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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 amending Regulation (EC) No 715/2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information
- Guidance for further work

I. INTRODUCTION

1. On 14 June 2019, the Commission transmitted the above-mentioned proposal for a Regulation to the European Parliament and the Council in reaction to the ruling by the General Court of the European Union of 13 December 2018 concerning conformity factors for nitrogen oxides (NO_x).
2. The Permanent Representatives Committee (COREPER I) agreed on a mandate for informal negotiations with the European Parliament on 11 December 2019.¹

¹ Doc. 15042/19 + COR 1.

3. The European Parliament adopted its amendments to the proposal on 16 September 2020.
4. The European Economic and Social Committee released its opinion on the proposal on 25 September 2019.
5. The Committee of the Regions did not release an opinion on this proposal.

II. STATE OF PLAY

6. The first informal trilogue with representatives of the European Parliament and the European Commission took place on 9 October 2020. The Presidency provided a debrief on the outcome of the first trilogue on 14 October 2020.
7. On 4 November 2020, the Presidency received a revised COREPER mandate for the second informal trilogue on 10 November 2020. COREPER I was debriefed on the outcome of the second trilogue on 18 November 2020.
8. The third informal trilogue took place on 2 December 2020. COREPER I was debriefed on the outcome of the third trilogue on 4 December 2020.
9. In the third trilogue, the Council and the European Parliament were unable to reach an overall agreement, mainly due to the Parliament's amendment to phase out conformity factors for NO_x by a mandatory date (30 September 2022). The Parliament argued that the majority of vehicles already meet the current emission limits and that political pressure (a specific date for the phase-out of conformity factors in the operative part of the proposal) on those that fall behind with the limits was necessary. The Council defended its position that conformity factors for NO_x aim at taking into account statistical and technical uncertainties regarding measurements obtained through portable emission measurement systems (PEMS). The Council stressed that measurements by PEMS remain inaccurate and therefore any phase-out of conformity factors for NO_x under Euro 6, without scientific evidence and significant technical progress, would be inappropriate. For both co-legislators, this issue remains a red line.

10. Since the beginning of the Portuguese Presidency, the Working Party discussed possible compromise proposals on this file on 14 and 27 January, 10 February, 3 and 23 March 2021.
11. On 22 February 2021, the Joint Research Centre (JRC) released its third report on "Real Driving Emissions (RDE): 2020 assessment of Portable Emissions Measurement Systems (PEMS) measurement uncertainty"².
12. The report concludes that the PEMS measurement uncertainty margin for NO_x can be further reduced to 0,23 for the current generation of measurement equipment, and that an additional reduction is possible by improving the permissible tolerances for the equipment in the Commission Regulation (EU) 2017/1151 and the method by which the zero drift is taken into account. Under this future scenario, the future margin for NO_x could be reduced to 0,10, but this requires first changes in the referred regulation. The report also sets the measurement uncertainty margin for particle number (PN), suggesting that the PEMS measurement uncertainty margin for PN be lowered from 0,50 to 0,34. A technical meeting to discuss the report took place on 18 March 2021.
13. The initial Commission proposal did not include any modifications of the measurement uncertainty margins since it concerned only procedural adaptations necessary to comply with the ruling by the General Court of the European Union. The European Parliament wants to adopt the values contained in the latest JRC report (released in February 2021) and to provide for a mandatory date for phasing out the measurement uncertainty margins. In its last mandate, the Council proposed to set the uncertainty margin for NO_x at 0,32, as recommended in the previous JRC report (released in February 2020).

² Real Driving Emissions (RDE): 2020 assessment of Portable Emissions Measurement Systems (PEMS) measurement uncertainty.
<https://publications.jrc.ec.europa.eu/repository/handle/JRC124017>

14. The current COREPER mandate does not reflect the recommendations of the latest JRC report (measurement uncertainty margins for NO_x and PN and further possible reductions), nor does it provide for a possible solution for the phase-out of conformity factors based on the ideas discussed at Working Party level (i.e. "triggering value clause").
15. At Working Party level, no clear tendency emerged on the possible way out of the current deadlock in negotiations with the European Parliament.

III. NEXT STEPS

16. The Presidency considers it is important to clarify whether the Council is ready to take a further step towards the European Parliament, with the view to finding an agreement before the final ruling of the Court.
17. In light of the above, the Permanent Representatives Committee is asked to provide political guidance for further work, more specifically on the following alternatives:
 1. Should the Presidency submit a revised mandate for negotiations with the European Parliament on the basis of:
 - the JRC report, released in February 2021 (e.g. values of the uncertainty margins for NO_x and PN), **and**
 - the ideas for a compromise for the phase-out of the PEMS measurement uncertainty margin (i.e. "triggering value clause")?
 - or**
 2. Should informal negotiations with the European Parliament continue at technical level, on the basis of the current mandate, in order to continue seeking European Parliament's flexibility on a mandatory date for the phase-out of conformity factors?

IV. CONCLUSION

18. The Permanent Representatives Committee is therefore invited to examine the above with a view to delivering political guidance for future negotiations on a first reading agreement with the European Parliament.
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