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Subject : **PREPARATION OF THE COUNCIL (ENVIRONMENT) MEETING ON
5 JUNE 2008 AND OF THE TTE COUNCIL (ENERGY) MEETING ON
6 JUNE 2008**

Climate-Energy Legislative Package

- (a) Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading system of the Community
 - (b) Proposal for a Decision of the European Parliament and of the Council on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020
 - (c) Proposal for a Directive of the European Parliament and of the Council on the geological storage of carbon dioxide and amending Council Directives 85/337/EEC, 96/61/EC, Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC and Regulation (EC) No 1013/2006
 - (d) Proposal for a Directive of the European Parliament and of the Council on the promotion of the use of energy from renewable sources
 - Progress report
 - Policy debate
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I. INTRODUCTION

On 23 January 2008, the Commission submitted its package of implementation measures for the EU's objectives on climate change and renewable energy ("Climate Action and Renewable Energy package"). It contains the following proposals:

- Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC so as to improve and extend the EU greenhouse gas emission allowance trading system ("EU ETS review");
- Proposal for a Decision of the European Parliament and of the Council on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020 ("effort sharing");
- Proposal for a Directive of the European Parliament and of the Council on the geological storage of carbon dioxide and amending Council Directives 85/337/EEC, 96/61/EC, Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC and Regulation (EC) No 1013/2006 ("CCS Directive");
- Proposal for a Directive of the European Parliament and of the Council on the promotion of the use of energy from renewable sources ("renewables Directive").

In addition, the package contains a communication from the Commission to the Council and the European Parliament "Supporting early demonstration of sustainable power generation from fossil fuels" as well as revised Community guidelines on state aid for environmental protection.

To enable work on the renewables directive and the earlier Commission proposal on fuel quality ¹ to go forward without creating inconsistencies, Coreper decided to establish an ad hoc Working Party to draw up a common sustainability scheme for biofuels for the purposes of the two directives.

¹ 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 (doc. 6145/07).

II. STATE OF PLAY

In the Council, the package was presented to the Energy Working Party on 25 January and to the Working Party on the Environment on 28 January 2008. It was presented also to the Coreper on 30 January 2008. Both working parties focused, during the meetings in February, on the preparation of the policy debates which took place at the (Energy) Council on 28 February and at the (Environment) Council on 3 March 2008.

The *ad hoc* Working Party on sustainability criteria for biofuels has met several times, taking the relevant provisions of the renewables proposal as the basis for its work, while also taking account of past discussions on the fuel quality directive.

The discussions at the Working Party level have allowed an in-depth examination of the various proposals, thereby identifying the issues where there is convergence of views as well as the outstanding issues (*for details on each of the proposals, see the Annexes to this note, where the major outstanding issues are reflected in the order in which they appear in the articles.*).

The 2008 Spring European Council confirmed that the package provides a good starting point and basis for agreement on the proposals as a coherent package, to be reached before the end of 2008 and consequently allow for their adoption within the current legislative term, at the latest early in 2009.

The EU remains strongly committed to deliver on its own climate and energy policy targets by the end of this year, thus maintaining international leadership on climate change and energy and keeping up the momentum of the negotiations on the United Nations Framework Convention on Climate Change, in particular at the next Conference of the Parties in Poznan. The objective is to secure an ambitious and comprehensive post-2012 agreement on climate change at Copenhagen in 2009.

In view of the ambitious timeline and the complexity of the package, informal contacts with the European Parliament have been established at an early stage.

In the European Parliament, Ms Avril Doyle (EPP) has been appointed rapporteur for the "EU ETS review" and Ms Satu HASSI (Greens) for the "effort sharing" proposal, both for the ENVI Committee. For both proposals, an enhanced cooperation procedure is foreseen with the ITRE Committee. The vote in the ENVI Committee is tentatively scheduled for 7 October 2008.

