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From:	Presidency
To:	Permanent Representatives Committee
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Subject:	Proposal for a Regulation of the European Parliament and of the Council establishing a framework for setting ecodesign requirements for sustainable products and repealing Directive 2009/125/EC - Guidance for further work

I. INTRODUCTION

1. On 30 March 2022, the Commission adopted a proposal for a Regulation of the European Parliament and the Council establishing a framework for setting ecodesign requirements for sustainable products¹. The legal basis of the proposal is Article 114 of the Treaty on the Functioning of the European Union (TFEU). The proposal updates, modernises and extends the framework for the ecodesign of sustainable products, while repealing the legislative framework in place (the Ecodesign Directive 2009/125/EC²).

¹ Proposal for a Regulation of the European Parliament and of the Council establishing a framework for setting ecodesign requirements for sustainable products and repealing Directive 2009/125/EC, doc. ST 7854/22 + ADD 1.

² Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (recast), OJ L 285, 31.10.2009, p. 10–35.

II. WORK CONDUCTED IN THE COUNCIL PREPARATORY BODIES

2. The proposal was discussed at the Competitiveness Council on 29 September 2022 following an exchange of views of the Working Party on Competitiveness and Growth (High Level) on 7 July 2022³. Moreover, the proposal was also discussed at the Environment Councils on 28 June and 24 October 2022. Discussions in the Working Party on Competitiveness and Growth (Internal Market – Ecodesign) started in July 2022 under the Czech Presidency. After 11 working party meetings, the Czech Presidency published a first compromise text on 6 December 2022⁴ which was presented to the delegates at the Working Party meeting on 12 December 2022. A progress report was also presented at the Competitiveness Council on 1 December 2022.
3. Building on the first compromise text, the Working Party on Competitiveness and Growth (Internal Market – Ecodesign) has so far met 8 times under the Swedish Presidency. The Swedish Presidency published a second compromise text on 10 February 2023⁵.

III. MAIN ISSUES

4. Many issues have been analysed since the examination of the proposal started in July 2022, including but not limited to: how to ensure environmental ambition, the degree of harmonisation, the prohibition to destroy unsold consumer products, the Digital Product Passport, the role for customs authorities and Market Surveillance authorities, administrative burdens for SMEs and Green Public Procurement.

³ doc ST 11671/22

⁴ doc. ST 15613/22

⁵ doc. ST 6199/23

5. A recurring key issue in the negotiations has been how the empowerment to the Commission to adopt the ecodesign requirements, consisting of performance and information requirements for products (Articles 5-7) should be framed, and whether such requirements should be laid down in delegated or implementing acts. Most Member States have, both at technical and political level, asked for a better framing of the Commission empowerment. Many Member States have also asked for implementing acts to be used in many parts of the text including for the development and establishment of product-specific ecodesign requirements. This has led the Swedish Presidency, in its compromise text published on 10 February 2023, to make an attempt at transforming the empowerment to adopt delegated acts foreseen in Article 4 into one to adopt implementing acts.
6. The choice between conferring on the Commission a delegated power pursuant to Article 290(1) TFEU or an implementing power pursuant to Article 291(2) TFEU is a political choice for the co-legislators, within the limits of the TFEU, taking into account the objectives, content and context of the envisaged act as well as those of the legislative act itself. Implementing acts should be provided to ensure uniform conditions for implementing the basic act whereas delegated acts can supplement or amend non-essential elements of the basic act.
7. As discussed during the Working Party meetings of 17 February and 14 March 2023, the use of implementing acts for the ecodesign requirements foreseen under Articles 5-7 would require adding significantly more criteria and principles to the compromise text in order to arrive at a legally sound framework. Even if legally possible, using implementing acts for the setting of ecodesign requirements would entail some practical consequences and the complete framework needed would inherently limit the possibility for the Commission to tailor or adapt the environmental sustainability requirements of products to the wide variety of products, and to different situations.

8. As a compromise going forward, the Presidency would therefore suggest that the Council reverts back to delegated acts for the setting of the ecodesign requirements by adding clearer criteria and principles which would limit and better frame how the Commission can use their empowerment to develop ecodesign requirements. It will also be possible to ensure better involvement of Member States in the setting of ecodesign requirements through the Ecodesign Expert Group. Nevertheless, implementing acts could still be foreseen for other types of requirements under the proposal.

IV. CONCLUSIONS

Following the technical discussions at the Working Party level, the Permanent Representatives Committee is invited to provide guidance for further work. In this regard, the Permanent Representatives are invited to address in their interventions the following questions:

- Would you object against reverting back to delegated acts for the setting of the ecodesign requirements, under the condition that the empowerment to the Commission is better framed with clearer criteria and principles? How would you like to see the delegation framed?
