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From:	General Secretariat of the Council
To:	Working Party on Energy
Subject:	Directive on renewable energy - EWP 16/4

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Delegations will find in the annex a document on Renewables Directive, for the EWP on 16 April.

With a view to make swift progress in the negotiations and in order to facilitate preparations of the next technical meeting with the EP, the Presidency would like to put forward for discussions the following items in the area of transport (Article 25), sustainability criteria (Articles 26-28) and waste hierarchy issues. Amendments not mentioned would remain unchanged.

**ENERGY WORKING PARTY 16/4**  
(WK 4045/18 18)

**Art. 25 – Transport**

Amendments /Articles	Questions to MS/Explanations	New proposal for discussion
Definition, Art 2(2) point (ff)		
AM 104 & 229	<p>Could Member States agree to clarify that only waste processing gases and exhaust gases of non-renewable origin which are produced as an <u>unavoidable and not intentional</u> consequence of the production process qualify as feedstock for recycled carbon fuels? (to address also AM 229)</p>	<p>ff) 'recycled carbon fuels'<sup>1</sup> means liquid and gaseous fuels that are produced from waste processing gases and exhaust gases of non-renewable origin <b><u>which are produced as an unavoidable and not intentional consequence of the production process in industrial installations.</u></b></p>
Obligation on fuel suppliers, Art 25(1)		
	<p>In view of the presentation of the Commission on comparison of the position of the EP, COM and Council regarding transport provisions, MS are requested to reflect on the question whether the priority in the negotiations with EP should be to maintain the overall level of ambition the share of renewables supplied for final consumption in the transport sector (GA: 14%) or the overall structure of Article 25 as agreed in GA subject to the below changes.</p>	
AM 217	<p>Could MS agree to include an additional milestone for the share of advanced biofuels and to accept the exemption of EP proposed in AM 217 in Article 25(1)?</p> <p>Would the MSs agree to target this exemption towards certain fuels and not suppliers supplying only such fuels?</p>	<p>[ ] Within this total share, [ ] the contribution of [ ] biofuels and biogas produced from feedstock listed in part A of Annex IX shall be <b><u>at least equal to [0,2]% in 2022, 1% in 2025 and [ ]</u></b>, increasing up to at least [ ] 3% by 2030 [ ].</p> <p>Within this total share, the contribution of renewable electricity shall be considered to be [5] times its energy content when supplied to road vehicles [and 2 times the energy content when supplied to rail transport].</p> <p><i>Fuel suppliers supplying <del>only</del> fuels in the form of electricity and renewable liquid and gaseous transport fuels of non-biological origin <b><u>in respect to these fuels do not need</u></b></i></p>

<sup>1</sup> Note: for these 'recycled carbon fuels', the methodology for the calculation of their greenhouse gas savings is to be determined via a delegated act under Article 25(6) and the GHG emissions savings level is set at 70% in Article 25.

		<i>to comply with the minimum share of advanced biofuels, other biofuels and biogas produced from feedstock listed in Annex IX.</i>
AM 221	Could the MSs agree to add in third subparagraph of Article 25(1) the reference to the waste Directive to take account of AM 221 of the EP?	<b>When setting the obligation under the first and second sub-paragraphs to ensure the achievement of the share set out therein, Member States may do so, inter alia, by renewable energy obligations or other measures targeting volumes, energy content or greenhouse gas emission savings provided that it is demonstrated that the shares set out in the first and second sub-paragraph are achieved. <u>Member States shall ensure that the waste hierarchy established in Directive 2008/98/EC is complied with, including its provisions regarding life cycle thinking on the overall impacts of the generation and management of different waste streams.</u></b>
<b>Multipliers, Art 25(1b)</b>		
AMs 139 and 220	Could the MSs agree to show some flexibility in comparison to the GA regarding the multipliers for different types of fuels and give a direction where PCY could show some flexibility?  Could MS agree to distinguish between Annex IX part A and B types of advanced biofuels in terms of multipliers?	Lowering multipliers for renewables in rail and road transport.  Maintaining multipliers for biofuels (produced from feedstock listed in Annex IX) and maritime.  Increasing the multiplier for RES in aviation.
<b>Other elements in Art 25</b>		
AM 228	Could MS agree that the Commission publishes aggregated information from the database? The usual rules applicable to the Commission in handling confidential information would apply.	<b>5. Member States shall have access to the database and take measures to ensure that within each Member States economic operators enter the correct information. The Commission shall require the schemes that are the subject of a decision pursuant to paragraph 4 of Article 27 to verify compliance with this requirement when checking compliance with the sustainability criteria for biofuels, bioliquids and biomass fuels <u>and shall publish, on an annual basis, aggregated information from the database.</u></b>

