

Brussels, 15th June 2007

European Commission Public Consultation exercise

Biofuels issues in the new legislation on the promotion of renewable energy

Part 1. How should a biofuel sustainability system be designed?

Question 1.1. Do you think the “possible way forward” described above is feasible?

COCERAL agrees that the new EU Directive on the promotion of renewable energy should list the sustainability criteria (land use change and greenhouse gas (GHG) emissions savings criteria) to be met by the biofuels in order to count towards the national biofuel target, national obligations and to be eligible for tax reductions and similar types of financial support. (a and b) These criteria should be uniformly applicable at EU level.

As a major supplier of feedstock for the biofuel processing sector and for the food and feed industry, COCERAL would like to stress that biofuels feedstocks trade is made on a global bulk commodity market and is thus far from a niche market.

Therefore COCERAL strongly emphasizes that a system whose implementation/verification is left to the different Member States (c) entails a risk of a fragmentation of the biofuels market within the EU as well as of trade flows of raw materials for food, feed and biofuels. This would impair the growth of the biofuels industry in Europe, thus preventing the EU from meeting its biofuels incorporation target.

COCERAL would like to stress the crucial need to have a centralized system at European level designed to verify that sustainability criteria have been met.

COCERAL supports the idea of having environmental criteria, as proposed by the European Commission (i.e. land use change criteria and GHG emissions savings values), set in the EU directive on the promotion of renewable energy. A centralized system at EU level should be responsible for the verification of the implementation of these criteria.

Question 1.2. What do you think the administrative burden of an approach like the “possible way forward” would be? (if possible, please quantify your answer)

To achieve a 10 % share of biofuels, the industry will have to be supplied with raw materials sourced in the EU but also by imported feedstocks.

Should the supply of the biofuels industry be governed by sustainability criteria diverging in some Member States or – in the worst case scenario – diverging from Member State to Member State, the whole economy of the sector will be endangered.

As far as ethanol production is concerned, prospects indicate that the industry could be supplied by EU produced feedstocks (wheat, sugar beets, maize). The Southern European countries are however in serious deficit for cereals and sugar beets: this means that the feedstocks must be imported from other EU countries or from third countries, depending on market prices and logistics. Different sustainability criteria and systems for verification would hinder these flows of goods* and would go against the principle of free circulation of goods laid down in the Treaty.

Only a few countries in the world export cereals and oilseeds to the EU. Cereals are mainly originated from Canada, Argentina, Brazil, Ukraine, Russia, USA, Australia, while oilseeds come mainly from Canada, the United States, Argentina, Brazil and Ukraine. These commodities are shipped in bulk in vessels, carrying for example some 50 000 to 80 000 t soybeans. These cargoes are directed to main EU ports and then dispatched into the hinterland. The same applies for semi-processed feedstuff such as Palm Oil, Rapeseed oil, Soybean oil and Sunflower seed oil which are usually transported in bulk tankers.

If such commodities cannot be used everywhere in the European Union, due to different sustainability criteria and/or verification mechanisms, the economies of scale resulting from the use of big vessels will no longer be possible. As a result, the prices of commodities would go up, endangering the competitiveness of the EU biofuels industry.

Moreover the supplying countries would have to set up special flows of commodities matching the requests of the end-user country. This would request a segregation of the goods, i.e. a full Identity Preservation system: separation right from the farm through the storage facilities, the transport to the port in the third country, dedicated transport to the EU and again dedicated handling and transport to the final plant. This would cause transit issues as not all member states have ports with sufficient capacity to welcome bulk quantities or sufficient storage facilities to segregate goods with different status.

Such an identity preservation system has been put in place in some supplying countries to segregate genetically modified (GM) goods from non-GM goods. This single criterion currently

induces a price increase of anywhere between 10% and 25% for non-GM products. Please note that in this example, the only criterion is whether the crop is GM or not. The more criteria are added, the higher the costs of control are. Moreover, contrary to non-GM markets, where it is possible to make quite simple and reliable analytical tests to monitor the presence of GM raw materials in the cargoes within the established legal limit, sustainable crops can not be distinguished by an analytical test from unsustainably produced raw materials.

