



Brussels, 4 June 2018
(OR. en)

9287/18

Interinstitutional Files:

2016/0375 (COD)
2016/0382 (COD)
2016/0376 (COD)

ENER 180
CLIMA 88
ENV 349
TRANS 221
ECOFIN 483
RECH 223
CONSOM 154
AGRI 243
IND 141
CODEC 840

NOTE

From: General Secretariat of the Council

To: Council

No. Cion doc.: 15090/1/16 ENER 412 CLIMA 167 IA 123 CODEC 1788 REV 1
+ ADD 1 REV 1
15120/1/16 REV 1
15091/16

Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the Governance of the Energy Union, amending Directive 94/22/EC, Directive 98/70/EC, Directive 2009/31/EC, Regulation (EC) No 663/2009, Regulation (EC) No 715/2009, Directive 2009/73/EC, Council Directive 2009/119/EC, Directive 2010/31/EU, Directive 2012/27/EU, Directive 2013/30/EU and Council Directive (EU) 2015/652 and repealing Regulation (EU) No 525/2013

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the promotion of the use of energy from renewable sources (recast)

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2012/27/EU on energy efficiency

- *Information from the Presidency on the state of play*

1. At the TTE (Energy) Council meeting on 11 June, the Presidency will inform Ministers about the latest state of play of the trilogue negotiations on the three above-mentioned legislative proposals of the Clean Energy Package. On these files, informal trilogue meetings have been held since February 2018, with many Technical Meetings. The fourth trilogues on the Energy Efficiency and Renewables files were held on 30 and 31 May, respectively. The fifth (*i.e.* final) trilogues for these two files will be held in mid-June (probably on the 13th), followed by the fourth (*i.e.* final) trilogue on the Governance file, scheduled for 19 June.

Although great progress was made and many compromise texts were provisionally agreed between the co-legislators, a few key outstanding issues remain to be agreed in each of the files.

The aim of the Bulgarian Presidency remains to reach a political agreement with the EP on these files during its Presidency.

The key outstanding issues relating to the three files¹ are set out below.

2. **Energy Efficiency**

- (a) ***2030 EU target for energy efficiency: level and nature***

The issue of the level and nature of the 2030 EU' target for energy efficiency is an extremely contentious point for both co-legislators and will likely make or break the deal.

At the last informal trilogue held on 30 May, the EP deviated from its initial position (*i.e.* a 35% EU binding target) and proposed either a 34% EU non-binding target or a 32% EU binding target.

Having regard to the concern of the delegations that have different positions and approaches to the EU target, none of these two proposals was accepted by the Presidency.

¹ Note: the most recent texts available on these three proposals are: Governance doc. 9103/18; Renewable Energy doc. 8392/18; Energy Efficiency doc. 8329/18.

Taking into account that:

- the final stage of the negotiations is approaching;
- the EP might aim at the same level of the EU target for energy efficiency and renewable energy; and
- slightly increasing the level of the EU target might convince the EP to accept a more flexible Article 7 (together with Annex V) which would result in a more balanced compromise package solution;

a final Council compromise proposal could be an EU headline target higher than 30%.

(b) *Energy savings obligations - Article 7*

Contrary to its initial position, the EP is now flexible on the structure of Article 7, provided that the level of ambition of this provision increases compared to the Council General approach that would allow about a 0,4% real annual savings rate.

In view of the last informal trilogue held on 30 May, while confirming its openness on the structure of Article 7 as regards any aspect (i.e. annual savings rate, inclusion or not of transport in the baseline, exemptions and their cap), the EP proposed a 1% real annual savings rate. This percentage was further reduced to 0,9% during the trilogue (eventually combined with a 34% EU non-binding target).

Having regard to the Council mandate, this last offer was refused by the Presidency. The Presidency tried to explore a compromise solution with a 30-31% EU headline target and a real annual savings rate of about 0,75% but the EP did not accept this.

In view of a political agreement, a final Council compromise proposal could offer to increase the real annual savings rate to around 0,80%. This would mean, nonetheless, that the delegations should possibly consider an alternative structure of Article 7 (e.g. with no exemptions at all or with the inclusion of a quite high percentage of transport in the baseline).

3. **Renewables**

(a) ***Level of the binding EU renewable energy target (Art. 3)***

At the fourth informal trilogue meeting, the Parliament indicated for the first time its flexibility on key political issues. On the question of the EU-wide renewable energy (RES) target, the initial positions of Council and Parliament are 27% and 35% respectively.

Depending on the flexibilities that Parliament can offer on other remaining key issues (see below), the Presidency put forward two package proposals based on target ranges.

(b) ***Formula on contributions by Member States (AM 111 and Annex I)***

The Presidency agreed to discuss the formula proposed by the Parliament, while insisting that the formula would be applied 'indicatively', by the Commission, and in case of gap-filling as part of the Governance process (no automatic application for national 'targets' as proposed by the EP).

