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Clean Energy Summit: 18 March 2024

As the EU aims to triple renewable energy and double energy efficiency by 2030, #CES2024 serves as a crucial forum for policy-makers and industry leaders to address climate challenges, emphasizing the Paris Agreement principles and fostering collaboration for a just and inclusive transition. Don't miss out: registrations are opening soon.

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This week's highlights

- Belgian Presidency of EU Council and European Parliament reach a new provisional agreement on digital platform workers
- Packaging and packaging waste regulation, European Parliament and EU Council to continue negotiations on 4 March
- Provisional agreement between European Parliament and EU Council on Net-Zero Industry Act
- *Gigabit Infrastructure Act* – EU Council and European Parliament reach provisional political agreement on deployment of high-speed networks
- MEPs formally approve interinstitutional agreement on 'Interoperable Europe'
- Agreement on financial guarantees between EU and World Bank to finance reconstruction of Ukraine

SOCIAL AFFAIRS - EMPLOYMENT: Belgian Presidency of EU Council and European Parliament reach a new provisional agreement on digital platform workers

Almost 2 months after an initial provisional agreement on the subject, which in the end was rejected by the Member States on 22 December 2023 *(see EUROPE 13320/14)*, negotiators from the European Parliament and the Belgian Presidency of the EU Council once again reached, on Thursday 8 February, a provisional agreement on the Platform Work Directive which will oblige the Member States to create a mechanism for legal presumption of salaried employment, leaving them free to define at their level the facts, in particular, control of the worker, justifying the triggering of this procedure.

This agreement, based on the joint exploratory text negotiated last week between the two parties *(see EUROPE 13343/8)*, still has to be validated by the Member States, who will in turn examine the dossier on Friday 9 February. At this stage, a vote is scheduled for 16 February, although things could be organised differently on Friday depending on support for the agreement.

Reversing the trend of the work carried out until mid-January, the provisional agreement puts an end to the system of identifying criteria/indicators harmonised at EU level to help the authorities reclassify a bogus self-employed worker as an employee.

The provisional agreement introduces "*a presumption of an employment relationship that is triggered when facts indicating control and direction are present, according to national law and collective agreements in place, as well as taking into account the case law of the European Court of Justice*".

The directive obliges EU countries to establish a rebuttable legal presumption of employment at national level, and the burden of proof lies with the platform, which will have to prove that the contractual relationship is not one of employment.

The agreement also covers new rules on algorithmic management to ensure that a person working on a platform cannot be dismissed on the basis of a decision taken by an algorithm or automated decision-making system. Instead, platforms must provide human oversight of important decisions that directly affect people working on the platform, says a European Parliament press release.

The directive also improves transparency and data protection obligations.

A new role for the Commission

However, it is on the articles relating to the correct determination of employment status and the legal presumption procedure, as well as on the accompanying measures, that the negotiations are most tense.

On Thursday morning, the co-legislators made a number of changes to these parts of the directive, giving the Commission a new role in monitoring the implementation of the legal presumption in the Member States through a new provision in Article 25.

The aim here would be to reassure countries concerned about a level playing field between Member States. A new recital 31b has also been created on the effectiveness of legal presumption procedures, which incorporates some of the lengthy wording of a previous version of recital 31a.

Recital 31b thus stresses that legal presumption procedures must not overburden those who have to provide evidence of the contractual employment relationship.

The wording has also been slightly amended to exclude tax, criminal and social security authorities from this procedure, as well as labour inspections and controls following a reclassification decision.

According to partial information gathered on Thursday, a few adjustments have also been made to other parts of the text, concerning intermediaries, transparency and penalties, but these are considered to be minor.

European Commissioner Nicolas Schmit, the Belgian Presidency of the EU Council and the rapporteur, Elisabetta Gualmini (S&D), welcomed this preliminary agreement, with the Commissioner hoping in particular for a "*positive result*" the following day within the Member States.

Contacted by *EUROPE* on Thursday, a number of delegations had not yet been able to take a position or predict a result. France, in any case, will be a key country, having requested further clarification this week, particularly on the concept of an individual relationship between the platform and the worker.

