Minutes


15 December 2016, Brussels

1. Approval of the agenda and of the minutes of previous meeting
The agenda and the minutes from the meeting of 28 June 2016 were adopted.

2. Nature of the meeting
The meeting was not public.

3. List of points discussed

   a) Guidance on upstream emission reductions – presentation of Legal Service opinion
COM explained the clarifications given by Legal Service (LS) on two questions related to the guidance on upstream emissions reductions (UERs).
On the first question – whether green hydrogen used in refineries can be counted as UERs, LS answered negative. Firstly, upstream emission reductions relate to emission reductions occurring prior to the entry into a refinery. Council Directive (EU) 2015/652 (Council Directive) specifies “UERs shall only be applied to the upstream emission’s part of the average default values for petrol, diesel, CNG or LPG”. Secondly, the default values approach adopted in the Council Directive does not leave room for considering differences in the processed employed in refineries. And thirdly, emissions from the production of hydrogen are subject to the Emissions Trading Scheme and thus incentivised in this way. A sentence to clarify this is included in the guidance note.
On the second question – whether CERs need to be cancelled if UERs stem from CDM projects, LS confirmed the approach taken in the guidance note, i.e. that CERs have to be cancelled. The same emission reductions may not be used to generate both UERs and CERs as this would violate the principle that ‘double counting’ of emissions or emission reductions must be avoided. The possibility to claim UERs in order to demonstrate compliance with the Fuel Quality Directive (FQD) target is foreseen “in order to incentivise further greenhouse gas emission reductions”. CERs surrendered to a Member State by a fuel supplier for the sake of its compliance with the FQD target cannot be understood as CERs which have been “issued” to that Member State in the way foreseen by Article 5 of the Effort Sharing Decision. DK enquired whether this will prevent NL to use their Kyoto Protocol system. NL affirmed that this is in line with what they are planning – for them, the importance is to be able to use emission reductions stemming from CDM projects.
The guidance note is available on the website of DG Climate Action: http://ec.europa.eu/clima/sites/clima/files/guidance_note_on_uer_en.pdf. The guidance will not be translated in other official languages as it is a non-legislative document issued by the services of the Commission.

b) Presentation of the proposals of the Energy Union package: Regulation Governance of the Energy Union

COM gave an overview of the proposal for a Regulation on the Governance of the Energy Union. The proposed Regulation aims at: 1) meeting the Energy Union objectives, notably the 2030 targets; 2) promoting better regulation and reducing administrative burden by streamlining and reducing planning and reporting obligations and 3) enhancing investor certainty and predictability. Together with the proposal for revising the EU ETS and the proposals for the Effort Sharing Regulation and the LULUCF Regulation, the Governance proposal should also ensure achieving the commitments of the European Union and its Member States under the Paris Agreement. The proposed main elements are 1) integrated national energy and climate plans (2021-2030); 2) biennial national progress reports; 3) European Commission monitoring. New important elements are that there will be an iterative process between the Commission and Member States from draft to final plans, that Member States will be able to comment on other Member States' plans and that the European Commission can issue recommendations or propose measures at Union level in case there would be a gap between objectives and what would be achieved collectively.

COM also provided an overview about Article 40 and 49 of the draft Governance Regulation that aim to amend the FQD and Directive 2015/652. The proposed amendments have four main objectives: 1) including the annual report on fuel quality in the State of the Energy Union report, 2) removing the requirement to report on origin of crude oil imports and the place of purchase for refined fuel products from the FQD, 3) clarification of the reporting date under Article 7a of the FQD, and 4) deletion of non-functional references in the Directive.

As regards point 2) the aim is to simplify the reporting requirement for fuel suppliers and to avoid an overlap with existing reporting requirements for crude oil that already apply at the level of imports pursuant to Council Regulation 2964/95. The Commission is currently assessing the option of changing the reporting format under the Regulation such that an equivalent level of information will be collected on origin of crude oil as currently envisaged under the FQD. The simplification on reporting on origin and place of purchase was welcomed by many MS. The UK pointed out that they find the reporting requirement on origin and place of purchase of biofuels useful, but that these would also be deleted by the amendment. COM agreed and responded that reporting on the GHG intensity and type of biofuel would remain in place. MS can request reporting from fuel suppliers, which is not spelled out in the FQD.

As regards point 3), UK and DE favoured maintaining the deadline of 31 December for the Article 7a report instead of anticipating it to 31 August as proposed by the Commission. DK favoured starting the reporting under Article 7a in 2019 on data of 2018. Reporting in 2018 on 2017 data would yield incomplete information as fuel suppliers could not be obliged retroactively. Many Member States were concerned that if the first reporting deadline is 31 August 2018, they may not be able to provide complete and quality-checked reporting for 2017 in view of the transposition deadline of 21 April 2017. COM acknowledged the difficulty of issuing a complete report in 2018. It would be acceptable to have the first report covering only part of 2017. DE questioned whether there is a need to continue reporting on
the availability of fuel with low sulphur content because only fuel with 10ppm is allowed since 2009. COM is of the opinion that this requirement and the reporting on the other fuel parameters must continue to ensure a high standard of health and environment protection across the EU. On question of FI, COM clarified that this change of dates also means aligning the date of reporting with the fuel quality report required under Article 8(3) of the FQD, which was the intention anyhow of the Council Directive 2015/652 Article 5(1). No change to the fuel quality report is envisaged apart from its presentation as part of the State of the Energy Union report.

