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NOTE

from : Presidency
to: Permanent Representatives Committee
on: 3 September 2008

Nos prev. docs: 11816/08 ENV 452 ENT 178 ENER 230 TRANS 247 AGRI 226 CODEC 971
11129/08 ENV 412 ENT 150 ENER 210 TRANS 220 AGRI 200 CODEC 872
ADD 1

Nos Cion props: 6145/07 ENV 80 ENT 17 ENER 59 TRANS 34 CODEC 98 – COM(2007) 18
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5421/08 ENER 15 ENV 24 TRANS 15 AGRI 15 CODEC 58 – COM(2008) 19
final

Subject: – Proposal for a Directive of the European Parliament and of the Council
amending Directive 98/70/EC as regards the specification of petrol, diesel and
gas-oil and introducing a mechanism to monitor and reduce greenhouse gas
emissions from the use of road transport fuels and amending Council Directive
1999/32/EC, as regards the specification of fuel used by inland waterway
vessels and repealing Directive 93/12/EEC
– Proposal for a Directive of the European Parliament and of the Council on the
promotion of the use of energy from renewable sources
= Sustainability criteria for biofuels

1. On 16 and 23 July 2008, Coreper examined the **key questions** which remained outstanding: the effectiveness criterion, methodology and environmental and social criteria.

(1) **The effectiveness criterion**

2. The issue of the effectiveness criterion was discussed at the Coreper meetings on 16 and 23 July and an overall compromise was reached on the following points:

- As regards the saving threshold, the values set are 35 % for the first step and 50 % for the second step. Three years before the beginning of the second period, the Commission will review the proposed threshold in order to ascertain whether it is appropriate and, if necessary, suggest another one.
- As regards the date for the second step, some delegations and the Commission asked for the date of 2015 to be maintained. Others would have preferred 2018. A third group called for 2020 or even later. In these circumstances, 2017 was selected as a medium point.

Certain delegations called for the deletion of the exemption clause applicable to existing installations ("grandfather clause"). Others wished it to be kept and even strengthened. Accordingly, the Presidency suggests leaving the Commission proposal as it stands.

(2) **Methodology**

3. Two main issues relating to methodology remain outstanding:

- The question of the bonus allocated to biofuels produced from plant material cultivated on degraded land: the principle of the bonus was broadly accepted, provided a precise definition of "degraded land" was inserted in the text. With this in mind, the Presidency suggested using the definition submitted by the Commission at the Coreper meeting on 23 July. Many delegations felt, on the basis of a first scrutiny, that these suggestions were on the right lines. They are invited to confirm that position.

As regards the bonus value, the Presidency, in the light of the discussions held under the Slovenian Presidency, suggested keeping 29 gCO_{2eq}/MJ. On 23 July, the Commission submitted an analysis prompting it to put forward a value of 12 gCO_{2eq}/MJ over 20 years. The Presidency suggests, at this point, keeping the value of 29 gCO_{2eq}/MJ. It would point out that, as provided for under Article 17(5), the Commission will be able to revise Annex VII – and therefore the bonus value – through the committee procedure. Furthermore, pursuant to Article 20(5)(e), the Commission will report on and analyse the indirect effects related to land-use changes and propose corrective action if necessary.

- The difficulties some countries would appear to be having in using the default values for cultivation: the Presidency is continuing its discussions with the delegations concerned and the Commission in order to identify solutions ahead of the forthcoming Coreper meeting.

(3) Environmental and social criteria

4. The arrangements put forward by the Presidency at the Coreper meeting on 16 July, and amended on 23 July to take delegations' comments into account, received broad support.
5. At the Coreper meeting on 23 July, the Commission proposed adjustments to the arrangements which were mainly intended first of all to suppress – initially at least – most of the information requested from operators and secondly to ensure that the obligations apply irrespective of where the biofuels are produced.
6. The Presidency would suggest that the arrangements should continue to provide for the request for information from operators in order to ensure that sufficient data are collected as of the entry into force of the Directive, so that the impact of biofuels on sustainability can be taken into account as soon as possible. That approach also provides an incentive to establish recognised certification systems and conclude international agreements, which will replace the provision of information.

7. Furthermore, in response to certain requests for clarification from delegations and the concerns expressed by the Commission, the Presidency would suggest the following:
- replacing, in the third paragraph of Article 16(3), the words "minimum information" by "list of information" so as to ensure equal treatment of all economic operators;
 - drawing up that list via a committee procedure, so as to involve the Member States;
 - specifying expressly that the obligation to supply information under Article 16(3) applies to biofuels produced both in third countries and within the European Union; and
 - providing that the Commission, as it itself suggested, should report, by 2015 at the latest, on the arrangements for providing information on the sustainability criteria.

Delegations are invited to state their position on these points.

Other issues (footnotes in 11129/08 ADD 1)

8. Further to the overall compromise accepted by delegations, the following footnotes can be withdrawn: 4, 6, 8, 15, 16, 17, 18, 19, 25, 26, 32.

The Presidency wishes to convene the ad hoc working party on 8 September in order to examine the following footnotes: 3, 5, 9, 10, 12, 13, 20, 27, 28, 29, 33, 35, 36, 37.

Delegations are invited to comment on whether the other footnotes can be withdrawn.

9. Delegations will find, in the addendum to this note, a **consolidated text** of the common scheme, incorporating the Presidency's latest suggestions on Articles 15, 16, 17 and 20 and on Annex VII.

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