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

I. INTRODUCTION

1. The Commission presented the above proposal on 13 May 2014.¹
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 Council has agreed on a General Approach concerning this file on 17 December 2014². At this occasion, the Presidency was also mandated to enter into informal contacts with the representatives of the European Parliament and the European Commission in order to explore the possibility of an agreement at first reading. It has to be pointed out that to a large extent, the text of the General Approach includes standard provisions already adopted for the files of the "Alignment Package" agreed in 2013.
4. The European Parliament Internal Market and Consumer Protection Committee (IMCO) adopted its report on 23 April 2015³, which contains 202 amendments to the text of the original Commission proposal. The Council Working Party on Technical Harmonisation has examined these amendments in greater detail in May 2015.

II. STATE OF PLAY

5. Informal contacts with the representatives of the European Parliament and the European Commission have led to a situation where there is consensus on most of the text. Furthermore, during a first informal trilogue on 11 May 2015 which focused on the Cableways dossier, a short exchange of views on the Gas Appliances file took place.
6. The Council Working party on Technical Harmonisation has regularly been informed on the progress concerning the technical negotiations with the European Parliament. At the meeting on 29 May, the Working Party confirmed that most of the text could be acceptable. The acceptable parts of the text can be found in the four-column-document (in the right column / green. shaded) which is set out in ADDENDUM 1 to this note.

² doc. 16259/1/14 REV 1.

³ The report is not yet published.

7. The few open issues can be divided into three groups:

- Firstly, horizontal provisions which are largely identical in the regulations on "Appliances burning gaseous fuels", on "Cableways" and on "Personal Protective Equipment". These issues will be dealt with at the occasion of a trilogue on 16 June. The Presidency will here defend the text of the General Approach in its entirety, as these provisions follow exactly what was adopted on the Alignment Package in 2013 and should, therefore, not be altered.

- Secondly, there are issues of secondary importance where the texts of the European Parliament and the Council differ in wording and presentation, but not in substance or where the representatives of the European Parliament are still checking internally whether the Council wording is acceptable. These issues are presented as "yellow-shaded" in the four-column-document, but should not trigger new drafting suggestions. For these issues the Presidency therefore does not propose any new compromise text to the Committee and will maintain the substance of the General Approach.

- Thirdly, there is a group of issues of a more political nature, shaded in yellow or red, and set out in section III below, which remain open. On these the Presidency would like to receive guidance from the Committee.

III. OUTSTANDING ISSUES

8. Article 4 (1a) and Annex II, recitals 61a, 62, 63 and Chapter V, "Implementing vs. delegated act"

On the information on the gas supply conditions, the Council when agreeing the General Approach took the view that implementing acts are adequate, while the European Parliament is strongly in favour of delegated acts. The European Commission has expressed a high degree of flexibility in this issue. The Presidency has tried to find a compromise with the European Parliament. Several attempts have been made to describe the obligation for Member States and the leeway for the European Commission in such a manner that would implementing acts make acceptable to the European Parliament. However, the European Parliament showed little flexibility and insisted on a delegated act.

In order not to let overall agreement fall because of this single issue, the Presidency by way of compromise suggests that the format of the information to be delivered by Member States would be determined by an implementing act while the content would be decided upon by a delegated act.

The wording for Article 4, 37, 38 and 39 , recital 61a, 62 and 63 would be as follows:

Article 4 (1):" **By reporting relevant technical parameters**, Member States shall communicate to the Commission and the other Member States, the types of gas and corresponding supply pressures of gaseous fuels used on their territory before [six months before the date referred to in Article 42(2)] and any changes thereof within six months after the announcement of *the envisaged* ~~those~~ changes."

(1a) **In order to ensure the uniform application of the obligation set out in paragraph 1**, the Commission may, by means of implementing acts, define the harmonised ~~content and form of model for~~ the communications by the Member States referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 36 (3).

(2) The Commission shall ensure that the information provided by Member States **in accordance with** ~~under~~ paragraph 1 is published in the Official Journal of the European Union.

