Preliminary draft law on Sustainable Consumption

VGE & AEVI response to TRIS 2026/0294/ES

Video Games Europe (VGE), the European trade federation representing the video game sector in Europe, and the Spanish Video Game Association (AEVI), the leading trade association representing the video game industry in Spain, submit these comments as part of their commitment to consumer protection and to the development of an integrated European digital market, while also addressing the implications of the Draft Bill for the video game industry.

The video game industry operates within an essentially European and global market. Its value chains bring together developers, publishers, distributors, device manufacturers, platform operators, technology providers and service providers established across different Member States. Digital distribution, the cross-border provision of services, software updates, and reliance on third-party infrastructure and technologies are all integral features of the sector.

1. General comments

We support the objective of enabling consumers to have goods repaired, as reflected in the relevant European legislation. Achieving this objective, however, requires that the obligations imposed be proportionate and compatible with the nature of the product or service concerned.

National legislation should respect the allocation of subject matter established under EU law between the repair of goods, the bringing into conformity of goods with digital elements, and the bringing into conformity of digital content and digital services. It should also respect the level of harmonisation established by Directives (EU) 2024/1799, 2024/825, 2019/771 and 2019/770.

Directive (EU) 2024/1799 expressly seeks to prevent divergent national rules on repair that would require businesses to adapt their services and contractual arrangements on a Member State-by-Member State basis. Article 3 prohibits Member States from maintaining or introducing national provisions that diverge from the harmonised rules. At the same time, Recitals 6 and 7 recognise a degree of national discretion with regard to non-harmonised matters and complementary measures promoting repair, provided that such measures are compatible with the Directive itself and with the wider body of EU law.

Accordingly, not every complementary national measure is necessarily incompatible with EU law. However, the greater its impact on product design, the organisation of after-sales services or the cross-border provision of digital services, the more clearly its scope should be defined, and the stronger its justification should be in terms of the principles of necessity, proportionality and legal certainty.

A national measure that affects the marketing or after-sales treatment of goods originating in other Member States may fall within the scope of Articles 34 and 36 of the Treaty on the Functioning of the European Union (TFEU). Where such a measure affects services provided on a cross-border basis, it should also be assessed in light of Article 56 TFEU. In non-harmonised areas, the principle of mutual recognition of goods lawfully marketed in another Member State may also be relevant.

From these viewpoints, we are particularly concerned that the Draft Bill introduces several Spain-specific information and digital-interface obligations, a mandatory post-guarantee repair financing mechanism and a general ten-year spare-parts and technical-assistance framework. Unless strictly circumscribed, these measures could require economic operators to adapt product design, after-sales networks, online storefronts and consumer-facing information flows for Spain alone, with disproportionate consequences for economic operators distributing the same products across the Union.

2. **Need to clarify the concept and scope of repair**

The Draft Bill contains a number of provisions that correctly distinguish between goods and digital supplies:

- Proposed Article 59 bis(1)(w) defines **"repair"** as the process of restoring defective goods to a condition in which they can be used for their intended purpose.
- Article 59 bis(2) provides that, for these purposes, **goods** are tangible movable items.
- Article 118(1) uses the concepts of **repair** and **replacement** in relation to goods, whereas paragraph 2 recognises, in respect of digital content and digital services, the consumer's right to require that they be **brought into conformity**.
- Article 127 bis(2) **limits** the manufacturer's repair obligation to those goods for which the Union acts listed in Annex II to Directive (EU) 2024/1799 establish repairability requirements.

This distinction is consistent with EU law. Regulation (EU) 2024/1781 defines a **"product"** as a physical good and **"repair"** as the process of restoring a defective product to a condition in which it can fulfil its intended purpose. The Regulation also expressly distinguishes repair from maintenance, upgrading and refurbishment.

Directive (EU) 2019/770 harmonises the rules governing conformity, updates, remedies and modifications relating to digital content and digital services. Article 14 grants consumers the right to have the digital content or digital service **brought into conformity**, unless this is impossible or disproportionate. It does not characterise this remedy as the repair of goods. Furthermore, Article 4 establishes a regime of full harmonisation in respect of the matters covered by the Directive.

