



20.10.2017

NOTICE TO MEMBERS

(35/2017)

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)
(COM(2016)0767 – C8-0500/2016 – 2016/0382(COD))

The Interinstitutional agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts¹ requires a consultative working party of the legal services of Parliament, the Council and the Commission to consider any Commission proposal for recasting.

Please find attached the Consultative Working Party's opinion on the above proposal.

The Committee on Legal Affairs intends to state its views on the opinion at its meeting on 20-21 November 2017.

Annex

¹ OJ C 77, 28.3.2002, p. 1.



CONSULTATIVE WORKING PARTY
OF THE LEGAL SERVICES

Brussels, 28 September 2017

OPINION

**FOR THE ATTENTION OF THE EUROPEAN PARLIAMENT
THE COUNCIL
THE COMMISSION**

**Proposal for a directive of the European Parliament and of the Council on the promotion of the use of energy from renewable sources
COM(2016)0767 of 23.2.2017 – 2016/0382(COD)**

Having regard to the Inter-institutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, and in particular to point 9 thereof, the Consultative Working Party consisting of the respective legal services of the European Parliament, the Council and the Commission met on 29 June 2017 for the purpose of examining the aforementioned proposal submitted by the Commission.

At that meeting¹, an examination of the proposal for a Directive of the European Parliament and of the Council recasting Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC resulted in the Consultative Working Party's establishing, by common accord, as follows.

1. The following should have been marked with the grey-shaded type generally used for identifying substantive changes:

- in recital 2, the deletion of the words '*The control of European energy consumption*';
- in recital 3, the deletion of the final words '*in the transport sector, in which the security of energy supply problem is most acute, and influence the fuel market for transport*';
- in recital 20, the deletion of the second sentence of recital 11 of Directive 2009/28/EC, which reads '*In this context, the energy present in oceans and other water bodies in the form of waves, marine currents, tides, ocean thermal energy gradients or salinity gradients should be included*';
- in recital 26, the deletion of the words '*national targets*', '*flexibility measures*' and '*but they remain under Member States' control in order not to affect their ability to reach their national targets*';

¹ The Consultative Working Party worked on the basis of the English language version of the proposal, being the master-copy language version of the text under discussion.

- in recital 27, the deletion of the words '*transparency platform*';
- in recital 28, the deletion of the final word '*targets*' in the first sentence as well as of the second sentence of recital 37 of Directive 2009/28/EC, which reads '*However, to avoid a net increase in greenhouse gas emissions through the diversion of existing renewable sources and their complete or partial replacement by conventional energy sources, only electricity produced by renewable energy installations that become operational after the entry into force of this Directive or by the increased capacity of an installation that was refurbished after that date should be eligible to be counted*';
- in recital 34, the deletion of the words '*to provide that such levels are achieved by incorporating a factor for energy from renewable sources in meeting minimum energy performance requirements under Directive 2002/91/EC, relating to a cost-optimal reduction of carbon emissions per building*';
- in recital 39, the deletion of the final words '*devices for producing energy from renewable sources*';
- in recital 43, the deletion of the last sentence of recital 52 of Directive 2009/28/EC, which reads '*It is important to distinguish between green certificates used for support schemes and guarantees of origin*';
- in recital 44, the deletion of the words '*minimum percentage*';
- in recital 45, the deletion of the words '*in particular as regards the amount of energy from renewable sources produced by new installations, the Commission should assess the effectiveness of the measures taken by Member States*';
- the deletion of the entire wording of recital 56 of Directive 2009/28/EC;
- in recital 48, the deletion of the word '*intermittent*';
- in recital 52, the deletion of the words '*support the demonstration and commercialisation phase*';
- in recital 70, the deletion of the final words '*and the development of second and third-generation biofuels in the Community and worldwide, and to strengthen agricultural research and knowledge creation in those areas*';
- in recital 72, the deletion of the last two sentences of recital 73 of Directive 2009/28/EC, which read '*Forested areas with a canopy cover of between 10 and 30 % should also be included, unless there is evidence demonstrating that their carbon stock is sufficiently low to justify their conversion in accordance with the rules laid down in this Directive. The reference to wetlands should take into account the definition laid down in the Convention on Wetlands of International Importance, especially as Waterfowl Habitat, adopted on 2 February 1971 in Ramsar*';
- in recital 81, the deletion of the words '*multilateral and bilateral agreements*' and '*such agreements*';
- in recital 95, the deletion of the words '*or heavily contaminated*' as well as of the last six sentences of recital 85 of Directive 2009/28/EC, which read '*Even if biofuels themselves are made using raw materials from land already in arable use, the net increase in demand for crops caused by the promotion of biofuels could lead to a net increase in the cropped area. This could affect high carbon stock land, which would result in damaging carbon stock losses. To alleviate that risk, it is appropriate to introduce accompanying measures to encourage an increased rate of productivity on land already used for crops, the use of degraded land, and the adoption of sustainability requirements, comparable to those laid down in this Directive for Community biofuel consumption, in other biofuel-consuming countries. The Commission should develop a concrete methodology to minimise greenhouse gas emissions caused by indirect land-use changes. To this end, the Commission should analyse, on the basis of best available scientific evidence, in particular, the inclusion of a factor for indirect land-use*

changes in the calculation of greenhouse gas emissions and the need to incentivise sustainable biofuels which minimise the impacts of land-use change and improve biofuel sustainability with respect to indirect land-use change. In developing that methodology, the Commission should address, inter alia, the potential indirect land-use changes resulting from biofuels produced from non-food cellulosic material and from ligno-cellulosic material';

