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STATEMENT OF THE COUNCIL'S REASONS

Subject: Position of the Council at first reading with a view to the adoption of 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

- Statement of the Council's reasons
- Adopted by the Council on 9 December 2014

I. INTRODUCTION

1. 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.

The proposal¹ is intended to amend the Directives on Fuel Quality (98/70/EC as amended in 2009/30/EC, hereinafter "Fuel Quality Directive") and on Renewable Energy Sources (2009/28/EC, hereinafter "Renewables Directive") 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 change² on greenhouse gas emissions and addressing ways to minimise the impact, if appropriate accompanied by a proposal.³

The European Parliament's Committee on Environment, Public Health and Food Safety voted its report on 11 July 2013, followed by the adoption by the European Parliament of its first-reading position on 11 September 2013.⁴

On 13 June 2014, the Council reached political agreement on the draft proposal. Following legal/linguistic revision, the Council adopted its Position on 9 December 2014 in accordance with the ordinary legislative procedure laid down in Article 294 of the Treaty on the Functioning of the European Union.

In carrying out its work, the Council took account of the opinion of the European Economic and Social Committee. The Committee of the Regions decided not to issue an opinion.

¹ 15189/12 ENV 789 ENER 417 ENT 257 TRANS 346 AGRI 686 POLGEN 170 CODEC 2432

² "ILUC"

³ Article 7d(6) of Directive 2009/30/EC and Article 19(6) of Directive 2009/28/EC.

⁴ A7-0279/2013

II. OBJECTIVE

The aim of the Commission's proposal is to start the transition to biofuels that deliver substantial greenhouse gas savings when also estimated indirect land-use change emissions are reported. While the Commission emphasises that existing investments should be protected, the aims of the Commission's proposal and its main elements are to:

- limit the contribution that conventional biofuels (with a risk of ILUC emissions) make towards attainment of the targets in the Renewable Energy Directive;
- improve the greenhouse gas performance of biofuel production processes (reducing associated emissions) by raising the greenhouse gas saving threshold for new installations, subject to protecting installations already in operation;
- encourage a greater market penetration of advanced (low-ILUC) biofuels by allowing such fuels to contribute more to the targets in the Renewable Energy Directive than conventional biofuels;
- improve the reporting of greenhouse gas emissions by obliging Member States and fuel suppliers to report the estimated indirect land-use change emissions of biofuels.

III. ANALYSIS OF THE COUNCIL'S POSITION

1. General

Although the Council concurs with the Commission and the Parliament as regards the main objectives of the proposal, the Council's approach involved modifications to the original proposal. The Council aims at a balanced approach that takes into account the need to address

- the global ILUC phenomenon,
- the objective of providing incentives for more advanced biofuels,
- a clearer investment perspective and protection of investments made on the grounds of existing EU legislation.

As a result of this approach, the Council's position modifies, to a certain extent, the original Commission proposal, in order to reflect in particular the current situation and uncertainties surrounding ILUC estimates and circumstances and perspectives for the production and consumption of biofuels, by redrafting it and deleting some provisions of the text. This implies that all amendments introduced in the European Parliament's first-reading opinion and related to these deleted provisions were not accepted by the Council. In addition, a number of the proposed amendments were not accepted because they were considered not to contribute appropriately to the objectives of the Directive, and other provisions were redrafted with a view to clarifying and strengthening the Directive.

The following sections describe the changes of substance.

2. **Key policy issues**

i) Threshold for conventional biofuels and new installations

The Commission proposed to limit to 5 % the contribution of biofuels and bioliquids produced from cereals and other starch-rich crops, sugars and oil crops towards attainment of the targets of the Renewables Directive, without laying down any limits on their overall consumption.

While the Council considers that a threshold can constitute a policy instrument to mitigate ILUC, it is of the view that the Commission proposal needs to be modified with a view to the objectives mentioned above. The Council's position sets the threshold at 7%. It is noted that the Parliament also raised the threshold proposed by the Commission by its amendment 181 (to 6%, including energy crops). Council does not support Parliament's amendment 184/REV that applies the threshold also to the reduction target for greenhouse gas intensity of the Fuel Quality Directive, and notes that the Commission has not included the threshold's application in its proposal. Council considers that its application is not appropriate given that the target of the Fuel Quality Directive is a reduction target for the greenhouse gas intensity of the EU fuel mix.

