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NOTE

From:	Presidency
To:	Permanent Representatives Committee
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Subject:	Regulation establishing a framework for setting ecodesign requirements for sustainable products and repealing Directive 2009/125/EC - Preparation for the trilogue

I. INTRODUCTION

1. On 30 March 2022, the Commission adopted a proposal for a Regulation of the European Parliament and the Council establishing a framework for setting ecodesign requirements for sustainable products¹. The legal basis of the proposal is Article 114 of the Treaty on the Functioning of the European Union (TFEU).

¹ Proposal for a Regulation of the European Parliament and of the Council establishing a framework for setting ecodesign requirements for sustainable products and repealing Directive 2009/125/EC, doc. ST 7854/22 + ADD 1-8.

2. The proposal updates, modernises and extends the framework for the ecodesign of sustainable products, while repealing the legislative framework in place (the Ecodesign Directive 2009/125/EC¹). It seeks to make sustainable products the norm in the EU. It addresses product design, setting new requirements to make products more durable, reliable, reusable, upgradable, repairable, easier to maintain, refurbish and recycle, and energy and resource efficient.
3. On 16 May 2022, the European Parliament's Committee on Environment, Public Health and Food Safety (ENVI) appointed Alessandra Moretti (S&D, IT) as rapporteur for the proposal. The ENVI Committee voted its final report, as well as the decision to enter into interinstitutional negotiations, on 15 June 2023. The Plenary endorsed that decision on 12 July 2023.
4. The European Economic and Social Committee gave an opinion on the proposal on 14 July 2022.

II. WORK WITHIN THE COUNCIL

5. Discussions in the Working Party on Competitiveness and Growth (Internal Market – Ecodesign) started in July 2022 under the Czech Presidency. Following intensive preparatory work under both the Czech and Swedish Presidencies, a General Approach was adopted at the Competitiveness Council of 22 May 2023, mandating the Presidency to enter into negotiations with the European Parliament.
6. The opening political trilogue was held under the Spanish Presidency on 30 August 2023. 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.

¹ Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (recast), OJ L 285, 31.10.2009, p. 10–35.

7. In view of the preparation of the second trilogue, the Spanish Presidency has held exchanges with the European Parliament and the European Commission in fourteen technical meetings.
8. The Working Party on Competitiveness and Growth (Internal Market – Ecodesign) was convened to discuss the progress in the interinstitutional technical meetings on 20 September 2023.

III. PREPARATION FOR THE NEXT TRILOGUE

9. In view of the second trilogue scheduled for 7 November 2023, the Presidency proposes to accept elements which were provisionally agreed at technical level with the Parliament. These compromise proposals are contained in the four-column table, marked in green, in document ST 14402/23 ADD 1 REV 1.
10. The Presidency has identified a set of key issues where it seems necessary to adjust the mandate for further negotiations, so that compromise solutions can be sought more effectively. These are listed below. The Presidency would like to invite COREPER to consider the questions below and to express their views on possible areas of flexibility in order to reach a compromise. Discussions in the forthcoming political trilogue will focus on the political aspects that emerged from the negotiations at the technical level so far.
11. On **substances of concern** (*Articles 2 (28), 5(9), 6(3), 7(2) and 7(5). Rows: 167-178, 277a- e, 284, 288-289, 299-310a*), the Parliament mandate broadens the scope of the definition by deleting the reference to Art. 59(1) of the REACH Regulation and including new hazard categories covered in Part 3 of Annex VI to the CLP Regulation. Among these hazard categories, the substances regulated under Regulation (EU) N° 2019/1021 (row 177a) are mostly covered by the other categories and would not represent a significant expansion of the definition of ‘substance of concern’. Regarding the information requirements, the Parliament mandate limits the tracking of substances to those present in the final product, in order to keep the burden to economic operators limited where in line 299 it adds, “substances of concern **present in the product as placed on the market**” (bold part only).

