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'I' ITEM NOTE

From: General Secretariat of the Council

To: Permanent Representatives Committee (Part 2)

Subject: Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2021/241 as regards REPowerEU chapters in recovery and resilience plans and amending Regulation (EU) 2021/1060 , Regulation (EU) 2021/2115, Directive 2003/87/EC and Decision (EU) 2015/1814

- Presidency Progress Report

I. BACKGROUND

1. On 18 May 2022, the Commission adopted the “REPowerEU” package which contained a proposal to modify the Recovery and Resilience Facility (RRF) Regulation and other legislative acts. The aim of the proposal is to include in the Recovery and Resilience Plans (RRPs) a REPowerEU chapter to finance investments and reforms with the objective of diversifying energy supplies and reducing dependence on fossil fuels.
2. The Council adopted a general approach on the above-mentioned proposal on 4 October 2022 (ST 12662/22 REV 2). On this basis, the Czech Presidency is conducting negotiations with the European Parliament and the Commission with a view to a first reading agreement.

3. On 10 November 2022, the European Parliament (EP) adopted a number of amendments to the legislative proposal, which constitute the position of the EP in the negotiations with the Council on this file.¹

II. STATE OF PLAY

4. So far, three political trilogue meetings have been held under the Czech Presidency (16 November, 23 November, 29 November 2022).
5. At the first political trilogue on 16 November, the co-legislators, in view of the urgency of the matter, confirmed their objective to reach a political agreement as soon as possible, preferably before the end of the year. The co-legislators noted, however, that there were important differences to be bridged and identified five main negotiation blocks:
 - i. REPowerEU objectives, eligibility, scope and contents of chapters;
 - ii. requirements for supported measures (consultation of stakeholders, cross-border; data collection and transparency);
 - iii. Financing;
 - iv. Amendments to other regulations such as EAFRD, CPR and ETS; and
 - v. other important issues.
6. Significant progress has been made in these five blocks during trilogue negotiations, but further substantive progress is needed on the issues outlined in Part III of this note, which will be indeed discussed in the upcoming trilogue on 13 December 2022.

III. KEY ISSUES

a) REPowerEU objectives, scope and contents of the chapters

7. The Council Presidency and the EP reached a common understanding to further specify the REPowerEU Chapter objectives (set out in article 4) to include *security and sustainability of the Union energy system, uptake of renewables, energy efficiency and storage capacity*.
8. Regarding the scope of the chapters, agreement in principle was reached on all measures to be supported except two: infrastructure and facilities to meet immediate security of supply needs for oil, and low-carbon energy sources.
9. The EP strongly opposes the inclusion of oil within the scope of REPowerEU. For the Council Presidency, the inclusion of oil is essential to fulfil the objectives of REPowerEU. The Presidency has committed to provide practical examples of oil projects that could be supported under REPowerEU.

¹ https://www.europarl.europa.eu/doceo/document/TA-9-2022-0384_EN.html

10. The inclusion by the EP of low-carbon energy sources, raises concerns by the Commission as it could imply the support to nuclear power generation, which in their view is not possible under the current legal basis (Article 175 TFEU). The Presidency has also called for more clarity, proposing to include, if necessary, other non-nuclear low-carbon technologies under the other categories of measures.

b) *REPowerEU Do-No-Significant-Harm (DNSH) derogation*

11. The EP advocates strict and cumulative conditions for the application of the DNSH derogation. Under the EP proposal Member States would need to justify that there is no other possible adequate clean technology; that the potential harm is reduced to the strict minimum and mitigated by accompanying measures; and that the measure would be in operation by 31 December 2024. For the Council Presidency these conditions are not realistic and would exclude potential projects needed to decrease the dependency on fossil fuels. The Presidency considers that an overall assessment of compliance by the Commission could be a way forward.

c) *Cross-border and multi-country projects*

12. The EP supports setting a 35% target for these type of projects in each chapter while allowing for some derogations. The Commission considers this percentage extremely ambitious as the average share of these projects in current RRP is 6%. The Council Presidency agrees with encouraging these type of projects but avoiding any numerical target.

d) *REPowerEU retroactivity*

13. The EP initially wanted that eligible measures would start on 1 February 2022. Following negotiations, the EP and the Council Presidency have reached a political understanding to allow retroactivity starting from 1 February 2020 for scaled-up measures and transfers from a CID following a downward update of the allocation, while having retroactivity starting from 1 February 2022 for new measures.

e) *REPowerEU transfers from shared management programmes (ERDF, ESF, Cohesion Fund, BAR, EAFRD and JTF)*

14. During the negotiations, the EP has rejected the possibility of transfers from shared management programmes, albeit less categorical concerning transfers from BAR. The EP position is very keen on the flexibility for 2014-2020 cohesion policy, accepting broadly the non-paper proposed by the Commission on the use of unspent funds. It has further requested increasing the 10% cap proposed by the Commission. For the 2021-2027 programmes, it proposes earmarking REPowerEU funds within the respective shared management programme and increasing the co-financing to 100%. The Commission opposes these proposals. The Council Presidency insists on voluntary transfers for the 2021-2027 programmes and is open to discuss increasing the flexibility for 2014-2020 unspent funds.

f) New revenue and allocation key

15. The EP is in favour of financing all the new revenue of REPowerEU by auctioning frontloaded ETS allowances before 2025. According to its position, the Market Stability Reserve is not an alternative in order not to disrupt the integrity of the ETS system. The Innovation Fund should not be depleted either, as it is the only source of funding for innovative large-scale industrial projects. Further, this new revenue should not finance fossil fuel projects. The Council Presidency underlined the link between the allocation key and the sources of financing arguing that a significant share of frontloading would alter the fragile balance reached on the allocation key defeating the purpose of supporting Members States suffering more from the energy crisis.

g) Stakeholder consultation

16. The EP demands a fully-fledged new stakeholder consultation to be assessed by the Commission. The Council Presidency is in favour of avoiding unnecessary administrative burden stressing that Member States carried out exhaustive consultations in the context of the preparation of the original plans. The co-legislators have reached a political understanding to complement the summary of the original consultation with a summary of the complementary consultation including a list of stakeholders involved in the complementary consultation and outlining how the input received was reflected in the final design of the REPowerEU chapter.

III. CONCLUSION

17. As we enter into the decisive part of the interinstitutional negotiations, the Council Presidency provides a review of the progress made so far identifying the main remaining issues at stake in view of reaching a political agreement with the EP. In the framework of the mandate provided by Council, the Presidency will continue to engage constructively with the EP in order to reach a satisfactory compromise for the Council.