We do not have precise estimations of what would be the price of commodities fulfilling different criteria, should several countries set up different sustainability requirements.

However it is quite clear that the more fragmented the deliveries, the more complicated the controls and the higher the costs would be.

* As the largest importer of agricultural goods worldwide, the EU imports on average 10 mio t cereals every year. These imports are mainly directed towards EU member states showing a deficit in cereals (e.g. the Iberian peninsula). In addition, EU cereals are exported from EU member states such as France or Germany to third countries. As for oilseeds and their co-products (vegetable oils and meals), the EU is highly dependent on imports of raw materials from third countries.

Moreover the goods fulfilling the strictest criteria would be scarce: should those criteria be in force in a country with high demand, prices would increase even more, putting the viability of the industry at stake. We can mention here, as an example, the price of corn gluten feed – a feedstuff imported for cattle breeding in Europe – which rose from 80 \$ to 200 \$/ton from summer 2006 to spring 2007 because the supply was cut by 2/3 due to an issue with the presence of a not yet authorised GM event.

Finally, given the reduced number of exporting countries and the huge needs of the rest of the world for food, feed and fuel, especially China, producing countries will always have the possibility to sell their commodities to less demanding markets, which do not require European sustainability criteria. Another aspect to keep in mind is the risk of triangular trade effects, as some producing countries could sell all their sustainable crops to the EU market and import raw materials from non sustainable origins to cover their local needs.

To have a real impact on sustainability, the European Union needs to engage with the rest of the world in this debate and ensure that the criteria set are simple to apply and harmonised at EU level. A worldwide agreement on such issue (Codex or WTO level) would be by far better for the trade. This would prevent the disruption of trade flows and supplies to the EU biofuels industry.

Question 1.3. Please give your general comments on the “possible way forward”, and how it could be implemented. Does it give an adequate level of assurance that biofuels will be sustainably produced? If you think the problem should be tackled in a different way, please say how, giving details of the procedures that would be used.

Sustainability criteria:

COCERAL supports the setting of sustainability criteria within the EU legislation. We would like to stress that any set of criteria would need to respect the following general principles:

- Single system across the EU
- Simple to apply and economically feasible
- Transparent
- Applicable to all feedstocks, regardless of origin
- Allow trade flows/non-discriminatory
- Certifiable, measurable, enforceable and controllable in the biofuels supply chain
- Support efforts undertaken under other initiatives at international level, such as the Roundtable on Sustainable Palm Oil (RSPO) and other roundtables*

COCERAL agrees with the sustainability criteria as proposed by the Commission (i.e. land use change criteria and GHG emissions savings values) which should be met in order for the biofuels to receive the incentives and count towards the target. Only environmental criteria should be taken into account as these are the only ones relevant with regards to the objective of meeting the Kyoto Protocol targets. COCERAL would like to stress that the calculation of the GHG savings of the biofuels and direct land use change criteria should be kept separate, land use change constituting a knock-out criterion.

- Criterion 1: Achieving a minimum level of greenhouse gas (GHG) savings

As for GHG emissions, COCERAL agrees with the EU providing default values for feedstocks and biofuel production. The JRC-Concawe-EUCAR study is already a good step in this direction and its results could be used as reference default values to be included in the new EU Directive on renewable energies. Yet default values and underlying assumptions taken into account in the study should be checked by all related stakeholders, including the

agricultural and biofuels sectors, before the values can be accepted as legal references.

* Given the variety of raw commodities used for biofuels, it is recommended to have different roundtables to take into account the specificity of each commodity.

Hence COCERAL strongly reiterates its request to participate in the review of the JRC default values.

