BRIEFING

Initial Appraisal of a European Commission Impact Assessment

European Parliament

Promoting the repair of consumer goods

Impact assessment (SWD(2023) 59, SWD(2023) 60 (summary)) accompanying a Commission 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, COM(2023) 155

This briefing provides an initial analysis of the strengths and weaknesses of the European Commission's impact assessment (IA) accompanying the above-mentioned proposal, put forward by the Commission on 22 March 2023 and referred to the European Parliament's Committee on the Internal Market and Consumer Protection (IMCO).

The sustainable consumption of goods is crucial in a circular economy, as it reduces waste and spares resources needed for the production of new goods. The Commission announced its intention to promote the repair of goods and introduce an effective 'right to repair' in its key communication on a European Green Deal (2019), the new circular economy action plan, and the new consumer agenda (both 2020). The present proposal complements two legislative initiatives the Commission put forward in March 2022, pursuing the Green Deal objective of sustainable consumption. The proposed regulation on eco-design for sustainable products aims to improve reparability through product design requirements and the availability of spare parts, whereas the proposed directive for empowering consumers for the green transition sets out information requirements for the durability and reparability of goods and seeks to tackle greenwashing and early obsolescence practices.

The present initiative on the repair of goods featured in the Commission work programme and the joint declaration on legislative priorities for the years 2022 and 2023. It also responds to citizens' calls voiced in the framework of the Conference on the Future of Europe,[1] and to long-standing requests by the European Parliament, voiced for instance in its topical resolution of 7 April 2022.

Problem definition

The IA identifies the **premature disposal of repairable consumer goods** in the after-sales phase as the main problem, both **within the legal guarantee –** usually a minimum of 2 years under EU consumer law[2] **(problem 1)** – and **outside (problem 2)**. A 'problem tree' visualises the problems identified, their drivers and consequences in a clear manner (IA, p. 7).

Problem 1: With regard to premature disposal of purchased products that become defective **within the legal guarantee**, the IA singles out one driver, namely EU consumer law favouring replacement of a defective product over repair. Directive (EU) 2019/771 on the sales of goods largely leaves consumers the choice between free-of-charge repair and replacement,[3] with the effect that consumers tend to opt for the less sustainable solution of getting a new product. Furthermore, returned products tend to be discarded rather than refurbished (IA, p. 8). The IA states that the share of defects tackled within the guarantee period is rather small, amounting to a mere 11.6 % (IA, p. 59).

Problem 2: The potential for repair **outside the legal guarantee** is high, as the majority of product defects occur after the guarantee has expired or when it is not applicable (e.g. defects resulting from wear and tear). However, in this situation, the costs and burden of arranging a good's repair shift to the consumers, who, again, tend to replace defective goods with new ones rather than seeking their repair. The IA notes that even where repair is technically feasible and economically affordable, the

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effective repair depends on consumers' willingness to repair, and their willingness to pay the price for the repair (IA, p. 9). It also recognises that, for consumers, repair is typically associated with a certain effort, inconvenience, and uncertainty regarding the reparability, cost, and quality or durability of the repair.

The IA identifies **five problem drivers** that may dissuade consumers from repair outside the guarantee phase. Two are deemed beyond the scope of the initiative (listed below *in italics*, and tackled, at least to some extent, by complementary EU initiatives).[4]

1 Lack of transparency regarding availability and conditions of repair (including cost)
2 Inconvenience factors (including time to repair and efforts to arrange repair)
3 Economic unattractiveness of repair outside the legal guarantee
4 *Products not being designed to be repairable*
5 *Consumer lifestyle choices*

Consumer goods disposed of prematurely – whether or not they are covered by the legal guarantee – often end up as waste. According to the IA, this primarily concerns 'products with a relatively low cost, modularity and consumption life-time' (IA, p. 12). In an attempt to quantify the **scale of the problem**, the IA estimates the scale of the market failure at €5.1 billion per year, or €62 million over a 15-year period (IA, p. 11). This (conservative) estimate considers only consumers who made an attempt to repair but failed. It does not take into account 'the costs of other negative consequences …, notably for the environment' (IA, p. 11). Overall, the problem definition appears well substantiated, and draws on a vast amount of quantitative and qualitative data. However, the main data source, a dedicated study supporting the IA, is neither properly cited nor linked, thus the data cannot be verified.