Subject to further assessment, however, the agreement reached on Thursday morning did not appear to provide any new evidence in favour of the French requests.

Unhappy platforms

Move EU, which represents *Uber* in particular, said that the provisional agreement "*is not the result of more than 2 years of deliberations, but of a rushed process to agree to any Directive at any price, despite lack of support from many Member States*".

"*Given the vague nature of the text and the lack of a thorough impact assessment, its adoption would lead to uncertainty for national labour systems and for hundreds of thousands of professional drivers, while greatly hindering the activities of ride-hailing platforms*", says the association.

Move EU therefore calls on the EU Council to reject these negotiations. For *Delivery Platforms Europe*, which represents *Deliveroo* and *Uber Eats* among others, "*the provisional agreement is a missed opportunity to create clear rules for the benefit of platform workers and the sector as a whole. Getting it right is more important than getting a deal and we hope Member States will prioritise getting it right*". *(Original version in French by Solenn Paulic)*

SECTORAL POLICIES: Packaging and packaging waste regulation, European Parliament and EU Council to continue negotiations on 4 March

More than 4 hours of negotiations between the European Parliament, the EU Council and the Commission (trilogue) on the evening of Monday 5 February in Strasbourg failed to produce any significant progress on the future EU regulation on packaging and packaging waste. And with good reason: this was the first 'trilogue' devoted to political discussions on a number of points which were the subject of a compromise proposed to the Member States by the Belgian Presidency of the EU Council and examined on 31 January by the 27 ambassadors of the Member States to the EU (Coreper).

This European *Green Deal* regulation aims to tackle the constant growth in waste by imposing binding targets for reducing packaging, preventing its production, reuse, high-quality recycling and creating an internal market for secondary raw materials *(see EUROPE 13074/7)*.

The Council adopted its negotiating position in December *(see EUROPE 13316/5)* and the Parliament at the end of November *(see EUROPE 13298/2)*.

On Monday evening, the negotiators made little progress on substances of concern (article 5), recycled content in plastic packaging (article 7), and deposit and return systems (articles 43 and 44) - progress that is relative, since work will continue at technical level to try to find compromises on these issues.

Interinstitutional negotiations at political level will resume on Monday 4 March, with the aim of reaching a provisional agreement at the end of this second trilogue, for which the most problematic issues remain unresolved, namely reuse and refill targets (article 26), and restrictions on the use of certain packaging formats (article 22 and the associated Annex V). They were only briefly discussed on Monday.

Substances of concern/PFAS and BPA (article 5). The Parliament wants a total ban on the use of PFASs and bisphenol A in food packaging. Both the Council and the Commission are of the view that there is no need to duplicate the REACH regulation. A mandate was given to find a way of addressing the issue in the packaging and packaging waste regulation.

Minimum recycled content in plastic packaging (article 7). The Parliament wants to reduce the 2030 target to 7.5% (instead of 10% in the proposal) and add a target of 25% for 2040. The negotiators are said to be in agreement on staying at 10% from 2030 and adding the 2040 target.

However, disagreements remain on a number of points: - the flexibility requested by the Council for SMEs; - bio-based plastics (the Council wants a review report from the European Commission after the regulation comes into force to take account of technological developments. The Parliament, for its part, is asking for a report from 2025).

Separate collection/return and collection systems (article 43 and 44 derogations). A compromise was reached only on the percentage of separate collection of plastic bottles and metal cans triggering a derogation. This is reportedly 80% (the Council wanted 78%, the Parliament 85%), but the new Article 43a introduced by the European Parliament to impose a separate collection target of at least 90% for all materials is a red line for the Council.

Extended producer responsibility (article 40). The negotiators have reportedly agreed to include the costs of waste cleaning, but have yet to reach agreement on the costs of public waste collection systems and the modulation of financial contributions. The Commission should help them find a compromise solution, particularly on this last point.

Urgency procedure for the adoption of the text. Given the tight deadline before the European elections from 6 to 9 June, and that Parliament's last plenary session is scheduled for April, the urgency procedure known as the 'corrigendum procedure' (from Parliament's Rules of Procedure) will be used.