AM 230	<p>Could MS agree to ask the Commission to assess in 2025 whether the ambition level of the targets and in particular the sub-target for advanced biofuels can be increased and that double accounting is effectively excluded?</p>	<p>7. By 31 December 2025, in the context of the biennial assessment of progress made pursuant to Regulation <u>... of the European Parliament and of the Council [on the Governance of the Energy Union, 2016/0375(COD)]</u>, the Commission shall assess whether the obligation laid down in paragraph 1 effectively stimulates innovation and <u>ensures</u> greenhouse gas savings in the transport sector, and whether <input type="checkbox"/> <b><u>the level of ambition of the targets and in particular the sub-target for advanced biofuels can be increased.</u></b> The <u>assessment shall also analyse if the provisions in this article effectively avoid</u><input type="checkbox"/> <u>double accounting of renewable energy.</u> The Commission shall, if appropriate, present a proposal to modify the obligation laid down in paragraph 1.</p>
Palm oil issue: relevant provisions in Art. 25, Art. 2 and Recitals		
AM 59 and 307	<p>Which approach do MS suggest to address the EP demand on palm oil?</p> <p>Could MS agree to refine the criteria for distinguishing between different types of food and feed crop based biofuels? (See proposed wordings, as to allow measures by Member States as already established in GA while better addressing international legal concerns)</p>	<p><u>Definition, Art 2(2) point (u)</u></p> <p>‘low indirect land-use change-risk biofuels and bioliquids’ means biofuels and bioliquids, the feedstocks of which were produced within schemes which <b><u>avoid displacement effects of food and feed crop based biofuels, bioliquids and biomass fuels through improved agricultural practises, as well as the cultivation of crops on areas which were previously not used for cultivation of crops</u></b> and which were produced in accordance with the sustainability criteria for biofuels and bioliquids set out in Article 26.</p> <p><u>Art 25(1) subparagraph 6</u></p> <p><input type="checkbox"/> Member States may set a lower limit and may distinguish for the purposes of Article 26(1) between types of biofuels, bioliquids and biomass fuels produced from food and feed crops, <b><u>taking into account best available evidence on indirect land-use change impact. Member States may for instance set a lower limit for the contribution from food or feed crop-based biofuels, bioliquids and biomass fuels</u></b></p>

		<p><u>produced from oil crops or for the contribution from food or feed crop-based biofuels, bioliquids and biomass fuels produced from crops for which a significant expansion of the production area into land with high carbon stock is observed, provided a specific limit is also set for biofuels, bioliquids and biomass fuels produced from feedstock that can be considered as a close substitute and low indirect land-use change risk biofuels and bioliquids are excluded. When setting such lower limit, Member States shall apply objective and duly justified criteria in distinguishing between different types of biofuels, bioliquids and biomass fuels.</u></p> <p><u>The Commission shall report as part of the biennial reporting on bioenergy sustainability set out in Annex VIII of Regulation [Governance] [ ] on the status of production expansion of relevant food and feed crops worldwide.</u></p>
	<p>Furthermore the following RECITALS could be added:</p>	<p><u>Recital (NEW 62 bis).</u></p> <p><u>Directive 2009/28/EC introduced a set of sustainability criteria including criteria protecting land with high biodiversity value and land with high carbon stock but did not cover the issue of indirect land use change.</u></p> <p><u>Indirect land-use change occurs when the cultivation of crops for biofuels, bioliquids and biomass fuels displaces traditional production of crops for food and feed purposes. This additional demand can increase the pressure on land and can lead to the extension of agricultural land into areas with high carbon stock such as forests, wetlands and peat land causing additional greenhouse gas emissions. Directive (EU) 2015/1513 recognised that the magnitude of greenhouse gas emissions-linked indirect land-use change could negate some or all greenhouse gas emission savings of individual biofuels, bioliquids or biomass fuels. While the risks stemming from indirect land use change are significant, research has shown that the scale of the effect depends on many factors, including the type of feedstock used for fuel production, the level of additional feedstock demand triggered by the use of biofuels, bioliquids and biomass fuels and the extent to which land with high carbon stock is protected across the globe. The highest risks of indirect land-use change have been identified for biofuels, bioliquids and biomass fuels produced from feedstocks for which a significant expansion of the</u></p>