Subsidiarity / proportionality

The proposed legal basis for this initiative is **Article 114 TFEU**, which provides for the approximation of national legislations applicable in the internal market. The IA justifies this choice, arguing that the initiative aims to contribute to a better functioning of the internal market through **uniform rules** for promoting repair and reuse of consumer goods. Specific reference is made to Article 114(3) TFEU to stress the high level of environmental and consumer protection the present initiative is based on.

No subsidiarity grid is attached to the proposal, although the Better Regulation Guidelines (BRG) recommend its use for sensitive or important initiatives (tool #5). In a brief section on subsidiarity, the IA highlights the EU-wide relevance and cross-border nature of the problems identified and argues convincingly that the absence of EU-level action might lead to fragmentation of the internal market (IA, pp. 23-24). On **proportionality**, the IA maintains that none of the policy options proposed would go beyond what is necessary to achieve the objectives (IA, p. 24); however, not all policy options are systematically assessed as to whether they uphold the proportionality principle (BRG tool #17).

No **national parliament** issued a reasoned opinion before the subsidiarity deadline of 26 May 2023. However, in the framework of the political dialogue, the Czech Chamber of Deputies expressed doubts regarding the proposal's compliance with the principles of subsidiarity and proportionality.

Objectives of the initiative

The IA succinctly explains the initiative's objectives (IA, pp. 24-25). The **general objective** is to achieve more sustainable consumption by promoting the repair and reuse of consumer goods in the single market, within the field of consumer remedies. This goes hand in hand with longer product lifespan and waste reduction. This objective is coherent with the European Green Deal and also supports the United Nations **Sustainable Development Goals** (SDGs), in particular Goal #12 (responsible consumption and production) and Goal #13 (climate action), according to the IA.

The general objective is then broken down into two **specific objectives**, which derive directly from the problem definition, namely to **increase the repair and reuse of viable consumer goods,** first

within the legal guarantee, and second, **outside the legal guarantee**. Under the first specific objective, repair would be prioritised as a remedy, while the second specific objective would incentivise consumers to opt for repair rather than for replacement and to buy refurbished products rather than new ones. This would prolong the lifespan of the products concerned considerably. Consequently, both specific objectives would reduce the amount of waste stemming from discarded products, and the resources needed to manufacture new products. The specific objectives are not further detailed in the form of operational objectives setting out the concrete deliverables of policy actions. Thus, they do not appear to meet the SMART criteria of being specific, measurable, achievable, realistic and time-bound (BRG, tool #15). However, the indicators included in the monitoring framework allow for progress in implementing the preferred policy option to be measured (IA, pp. 74-75).

Range of options considered

To achieve the objectives set, the IA identifies **seven policy options** (POs) – most with sub-options – in addition to the **baseline scenario**. The latter serves as a benchmark for assessing the impact of the policy options in the long term, over a period of 15 years (IA, pp. 35-38). It is based on the current legal framework, but considers, where applicable, changes arising from legislation that is currently in progress.[5] Although the IA concedes that some pending legislation does have 'a positive effect on repair' (IA, p. 27), it concludes that, under the baseline scenario, repair would not become more acceptable or accessible to consumers and therefore this could not solve the problem of the premature disposal of goods by consumers within and outside the legal guarantee (IA, p. 27).

The **seven policy options** (see Table 1) are grouped in two clusters, corresponding to the two specific objectives of the proposed initiative:

- **Cluster I** promoting the repair and reuse of goods within the legal guarantee; and
- **Cluster II** facilitating and encouraging repair and reuse outside the legal guarantee.