COCERAL agrees with the setting of cut-off values and initial default values, which could be revised by comitology. However any change should be made following a clear and agreed calculation methodology established beforehand and allow sufficient time for industry and trade to adapt (for instance, 2 years).

In addition, COCERAL supports the idea that biofuel producers would be allowed to do a more detailed calculation according to their specific biofuel production process.

- Criterion 2 and Criterion 3 : avoiding major reduction in carbon stocks and major diversity loss through land use change

COCERAL stresses that the definitions of high carbon stock land and exceptional biodiversity value land should be in line with the concepts developed under the international roundtables, such as the Roundtable on Sustainable Palm Oil (RSPO). Well established definitions at international level (i.e. United Nations) as well as local specificities should also be taken into account. The EU definitions could be simpler but in no case different or more complicated. Clear rules should be implemented also for EU own feedstocks production as current EU CMO Cross Compliances rules may not integrate all the sustainability criteria proposed.

Overall sustainability scheme: a single EU harmonised system based on tradable certificates

There should be a single harmonised European system of verification of the implementation of these criteria. Criteria 2 and 3 should be ensured through an independent certification system. In addition, there should be an overarching organisation set up at European level to oversee and control the certification system. This structure should allow for:

- the certification of biofuels feedstocks according to an accredited international scheme, benchmarked against the European criteria and
- the direct certification of producers against the European biofuels criteria

Please refer to our suggestion of a sustainability scheme in Annex 1. COCERAL considers that the practicalities of the system should be designed by comitology with the assistance of a technical advisory committee of experts, gathering all involved stakeholders. A pilot phase should test the scheme before its broad implementation.

COCERAL would favour tradable certificates as a way of managing the supply of sustainable feedstock:

- This system is indeed “applicable for both small and large quantities of biomass, originating from small well-organised orderly chains and also from the long and very complex chains”
- This would allow for certificates and feedstocks to be traded separately, thereby avoiding the costs related to a segregation or identity preservation system.
- In addition, the supplement price paid for a certified lot of biomass will go to the primary producer, “which is highly doubtful in the other systems”
- This would foster primary producers to convert to sustainable production.
- It allows for the continuation of trade flows within the European market
- It would foster the use of sustainable production by the food and feed sectors.
- Such certificates could also be used for imported biofuels.

* Final report from the Dutch project group “Sustainable production of biomass” (the so-called Cramer study), p. 27

The European Commission proposal for a Directive on renewable energies should stipulate which sustainability criteria/principles should be met by biofuels in order to receive the incentives and count towards the target; it should mention that these sustainability criteria shall be ensured by a certification mechanism and that its implementation in practice (structure and organisation) will be designed by comitology, with the assistance of a technical advisory committee gathering all relevant stakeholders.

B. Questions relating to individual criteria in box 1

Question 1.4.

Carbon stock differences between land uses would be taken into account under

criterion 2. Should they also be taken into account under criterion 1? If so, what method should be used to determine how the land in question would have been used if it had not been used to produce raw material for biofuels?

COCERAL does not consider that carbon stock differences between land uses should be taken into account under criterion 1. The use of high carbon stock land should be regarded as a knock-out criterion under criterion 2.

Question 1.5.

As described in the “possible way forward”, criterion 3 focuses on land uses associated with exceptional biodiversity. Should the criterion be extended to apply to land that is adjacent to land uses associated with exceptional biodiversity? If so, why? How could this land be defined?

Legal certainty is crucial for operators. Therefore COCERAL requests that limits and boundaries of what is considered as land with exceptional biodiversity value should be clearly stated when the definition of “exceptional biodiversity land” is developed for the purpose of the new EU directive on renewable energies. Should the criterion be extended to apply to land that is adjacent to land uses associated with exceptional diversity, it should be clearly harmonized at EU level in order to avoid national differences in the implementation and verification of the fulfillment of the criterion.

Question 1.6.

How could the term “exceptional biodiversity” (in criterion 3) be defined in a way that is scientifically based, transparent and non-discriminatory?

