

On the subject of warranties, it is common to see confusion in commercial communications between the different types of warranties, leading consumers to believe that they are benefiting from a "bonus" when in fact it is simply the legal warranties to which they are entitled.

It is important to distinguish between:

Legal warranty of conformity

This is **mandatory, free of charge**, and binding on all professional sellers. It covers defects in the conformity of the goods (malfunction, characteristics that do not conform to those agreed upon at the time of sale).

Commercial (or contractual) warranty⁽¹⁸⁾

This is **optional** and may be paid or free of charge, with varying durations. It is offered by the seller or manufacturer in addition to the legal warranty. It may cover more items than the legal warranty, or conversely, provide a more limited scope. In any case, **it cannot replace or remove the legal warranty of conformity.**



In accordance with Directive 2005/29/EC on unfair commercial practices (in particular point 10 of Annex I), it is **strictly prohibited to present a right granted by law as a feature specific to the seller's offer.**

Example: Presenting the 2-year legal warranty as an "exclusive benefit" or a "gift from the store" is a misleading commercial practice, as this protection is an automatic right of the consumer.

(18) Article L217-15 paragraph 1 of the Consumer Code.

II. Product durability

In March 2020, the European Commission announced its New Circular Economy Action Plan.⁽¹⁹⁾ A key element of the European Green Deal, this plan aims to accelerate the EU's transition to a more sustainable economy that protects natural resources, with a view to achieving climate neutrality by 2050. This plan has led to the implementation of several initiatives that have had a significant impact on the refurbished goods sector, notably by making new products more repairable.

1. "Right to repair" Directive

In order to extend the life of products, Directive 2024/1799, which came into force on July 30, 2024, sets out common rules to promote the repair of goods.⁽²⁰⁾

The directive recognizes that there are **various barriers to repair**, including "*economic convenience*," "*availability*," and "*proximity*" of repair services, which still encourage consumers to favor the purchase of new products. In order to remove these barriers, the directive sets out **several obligations, particularly for manufacturers of new products**.

a. Repair obligation

The directive creates a **general repair obligation** (Article 5): manufacturers cannot refuse to repair unless it is impossible to do so. Where repair is possible, it must be carried out "**free of charge or at a reasonable price**" and "*within a reasonable time*."

The manufacturer may provide the consumer with a replacement product, free of charge or at a reasonable cost, for the duration of the repair. If repair is impossible, the **consumer may be offered a refurbished product**.

(19) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions: A New Circular Economy Action Plan - For a Cleaner and More Competitive Europe of March 11, 2020 COM/2020/98 final.

(20) Directive (EU) 2024/1799 of June 13, 2024 establishing common rules to promote the repair of goods.

b. Encouraging independent repair

The directive also requires manufacturers to **make spare parts and tools for repair available** on the market at a **reasonable and non-discriminatory price**.

This means that manufacturers must allow independent repairers to obtain parts and tools and carry out the appropriate repairs for consumers.

Manufacturers are **also prohibited from using contractual or technical clauses** that hinder repairs, particularly independent repairs. This means that manufacturers are prohibited from using, at the product design stage, any technique that would make independent repair impossible (e.g., **serialization of spare parts** that causes a loss of functionality after repair). The directive also specifies that independent repairers must be able to "**use original or second-hand parts**" and "**compatible spare parts**" as long as they comply with the legislation in force (Article 5).

c. Better information on the existence of repair services

Member States must ensure that the manufacturer or, where applicable, the authorized representative, importer, or distributor makes information about their repair services available free of charge, at least for the duration of their repair obligation, in an easily accessible, clear, and understandable manner (Article 6).

In order to address the lack of or poor knowledge of repair services among consumers, the directive creates a European **online platform for repairs that lists the repair services available in each Member State**. This European interface must be online by July 31, 2027, at the latest, and must enable consumers to find repair professionals closest to their home (Article 7).

d. Creating financial incentives for repair

The Directive recognizes that price is one of the main barriers to repair for consumers. To address this, Member States are required to introduce at least one measure to promote repair (Article 13).