(c) ***RES in heating and cooling (Art. 23-24)***

The Presidency is of the view that the level of the RES increase in heating and cooling (H&C) needs to be conditional on the overall EU-wide RES target. Parliament expressed flexibility here and proposed an annual increase of 1.5% (departing from its demand for a mandatory 2% increase), whereas the Presidency proposed that the level should be flexible with regard to a potential inclusion of waste heat/cold. The Presidency insists that the 'sub-targets' for RES in H&C and district H&C must be indicative, emphasising that the EP's demand concerning third party access for district H&C systems is not acceptable.

(d) ***RES increase in transport (Art. 25)***

For the level of the transport sub-target, and respective multipliers, the Presidency makes also this issue conditional on the EU-wide RES target. In the most recent trilogue meeting Parliament showed flexibility, expressing support for multipliers on road, aviation and maritime transport, while speaking out strongly against double counting of conventional biofuels (especially concerning part B of Annex IX).

The EP also suggested a compromise on its proposal for an obligation for fuel suppliers to include minimum shares of biofuels (AM 217), to a varying degree depending on whether Member States opt to include conventional biofuels (to increase by 2030 to 12% if Member State take conventional biofuels into account, and to 10% if not).

(e) ***Capping conventional and palm oil based biofuels (Art. 26)***

Council and Parliament both want to cap conventional biofuels at a level of 7%. The EP would like to introduce additional caps per Member State levels (if below 7%), while it expressed flexibility at which date to set these levels per Member State. Concerning palm oil based biofuels, Parliament insists on an EU-wide approach (besides enforced options Member State as proposed by the Presidency), while Council wants to ensure WTO-compatibility.

(f) ***Biomass***

Regarding biomass use for electricity production (Art. 26(8)), the Presidency and the Parliament agreed on a way forward, by distinguishing between medium sized and large installations (based on thresholds of 50 and 100 MW) and by applying best available technology (BAT) and net-electrical efficiency criteria respectively.

On the question of whether Member States should be able to place additional sustainability requirements for biomass fuels (Art. 26(10)), the EP proposed to introduce a review clause on this provision.

(g) ***Renewable energy support schemes and guarantees of origin (GO)***

Council and Parliament found provisional agreement on the stability of support (Art. 6) and are very close on the question of technology-specific support. However, the EP insists on explicit thresholds for small-scale RES installations, especially for wind powered installations (Art. 4), while the Presidency keeps emphasising that support schemes must be in line with state aid competences. Also, the Presidency insists on a voluntary approach to the question of opening support schemes to other Member States (Art. 5).

Regarding the disclosure of guarantees of origin (Art. 19), the Presidency insists that a fully mandatory approach is a red line for the Council, based on its compromise proposal for exemptions, by applying the residual electricity mix or by means of the Labelling Directive.

(h) ***Self-consumption (Art. 21)***

Despite continued compromise attempts by the Presidency, the EP insists on a general exemption from any charges or fees when consuming self-generated renewable electricity ('behind the meter') and recently proposed not to consider self-consumers as electricity suppliers according to Union or national legislation for RES electricity they feed into the grid, below 10 MWh for households and 500 MWh for legal persons annually. On the other hand, Parliament agreed to treat individual and collective self-consumption differently.

4. Governance

(a) *Level of the three reference points in 2022, 2025 and 2027*

In the context of the renewables trajectories, the level of the three reference points in Art. 4(a)(2)) has so far not been subject to negotiations with the EP. National contributions start from '0%' on 1 January 2021 and must reach at least 100% by 31 December 2030. A linear trajectory as requested by the EP, would mean **20%** by (31 December) 2022, **50%** by 2025 and **70%** by 2027.

The Council GA and the current Presidency compromise contain percentages corresponding to 80% of linearity in 2022 (**16%**) and 2025 (**40%**), and to 86% linearity in 2027 (**60%**).

Both institutions agree that the levels apply to both the Union trajectory and to the trajectories of individual Member States.

	2022	2025	2027
EP	20%	50%	70%
Council	16%	40%	60%

Having regard to the opposition of most delegations to a linear trajectory, and to the concern shared by all institutions to guarantee the collective achievement of the binding EU target by 2030, a final Council compromise offer could for example correspond to 80%, 85% and 90% of linearity, *i.e.* **16%** in 2022, **43%** in 2025 (rounded up from 42.5), and **63%** in 2027. In short, flexibility could be offered to the EP either in general - by raising a bit the levels of all three reference points - or by raising the level of the first reference point (2022) or of the last reference point (2027).

(b) *Committees*

On the **Committees in Article 37**, an agreement in principle could be reached in the third trilogue meeting. However, further work at technical level is still ongoing in order to determine the exact division of competences between the two Committees and the need to avoid overlaps. Furthermore, the EP maintains its request for using **delegated acts** instead of implementing acts in Articles 23(6), 27(4ter) and 30(6).

