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COVER NOTE

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

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To: Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

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Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 14.3.2024 amending Delegated Regulation (EU) 2023/1184 as regards aligning a technical term with Directive (EU) 2018/2001 of the European Parliament and of the Council

Delegations will find attached document C(2024) 1621 final.

Encl.: C(2024) 1621 final



Brussels, 14.3.2024
C(2024) 1621 final

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

of 14.3.2024

**amending Delegated Regulation (EU) 2023/1184 as regards aligning a technical term
with Directive (EU) 2018/2001 of the European Parliament and of the Council**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Renewable fuels of non-biological origin are important for increasing the share of renewable energy in sectors and for uses where other alternatives might be unfeasible or more expensive. Directive (EU) 2023/2413 amended Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources and extended the scope of the promotion of renewable fuels of non-biological origin to cover other sectors than transport. Accordingly, the term ‘renewable liquid and gaseous transport fuels of non-biological origin’ was replaced with the term ‘renewable fuels of non-biological origin’ throughout the Directive. This Regulation amends Regulation (EU) 2023/1184 by aligning the term ‘renewable liquid and gaseous transport fuels of non-biological origin’ with the new term used in the amended Directive (EU) 2018/2001.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

As this is a technical delegated act, that is limited to the alignment of a technical term, it did not need to be supported by an impact assessment or a public consultation.

The expert group on renewable fuels was consulted on 1 March 2024.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The delegated act is made pursuant to the fourth subparagraph of Article 27(6) of Directive (EU) 2018/2001, which empowers the Commission to adopt a delegated act establishing a Union methodology, setting out detailed rules by which economic operators are to comply with the requirements laid down in the second and third subparagraphs of Article 27(6).

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

of 14.3.2024

amending Delegated Regulation (EU) 2023/1184 as regards aligning a technical term with Directive (EU) 2018/2001 of the European Parliament and of the Council

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 sources¹, and in particular Article 27(6), fourth subparagraph thereof,

Whereas:

- (1) Directive (EU) 2023/2413 of the European Parliament and of the Council² amended Directive (EU) 2018/2001 by replacing the term ‘renewable liquid and gaseous transport fuels of non-biological origin’ by the term ‘renewable fuels of non-biological origin’ throughout the Directive, modifying its definition. Those changes expanded the scope of the replaced term in Directive (EU) 2018/2001, which previously referred only to liquid and gaseous fuels used in the transport sector but, following the amendment, it also refers to liquid and gaseous fuels used in the electricity sector, in non-energy purposes in the industrial sector and in the heating and cooling sector.
- (2) Delegated Regulation (EU) 2023/1184³ should be amended accordingly in order to align it with Directive (EU) 2018/2001 as amended by Directive (EU) 2023/2413. Therefore, the term ‘renewable liquid and gaseous transport fuels of non-biological origin’ should be replaced by the term ‘renewable fuels of non-biological origin’ in that Delegated Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) 2023/1184

- (1) Delegated Regulation (EU) 2023/1184 is amended as follows: The title is replaced by the following:

¹ [OJ L 328, 21.12.2018, p. 82, ELI: <http://data.europa.eu/eli/dir/2018/2001/oj>](#).

² Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652 (OJ L, 2023/2413, 31.10.2023, ELI: <http://data.europa.eu/eli/dir/2023/2413/oj>)

³ Commission Delegated Regulation (EU) 2023/1184 of 10 February 2023 supplementing Directive (EU) 2018/2001 of the European Parliament and of the Council by establishing a Union methodology setting out detailed rules for the production of renewable liquid and gaseous transport fuels of non-biological origin (OJ L 157, 20.6.2023, p. 11, ELI: http://data.europa.eu/eli/reg_del/2023/1184/oj)

‘Commission Delegated Regulation (EU) 2023/1184 of 10 February 2023 supplementing Directive (EU) 2018/2001 of the European Parliament and of the Council by establishing a Union methodology setting out detailed rules for the production of renewable fuels of non-biological origin’;

(2) Article 1 is replaced by the following:

‘Article 1

Subject matter

This Regulation lays down detailed rules for determining when electricity used for the production of renewable fuels of non-biological origin can be considered fully renewable. These rules shall apply to the production of renewable fuels of non-biological origin via electrolysis and analogously for less common production pathways.