Article 37:

Amendment of Article 4 (1):

The Commission shall be empowered to adopt delegated acts in accordance with Article 38 concerning modifications to the content ~~and the form~~ of the communications of the Member States of the gas supply conditions used in on their territory, **as set out** in Article 4 (1) ~~Annex H~~, in order to take into account the technical developments with regard to the gas supply conditions.

Article 38

Exercise of the delegation

(1) The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

(2) The delegation of power **to adopt delegated acts** referred to in Article 37 shall be conferred **on the Commission** for an ~~indeterminate period of time~~ **a period of five years from The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.**

(3) The delegation of powers referred to in Article 37 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

(4) As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

(5) A delegated act adopted pursuant to Article 37 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Recital (61a) The examination procedure should be used for the adoption of implementing acts to define **the model for** the Member States communications on the gas supply conditions on their territory.

Recital (62) In order to take into account the technical developments, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amendments to the content ~~and the form~~ of the Member State communications on the gas supply conditions on their territory.

Recital (63) The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

9. Penalties and entry into force (Article 39 and Article 42)

The Presidency asks the Committee to endorse the solution tentatively agreed with the Parliament as a horizontal solution for the entry into force on the notification on penalties, including the minor adaptations necessary to match the relevant references for Gas Appliances, etc.

The text would read as follows:

Article 39 Penalties

(1) Member States shall lay down the rules on penalties applicable to infringements by economic operators of the provisions of this Regulation ~~and shall take all measures necessary to ensure that they are enforced~~. Such rules may include criminal penalties for serious infringements. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by [one month prior to the date of application of this Regulation] at the latest and shall notify it without delay of any subsequent amendment affecting them.

(2) Member States shall take all measures necessary to ensure that their rules on penalties applicable to infringements by economic operators of the provisions of this Regulation are enforced.

Article 42

Entry into force and application

(1) This Regulation shall enter into force on the twentieth day following its publication in the Official Journal of the European Union.

(2) It shall apply from [two years after entry into force].

(3) By way of derogation from paragraph 2:

(a) Articles 4, 19 to **35** and Article **36** shall apply from [six months after entry into force].

(b) Paragraph 1 of Article 39 shall apply from [1 year and 11 months after entry into force].

10. Annex I, point 1.6.1. "Safe combustion at the time of commissioning"

The EP insisted on IMCO amd. 130, which was rejected by the Working Party. In order to find a compromise and given that the practical consequences of this change for the essential requirements are probably limited, the Presidency now proposes the following wording:

"The ~~technical~~ instructions **for installation** intended for the installer shall contain all the instructions for installation, adjustment and servicing required to ensure that those operations are correctly performed **so** and that the appliance may be used safely and **in particular that efficient and safe combustion is ensured.**"

11. Annex I, point 1.6.2. "Advice on professional installation"

The EP would like to maintain some parts of its original IMCO amd. 131 , but is not insisting on the wording. The Working Party was reluctant to include the wording proposed by the Parliament, since this might be misunderstood as interfering with national competences or give additional burden to manufacturers.

The Presidency therefore suggests the following drafting to meet the concerns of the Parliament.

The final part of 1.6.2. should read as follows:

" The manufacturer shall give instructions to check whether national legislation obliges that the gas appliances may only be installed or serviced by professional personnel. Whether or not national law requires that any of the -installation or servicing referred to in the first paragraph of this point is to be carried out by a professional, the manufacturer shall note in the instructions where additional care is needed. In addition, the manufacturer may determine that the appliance has to be installed by professional personnel, where it is not obligatory through national legislation."

The manufacturer of the appliance shall include in the instructions accompanying the appliance, all necessary information for adjustment, operation and maintenance of the fittings as part of the finished appliance, as appropriate. (*unchanged*)"

IV. CONCLUSION

The Committee is invited

- to agree to the Presidency compromises as suggested in section III,
- to mandate the Presidency to continue the informal trilogues on this basis and on the basis of the four-column-document (addendum to this note) with the representatives of the European Parliament and the Commission, in view of an agreement at first reading.