Example: in France, the government has set up a Repair Fund to provide financial support for the cost of repairs. For example, a consumer can receive up to €60 to have their television repaired.⁽²¹⁾

Conclusion

The Right to Repair Directive **enables the development of the independent repair market**, benefiting consumers who should be able to access repairs from any professional service provider. These professionals must not be hindered in their work by a lack of spare parts and tools, or deterred by their price, or prevented from carrying out repairs by software techniques used by manufacturers at the design stage.

Finally, **manufacturers will not be able to refuse to repair** a product on the sole grounds that a previous repair has been carried out by other repairers.

The deadline for transposing Directive 2024/1799 into national law is July 31, 2026. Member States will therefore gradually adopt legislative measures between now and that date; particular attention should be paid to the terms of each national transposition.

France already has advanced legislation in place with the AGECE law (Anti-Waste Law for a Circular Economy). In particular, Article L541-9-2 I of the Environmental Code already requires the provision of a **repairability index** to consumers for certain categories of products. The precise relationship between the directive and French law, as well as its effective transposition, remain major points of vigilance for the coming months.

(21) Law No. 2020-105 of February 10, 2020 on waste reduction and the circular economy.

2. Eco-design regulations

a. The Eco-design Regulation for sustainable products

The new Eco-design Regulation 2024/1781,⁽²²⁾ which came into force on July 18, 2024, replaces the Eco-design Directive 2009/125/EC⁽²³⁾ and establishes eco-design requirements, including requirements relating to the durability and circularity of products.

These requirements are intended to improve **"durability," "reusability," "repairability," and "the possibility (...) of refurbishment"** (Article 5). Manufacturers must therefore incorporate these concepts from the product design and production phase onwards.

European law also provides a **definition of refurbishment** for the first time, distinguishing it from the concepts of refurbishment and recycling.

Article 2 (18):

*"Actions carried out to **prepare, clean, test, service** and, where necessary, **repair** a product or a discarded product in order to restore its performance or functionality within the intended use and range of performance originally conceived at the design stage at the time of the placing of the product on the market".*

Information requirements should also help **to improve collection rates** by Member States for the product groups concerned, in particular those **with significant potential for reuse and refurbishment such as mobile phones** (the collection rate for which in Member States does not exceed 5%), for example by improving information on take-back systems through financial incentives and deposit systems, data privacy guarantees, databases of collection points, and personalized end-of-life information, using the digital product passport, on the value of the product and best practices for its proper disposal.

Directly applicable, the regulation covers a broad category of products and provides a foundation of requirements that are supplemented by eco-design regulations for specific product families.

(22) Regulation (EU) 2024/1781 of June 13, 2024 establishing a framework for setting eco-design requirements for sustainable products.

(23) Directive 2009/125/EC of October 21, 2009 establishing a framework for setting eco-design requirements for energy-related products.

b. The eco-design regulation for smartphones and tablets

Regulation 2023/1670⁽²⁴⁾ specifically establishes eco-design requirements for the **smartphone and tablet** product family. It applies to all products placed on the European market from June 20, 2025.

Annex II of the regulation creates several obligations for smartphone and tablet manufacturers to meet these eco-design requirements, including promoting readiness for reuse, refurbishment, and repairability.

Availability of spare parts and repair instructions

Annex II of the regulation lists a **set of spare parts** (batteries, cameras, audio jacks, charging ports, buttons, microphones, speakers, etc.) that must be **available on the market for a minimum of seven years** after the end of the product's market availability.



In accordance with this annex, in addition and for the same minimum period of seven years, **manufacturers must make "information on repair and maintenance" available to professional repairers**, at least for the spare parts mentioned above. This information must contain "the level of detail necessary" to be able to replace these parts. This includes "disassembly diagrams," a "list of necessary repair and testing equipment," a technical repair instruction manual, etc.

In the case of serialized parts, independent repairers must also be **given access to software techniques** that guarantee the full functionality of the part and the product after repair: as a result, the regulation does not prohibit the serialization of spare parts in the same way as the new Regulation 2023/1542⁽²⁵⁾ at the time of product design, but requires the manufacturer to provide the necessary tools and techniques to ensure that **a part replacement carried out by an independent operator does not result in a loss of functionality for the product.**

(24) Regulation (EU) 2023/1670 of June 16, 2023 establishing ecodesign requirements for smartphones, mobile phones other than smartphones, cordless phones, and tablets.

