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COMMISSION DELEGATED REGULATION (EU) .../...

of 10.2.2023

supplementing Directive (EU) 2018/2001 of the European Parliament and of the Council by establishing a minimum threshold for greenhouse gas emissions savings of recycled carbon fuels and by specifying a methodology for assessing greenhouse gas emissions savings from renewable liquid and gaseous transport fuels of non-biological origin and from recycled carbon fuels

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The recast Renewable Energy Directive¹ (hereafter “the Directive”) introduces new provisions for promoting the use of renewable liquid and gaseous transport fuels of non-biological origin and recycled carbon fuels. While the Directive establishes a minimum threshold for greenhouse gas emissions savings for renewable liquid and gaseous transport fuels of non-biological origin, the Directive does not establish a minimum threshold for greenhouse gas emissions savings of recycled carbon fuels and does not specify the methodology by which to assess the greenhouse gas emissions savings from renewable liquid and gaseous transport fuels of non-biological origin and from recycled carbon fuels. However, the Directive includes an empowerment of the European Commission to establish those in delegated acts.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

Being of technical nature, this delegated act did not need be supported by an impact assessment nor an open public consultation, which are usually required only for major initiatives.

The delegated act draws on the results of several consultation exercises undertaken by the Commission in the context of the implementation of Article 25(2) and Article 28(5) of the Directive, including *inter alia*, three meetings of the expert group on renewable fuels and two stakeholder workshops.

The draft act was published for public feedback on the Better Regulation Portal from 20 May to 17 June 2020.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The delegated act is adopted pursuant to Article 25(2) and Article 28(5) of the Directive, which empowers the Commission to adopt delegated acts establishing appropriate minimum thresholds for greenhouse gas emissions savings of recycled carbon fuels and specifying the methodology by which to assess the greenhouse gas emissions savings from renewable liquid and gaseous transport fuels of non-biological origin and from recycled carbon fuels. Due to the substantive link between both matters, the empowerments should be bundled in a single legislative act.

¹ 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 (OJ L 328, 21.12.2018, p. 82).

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THE EUROPEAN COMMISSION,

Having regard to 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 sources², and in particular Article 25(2) and Article 28(5) thereof,

Whereas:

- (1) Taking into account the need to substantially reduce greenhouse gas emissions in the transport sector and the possibility for each fuel to make significant greenhouse gas emissions savings by applying carbon capture and storage techniques, among other measures, and considering the greenhouse gas saving requirements set for other fuels in Directive (EU) 2018/2001, a minimum greenhouse gas emission saving threshold of 70% should be set for all types of recycled carbon fuels.
- (2) Clear rules need to be set, based on objective and non-discriminatory criteria, for calculating greenhouse gas emissions savings for renewable liquid and gaseous transport fuels of non-biological origin and recycled carbon fuels and their fossil fuel comparators.
- (3) The greenhouse gas emissions accounting methodology should take into account the full life-cycle emissions from producing renewable liquid and gaseous transport fuels of non-biological origin and recycled carbon fuels and be based on objective and non-discriminatory criteria.
- (4) Credits should not be granted for capturing CO₂ which has already been taken into account under other provisions of Union law. Therefore that kind of captured CO₂ should not be considered as being avoided when determining the emissions from the inputs' existing use or fate.
- (5) The origin of carbon used for the production of renewable liquid and gaseous transport fuels of non-biological origin and recycled carbon fuels is not relevant for determining emission savings of such fuels in the short term, as currently many carbon sources are available and can be captured while making progress on decarbonisation. In an economy on a trajectory towards climate neutrality by 2050, sources of carbon that can be captured should become scarce in the medium- to long-term, increasingly restricted to CO₂ emissions that are hardest to abate. In addition, the continued use of renewable liquid and gaseous transport fuels of non-biological origin and recycled carbon fuels

² OJ L 328, 21.12.2018, p. 82.

that contain carbon from non-sustainable fuel is not compatible with a trajectory towards climate neutrality by 2050 as it would entail the continued use of non-sustainable fuels and their related emissions. Therefore, capturing of emissions from non-sustainable fuels should not be considered as avoiding emissions indefinitely when determining the greenhouse gas emissions savings from the use of renewable liquid and gaseous transport fuels of non-biological origin and recycled carbon fuels. Captured emissions from the combustion of non-sustainable fuels for the production of electricity should be considered avoided emissions up to 2035, as most should be abated by that date, while emissions from other uses of non-sustainable fuels should be considered avoided emissions up to 2040, as these emissions will remain longer. These dates will be subject to review in light of the implementation in the sectors covered by Directive 2003/87/EC of the Union-wide climate target for 2040. The Union-wide climate target for 2040 is to be proposed by the Commission at the latest within six months of the first global stocktake carried out under the Paris Agreement, in accordance with Regulation (EU) 2021/1119³. The implementation of the target in Directive 2003/87/EC will further determine the expected scarcity of emissions in each sector.

