



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR ENERGY

Director-General

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Raffaello Garofalo  
Secretary General  
European Biodiesel Board  
Boulevard Saint Michel 34  
B - 1040 Brussels

Dear Mr. Garofalo,

Thank you for your letter addressed to Commissioner Oettinger raising the issue of the application of the biofuels sustainability criteria to the harvest of 2010. I am informed that two constructive meetings with my services, one of which with the participation of a Member of the Cabinet of the Commissioner, have taken place in the last few days on the matter. I am now writing to confirm the views of the Commission services and to outline a practical way to address the issues while fully respecting the legal framework set by EU legislation.

It is my understanding that, whilst you confirm that there is sufficient biofuel feedstock available to meet the EU sustainability criteria, hardly any such material have been certified so far. In particular you raise a concern regarding the harvest of 2010.

The matter you raise has my full attention and I share your view related to the importance of the sustainability criteria as a key element of our renewable energy policy. In this sense, we appreciate your commitment to the implementation of the EU sustainability criteria and consider that the biofuels industry has an important part to play in reaching the objectives of the EU's renewable energy policy.

As you know, the Commission is committed to the timely implementation of the Renewable Energy Directive. To assist Member States in the implementation of the sustainability criteria from 5 December 2010 (date of transposition of the directive), in June this year we presented guidelines<sup>1</sup> for setting up certification schemes, so-called 'voluntary schemes'. As part of the transposition of the directive, Member States, in compliance with Article 27(1), will set up a method through which economic operators can submit information to show that consignments of biofuels (and bioliquids) comply with the sustainability requirements. The Directive does not detail how Member States must set up such a method, though it requires that Member States ask economic operators to do three things: 1) to submit information; 2) to arrange for an adequate standard of independent auditing; and 3) to use a mass balance system.

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<sup>1</sup> Available at: [http://ec.europa.eu/energy/renewables/biofuels/sustainability\\_criteria\\_en.htm](http://ec.europa.eu/energy/renewables/biofuels/sustainability_criteria_en.htm)

You indicate that because most Member States' rules for verifying compliance with the sustainability criteria were not yet available at the time of the 2010 harvest, the basis for verification of those raw materials that will be used for biofuels after 5 December 2010 when the sustainability scheme will start to apply is unclear. I understand that you fear that this will mean that the harvest of 2010 would be lost and this would seriously damage the industry.

The Annex to this letter sets out a system that is in line with the requirements of the Renewable Energy Directive and, particularly for the 2010 harvest (which occurred before the directive was transposed) allows for biofuels produced from raw materials that have already been harvested still to be verified as meeting the EU sustainability criteria. I want to stress that the method proposed does not imply that there is room to compromise a proper check on the sustainability requirements for biofuels and bioliquids. This includes the need to have evidence independently audited.

I trust you will circulate this letter to the organisations representing other parts of the supply chain for biofuels. As several Member States have raised similar issues in various fora, intend to circulate this letter and its annex to Member States' authorities as well.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Philip Lowe', with a stylized, flowing script.

Philip Lowe

## Annex – System for implementation of the sustainability criteria

It follows from Article 18(1) and 18(3) of the Renewable Energy Directive that verification of compliance with the EU sustainability criteria for biofuel and bioliquids requires that Member States ask economic operators to do three things: 1) to submit information; 2) to arrange for an adequate standard of independent auditing; and 3) to use a mass balance system. One way these requirements may be implemented by Member States could be:

### 1) Submission of information:

- As indicated in the Communication on voluntary schemes<sup>2</sup> the submission of information can consist of a statement that the biofuels/bioliquids were obtained in a way that complies with the Directive's criteria. There is no general requirement that evidence itself has to be submitted, although it should be made available to Member States on their request.
- There is no requirement to impose a specific format for economic operators to use when submitting information about compliance with sustainability requirements. Member States may choose e.g. only to provide an address for where to submit the information.
- Evidence may be collected retrospectively, e.g. after materials have been sold or used, as long as the evidence can be presented when auditing takes place (see point 2).
- As indicated in the Communication on voluntary schemes evidence of compliance with the land-related criteria could take many forms, including aerial photographs, satellite images, maps, land register entries/databases<sup>3</sup> and site surveys. Evidence of compliance can be 'positive', e.g. if it is shown that land was cropland in January 2008 or a little earlier this may be enough to show compliance with some or all of the land-related criteria.

### 2) Arranging for an adequate standard of independent auditing:

- Member States shall require economic operators to arrange for an adequate standard of independent auditing of the information submitted, and to provide evidence that this has been done.
- Auditing can be done retrospectively on a yearly basis, i.e. there is no requirement that an audit takes place before materials are sold or used.
- Auditing can be done on a sample basis, in which case it is for independent verifiers to define the size of the sample that will permit them to reach the level of confidence necessary to issue a verification statement.

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<sup>2</sup> OJ 2010/C 160/1

<sup>3</sup> E.g. the Integrated Administration and Control System (IACS) for the EU's Common Agricultural Policy.

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3) Using a mass balance system<sup>4</sup>:

- When economic operators choose to use a mass balance system in which they average the mass balance over a period of time, an appropriate time period needs to be established. It may be appropriate for Member States to allow for additional flexibility in the period over which the balance has to be achieved for crops that have been harvested previous to the implementation of the system. However, the period over which the balance has to be achieved on a site should not exceed one year.
- The evidence of compliance with the mass balance system can be collected retrospectively as long as the evidence of the physical link between all stages can be presented when auditing takes place.

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<sup>4</sup> Typically, biofuels/bioliquids have a production chain with many links, from field to distribution of the fuel. It is in relation to the final product that compliance with the requirements of the Directive need to be shown. To show this, claims will need to be made about the raw material and/or intermediate products used. The method laid down in the Directive by which a connection is made between information or claims concerning raw materials or intermediate products and claims concerning final products is the mass balance method. This requires a physical link between all stages (as opposed to 'book and claim' systems where after feedstock production the certificate and the raw material are traded separately from each other). However, the mass balance system does allow raw materials with different sustainability characteristics to be mixed (as opposed to physical segregation systems), but on balance no more sustainable material can be taken out of such a mixture than went in.