(25) Regulation (EU) 2023/1542 of July 12, 2023 on batteries and waste batteries.

Also, in order to reduce consumption and the purchase of parts, manufacturers are prohibited from offering these spare parts only as assemblies. This means that professional repairers must be able to purchase only the spare part they need. This **prohibition puts an end to bundling practices**, which consisted of systematically selling spare parts in an inseparable assembly.

Provision of operating systems

Manufacturers are required to make **all operating system updates available for at least 5 years** after the product's release date. These may be security, corrective, or feature updates provided by the manufacturer or required by regulation. These updates must be provided **free of charge**.



This measure guarantees the extended life of smartphones and tablets by allowing them to continue to function optimally thanks to operating system updates, just like new products. This enables second-life professionals to offer products with the latest updates, which, among other things, provide protection against online threats.

Conclusion

The new Eco-design regulations make it possible to **apply elements related to the reparability and reusability of products from the manufacturing stage onwards**.

Manufacturers have several obligations in this regard, including allowing independent repair, using tools and parts that are available on a non-discriminatory basis, and refraining from any techniques that hinder such repair. This set of measures therefore promotes refurbishment and reuse activities, which must be considered from the moment a new product is manufactured and throughout the product's life cycle.

3. Battery Regulation

Regulation 2023/1542⁽²⁶⁾ aims to make batteries more sustainable.

a. Removability of batteries

The new regulation creates an **obligation to facilitate the removal and replacement of portable batteries**. In particular, it states that batteries must be "**easy to remove and replace**" at "*any time during the product's lifetime*." When designing a product, manufacturers are therefore **prohibited from using physical techniques that hinder the easy removability of the battery**.

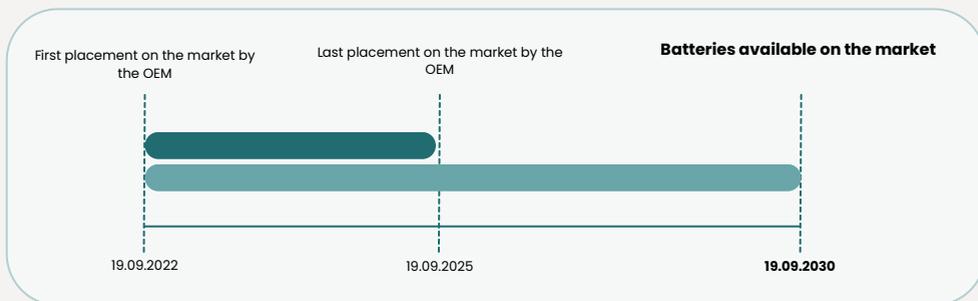
A removable battery is defined as one that can be **removed from a product using commercially available tools**, without the need for specialized tools, unless these are provided free of charge with the product.

b. Availability of batteries on the market

Manufacturers of products incorporating batteries are required to make these batteries available **as spare parts on the market at a "reasonable and non-discriminatory price for independent professionals and end users"**. In order to ensure the reparability of products, batteries must be available for a **minimum of five years** after the last unit of the model has been placed on the market.

Example: Apple marketed the iPhone 11 model until October 13, 2020. This means that the batteries built into these models must be available as spare parts on the market until October 13, 2025. Their sale price, particularly to independent professionals, must not discourage battery replacement.

(26) Regulation (EU) 2023/1542 of July 12, 2023 on batteries and waste batteries.



c. Prohibition of software techniques that prevent battery replacement and recognition of the use of compatible batteries

The regulation **prohibits the use of software that prevents the replacement** of a battery with another battery, in particular a **compatible** battery, i.e., one that is not original or not produced by the original manufacturer (Article 11, which will apply from February 18, 2027).

Example: Battery serialization techniques that allow the original battery to be paired with the entire product, resulting in a loss of functionality or the display of an error message following battery replacement, are prohibited.

