



*EU Environmental Policy Briefing**

Member States Debate Strengthening Biofuel Sustainability Requirements

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Following the leaking of a working draft some weeks ago, the special working group created by the Council of Ministers to draw up sustainability criteria for biofuel production has now delivered its final draft criteria (Council Document 8847/08). While further progress on several important elements is evident, some key issues nonetheless remain undecided. These will be negotiated and agreed by senior Member State diplomats in the coming weeks.

The stringency or otherwise of these criteria is important, as it will determine not only what biofuels are allowed to count towards the Community's proposed 10 per cent target for biofuels and future incentives, but will also apply to future targets for all road fuels under the revision of the fuel quality Directive. Ministers have previously expressed doubts as to the rigour of the sustainability criteria proposed by the Commission, so it remains to be seen whether the Council can now agree on a better formulation to be inserted as amendments to its Common Position.

Key Amendments Proposed by the Presidency

- The Commission's proposals focus exclusively upon environmental sustainability. *As in the leaked draft, the Council has removed the reference to 'environmental' resulting in biofuel production simply needing to be 'sustainable'.* It should be noted that this does not seem to represent a weakening of the environmental requirements, nor does it mean (as is often the case) that economic considerations have been given added weight to counterbalance the environmental emphasis. Instead this change appears to be driven primarily by a desire by the Member States to avoid biofuels leading to worker exploitation or social decline within producing countries. However, see the discussion below on social criteria.
- *The Council has explicitly inserted a reference into the Directive's preamble to laws on access to justice and public participation.* While the preamble is not legally binding, as with the specific Articles of the Directive, it sets the tone of the measure and is used to interpret the 'spirit' of the Directive for example in legal cases. This addition is, therefore, of interest as it indicates Member States are

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determined to ensure that future decisions in relation to biofuels are part of a participative and deliberative process.

- The Commission proposal sets a minimum greenhouse gas emission reduction from biofuels (when compared to fossil fuels) of 35 per cent. *The Presidency is proposing that this target stands, but as part of a two-step approach, whereby from a specified date the emission reduction requirement would rise.* The UK is reportedly one of a minority of countries still maintaining that the 35 per cent threshold is too low, but there seems now to be general agreement on the principle of a two-stage threshold. However if the latter were to be as low as 40 per cent as some have suggested, this would represent little improvement. In contrast 50 per cent (which has been widely reported) would be a significant step forward. However, there are still doubts in some quarters as to whether it is practical to establish such a target as yet. A 35 per cent limit allows many first generation fuels produced in Europe to contribute to the 10 per cent target; whereas a 50 per cent limit would exclude many home grown materials unless significant technological innovation takes place.
 - An earlier provision that the targets could be amended or deferred using a comitology procedure if ‘compelling evidence that change to the targets is necessary to ensure adequate supply of biofuels or to avoid undue trade distortions’ has apparently now been dropped
- The impact of biofuels upon biodiversity and nature conservation is a particular area of concern. The Council appears to have slightly strengthened requirements in relation to biodiversity. In the text it now states that biofuels shall not be made from raw material obtained from ‘highly biodiverse’ land, whereas the Commission text states ‘recognised highly biodiverse land’. It should however be noted that a clause has been added stating that biofuels can be produced from raw materials harvested from biodiverse land provided that this does not adversely affect its biodiversity. This is intended to allow, for example, the use of wood from sustainably managed forests. However, it is reported that there is still no agreement on a precise definition of ‘highly biodiverse forests’.
- Biofuel production within the EU will be covered by existing environmental and agricultural policy - specifically cross compliance requirements. The Council has added explicit references to key annexes within the Regulation that sets common rules on direct support schemes for farmers. This includes a requirement that biofuels should be obtained in accordance with ‘Good Agricultural Environmental Conditions’. These conditions already apply to crops produced on land receiving CAP direct payments so there is no great value added.
- Most important and significant among the changes proposed are efforts by the Council to ensure that imports of biofuels are produced in a sustainable manner. It is obviously a major challenge to ensure that production of materials outside the EU is completed in a way considered to be appropriate and ideally commensurate with Community rules. The Commission’s proposal included virtually nothing on this point and argued that it was ‘impossible’ to impose such conditions. However, the Council has sought to propose requirements with which countries producing biofuel raw materials outside the EU must comply. This text has clearly rowed

back from the level of ambition in the earlier draft, but some important provisions remain:

