Subject: Implementation of the recently adopted criteria and geographic ranges of highly biodiverse grassland

Dear Sir or Madam,

The Commission has adopted on 8 December 2014 a Regulation\(^1\) setting out criteria for compliance with Article 17(3)(c) Renewable Energy Directive and Article 7b(3)(c) of the Fuel Quality Directive. This letter provides guidance how the provisions laid down in the Regulation should be implemented by the voluntary schemes.

The Renewable Energy Directive provides that biofuels may not be made from raw material obtained from grassland that was highly biodiverse in January 2008 or afterwards and requested the Commission to establish criteria and geographic ranges to determine which grassland qualifies as highly biodiverse grassland. In absence of such detailed criteria and geographic ranges the Commission has so far recognised voluntary schemes for demonstrating compliance with this criterion only when the schemes required strict protection of all grassland independent of its biodiversity value. In other words no raw material could be considered to be compliant with the sustainability criteria for biofuels if it was obtained from land which was grassland in January 2008 or afterwards. This pragmatic approach can also be followed in the future, provided that voluntary schemes apply a definition of grassland which includes at least the areas covered by Article 1(1) of the Regulation.

Voluntary schemes may also opt to limit the protection to those grasslands which were highly biodiverse in January 2008 or afterwards. This requires distinguishing highly biodiverse grassland from other land. In order to make this distinction, a number of questions have to be answered:

\(^1\) Commission Regulation (EU) No 1307/2014 of 8 December 2014 on defining the criteria and geographic ranges of highly biodiverse grassland
For all land which according to the definition laid down in Article 1(1) was grassland in January 2008 or has become grassland in the meantime it needs to be established whether the grassland would remain or cease to be grassland in the absence of human intervention (for "natural highly biodiverse grassland" and "non-natural highly biodiverse grassland", respectively) as in the further procedure it needs to be distinguished between those two types of grassland.

Case 1: Natural highly biodiverse grassland

In case the grassland would remain grassland or would have remained grassland (if it was converted) in absence of human intervention and the land is located in the areas referred to in Article 2 of the Regulation the land has to be considered to be or have been natural highly biodiverse grassland.

If such land is located outside these areas it needs to be assessed whether the grassland maintains or would have maintained the natural species composition and ecological characteristics and processes. If this is the case the land has to be considered to be or to have been natural highly biodiverse grassland.

No raw materials from land which is or was natural highly biodiverse grassland in January 2008 may be used for biofuel production.

Case 2: Non-natural highly biodiverse grassland

In case the grassland would not remain grassland in absence of human intervention and the harvesting of the raw material is necessary to preserve the grassland status, no further evidence is necessary to show compliance with Article 17(3)(c) even if the grassland is located in the areas laid down in Article 2 of the Regulation.

If the harvesting of raw material is not necessary to preserve the grassland status or the grassland has been converted e.g. to cropland used for the production of raw materials, it has to be established whether the grassland is or was highly biodiverse:

• If the land is located in the areas laid down in Article 2 the grassland has to be considered non-natural highly biodiverse grassland.

• If the land is located outside these areas it needs to be assessed according to the criteria laid down in Article 1 (3) and (4) of the Regulation whether the land is/was degraded and species rich. If the land is not degraded and species rich, or it was before being converted, it has to be considered as non-natural highly biodiverse grassland. In case the grassland is or was non-natural highly biodiverse grassland raw material from this area cannot be regarded compliant with the sustainability criteria.

If grassland has already been converted to arable land it is not possible to assess the characteristics of the land itself. In particular if the conversion took place before this Regulation was adopted other relevant sources of information can be used e.g. information on the typical properties of grassland in the area or other reliable information concerning the characteristics of the land. In such cases taking a precautionary approach would be appropriate.
Verifying compliance with criterion protection highly biodiverse grassland partially requires technical knowledge that goes beyond the competences that can be expected from the auditors verifying the claims made by the market operators.

For instance assessing whether grassland maintains the natural species composition and ecological characteristics and processes and whether grassland is species-rich can only be done by experts that have acquired a specific qualification for this purpose. These experts must be external, independent of the activity being audited and free from conflict of interest. The role of the expert would be to establish case by case whether a specific piece of land is, or in case of conversion, was highly biodiverse grassland. Such an assessment does not need to be done annually. Often, it is sufficient that it is done once e.g. if a piece of grassland is converted into arable land to grow agricultural raw materials. In contrast the role of the independent auditor is to establish whether an assessment was necessary, whether it came to the conclusion claimed by the operator and whether the expert that conducted the assessment fulfilled all requirements.

Yours sincerely,

[Signature]

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