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NOTE

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

Subject: Proposal for a Regulation of the European Parliament and of the Council
establishing a Social Climate Fund
- Preparation for the trilogue

I. INTRODUCTION

1. On 14 July 2021, the Commission submitted to the European Parliament and to the Council, in the context of the ‘Fit for 55’ package, a proposal for a Regulation establishing a Social Climate Fund (SCF)¹. The proposal aims to mitigate the social impacts of the proposed emissions trading system for buildings and road transport (ETS BRT) on vulnerable households, micro-enterprises and transport users, through measures and investments as well as temporary direct income support.

¹ doc. 10920/21 + COR 1 + ADD 1 + ADD 1 COR 1

2. The European Parliament adopted its amendments² and negotiation mandate on the proposed regulation on 22 June 2022, based on the draft report of the rapporteurs Esther de Lange (Committee on Environment, Public Health and Food Safety, EPP, NL) and David Casa (Committee on Employment and Social Affairs, EPP, MT), as well as on the opinion of the associated Committee on Budgets (rapporteur Margarida Marques, S&D, PT).
3. The European Economic and Social Committee adopted its opinion on 8 December 2021. The Committee of the Regions adopted its opinion at its plenary session on 27-29 April 2022.

II. WORK WITHIN THE COUNCIL AND WITH THE EUROPEAN PARLIAMENT

4. On 29 June 2022, the Council (Environment) reached agreement on a general approach³ to the proposal as a basis for future negotiations with the European Parliament in the context of the ordinary legislative procedure.
5. In order to organise further work, the co-legislators agreed to divide the regulation into different “blocks”, each of them containing a set of Articles and provisions clustered by topic⁴.
6. One trilogue has been held on 13 October 2022. Twelve technical meetings have taken place at tripartite level, during which provisional agreement has been reached on several issues of a more technical nature or on which the positions of the co-legislators had a certain degree of convergence. The Presidency has kept delegations updated on progress made at technical level, most recently at the Ad Hoc Working Party on Social Climate Fund on 11 November 2022.

² P9_TA(2022)0247

³ doc. 10775/22

⁴ Block 1 *General Provisions*, Block 2 *Programming*, Block 3 *Eligibility*, Block 4 *Management and control*, Block 5 *Information and communication, monitoring and evaluation*, Block 6 *Financial management*, Block 7 *Final Provisions*, Block 8 *Budgetary aspects*.

7. In view of the second trilogue, which is scheduled for 29 November 2022, the Presidency has prepared an updated four-column table, set out in the Annex to this note (doc 14975/22 ADD1). Its fourth column contains the texts on which provisional agreement has been reached at the interinstitutional technical meetings. Provisions on which neither the Council nor the Parliament propose changes to the Commission proposal or on which their positions are identical also appear in the fourth column and are marked green. A fifth column is used to set out the Presidency's suggestions for the Council position and/or possible ways forward on other issues, as well as any additional comments.

III. PRESIDENCY SUGGESTIONS IN VIEW OF THE TRILOGUE

Main issues preliminarily agreed at technical level

On the following main issues, based on the broad mandate given at the first trilogue, compromise texts were provisionally agreed following work at technical level. It is understood that any such provisional agreement is subject to validation at political level in the context of a balanced overall compromise and under the crucial proviso "nothing is agreed until everything is agreed". The Presidency considers that the solutions found on the issues below are feasible and represent a good compromise compared to the numerous initial EP amendments on many of these issues. The Presidency will continue to defend a very cautious line as regards the Parliament's amendments that would make the regulation difficult to implement.

A. Block 1 - General Provisions (definitions):

- a) 'building renovation' - Article 2, first paragraph, point (1), row 54 - draft compromise includes references to energy performance of buildings, technical building systems, national safety standards, and contribution to renovation requirements in the directive on the energy performance of buildings (EPBD), based on the understanding that the European Parliament drops all its amendments to EPBD across the regulation and their reference to safety measures in rows 54 and 72;

- b) 'household' - Article 2, first paragraph, point (5), row 58 - the Presidency proposes to accept the definition as in the Commission proposal;
- c) 'vulnerable households' - Article 2, first paragraph, point (11), row 64 - texts is provisionally agreed except for reference to inclusion of buildings and road transport into the scope of ETS directive which is not acceptable to the European Parliament;
- d) 'vulnerable micro-enterprises' - Article 2, first paragraph, point (12), row 65 - the Presidency proposes to accept the draft compromise which now reflects both the buildings and transport sectors; the definition of 'transport users' - Article 2, first paragraph, point (10), row 63 has been amended accordingly;

To ensure consistency with the new definitions of vulnerable groups, the initial reference to 'vulnerable households and households that are transport users' has also been amended throughout the SCF Regulation (Article 3(2), row 70; Article 4(1)(d), row 79; Article 6(1a) row 107a);

- e) 'technical building system' - Article 2, first paragraph, point (13a), row 66a - provisionally agreed as per Council's general approach.