They shall apply regardless of whether the renewable fuel of non-biological origin is produced inside or outside the territory of the Union.’;

(3) in Article 2, points (4) and (5) are replaced by the following:

‘(4) ‘fuel producer’ means an economic operator that produces renewable fuel of non-biological origin;

(5) ‘come into operation’ means starting production of renewable fuels of non-biological origin or renewable electricity for the first time or following a repowering as defined under Article 2, point (10) of Directive (EU) 2018/2001 requiring investments exceeding 30 % of the investment that would be needed to build a similar new installation.’;

(4) in Article 3, points (a), (b) and (c) are replaced by the following:

(a) the installations generating renewable electricity are connected to the installation producing renewable fuel of non-biological origin via a direct line, or the renewable electricity production and production of renewable fuel of non-biological origin take place within the same installation;

(b) the installations generating renewable electricity came into operation not earlier than 36 months before the installation producing renewable fuel of non-biological origin; where additional production capacity is added to an existing installation producing renewable fuel of non-biological origin, the added capacity shall be considered to be part of the existing installation, provided that the capacity is added at the same site and the addition takes place no later than 36 months after the initial installation came into operation;

(c) the installation producing electricity is not connected to the grid, or the installation producing electricity is connected to the grid but a smart metering system that measures all electricity flows from the grid shows that no electricity has been taken from the grid to produce renewable fuel of non-biological origin.’;

(5) Article 4 is amended as follows:

(a) paragraph 1 and the introductory sentence of paragraph 2, first subparagraph, are replaced by the following:

‘1. Fuel producers may count electricity taken from the grid as fully renewable if the installation producing the renewable fuel of non-biological origin is located in a bidding zone where the average proportion of renewable electricity exceeded 90 % in the previous calendar year and the production of renewable fuel of non-biological origin does not exceed a maximum number of hours set in relation to the proportion of renewable electricity in the bidding zone.

This maximum number of hours shall be calculated by multiplying the total number of hours in each calendar year by the share of renewable electricity reported for the bidding zone where the renewable fuel of non-biological origin is produced. The average share of renewable electricity shall be determined by dividing the gross final consumption of electricity from renewable sources in the bidding zone calculated by analogy to the rules set out in Article 7(2) of Directive (EU) 2018/2001 by the gross electricity production from all energy sources as defined in Annex B to Regulation (EC) No 1099/2008 of the European Parliament and of the Council*, except from water previously pumped uphill, plus imports minus exports of electricity to the bidding zone. Once the average share of renewable electricity exceeds 90 % in a calendar year, it shall be continued to be considered to be higher than 90 % for the subsequent five calendar years.

* Regulation (EC) No 1099/2008 of the European Parliament and of the Council of 22 October 2008 on energy statistics (OJ L 304, 14.11.2008, p. 1, ELI: <http://data.europa.eu/eli/reg/2008/1099/oj>).

2. Where the conditions set out under paragraph 1 are not met, fuel producers may count electricity taken from the grid as fully renewable if the installation producing the renewable fuel of non-biological origin is located in a bidding zone where the emission intensity of electricity is lower than 18 gCO₂eq/MJ, provided that the following criteria are met:’;

(b) in paragraph 2, the second subparagraph is replaced by the following:

‘The emission intensity of electricity shall be determined following the approach for calculating the average carbon intensity of grid electricity in the methodology for determining the greenhouse gas emissions savings from renewable fuels of non-biological origin and from recycled carbon fuels set out in the delegated act adopted pursuant to Article 28(5) of Directive (EU) 2018/2001 based on latest available data.’;

(c) paragraph 3 is amended as follows:

(1) the introductory sentence is replaced by the following:

‘3. Electricity taken from the grid that is used to produce renewable fuel of non-biological origin may also be counted as fully renewable if the electricity used to produce renewable fuel of non-biological origin is consumed during an imbalance settlement period during which the fuel producer can demonstrate, based on evidence from the national transmission system operator, that:’;

(2) point (b) is replaced by the following:

‘(b) the electricity consumed for the production of renewable fuel of non-biological origin reduced the need for redispatching by a corresponding amount.’;

(6) in Article 5, points (a) and (b) are replaced by the following:

- (a) The installation generating renewable electricity came into operation not earlier than 36 months before the installation producing the renewable fuel of non-biological origin.

Where an installation generating renewable electricity complied with the requirements set out in the first subparagraph of this paragraph under a renewables power purchase agreement with a fuel producer that has ended, it shall be considered to have come into operation at the same time as the installation producing the renewable fuel of non-biological origin under a new renewables power purchase agreement.

Where additional production capacity is added to an existing installation producing renewable fuel of non-biological origin, the added capacity shall be considered to have come into operation at the same time as the initial installation, provided that the capacity is added at the same site and the addition takes place no later than 36 months after the initial installation came into operation.