Furthermore, while the Council accepts a limit for the contribution towards the targets of the Renewables Directive, it also considers that a threshold should not limit Member States' flexibility by establishing that amounts of biofuels which exceed the threshold should be found to be non-sustainable and thus not have access to support in Member States. The Council thus cannot accept the European Parliament's amendment 89.

On new installations, the Council can in principle agree to the Commission's approach, also supported by Parliament, to bring forward the 60% minimum greenhouse gas saving threshold for biofuels/bioliquids produced in new installations (to the date of entry into force of the Directive, instead of the proposed fixed date of 1 July 2014).

ii) ILUC estimates, reporting and review

In its original text, the Commission includes an obligation for Member States/fuel suppliers to add estimated ILUC emissions in their reporting, for the purposes of the calculation of the lifecycle greenhouse gas emission savings from the use of biofuels/bioliquids. Respective new Annexes (V for the Fuel Quality Directive and VIII for the Renewables Directive) with estimated indirect land-use change emissions from certain feedstock groups⁵ are proposed.

The Council considers that these provisions should better reflect the degree of uncertainty surrounding modelling, assumptions and resulting ILUC estimates, while aiming to apprehend the ILUC phenomenon and supporting the further development of best scientific evidence. The Council's text therefore includes ranges illustrating such uncertainty around provisional estimated ILUC emissions in the above-mentioned new Annexes. Member States/fuel suppliers would report amounts of biofuels/bioliquids for each category of feedstocks listed in those annexes, on the basis of which the Commission would carry out its reporting including the ranges of values, with the objective of narrowing the range of uncertainty and thus creating a more robust scientific basis. Furthermore, on reporting and review, the Commission would also look into possible impacts of EU policies such as environment, climate and agricultural policies, and whether these could be factored in.

⁵ Cereals and other starch rich crops, sugars, and oil crops.

Strengthened review elements, combined with a new definition of low-ILUC risk biofuels/bioliquids, including setting out criteria for the identification and certification of low-ILUC risk biofuels such as those obtained through yield increases, as well as the consideration of certification schemes for low ILUC-risk biofuel and bioliquid production by way of project-level mitigation measures, were also included. The review clause maintains the possibility of introducing adjusted estimated ILUC factors into the sustainability criteria. Furthermore, in the review article, the Council's position calls on the Commission, as found in the Parliament's amendments 189, 107 and 190, to include in its review the latest available information with regard to key assumptions for ILUC estimates such as trends in agricultural yields and productivity, co-product allocation and observed global land use change and deforestation rates.

The Council cannot accept the Parliament's amendment 60, which aims at including ILUC factors into the calculation of the lifecycle greenhouse gas emissions from biofuels from 2020 onwards in the Fuel Quality Directive, due to the considerations on the nature of ILUC estimates as outlined above. Furthermore, as a general approach, the Council's position aims at the greatest possible coherence of amendments to the Fuel Quality and Renewables Directives.

The Council is of the view that, for reasons of coherence between the two amended Directives, new Annex VIII of the Renewables Directive, as amended by the Council's position, should be maintained together with new Annex V of the Fuel Quality Directive, and should not be deleted as in the Parliament's amendment 164.

iii) Incentives for advanced biofuels

To enhance incentives for advanced biofuels, apart from the threshold on conventional biofuels, the Commission proposed a scheme to further promote such biofuels from feedstocks that would not create additional demand for land by suggesting that their energy content should count four times towards achievement of the 10% transport target of the Renewables Directive. A new Annex IX to that Directive including such feedstocks, such as wastes and residues, is proposed.

In its position, the Parliament has included mandatory targets for Member States to gradually achieve at least 0.5 % of energy consumption to be met with advanced biofuels in 2016 and at least 2.5% in 2020. Annex IX is classified into three different categories in Parts A, B, and C, whereby some feedstocks would count once, some twice, and some others four times towards the achievement of the 10 % transport target, and only those from Parts A and C towards the advanced biofuels targets.

The Council shares the objective of promoting the consumption of advanced biofuels with low risks of causing ILUC. However, in the Council, strong doubts about the benefits of quadruple counting of certain feedstocks as proposed by the Commission have prevailed, on the basis of concerns about possible market distortions and fraud, and such a scheme was not considered the most effective tool to incentivise advanced biofuels. The Council's position therefore contains a number of elements to promote advanced biofuels, while leaving flexibility for Member States according to their potentials and national circumstances: Member States are required to set national targets for advanced biofuels based on a reference value of 0.5 percentage points of the 10% target for renewable energy in transport of the Renewables Directive. They can set a lower target, based on three categories of reasons. However, they would have to justify any setting of a lower target than 0.5 percentage points and to report any reasons for a shortfall in achieving their national advanced biofuels target. The Commission is to publish a synthesis report on Member States' achievements towards their national advanced biofuels targets.