Conclusion

In the context of Recommerce activities, we have found that batteries are the parts most regularly replaced in electrical and electronic products. This new regulation therefore has a significant impact on the refurbishment business by **ensuring the availability and reasonable price of these spare parts**. The new regulation also protects independent repairers by allowing them to replace any battery **without software barriers and with compatible batteries**.

III. Product Traceability

Traceability is one of the main challenges facing the sector, whether it is a question of ensuring product compliance or simply identifying product characteristics in order to repair them properly.

1. Police register

In some countries, such as France and the Netherlands, the sale of second-hand products must **be reported to the competent authorities** before it can take place. Maintaining a **police register is even mandatory**, and refurbishers must either set up their own register or fill out a state-owned register. This register makes it possible to identify the seller of the product, which helps to **limit the handling of stolen goods**, but it is also a very useful tool for addressing the **challenges associated with the traceability** of refurbished products.



Example: French criminal law provides for penalties (in particular, up to six months imprisonment and a fine of €30,000 for individuals and €150,000 for legal entities) for operators who do not keep a register or who fill in the register with false information.⁽²⁷⁾ Anyone engaged in the business of buying second-hand goods must notify the authorities of their activity and make a prior declaration to the prefecture or sub-prefecture responsible for their main establishment, in exchange for which they will receive a declaration receipt that they must be able to provide to the authorities in the event of an inspection.⁽²⁸⁾

The police register must indicate:

- The nature, characteristics, origin, and method of payment of the product taken back and contain its description.
- It must also identify the persons who sold it. Thus, in addition to the description of the items acquired or held for sale or exchange, the register must include, among other things: the surnames, first names, status, and address of each person who sold, exchanged, or deposited one or more items for sale.
- The nature, number, and date of issue of the identity document produced by the natural person who carried out the sale, exchange, or deposit, with an indication of the authority that issued it.⁽²⁹⁾

(27) Article R321-1 of the Criminal Code.

(28) Article R. 321-3 of the Criminal Code.

(29) Article R. 321-6-1 of the Criminal Code.



Furthermore, when the register is dematerialized, it must have certain technical characteristics to ensure the integrity and traceability of actions. Automated processing must also guarantee the integrity, inviolability, and security of the data recorded. The data must be kept for ten years from the date of its recording in the processing system. ⁽³⁰⁾

2. Digital Product Passport

In order to improve product traceability, the Ecodesign Regulation 2024/1781 has created the obligation to implement a **Digital Product Passport** (hereinafter "Product Passport"). ⁽³¹⁾

The Product Passport acts **as a tool for identifying individual products** by centralizing essential information about their lifecycle.

In particular, it will include:

- information on product **performance**: repairability index, durability index, carbon footprint, or environmental footprint;
- information for customers and other economic actors, indicating how to **install, use, maintain, and repair** the product in order to minimize its environmental impact and ensure optimal durability;
- information for treatment facilities on the **dismantling, reuse, refurbishment, recycling**, or disposal of the product at the end of its life.



(30) Article R. 321-6-1 of the Criminal Code.

(31) Chapter III of Regulation 2024/1781 of June 13, 2024 establishing a framework for setting eco-design requirements for sustainable products.

Digitized information on the product and its life cycle or, where applicable, its passport, must be easily accessible by scanning a data carrier, such as a watermark or a quick response (QR) code.

The Product Passport will be accessible to all actors in the value chain, from manufacturers to refurbishers, repairers, and independent operators.

This means that when a refurbisher or repairer receives a used product for reuse or repair, they will be able to find out exactly what the product's characteristics are and what operations may have been carried out on it, enabling them to take all the necessary steps to ensure the product's compliance, restore its functionality, etc.

The Product Passport will be rolled out gradually from **2027**. Work is currently underway at European level to define the technical details of the system.

Conclusion

The introduction of the Product Passport will significantly improve product traceability and **thus facilitate refurbishment activities**. Unlike new products, second-hand products are unique in that they are in a unique condition. By giving second-hand professionals access to the Product Passport, this new system allows them to **immediately obtain all the information they need for their business**, which will ultimately reassure consumers.