Mr Chris Davies (ALDE) has been appointed rapporteur for the "CCS Directive", for the ENVI Committee. An enhanced cooperation procedure with ITRE is foreseen and the vote in the ENVI Committee is scheduled for the first week of October 2008.

Mr Claude Turmes (Greens) has been appointed rapporteur for the "Renewables Directive", for the ITRE Committee. An enhanced cooperation procedure with ENVI Committee is foreseen. A tentative timetable foresees the vote in ITRE Committee in July 2008.

On the issue of sustainability criteria for biofuels, Claude Turmes is cooperating closely with Dorette Corbey (PSE), rapporteur for the fuel quality directive, and Anders Wijkman (EPP), who is drafting the ENVI Committee's opinion on the renewables directive.

III. CONCLUSION

The Council is invited to take note of the progress report drawn up under the responsibility of the Presidency and hold a policy debate on 5 and 6 June 2008, focusing on the major outstanding issues, in order to further clarify the positions of the Member States so as to facilitate a further convergence of views. The close cooperation with the Parliament and the Commission will continue in order to reach agreement on the package as soon as possible before the end of 2008.

With a view to streamlining the debate, delegations are asked to submit their contributions in writing to the General Secretariat of the Council, in advance of the Council meeting and preferably before 30 May 2008.

1. **Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading system of the Community (EU ETS Review)**

The Commission proposal is based on Article 175(1) of the Treaty establishing the European Community. The proposal aims at streamlining and increasing the scope of the EU ETS, providing further harmonisation and increased predictability, enabling linking with emissions trading systems in third countries and providing appropriate means to involve developing countries.

Major outstanding issues

Allocation method; redistribution and use of auctioning proceeds; rules for auctioning
(Article 10 and Annex IIa; Article 10a, paragraphs 1-7)

The Commission proposal foresees an immediate introduction of auctioning in 2013, mainly for electricity generation, and a gradual introduction until 2020 in other sectors. It is expected that 30 to 50 billion euros of auctioning proceeds will eventually be generated in this way, from which - according to the Commission proposal - at least 20 % should be earmarked for the implementation of climate change policies in the EU or third countries.

Several delegations favour a gradual introduction of auctioning for electricity generation as well. Other delegations have requested that district heating and/or industrial combined heat and power production should not be subject to full auctioning and that the text should be clarified/amended to this end.

Some delegations consider that the redistribution of auctioning proceeds is a compensation for the comparatively higher direct costs resulting from the package and some would like a greater redistribution to take place to compensate for the Kyoto Protocol achievements since 1990. Other delegations have problems with including a cohesion element through environmental legislation (via the redistribution of a percentage of the auctioning proceeds).

Some delegations have also problems of principle with earmarking of auctioning proceeds.

In addition, some delegations have expressed concerns that the auctioning rules to be established through a regulation should not put some companies at a disadvantage or lead to speculation.

Carbon leakage (Article 10a, paragraphs 8-9; Article 10b)

Delegations recognised that an international post-2012 climate agreement remains the best way of addressing the issue of carbon leakage.

Furthermore, delegations generally welcomed the proposed provisions to support installations in sectors which are exposed to a significant risk of carbon leakage, but asked for more certainty for industry by bringing forward the dates on which the Commission:

- shall determine those sectors (Commission proposal: 30 June 2010);
- shall submit an analytical report assessing the situation in the light of the international agreement, accompanied by any appropriate proposals (Commission proposal: June 2011).

However, some delegations asked that these provisions should also apply to:

- non-energy intensive sectors which are also exposed to a significant risk of carbon leakage;
- sectors where electricity constitutes a high proportion of production costs;
- electricity installations, in exceptional cases linked to energy security problems.

Other issues

EU-wide cap (Article 9)

Generally, delegations welcomed the Commission proposal replacing the system of National Allocation Plans by the setting of an EU-wide cap, together with a long-term downwards linear trajectory.

However, several delegations asked that the review of the linear factor be brought forward (Commission proposal: no later than 2025).

