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From: Presidency
To: Council

Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information
- Progress report

I. INTRODUCTION

1. On 30 March 2022, the Commission submitted the above mentioned proposal for a Directive of the European Parliament and of the Council amending Directives 2005/29/EC and 2011/83/EU as regards empowering consumers for the green transition through better protection against unfair practices and better information¹. The proposal is based on Article 114 of the Treaty on the Functioning of the European Union (TFEU).

¹ doc. 7808/22

2. The proposal aims at enhancing consumer rights, in particular by ensuring that consumers can take informed and environment-friendly decisions when buying products, and thus contribute to more sustainable consumption. Consumers should have a right to know how long a product is designed to last and whether it can be repaired. In addition, the rules strive to strengthen consumer protection against untrustworthy or false environmental claims by banning ‘greenwashing’ and other practices that mislead consumers about a product’s durability.
3. The European Economic and Social Committee provided its opinion on the proposal on 13 July 2022².
4. In the European Parliament, the Committee on the Internal Market and Consumer Protection (IMCO) has not yet voted on its report.

II. WORK CONDUCTED IN THE COUNCIL PREPARATORY BODIES

5. The examination of the proposal by the Working Party on Consumer Protection and Information started on 4 April 2022 under the French Presidency, aiming to complete the first examination of the text by the end of its Presidency.
6. The impact assessment accompanying this proposal was examined in detail at the first working party meeting. The examination showed that delegations generally support the objectives of the proposal identified by the Commission. At the same time, however, doubts were expressed, pointing in particular to the risk of overloading consumers with information that would be incomprehensible to them, to an unnecessary burden for traders when most of obligations can be fulfilled by manufacturers, and to unclear links to existing and upcoming Union legislation.

² INT/957 – EESC-2021. <https://webapi2016.eesc.europa.eu/v1/documents/eesc-2021-03583-00-00-ac-tra-en.docx/content>

7. The examination of the proposal continued in the subsequent working party meetings on 28 April 2022 and 19 May 2022, in which all of the proposal's provisions were thoroughly examined.
8. The first meeting of the working party under the Czech Presidency took place on 14 July 2022. The discussion focused on horizontal issues highlighted by the Member States in both their oral and written contributions: efficiency of some of the proposed measures, consistency with other EU legislation and complexity of the information obligations, from the perspective of both consumers and traders.
9. In the working party meeting on 28 September, the Presidency presented its first amended draft proposal that was discussed in depth. Member States also commented on it in writing. The results of these contributions will be reflected in the second amended draft proposal that the Czech Presidency will present and discuss with Member States in the upcoming working party meeting on 7 December 2022.

III. MAIN ISSUES

10. Based on the discussions held at working party level so far, the Presidency has identified preliminary general support among Member States for the overall objectives of the proposal. Member States have contributed to a time-intensive and constructive debate in the first and second article-by-article examinations of the text as well as in the debate on horizontal aspects of the proposal. In this context, the following sensitive issues have been identified:

a) *Definitions*

The proposal amends the Unfair Commercial Practices Directive and the Consumer Rights Directive in which it introduces new definitions when needed. The definitions introduced in the Unfair Commercial Practices Directive are closely linked to existing or upcoming environmental legislation. In this regard, Member States would welcome more clarity and consistency with other Union legislation (e.g. certification scheme, recognised excellent environmental performance). As regards the definitions in the Consumer Rights Directive, similar doubts have been raised, in particular in relation to the Sales of Goods Directive³ and the Digital Content Directive⁴ (e.g. commercial guarantee of durability, updates and reparability score). The definitions therefore need to be further discussed, especially with regard to other Union legislation.

b) *Blacklisted commercial practice regarding the plan to introduce early obsolescence*