Table 1 – Policy options assessed in the IA

Specific objective	Policy options (plus sub-options)		
SO 1 Increase repair and reuse of viable consumer goods **within** the legal guarantee	**1**	**Prioritising repair within the remedies system of Directive 2019/771**	**Cluster I** Encouraging repair and reuse **within** the legal guarantee
	1A	Prioritising repair whenever it is cheaper than replacement	
	1B	Making repair the primary remedy	
	2	**Prolonging the liability period in the context of repair**	
	2A	Incentivising the consumer with a longer liability period to choose repair	
	2B	Extending the liability period for repair	
	3	**Replacement with refurbished goods** (where available)	
	3A	… in the extended liability period (PO 2B)	
	3B	… from the second year of the liability period	
	4	**Aligning the liability period for refurbished goods with new goods**	
SO 2 Increase repair and reuse of viable consumer goods **outside** the legal guarantee	**5**	**Information on where to repair**	**Cluster II** Encouraging repair and reuse **outside** the legal guarantee
	5A	Producer's obligation to inform where to repair	
	5B	A matchmaking platform on available repair services at national level	
	5C	A matchmaking platform on available repair services at EU level	
	6	**Enhance transparency/conditions for repair**	
	6A	Voluntary commitments by repairers to an EU 'easy repair standard'	
	6B	Obligation to issue a binding quote on the price and conditions for repair, in standardised format (applicable to all repairers)	
	6C	Producer's obligation to repair goods that are subject to reparability requirements under EU law (for a price)	
	6D	Producer's obligation to repair all products that are repairable (for a price)	
	7	**Online platform promoting refurbished goods via an additional functionality under PO 5B or 5C**	

Source: Author, based on the IA, p. 28. Note: elements constituting the preferred PO are marked in blue.

The description of the options and sub-options, as well as their underlying logic, is easily comprehensible and corresponds to the problem definition and the set objectives, thus forming a **clear intervention logic**. However, the explanation that the 'POs within and between the clusters are complementary; the sub-options within each option are alternatives' (IA, p. 28) appears confusing in light of the preferred policy option, which eventually is a combination of several options and sub-options, the latter partly from within one and the same policy option (see Table 1). PO 6C deserves a special mention, as it would establish a **legally enforceable right to repair** (IA, p. 52). In this respect, it would considerably improve the availability of repair services by requiring producers to provide repair services. This measure alone is expected to increase the take-up in repair of consumer goods by 12.1 % (IA, pp. 52-53).

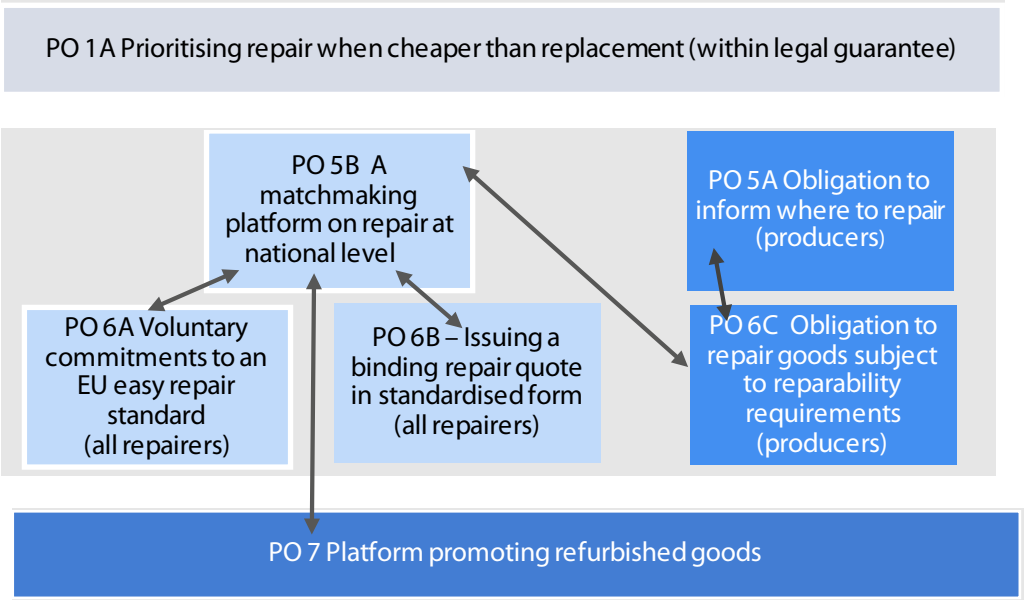
Assessment of impacts

Under due consideration of the available evidence (including data from behavioural experiments) and stakeholder views, the IA presents a seemingly solid **qualitative and quantitative analysis** of **all policy options** (IA, pp. 29-59). Impacts are analysed for their **effectiveness** and **efficiency** (both over a period of 15 years), and for their **coherence** with the current legal framework. The effectiveness analysis focuses on impacts on **consumers and the environment**, whereas the efficiency analysis is broken down into **economic** impacts, **social** impacts and impacts on the **public administration** (in terms of implementation and enforcement costs).