However, certain provisions of the Draft Bill may give rise to interpretative uncertainty. In particular, proposed Article 115 ter(1)(d) refers jointly to repairability, accessibility, continuity and functionality in a provision applicable to goods, digital content and digital services. Although Article 118 subsequently distinguishes the respective remedies applicable to each, the wording could encourage authorities to treat **"repair"** and **"bringing into conformity"** as interchangeable concepts.

Such an expansive interpretation could transform an obligation relating to physical goods into a general obligation applicable across different categories of products and services. This would go beyond the Draft Bill's own definition of repair and would blur the distinction established by Directives (EU) 2019/770 and 2019/771.

Preserving this distinction is particularly important for the video game industry, where goods, digital content and digital services frequently coexist and are subject to different regulatory frameworks.

The Draft Bill should therefore clarify that, for the purposes of Article 127 bis and the measures associated with the repair obligation, **repair** refers exclusively to tangible movable goods and applies only in the circumstances and to the extent provided for by the applicable Union acts. It should not, in itself, encompass the correction of digital content, the provision of updates, the maintenance of servers, the continuity of digital services or the restoration of functionalities dependent on third parties, without prejudice to any conformity obligations arising under the applicable legislation.

This clarification is also important from a cybersecurity perspective. Requiring companies to preserve, restore or recreate outdated digital content, digital services, connectivity functions or server-side infrastructure for the purpose of a repair regime could prevent them from decommissioning insecure systems, applying latest security standards or responding to evolving cybersecurity threats, and may ultimately increase security risks for consumers.

It would also be desirable to clarify that the obligations associated with repairability cannot be interpreted as requiring the disclosure of, or access to, advanced diagnostic tools, firmware, cryptographic keys, authentication systems, security credentials, anti-circumvention technology, sensitive technical documentation or other protected elements where such disclosure or access could compromise cybersecurity, product safety, product integrity, the protection of intellectual property rights, personal data, trade secrets or the effectiveness of technical measures designed to prevent unauthorised tampering. The repair obligation should be understood as being limited to the provision of the elements necessary to carry out the repair in accordance with the requirements of EU law, without prejudice to other equally protected legal interests.

Similarly, the Draft Bill should clearly identify the economic operator responsible for each obligation relating to repair, avoiding the imposition of equivalent obligations on operators

that lack the necessary technical knowledge or effective control over the design, manufacture or characteristics of the product. Responsibility should be allocated according to the functions actually performed by each economic operator within the supply chain, in line with the framework established under EU law, thereby reinforcing legal certainty and ensuring the proportionality of the regime.

3. EU Harmonisation and the risk of internal market fragmentation

Directive (EU) 2024/1799 establishes three particularly relevant limitations.

First, the manufacturer's repair obligation applies only to those goods for which repairability requirements are laid down in the Union acts listed in **Annex II**, and only to the extent provided for in those acts. Second, the obligation does not apply where repair is impossible. Third, the Directive establishes a specific sequence of responsible economic operators where the manufacturer is not established in the Union: the authorised representative, the importer and, as a last resort, the distributor.

Proposed Article 127 bis(2) and (4) of the Draft Bill substantially reproduces these elements. This correspondence should be preserved, and other provisions of the Draft Bill should not be allowed to expand, directly or indirectly, the material or personal scope of the repair obligation.

As of the date of these comments, video game consoles are not included as a standalone product category in the current Annex II. The 2026 amendment to that Annex was limited to the inclusion of certain local space heaters. Accordingly, any repair obligation specifically applicable to video game consoles or other devices within the sector should derive from a Union act establishing the relevant repairability requirements, rather than from an expansive interpretation of national law.

Game consoles are also addressed at EU level through the recognised Games Consoles Voluntary Agreement, an ecodesign self-regulatory initiative. Any broader national requirements concerning spare parts or technical assistance should therefore take this tailored EU approach into account, avoiding overlapping obligations and further market fragmentation.