production area into land with high carbon stock is observed but the impact extends also to biofuels, bioliquids and biomass fuels produced from other types of feedstocks, in particular if they are close substitutes. The level of greenhouse gas emissions caused by indirect land-use change cannot at present be unequivocally determined with the level of precision required to be included in the greenhouse gas emission calculation methodology. Instead it is appropriate to limit food and feed crop-based biofuels, bioliquids and biomass fuels promoted under this Directive and to allow Member States to set stricter limits for biofuels, bioliquids and biomass fuels produced from crop groups such as oil crops, sugars and cereals and other starch-rich crops as well as for biofuels, bioliquids and biomass fuels produced from feedstocks that have been identified to be associated with a high level of risk of indirect land-use change. In order to avoid any unintended replacement effect, an accompanying limit should also be applied to biofuels, bioliquids and biomass fuels produced from feedstock that can be considered as close substitutes, whereas low indirect land-use change-risk biofuels, bioliquids and biomass fuels should be exempted from the lower limit.

Recital (62 ter) (former 62 bis)

Yield increases in agricultural sectors through improved agricultural practises, investments into better machinery and knowledge transfer [ ] beyond levels which would have prevailed in the absence of productivity-promoting schemes for food and feed crop-based biofuels, bioliquids and biomass fuels, as well as the cultivation of [ ] crops on areas which were previously not used for [ ] cultivation of crops, can [ ] mitigate [ ] the indirect land-use change. In case there is evidence that such measures have led to an increase of the production going beyond the expected increase in productivity, biofuels, bioliquids and biomass fuels produced from such additional feedstock should be considered as low indirect land-use change-risk biofuels.

**Art. 26-28 – Sustainability criteria**

Amendments /Articles	Questions to MS/Explanations	New proposal for discussion
Art 26(1)		
AM 234	Could MS accept this amendment of EP in spirit of compromise?	<p><b>AM 234</b>  <i>Biofuels, bioliquids and biomass fuels produced from waste and residues from agricultural land shall be taken into account for the purposes referred to in points (a), (b) and (c) of this paragraph only if measures <b>such as resource assessments and management plans</b>, have been taken by the operators <b>producing biofuels, bioliquids and biomass fuels</b> to minimise <b>the risk of negative impacts on soil quality and soil carbon</b>. Information about those measures shall be reported pursuant to Article 27(3).</i></p>
Art 26(2)		
AM 236	Could MS accept this amendment of EP in spirit of compromise, even if it might be partially covered by the GA?	Wording of AM 236
Art 26(4)- 26(6)		
AM 238	Could MS accept this amendment of EP which broadens the scope of the criteria in spirit of compromise?	Wording of AM 238
AM 240 (part)	In spirit of compromise can MS accept the following parts of AM 240 for the purpose of Article <u>26(5)a and 26(5)b</u> while maintaining GA on the rest of the AM 240?	<p>iii) areas <b>designated by international or national law</b> or by the relevant competent authority for nature protection purposes [ ], including <i>in</i> wetlands and peatlands, [ ] are protected;</p> <p>iv) harvesting <i>is carried out considering maintenance of</i> soil quality and biodiversity <i>with the aim of minimising negative impacts</i>; and</p> <p>v) harvesting <i>maintains or improves</i> the long-term production capacity of the forest <i>at national or regional level</i>.</p>
AM 242	Could MS agree to add “or increased” as proposed by EP?	(b) when evidence referred to in point (a) [ ] is not available, the biofuels, bioliquids and biomass fuels produced from forest biomass shall be taken into account for the purposes