- The approach proposed would require that non-EU countries would need to have ratified and ‘*effectively implemented*’¹ four key treaties on the protection of the environment – CITES, CBD, the Cartagena Protocol and the Kyoto Protocol. It is far from clear that this provision would answer to the sustainability of any given batch of biofuel produced (some countries maintain that it will not), but arguably provides some general positive pressure for improving environmental standards. Intriguingly, it would also have the potential of excluding biofuel imports from the US in counting towards the targets therefore disincentivising their use – a current source of contention. The Commission would however be able to allow imports from other countries that have not ratified the treaties assuming they are able to demonstrate that they apply equivalent environmental standards.
 - A further proposal that would have extended this approach to cover a range of treaties under the International Labour Organisation on basic social rights such as abolition of child labour, forced labour, and worker discrimination based on sex, has now been watered down. Instead the Commission will now be required to report every two years on impacts of biofuels on food prices and land use rights, and on whether exporting countries had ratified the specified conventions. However a significant bloc of EU15 countries including the UK reportedly still maintains that producers and importers should be obliged to report this information.
 - Earlier proposals that the above requirements should not apply to any countries which are members of the OECD have now been dropped. As these would have had the effect of artificially favouring richer nations in the North, this seems to be a positive development.
 - An alternative proposal, whereby importers might be required to produce a series of plans and assurances (covering soil and water management; producer rights to land, local support for production, and observance of international labour standards) has also been dropped. In view of the difficulties that were foreseen in such an approach (see IEEP Briefing Note: 4 April 2008) this too seems a sensible move.
- A final key addition is the retention of requirements to monitor displacement impacts. Displacement impacts of biofuel production are a major source of concern and a mechanism for incorporating them into certification has yet to be devised and may well prove impossible. Previously this key term was conspicuously absent from the Directive, but under the new proposals the Commission would be required to monitor displacement impacts. This would at least provide an understanding of the extent of any problems and allow them to be taken into account in a future review. Interestingly, however, while displacement

¹ Within the proposed amendments effective implementation would be ascertained having regard to countries’ implementation record in accordance with the treaties’ implementation provisions and, in particular, any recommendations by bodies set up under those treaties to monitor compliance. It should be noted that Germany, France, Italy, Austria and Romania feel that the requirements placed upon third countries are insufficient when compared to those applicable in the community.

impacts are explicitly added to the monitoring requirements they do not appear amongst those on reporting, which seems to be an important omission.

- There is one key area of the Directive on biofuels that has still not been significantly amended by the Council, but arguably should be. Effective verification of emission savings and compliance with sustainability requirements will be essential in order for the certification scheme to operate reliably. The verification requirements within the Directive are currently weak and unclear, and left up to each Member State to devise. This would seem to be an inappropriate approach, especially given experiences under the EU Emissions Trading Scheme, for example. This demonstrated that verification is essential to deliver on objectives, but that it is also complex and difficult to adopt on a country-by-country basis. It also needs clear structures and boundaries to operate effectively. However these are not still provided by the text as it stands.

In short, the Council working group has made significant progress in improving on the Commission's rather weak proposals for sustainability criteria, but has not been able to meet all of the Council's declared aspirations. Some important elements also remain to be fully defined, including the detailed methodology to calculate carbon dioxide savings. Accordingly there are important issues still in play that will need to be agreed in negotiations over the coming weeks.

Developments in the Parliament

Green MEP Claude Turmes, who is lead rapporteur for the renewable energy proposal and sits on the Research, Industry and Energy Committee and the temporary Climate Change Committee, has joined those calling for the scrapping of the 10 per cent biofuel target. He has commented that he is working closely with MEP Anders Wijkman, who will deliver the Environment Committee's opinion on the biofuel proposals, to develop the European Parliament's proposed amendments. Currently Turmes is proposing a large number of changes to the Commission's text including extensive sustainability criteria for biofuels. One concept included in the amendments is that the acceptability of biofuels should be based on an approved list of biofuels instead of more general criteria. However, it should be noted that while this approach seems superficially attractive, such a technology-based approach often leads in practice to technical difficulties in definitions, arbitrary discrimination and loopholes.

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