While therefore viewing non-legally binding sub-targets at national level for advanced biofuels as an effective incentive and a clear investment signal, the Council cannot support both nature and trajectory for an advanced biofuels target contained in Parliament's position, because of concerns regarding both the availability and the costs of such biofuels. The Council and the Parliament, in its amendment 111, seem to concur on the need for the review to include an assessment of the availability of such biofuels, for taking into account environmental, economic and social considerations in that context, as well as the possibility of establishing additional criteria to ensure their sustainability.

As additional incentives for advanced biofuels, the Council's position extends the tool of statistical transfers of the Renewables Directive to cover such advanced biofuels, and the double counting of the contribution of these biofuels is extended to the overall targets of that Directive.

The Council's position contains an amended new Annex IX, which has been expanded to include, in its Part A, more items such as wastes and residues from forestry and bio-waste from private households, which would all count twice their energy contents towards the targets. Part B would only contain used cooking oils and animal fats, whose contribution would not count towards the dedicated national advanced biofuels target.

As a "grandfathering" provision, feedstocks for biofuels not listed in Annex IX and that were determined to be wastes, residues, non-food cellulosic material or ligno-cellulosic material, and used in existing installations prior to the adoption of the Directive, can be counted towards the national advanced biofuels target. The streamlined and clear categorisation in Annex IX is, in the Council's view, to be preferred over the complex structure of Annex IX as included in the Parliament's position.

The Council broadly shares the Parliament's wish to strengthen the provisions in order to minimise possible risks of fraud, such as of single consignments being claimed more than once in the EU, or of material being intentionally modified in order to fall under Annex IX, and has taken on board respective elements found in amendments 101 and 185 so that Member States encourage the development and use of systems which track and trace feedstocks, and the resulting biofuels, over the whole value chain and ensure that action is taken when fraud is detected. In addition, the Council's position includes a reporting obligation for Member States which will allow the Commission to assess the effectiveness of the measures taken to prevent and fight fraud, and whether additional measures, including at Union level, are considered necessary.

Concerning Member States' and Commission reporting on availability and sustainability of biofuels made from feedstocks listed in Annex IX, the Council's position furthermore includes an obligation for Member States and the Commission to take due account of the principles of the waste hierarchy established in the Waste Framework Directive, the biomass cascading principle, the maintenance of the necessary carbon stock in the soil and the quality of the soil and the ecosystem, but does not consider amendment 59 of the Parliament, empowering the Commission to adopt delegated acts for verification of compliance with the waste hierarchy, suitable and implementable. The Council notes that the Parliament's amendments 12 and 109 similarly call on the Commission to submit a report including on availability of advanced biofuels and on environmental and economic impacts of biofuels produced from waste, residues, co-products or non-land using feedstocks.

iv) Incentives for renewable electricity and energy efficiency measures

The Commission's proposal addressed ways of mitigating ILUC risks in direct relation with the production and consumption of biofuels. However, it is the Council's view that decarbonisation of transport as the overarching objective can also be promoted through greater use of electricity from renewable sources. The Council's text therefore raises the multiplication factors for the calculation of the contribution from electricity from renewable sources consumed by electrified rail transport and electric road vehicles so as to enhance their deployment and market penetration.

Comparable provisions are not found in the Parliament's position. The Parliament does however call on the Commission to make recommendations for additional measures to encourage energy efficiency and energy savings in transport, which could be counted for the calculation of the amount of energy from renewable sources consumed in transport with regard to the 10 % transport target of the Renewables Directive (amendments 153 and 154). While the Council views greater energy efficiency in general as an important contribution to the decarbonisation of transport, it does not consider that measures and their effect in that respect should be part of a Directive amending the Renewables Directive.

v) Compliance with sustainability criteria: Voluntary schemes and mutual recognition

On reporting on and review of the functioning of voluntary schemes established pursuant to the Fuel Quality and Renewables Directives, the Council and the Parliament have both included detailed and very similar reporting provisions to allow the Commission to assess e.g. independence, transparency, stakeholder involvement, and overall robustness of the schemes (amendments 54, 58 and 103), and the Council's text invites the Commission to submit a proposal for amending the provisions of the Fuel Quality and Renewables Directives relating to voluntary schemes if appropriate, with a view to promoting best practice.

