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

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Subject: Proposal for a Directive of the European Parliament and of the Council on
the limitation of emissions of certain pollutants into the air from medium
combustion plants
- Preparation for the informal trilogue

I. INTRODUCTION

1. On 17 December 2014, the Council agreed on a general approach on the above mentioned proposal. The BG/CZ/EE/FI delegations indicated they could not support the text.
2. The European Parliament ENVI Committee, on 6 May 2015, voted on its report containing 86 amendments on the proposal and agreed to enter into negotiations with the Council with a view to a first reading agreement.

3. A first informal trilogue took place on 21 May in a positive and constructive spirit. The Presidency informed delegations on the outcome at COREPER on 22 May 2015.
4. With a view to a second informal trilogue on 2 June, the Presidency suggests to adapt a number of elements of the Council's general approach according to discussions at the first trilogue. These are outlined below in Section II of this note and in the text contained in the Annex¹.
5. All delegations and the Commission have scrutiny reservations on the Presidency compromise suggestions.

II. OUTSTANDING ISSUES

The Presidency proposes to maintain the Council's general approach on the main package that includes dates of application, MCP categories, emission limit values and derogations.

In order to take into account the EP's position and arguments raised at the trilogue on 21 May, the following modifications to the Council's general approach could be proposed:

1. Subject matter - carbon monoxide

As the EP, the Council acknowledged in its discussions that it would be appropriate to assess whether emission limit values should be established for other pollutants, such as carbon monoxide. This is already reflected in the recital 16a of the general approach. In order to allow for a solid assessment, relevant monitoring data are required in respect of plants that are a particular source of such pollutants. It is therefore suggested to include in the Directive the obligation to monitor emissions of carbon monoxide for gas fired plants.

¹ Given the short deadlines, only those parts of the draft Directive where modifications are suggested, are included in the Annex.

2. Aggregation rules

It is proposed to agree with the EP to specify in Article 2, scope, that this Directive applies to a combination formed by new medium combustion plants, in accordance with Article 3a. Furthermore, paragraph 1 of the new Article 3a as proposed by the EP (AM 34) should be acceptable. On the contrary, the Council is of the view that plants below 1 MW shall not fall under the scope of this Directive and its aggregation rules to avoid any overlap with Directive 2009/125/EC (eco-design Directive). The second part of EP AM 34 is therefore not acceptable.

3. Energy efficiency

The Presidency proposes to highlight in a recital the importance of energy efficiency considerations in particular for operators of medium combustion plants and in the case of retrofitting and investments in order to partly reflect the EP suggestions in AM 55.

4. Annex III

The Council recognizes the difficult situation regarding air quality in zones not complying with EU limit values laid down in Directive 2008/50/EC, but at the same time does not wish to introduce provisions leading to double regulation that are disproportionate and unrealistic. According to the new text for Article 5(4) set out below, Member States concerned by such a situation have the obligation to assess the need to apply, for medium combustion plants, stricter requirements than laid down in this Directive. They should assess possible impacts of such measures as suggested by the EP in AM 9.

A full four-column table will be provided to delegations after the first technical meeting scheduled for 26 May in order to take account of other elements, of a more technical or editorial nature, on which agreement in principle between the two co-legislators could possibly be found.

III. CONCLUSION

The Permanent Representatives Committee is invited to examine the Presidency compromise text set out in the Annex to this note with a view to agreeing on a revised mandate in view of the second informal trilogue. The Presidency will report on the outcome of the second informal trilogue and propose, where necessary, adjustments to the Council's general approach to be discussed by this Committee thereafter.

After the second informal trilogue, there are at least two technical meetings scheduled, on 4 and 12 June 2015. The third informal trilogue should take place on 23 June 2015.

**Proposal for a Directive of the European Parliament and of the Council
on the limitation of emissions of certain pollutants into the air from medium combustion plants**

1. Subject matter - carbon monoxide (AM 13, AM 72, AM 74, AM 82, Council's recital 10a new, part of AM 11, part of AM 76)