“Exceptional diversity” requires expert definition based on scientific data. It should be internationally recognised.

Part 2. How should overall effects on land use be monitored?

Question 2.1: Please give your comments on the “possible way forward” described above. If you think the problem should be tackled in a different way, please say how.

Monitoring land use is a difficult exercise given the wide variety of factors to take into account and must be carried out by experts taking all factors into consideration.

Indeed the use of land for growing energy crops is only one factor influencing land use. There are many other important factors, including population growth, increase in the food and feed demand, industrial use of crops, housing, roads, etc.

Question 2.2: Do you think it is possible to link indirect land use effects to individual consignments of biofuel? If so, please say how.

COCERAL does not think it is possible to link indirect land use effects to individual consignments of biofuel, since for most of the feedstocks, it is not known in advance what will be the end use (food, feed or energy).

Section 3. How should the use of second generation biofuels be encouraged?

Question 3.1 How should second generation biofuels be defined?

“2nd generation” is a confusing word as such. Investment in Research and Development should be encouraged to foster the development of the most “efficient” biofuels (high yield GHG saving), regardless of the technology used.

Question 3.2 Please give your comments on the “possible way forward” described above. If you think the problem should be tackled in a different way, please say how.

Investment in Research and Development should be encouraged to foster the development of the most “efficient” biofuels (high yield GHG saving), regardless of the technology used.

Question 3.3 Should second generation biofuels only be able to benefit from these advantages if they also achieve a defined level of greenhouse gas savings?

No comment.

Section 4. What further action is needed to make it possible to achieve a 10% biofuel share?

- Link with the on-going review of the Fuel Quality Directive

Clarification is needed with regard to the interconnection between the on-going review of the Fuel Quality Directive (requirements for suppliers to reduce GHG emissions from 2011 per unit of energy by 1% a year from 2010 levels – art 7 a of the Commission proposal 2007/18/EC) and the 10% binding target of biofuels incorporation. Would 1% GHG emissions reduction only mean a 10% incorporation or actually lead to an increased need to incorporate, especially in the event that some biofuels would not count towards the target if they do not meet sustainability criteria set at EU level or count for a reduced percentage of incorporation? A lack of clarity would lead to a high degree of uncertainty which would be detrimental to biofuels investors.

- Abolition of set-aside

The growth in demand for grain and oilseeds will change the EU supply and demand balance sheets significantly. In general terms, demand will increase, surpluses will be reduced and imports will have to be increased for some commodities. Along the road, all production resources will have to be tapped (as long as a sustainable crop production is possible). Therefore, and in the light of the decoupled payments to farmers, set-aside is an outdated instrument and should be abolished immediately.

- Harmonisation of fiscal incentives

A harmonisation of fiscal incentives within the EU is crucial to create an adequate level playing field for operators. Thus current data demonstrate that fuel taxation differs a great deal among EU Members States, which may lead to sub-optimal transportation routes, as transport companies are encouraged to fuel their vehicles where it is the most affordable.

Conclusion:

Biofuels feedstocks are traded at global level on a bulk commodity market serving food, feed and energy end users.

A centralized sustainability system must be set at European level on the basis of:

- simple environmental criteria (criteria 1, 2 and 3 as proposed by the Commission) to be listed in the new EU Directive on renewable energies**
- calculation of GHG emissions savings (criterion 1) to be kept separate from land use change criteria (2 and 3)**
- ensured by independent certification and verification**
- allowing accreditation of existing sustainability schemes such as the roundtables (RSPO) and direct certification of producers**
- concrete structure and organization to be designed by comitology with the assistance of a Technical Advisory Committee of experts including all relevant stakeholders**

A system of tradable certificates is highly recommended

Should sustainability criteria differ from one Member state to another, this would lead to a fragmentation of markets which would be highly detrimental to global trade flows of feedstocks, increase commodity prices, and cause transit and supply issues.