B. Block 2 - Programming

- a) public consultation - new Article 3a (row 73a) proposed by the Presidency is based on the understanding that the European Parliament drops all its amendments to consultation across the regulation.
- b) geographic specificities - new Article 4(1)(ka) (row 86a) proposed by the Presidency is based on the understanding that the European Parliament drops all its amendments on this issue across the regulation.
- c) assessment of the Social Climate Plans – compromises in Article 15 build mostly on the Council's general approach; provisionally agreed rows 136, 137, 140, 141, 143, 145, 147, 148, 150.

C. Block 3 - Eligibility

a) European Pillar of Social Rights (EPSR) - Article 5, new paragraph (4) (row 98a) - proposed compromise is based on the understanding that the European Parliament drops all its amendments to EPSR across the regulation (Art. 5(2), introductory part, row 92 and Art. 23(1)(ca), row 219a) and drops also references to promotion of quality jobs (in Art. 4(1)(eb), row 80b; Art. 5(2)(ea), row 97a; Art. 6(2a), row 107b; Art. 15(2)(b)(iii), row 145b). The proposed text does not widen the SCF scope and does not constrain the preparation and implementation of the Social Climate Plans.

b) Eligibility of measures and investments to be included in the Social Climate Plans - Article 6(2), rows 102, 102a, 103, 103a, 104 - proposed compromises on eligible measures and investments in the buildings sector, including related to social housing and tenants, are reflected in a neutral manner allowing Member States the flexibility required in the preparation and implementation of the Social Climate Plans. It is suggested that recital 13 is updated in this regard.

Article 6(2)(e), row 106 - proposed compromise on measures and investments related to public transport is in line with the overall flexibility on this issue granted to the Presidency in view of the first trilogue.

D. Block 5 - Information and communication, monitoring and evaluation

a) Visibility - Article 22(2), row 213 - proposed streamlined provisions based on the understanding that the European Parliament drops all amendments in rows 214a-214i.

Main difficult issues

Given that the Presidency has shown openness on a number of priority issues in the European Parliament's amendments, as set out above, the Presidency has made clear that such openness needs to be reciprocated by the European Parliament, in particular when it comes to the main pending political issues:

- a) Block 1 - SCF scope and direct link between ETS BRT and SCF: Article 1, third and fourth paragraphs, rows 50-51; Article 2, first paragraph, point (11), row 64; Article 2, first paragraph, point (13), row 66; Article 3(2), row 70; Article 4(1), point (c), row 78; Article 4(3a), row 88a; Article 6(2a), row 107a; Article 7(1), point (a), row 110; Article 7(2), row 112; Article 15(2), point (a)(i), row 139; Article 17(1), row 168; Article 18(1), row 174; Article 24(3), row 231; Article 26, second paragraph, row 243

The European Parliament insists that the SCF is established to address a wider impact on vulnerable groups than that of the ETS BRT and instead proposes that the Fund addresses the impacts of the transition to climate neutrality on vulnerable groups, including carbon pricing. The Presidency proposes to maintain the Council's general approach on the SCF scope and the direct link between ETS BRT and SCF; these issues are related to the ongoing discussions on the ETS BRT and will be decided in the final phase of negotiations.

- b) Block 1 - Definitions of energy poverty, mobility poverty and vulnerable transport users: Article 2, first paragraph, points 2, 2a and 13, rows 55, 55a and 66

The European Parliament's proposal for a definition on energy poverty preempts the ongoing negotiations on the corresponding provisions in the directive on energy efficiency. The Presidency proposes to maintain the Council's general approach and to refer to the definition as set out in the above directive. The European Parliament's proposal for a definition on mobility poverty is premature as preparatory work on the issue is at an early stage in the Commission. Moreover, the European Parliament's proposal for a definition on vulnerable transport users should not be a vehicle for introducing a definition on mobility poverty through the backdoor. The Presidency proposes to continue to reject the Parliament's amendments on a definition of mobility poverty and vulnerable transport users.

