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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. Two trilogues have been held on 13 October⁵ and 29 November 2022⁶. Fifteen 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 1 December 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*.

⁵ doc. 12867/22

⁶ doc. 14795/22 + ADD1

7. In view of the third trilogue scheduled on 16 December 2022, the Presidency has prepared an updated four-column table, set out in the Annex to this note (doc 15455/22 ADD1). Its fourth column contains the texts on which provisional agreement has been reached at the interinstitutional technical meetings. Provisions confirmed at the previous trilogue or 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

8. The third trilogue will deal with all outstanding issues in view of making efforts to reach an overall agreement on the SCF regulation.
9. In view of the trilogue, the Presidency proposes a revised mandate as set out below.

A. Block 1 - General Provisions

- 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 9(1), row 117; Article 15(2), point (a)(i), row 139; Article 17(1), row 168; Article 18(1), row 174; Article 23, row 222; Article 24(3), row 231; Article 26, second paragraph, row 243

The Presidency will maintain the SCF scope and the direct link between ETS BRT and SCF. To be able to go along with the direct link, the Parliament proposes to streamline the number of references across the regulation (i.e. Fund is addressing the social impacts of the inclusion of greenhouse gas emissions from buildings and road transport into the scope of Directive 2003/87/EC). The Presidency proposes to consider a limited streamlining, for instance deleting two or three references to the ETS directive in the text of the regulation⁷ based on the understanding that the key provisions of the

⁷ Articles 18 and 23.

regulation will continue to maintain the direct link with the ETS BRT and that the Parliament accepts the direct link.

- Definitions of energy poverty, mobility / transport poverty and vulnerable transport users - Article 2, first paragraph, points 2, 2a and 13, rows 55, 55a and 66

In light of the exchanges at the trilogue on 29 November 2022 and the Parliament's insistence on a definition on 'mobility poverty', the Commission has proposed at technical level a definition on 'transport poverty' instead (row 55a). In line with that, the Commission also proposes to amend the definition of 'vulnerable transport users' and delete the definition of 'transport users'. The Presidency suggests to show openness to these changes, provided that they do not add to administrative burden and the Parliament accepts the definitions on energy poverty in line with the Council's general approach.

- 'Fossil fuels' and 'carbon lock-in' references – recital 18 (row 28); Article 1, paragraph 4 (row 51), Article 5(2)(d) (row 96), Article 5(3) (row 98), Article 5(3), (row 98a); Article 6(2)(d), row 105; recital 13 (row 23).

In follow-up to the discussion at the trilogue on 29 November 2022, the Parliament suggested language on "ensuring that measures and investments do not prolong fossil fuel dependency" in Articles 3(1) and 15(2). In the context of an overall balanced compromise, the Presidency proposes to continue to show openness on "reducing reliance on fossil fuels and avoiding carbon lock-in" in Article 1, row 51 or as a last resort in Article 5(3a), row 98a, based on the understanding that the Parliament drops all other references to reducing fossil fuels dependency as well as taxonomy-related 'technical screening criteria' across the regulation (Article 5(3), row 98; Article 6(2)(d), row 105).

B. Block 2 - Programming

- Annex IV on Indicators (also in connection to Block 5, Article 23 - monitoring of implementation; Article 24 - evaluation and review); Annex V on the Template for the Social Climate Plans;

The latest versions of both annexes are set out in annex to this note (doc. 15455/22 ADD1). The Presidency considers that overall their content is balanced and in line with the regulation.

- Significant/minor amendments of the Plans (Article 17 - rows 168, 172a), in connection with stand-alone article on public consultation (new Article 3a, row 73a; recital 15, row 25).

Preliminary agreement on including minor / significant amendments of the Plan to the Regulation has been reached at the previous trilogue, based on the understanding that the technical level will work on updated language on consultation in recital 15. The Presidency suggests to show openness to such updated language in recital 15.

- Addressing gender inequality - Article 4(1)(kb), row 86b

The Parliament proposes language on the content of the Social Climate Plans to include, where relevant, an explanation, in the descriptive part of the Plan, of how the measures and investments in the plans will aim to address gender inequality. The Presidency suggests to show openness to the wording based on the understanding that the Parliament drops its proposal to include an indicator on gender in Annex V on indicators, drops its amendment in Article 23 (row 219a) and expresses support for the Council on deleting 'minimum' in the headline of Annex V on indicators (the title would read “Common indicators for indicative milestones and targets for the Social Climate Fund of the Member States”).

C. **Block 3 - Eligibility**

- Direct income support (DIS) - Article 6(1), row 107a, Art. 4(1)(h), row 83

With regard to the proposed correlation by the European Parliament between DIS and measures and investments in the Social Climate Plans, the text in the operative part is unchanged. In follow-up to the trilogue on 29 November 2022, the Presidency suggests to accept the updated language in recital 17 which reflects this correlation in a balanced and broad manner. The Presidency also suggests that application of the principle of "do no significant harm" to Direct Income Support is dropped on condition that the Parliament accepts the Council's position on Annex III "Key requirements for the Member State's control system" of the regulation.

- Eligibility of measures and investments to be included in the Social Climate Plans (private transport sector) - Article 6(2)(d), row 105

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 and no prioritisation is included in the operative part. With regard to the Parliament's emphasis on zero- over low-emission, the Presidency suggests that some carefully worded language in recital 14 could be explored provided that the Parliament drops its request in the operative part. To ensure coherence with existing legislation, Article 2 has been updated with the definition on 'zero- and low emission vehicles', in line with Regulation 2019/631 on CO2 standards for cars and vans.