The provisional agreement would be reviewed for approval by Coreper in March, with the European Parliament Committee on the Environment, Public Health and Food Safety (ENVI) expected to do the same before April, in accordance with the ordinary procedure.

The outgoing Parliament would adopt at first reading the text provisionally approved and translated, but not yet revised by the lawyer-linguists.

The newly elected European Parliament would approve the provisional agreement, probably unchanged (as was the case for 20 texts adopted after the May 2019 elections), by means of a 'corrigendum' to the text drawn up by the lawyer-linguists.

If this is the case, the regulation will be formally adopted by the Council at the end of 2024.

See the EU Council's general approach: https://aeur.eu/f/aqd *(Original version in French by Aminata Niang)*

SECTORAL POLICIES: Provisional agreement between European Parliament and EU Council on Net-Zero Industry Act

On Tuesday 6 February, European Parliament and EU Council negotiators reached a provisional agreement on the Net-Zero Industry Act (NZIA). If it is approved by the Member States and the European Parliament as a whole, the text could see the light of day before the end of the legislative cycle. The NZIA is Europe's response to the US Inflation Reduction Act (IRA) to prevent investors and promoters of green projects on the other side of the Atlantic from leaving. Some of the technical details of the text have yet to be finalised, but the co-legislators reached agreement on some of the thorny issues in the NZIA, such as sustainability and resilience criteria in public auctions.

List of technologies

The question of the technologies covered by the text, from which industrial projects will be able to benefit, has been settled: the NZIA will include a list of 15 technologies. Nuclear power is included, but Member States can request an exemption from including this sector (like others) if it is not relevant to their energy mix.

The list has also been extended to the value chain, as certain sectors such as wind and solar power are highly dependent on these value chains.

Public procurement

The compromises reached on pre-qualification criteria for public procurement are as follows: Member States will have to apply pre-qualification and selection criteria other than price, in other words environmental sustainability criteria as well as the contribution to the EU's resilience. As for the role that these criteria should play in the assessment, the Commission will reportedly propose a trajectory for setting the thresholds to be respected, by means of a legislative proposal.

We already know, however, that the resilience criterion will only apply if the proposed technology is more than 50% dependent on a third country that is not part of the World Trade Organization's Government Procurement Agreement (GPA).

The pre-qualification criterion has disappointed some actors, who claim that it is not feasible in certain sectors. In the case of solar panels, this criterion would exclude around 90% of the solar supply chain, Dries Acke, Director of *Solar Power Europe*, told *EUROPE*.

Public auctions

With regard to public auctions, the negotiators have agreed to set a threshold for applying sustainability and resilience criteria: at least 30% of the projects put up for auction each year will have to be assessed on the basis of these criteria, in addition to the price.

The European Commission may review this threshold on the basis of a practical analysis of how the system works.

EUROPE will come back to other details of the text which have not been communicated at this stage. *(Original version in French by Léa Marchal)*

SECTORAL POLICIES: *Gigabit Infrastructure Act* – EU Council and European Parliament reach provisional political agreement on deployment of high-speed networks

Negotiators from the European Parliament and the Council of the European Union reached a provisional political agreement on the deployment of high-speed networks in the EU ('*Gigabit Infrastructure Act*') *(see EUROPE 13342/3)* shortly after 5 a.m. on Tuesday 6 February, following several hours of negotiations.

"*In Europe, the deployment of fibre optics and 5G could be much easier with less administration. We are tackling this administrative burden through legislation on Gigabit infrastructure*", commented Belgian Deputy Prime Minister and Minister for Telecommunications Petra de Sutter.

"*We now have a common EU approach to providing high-speed Internet access to every EU citizen, bridging the connectivity gap between rural and remote areas and their urban counterparts, and ensuring better coverage of transport corridors. This historic agreement will move us forward in the digital race*", said Parliament's rapporteur on this issue, Alin Mituța (*Renew Europe*, Romanian).

A four-month period for tacit approvals

A number of issues remained unresolved before this final round of inter-institutional negotiations, starting with the question of tacit approval, which deeply divided Europe's co-legislators.