The comparison of impacts of the different policy options (including sub-options) draws on the results of a **multi-criteria analysis** (MCA) and a **cost-benefit analysis** (CBA). These results are summarised in a clear and comprehensive manner (including tables) in the main text for each policy option (IA, pp. 58-66). Annexes provide additional detail, including on the methodology.

The **identification of the preferred set of options**, a mix of seven options and sub-options, appears transparent. It takes account of the synergies the individual options produce when combined (IA, pp. 66-67) and also appears to enjoy stakeholder support. An explanation of why certain options were discarded is provided in Annex 5. Under the preferred option, **Specific Objective 1** can be achieved by prioritising repair whenever repair is cheaper than replacement (PO 1A); this requires only a targeted amendment of the Sales of Goods Directive. In contrast, **Specific Objective 2** is addressed by a bundle of interlinked measures that are deemed to produce synergies. Figure 1 visualises the preferred option package and their linkages.

Figure 1 – Package forming the preferred option



Source: author, based on IA, p. 66.

The IA duly justifies the choice of preferred option (IA, pp. 66-74), and **assesses the combined impacts** of its elements (IA, pp. 71-74). It explains that the preferred option is designed to incentivise repair and reuse in the long term and prompt behavioural change in that type of consumers 'who are in principle open to repair, but hindered by obstacles that discourage them' (IA, p. 71).

The package would increase **consumer protection** by introducing new rights and tools for consumers with regard to defective products falling outside the legal guarantee (POs 5, 6 and 7). The combined **environmental impact** of the preferred option is expressed in CO_2 savings within 15 years. To make the magnitude of the savings more tangible, they are compared with the estimated CO_2 savings achieved through related initiatives under the Green Deal (namely eco-design for sustainable products, and empowering consumers for the green transition).

The combined **economic impact** is estimated to be positive overall. The IA deems losses for producers and traders (in terms of foregone sales) to be outweighed by 'significant gains by EU repairers'. Furthermore, the IA expects 'significant savings in production', as the preferred option would decrease the share of freely replaced goods. The IA believes that these savings could result in increased competitiveness for EU businesses. In view of the overall impact of the initiative, it considers the business adjustment costs adequate. Non-EU producers are expected to be negatively affected by foregone sales (estimated at €29.8 billion over 15 years), although in the longer term they could be encouraged to 'switch production to more durable goods' (IA, p. 73).

Finally, in terms of combined **social impact**, the IA expects a limited net job increase of fewer than 9 000 jobs, mainly in the repair sector (p. 73 of the IA indicates 8 000). This figure, resulting from calculating EU-wide job losses among traders and producers and new employment in the repair sector after 15 years, is surprisingly low, but appears plausibly explained in Annex 4 (pp. 135-138).

Table 2 – Main impacts of the preferred option package in terms of costs and benefits

	Benefits over 15 years	Costs over 15 years
Environmental impact	**CO_2 savings:** 18.5 million tons CO_2-eq = €3.3 billion	
	Resource savings: 1.8 million tons = €1.1 billion	
	Waste savings: 3 million tons = €493.4 million	
	Total monetised: €4.9 billion	
Economic impact	**Savings in production costs:** €15.6 billion	**Business adjustment costs:** €8.1 billion
	Growth and investment (in Europe - GVA traders, producers, repairers): €4.8 billion	**Business administrative costs:** €69.8 million
	Consumer savings: €176.5 billion (€25 per consumer per year)	
Social impact	8 872 jobs, corresponding to €3.3 billion in personnel costs	
Impact on public administration		**Implementation and enforcement costs:** €105.5 million

Source: IA, p. 72.

SMEs / competitiveness

Underpinned by Eurostat data, the IA makes the case that many SMEs operate in sectors affected by the proposed initiative (IA, p. 194). This renders the initiative 'relevant' for SMEs. Consequently, the Commission conducted an **SME test** in four steps (IA, Annex 8, pp. 194-195), as prescribed in tool #23 BRG. The IA concludes that the initiative **generally affects SMEs in a positive way**.

