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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
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Subject:	Proposal for a Directive of the European Parliament and of the Council on the promotion of the use of energy from renewable sources (recast)

On 21 March, after a discussion on the basis of doc. 7026/18, COREPER agreed on a revised mandate for the second trilogue which took place on 27 March. In the course of the second trilogue meeting the Presidency reached provisional agreements with Parliament on Articles 9, 10, 12, 13, 18 and 20, and partially provisional agreements on Articles 8, 11 and 15 (except for Art. 8(2), AM 146, AM 154, AM 156 and AM 161). Since then, discussions have continued in several meetings of the Energy Working Party as well as technical meetings with the European Parliament.

For the third trilogue on 17 May COREPER is invited to agree on a revised mandate for the Presidency, on the basis of the text reflected in the Annex. For this purpose the Presidency proposes a number of compromises ('accept in part/with changes') for outstanding issues, notably in Articles 2-6, 8, 15-17, 19, 21-27, 33 and Annex I and V.

Furthermore, with a view to having a sufficient degree of flexibility in negotiations, COREPER is invited to provide the Presidency with guidance on remaining key political issues. The Presidency recalls the broad support for an EU level renewables target of 30% expressed in the discussions at the informal meeting of Energy Ministers in Sofia in April 2018. The Parliament voted for a target of 35%. The Presidency notes also a strong interest of Member States to defend the General Approach in several areas. The more areas the Presidency is asked to maintain the General Approach for, the more likely the Council will have to accept Parliament's amendments in other areas.

The assessment of the Presidency is that the following highly political and very sensitive issues for the Council and the European Parliament will be part of the final compromise package:

- Overall EU target level;
- The use of a formula as basis for the Commission to assess the ambition gap in the context of the iterative process under the Governance Regulation;
- Treatment of renewable energy self-consumption behind the meter, including possible charges and fees depending on capacity size and costs of investments;
- Opening of support schemes and guarantees of origin subject to the text in the four column document as in Annex;
- Definition of an indicative renewable target level for heating and cooling as an 'endeavour to increase the share';
- Design of the obligation for the transport sector (Articles 7, 25), following the structure defined in the General Approach, including maintaining the use of multipliers and double counting of advanced biofuels as an option for Member States;
- The treatment of first generation biofuels, including of palm oil, ensuring there is no impact on existing and committed investments under the current framework.

On these issues, it seems clear at this stage that neither co-legislator will be ready to move from its position without significant movement also from the other side. Therefore, if the priority of the Council is to arrive at a compromise close to its position on the majority of the topics above, there could be a need in exchange to go beyond the 'psychological level' of 30% EU RES target. Following this logic, Member States are invited to express their positions on the following questions:

Regardless of the list of issues mentioned above, could Member States agree to the mandate included in the attached fourth column document as a basis for the discussion in the next trilogue?

For the issues that are identified as part of the final compromise package and listed above, could Member States agree that in order to pave the way for a final agreement, the Presidency would be able, without any commitment, to explore the room for a compromise with the European Parliament including an overall EU target slightly above 30% (also reflecting the target discussed in energy efficiency) and at the same time reaching a solution as close as possible to the Council position on the majority of the elements in the list? These options for landing zones will be further presented to COREPER for its assessment as part of the mandate for the fourth trilogue.

	<p>AM 31 <i>(25a) The resolution of the European Parliament of 4 April 2017 on palm oil and deforestation of rainforests called on the Commission to take measures to phase out the use of vegetable oils that drive deforestation, including palm oil, as a component of biofuels, preferably by 2020.</i></p>		<p><i>Maintain Council GA</i></p>
<p>(26) To create opportunities for reducing the cost of meeting the Union target laid down in this Directive and to give flexibility to Member States to comply with their obligation not to go below their 2020 national targets after 2020, it is appropriate both to facilitate the consumption in Member States of energy produced from renewable sources in other Member States, and to enable Member States to count energy from renewable sources consumed in other Member States towards their own renewable energy share . For this reason, a European Union Renewable Energy Platform (“ERDP”) will be put in place, enabling trading renewable energy shares between Member States, in addition to bilateral cooperation agreements. This shall complement voluntary opening of support schemes to projects located in other Member States . The agreements between Member States include statistical transfers, joint projects between Member States or joint support schemes</p>		<p>(26) To create opportunities for reducing the cost of meeting the Union target laid down in this Directive and to give flexibility to Member States to comply with their obligation not to go below their 2020 national targets after 2020 , it is appropriate both to facilitate the consumption in Member States of energy produced from renewable sources in other Member States, and to enable Member States to count energy from renewable sources consumed in other Member States towards their own renewable energy share. For this reason, a European Union Renewable Energy Platform (“ERDP”) will be put in place, enabling trading renewable energy shares between Member States, in addition to bilateral cooperation agreements. This shall complement voluntary opening of support schemes to projects located in other Member States . The agreements between Member States include statistical transfers, joint projects between Member States or joint support schemes.</p>	