IV. Taxation and eco-contributions

1. VAT on Margin

Principle

VAT on margin is a derogation among the methods for calculating the VAT base, established as the standard system for second-hand goods by Directive 2006/112/EC.⁽³²⁾

The aim is **to avoid double taxation** and to ensure that goods which are reintroduced or which have already been placed on the EU market once (i.e. which have been subject to the full and normal rate of VAT having been definitively paid to an EU tax authority without any right of deduction) **are not subject to the same VAT again**. This scheme aims to restore a balance between taxable resellers, such as refurbishers, with regard to their type of supply of used equipment.

In principle, the total price of a good or service is generally the basis for the total taxable amount, defined as the total value received by the seller. As an exception, second-hand goods are subject to a special VAT scheme and **the tax base is not the total price but the margin realized** by the reseller, defined as *"the difference between the invoiced sale price (...) and the purchase price."*

However, the regime does not automatically apply to all second-hand goods and must meet certain conditions: **the goods purchased must be supplied by a "non-taxable person" or a person who is not authorized to charge VAT on the sale.**

In practice

A refurbished product can benefit from VAT on margin **if the refurbisher has purchased the device from a non-professional or a private individual in the EU**, or from another taxable person who has not charged VAT, for example, a company that has itself benefited from VAT on margin.⁽³³⁾

(32) Council Directive 2006/112/EC of November 28, 2006 on the common system of value added tax.

(33) Article 314 of Directive 2006/112 of November 28, 2006 on the common system of value added tax.

Examples:

However, **the scheme does not apply to a refurbisher who has purchased a used product shipped from a third country to the EU and therefore subject to import VAT.**

The margin VAT scheme is not an automatic scheme for refurbished devices. Refurbished devices can only be sold under the margin VAT scheme **if they were purchased in the EU from a private individual or a trader who did not charge VAT on the sale.** All other types of refurbished devices, such as products imported from countries outside the EU, are **subject to the normal VAT regime**, i.e., VAT is applied to the total price.



VAT is subject to large-scale fraud across the EU: in 2020, Member States estimated VAT fraud at €93 billion.⁽³⁴⁾ At the level of a single country, such as France, at the beginning of 2024, the French Ministry of Finance suspected VAT fraud amounting to €114 million.⁽³⁵⁾

In our sector, the EU recently investigated VAT margin fraud amounting to €19 million by a single player in six countries.⁽³⁶⁾

(34) https://france.representation.ec.europa.eu/informations/fiscalite-adopter-la-transition-numerique-pour-contribuer-lutter-contre-la-fraude-la-tva-et-soutenir-2022-12-08_fr#:~:text=Selon%20les%20derniers%20chiffres%20de,int%C3%A9rieur%20de%20l'Union

(35) https://www.linforme.com/grande-conso/article/114-millions-d-euros-bercy-sur-la-piste-d-une-enorme-fraude-a-la-tva-sur-les-colis_1325.html

(36) <https://www.eppo.europa.eu/en/media/news/eppo-carries-out-searches-six-countries-probe-second-hand-mobile-phone-vat-fraud>

In order to verify the origin of the product and ensure compliance with margin VAT, **traceability** is the main challenge facing the sector in the fight against fraud. The physical origin of the goods, the information on the purchase invoice, the product's IMEI, the location of the supplier, and the CE marking on the product are particularly important, especially since, in the absence of these checks, a purchasing company may find itself exposed to tax risks.



In France, for example, the irregular application of the VAT margin scheme exposes not only the main perpetrator of the fraud, but also the other parties involved in the chain of operations, to tax risks if they are unable to demonstrate that they have carried out the required checks.

In addition, Article 283, 4 bis of the General Tax Code provides that the taxable person to whom goods or services have been supplied, who knew or could not have been unaware that all or part of the VAT due on that supply of goods or services — or on a previous transaction involving the same goods or services — would not be paid back fraudulently, is jointly and severally liable, with the legal taxpayer, for paying this tax. The purchasing company's defense will be based on proof of its good faith and the exercise of reasonable diligence (verification of the supplier, consistent prices, compliance of invoices).