- (6) Emissions from activities listed in Annex I to Directive 2003/87/EC of the European Parliament and of the Council⁴, namely from industrial processes or from the combustion of non-sustainable fuels, should be prevented, even if they could be captured and used to produce renewable liquid and gaseous transport fuels of non-biological origin and recycled carbon fuels. These emissions are subject to carbon pricing to incentivise abating the emissions from non-sustainable fuels in the first place. Therefore, where such emissions are not taken into account upstream through an effective carbon pricing, those emissions must be accounted for and should not be considered as being avoided.
- (7) Renewable liquid and gaseous transport fuels of non-biological origin and recycled carbon fuels can be produced in various processes, which may yield a mixture of different types of fuels. The methodology to assess the greenhouse gas emissions savings should therefore be able to derive the actual emission savings from those processes, including processes that yield both renewable liquid and gaseous transport fuels of non-biological origin and recycled carbon fuels.
- (8) To determine the greenhouse gas emissions intensity of renewable liquid and gaseous transport fuels of non-biological origin and recycled carbon fuels it is necessary to calculate the share of the energy content of such fuels in the output of a process. For this purpose, the fraction of each type of fuel should be determined by dividing the relevant energy input for the type of fuel in question by the total relevant energy inputs into the process. In case of the production of renewable liquid and gaseous transport fuels of non-biological origin, it is necessary to determine whether the relevant electricity input should be considered as fully renewable. The relevant electricity input should be counted as fully renewable if the provisions under Article 27(3) fifth and sixth subparagraph of Directive (EU) 2018/2001 are fulfilled. Otherwise, the average share of electricity from renewable sources in the country of production, as measured

³ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (OJ L 243, 9.7.2021, p. 1–17).

⁴ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

two years before the year in question, should be used to determine the share of renewable energy. In case of the production of recycled carbon fuels, only liquid or solid waste streams of non-renewable origin which are not suitable for material recovery in accordance with Article 4 of Directive 2008/98/EC and waste processing gas and exhaust gas of non-renewable origin which are produced as an unavoidable and unintentional consequence of the production process in industrial installations can be considered as relevant energy input for the production of recycled carbon fuels.

- (9) The fossil fuel comparator for renewable liquid and gaseous transport fuels of non-biological origin and recycled carbon fuels should be set at 94 gCO₂eq/MJ in line with the value set out for biofuels and bioliquids in Directive (EU) 2018/2001.
- (10) The main objective of promoting recycled carbon fuels is to reduce greenhouse gas emissions by improving the efficiency of use of eligible feedstock compared to present uses. Given that feedstock that can be used to produce recycled carbon fuels may already have been in use to produce energy, it is appropriate to take the greenhouse gas emissions resulting from the diversion of the use of those rigid inputs from its current use into account when calculating greenhouse gas emissions. The same should apply for rigid inputs obtained from incorporated processes and used to produce renewable liquid and gaseous transport fuels of non-biological origin.
- (11) If the electricity used to produce renewable liquid and gaseous transport fuels of non-biological origin is taken from the electricity grid and is not considered as fully renewable, the average carbon intensity of electricity consumed in the Member State where the fuel is produced should be applied, given that that best describes the greenhouse gas intensity of the whole process. Alternatively, electricity taken from the electricity grid that is used in the production process of renewable liquid and gaseous transport fuels of non-biological origin and recycled carbon fuels that does not qualify as fully renewable according to Article 27(3) of Directive 2018/2001, could be attributed greenhouse gas emissions values depending on the number of full load hours the installation producing renewable liquid and gaseous transport fuels of non-biological origin and recycled carbon fuels is operating. If the electricity used to produce renewable liquid and gaseous transport fuels of non-biological origin is considered fully renewable according to the rules set out in Article 27 of Directive (EU) 2018/2001, a carbon intensity of zero should be applied to this electricity supply,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation establishes a minimum threshold for greenhouse gas emissions savings of recycled carbon fuels and specifies the methodology to calculate the greenhouse gas emissions savings from renewable liquid and gaseous transport fuels of non-biological origin and from recycled carbon fuels.

Article 2

The greenhouse gas emissions savings from the use of recycled carbon fuels shall be at least 70 %.

Article 3

The greenhouse gas emissions savings from renewable liquid and gaseous transport fuels of non-biological origin and from recycled carbon fuels shall be determined in accordance with the methodology set out in Annex I.

Article 4

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 10.2.2023

For the Commission
The President
Ursula VON DER LEYEN