Base year (Article 10, paragraph 2)

While a few delegations are content with using the 2005 verified emissions data for (re)distributing the allowances to be auctioned by the Member States as proposed by the Commission, a large group of Member States would prefer to use a reference period of two or three years in order to even out extreme emission figures from one single year.

It should be noted that in two Member States the first available verified emission data will relate to 2007.

New Entrants Reserve (Article 10a, paragraph 6)

Several delegations are of the view that the quantity of allowances set aside for new entrants (5%) as proposed by the Commission is too high.

Another group of delegations is of the view that the New Entrants Reserve should be large enough to ensure that no barriers are put in place for new installations and point out that in any case the unused part will be auctioned.

Small installations (Article 27)

While all delegations agree that the administrative burden should be minimised without compromising the environmental integrity of the system, there is no common view on the installations to be potentially excluded from the scope of the ETS or the applicable threshold for exclusion; questions have also been raised as to the meaning of "equivalent measures" that should apply to the excluded installations.

A large group of Member States would like the exclusion to apply to all small installations and not only to combustion installations.

In addition, a large group of Member States would like the emission threshold for potential exclusion to be established at 25 000 instead of 10 000 tonnes of carbon dioxide equivalent.

2. **Proposal for a Decision of the European Parliament and of the Council on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020 (Effort-Sharing)**

The Commission proposal is based on Article 175(1) of the Treaty establishing the European Community.

The proposal aims at sharing the emission reduction effort amongst Member States in the sectors not covered by the EU ETS. The Commission proposes to base the efforts of Member States on the principles of growth and solidarity, taking into account the relative per capita GDP of Member States.

Major outstanding issues

Scope (Article 1)

The Commission proposal on effort sharing aims to reduce emissions in sectors not covered by the emissions trading Directive. Delegations would like to make clear in the text what these sectors are. Some delegations would like to explicitly refer to emissions from international maritime transport, while others would like to include emissions and removals from land use, agriculture and forestry.

Reference year (Article 3, paragraph 1 and Annex)

A majority of delegations can support the Commission proposal to use 2005 data to calculate the overall aggregate reduction targets per Member State.

However, a group of delegations would like to recalculate those targets on the basis of 1990 data, arguing that the choice of 2005 as the reference year hides the differences in the efforts undertaken by Member States in greenhouse gas emission reductions until 2005, which in their view are not taken into account. A group of delegations proposes an economy-wide flat rate target of -18% relative to the respective Kyoto Protocol targets for all Member States.

Intermediate targets (Article 3)

While welcoming in principle the Commission proposal for an annual reduction of the non ETS emissions in a linear manner, several delegations pointed out some difficulties related to this linear reduction: a) it is very difficult to control very different/diverse sectors in order to have a linear reduction annually; b) it can work as a perverse incentive for Member States to increase emissions if the starting point is 2008-2010; c) the level of flexibility is not sufficient to take into account difficult years (climatic conditions, economic situation). Moreover, some delegations consider that the nature of the intermediate targets should be indicative and that the obligation to comply with these intermediate targets can be counter-productive for Member States in their efforts to meet, cost-effectively, the 2020 target.

3. Cross-cutting issues (between EU ETS review and Effort-sharing)

Trigger 20-30%

The Commission proposal includes an adjustment clause enabling the EU to move from the independent 20% commitment to a more ambitious target to which a future international agreement will commit the Community.

Generally, Member States would have liked the impact assessment to be as thorough for the more ambitious emission reduction commitment to be taken on in the framework of an international agreement as it is for the 20% commitment. There are concerns that the quasi-automatic adjustment to be done through comitology once the international agreement is in place does not sufficiently take into account cost-efficiency issues, in particular as regards the ETS/non ETS split, nor that it takes the Kyoto Protocol achievements since 1990 adequately into account.

