DRAFT MOTION FOR A RESOLUTION

pursuant to Rule 111(3) of the Rules of Procedure

on the Commission delegated regulation of 5 June 2023 on the methodology to determine the share of biofuel and biogas for transport, produced from biomass being processed with fossil fuels in a common process (C(2023)03513 – 2023/2730(DEA))

Committee on the Environment, Public Health and Food Safety

Member responsible(*): Marlene Mortler

(*) Associated committee – Rule 57 and Rule 113(1) of the Rules of Procedure
The European Parliament,

– having regard to the Commission delegated regulation of 5 June 2023 on the methodology to determine the share of biofuel and biogas for transport, produced from biomass being processed with fossil fuels in a common process (C(2023)03513),

– having regard to Article 290 of the Treaty on the Functioning of the European Union,

– having regard to Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources\(^1\), and in particular Article 28(5) and Article 35(7) thereof,

– having regard to Rule 111(3) of its Rules of Procedure,

– having regard to the letter of the Committee on the Environment, Public Health and Food Safety,

– having regard to the motion for a resolution by the Committee on Industry, Research and Energy,

A. whereas the supply of fuels involves an organised oligopoly whereby a few oil companies operate oil refineries in the Union and sell their products through their own or formally independent service stations; whereas, to some extent, oil production is also in the hands of corporations and, to a considerable extent, in the hands of large state-owned companies in the producing countries;

B. whereas the production of biofuels in the Union is organised on a medium scale: European agriculture supplies significant portions of the raw materials, and processing of those raw materials to transform them into the finished biofuel, namely biodiesel, bioethanol and biomethane, takes place in companies with typically 30 to 100 employees;

C. whereas, since Directive 2009/28/EC of the European Parliament and of the Council\(^2\) (RED I), the manner in which that Directive has been implemented in the Member States has led to a central role being assigned to the mineral oil companies as quota obligors and thus to those companies being granted even greater and decisive market power; whereas, in contrast, the medium-sized biofuel producers do not sell to end-

\(^1\) OJ L 328, 21.12.2018, p. 82.

customers, but to one of the large mineral oil companies;

D. whereas mineral oil companies as quota obligators have to date complied with the implementation by Member States of Directive (EU) 2018/2001 (RED II) without the accounting of co-hydrogenation (co-HVO), as other sustainable fuel options are sufficiently available and established on the market;

E. whereas, while in stand-alone biofuel production the biogenic input is processed to biogenic output, in co-HVO production, where a small portion of biogenic feedstock is processed together with a much bigger portion of fossil feedstock, it remains unclear to which extent the stated biogenic input is represented in the diesel fuel without a radiocarbon ($^{14}$C) analysis in accordance with DIN 51637 of the final product;

F. whereas the Union biofuel market is currently under massive pressure due to erroneous and possibly fraudulently declared biofuel imports from third countries;

1. Objects to the Commission delegated regulation;

2. Instructs its President to forward this resolution to the Commission and to notify it that the delegated regulation cannot enter into force;

3. Considers that the Commission delegated regulation:

   (a) gives rise to another option for mineral oil refinery operators to achieve their legal obligations under RED II/RED III\(^3\) with the accounting of co-HVO, which would likely be their cheapest and most convenient option of choice: they can produce co-HVO in their existing refineries with only minor adjustments to the facilities, which is likely to put the small and medium-sized biofuel industry at a disadvantage;

   (b) does not sufficiently address the risk of fraud in co-HVO production since refinery operators would not be obliged to provide proof in the form of a $^{14}$C analysis that the biogenic input to their facilities is actually represented in the final product;

4. Calls on the Commission to submit a new delegated act which takes account of the following recommendations:

   (a) it is of crucial importance to control exactly what the biofuel content of the final fuel mixture produced by co-HVO is; unlike biodiesel and bioethanol, the biogenic content is not easy to detect analytically; this requires the use of a special analytical method, the $^{14}$C analysis in accordance with DIN 51637; a purely balance sheet-based recording of the biogenic quantities is highly susceptible to fraud;

   (b) as a minimum requirement, the submission of a $^{14}$C analysis of the delivery tank in the tax warehouse from which the fuel is distributed should be included; in the

delivery tank, the fuel ready for sale is blended as a mixture of, possibly different, fossil and biofuel components; prior to delivery, a sample must be taken to determine the biogenic co-HVO content by a $^{14}$C analysis; the $^{14}$C analysis should be randomly checked as part of both sustainability certification and customs monitoring;

(c) furthermore, the Commission delegated regulation should only come into force once the Union database for liquid and gaseous fuels, provided for in Article 28 of RED II, is fully operational; that necessity arises given that biogenic components along with their sustainability certifications are more difficult to back-trace in co-HVO production than in biodiesel or bioethanol production; the Union database is aimed at preventing illegal repeated use of corresponding sustainability certificates, possibly in other Member States, and is a preventive measure against fraud in addition to the $^{14}$C analysis;

5. Instructs its President to forward this resolution to the Council and to the governments and parliaments of the Member States.