The Presidency suggests keeping the Council mandate in this thematic block. Nevertheless, if it was necessary to reach a compromise:

Could delegations give flexibility to the Presidency to accept the Parliament's position in row 177a, therefore including the substances regulated under Regulation (EU) N° 2019/1021 in the definition of 'substance of concern', while limiting the tracking of substances to those present in the product as placed on the market?

12. On **prohibition of destruction of unsold goods** (Chapter VI, articles 20-20d, Rows 451-479be) a delicate balance was found in the Council General Approach. The main issues currently under discussion in trilogues are the products subject to a direct ban on destruction and the exemption for SMEs. The Presidency will defend the Council mandate for the whole chapter, but requires elements of flexibility in order to reach an agreement.

Could delegations give flexibility to the Presidency to accept the inclusion of footwear in the list of products subject to a direct ban and, at the same time, extend the date of application of the provisions to medium-sized enterprises, going beyond the 4 years included in the sunset clause included in row 479at?

13. On **prioritisation and planning** (Article 16, Rows 410-419e), the Council General Approach deviates from the current practice under the Ecodesign Directive, as it establishes the Ecodesign Working Plans in implementing acts, while it has been argued that this could unnecessarily delay their publication. In addition, the Parliament mandate includes an indicative list of product groups for the Commission to consider, when prioritising products in the first Working Plan under the Ecodesign for Sustainable Products Regulation.

As the current practice under the Ecodesign Directive sets the working plans in Communications from the Commission and the establishment of an indicative list of product groups in the articles, as set in the Parliament's mandate, allows the Commission to deviate from the list, by providing a justification:

Could delegations give flexibility to the Presidency to accept the Parliament's position in rows 418 and 419b if needed, in order to reach a compromise?

14. On the **Ecodesign Expert Group** (Article 17a, rows 422d-422n), the main problems indicated in the negotiations are:
- the unnecessary duplication of consultations to Member States, both in the Ecodesign Forum and separately;
 - the possible delay in the procedure, as this group will have to be consulted after a consultation of the members of the Ecodesign Forum, therefore creating an additional layer of complexity to the system;
 - the need for additional resources by the Commission to be dedicated to the group.

The Presidency will defend keeping the Ecodesign Expert Group in the text, but will need some flexibility to facilitate the agreement.

Given that the experts from Member States will be consulted, in any case, before the adoption of a delegated act, as indicated in Article 66(4), could delegations accept a better framing of the consultation process, so that the experts from Member States are consulted once, separately, during the consultation to the Ecodesign Forum?

15. On **market surveillance** (Chapter XI, Articles 59 to 62, Rows: 781-825), the Presidency and the European Parliament have been working towards a compromise text at technical level in relation to Market Surveillance that would include the political priorities of both co-legislators. In order to move negotiations forward, a draft compromise text for discussion (WK 13241 2023 INIT) was proposed. The main points of this compromise proposal are:

On Article 59, now *Planned Market surveillance activities*, Member States are requested to include an outline of their planned market surveillance activities in relation to this regulation in the context of the overall market strategy including information on non-compliances and, *where appropriate*, indication of planned physical checks. On the basis of this outline the Commission would be empowered to adopt an Implementing Act on requirements that should be considered as priorities.

Article 60 on the *Minimum number of checks*: deleted, except for the possibility of authorities to recover the costs of inspections from non-compliant economic operators.

Article 61 on *Reporting and benchmarking* has remained very close to the initial Commission proposal but moving the reporting obligation from 2 to 4 years.

Article 62 on *Market surveillance coordination and support* remains close to the initial Commission proposal but in relation to the Implementing Act referred to in Article 59 reduces its tasks to “support the implementation of the **outlines** drawn up pursuant to Article 59(1)”.

In the spirit of compromise, could delegations agree to mandate the Presidency to negotiate with the Parliament on the basis of this compromise proposal?

IV. CONCLUSIONS

16. In light of the above, the Permanent Representatives Committee is invited **to confirm**:
- a)** The lines preliminarily agreed at the technical level, as listed in point 9 of this note and in the four-column table, in addendum to this document;
 - b)** the flexibilities asked for in points 11 to 15 of this note.