- in recital 100, the deletion of the current reference to Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission;
- in recital 101, the deletion of the indication '*a 20%*';
- in Article 1 and in point (j) of Article 2, the deletion of the word '*national*';
- in point (g) of Article 2, the deletion of the words '*or gaseous*';
- in Article 7(1), the replacement of the current reference to '*Article 17(2) to (6)*' with a reference to '*Article 26(2) to (7)*';
- the deletion of the entire wording of paragraph 2 of Article 5 of Directive 2009/28/EC;
- in Article 7(3), the deletion of the words '*Aerothermal, geothermal and hydrothermal*';
- in Article 8(1), the deletion of the words '*and may make arrangements for*', '*compliance by*', '*with the requirements of Article 3(1), (2) and (4)*' and '*compliance by another*';
- in Article 8(2) and in Article 12(1), the deletion of the word '*three*';
- in Article 9(2) and (3) and in Article 10(1), the deletion of the word '*target*';
- in Article 9(4), the deletion of the first sentence, which reads '*The period specified under paragraph 3(d) shall not extend beyond 2020*', and of the indication '*2020*' in the second sentence;
- in Article 10(3), the deletion of the wording '*measuring target compliance with the requirements of*' and '*concerning national overall targets*';
- in Article 13(1), the replacement of the current reference to '*Article 3*' with a reference to '*Article 5*';
- the deletion of the entire wordings of points (a) and (b) of Article 13(1) of Directive 2009/28/EC;
- in Article 19(13), the replacement of the word '*consumers*' with '*customers*' and the deletion of the final words '*that comes from installations or increased capacity that became operational after 25 June 2009*';
- in Article 26(1), the deletion of the word '*sustainability*';
- in Article 27(4), the replacement of the current reference to '*Article 17(2)*' with a reference to '*Article 26(7)*' and of the current reference to '*Article 17(3), (4) and (5)*' with a reference to '*Article 26(2), (3), (4), (5) and (6)*';
- in Article 27(6), third subparagraph, the deletion of the word '*transparency*';
- in Article 27(6), fifth subparagraph, and (7), the replacement of the current reference to '*Article 17(2) to (5)*' with a reference to '*Article 26(2) to (7)*';
- in Article 28(1) and (4), the replacement of the current reference to '*Article 17(2)*' with a reference to '*Article 26(7)*';
- in Article 28(5), the deletion of the words '*particularly with regard to*' and of the word '*additions*';
- in Article 30(3), the replacement of the indication '*In 2018*' with the indication '*In 2026*';
- in Article 30(4), the replacement of the indication '*In 2021*' with the indication '*In 2032*';
- in Article 32(2), the replacement of the indication '*from 5 October 2015*' with the indication '*from 1st January 2021*';
- in Article 32(2), (3) and (6), the replacement of the current reference to Article 3(5) with a reference to Article 7(5) and the adding of new references to Article 19(11) and (14) and to Article 25(6);

- in point A of Annex V, the deletion of the indication '52%' in correspondence with the item '*sugar beet ethanol*';
- in point B of Annex V, the deletion of the indication '92%' in correspondence with the item '*farmed wood dimethylether*';
- in point C(3) of Annex V, the deletion of the formula ' $(EF - EB)/EF$ ' in correspondence with the item '*farmed wood dimethylether*';
- the deletion of the entire wording of point C(8)(b)(ii) of Annex V of Directive 2009/28/EC;
- in point C(8), second subparagraph, of Annex V, the deletion of the number '10';
- the deletion of the entire wording of point C(9)(b) of Annex V of Directive 2009/28/EC;
- the deletion of the entire wording of the second subparagraph of point C(9) of Annex V of Directive 2009/28/EC;
- in point C(10) of Annex V, the deletion of the indication '2009';
- in point C(12) of Annex V, the deletion of the words '*and storage*';
- in point C(14) of Annex V, the deletion of the word '*sequestration*';
- in point C(15) of Annex V, the deletion of the final words '*to replace fossil-derived CO2 used in commercial products and services*';
- in point C(18) of Annex V, the deletion of the wording '*eec + el + those fractions of ep, etd and eee*';
- the deletion of the entire wording of the fourth subparagraph of point C(19) of Annex V of Directive 2009/28/EC.

2. In the second subparagraph of paragraph 5 and in the first and fifth subparagraphs of paragraph 6 of Article 27, the reference made to '*Article 31(3)*' should be adjusted so as to read as a reference to Article 31(2).

In consequence, examination of the proposal has enabled the Consultative Working Party to conclude, without dissent, that the proposal does not comprise any substantive amendments other than those identified as such. The Working Party also concluded, as regards the codification of the unchanged provisions of the earlier act with those substantive amendments, that the proposal contains a straightforward codification of the existing legal text, without any change in its substance.

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