



*EU Environmental Policy Briefing**

Biofuels Provisions in the Renewable Energy Directive – A Summary

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Concerns over the use of biofuels for transport have repeatedly hit the headlines of late. It is, therefore, unsurprising that by far the most controversial element of the proposal for a renewable energy Directive¹ (launched as part of the Commission's climate and energy package on 23 January 2008) is the binding requirement that 10 per cent of energy consumed by road transport be from renewable sources by 2020. While the European Commission has been keen to stress that this does not only apply to the use of liquid biofuels, it will inevitably lead to a massive increase in the demand for bioethanol and biodiesel. The Commission has defended its consumption-based target. Paul Hodson of DG Transport & Energy commented that Europe has the ability to shape the market for biofuels, but can only do this by being a major customer. The 10 per cent target guarantees that suppliers will take Europe's requirements seriously: if you lose this target you lose the power to shape the market.

Meanwhile, NGOs have been enraged by the proposals; Birdlife have branded the target a 'dangerous dead end' given the potential social and environmental consequences of a rapid expansion in biofuels. They went on to comment that 'it is difficult to understand why the Commission is pushing forward so strongly with a deeply flawed policy, in the face of overwhelming evidence that the risks greatly outweigh the benefits'². Many NGOs have thrown their weight behind the approach set out in the proposed revision of the fuel quality Directive (COM(2007)18) for the progressive reduction of lifecycle greenhouse gas emissions from road transport fuels. The European Parliament also appears to be favouring this: Dorette Corbey – rapporteur for the proposed fuel quality Directive revision – has indicated that MEPs are considering totally removing the 10 per cent by 2020 target in favour of stricter requirements in the fuel quality Directive. She also indicated that the European Parliament is planning to add broader sustainability criteria into this measure. Box 1 below presents key concerns that have been raised in relation to the expansion of biofuels use.

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Box 1 - Concerns about the expansion of biofuels

- that the greenhouse gas savings from many sources and processes are uncertain;
- that a massive expansion in demand for biomass will increase pressure on land – a finite commodity – causing intensification of farming and potential conversion of biodiverse areas and/or areas that act as a carbon store ie permanent pasture, forested areas or wetlands;
- that the use of biofuels for transport will compete against and potentially sully the reputation of biomass being used for heating and electricity which has far greater benefits in terms of greenhouse gas savings and is wholly more desirable;
- that biofuels may be grown on land converted from other valuable uses either causing devastation to biodiverse areas worldwide directly, pushing activities into other more marginal areas ie food production, or displacing them to biodiverse or carbon rich areas;
- that creating fuel from the same resources we use as food will create greater volatility in the commodities market causing prices, and potentially the cost of food, to rise;
- that developing a multinational, potentially million Euro business overnight may lead to massive social impacts, from land-grabbing to worsened working conditions for the rural poor.

The proposals on transport fuel are, however, only one element of the proposed renewable energy Directive and there are concerns that the controversy over biofuels may undermine the Directive more generally. Arguments concerning biofuel use could slow the progress through codecision of important new provisions for the expansion of renewable energy use to 20 per cent of energy consumption by 2020. This higher target has thus far been less controversial, not least because the Commission has attempted to break it down, sharing the opportunities and burden more equitably across Member States. This combined with provisions allowing for the transfer of ‘Guarantees of Origin’³, essentially means that the 20 per cent renewable energy target is relatively flexible.

Amid the initial round of mud-slinging in relation to the biofuels target, what has so far been absent is a clear analysis of what is included in the proposed Directive in relation to biofuels, what gaps and problems exist and their impacts. The table below sets out key issues in the proposed Directive and comments on their potential implications. It should be noted that while the proposals are by no means perfect they do, however, represent a massive improvement from earlier leaked drafts.

