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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. prev. doc.:	5683/24
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Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on common rules promoting the repair of goods and amending Regulation (EU) 2017/2394, Directives (EU) 2019/771 and (EU) 2020/1828 <i>- Analysis of the final compromise text with a view to agreement</i>

I. INTRODUCTION

1. On 22 March 2023, the Commission submitted to the Council and the European Parliament a proposal for a Directive of the European Parliament and of the Council on common rules promoting the repair of goods¹, which aims to increase the repair and reuse of viable defective goods purchased by consumers within and beyond the legal guarantee of conformity and thus to promote sustainable consumption.

¹ 7767/23 + ADD1-4.

2. The draft Directive is based on Article 114 of the Treaty on the Functioning of the European Union (TFEU) (ordinary legislative procedure). The draft Directive is one of the initiatives set out in the Commission's 2020 New Consumer Agenda² and 2020 Circular Economy Action Plan³, and follows up the European Green Deal⁴.
3. The European Economic and Social Committee delivered its opinion on 14 June 2023⁵.
4. In the European Parliament, the Committee on the Internal Market and Consumer Protection (IMCO) has the lead responsibility. The European Parliament adopted its negotiating mandate⁶ at the plenary session on 21 November 2023.
5. At its meeting on 22 November 2023, the Permanent Representatives Committee granted the Presidency a mandate to enter into negotiations with the European Parliament.

II. INTER-INSTITUTIONAL NEGOTIATIONS

6. The first trilogue was held under the Spanish Presidency on 7 December 2023. This Committee was debriefed on 8 December 2023.
7. The technical level held eleven meetings between 11 December 2023 and 29 January 2024.
8. The Working Party on Consumer Protection and Information discussed the progress in the inter-institutional technical meetings on 19 December 2023 and on 12, 18 and 25 January 2024.
9. On the basis of the technical work the Presidency proposed a revised mandate⁷ to the Permanent Representatives Committee at its meeting on 31 January 2024.
10. The second and final trilogue took place under the Belgian Presidency on 1 February 2024. This Committee was debriefed on 7 February 2024.

² 12976/20 (COM(2020) 696 final).

³ 6766/20 + ADD1 (COM(2020) 98 final).

⁴ 15051/19 + ADD1 (COM(2019) 640 final).

⁵ 10768/23.

⁶ T9-0400/2023.

⁷ 5683/24.

11. On 1 February 2024, a provisional agreement was reached between co-legislators, resulting in the final compromise text as set out in the addendum to this note.
12. The main elements of this compromise text are set out in Section III. below. The Presidency considers that the overall compromise reached with the European Parliament is balanced and respects the mandate it has received.

III. MAIN ELEMENTS OF THE COMPROMISE TEXT

13. On the key political issues, the compromise agreed provisionally with the Parliament consists of the following elements:

- a) Definitions (Article 2)

The definition of “repair” and “durable medium” are added to the list of definitions. Furthermore, “producer” is replaced by “manufacturer” since the definition refers to the definition of “manufacturer” included in the proposal for the Ecodesign Regulation. This change is performed throughout the text.

- b) European Repair Information Form (Article 4)

The co-legislators found a compromise by deciding to make optional the use of the Form, with the conditions set out in the Council’s mandate. Thus, the Form must be provided free of charge, but the consumer may be requested to pay the necessary costs of the diagnostic service where such a service is needed to identify the defect and the type of repair. Besides, the period of validity is added to the list of key information included in the Form, specifying that the consumer and the repairer may agree on a longer validity period than the established 30 calendar days. Once provided and accepted by the consumer, the conditions set out in the Form will be binding on the repairer.

c) Obligation to repair (Article 5)

- Regarding the scope, it was agreed that the obligation for the manufacturer to repair will only apply to goods for which Union legal acts impose reparability requirements, as listed in Annex II. The Commission will update this Annex without undue delay and at the latest 12 months after the adoption of any new EU legal act that imposes reparability requirements. In this logic, household tumble driers and goods incorporating light means of transport batteries are now added to Annex II.
- Manufacturers will be required to perform their obligation to repair within a reasonable time and, unless it is provided for free, for a reasonable price so that consumers are not intentionally deterred from benefitting from this obligation. Manufacturers may offer, on a voluntary basis, a loan of a comparable good for the duration of the repair or a refurbished good where the repair is impossible.
- The co-legislators agreed that spare parts for technically repairable goods are made available at a reasonable price that does not deter repair. Manufacturers will also have to publish information on the indicative prices charged for typical repairs. Besides, they will be prohibited to use contractual, hardware or software related barriers to repair, unless these are justified by legitimate and objective factors.

d) European online platform for repair (Articles 7, 7a and 7b)

The co-legislators agreed to opt for a combination of the European online platform and national online repair platforms (whether public or private) for those Member States that choose to continue or start such initiatives. The European online platform will be designed and operated by the Commission with the assistance of Member States through an expert group and national contact points. While the aim is to help consumers find repair service providers via the platform, Member States can also choose to include sellers of goods that have been subject to refurbishment, purchasers of defective goods for refurbishment and community-led repair initiatives, in order to promote sustainable consumption.

e) Member States' measures to promote repair (Article 9a)

The co-legislators agreed to include an obligation for Member States to take at least one measure to promote repair, which can be of financial or non-financial nature, taken on national, regional or local level. Member States will have to report one of their measures as a minimum to the Commission and they will be able to exchange best practices.

f) Changes to the Sale of Goods Directive (Article 12)

- Repair vs replacement: The compromise text maintains the consumer's choice regarding the remedy to bring the defective goods into conformity during the liability period.
- The co-legislators agreed to add reparability to the objective conformity requirements. Furthermore, they agreed to extend the seller's liability period by twelve months where repair takes place, while allowing Member States to maintain their national specificities or to further extend this period in order to incentivise repair.
- It was also agreed to enable the seller to offer, on a voluntary basis, a good on loan during the repair, or a refurbished good as a replacement for a defective good, upon request by the consumer.

g) Transitional provisions, transposition, and application (Articles 16 and 17)

As a compromise, it was agreed that the Directive will be applicable 24 months after its entry into force, as set out in the Commission's original proposal.

h) Reporting by the Commission and review (Article 14a)

The co-legislators agreed to invite the Commission to submit a report on the application of this Directive by 7 years after its entry into force. This report will also assess the effectiveness of incentives to opt for repair including the extension of the legal guarantee, the need for promoting commercial guarantees on repair services as well as the necessity of setting out rules for liability of repairers for repair. Furthermore, the report will assess the effectiveness of the European online platform for repair.

IV. CONCLUSION

14. The Permanent Representatives Committee is therefore invited to:
- a) confirm agreement on the final compromise text as set out in the addendum to this note with a view to reaching an agreement at first reading with the European Parliament;
 - b) authorise the Chair of the Permanent Representatives Committee to send a letter to inform the Chair of the European Parliament's Committee on the Internal Market and Consumer Protection (IMCO) that, should the European Parliament adopt its position at first reading on the text of the proposal in the exact form as set out in the addendum to this note, and subject to revision of that text by the lawyer-linguists of both institutions, the Council will approve the European Parliament's position and the act will be adopted in the wording which corresponds to the European Parliament's position.
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