Flexibility

The majority view is that Member States need more flexibility than is currently allowed in the ETS and effort sharing proposals in order to meet their commitments in a cost-efficient way. This additional flexibility could take several forms, *inter alia* allowing a greater use of credits from project-based mechanisms in ETS and non ETS sectors; allowing trade between Member States within the non trading sectors as well as between ETS and non ETS; and allowing a wider margin of manoeuvre on banking and borrowing in the non trading sectors.

Proposal for a Directive of the European Parliament and of the Council on the geological storage of carbon dioxide and amending Council Directives 85/337/EEC, 96/61/EC, Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC and Regulation (EC) No 1013/2006 (CCS Directive)

The Commission proposal is based on Article 175(1) of the Treaty establishing the European Community. The proposal aims at establishing harmonised rules for the safe storage of CO₂ in geological formations. All the steps are addressed, from the exploration of potential storage sites, the selection of storage sites, the delivering of permits for exploration and storage, the obligations related to the storage operation, the closure of the site and the post-closure monitoring and control requirements to ensure that the stored CO₂ will be completely contained for the indefinite future. In addition, provisions are envisaged for the withdrawal of storage permits and the transfer of responsibility to the competent authorities (after withdrawal of the permit or following the normal closure of the site), including all ensuing legal obligations. Financial security provisions, as well as provisions to ensure fair and open access to transport networks and storage sites for third parties and for the settlement of any dispute are also foreseen.

Major outstanding issues

Several points need to be further clarified from the technical viewpoint or prove to be difficult for single delegations. In this respect, it can be noted that two delegations expressed concerns, throughout the examination of the text, in relation to the global and local environmental impacts of CCS, suggesting that the scope of the present regulatory framework should be limited to the demonstration phase of this technology, until more elements are obtained on its safety and viability.

The main open issues at this stage can be identified as follows:

Review of storage permits

The proposal foresees (Chapter 3 "storage permits", Article 10) that draft permits for CO₂ storage should be forwarded by the competent authorities to the Commission. The draft permits will be reviewed by the Commission which may issue a non-binding opinion within a period of six months, after which the competent authority will take a final decision. This review is justified to ensure a harmonised application of the Directive from the very early phase and to provide additional confidence on the safety of the first generation of storage sites.

Some delegations object to this procedure, finding it too long, burdensome or because of subsidiarity reasons. The other delegations could generally support this procedure, some requiring the addition of more details as to how the review will be conducted.

Composition of CO₂ stream

The proposal establishes in Article 12 (Chapter 4 "operation, closure and post-closure obligations") certain acceptance criteria for the CO₂ stream. It is stipulated that this stream shall consist "overwhelmingly" of carbon dioxide, that no waste may be added to it but that the stream may contain incidental associated substances from the source capture or injection process in concentrations below certain harmful levels.

Many delegations find Article 12 insufficiently clear and suggest to define concentration limits via e.g. a Comitology procedure. Some other delegations and the Commission consider it difficult to set specific limits - considering that the concentration requirements will depend on the storage site and the capture techniques used among others and, *inter alia*, refer to the fact that the wording was taken from the London Protocol to the London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter.

Transfer of responsibility

Article 18 (Chapter 4 "operation, closure and post-closure obligations") stipulates that after closure of a storage site pursuant to Article 17, the responsibility for the site, including all ensuing legal obligations, shall be transferred to the competent authority, if and when all available evidence indicates the complete containment of the stored CO₂ for the indefinite future. A Commission review, parallel to that for decisions on storage permits (Article 10), is foreseen.

After a transfer of responsibility has taken place, it will not be possible to recover costs incurred from the former operator. In addition, monitoring may cease after the transfer of responsibility unless leakages or significant irregularities are identified. Transfer of responsibility is also referred to in Article 11 (changes, review, update and withdrawal of storage permits).