(c) ***Early efforts: as from 2005 or 2021 ?***

In the context of Member States' contributions in the area of renewable energy, the only outstanding issue is the 'early efforts' that may be taken into account as a 'relevant circumstance' by a Member State when it establishes its national contribution (Art. 5, para. 1 (d)(v)). Council insists that 'early efforts' be counted as from 2005, whereas the EP proposes to count them from 2021 onwards.

The corresponding definition of 'early efforts' is set out in AM 53 (new Art. 2(2)(11a)), and the obligation for the Commission to have due regard for these relevant circumstances when assessing the contributions of Member States ambition/progress gap-filling mechanism is established in Art. 27(1).

(d) ***Dates of submission of draft national plans and Commission recommendations thereon***

In Article 9 on the *draft* national plans, in the first paragraph, the EP has indicated that it will insist on negotiating the date on which Member States have to submit their first draft national plans. The Council's General Approach sets that date at 31 December 2018, but the EP, supported by the Commission, strongly insists on negotiating an earlier date that would lie between 1 September and 31 December 2018.

Furthermore, in the second paragraph, the EP, supported by the Commission, wants to delay the issuing of Commission recommendations to Member States. The Council proposes that the Commission should send its recommendation six months before the Member States' final plans are due, but the EP wants to reduce this period in the final trilogue to between 3 to 6 months.

(e) ***Multilevel Climate and Energy Dialogue Platforms***

The EP has proposed to add a new Article 10a establishing in each Member State a permanent Multilevel Climate and Energy Dialogue Platform. As a compromise, Council accepted the addition of an Article along these lines (including a compromise recital 20ter): this text obliges all Member States, in particular those that have no such structure in place yet, to consider establishing such a permanent Dialogue Platform. The EP, however, maintains its request to make it obligatory for any Member State *that does not have such a structure in place* to establish such a platform.

(f) **Gap filler mechanism for renewable energy and energy efficiency**

On Article 27 and the issue of what will happen if the Member States planned contributions for renewable energy do not add up to the 2030 Union target, good progress was made in the Energy Working Party in preparing a text that is much closer to the EP's position². However, on 31 May the EP presented a new compromise text proposal for Article 27³. This text most importantly proposes a gap filling mechanism for energy efficiency, as well as a number of other changes. The text *inter alia*:

- (for energy efficiency:) adds to paragraph 1 the elements for a Commission assessment in case of a gap in the area of energy efficiency; adds in paragraph 3 a provision on 'early efforts' (for both energy efficiency and renewable energy), and in paragraph 5 introduces a provision that Member States that have fallen below their 'national trajectory'⁴ for energy efficiency must close the gap within one year.
- in paragraph 3 deletes the provision that EU measures will only be taken if national measures are not sufficient to reach the Union's renewable energy targets, and in paragraph 4 obliges the Commission to take EU measures as appropriate to achieve the renewables trajectory and 2030 goal;
- in paragraph 3a gives the right to the Commission to assess any infrastructure project involving third countries, and to issue a recommendation thereon;
- in paragraph 4 reduces the time for Member States that have fallen below their indicative renewable energy trajectory to close the gap, from two years to one year.
- in paragraph 4bis insists on the provision of the Commission proposal that any gap to the baseline share must be covered by the Member State by means of a financial contribution to the financing platform;
- replaces paragraph 4ter on the financing mechanism with a separate Article 27bis on a Financing Platform, adds additional sources of financing and a deadline for its establishment, and specifies that this Platform should be established by means of a delegated act instead of an implementing act as proposed by the Council.

² cf. Note to Coreper 8536/18 p. 5

³ cf. WK 6381/2018

⁴ Note: the EP requests a linear energy efficiency trajectory for Member States in its amendment 73 (Art. 4(b)(1))

(g) *Political monitoring of the governance*

In response to the Article 29bis inserted by Council which establishes an annual review by the Council of progress, the EP has indicated that it refuses to accept this provision, and has presented instead a compromise text for a Joint Declaration ⁵.

(h) *Long-term low emission strategies*

As a key climate element, Article 14 related to the long-term strategies is expected to evoke extensive discussions at the final trilogue. Although the Council revised the general approach and made a step toward the EP with new mandate on the newly introduced aspects by the EP (introducing obligations for the Commission to assess various scenarios for the EU contribution to the targets in the Paris agreement, including net-zero GHG by 2050, negative emissions and the implication on the global and EU carbon budget) there is still a gap between the positions related to these elements. In addition the EP introduced an obligatory Annex IIa containing a detailed set of elements to be included in the long-term strategies of the Member States. The Council made it lighter in substance and non-binding.

5. At the TTE (Energy) Council meeting on 11 June, time permitting, Ministers that wish to do so may intervene to highlight their particular concerns or positions regarding any of the outstanding issues.

⁵ *cf.* WK 6381/2018