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REGULATORY SCRUTINY BOARD OPINION

Revision of the Sale of Goods Directive

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Brussels,
RSB/

Opinion

Title: Impact assessment / Revision of the Sale of Goods Directive

Overall 2nd opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

Directive (EU) 2019/771, better known as the Sale of Goods Directive, introduces rules on conformity of goods and provides consumers with a number of remedies for lack of conformity, including repair and replacement of goods, price reduction and termination of the sales contract. This Directive complements Directive (EU) 2011/83/EU, better known as the Consumer Rights Directive, which is a consumer protection measure in EU law.

The revision aims to strengthen the repair remedies vis-à-vis the replacement remedy of the Sale of Goods Directive as a consumer's "right to repair". It aims to tackle the premature disposal of repairable consumer goods and to contribute to the circular economy and the European Green Deal objective of sustainable consumption.

(B) Summary of findings

The Board notes the improvements that have been made to the report responding to the Board's previous opinion.

However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the DG to rectify the following aspects:

- (1) The report is not sufficiently clear how repair rates will change under the dynamic baseline and to what extent consumers' behaviour – that is, in preferring repair over replacement – will change as a result of this initiative.**
- (2) The report is not sufficiently clear on the methodological approach to estimate consumer savings. The robustness of the estimates and the underlying assumptions are not clearly presented.**
- (3) The methodology and assumptions behind the results of the multi-criteria analysis and how they feed into the comparison of the options remain unclear.**

This opinion concerns a draft impact assessment which may differ from the final version.

(C) What to improve

(1) The report should be clearer on successful repair rates (i.e. a percentage of goods successfully fixed by repairers) under the dynamic baseline. It should better explain how those rates were calculated and how they were factored into the dynamic baseline. It should also be more explicit that they are based on the preliminary data.

(2) The report should better demonstrate the extent to which the preferred option will change a consumer's preference for replacement over repair taking into account different consumer goods categories and different consumer types. The report should clarify to what extent the preferred option envisages a legally enforceable "right to repair" and whether this right applies to all consumer good categories envisaged by the initiative equally.

(3) The report should further explain the methodological approach to estimate consumer savings. It should clearly present two approaches – the approach based on avoided purchases of new goods as well as the approach based on increased repair rates. It should be clear on how those methodologies differ in assumptions and underlying indicators for the estimates. For the latter, the report should better explain how the results for a sample of assessed products were extrapolated to all consumer durables including a clearer justification of the extrapolation factor. It should also provide more explanation on how the increased number of additionally repaired goods and increased repair rates as a result of the policy options are reflected in the modelling.

(4) The report should be clearer about the robustness of the estimates and the underlying assumptions, in particular the assumptions behind the behavioural change towards repair by consumers. It should explain to what extent experts have verified the data robustness and representativeness. The report should explain how robust the estimates are in both methodological approaches. The level of certainty in the analysis and conclusions should be clear.

(5) The report should better explain the methodology and assumptions behind the results of the multi-criteria analysis. It should be clearer how the multi-criteria analysis feeds into the comparison of the options. It should ensure consistency between the multi-criteria scores reported in the main text and the annexes.

(6) The report should better explain to what extent the preferred option – implemented through amending the current Sale of Goods Directive and adding a new self-standing Directive – is likely to lead to differences in consumer rights across Member States and if so, what the impact(s) will be. The report should describe better what the delivery risks are of the other instruments of delivery: self-regulation (code of conduct) and/or Commission standardisation mandate.

(7) The report should expand on the monitoring and evaluation arrangements needed to monitor the actual impacts of an information exchange platform as envisaged by the initiative. The report should explain better to what extent these costs are vectored in in the cost benefits calculations under enforcement costs by Member States' administrations.

The Board notes the estimated costs and benefits of the preferred option(s) in this initiative, as summarised in the attached quantification tables.

(D) Conclusion

The DG may proceed with the initiative.

The DG must revise the report in accordance with the Board's findings before launching the interservice consultation.

If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.

