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Subject: Right to Repair - Meeting with BEUC - Short Report

Dear all,

After the meeting with BEUC and ANEC and ahead of the Cab meeting with BEUC, JUST A2 met on 15 October 2021 with a BEUC delegation.

Our aim with this constructive meeting which took place in a friendly atmosphere was to engage with BEUC into a substantive discussion process on the merits of different options; this meeting was a good start.

JUST A2 explained the context, the objectives and the envisaged timing of the Right to Repair Initiative.

BEUC highlighted that consumer’s rights should not be reduced by the new initiative. They advocate instead for longer guarantee period for all products.

JUST A2 confirmed that the recently launched study and the Impact Assessment will also examine the option of longer guarantee periods. It asked about BEUC reactions to two arguments made in the discussion. One argument made by stakeholders is that longer liability periods for both repair and replacement will in practice not lead to more repair but to more replacement which is not favourable to the environment. The other argument emerging from discussion with MS is that MS are already now able to extend the liability period. According to the indications given at the last MS workshop and the received notifications so far only one MS increased the liability period (from 2 to 3 years) and one wanted to maintain 3 years. All other MS either indicated or notified so far that they intend to maintain/implement 2 years. A proposal for an extended liability period would need to convince this large majority of MS in Council which will point to the possibility for MS to extend the liability period if they want to.

BEUC acknowledged both arguments and could accept an extension not for all but for products for which the SPI provides durability requirements. Informally, they also indicated that if there is such longer guarantee period, they could also accept a replacement with re-furbished goods instead of new goods.

JUST A2 mentioned that the idea of extending the liability period depending on the durability of the product was already discussed in the Council in the SGD legislative process, as (only) the Netherlands have such system. However, Dutch stakeholders indicated that this system does not work as it does not give enough legal certainty and leads to a multitude of different liability periods. At the time of the negotiation of the SGD, almost all MS opted for one single period to have legal certainty.
A2 asked BEUC how their proposal differs from the NL system. BEUC admitted that in their approach, there would be also several different liability periods, but their length should be linked to and thereby defined by the eco-design legislation under the SPI. We will re-discuss this point once the contents of the SPI becomes clearer.

BEUC also stressed that longer liability periods would incentivise producers to make products more durable. A2 asked about the BEUC reaction to the argument in the discussion that such incentive is already foreseen in/will be extended by the obligations on the producer by the SPI/eco-design legislation and that the remedies in the SGD are directed not against the producer but the seller which does not design the product. The economic burden and therefore a potential indirect economic incentive on the producer depends on the distribution of bargaining power between the seller and producer.

Turning to the R2R, BEUC asked about whether an intended R2R would have a negative effect on the consumer remedies under the SGD. A2 confirmed that such an R2R could apply outside the SGD framework, i.e. to defects created through wear and tear and the use by the consumer or to defects becoming apparent after 2 years, both of which are not covered by the SGD. This means that it would come on top of the consumer remedies under the SGD.
BEUC argued that a right to repair against the producer could be an incentive not to have more durable products to produce more spare parts and make a profit through repair. BEUC also voiced that a right to repair on top of the remedies granted in the SGD would add an additional layer of complexity for consumers to understand their rights. Finally, BEUC raised also that the new initiative should also look at the role of software as it also determines the durability of products. JUST A2 invited BEUC to contribute to the upcoming public consultation. We agreed to have the next meeting once the Call for Evidence for the Right to Repair Initiative is published.