Several delegations have reservations on Articles 11, 17 and 18 as regards the type and extent of the responsibility to be transferred to the competent authorities, the procedure envisaged and the conditions of this transfer, the need for a Commission review and the issue of monitoring which should, according to some delegations, continue after closure. On the latter, the Commission notes that the risks of leakage after closure are minimal given that before the transfer of responsibility takes place all available evidence should show that the CO₂ stored will be completely contained for the indefinite future.

Financial security

Article 19 (Chapter 4 "operation, closure and post-closure obligations") sets out general provisions on financial security to be made by the applicant of a storage permit. While the main elements on the coverage and the duration of the financial security are indicated, it is foreseen that detailed modalities shall be decided by each Member State.

Many delegations ask clarifications and/or suggest to amend Article 19 to specify further, among others, the risks/obligations to be covered by the financial security, its amount and the need for adjustments over time, the moment where activation and surrender are foreseen, and the possibility of accessing the financial security by the competent authority.

Access to transport networks

Article 20 (Chapter 5 "third party access") lists the conditions to be taken into account by Member States while establishing the measures necessary to ensure that potential users are able to obtain open and fair access to CO₂ transport networks and storage sites.

Several delegations ask to clarify this Article further, especially as regards the conditions under which access can be refused by the competent authorities or single operators. The Commission, recalling that the technology is still in its demonstration phase, does not consider it is justified to establish detailed market rules for CCS at this early stage.

Capture readiness

In Article 32 (Chapter 7 "amendments") it is proposed to amend Directive 2001/80 on large combustion plants. In particular, all combustion plants with a capacity of 300 megawatts or more licensed after entry into force of the Directive will have suitable space on the installation site for the equipment necessary to capture and compress CO₂ and that the availability of suitable storage sites and transport networks, as well as the technical feasibility of retrofitting for CO₂ capture, have been assessed.

While some delegations can support Article 32, several other delegations find this provision premature and suggest its deletion. The Commission, noting that the foreseen capture readiness does not imply the obligation to apply CCS to future installations, considers Article 32 to be essential to incentivise, at reasonable costs, the future application of the technique and to prevent a lock-in of high-emitting technology.

Proposal for a Directive of the European Parliament and of the Council on the promotion of the use of energy from renewable sources

This proposal, based on article 175(1) and article 95 of the Treaty establishing the European Community, aims to set binding targets for renewable energies .

Major outstanding issues ²

Targets (art. 3)

Three main concerns were identified concerning the targets:

- = the level of the national renewable energy targets (this target, differentiated per Member State, states that by 2020, 20% of the EU energy consumption must come from renewable energies). Some delegations indicate that their target is very high, or even too high. However, since the acceptability of the level of these national targets will to a large extent depend on the outcome of the negotiations on other provisions of the Directive - notably those concerning flexibility - and on the package as a whole, it is not yet certain that a discussion on this issue will be needed.

² Note: the articles relating to biofuels are examined by the Ad Hoc Group on sustainability criteria for biofuels (see Annex IV).

- = the conditionality of the renewable transport fuel target (this target, equally applicable in all Member States, states that by 2020, 10% of the EU energy consumption in the transport sector must come from renewable energies). Many delegations want to make the binding nature of this target conditional upon the conditions named by the 2007 Spring European Council (which stated: "*The binding character of this target is appropriate subject to production being sustainable, second-generation biofuels becoming commercially available and the Fuel Quality Directive being amended accordingly to allow for adequate levels of blending.*"). Other delegations have underlined that an agreement on the transport target depends on the results of the work of the Ad Hoc Group on sustainability criteria for biofuels. The Commission, supported by several other Member States, argues that the conditionality for sustainability is ensured by the sustainability criteria, and that making the binding nature of the target conditional on the availability of second generation biofuels will have the effect of discouraging investment in second generation biofuels and of encouraging "doing nothing" which will ensure that those conditions will not be met. Furthermore, it can be stressed that the 10% target allows the use of other renewable energies besides biofuels.
- = The indicative trajectory and its consequences: there are delegations which insist that missing the indicative trajectory should have few or no consequences. The proposal requires Member States that do not meet the indicative trajectory to submit a new National Action Plan, forbids those Member States to sell Guarantees of Origin (GOs), and leaves open the possibility of an infringement procedure if it is deemed that a Member State has not taken adequate measures. Furthermore, some delegations consider the trajectory is too steep at the beginning. The Commission, supported by some delegations, argues that it would be illogical for a Member State that does not meet its own trajectory to sell GOs, that an infringement procedure will not be initiated just for missing the trajectory but rather against Member States that do not take "appropriate measures", and that the trajectory only requires a 25% increase in renewable energy consumption by the end of 2011 compared to 2005 - so that this would only be problematic for Member States that failed to take any substantial action after 2005 (target base year) and after the March 2007 Spring European Council which agreed upon the targets.