- 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. In a spirit of compromise, the Presidency suggests to show openness to delete the reference to technical assistance in Article 4(1a) on the content of the Social Climate Plans, while keeping it in Article 6(2b) on eligible measures and investments as well as in Article 12 on additionality. In relation to the amount, as confirmed at the trilogue on 29 November 2022, the Parliament sees technical assistance in a package with other outstanding issues falling within the scope of discussion on Blocks 6 – 8 (namely transfers and co-financing).

D. Block 4 - Management and control

- rule of law - Article 20(1), (1a), (5a) - rows 187, 187a, 204a; recitals (rows 29a, 38, 38a, 39a, 40a)

The Presidency proposes to continue to reject the Parliament's numerous 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 (Article 11). As part of an overall balanced compromise, the Presidency suggests that part of the explanatory footnote in Article 11 is included in the Article itself and also could be open to factual wording on the general regime of conditionality in recital 28 on the same lines as the language for the Innovation Fund in the ETS directive, provided that the Parliament drops all its other similar amendments across the regulation, including on fundamental values of the EU pursuant to Article 2 TEU.

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

Transparency - Article 23a, rows 226a-e

Social Climate Dialogue - Article 23b, rows 226f-n

Exercise of delegation - Article 25, rows 235-240

In an overall balanced compromise, the Presidency suggests to indicate openness regarding the Parliament's proposed new Articles 23a and 23b given Parliament's openness to the Council's position restructuring of Article 23 (monitoring of implementation) and its agreement on Annexes IV (indicators) and V (template). Such openness is also provided under condition that Articles 23a and 23b are streamlined, the processes are not cumbersome and on condition that the Parliament accepts the Council's approach to delete Article 25 on exercise of delegation of powers (row 234).

F. Block 6 - Financial management

It is to be noted that the final content of a number of provisions in Block 6 on 'Financial Management' (Article 19) could require further adjustments depending on the final agreement on Block 8.

All the proposed flexibilities in Blocks 1-6 above are suggested in the context of an overall balanced compromise on the text of the regulation, in particular on Block 8.

G. Block 8 - Budgetary aspects; connected issues in other blocks

The Presidency intends to stick to the key elements of the Council's general approach on budgetary aspects. However, it is clear that an overall balanced compromise on the file will require certain adjustments and flexibility on some aspects, depending on the ETS BRT discussions.

In this section, the Presidency proposes a package on budgetary aspects (Block 8) and key connected issues in other blocks, such as percentage of technical assistance, percentage of the ceiling for direct income support, percentage of transfers from SCF to shared management programmes and a possible vouchers scheme.

- Budgetary architecture of the Fund - Article 9, rows 116, 117, 117a, 119

The Presidency will maintain the Council's proposed budgetary architecture of the Fund financed by external assigned revenue.

- Duration of the Fund - Article 1, row 48

The Presidency will maintain the Council's position of a Fund for the period 2027-2032 and retroactive eligibility of expenditure from 1 January 2026. In case a different starting date of ETS BRT is agreed, the Presidency will continue to ensure parallelism between the start of ETS BRT and the Fund.

- Volume of the Fund - Article 9, row 117

Some limited adjustment to the volume of the Fund might be necessary, notably depending on the final outcome on ETS BRT ambition and scope. The Presidency will continue to ensure the direct link between the volume of the Fund and the scope of ETS BRT.

- Minimum share - Annexes I, II

On fairness and solidarity grounds with one Member State, the Presidency proposes to accept the Parliament's proposal for an increase in the minimum share (from 0.01 to 0.07). National envelopes have been adjusted accordingly in Annex II. Except for this adjustment, the allocation methodology remains unchanged.

- Co-financing - Article 14, row 132

The Presidency proposes to introduce limited co-financing provided that the Parliament accepts the Fund's budgetary architecture based on external assigned revenues and if an acceptable outcome can be ensured for the Council with regard to technical assistance and transfers from SCF to shared management programmes. It is recalled that the Commission proposal included 50% co-financing, whereas the Council general approach deleted such provision. The Parliament differentiates co-financing based on the level of development of Member States, i.e. 40% for Member States eligible for the Modernisation Fund, 50% co-financing for the other Member States and 60% for all as regards measures under direct income support.

- Transfers of resources from SCF (15%) to shared management programmes - Article 10(1a), row 121a

The Presidency proposes to maintain 15% in line with the general approach. Certain limited adjustment downwards to be considered based on outcome on co-financing and technical assistance.

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

The Presidency proposes to maintain 2.5% in line with the general approach. Certain limited adjustment downwards to be considered based on outcome on co-financing and transfers.

- Direct income support - Article 6(1), row 107a - Block 3

The Presidency proposes to stick to 35% ceiling as in the General Approach. However, certain limited upwards adjustment towards the Parliament ceiling (40%) could be considered.

- 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:

- a) show openness to discuss the inclusion of such scheme under the Social Climate Fund provided that it is voluntary, 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;
- b) 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.

H. Other outstanding issues

- Legal basis (row 4) - the Council will continue to defend the general approach on the issue of legal basis. Article 322(1) TFEU is included as additional legal basis to cater for a derogation from Article 22(2) of title II of the Financial Regulation, required by the use of external assigned revenues for this Fund.
- 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

10. 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.