DK brought the attention to a reference in Article 7b(6) to Regulation (EC) No 73/2009, whose validity has expired and suggested correcting this paragraph as well. Please note: Regulation (EC) No 73/2009 has been repealed by Regulation (EU) No 1307/2013. Article 72 of Regulation (EU) No 1307/2013 foresees that 'references to the repealed Regulation shall be construed as references to this Regulation or Regulation (EU) No 1306/2013 and shall be read in accordance with the correlation table set out in Annex XI to this Regulation'. So the reference in the FQD is still valid.

EE enquired whether COM intends to propose a revision of the FQD. There is no continuation proposed of the target set out in Article 7a point 2 (see also point c) below for further details) for the period after 2021. The measures to reduce GHG emissions from transport fuels from 2021 to 2030 are included in the recast of the RED, which is in line with the intention to simplify legislation. All other articles of the FQD are subject to an ongoing REFIT – evaluation of their efficiency, effectiveness, proportionality, consistency and EU added-value. The evaluation report is planned to be published in the first quarter of 2017.

The implications of the draft Governance Regulation for the transposition of Article 7a of the FQD and Directive 2015/652 as regards reporting on origin and place of purchase were discussed. COM clarified that MS are obliged to transpose the Directive within its transposition deadline. MS were reminded that they should not postpone the transposition until the Governance Regulation was adopted. In case of non-transposition within the deadline the COM would be entitled to start infringement procedures. MS may opt for transposing the reporting requirements in anticipation of the changes to be introduced by the draft Governance Regulation. Should this be the case COM intends to take into account the fact that a legal proposal amending the Directives was adopted. In case the transposition measures would not match the outcome of this legislative process, and transposition measures would thus not be in line with the Directive, COM would request the MS to correct their legislation.

c) Presentation of the proposals of the Energy Union package: Recast of the Renewable Energy Directive

COM explained the objectives of the proposal for a recast of the Renewable Energy Directive: to achieve cost-effectively the at least 27 % EU-level binding renewables target; to provide investment certainty; to contribute to the EU political priority of becoming world leader in renewables; to tap into the heating and cooling potential and to promote innovation in transport. COM explained in more detail the part concerning decarbonisation of transport: the gradual phase out of food-based biofuels and the blending obligation for low carbon and renewable fuels (such as advanced biofuels, renewable electricity, renewable fuels of non-biological origin and waste-based fossil fuels). There is also a cap on fuels produced from feedstocks listed in Annex IX Part B such as used cooking oil. Whereas there is a lot of unutilised potential and use should be encouraged, the supply is limited and if left uncapped there would be an incentive for fraud. The obligation also provides a bonus for consuming
fuels in the aviation and maritime sectors. On question of FR, COM replied that molasses is a by-product from of refining sugarcane or sugar beets with no particular sustainability concerns provided that the best industry standards for the extraction of sugar have been respected. The proposal also introduces sustainability criteria for biomass used for producing heat and electricity in installations above 20 MW fuel capacity and requires that support is provided only to installations meeting minimum efficiency requirements. On questions raised by DK and DE, COM explained that the ILUC factors will remain only indicative and Member States cannot include them in the GHG emission calculation methodology: the cap on food-based biofuels will serve to limit the impact of indirect land use change. On question from DE, COM confirmed that both the multiplier for electric vehicle efficiency and the possibility to include electricity in rail transport were removed.

d) Reporting template
EEA informed about changes in the last version and that there are still some small corrections and clarifications to be made on the basis of comments already received from MS. The MS that had previously provided comments on the draft template were thanked for their input. The summary worksheet provides MS and/or suppliers an overview of aggregated results. Automatic calculations are now implemented for the following elements using the data entered in the two underpinning reporting work sheets: overall supply; UERs (total reported UERs plus maximum claimable (oil, gas)), net summary and summary of ILUC reporting by feedstock category.

In the supplier & country’ worksheet, certain columns are reordered to make the spreadsheet more intuitive. There is an improved clarity on what fields need to be reported for fossil fuels, biogenic fuels, and electricity. The list of fuel types is now aligned to the list given in Annex 1 Part 2 (5). CN codes for fuels (auto-completed once fuel type is selected – CN ‘2-level’ aggregated codes only), and biofuel components are added. Lookup codes for value of ILUC emission intensity factors are also added. GHG intensity default look-up values added for fossil fuels, but not for biofuels. The reporting of biofuels needs to be aligned with the requirements of the Directive; namely origin of biofuels means biofuel production pathway, whereas place of purchase is as for fossil fuels – country and name of processing facility. The template will require all information to be provided in litres rather than the current mixture of litres and tonnes for consistency.