- (b) The installation generating renewable electricity has not received support in the form of operating aid or investment aid, excluding support received by installations before their repowering, financial support for land or for grid connections, support that does not constitute net support, such as support that is fully repaid and support for installations generating renewable electricity that are supplying installations producing renewable fuel of non-biological origin used for research, testing and demonstration.’;

- (7) Article 6 is replaced by the following:

‘Article 6

Temporal correlation

Until 31 December 2029 the temporal correlation condition referred to in Article 4(2) and (4), shall be considered complied with if the renewable fuel of non-biological origin is produced during the same calendar month as the renewable electricity produced under the renewables power purchase agreement or from renewable electricity from a new storage asset that is located behind the same network connection point as the electrolyser or the installation generating renewable electricity, that has been charged during the same calendar month in which the electricity under the renewables power purchase agreement has been produced.

From 1 January 2030, the temporal correlation condition shall be considered complied with if the renewable fuel of non-biological origin is produced during the same one-hour period as the renewable electricity produced under the renewables power purchase agreement or from renewable electricity from a new storage asset that is located behind the same network connection point as the electrolyser or the installation generating renewable electricity, that has been charged during the same one-hour period in which the electricity under the renewables power purchase agreement has been produced. Following a notification to the Commission, Member States may apply the rules set out in this paragraph from 1 July 2027 for renewable fuel of non-biological origin produced in their territory.

The temporal correlation condition shall always be considered complied with if the renewable fuel of non-biological origin is produced during a one-hour period where

the clearing price of electricity resulting from single day-ahead market coupling in the bidding zone, as referred to in Article 39(2), point (a) of Commission Regulation (EU) 2015/1222**, is lower or equal to EUR 20 per MWh or lower than 0,36 times the price of an allowance to emit 1 tonne of carbon dioxide equivalent during the relevant period for the purpose of meeting the requirements of Directive 2003/87/EC of the European Parliament and of the Council***.’;

**Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (OJ L 197, 25.7.2015, p. 24, ELI: <http://data.europa.eu/eli/reg/2015/1222/oj>).

***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, ELI: <http://data.europa.eu/eli/dir/2003/87/oj>).

(8) in Article 7(1), point (b) is replaced by the following:

‘(b) the installation generating renewable electricity is located in an interconnected bidding zone, including in another Member State, and electricity prices in the relevant time period on the day-ahead market referred to in Article 6 in the interconnected bidding zone is equal or higher than in the bidding zone where the renewable fuel of non-biological origin is produced;’;

(9) Article 8 is amended as follows:

(a) in point (a), the introductory sentence is replaced by the following:

‘(a) the amount of electricity used to produce renewable fuel of non-biological origin, further detailed as follows:’;

(b) points (b) and (c) are replaced by the following:

‘(b) the amount of renewable electricity generated by the installations generating renewable electricity, regardless of whether they are directly connected to an electrolyser and regardless of whether the renewable electricity is used for the production of the renewable fuel of non-biological origin or for other purposes;

(c) the amounts of renewable and non-renewable fuel of non-biological origin produced by the fuel producer.’;

(10) Article 9 is replaced by the following:

Article 9

Certification of compliance

Regardless of whether the renewable fuel of non-biological origin is produced inside or outside the territory of the Union, fuel producers may make use of national schemes or international voluntary schemes recognised by the Commission pursuant to Article 30(4) of Directive (EU) 2018/2001 to demonstrate compliance with the criteria set out in Articles 3 to 7 of this Regulation, in line with Article 8, as relevant.

Where a fuel producer provides evidence or data obtained in accordance with a scheme that has been the subject of a decision in accordance with Article 30(4) of Directive (EU) 2018/2001, to the extent that such decision covers the demonstrating of compliance of the scheme with Article 27(3), fifth and sixth subparagraphs of that

Directive, a Member State shall not require the suppliers of renewable fuels of non-biological origin to provide further evidence of compliance with the criteria set out in this Regulation.’;

(11) Article 11 is replaced by the following:

‘Article 11

Transitional phase

Article 5, points (a) and (b) shall not apply until 1 January 2038 to installations producing renewable fuel of non-biological origin that come into operation before 1 January 2028. This exemption shall not apply to capacity added after 1 January 2028 for the production of renewable fuel of non-biological origin.’

Article 2

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, 14.3.2024

For the Commission
The President
Ursula VON DER LEYEN