However, the provisions relating to the questioning of the right to deduction⁽³⁷⁾ and the use of joint and several liability for payment cannot be applied cumulatively for the same goods. The choice will be made according to the circumstances of each individual case. The right to deduction will be questioned whenever possible.⁽³⁸⁾ It is also subject to financial penalties, the level of which depends on the degree of intent determined by the tax authorities.⁽³⁹⁾

It should be noted that the tax authorities are not required to take priority action against the legal taxpayer (i.e., the supplier who fraudulently applied the margin scheme), but may pursue the purchasing company directly.

(37) Article 272(3) of the French General Tax Code.

(38) BOI-TVA-DECLA-10-10-30-10

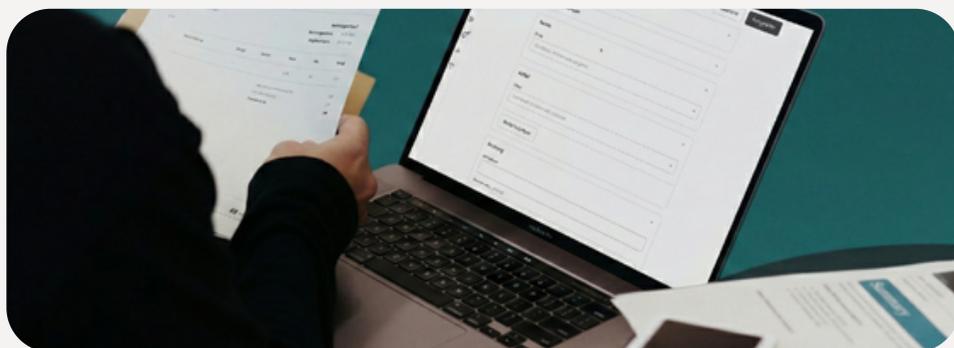
(39) Articles 1728 and 1729 of the General Tax Code.



Impact of the electronic invoicing

Finally, in an era of increasing fiscal scrutiny, the application of VAT margin scheme is likely to be impacted by the implementation of mandatory electronic invoicing, which will require particular vigilance with regard to its application. In France, the General Tax Code requires taxpayers using this scheme to not display VAT on their invoices (Article 297 E of the CGI). Even if the company does not charge VAT under the VAT margin scheme, transactions with other taxable entities still fall within the scope of mandatory electronic invoicing. This framework imposes specific data requirements for invoices that do not display a VAT amount, ensuring that the 'margin' nature of the sale is correctly categorized within the national e-invoicing directory. If the transaction is carried out with a private individual, it falls within the scope of e-reporting, for which taxable persons remain required, in the interests of transparency vis-à-vis the tax authorities, to indicate the specific mandatory reference corresponding to the "special scheme - second-hand goods," in accordance with Article 242 nonies A I-16 of the CGI.

The electronic invoice must therefore be configured in such a way as to transmit the amount of VAT due to the authorities via e-reporting, while concealing this information on the document provided to the customer, in order to comply with the specific requirements of the VAT margin scheme.



2. Eco-contributions

Directive 2008/98/CE ⁽⁴⁰⁾ establishes **the polluter pays principle** with the payment of an **eco-participation or eco-contribution** by the party responsible for placing the product on the market, whether it is the importer or distributor of a new product. This contribution is intended to finance the collection and recycling of discarded products and constitutes an additional cost in the price of a product.

Three types of contributions apply to the electronics sector :

- Waste Electrical and Electronic Equipment (**WEEE**)
- Waste **Batteries**
- Waste **Packaging**

For each of these, a certain amount is due in accordance with the national legislation of the Member States, which may also require proof of payment.



In most cases, the party responsible for payment is the producer or importer of the product in the national territory of the Member State concerned. Here again, the nature of the product—new or refurbished—does not change the rules of responsibility: **the first party to place the product on the market is responsible for paying the contribution.**

Without harmonization of the rules on eco-contributions in the EU, Member States may have developed different systems. Additional obligations to ensure adequate payment may be implemented.

(40) Directive 2008/98/EC of November 19, 2008 on waste



Example: In France, for example, **marketplaces** (online marketplaces as defined in the introductory article of the Consumer Code) may be subject to certain EPR obligations, such as **payment of the WEEE eco-contribution if they are unable to demonstrate the compliance of sellers offering products through them**. This can be demonstrated by providing the unique identification number of the entity responsible for the products in the event of an inspection. In addition, as part of the final price, the amount of eco-contributions applicable to the product must be communicated to the consumer.