A new worksheet is added for reporting of UER information by suppliers. Worksheet elements are based on the information requirements specified in Annex 1 Part 2 (1) of 2015/652. SK raised a concern about the disaggregation of reporting of UERs originating from gas and oil production supply chain. The Directive specifies that UERs originating from any country may be counted as a reduction in greenhouse gas emissions against fuels from any feedstock source supplied by any supplier. Furthermore, some fields produce both gas and oil. ICCT and COM clarified that the Directive (Annex 1 Part 1 3(d) i) requires a limitation of UER use, which is fuel specific: "UERs shall only be applied to the upstream emission’s part of the average default values for petrol, diesel, CNG or LPG". This had previously been understood as effectively imposing a cap on UERs in each supply chain. Admittedly the supplied UERs are unlikely to be constrained by the cap of Annex 1 Part 1 3(d) I and the Directive is indeed explicit in delinking the origin of the UERs from the fuels supplied. At the same time, for projects relating to oil extraction, suppliers must report the annual and historical gas-to-oil ratio, reservoir pressure, depth, and well production rate (Annex I Part 2 (1) h). Given the above, fuel suppliers will have to provide additional data on UERs from the oil extraction, which directly would link these UERs to the oil supply chain. UERs associated with the gas supply chain will not need to report this information.
Another concern was reporting disaggregated data at the level of individual suppliers to the COM. Some Member States, e.g. NL, UK, have trading schemes which will not allow supplying this level of disaggregation with regard to how suppliers meet their obligations. Other Member States are concerned about the confidentiality of the data especially if there are only very few fuels suppliers. COM and EEA reassured that data will be treated confidentially and not disclosed in a way that would be possible to link data to individual suppliers. The template was meant to be in line with the requirements of Annex III and IV. The template is designed in such a way so it can be used by both fuel suppliers and Member States. DK requested not to provide data on individual fuel suppliers and reflecting the Annex III requirements that MS shall report aggregated data.

EEA reminded the timeline for finalising the reporting template. Member States are asked to send final comments by 15 January in order to finish it by end of January 2017 as many Member States are planning to use the template both for their own reporting to the Commission and for fuel suppliers reporting to the competent national authority. Comments/questions on the second draft template already received from CZ, IT, SE, and PT. It is clear from the comments received to date that there remain quite a number of questions and uncertainties often concerning the interpretation of the Directive’s reporting requirements. In many instances these discussions are only now being triggered by Member States seeing and testing the template. Some countries are providing suggestions for simplified reporting e.g. to drop certain elements specified as mandatory in the annexes of Directive 2015/652 but there is no flexibility to do that.

A number of ‘interpretation’ queries have been received from Member States concerning questions of implementation, requests to change default items in the pre-defined lists etc. EEA/COM will compile responses to these in an informal document that will be made available to all Member States.


Member States reported on their preparations for adopting national laws, regulations and administrative provisions necessary to comply with the Council Directive by the transposition deadline of 21 April 2017. All Member States are in a fairly advanced stage of the preparations. Many reported that they will or are hoping to meet the transposition deadline. UK reported that they also plan intermediate targets for 2018 - 2% and for 2019 - 4%. UK and BE expect that about 4.5% points of the target will be reached with biofuels. Member States stressed the need to close open questions around the Directive, including on UERs and the reporting template, in order to be able to proceed with adoption of national legislation. On a question from LT, COM explained the compliance check, which it will undertake. Once complete measures are reported by a MS, they are evaluated against the requirements of the Directive. If COM has doubts with regards to the correct transposition of the measures, it sends an enquiry through the EU-Pilot scheme. MS have 70 days to respond. COM aims in turn to analyse the responses in 70 days. This can be repeated if needed. COM is aware of the need of certainty for obligated parties and the approaching target date 2020, therefore it will strive to accomplish the process as fast as possible. Please note, that if COM notices that the national implementing measures are not complete, COM will have to immediately follow up with infringement proceedings. Instances of non-communication or partial communication are not eligible for the EU Pilot scheme and must be directly treated as infringements.

4. Conclusions

Commission thanked participants for very fruitful discussion on all points of the agenda.

5. Next steps
COM will clarify the questions that remained without a firm answer and inform the MS in writing. MS will provide comments, if any, on the reporting template by 15 January 2017 with a view of finalising it before the end of January 2017.

6. Next meeting
Member States expressed a wish to continue the exchange on implementation of the provisions of Article 7a of the FQD and the Council Directive (EU) 2015/652. One particular point to be discussed at the next meeting will be the organisation of the nationals systems for upstream emission reductions and exchange of information between Member States in order to avoid double use of UERs. The Commission will look for an appropriate date for the meeting to take place already before the transposition deadline of 21 April 2017.

7. List of participants
The meeting was attended in person or through a video-link by representatives from the following Member States: AT, BE, BG, CZ, DE, DK, EE, EL, ES, FI, FR, IT, HR, HU, LU, LT, LV, NL, SK, UK and NO. Representatives from DG Climate Action, DG Energy from the European Commission, European Environmental Agency and ICCT as a consultant to DG CLIMA were also present.