Full title	Revision of the Sale of Goods Directive (EU) 2019/771
Reference number	PLAN/2021/11514
Submitted to RSB on	31 August 2022 (1 st submission) 15 December 2022 (2 nd submission)
Date of RSB meeting	28 September 2022

ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

I. Overview of Benefits (total for all provisions) – Preferred Option		
<i>Description</i>	<i>Amount</i>	<i>Comments</i>
<i>Direct benefits</i>		
Consumer savings	EUR 176.5 billion	Main beneficiaries: consumers
Environmental benefits	CO2 savings: 18.5 million tons CO2-eq = EUR 3.3 billion Resource savings: 1.8 million tons CO2-eq = EUR 1.1 billion Waste savings: 3 million tons CO2-eq = EUR 493.5 million Total monetised: EUR 4.8 billion	Main beneficiaries: society
Total cost savings in production costs	EUR 15.6 billion	Main beneficiaries: EU producers
<i>Indirect benefits</i>		
-		
<i>Administrative cost savings related to the 'one in, one out' approach*</i>		
-		

II. Overview of costs – Preferred option							
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
PO1A: Prioritising repair whenever it is cheaper than replacement	Direct adjustment costs	-	-	EUR 104.2 million	EUR 758.1 million (15 years)	-	-
	Direct administrative costs	-	-	-	-	-	-
	Direct regulatory fees and charges	-	-	-	-	-	-
	Direct enforcement costs	-	-	-	-	EUR 0.5 million	EUR 27.7 million
	Indirect costs	-	-	-	-	-	-
PO5A: Obligation to inform where to repair	Direct adjustment costs	-	-	EUR 106.6 million	EUR 160 million	-	-
	Direct administrative costs	-	-	-	-	-	-
	Direct regulatory fees and charges	-	-	-	-	-	-

	Direct enforcement costs	-	-	-	-	EUR 1.1 million	EUR 11.2 million
	Indirect costs	-	-	-	-		
PO5B: Platform with information on available repair services (national level)	Direct adjustment costs	-	-	-	-	-	-
	Direct administrative costs	-	-	-	-	-	-
	Direct regulatory fees and charges	-	-	-	-	-	-
	Direct enforcement costs	-	-	-	-	EUR 8.6 million	EUR 23.4 million
	Indirect costs	-	-	-	-	-	-
PO6A: Voluntary commitments to an EU common “easy repair standard”	Direct adjustment costs	-	-	-	-	-	-
	Direct administrative costs	-	-	-	-	-	-
	Direct regulatory fees and charges	-	-	-	-	-	-
	Direct enforcement costs	-	-	-	-	EUR 1 million	EUR 1.5 million
	Indirect costs	-	-	-	-	-	-
PO6B: Obligation to issue a repair quote on price and conditions for repair in a standardised form	Direct adjustment costs	-	-	EUR 475.4 million	EUR 5.9 billion	-	-
	Direct administrative costs	-	-	-	-	-	-
	Direct regulatory fees and charges	-	-	-	-	-	-
	Direct enforcement costs	-	-	-	-	EUR 1.1 million	EUR 25.4 million
	Indirect costs	-	-	-	-	-	-
PO6C: Producer’s obligation to repair goods that are subject to reparability requirements under EU law (against a price)	Direct adjustment costs	-	-	EUR 45.0 million	EUR 582.1 million	-	-
	Direct administrative costs	-	-	EUR 69.8 million	-	-	-
	Direct regulatory fees and charges	-	-	-	-	-	-
	Direct enforcement costs	-	-	-	-	EUR 1.1 million	EUR 3.4 million
	Indirect costs	-	-	-	-	-	-

PO7: Promoting refurbished goods on an online platform via a functionality under PO5B	Direct adjustment costs	-	-	-	-	-	-
	Direct administrative costs	-	-	-	-	-	-
	Direct regulatory fees and charges	-	-	-	-	-	-
	Direct enforcement costs	-	-	-	-	EUR 0.7 million	EUR 3.2 million
	Indirect costs	-	-	-	-	-	-
Costs related to the 'one in, one out' approach							
Total	Direct adjustment costs	-	-	EUR 681 million	EUR 8 billion		
	Indirect adjustment costs	-	-	-	-		
	Administrative costs (for offsetting)	-	-	EUR 69.8 million	-		



Brussels,
RSB/

Opinion

Title: Impact assessment / Revision of the Sale of Goods Directive

Overall opinion: NEGATIVE

(A) Policy context

Directive (EU) 2019/771, better known as the Sale of Goods Directive, introduces rules on conformity of goods and provides consumers with a number of remedies for lack of conformity, including repair and replacement of goods, price reduction and termination of the sales contract. This Directive complements Directive (EU) 2011/83/EU, better known as the Consumer Rights Directive, which is a consumer protection measure in EU law.