Conclusion

The lack of harmonization of the rules on the payment of eco-contributions does not mean that Member States are exempt from this rule. **In all EU Member States, eco-contributions are payable**. Each national system must be carefully examined in this regard, and the **amounts and methods of calculation may vary** (by product, by kilograms introduced into the national territory, etc.).

Average eco-contribution rates (smartphones)



3. Private copying levies

Directive 2001/29/EC introduced a system of compensation for copies of cultural content on electronic devices such as smartphones. Some countries **have explicitly applied this system to refurbished devices.**

The amount of this compensation must be taken into account as it can reach €10 in some countries and therefore represents a considerable price difference between the prices charged by operators who comply with the rules and those who do not.

Private copying levy rate for refurbished smartphones



(41) Decision No. 23 of January 12, 2023 of the private copying remuneration commission provided for in Article L. 311-5 of the Intellectual Property Code.

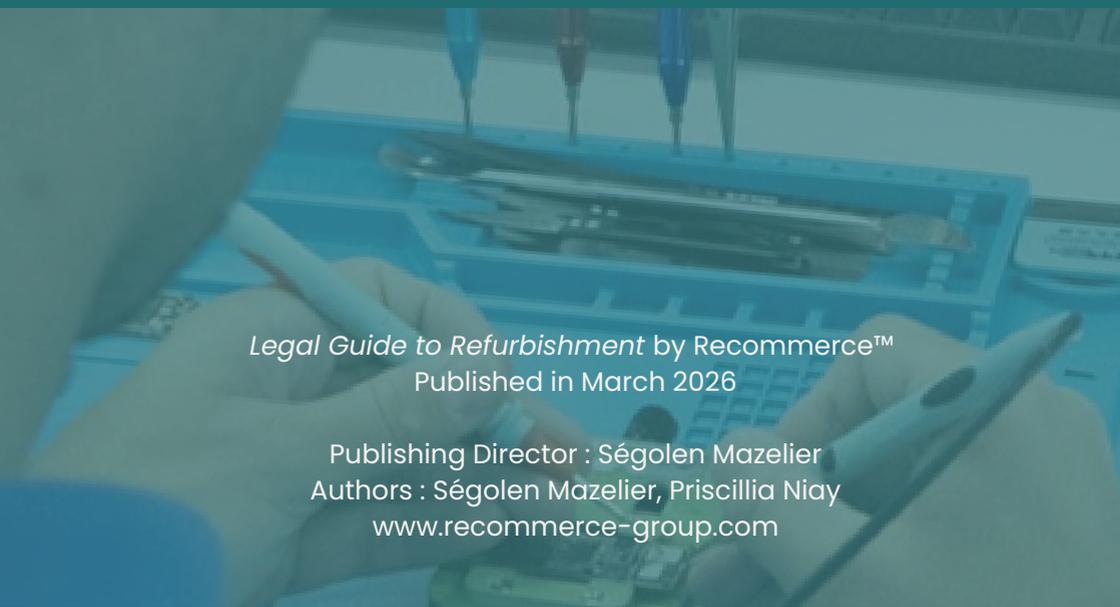
(42) Common tariff for remuneration under Sections 54 and 54a of the German Copyright Act (UrhG) (remuneration for reproductions under Section 53(1) to (3) UrhG) for mobile phones (Gemeinsamer Tarif über die Vergütung nach den §§ 54, 54a UrhG (Vergütung für Vervielfältigungen gemäß § 53 Abs. 1 bis 3 UrhG) für Mobiltelefone) - [official website of the ZPU](https://www.zpue.de/download-center.html?category%5B%5D=17&search=&tag%5B%5D=ab2008), accessed on 24/01/2025: <https://www.zpue.de/download-center.html?category%5B%5D=17&search=&tag%5B%5D=ab2008>

(43) Article 2 of the Royal Decree amending the Royal Decree of October 18, 2013, on the right to remuneration for private copying.



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