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NOTE

From: Presidency/General Secretariat of the Council
To: Permanent Representatives Committee

Subject: Proposal for a Regulation of the European Parliament and of the Council
on machinery products
- Preparation for the trilogue

I. INTRODUCTION

1. On 21 April 2021, the Commission presented a proposal for a Regulation of the European Parliament and of the Council on machinery products.
2. The main objectives of this proposal are to establish a legal framework for the placing on the Union market of safe machinery, to guarantee legal certainty by clarifying the scope and definitions, to clarify the issue of mandatory third-party conformity assessment for certain product categories, as well as to find the right balance between digital and paper documentation.

3. The European Economic and Social Committee delivered its opinion on 22 December 2021.
4. Examination of the proposal at the Council started in the Working Party on Technical Harmonization on 26 April 2021 under the Portuguese Presidency, the examination continued the Slovenian Presidency and under the French Presidency until the Permanent Representatives Committee adopted the Council's mandate on 22 June 2022.
5. In the European Parliament, the committee responsible is the Committee on the Internal Market and Consumer Protection (IMCO Committee). The IMCO Committee voted on its final report, as well as the decision to enter into interinstitutional negotiations, on 3 May 2022. The Plenary endorsed that decision on 20 May 2022.

II. INTERINSTITUTIONAL NEGOTIATIONS – STATE OF PLAY

6. The first political trilogue was held under the Czech Presidency on 12 July 2022. The co-legislators presented their views on the main political issues and gave a broad mandate to the subsequent technical meetings to identify and make progress on areas of compromise.
7. The second political trilogue took place on 17 November 2022, during which co-legislators were able to reach a compromise on a number of political issues, such as terminology, the main principles of digital and paper instructions that will have to be provided by manufacturers and SME fees for conformity assessment. While other issues, like transitional provisions, date of application, content of Annex I as well as Article 5 with the empowerment for Commission to amend Annex I, remained unsolved and will require a compromise solution from both co-legislators in the next trilogue.
8. Starting from September 17 technical meetings took place, during which all political and technical issues in the text of the proposal were discussed at least once and a solution was found for almost all technical issues. Some technical work will be necessary after the third trilogue in order to ensure coherence of the text.

9. The Working Party on Technical Harmonisation was convened to discuss the progress in the interinstitutional technical meetings on 27 September, 19 and 28 October as well as 28 November 2022.
10. The third trilogue is scheduled to take place on 15 December in Parliament's premises in Strasbourg. Overall political agreement on this proposal seems possible if both co-legislators manage to find additional flexibilities and resolve the remaining political differences.

III. PREPARATION FOR THE NEXT TRILOGUE

11. Following the outcome of the second political trilogue and negotiations at the technical level, the only unsolved political issues are Article 5, transitional periods, evaluation and review and date of entry into application, and Annex I (lists of categories of machinery or related products to which relevant conformity assessment procedures shall be applied). As the positions of both institutions differ in these questions, it is necessary to adjust the mandate for further negotiations accordingly so that compromise can be achieved.
12. Regarding the transitional periods, entry into force and application, and Article 5 (except for the methodology for collecting data requested by the Parliament), the Presidency will take into account the outcome of the discussion in the Permanent Representatives Committee on 9 November. The Presidency believes that based on the mandate already given by the Committee on these questions, a balanced compromise with the Parliament could be reached.
13. The major topics for the final round of political negotiations will likely be Annex I and issue of the methodology for collecting data in Article 5. As both institutions have a strong position on these aspects, thus to reach an agreement, it will be crucial to find flexibility on both sides. Therefore, the Council's mandate needs to be re-evaluated in these aspects.

14. The Permanent Representatives Committee is therefore invited:
- to confirm the preliminary agreement reached at the technical level on the part of the text proposal, which is set out in the Annex to this note;
 - to consider the question below and to express their views on possible areas of flexibility in order to reach a compromise.
15. **High-risk machinery products – Article 5 (methodology for collecting data, Row: 184a), Annex I (Rows: 477 – 510b)**
- The Council specified in its mandate the procedure and criteria for amending Annex I. The Council also introduced an empowerment to the Commission to establish and update a template to collect the data and information necessary for the evaluation of Annex I by means of implementing acts. The Parliament, however, introduced in its position the empowerment to the Commission to establish a common methodology for collecting data and information by means of delegated acts.
 - The Parliament insists that its proposal for methodology is necessary to ensure that sufficient and comparable data is available for the Commission’s assessment of Annex I. Parliament also insists that delegated acts are necessary in this area. As this issue is very sensitive for many Member States, the Presidency suggests a compromise solution in case the scope of the empowerment proposed by the Parliament is not acceptable for the Member States. Namely, giving the Commission the empowerment to adopt the methodology for collecting data via delegated act, but only in the case that the data provided by the Member States within 24 months after the date of the entry into force of the Regulation are assessed by the Commission as not adequate to allow appropriate review of Annex I. It means that the Commission would not be able to trigger its empowerment automatically but needs to justify the need to adopt the methodology for collecting data.

- The original Commission’s proposal contained the obligation for third-party conformity assessment for the whole list of categories of machinery in Annex I (twenty-five items in total). Both institutions in their positions divided the list into two parts, leaving in list A with the mandatory third-party assessment only a limited number of categories of machinery – the Council three items, whereas the Parliament ten items. Parliament’s list A includes all three categories from the Council’s list A. The difference between both positions is, therefore, seven items.
- Taking into account the sensitivity of this question for both institutions, a fair compromise solution could be splitting the number of remaining categories in half. Given the fact that the empowerment for the Commission to set the methodology for collecting data adopted by the delegated act in Article 5 is the only remaining political issue, which is of comparable political value to the list in Annex I, it is necessary to consider the main elements of Council position holistically.
- Based on the previous discussions at the Working Party level, the Presidency considers as more important from a future perspective to ensure efficient and clear procedure for amendment of Annex I than to insist on maintaining the current list of categories of machinery and related products in part A of Annex I.
- In any case, the Presidency will insist on maintaining the empowerment of the Commission to adopt the template to collect the data and information necessary for the evaluation of Annex I.
- In that regard, the Presidency is asking the delegations to indicate the scope of the possible flexibility towards the Parliament’s position.

Q: Taking into account the possible solutions on Annex I, to which extent the Council could show its flexibility towards the Parliament's position:

A: extending list A in Annex I in the Council's mandate by additional 4 categories of machinery or related products + not accepting the adoption of methodology for collecting data, or

B: extending list A in Annex I in the Council's mandate by additional 3 categories of machinery or related products + accepting the adoption of methodology for collecting data in the compromise version proposed by the Council?

IV. CONCLUSIONS

16. The Permanent Representatives Committee is invited to reflect on the abovementioned question and to express their views on possible areas of flexibility as regards moving towards the position of the European Parliament during the meeting of the Permanent Representatives Committee.
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