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REPORT

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

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ADD1

Subject: Proposal for a Regulation of the European Parliament and of the Council
on appliances burning gaseous fuels
- Preparation of an informal trilogue

I. INTRODUCTION

1. The Commission presented the above proposal on 13 May 2014.¹ Its main objective is to adapt the provisions of Directive 2009/142/EC to the "New Legislative Framework" (Reg. 765/2008 and Decision 768/2008) following the example of a large number of other legislative acts in the area of technical harmonisation and furthermore to update some of its provisions to technical progress and developments.
2. The Council Working Party on Technical Harmonisation has examined the package at six WP meetings since June 2014.

¹ COM (2014) 258 final.

3. The European Parliament Internal Market and Consumer Protection Committee (IMCO) has not yet voted its report on the proposal. Consequently, the European Parliament has not given its opinion at first reading either.
4. Progress achieved at Council Working Party level has led to a situation that the Presidency considers it appropriate to submit the file to Coreper in order to obtain a mandate to enter into informal contacts with the representatives of the European Parliament in view of a first reading agreement, if possible.

II. STATE OF PLAY

5. Following negotiations at Council Working party level there is almost full agreement on most issues contained in the Presidency compromise proposal². In particular, the delegations have agreed to replace Article 37 and Annex II (delegated acts) by a new text clarifying that the format for the information on gas types and conditions (Art.4) should be done via implementing acts. The Working Party has moreover replaced the specific fittings conformity certificate by the normal declaration of conformity. Furthermore, the standard chapter on market surveillance from Alignment NLF has been integrated and a number of technical adaptations resulting from alignment on the nine directives in the "Alignment Package" already adopted in early 2014, have been introduced.
6. Apart from very minor editorial suggestions, the latest Presidency text has taken into account concerns by some delegation on some final issues where reservations remained:
 - a) **Choice of Legal Instrument**

The AT delegation maintained its position in strongly preferring a Directive instead of a Regulation for this sectoral legal act.

² The Commission, at this stage, has a reservation on the text of Article relating to the Committee article (Art. 36) and the corresponding recital.

**b) Clarification on second-hand collectors` items imported from third countries
(Recital 3aa)**

As for any other products, gas appliances that have already been placed on the market and are in use ("old" products) are not covered by the Regulation. However, second-hand products imported from third countries do in principle fall under the scope as they are "new" to the Union market and intended to be used as any other gas appliances. (recital 3a). As the FR delegation has pointed out there is however the case of historical gas appliances that are occasionally imported from third countries by collectors and cannot fulfil the essential requirements. The new recital (3aa) now clarifies that these historical appliances do not fall under the scope of this Regulation as they are not meant to be put into service, but just serve exhibition or collections purposes.

c) Article 2 (18) - Definition of manufacturer; Article 7 (1) "own use"

There is still a scrutiny reservation by the PL delegation on the definition of manufacturer, as the case of "own use" is only defined for the manufacturer of appliances. The Commission holds the view that there is no need to change the definition as fittings are not "used" independently from appliances and their only own use would also be the incorporation into an appliance.

Furthermore, the RO delegation maintains a scrutiny reservation.

d) Annex III Module F, point 5.5.2.A.- Sampling System

The new wording has been inserted in order to clarify that the notified body applies a specific random sampling system. This requirement within the conformity assessment procedures however does not impair the overall obligation for the manufacturer to place only compliant products on the market.

Given that the text has been inserted at a very late stage, several delegations maintain scrutiny reservations.

7. The Presidency considers that the text as set out in the doc. 16259/14 represents a well-balanced compromise and should therefore be acceptable for Coreper.

III. CONCLUSION

The Committee is invited to

- to agree to the text as set out in document 16259/14 - (if necessary, as amended today),
and
- to mandate the Presidency to enter into informal trilogues with the representatives of the European Parliament and the Commission on the basis of this latest Presidency compromise text (if necessary, as amended) in order to explore the possibility of an agreement at first reading.