However, it distinguishes between SMEs in the repair sector, which would obviously benefit, and SMEs in the manufacturing and retail sectors, which would face adjustment and administrative costs and lose in sales of new goods. The SME test draws on contributions received by SMEs and their representative organisations in response to the open public consultation, and on a business survey carried out in the context of the IA study. The latter captured the views of 195 SMEs (corresponding to 83 % of total respondents) regarding market practices in the repair and replacement of defective goods and specific measures under the proposed directive. The IA does not specifically discuss the impact of the proposed initiative on competitiveness.

The proposed initiative is subject to the **'one in, one out' approach** (OIOO). The IA (p. 74) estimates that the preferred option would generate direct adjustment costs for businesses (in general) amounting to €731 million (one-off costs) and €7.4 billion (recurrent costs over a period of 15 years). In addition, the one-off administrative costs for businesses would total €69.8 million. The initiative would not produce any administrative cost savings for businesses or consumers in the context of the OIOO.

Simplification and other regulatory implications

As a new initiative, the proposed directive does not seem to have any simplification potential. It would amend the Sale of Goods Directive in order to achieve the prioritisation of the repair of goods within the legal guarantee, 'where repair is cheaper than or as costly as replacement' (PO 1A; IA, p. 29). The 'easy repair standard' proposed under PO 6A could be implemented 'either by self-regulation (code of conduct) or a Commission standardisation mandate' (IA, p. 74).

Monitoring and evaluation

The IA briefly outlines the plans for evaluation and monitoring: an evaluation would be conducted 5 years after the directive's entry into application (p. 74). The proposed set of 26 indicators covering the various elements of the preferred policy option appears commensurate. The number of indicators relating to the national repair platforms (PO 5B) was increased in response to a comment by the Regulatory Scrutiny Board (RSB). The IA explains that the indicators 'are largely based on statistics that have been collected for the analysis of problems and POs in the IA'. However, it is not clear whether all relevant data are already being collected in a systematic way, and if not, how, by whom and at what cost the data in question would be gathered.

Stakeholder consultation

In line with the BRG, a detailed account of all stakeholder consultation activities is included in the IA (Annex 2, pp. 84-99). A **call for evidence** on the inception IA and an **open public consultation** were run in parallel between 11 January and 5 April 2022, thus meeting the default 12-week BRG requirement. Each yielded well over 300 contributions, mostly from EU citizens (i.e. consumers), companies and business organisations, and consumer organisations. The Commission also organised **targeted** bilateral meetings with stakeholders (no further details provided though) and a **workshop** with representatives of Member States on 7 April 2022 (the latter is summarised on pp. 97-99 of the IA). In addition, the IA reports that consumer and business surveys, behavioural experiments and targeted interviews took place in the context of the external study supporting the IA, but does not elaborate further.

Overall, stakeholder views – broken down to different groups of stakeholders – were duly considered throughout the IA, and in particular in the assessment of the different policy options. The IA identifies citizens (consumers), businesses (sellers and producers; the repair/refurbishment sector), and public sector authorities as being most affected by the proposed initiatives. Annex 3 describes the expected impacts of the preferred option on each of these stakeholder groups.

Supporting data and analytical methods used

In addition to stakeholder input, the IA draws to a large degree on an external **supporting study** that is said to focus on 'economic analysis and behavioural analysis' (IA, p. 82). The data collected for the purpose of the study comprised a mystery shopping exercise, a consumer survey (with two integrated consumer experiments), a business survey and stakeholder interviews. Methodological aspects of this supporting study are explained in a seemingly solid Annex 4, which gives a detailed account of how effectiveness, efficiency and coherence were assessed (IA, pp. 105-158). A dedicated heading 'data robustness and representativeness' (IA, pp. 106-107) claims that the 'findings from the two behavioural experiments … in the IA Study developed for the purpose of this impact assessment deliver robust and representative data'. To stress the authoritativeness of the data, the IA even states that the 'methodological approach to data collection and the set up of behavioural experiments was verified and approved by experts from the Commission Joint Research Centre' (IA, p. 106). However, despite over 100 direct references to this 'IA study' in footnotes, **the IA does not provide access to the study** either through a hyperlink or a bibliographic reference. It is not clear from the IA whether the supporting study was ever published (or is intended to be published).[6] This lack of transparency goes against the requirement of the BRG to 'ensure evidence availability and traceability' (tool # 4) and makes it impossible to verify the study findings cited in the IA.