Commission proposal	EP Amendments	Council position	Comments
Amendment 13			
Article 1 – subparagraph 1 a (new)			
	<i>This Directive lays down rules also to monitor emissions of carbon monoxide.</i>		<i>This Directive lays down rules also to monitor emissions of carbon monoxide <u>for gas fired plants</u>.</i>
Amendment 72			
Article 12 - paragraph 1 a (new)			
	<i>1a. Member States shall also report to the Commission, by 31 December 2024, an estimate of the total annual emissions of carbon monoxide from these plants, grouped by fuel type and capacity class.</i>		<i>1a. Member States shall also report to the Commission, by [31 December 2024], an estimate of the total annual emissions of carbon monoxide from <u>gas fired plants</u>, grouped by [...] capacity class.</i>
Amendment 74			
Article 12 - paragraph 2 - subparagraph 2			
The reports drawn up under the first subparagraph shall contain qualitative and quantitative information on the implementation of this Directive, any action taken to verify	The reports drawn up under <i>paragraphs 1 and 1a and</i> the first subparagraph <i>of this paragraph</i> shall contain qualitative and quantitative information on the	The reports drawn up under the first paragraph and the first subparagraph of paragraph 2 shall contain qualitative and quantitative information on the	EP AM acceptable

Commission proposal	EP Amendments	Council position	Comments
compliance of the operation of medium combustion plants with this Directive and any enforcement action taken for the purposes thereof.	implementation of this Directive, any action taken to verify compliance of the operation of medium combustion plants with this Directive and any enforcement action taken for the purposes thereof.	implementation of this Directive, any action taken to verify compliance of the operation of medium combustion plants with this Directive and any enforcement action taken for the purposes thereof.	
Amendment 82 Annex IV – part 1 – point 2			
2. Measurements are only required for pollutants for which an emission limit value is laid down in Annex II for the plant concerned.	<i>2. Member States shall take the necessary measures to ensure that measurements are carried out also for carbon monoxide (CO).</i>	2. Measurements are only required for pollutants for which an emission limit value is laid down in Annex II for the plant concerned.	<i>2. Member States shall take the necessary measures to ensure that measurements are carried out also for carbon monoxide (CO) <u>for gas fired plants.</u></i>
Amendment 11 Recital 16 a (new)			
	<i>(16a) The Commission should assess, within a reasonable period of time, the need to modify the emission limit values set out in Annex II on the basis of more advanced technologies. The Commission should also assess the need to propose specific emission limit values for other pollutants, such as carbon monoxide, on the basis of the monitoring referred to in Article 6. To that</i>	(16a) The Commission should assess the need to amend the emission limit values set out in Annex II for new medium combustion plants, on the basis of the state of the art technologies. In this context, the Commission should also consider the opportunity of setting out specific emission limit values for other pollutants, such as carbon	No change of general approach

Commission proposal	EP Amendments	Council position	Comments
	<i>end, Member States should take the necessary measures to ensure that such monitoring is carried out.</i>	monoxide (CO).	
Amendment 76 Article 12 a (new)			
	<p style="text-align: center;">Article 12a Review</p> <p><i>1. The Commission shall review the emission limit values for new medium combustion plants by 31 December 2025 with the exception of NOx emission limit values which shall be reviewed by 31 December 2021. The emission limit values for new and existing medium combustion plants shall be reviewed by 31 December 2030. Thereafter, the review shall take place every ten years. The review shall take into account the best available technologies and where possible the data collected from the monitoring referred to in Article 6.</i></p> <p><i>2. The Commission shall assess whether medium combustion</i></p>	<p style="text-align: center;">Article 12a Review</p> <p>The Commission shall, by 1 January 2023, assess the need to review Part 1a, 1b and 1c as regards plants being part of SIS/MIS as well as Part 2a, 2b and 2c of Annex II and on the basis of the state of the art of technologies. It shall also assess whether for certain types of medium combustion plants there is a need to regulate carbon monoxide emissions.</p>	No change of relevant part of general approach (1st subparagraph 2nd sentence)

Commission proposal	EP Amendments	Council position	Comments
	<p><i>plants need to be regulated in terms of their carbon monoxide emissions.</i></p> <p>3. The Commission shall submit the results of this review to the European Parliament and to the Council, accompanied, if necessary, by a legislative proposal.</p>	<p>The Commission shall report the results of that review to the European Parliament and to the Council accompanied by a legislative proposal where appropriate.</p>	

2. Aggregation rules (AM 34, AM 14, AM 5)

Commission proposal	EP Amendments	Council position	Comments
Amendment 34			
Article 3 a (new)			
	<p style="text-align: center;"><i>Article 3 a</i> Aggregation rules</p> <p>1. The combination formed by two or more new medium combustion plants shall be considered to be a single medium combustion plant for the purpose of this Directive and their rated thermal input added together for the purpose of calculating the</p>	<p style="text-align: center;"><i>Article 3a</i> Aggregation rules</p> <p>The combination formed by two or more new medium combustion plants shall be considered as a single medium combustion plant for the purpose of this Directive and their rated thermal input added for the purpose of calculating the total rated</p>	<p>1st paragraph of EP AM acceptable</p>