		referred to in points (a), (b) and (c) of paragraph 1 if management systems are in place at forest <b>sourcing area</b> [ ] level to ensure that carbon stocks and sinks levels in the forest are maintained <b>or increased over the long term</b> .
AM 243	Could MS agree to set an obligation to the Commission to establish the guidance shortly after the entry into force of the Directive?	<b>By 31 January 2021</b> , the Commission <b>shall</b> establish the operational <b>guidance on the</b> [ ] evidence for demonstrating compliance with the requirements set out in paragraphs 5 and 6, by means of implementing acts adopted in accordance with the examination procedure referred to in Article 31(2).
AM 244	Could MS agree with adding the last sentence as in EP proposal?	By 31 December <b>2026</b> [ ], the Commission shall assess whether the criteria set out in paragraphs 5 and 6 effectively minimise the risk of using [ ] forest biomass <b>derived from unsustainable production</b> and address LULUCF requirements, on the basis of available data. The Commission shall, if appropriate, present a proposal to modify the requirements laid down in paragraphs 5 and 6 <b>for the period after 2030</b> .
AM 247	In spirit of compromise could MS agree to lower the GHG saving threshold for new installations from 70% to 65% starting operation after 1 January 2021 (which would have an impact on some conventional biofuels).	(c) at least <b>65 %</b> for biofuels, <b>biogas consumed in transport</b> and bioliquids produced in installations starting operation after 1 January 2021;
AM 248	Could MS agree to increase the share up to 80% as of 2026? In exchange Presidency will propose to EP to drop AM 249.	(d) at least [ ] <b>70 %</b> for electricity, heating and cooling production from biomass fuels used in installations starting operation after 1 January 2021 and [ ] <b>80%</b> for installations starting operation after 1 January 2026.
AM 297 & 356	In case of these amendments, could MS agree to delete the reference to co-firing, and use the BAT reference documents instead of the 40% efficiency threshold requested by the EP?	8. Electricity from <del>co-firing</del> biomass fuels produced in installations with a [ ] <b>total rated thermal input</b> equal to or exceeding <b>75</b> [ ] MW shall be taken into account for the purposes referred to in points (a), (b) and (c) of paragraph 1 <b>of this Article</b> only if it is produced applying high efficient cogeneration technology as defined under Article 2(34) of Directive 2012/27/EU, <b>Biomass Carbon Capture and Storage or other efforts to develop negative emissions delivering</b>

		<p><b>substantial greenhouse gas emission savings.</b></p> <p>For the purposes of points (a) and (b) of paragraph 1 <i>of this Article</i>, this provision shall only apply to installations starting operation <b>or converted to biomass fuels</b> after [3 years from date of adoption of this Directive]. For the purposes of point (c) of paragraph 1 <i>of this Article</i>, this provision is without prejudice to public support provided under schemes approved by [3 years after date of adoption of this Directive].</p> <p><b><u>For the purposes of points (a) and (b) of paragraph 1 of this Article, this provision shall not apply to electricity-only installations which achieve a high net-electrical efficiency based on Best Available Technique reference documents developed under the Directive 2010/75/EU.</u></b></p>
Art 27		
AM 258	Could MS agree to the compromise text combining the EP and GA approach?	<p>3. Member States shall take measures to ensure that economic operators submit reliable information regarding the compliance with the sustainability and greenhouse gas emissions saving criteria set out in <b>Article 25(6) and Article 26(2) to (7)</b> and make available to the Member State, on request, the data that were used to develop the information. Member States shall require economic operators to arrange for an adequate standard of independent auditing of the information submitted, and to provide evidence that this has been done. <b>For the compliance with articles 26(5)a and 26(6)a on forest biomass first or second party auditing may be used up to the first gathering point of the biomass.</b> The auditing shall verify that the systems used by economic operators are accurate, reliable and protected against fraud <i>including verification ensuring that materials are not intentionally modified or discarded so that the consignment or part thereof could become a waste or residue under Article 26(2) to (7)</i>. It shall evaluate the frequency and methodology of sampling and the robustness of the data.</p>

## Waste hierarchy related amendments

AM 321	<p>In the spirit of compromise, could the MSs agree to accept partially AM 321 (integrating also some language from AM 332/rev) on the basis that the RES and waste policies should be aligned?</p> <p>In exchange Presidency will propose to EP to drop AM 323 on the basis that compliance with the waste hierarchy cannot be demonstrated at project level.</p>	<p><b>2a. Member States shall ensure that their national policies, including support schemes, are designed to <u>take into account the waste hierarchy, as set out in Article 4 of Directive 2008/98/EC and avoid significant distortive effects on the raw material markets.</u> Member States should take into account available sustainable supply of biomass. To that end, Member States shall regularly review their national policies and justify any deviation in the reports required under Article 18(c) of Regulation ...of the European Parliament and of the Council [on the Governance of the Energy Union, 2016/0375(COD)].</b></p>
AM 126	<p>In the spirit of compromise could MS agree to accept partially AM 126, focusing only on incineration of municipal solid waste?</p>	<p><b>4c. By way of derogation from paragraph 1 of this Article, Member States shall ensure that no support scheme for energy from renewable sources is provided for incineration of municipal waste which does not comply with the separate collection obligations set out in Directive 2008/98/EC.</b></p>
AM 221		See text on article 25
AM 140 & 308		See text on article 25