Follow-up to the opinion of the Commission Regulatory Scrutiny Board

On 30 September 2022, the Regulatory Scrutiny Board (RSB) issued a negative opinion (pp. 7-9) on a draft version of the IA, requiring substantial revisions. The RSB's second opinion of 24 January 2023 was positive with reservations. Although the Board recognised the improvements made since the first submission, it still noted some shortcomings and requested to address the following aspects:

- the extent to which consumer behaviour is expected to change owing to the initiative, taking into account different consumer goods categories and different consumer types and a legally enforceable 'right to repair';
- the methodological approach to estimate consumer savings;
- the methodology and assumptions behind the results of the multi-criteria analysis and how they feed into the comparison of the options.

As required by the BRG, the IA explains in Annex 1 how the RSB's comments and recommendations were tackled in the final IA (IA, pp. 81-82). It appears that the final IA did indeed address the RSB's comments. One result was the inclusion of a very detailed Annex 4 on analytical methods.

Coherence between the Commission's legislative proposal and IA

The proposed directive appears to reflect in full the preferred option package identified in the IA. From a regulatory perspective, it is noteworthy that the defined scope of the proposed directive (Article 1) is limited to the premature disposal of purchased consumer goods **outside** the legal guarantee (corresponding to problem 2 in the IA). Nonetheless, the proposed directive also addresses the premature disposal of goods **within** the legal guarantee (problem 1 in the IA) through a provision (Article 12) suggesting the amendment of Article 13(2) of the Consumer Goods Directive. This amendment would lead to the prioritisation of repair over replacement of defective goods in cases 'where the costs for replacement are equal to or greater than the costs for repair'.

In line with the overall objectives of the European Green Deal, the proposed initiative aims to render consumption more sustainable by increasing the repair and reuse of defective consumer goods, both within and outside their legal guarantee. It complements two related initiatives that are currently pending (eco-design and empowering consumers for the green transition). The IA presents a clear intervention logic and a seemingly comprehensive qualitative and quantitative assessment of the impacts of the seven policy options proposed, from which it derives a preferred set of options. The comparison of the environmental, economic, social and consumer impacts of the different policy options (including sub-options) relies inter alia on the results of a multi-criteria analysis (MCA) and a cost-benefit analysis (CBA). The IA is specific about the costs that businesses would incur in the context of the OIOO approach. Overall, the proposed directive appears to reflect the preferred set of options identified in the IA. The entire IA draws to a large degree on a supporting study focusing on economic and behavioural analysis, the methodology of which is described in detail in Annex 4. However, despite over 100 direct references to that 'IA study', the IA does not provide access to the supporting study (not even a bibliographic reference), nor does it justify why the study is not disclosed, which goes against the transparency requirements set out in the BRG.

ENDNOTES

1 In particular Proposal 5 (Sustainable consumption, packaging and production) and Proposal 11 (Sustainable Growth and innovation). The Commission's follow-up communication 'Putting vision into concrete action', (COM(2022) 404), announced legislative proposals on the sustainable consumption of goods and the right to repair (Annex, p. 6).

2 Directive (EU) 2019/771 on certain aspects concerning contracts for the sale of goods regulates product liability rules.

3 Directive (EU) 2019/771, the scope of which is limited to situations of non-conformity of products, leaves consumers the choice between repair and replacement for as long as both remedies are feasible and not disproportionately costly.

4 COM(2022) 142 and COM(2022) 143. Both are referred to in the introduction to this briefing.

5 This concerns i) the Ecodesign Directive, which covers 31 energy-related product groups, some of which contain reparability requirements; it is set to be replaced by the Ecodesign for Sustainable Products Regulation, which will extend the eco-design framework to nearly all categories of physical goods on the EU market; ii) the recast of the Design Directive, which introduces a repair clause into the act; iii) the proposed directive for empowering consumers for the green transition, which includes information requirements for the durability and reparability of goods.

6 The study in question is likely the 'Study to support the Commission's policy development on promoting repair of consumer goods and contracts in the data economy', listed in the (non-public) interinstitutional studies database. At the time of writing, this study was marked as 'ongoing', which might explain the missing reference to it in the IA report.

This briefing, prepared for the IMCO committee, analyses whether the principal criteria laid down in the Commission's own Better Regulation Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal.

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