<p>Subject to the second subparagraph of Article 26 (1), biofuels, bioliquids and biomass fuels that do not fulfil the sustainability and greenhouse gas emissions saving criteria set out in Article 26(2) to (7) shall not be taken into account.</p>	<p>For the calculation of a Member State's gross final consumption of energy from renewable energy sources, the contribution from biofuels and bioliquids, as well as from biomass fuels consumed in transport, if produced from food or feed crops, shall be no more than 7% of final consumption of energy in road and rail transport in that Member State. This limit shall be reduced to 3,8% in 2030 following the trajectory set out in part A of Annex X. Member States may set a lower limit and may distinguish between different types of biofuels, bioliquids and biomass fuels produced from food and feed crops, for instance by setting a lower limit for the contribution from food or feed crop based biofuels produced from oil crops, taking into account indirect land use change.</p>	<p>AM 307 For the calculation of a Member State's gross final consumption of energy from renewable energy sources, the contribution from biofuels and bioliquids, as well as from biomass fuels consumed in transport, if produced from food or feed crops, shall be no more than <i>the contribution from those to the gross final consumption of energy from renewable energy sources in 2017 in that Member State, with a maximum of 7 % of gross final consumption</i> in road and rail transport. <i>The contribution from biofuels and bioliquids produced from palm oil shall be 0 %, from 2021.</i> Member States may set a lower limit and may distinguish between different types of biofuels, bioliquids and biomass fuels produced from food and feed crops, for instance by setting a lower limit for the contribution from food or feed crop based biofuels produced from oil crops, taking into account indirect land</p>	<p><i>Deleted³⁰</i></p>	<p><i>Commission proposal unchanged</i></p>	<p><i>Maintain Council general approach (see also Article 25, para 1, subpara 7)</i></p>
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³⁰ Note: this subparagraph has been moved to Article 25 on mainstreaming renewable energy in the transport sector.

(AM 307 (Art. 7)

For the calculation of a Member State's gross final consumption of energy from renewable energy sources, the contribution from biofuels and bioliquids, as well as from biomass fuels consumed in transport, if produced from food or feed crops, shall be no more than *the contribution from those to the gross final consumption of energy from renewable energy sources in 2017 in that Member State, with a maximum of 7 % of gross final consumption* in road and rail transport.
The contribution from biofuels and bioliquids produced from palm oil shall be 0 % from 2021. Member States may set a lower limit and may distinguish between different types of biofuels, bioliquids and biomass fuels produced from food and feed crops, for instance by setting a lower limit for the contribution from food or feed crop based biofuels produced from oil crops, taking into account indirect land use change *and other unintended sustainability impacts.*)

For the calculation of a Member State's gross final consumption of energy from renewable energy sources set out in Article 7 and the share set out in the first subparagraph of this Article, the contribution from biofuels and bioliquids, as well as from biomass fuels consumed in transport, if produced from food or feed crops, shall be no more than 7% of final consumption of energy in road and rail transport in that Member State. | 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, based on categories set out in Annex VIII, for instance by setting a lower limit for the contribution from food or feed crop based biofuels produced from oil crops, taking into account indirect land use change impact. In case a Member State decides to limit the contribution from biofuels produced from food and feed crops to a share lower than 7%, that Member State may accordingly reduce the overall share referred to in the first subparagraph.

For the calculation of a Member State's gross final consumption of energy from renewable energy sources set out in Article 7 and the share set out in the first subparagraph of this Article, the contribution from biofuels and bioliquids, as well as from biomass fuels consumed in transport, if produced from food or feed crops, shall be no more than 7% of final consumption of energy in road and rail transport in that Member State. [] 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, 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 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