From this perspective, the mechanism requiring businesses to contribute to the cost of certain repairs, as provided for in Article Three of the Draft Bill, raises serious concerns as to its compatibility with the harmonised EU framework established by Directive (EU) 2024/1799 and should be removed. Also, the Draft Bill's requirement to ensure the availability of technical assistance services and spare parts for at least ten years after a product ceases to be manufactured raises additional concerns and should be removed. Imposing a uniform national ten-year requirement risks departing from the harmonised approach, creating additional compliance burdens and barriers to the marketing and distribution of products across the internal market. If retained, these requirements should

remain strictly limited to the economic operators referred to in Article 127 bis(2) and to the goods covered by the Union acts listed in Annex II.

The Draft Bill should also address the risk of fraudulent, inflated or unverifiable repair-financing claims. Economic operators required to contribute should have a clear right to obtain sufficient evidence from registered repairers, including the European repair information form and objective supporting material, before reimbursement is due. Any co-financing mechanism should be conditional on transparent accreditation, technical competence, professional liability coverage and compliance with applicable safety, cybersecurity, and waste-management requirements.

A broader national application would have direct implications for the internal market. Such additional burdens would particularly affect independent developers, SMEs and operators distributing the same video game or service across several Member States. Directive (EU) 2024/1799 itself recognises that divergent national rules generate compliance costs and create actual or potential obstacles to cross-border operations. It is therefore essential that the Draft Bill remain fully aligned with the harmonised EU framework and avoid introducing obligations or interpretations that could undermine regulatory consistency and the proper functioning of the internal market. Divergent national rules, including Spain-specific repair financing obligations, extended spare-parts obligations and additional information requirements, would limit the business options and increase compliance costs for manufacturers, importers, distributors and platform operators. Such costs are likely to be passed on through higher prices, reduced product availability, or the withdrawal of certain products and services from smaller markets, ultimately harming consumers while undermining the objective of maintaining a coherent and competitive internal market.

The same considerations are equally relevant in relation to those provisions of the Draft Bill that do not derive directly from Directives (EU) 2024/825 and 2024/1799. Any additional obligations should therefore be properly justified, comply with the principles of necessity and proportionality, and avoid introducing unnecessary restrictions affecting the functioning of the internal market.

This approach is fully consistent with the European Commission's recent Communication *A Simpler, Clearer and Better Enforced EU Rulebook* (2026), which identifies the reduction of so-called *gold-plating* and the strengthening of the uniform application of EU law among its priorities, with the aim of avoiding unnecessary regulatory burdens and further fragmentation of the internal market. In this context, the notification procedure established under Directive (EU) 2015/1535 (TRIS) constitutes a particularly valuable preventive mechanism for identifying potential inconsistencies with EU law at an early stage and facilitating their resolution before the final adoption of national measures, thereby reducing the risk of subsequent action by the Commission in the exercise of its supervisory powers and, where appropriate, infringement proceedings.

VGE and AEVI reiterate their willingness to cooperate with the European Commission and the Spanish authorities to ensure that the final legislation facilitates the effective repair of goods, maintains a high level of consumer protection, safeguards cybersecurity and product integrity, and preserves the coherence of both the internal market and the Digital Single Market.

About Video Games Europe

Video Games Europe comprises national trade associations covering 18 countries throughout Europe. Video Games Europe also has as direct members the leading European and international publishers, many of which have studios with a strong European footprint, which produce and publish interactive entertainment and educational software. Video Games Europe is the founder of PEGI.

The video games industry represents one of Europe's most compelling economic success stories, relying on a strong IP framework, and is a rapidly growing segment of the creative industries. There are around 6,000 game developer studios and publishers in Europe, employing over 116,000 people.

About AEVI – Spanish Association of Video Games

AEVI is the professional association representing video game publishers in Spain. AEVI was founded in 2014 following the restructuring of the former aDeSe and has since worked to represent all stakeholders in the video game value chain – developers, publishers, universities, esports agents, retailers, hardware manufacturers, etc. As the leading association in the sector, it is firmly committed to strengthening and defending the interests of one of the fastest-growing technological and cultural industries in Spain. AEVI is a member of VGE.