Long lead-time projects (art. 5(2))

The Commission proposal would allow, subject to certain conditions, Member States to apply to the Commission to take account - in the target year 2020 - of renewable energy from new renewable energy installations of exceptional size (production capacity ≥ 5000 MW) which are not yet operational. This high threshold was set because this clause constitutes in effect a derogation from the agreed binding 20% target, and is meant for projects which are of such a large scale that even if planning would begin by 2010, completion by 2020 would still be impossible.

Some delegations want the 5000 MW threshold for eligible installations to be (substantially) lower, or that the threshold be set in relation to national energy consumption; also more flexibility could be ensured by changing the dates relating to the start of construction and of operation, or by allowing a large project to be split up into several smaller projects. However, other delegations are opposed to this provision.

The system of trading in guarantees of origin (GOs) (art. 6-11)

To ensure cost-effectiveness, a system for the trade in Guarantees of Origin (GOs) for electricity and heating or cooling from renewable sources is foreseen. This system would allow Member States with fewer renewables resources or with higher renewables exploitation costs to purchase GOs from other Member States or private operators, rather than meeting their entire renewables target on their own territory at a higher cost.

The system, as proposed by the Commission, would lead to trading in GOs between Member States, provided they are on track for the indicative trajectory, and between private operators in those Member States. Such transfer of GOs may however be restricted or prohibited by Member States if trade would: undermine the secure and balanced energy supply, the environmental objectives underlying the national support scheme, the achievement of the 2020 targets or of the indicative trajectory.

Several Member States, all expecting to purchase GOs, have as their main concern the availability of sufficient quantities of GOs. These Member States want the GO system to be more flexible, and request to have as few limits as possible on the trade in GOs. Accordingly, they do not want to make trading dependent on having achieved the indicative trajectory. Other proposals to increase the flexibility would make GOs for renewable energy which is produced *and consumed* in third countries countable towards a national target, and would lengthen the period of validity of the GOs.

Many Member States fear possible negative consequences of the GO system, such as windfall profits for competitive renewables, or negative consequences on their national support schemes, such as a single GO price leading to pressure to harmonise national support schemes, at the detriment of support schemes for (temporarily) more expensive renewables such as photovoltaics. These Member States want a clearer opt-out, or even an opt-in, for the trade in GOs, and in any case do not want the burden of proof for the grounds to restrict or prohibit trade to be on their shoulders: they doubt whether the grounds which allow a Member State to restrict or prohibit the transfer of GOs are sufficient and clear enough in legal terms to allow Member States with feed-in tariff systems to restrict or prohibit the transfer of GOs.

A concern shared by several Member States relates to investment security: it must be made clear in the text of the directive that investments in renewable energy in other Member States and their accompanying transborder flows of GOs will in no way be touched by a later decision from a Member State to prohibit trade in GOs. There are also issues of a more technical nature still being discussed, such as how to ensure the harmonised format of the GOs and the functioning in practice of the system.