While there is general support among delegations for the need to fight against the plan to introduce early obsolescence, which involves introducing a feature into a good that limits its durability, Member States raised doubts about the efficiency of the proposed measures. According to the proposal, the trader is liable for omitting to inform consumers about the existence of such a feature in the good. However, only the manufacturer of the product can introduce such a feature in the good, and therefore the manufacturer alone knows about it. There are several alternative approaches to this issue that need to be further discussed: deleting the obligation of the trader in this proposal and providing - in sector-specific legislation - for the prohibition for the manufacturer to introduce features which limit the durability of products; keeping the obligation for the trader to inform consumers about such features; the obligation would only apply, however, if the trader has been informed by the manufacturer accordingly. Therefore, this issue needs to be further elaborated, in particular through a thorough analysis of the division of liability between manufacturer and trader. The enforceability of the provision should also be considered in this regard.

³ OJ L 136, 22.5.2019, p. 28 [EUR-Lex - 32019L0771 - EN - EUR-Lex \(europa.eu\)](#)

⁴ OJ L 136, 22.5.2019, p. 1 [EUR-Lex - 32019L0770 - EN - EUR-Lex \(europa.eu\)](#)

c) ***Blacklisted commercial practices regarding durability***

The proposal provides for the prohibition in all circumstances of a number of practices regarding the durability of goods. These practices include claiming that a good has a certain durability in terms of usage time or intensity when it does not, inducing the consumer to replace the consumables of a good earlier than technically necessary, and omitting to inform the consumer that a good is designed to limit its functionality when using consumables, spare parts or accessories that are not supplied by the original producer. In spite of the support of Member States in fighting these practices, there are doubts as to whether it is the manufacturer, rather than the trader, who bears responsibility. This issue also needs to be discussed further, including in relation to other Union legislation, such as the eco-design proposal. Furthermore, an analysis of the division of liability between the manufacturer and the trader is of great importance, as is ensuring that the provision can be enforced.

d) ***Pre-contractual information on the commercial guarantee of durability***

The current rules on pre-contractual information about commercial guarantees, i.e. including the commercial guarantee of durability in the Consumer Rights Directive, are in place and have recently been interpreted by the Court of Justice of the EU. Therefore, a large group of Member States argues that there is no need for significant changes in this regard. Requirements on the provision of information on the commercial guarantee are also set out in the Sales of Goods Directive. On top of this, the Member States have raised doubts as to whether there is a need to impose further information obligations on traders when it is only the manufacturer who can provide a commercial guarantee of durability. A further option involves simplifying the obligation. This issue still needs to be reflected on in the future, taking into account the existing rules, case law and the practical impacts on consumers and traders.

e) *Information on updates*

In general, Member States support the inclusion of the pre-contractual information obligation about updates, both for digital goods and services and goods with digital elements. However, this information must be clear. Member States also support the proposal to blacklist the unfair commercial practice that consists in omitting to inform consumers about the fact that a software update will negatively impact the use of goods with digital elements, or certain features of those goods, or digital content, or digital services, even if that software update improves the functioning of other features. However, at the same time, some Member States point to the fact that the trader may not have real knowledge of such an impact; only the manufacturer or the update provider can be aware of the impact. Consequently, the latter issue also needs to be further elaborated with a focus on the division of liability between the manufacturer and the trader. Moreover, consistency with the Sales of Goods Directive needs to be considered.

IV. CONCLUSION

11. While the French and Czech Presidencies have made considerable progress in the examination of the proposal, there is a need to continue the in-depth discussions in further meetings of the Working Party for Consumer Protection and Information. Taking into account the complexity of the proposal and its interrelation with other Union law instruments, both existing and upcoming in particular, further work at technical level is required before the Council can take a political decision.
12. The question of the need to revisit the impact assessment was also raised in light of the crisis that European consumers are currently going through.
13. The Presidency considers this report to be a balanced summary of the main issues identified during the examination of the proposal and a fair contribution to shaping the way forward.
14. The COUNCIL is invited to take note of the present progress report from the Presidency at its meeting on 1st December 2022.