<i>Biofuels Provisions in the Proposed Renewable Energy Directive</i>	
Compliance	– According to the proposals Member States would have to bring into place laws to comply with the Directive, eg the sustainability criteria set out, by 31 March 2010 . This essentially means that there will have been three years between the announcement of a massive ramping up in biofuels use and the application of sustainability criteria in the EU .
Environmental Criteria General	– Only criteria related to environmental impacts are included in the proposal; the Commission deemed social criteria too problematic in terms of implementation and potential conflicts with international trade law. The European Parliament has already indicated its wish to add social principles. – Biofuels (defined in the Directive as both liquid and gaseous fuels for transport produced from

	<p>biomass) and other bioliquids (which may be used as an energy source eg replacing oil in stationary boilers) that fail to meet the criteria on environmental sustainability set out will not be considered as contributing to national targets, renewable energy obligations or for financial support.</p> <ul style="list-style-type: none"> – The approach proposed makes no provision for displacement impacts of increased biofuel production. This is important as whilst they are almost impossible to monitor, the potential impacts of this are central to concerns over biofuels use.
Environmental Criteria – One Approach for Europe	<ul style="list-style-type: none"> – Importantly, while the majority of provisions under the renewable energy Directive are being justified under the Environment article of the Treaty ie Article 175(1) the provisions on biofuel certification are classified as intended to ensure the ‘proper functioning of the internal market by harmonising conditions of sustainability that biofuels must meet’ and will be dealt with under Article 95 of the Treaty. – Taking the internal market route means that only the sustainability requirements set out at European level can be applied and that Member States will no longer be able to develop their own national systems. While this makes sense, as having numerous approaches across Europe would have led to confusion, it does mean the European requirements become even more important and that it will not be possible for Member States such as the UK to pursue unilateral action (eg draft standards to support the UK’s renewable transport fuel obligation). – Article 15, paragraph 6 specifically states that Member States shall not refuse to take into account biofuels obtained in compliance with the criteria set at European level, on other grounds of sustainability.
Greenhouse Gas (GHG) Reduction	<ul style="list-style-type: none"> – GHG emission savings from the use of biofuels must be at least 35 per cent – Annex VII sets out default values for different feedstocks and biofuel production processes. Based on these the 35 per cent requirement would exclude: wheat ethanol where the process fuel is unspecified, the process fuel is lignite or natural gas in a conventional boiler ie not a CHP plant; palm oil biodiesel and hydrotreated vegetable oil from palm oil specifically where the production process is not specified. A default value is only provided for Community-produced corn ethanol using natural gas, leaving a gap in relation to corn ethanol primarily from the US produced with other processes. – If a default value is not applied or disputed a mechanism for calculating the GHG balance is provided in the proposal. – The GHG minimum will only apply to biofuels produced by existing installations from 1 April 2013.
Protecting Biodiversity	<p>The proposal sets out limited biomes considered to consist of:</p> <ul style="list-style-type: none"> – Land with recognised high biodiversity value. Biofuels shall not be made from raw materials obtained from land covered by these biomes after January 2008. – Forest undisturbed by significant human activity ie where there is no known human intervention or where the last significant intervention was sufficiently long ago. While it is clear that this is intended to protect ancient forests, the wording appears overly complex and very limiting. It is unclear how areas categorised as this would actually be identified and there is a potential that this definition could mean only limited areas are actually protected. – Areas designated for nature protection purposes, unless evidence is provided that the production of the raw material did not interfere with those purposes. Again, it is unclear how the latter caveat might be applied. – Highly biodiverse grassland ie that which is species rich, not fertilised and not degraded. Again the latter classification is subjective. Importantly, it is proposed that comitology be used in order to establish the criteria and geographic ranges determining which grassland this categorisation would apply to.
Carbon Stocks	<ul style="list-style-type: none"> – The proposal states that biofuels shall not be made from raw materials obtained from land with high carbon stock. This is defined as wetlands including pristine peat land and continuously forested areas of land spanning more that 1 hectare with trees higher than 5 metres and canopy cover of more that 30 per cent. – The latter definition of forests is very specific and it is questionable how criteria such as the 5 metre limit could ever be enforced or its appropriateness. Details in the impact