Commission proposal	EP Amendments	Council position	Comments
	<p><i>total rated thermal input of the plant, where:</i></p> <ul style="list-style-type: none"> <i>- the waste gases of such medium combustion plants are discharged through a common stack; or</i> <i>- taking into account technical and economic factors, the waste gases of such medium combustion plants could, in the judgment of the competent authority, be discharged through a common stack.</i> <p><i>2. For the purpose of calculating the total rated thermal input of a combination of two or more combustion plants, individual combustion plants with a rated thermal input below 1 MW shall not be considered unless more than one medium combustion plant is installed for the same purpose on a single site in a load-sharing arrangement. In this case, the load sharing combination formed by such plants shall be considered to be a single combustion plant and their</i></p>	<p>thermal input of the plant, where:</p> <ul style="list-style-type: none"> - the waste gases of such medium combustion plants are discharged through a common stack; or - taking into account technical and economic factors, the waste gases of such medium combustion plants could be discharged through a common stack. 	

Commission proposal	EP Amendments	Council position	Comments
	<i>capacities added together for the purpose of calculating the total rated thermal input even if each individual combustion plant has a rated thermal input below 1 MW.</i>		
Amendment 14 Article 2 - paragraph 1 a (new)			
	<i>1a. This Directive shall also apply to a combination formed by new medium combustion plants pursuant to Article 3a, including where the total rated thermal input of such combination is equal to or more than 50 MW, unless the combination is a combustion plant covered by Chapter III of Directive 2010/75/EU.</i>	This Directive shall also apply to a combination formed by medium combustion plants according to Article 3a, including where the total rated thermal input of such combination is equal to or more than 50 MW, unless this combination is a combustion plant covered by Chapter III of Directive 2010/75/EU.	EP AM acceptable
Amendment 5 Recital 9 b (new)			
	<i>(9b) This Directive should apply to combinations formed by two or more combustion plants having a total rated thermal input equal to or greater than 1 MW and less than 50 MW, unless the combination is a combustion plant covered by Chapter III of Directive 2010/75/EU. If more</i>	(10b) This Directive should apply to combustion plants, including a combination formed by two or more combustion plants, with a total rated thermal input equal to or greater than 1 MW and less than 50 MW. Individual combustion plants with a rated thermal input below 1 MW	EP AM not acceptable

Commission proposal	EP Amendments	Council position	Comments
	<i>than one individual combustion plant with a rated thermal input of less than 1 MW is installed on a single site in a load-sharing arrangement, such combination should be considered as a single combustion plant for the purposes of this Directive.</i>	should not be considered for the purpose of calculating the total rated thermal input of a combination of combustion plants. In order to avoid regulatory gaps, the provisions of this Directive should also apply to a combination formed by medium combustion plants where the total rated thermal input is equal to or more than 50 MW, without prejudice to the provisions of Chapter III of Directive 2010/75/EU.	

3. Energy efficiency (AM 55)

Commission proposal	EP Amendments	Council position	Comments
Amendment 55 Article 5 a (new)			
	<p style="text-align: center;"><i>Article 5a</i> <i>Energy Efficiency</i></p> <p><i>1. Member States shall take measures to promote increased energy efficiency of medium combustion plants.</i></p>		<p>New recital 10d:</p> <p>(10d) Medium combustion plants should be developed and operated in such a way to promote energy efficiency and such considerations should in particular be taken into account</p>

Commission proposal	EP Amendments	Council position	Comments
	<p><i>2. By 31 December 2016, the Commission shall assess the minimum energy efficiency standards for medium combustion plants in line with best available techniques.</i></p> <p><i>3. The Commission shall report the results of that assessment to the European Parliament and to the Council accompanied by a legislative proposal, where appropriate, setting efficiency performance levels for new medium combustion plants that will apply from 1 January 2020.</i></p>		<p>when retrofitting or deciding on major investments.</p>