The two parties finally agreed to set a maximum period of 4 months for a government authority to respond to an application for works authorisation, failing which the application will be deemed tacitly validated.

This provision was introduced by the Commission in its legislative proposal. In the Commission's view, this would make it possible to reduce the costs of deploying electronic communications infrastructures, which are partly generated by procedures for granting permits prior to the deployment or upgrading of networks.

Parliament, for its part, wanted Member States to have 2 months in which to accept or reject a request. Conversely, the Council of the EU removed this reference from the text in its position adopted on 5 December *(see EUROPE 13307/1)*.

However, exemptions have been introduced to allow a transition period for small municipalities, as well as specific provisions to promote connectivity in rural and remote areas.

A mandatory conciliation mechanism between public sector bodies and telecoms operators has also been introduced as an intermediate step to facilitate the licensing process.

Abolition of additional charges for intra-EU calls in 2029

Negotiators also had to agree on the other major issue, concerning charges to end-users for calls and text messages within the EU.

While the rules currently in force - capping the price of intra-EU calls at 19 cents per minute - will expire on 14 May, the co-legislators have decided to extend the caps by maintaining prices at 19 cents per minute for calls and six cents per text message.

However, Parliament, which wanted the ceilings to be abolished altogether, prevailed on the substance, since these additional charges should be abolished from 2029, subject to rules to be adopted by the European Commission by means of an implementing act.

"*I am delighted that this regulation will put an end to the compartmentalisation of the telecommunications market within the EU. I fought hard to ensure that calls to and from any European country, from 2029, would be strictly aligned with national tariffs. This is how the EU proves itself useful to its citizens and businesses. Until 2029, the current ceilings will continue to apply*", explained Alin Mituța.

Mandatory fibre optic installation for new and renovated buildings

The text also makes it compulsory to install fibre optics in all new buildings and buildings undergoing renovation. However, several exemptions have been included in the text for critical national infrastructures.

Provisions have also been introduced to enable the various civil engineering trades to better coordinate their work in order to reduce the difficulties caused in public spaces when installing fibre optics, telecommunications equipment, or water or energy supplies.

The provisional political agreement still has to be approved by MEPs in committee and then in plenary session. The text will then be submitted to the Member States. The legislation will apply 18 months after its entry into force, with the exception of certain specific provisions, which will come into force at a later date.

"*The digital single market cannot be built in a day, and businesses need time to adapt*", added Angelika Winzig (EPP, Austrian), who had already negotiated the roaming legislation for Parliament. *(Original version in French by Thomas Mangin)*

EUROPEAN PARLIAMENT PLENARY: MEPs formally approve interinstitutional agreement on 'Interoperable Europe'

On Tuesday 6 February, MEPs approved the provisional political agreement reached between the European Parliament and the Council of the EU on 13 November on 'Interoperable Europe' *(see EUROPE 13292/7)* (524 votes in favour, 18 against, 97 abstentions). The agreement had already been approved on 28 November by the European Parliament Committee on Industry, Research and Energy *(see EUROPE 13302/37)*. "*In the future, EU public sector institutions and businesses will need to promote the ability to 'communicate' electronically across borders. Before adopting major regulations or purchasing an IT system, national and local authorities will have to assess whether and how public services can be delivered digitally*", commented the dossier's rapporteur, Ivars Ijabs (*Renew Europe*, Latvian), after the vote. *(TM)*

NEWS BRIEFS: Agreement on financial guarantees between EU and World Bank to finance reconstruction of Ukraine

On Monday 5 February, the European Commission announced the signing of a financial guarantee agreement of up to €90 million with the *International Finance Corporation* (IFC), a member of the World Bank Group, to support investments that will contribute to the reconstruction of Ukraine. Investment mobilised under this programme is expected to exceed €500 million in sectors such as the production of infrastructure and essential goods. The EU guarantee will come from the 'European Fund for Sustainable Development' (EFSD+), the first pillar of the Fund for external investments. Further information: https://aeur.eu/f/app *(MB)*