With regard to mutual recognition of voluntary schemes and national schemes for compliance with the sustainability criteria for biofuels/bioliquids, the Council finds that the conditions under which the mutual recognition principle applies as between all schemes should be clarified in order to facilitate the smooth functioning of the internal market. To that end, the Council's position contains provisions for the Fuel Quality and Renewables Directives by which a Member State may notify its national scheme to the Commission, which would assess it with priority. A decision on a thus submitted national scheme's compliance would be adopted through examination procedure, and mutual recognition of a positively assessed scheme by other schemes, including voluntary schemes, established in accordance with the relevant Articles, cannot be refused. The Parliament's position includes automatic mutual recognition of verification schemes (amendment 102), which Council does not consider appropriate.

vi) Delegated acts

The Commission proposed a large number of adaptations to both the Fuel Quality and Renewables Directives, notably on conferral of powers on the Commission to adopt acts based on Articles 290 and 291 TFEU.

The Council reviewed these provisions taking due account of the changes introduced by the TFEU since adoption of the two Directives, and in particular Article 290 on the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act. The Council therefore decided to limit the delegation of powers to the Commission, for a period of five years, to the addition of estimated typical and default values for biofuel pathways and the permitted analytical methods related to the fuel specifications and the vapour pressure waiver permitted for petrol containing bioethanol, in amendments to the Fuel Quality Directive, and in respect of possible additions to the list of feedstocks and fuels in Annex IX and of estimated typical and default values for biofuel and bioliquid pathways in the Renewables Directive. The Council therefore cannot accept amendments in the Parliament's position which review or add to provisions on delegation of powers to the Commission which are not retained by Council.

Regarding other provisions on delegation of powers proposed by the Commission, the Council has concluded, after a thorough case-by-case analysis, that either implementing acts or the ordinary legislative procedure are more judicious.

vii) Recitals

The recitals have been amended by the Council to correlate with the modified operational parts of the Directive, and the Council's view of the Parliament's amended recitals therefore corresponds to the Council's view of the Parliament's amendments to the operational provisions. In addition, see under point 4, recitals, below.

3. Other policy issues

In the context of ILUC emissions and advanced biofuels, the Council considered it necessary for greater clarity and coherence to add a number of new definitions to the Fuel Quality and Renewables Directives. While the Parliament's position contains a larger number of new definitions (amendments 34 to 37, and 69 to 76) which are not needed in the Council's view, it can be noted that some of the proposed new definitions coincide, at least in part, with some of the definitions introduced by the Council (notably on "non-food cellulosic material" and "ligno-cellulosic material").

As to the calculation of greenhouse gas impacts from biofuels/bioliquids, the Council decided that, contrary to the Commission's proposal, the bonus for biofuel/bioliquid biomass obtained from restored degraded land should be maintained.

4. Other amendments adopted by the European Parliament

Further amendments not considered necessary or appropriate to fulfil the objectives of the Directive, and therefore not included in the Council's position, concern:

- an obligation for fuel suppliers to ensure the placing on the market of petrol with a specific maximum oxygen and ethanol content (amendment 38), an obligation on Member States to ensure a specific share of energy from renewable sources in petrol (part of amendment 152/rev), and concerning the percentage of FAME blended in diesel (amendment 39);
- suppliers of biofuels for use in aviation (amendment 40);
- third parties' legal rights and free prior and informed consent regarding use and tenure of land used for the production of biofuels (amendments 49 and 96);
- a Commission report on the impact on social sustainability of increased demand for biofuel, the impact of biofuel production on availability of vegetable protein, and foodstuffs at affordable prices (amendment 50);
- the conclusion and content of bilateral or multilateral agreements with third countries on biofuels sustainability (amendments 55 and 100);
- guarantees of origin in relation to target compliance, and the use of statistical transfers, joint projects or joint support schemes (amendment 88);
- sustainable land management practices (amendment 97);
- the Eurostat publication on trade-related information on biofuels, import and export data, and employment information related to the biofuel industry (amendments 98 and 99);
- other recitals (amendments 4, 8, 13, 129, 16, 17, 22, 24, 25, 27, 30).

III. CONCLUSION

In establishing its Position, the Council has taken full account of the proposal of the Commission and the European Parliament's position at first reading. With respect to the amendments proposed by the European Parliament, the Council observes that a certain number of amendments have – in spirit, partially or fully – already been included in its Position.