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From : General Secretariat of the Council

To : Permanent Representatives Committee

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Subject : **PREPARATION OF THE TTE (ENERGY) COUNCIL ON
22 FEBRUARY 2013**

Proposal for a Directive of the European Parliament and of the Council
amending Directive 98/70/EC relating to the quality of petrol and diesel fuels and
amending Directive 2009/28/EC on the promotion of the use of energy from
renewable sources (**first reading**)

– Orientation debate

I. INTRODUCTION

The Commission submitted the above proposal on 18 October 2012, based on Article 192(1) of the Treaty on the Functioning of the European Union, and Article 114 thereof in relation to a number of proposed provisions. It follows on from the Commission's Communication of 22 December 2010 (Report on indirect land-use change related to biofuels and bioliquids) (5100/11).

The proposal aims at amending the Directives on Fuel Quality (98/70/EC as amended through 2009/30/EC; FQD) and on Renewable Energy Sources (2009/28/EC; RES) on the basis of the requirement included in those two Directives for the Commission to provide a report reviewing the impact of indirect land-use change on greenhouse gas emissions and addressing ways to minimise the impact, if appropriate accompanied by a proposal.¹

In its conclusions of 3 December 2012 on Renewable Energy (16205/12), the Council underlined that further consideration needed to be given to the economic, environmental and social aspects of production and use of renewable energy sources, and in this context stressed that the Commission's proposal on indirect land-use change² related to biofuels and bioliquids should be given early and full attention.

The aim of the Commission proposal is to start the transition to biofuels that deliver substantial greenhouse gas savings, through

- limiting the contribution that conventional biofuels with a risk of ILUC emissions make towards the attainment of the targets in the RES Directive,
- improving the greenhouse gas performance of biofuel production processes,
- encouraging a greater market penetration of advanced (low-ILUC) biofuels, and
- improving the reporting of greenhouse gas emissions through estimated ILUC emissions of biofuels.

II. STATE OF PLAY

Given the cross-cutting policy nature of the proposal, the Permanent Representatives Committee decided on 12 December 2012 to establish an Ad Hoc Working Party on ILUC to examine the proposal, as an effective way of ensuring coherence and consistency between the two Directives. This Working Party met on 8, 15 and 28 January to begin the examination of the impact assessment and the proposed Directive. It carried out a **first complete reading of the proposal**, including its annexes.

¹ Article 7d(6) of Directive 2009/30/EC and Article 19(6) of Directive 2009/28/EC.

² Hereafter referred to as "ILUC".

Comments on the Commission's impact assessment:

While in-depth consideration of the **impact assessment** is ongoing in parallel with the examination of the proposal, at the meeting of the Ad Hoc Working Party on ILUC on 8 January, delegations provided first comments on the impact assessment, following a thorough presentation by the Commission. Whilst thanking the Commission for its presentation, in general terms, a number of delegations raised questions or expressed concerns as to the **basis, assumptions and degree of uncertainty** of the assessment, and **conclusions** drawn by the Commission. Several delegations questioned the expected **prospects for development and uptake of second-generation biofuels** which underpin the Commission's assumptions, as well as the basis for the proposed **5% threshold** for conventional biofuels to count towards the 10% transport biofuels target of the RES Directive. Regarding the **range of options**, some delegations noted that in their view, other options such as the inclusion of ILUC factors not only for reporting, but also for accounting, were not sufficiently explored, while some others supported the Commission's conclusions on this point. It was also questioned why under the option chosen by the Commission, the "bonus" for the conversion of **degraded land** was removed.

As far as the **analysis of impacts** is concerned, some delegations regretted what they see as a lack of analysis of impacts in different Member States or regions and of impacts due to pressure on other uses of material also used for biofuels. Some delegations considered that social and environmental impacts had not been adequately analysed. Concerning the **scientific basis**, a number of delegations enquired about the bases for the estimated indirect land-use change emissions from certain feedstocks groups and for the proposed double or quadruple counting of certain feedstocks towards the 10% renewables target for transport fuels of the RES Directive, as proposed in the annexes of the proposal. Finally, a number of delegations raised questions on the Commission's assessment of the **economic impact** of the proposal and the impact on investments - existing and future - into biofuels.

In its replies, the Commission referred to the various studies which are at the basis of its impact assessment and more specifically noted that the choice of crop groups rather than individual crops for estimating ILUC factors reduces the uncertainty of estimated ILUC impacts. It stated that the 5% limit of the contribution of conventional biofuels to the targets of the RES Directive corresponds to the current EU consumption level, while at present there are production overcapacities.

The Commission considers it to be normal practice that the impact assessment does not look into detailed impacts per Member State. The Commission furthermore explained that the inclusion of ILUC factors in the sustainability criteria for biofuels was discarded because of the expected major industrial adjustment needed. As to the bonus for degraded land, the Commission sees a risk of double counting with a zero ILUC factor that would be attributed under the new proposed provisions.

III. QUESTIONS FOR THE ORIENTATION DEBATE

Bearing in mind first comments provided by delegations in the course of the work of the Ad Hoc Working Party on ILUC and with a view to providing guidance for future work, Ministers will be invited to consider the following questions:

- 1. Does the proposed Directive, amending the Fuel Quality and Renewable Energy Directives, adequately meet the objectives of addressing indirect land-use change emissions and of encouraging the transition to advanced biofuels?*
- 2. Does the proposed Directive support the achievement across the Union of the existing EU energy and climate change objectives?*

In order to streamline the debate, it is proposed that, following Council's Rules of Procedure, delegations submit to the General Secretariat of the Council written answers, in advance of the Council meeting, and preferably before 20 February. Furthermore, delegations which have identical or similar positions are asked to choose one of them to express their shared position.

IV. CONCLUSION

The Permanent Representatives Committee is invited to confirm that the questions under section III can serve as a basis for the orientation debate at the TTE (Energy) Council on 22 February 2013.