	<p>assessment do not specify how such specific requirements were reached.</p> <ul style="list-style-type: none"> – The comment regarding pristine peat land is also a potential concern. ‘Pristine’ is a very specific term and appears to offer a loophole in a particularly fundamental area as peat lands have consistently been identified as a major concern in terms of GHG releases upon cultivation. – Importantly the definition of high carbon stock does not cover permanent grasslands.
Agricultural Raw Materials	<ul style="list-style-type: none"> – In addition to complying with the GHG emission saving requirements, those on biodiversity and carbon stocks agricultural raw materials cultivated in Europe must be obtained in accordance with ‘minimum requirements for good agricultural and environmental condition’.
Encouraging second generation	<p>‘In order to demonstrate compliance with national renewable energy obligations the contribution made by biofuels from wastes, residues, non food cellulosic material and ligno-cellulosic material shall be considered to be twice that made by other fuels’</p> <ul style="list-style-type: none"> – This provision, hidden in Article 18, is essentially intended to encourage the use of second generation fuels and the most desirable biofuels ie those produced from waste products. This combined with the sustainability requirements is considered by the Commission to mean that the proposal complies with the caveats placed upon the 10 per cent target by the European Council in March 2007 ie that biofuels must be sustainable and second generation be brought to market. – It is unclear exactly how this mechanism will work or indeed if it is anywhere near a strong enough signal to bring second generation to market. There is still massive uncertainty about when second generation might be ready. The proposal contains no specific reference to increased funding in this field etc.
Verification	<ul style="list-style-type: none"> – Verification will be fundamental to ensure any standards set out actually impact on the sustainability of the biofuels market place. This essential process will be left up to the Member States to decide upon and there is little guidance in the proposal about how this might be done, best practice or reference to approaches that have been developed in detail for other mechanisms eg the EU ETS. For the sustainability criteria to be a success this section would need to be substantially improved, otherwise there will be no confidence in the system. – The verification requirements in the proposal are relatively unclear. There is reference to Member States requiring economic operators to show environmental sustainability criteria are fulfilled but the approach suggested is the use of a mass balance system – which while possibly appropriate for the GHG reduction requirements seems inappropriate for other criteria. It is commented that the Commission will report to the European Parliament and Council in 2010 and 2012 on the operation of mass balance verification. – Economic operators will be responsible for ensuring adequate independent auditing of the information they submit and the evidence they provide. The auditing must ensure that systems used are accurate, reliable and fraud resistant, evaluating the frequency and methodology for sampling. – In addition it is proposed that the Commission can approve bilateral and multilateral agreements with third countries and decide whether voluntary approaches/international schemes provide accurate data.
Reporting	<ul style="list-style-type: none"> – National Action Plans will be a key mechanism used under the Directive to ensure Member States are on track in terms of delivering on their renewable energy and transport targets. These must be submitted by all Member States by 21 March 2010 and contain details of proposed policy measures. Specifically they must include policies for developing existing biomass resources and mobilising new biomass resources. – Member States will be required to ensure information is given to the public on the availability of biofuels and other renewable transport fuels. – Member States will be required to submit a report to the Commission on progress and use of renewable sources by June 2011 and every two years thereafter. Detailed requirements for reporting are set out, including information on commodity prices and land use changes within the Member State, development of second generation fuels, impacts of biofuel production, and

	<p>estimated GHG savings.</p> <ul style="list-style-type: none"> – Based on the information provided by Member States, by third countries and intergovernmental bodies the Commission will monitor the origin of biofuels and the impact of their production on land use, commodity price change and impact on food security. However, the Commission's first report will not be until 2012 – which seems late given that the impact of the target will have been felt ever since its announcement in early 2007. It is commented that following the report, if negative impacts are noted, corrective action will be proposed if appropriate. – Despite the above point on reporting, there is still no clear process for continually monitoring the implications of this measure and it is unclear what it will be possible to accomplish through the proposed process of assessment and potential amendment. Arguably provisions for oversight must be strengthened.
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References

1. Proposal for a Directive on the promotion of the use of energy from renewable sources, COM(2008)19, 23.1.2008,
http://ec.europa.eu/energy/climate_actions/doc/2008_res_directive_en.pdf
2. Biofuels targets are 'a dangerous dead end', Tuesday, January 29, 2008
<http://www.transportenvironment.org/News/2008/1/biofuels-targets-dangerous-dead-end/>
3. A GO is issued for 1 MWh of renewable energy a Member State that is on a trajectory to exceed its renewable energy target can essentially sell excess GOs to other countries allowing them to meet their target without producing the renewable energy nationally.

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