Several Member States are still reflecting on key aspects of the system of GOs and have announced that they will present their views in the near future. A possible solution currently being explored would allow free trade in GOs in any case until the first report by the Member State concerned is due and aims to provide more legal certainty to Member States that do not wish to allow imports or exports of GOs. Furthermore, it aims to provide legal certainty for investors that GO flows agreed prior to a Member State's decision to block GO imports or exports will not be affected by that decision. In addition, a draft recital underlines that all forms of cooperation between Member States, including so-called 'clustering' of national support schemes such as feed-in tariffs, are allowed under the provisions of the Directive.

Reinforcing measures (art. 4, 12-14, 19)

The proposal contains detailed "reinforcing provisions" which specify the measures Member States must take to promote renewable energies by: removing administrative barriers, speeding up procedures, setting planning requirements as well as minimum standards for the use of renewable energy in buildings ; developing and making available relevant information for planners, architects, consumers and builders, and putting in place training schemes for installers; and by ensuring priority network access for renewable energy. Furthermore, after the entry into force, each Member State has to submit a National Action Plan laying out its planned actions and the estimated results thereof; every two years thereafter, a report is due.

Member States largely agree with the provisions pertaining to the National Action Plans and the biennial reports, provided the resulting administrative burden remains proportional.

Based on the discussions so far, it would appear that most Member States also agree to a large extent with the reinforcing measures proposed; the Commission argues that such provisions are needed since experience shows a direct correlation between the measures taken by Member States and their success in meeting targets relating to renewable energy.

However, several Member States request that part, or all, of these provisions should either be left to subsidiarity, for instance the national certification schemes for installers of small-scale renewable energy installations, or be addressed in the relevant other energy legislation, for example the minimum standards for the use of renewable energy in new or refurbished buildings. Alternatively, the provisions contained in these articles could be transformed into recommendations or reporting requirements. Member States holding these views argue that since the targets will be binding (in contrast to previous renewable energy targets which were all indicative) there is less need for accompanying binding provisions to ensure that the targets will be met.

With a view to making further progress, several changes to the text of these articles are being explored.

Sustainability criteria for biofuels

The Commission proposed a dual legal basis for the renewables directive, with Article 95 as the legal basis for the sustainability scheme and Article 175(1) the legal basis for other provisions. The ad hoc Working Party decided not to discuss the legal basis.

Sustainability criteria are considered necessary for both the fuel quality and renewables directives, to ensure that the production of biofuels does not have negative consequences that outweigh the benefits arising from their use.

Major outstanding issues

One of the outstanding issues is the level and date of application of the second stage for the *minimum greenhouse gas emissions saving* requirement.

All delegations agree on a two-step approach and several delegations could accept the dates and figures that the Presidency presented to Coreper on 7 May (35% initially, increasing to 50% in 2015). However, several other delegations want to increase or to decrease the figures for the first or second step, or both, or request a later date for the second step. Many delegations want the figure for the second step to be left to a subsequent review, which other delegations and the Commission oppose on the grounds that this would be contrary to the objective of providing investment security.

Another outstanding issue concerns the environmental and social sustainability of *biofuel production which would apply also in third countries*. All delegations agree that the production of biofuels should respect certain environmental as well as social criteria. Some delegations consider that the suggested environmental criteria outside the Community are insufficient compared to the obligations for Community producers. However, several other delegations consider monitoring and reporting obligations for the Commission more appropriate than binding environmental criteria for third countries. On social issues, some delegations continue to favour reporting requirements for economic operators; but many delegations consider monitoring and reporting by the Commission more appropriate.

Remaining outstanding issue concerns also the methodology for calculating the greenhouse gas emissions saving obtained by using biofuels, particularly as regards the choices underlying the methodology. While the *ad hoc* Working Party was able to make further progress on certain technical issues, there remain important differences of opinion on certain issues. In particular, there are delegations who believe that the default values should be made more conservative or who request alternative approaches to the issues of co-generation, co-products and agricultural crop residues. However, a large majority of delegations support the approach that the Commission has proposed on these issues.