The revision aims to strengthen the repair remedies vis-à-vis the replacement remedy of the Sale of Goods Directive as a consumer's "right to repair". It aims to tackle the premature disposal of repairable consumer goods and to contribute to the circular economy and the European Green Deal objective of sustainable consumption.

(B) Summary of findings

The Board notes the additional information provided in advance of the meeting and commitments to make changes to the report.

However, the Board gives a negative opinion, because the report contains the following significant shortcomings:

- (1) The report does not sufficiently demonstrate the market failure and that the current legal framework is insufficient to tackle the premature disposal of repairable consumer goods.**
- (2) The report does not present a sufficiently dynamic baseline with a realistic timeline. It does not adequately reflect the estimated impacts from related sustainable products and the circular economy initiatives.**
- (3) The report does not convincingly demonstrate that mandatory right to repair measures will significantly change a consumer's preference from replacement towards repair. It does not sufficiently assess the robustness of the evidence underpinning the estimated consumer and business take-up rates of some key measures.**
- (4) The report does not provide a clear assessment and comparison of the costs and benefits of the options. It is not clear on the methodology and assumptions behind the results of the multi-criteria analysis and how they relate to the results of the cost benefit analysis and feed into the comparison of the options.**

(5) The report is not clear on the preferred option regarding obligations to repair. It does not bring out clearly enough their differences in terms of costs and benefits, implementation and proportionality.

(C) What to improve

(1) The report should explain better the scope of the initiative and its coherence with other EU legislation dealing with consumer goods, sustainability and the circular economy, notably the Ecodesign for Sustainable Products Regulation. The report should be clear on precisely which consumer goods are in the scope of the initiative. It should better explain to what extent the business-to-business market is affected by similar problems and if so, how these will be addressed, given that they are not covered, while ensuring coherence with the present initiative. It should better justify why the business segment is out of scope.

(2) The report should explain better why the Sale of Goods Directive is the correct instrument to tackle the premature disposal of repairable consumer goods. It should explain better how the problem of premature disposal *after* the guarantee period fits in with EU consumer law. It should also explain better how this articulation would work in practice when consumers will be given a legally enforceable “right to repair”, yet not all products are equally repairable in the years to come and not all repairs are equally favoured over replacement. It should further develop the intervention logic, including by clearly explaining and substantiating with evidence on how the issue of refurbished products fits therein, as currently there is no clear link to the identified problems. It should be clear if the problem is specific to some consumer goods categories.

(3) The report should present a more dynamic baseline scenario with a more realistic timeline allowing the estimated effects to materialise. It should fully reflect the expected improvements resulting from the Ecodesign for Sustainable Products Regulation and related circular economy measures, including by providing quantitative estimates and projections of some key impact indicators. It should also explain why the problem of premature disposal of repairable consumer goods is likely to increase in the next decade and if it applies to specific consumer goods categories.

(4) The report should better demonstrate, based on clear and robust evidence, how a mandatory “right to repair” will significantly change a consumer’s current preference for replacement. It should analyse better how economic operators such as sellers and producers, including SMEs, will be impacted by the “right to repair”. It should clarify how realistic and robust the assumed take-up rates for the various measures and estimated consumer savings are, given the stated reluctance of consumers to change behaviours in the near future.

(5) The report should provide a clearer assessment and comparison of the impacts and of the costs and benefits of all options, by integrating essential cost benefit estimates of measures currently presented only in the annex. It should better detail the methodology and assumptions behind the results of the multi-criteria analysis and justify the used weights of criteria, their allocation to the effectiveness and efficiency dimensions and how overlaps will be avoided. It should be clearer how the multi-criteria analysis feeds into the comparison of the options and how it relates to the results of the cost benefit analysis.

(6) As the report is not clear on the preferred option regarding obligations to repair (i.e. all product scope vs eco-design product scope), it should describe in more detail what the pros and cons and relative differences in terms of benefits and costs are as well as the implementation, coherence and proportionality of the two options to allow fully informed

decision making. It should also explain why both options have the same take-up rates given that under the policy option with the eco-design product scope it should be easier (and cheaper) to opt for repair for consumers and business alike. It should also better justify why the obligation to repair all products for a reasonable price could feature in the preferred option despite being described as the most incoherent option.

(7) The report should describe better what the main delivery risks are of the preferred option(s) to succeed in changing consumers' behaviour towards repair. It should better explain the costs and cost savings of the preferred option(s) in scope of the One In, One Out approach.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG must revise the report in accordance with the Board's findings and resubmit it for a final RSB opinion.

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Date of RSB meeting	28 September 2022