4. Annex III (AM 54, Article 5(5), Annex III, AM 9)

Commission proposal	EP Amendments	Council position	Comments
Amendments 54 Article 5 - paragraph 4			
<p>4. In zones not complying with EU air quality limit values laid down in Directive 2008/50/EC, Member States shall apply, for individual medium combustion plants in those zones, emission limit values based on the benchmark values laid down in Annex III or on stricter values established by the Member States, unless it is demonstrated to the Commission that applying such emission limit values would entail disproportionate costs and that other measures ensuring compliance with the air quality limit values have been included in the air quality plans required under Article 23 of Directive 2008/50/EC.</p>	<p>4. In zones not complying with EU air quality limit values laid down in Directive 2008/50/EC, Member States shall <i>assess the need to</i> apply, for individual medium combustion plants in those zones, <i>stricter</i> emission limit values based on the benchmark values laid down in Annex III.</p>	<p>4. [...]</p>	<p>4. In zones not complying with <u>EU air quality limit values laid down in Directive 2008/50/EC</u>, Member States shall assess the need to apply, for [...] medium combustion plants [...], <u>stricter requirements than those set out in this Directive.</u></p>

Commission proposal		EP Amendments		Council position		Comments
Article 5 - paragraph 5						
5. The Commission shall organise an exchange of information with Member States and stakeholders on the benchmark values for more stringent emission limit values referred to in paragraph 4.		5. The Commission shall organise an exchange of information with Member States and stakeholders on the benchmark values for more stringent emission limit values referred to in paragraph 4.		5. [...]		No change to general approach
ANNEX III						
<p style="text-align: center;"><u>ANNEX III</u> Benchmark values for more stringent emission limit values referred to in Article 5(4)</p> <p>All emission limit values set out in this Annex are defined at a temperature of 273,15 K, a pressure of 101,3 kPa and after correction for the water vapour content of the waste gases and at a standardised O₂ content of 6 % for combustion plants using solid fuels, 3 % for combustion plants, other than engines and gas turbines, using liquid and gaseous fuels and 15 % for engines and gas turbines.</p>				[...]		No change to general approach
Emission limit value benchmarks (mg/Nm ³) for medium combustion plants other than engines and gas turbines						
Pollutant	Rated thermal input	Solid biomass	Other solid fuels	Liquid fuels	Natural gas	Gaseous fuels other

Commission proposal		EP Amendments					Council position	Comments
	(MW)					than natural gas		
NO _x	1 - 5	200	100	120	70	120		
	> 5 - 50	145	100	120	70	120		
Particulate matter ²	1 - 5	10	10	10	-	-		
	> 5 - 50	5	5	5	-	-		
Emission limit value benchmarks (mg/Nm ³) for engines and gas turbines								
Pollutant	Type of installation	Liquid fuels	Natural gas	Gaseous fuels other than natural gas				
NO _x	Engines	150	35	35				
	Gas turbines ⁽¹⁾	50	20	50				
⁽¹⁾ benchmark is only applicable above 70 % load.								

² According to AM 27, "particulate matter" is to be replaced by "dust" throughout the text. This applies therefore also to this Annex. For reasons of presentation it cannot be shown in this table.

Commission proposal	EP Amendments	Council position	Comments
Amendment 9 Recital 13			
<p>(13) In accordance with Article 193 of the Treaty on the Functioning of the European Union (TFEU), this Directive does not prevent Member States from maintaining or introducing more stringent protective measures, for example for the purposes to comply with environmental quality standards. In particular, in zones not complying with air quality limit values, more stringent emission limit values, which would also promote eco-innovation in the Union, facilitating in particular market access of small and medium enterprises, should be applied by Member States, such as the benchmark values set out in Annex III to this Directive.</p>	<p>(13) In accordance with Article 193 of the Treaty on the Functioning of the European Union (TFEU), this Directive does not prevent Member States from maintaining or introducing more stringent protective measures, for example for the purposes to comply with environmental quality standards. In particular, in zones not complying with air quality limit values, more stringent emission limit values, which would also promote eco-innovation in the Union, facilitating in particular market access of small and medium enterprises, should be <i>considered</i> by Member States, such as the benchmark values set out in Annex III to this Directive. <i>Member States should conduct an assessment of possible impacts where they decide to take such measures.</i></p>	<p>(13) In accordance with Article 193 of the Treaty on the Functioning of the European Union (TFEU), this Directive does not prevent Member States from maintaining or introducing more stringent protective measures, [...] including stricter emission limit values, than the requirements set in this Directive.</p>	<p>(13) In accordance with Article 193 of the Treaty on the Functioning of the European Union (TFEU), this Directive does not prevent Member States from maintaining or introducing more stringent protective measures, <u>for example [...] in zones not complying with air quality limit values, including stricter emission limit values than the requirements set in this Directive. Member States should conduct an assessment of possible impacts where they decide to take such measures.</u></p>