- c) Blocks 2&3 - Technical assistance: Article 4(1a), rows 86b; Article 6(2b), row 107c; Article 12(2a), row 128a

The Presidency will continue to defend the need for technical assistance to Member States in return for its preliminary openness on a number of priority issues for the European Parliament, including on public consultation and geographic specificities.

- d) Block 3 - Eligibility of measures and investments to be included in the Social Climate Plans (transport sector): Article 6(2)(d),(e) rows 105-106 - transport sector

The Presidency will continue to ensure that measures and investments for both zero- and low-emission vehicles for private transport are eligible under the Social Climate Fund.

- e) Direct income support (DIS): Article 6(1), row 107a

With regard to the proposed correlation by the European Parliament between DIS and measures and investments in the Social Climate Plans, the Presidency considers that the text is sufficiently broad ('may be provided'); however it is likely that the European Parliament will request to strengthen this link further. The Presidency suggests to show openness to possible wording in a recital instead provided that it is balanced and does not go beyond the scope of the regulation.

The following issues on i) direct link between DIS and impacts of the ETS BRT; ii) DIS ceiling will be decided in the final phase of negotiations. The Presidency maintains the general approach on these issues.

- f) Horizontal provisions

- Vouchers:

As regards the proposed introduction of compensation for vulnerable households and transport users through a voucher scheme from the Social Climate Fund as presented by the Commission, the Presidency suggests the following:

- show openness to discuss the inclusion of such scheme under the Social Climate Fund provided that its parameters are feasible, workable at national level and do not disproportionately limit the ability of the Member States to implement the Social Climate Fund;
- such openness is predicated upon the Parliament dropping its amendments on the ETS BRT split scope and accepting the Council's position on the budgetary architecture of the Social Climate Fund.

- Block 1 - 'Fossil fuels' and 'carbon lock-in' references - Article 1, row 51;

The Presidency already proposed language in Article 1 on measures and investments under the Social Climate Plans, intended to reduce reliance on fossil fuels. However, the Parliament is likely to insist on the political importance of a reference in the operative part to 'carbon lock-in'. The Presidency would like to hear the delegations' views on the issue.

- Block 3 - technical criteria in the taxonomy regulation (EU) 2020/852: Article 5(3), Article 6(2)(d) - rows 98, 105;

The Presidency proposes to continue to reject the Parliament's amendments on this issue given that the support under the Social Climate Fund is already subject to the principle of 'do no significant harm' referred to in the above-mentioned regulation.

- Block 4 - rule of law: Article 20(1), (1a), (5a) - rows 38, 38a, 39a, 187, 187a, 204a;

The Presidency proposes to continue to reject the Parliament's amendments on this issue as the Social Climate Fund is already subject to the regulation on a general regime of conditionality for the protection of the Union budget.

- g) Block 6 - Transfers of resources from SCF (15%) to shared management programmes:

Article 10(1a), row 121a: the Presidency intends to fully stick to the Council's general approach. It is to be noted that in many aspects, the content of Block 6 on 'Financial Management' will depend on the final agreement on Block 8.

- h) Block 8 - Budgetary aspects:

The Presidency intends to fully stick to the Council's general approach.

Depending on developments in the ETS BRT discussions, it is nevertheless clear that an overall compromise on the file with the Parliament will have to encompass a balanced agreement on the above-mentioned political issues. The Presidency acknowledges that the Council will need to show some flexibility towards the Parliament on some of these elements in the final phase of negotiations.

Other outstanding issues

- a) Block 2 - Annex on the Template for the Social Climate Plans, Block 5 (Article 23 and Article 24) and Annex on Indicators

The provisional work on these aspects follow the logic of the Council's general approach that the SCPs should have a template in the Annex of the regulation, that monitoring and reporting should be done through reporting on the NECPs and should be based on indicators. Based on the comments from delegations and the exchange at the Ad Hoc Working Party on Social Climate Fund, work is ongoing at technical level between co-legislators on further fine-tuning of the text, including on the annexes prepared by the European Commission. The Presidency will continue to ensure that the requirements for monitoring, reporting and in the annexes reflect the provisions in the regulation.

- b) Remaining recitals across the regulation will be adjusted accordingly in the light of the outcome of the discussions on the corresponding parts of the operative part.

IV. CONCLUSION

8. In light of the above, the Permanent Representatives Committee is invited to agree with the Presidency's suggestions as set out in this note and its ADD1 (four-column table), in view of the upcoming trilogue.