

ECOS' Feedback on the European Commission Draft Delegated Act on High and Low ILUC risks biofuels

The adoption of RED II confirmed the EU's intention to minimize incentives for food-crop based biofuels, especially those causing the biggest indirect impacts such as ILUC emissions.

The legislator gave a mandate to the European Commission for the development of criteria to characterise high and low ILUC risks biofuels. ECOS believes that this draft delegated act does not properly fulfill this mandate. Indeed, we doubt that the current draft delegated act will help to end EU support to the highest emitting biofuels for two main reasons:

1. **it sets a too high threshold for feedstocks to be considered high ILUC risk;**
2. **it sets too low requirements for high ILUC risk biofuels to be certified low ILUC.**

High ILUC risk biofuels

Regarding the characterisation of high ILUC risks biofuels, studies show that biofuels can emit more GHGs than conventional biofuels even when land expansion to high carbon stocks land is lower than 10%. It is not acceptable to continue to support biofuels emitting even more GHGs than conventional fuels and to do so in the name of climate action. Therefore, as proposed by many organisations providing feedback to this draft text, **we urge the European Commission to lower the threshold set in Article 3(b) to 5% maximum.** A more conservative threshold would better ensure that indirect effects – at least as far as ILUC emissions are concerned – are minimised. Indeed, as indicated by ICCT in their reply: *'Using the Commission's assumptions on amortization period (20 years), energy yield per area (48 GJ/ha/yr), and GHG emissions of biofuel production other than land use change emissions (47 gCO₂e/MJ), we estimate that with a 4.5% share of expansion onto forestland, biofuel produced from a generic oilcrop would produce zero GHG savings compared to petroleum'*.

Low ILUC risk assessment

Regarding the elements developed for low ILUC risk certification, ECOS regrets their low ambition and fears that they are not sufficient to ensure that only low emitting biofuels get support on the EU market. These requirements should be made more stringent. To do so, we suggest the following:

- Article 5(1)(a)(i) makes the 'additionality test' easier to pass for small holders. We do not see any sound basis to presume additionality if the feedstock is produced by small holders. The size of a plantation or the type of land tenure have no relation to the risk of indirect deforestation or ILUC. **The exemption created by Article 5(1)(a)(iii) should be deleted.**
- Regarding the quantification of additional feedstock, the current definition (**Article 2(7)**):
 - a. explicitly excludes 'annual yield variations' without defining how such assessment should be performed. Weather conditions have an important impact on yields. To avoid that biomass production above the yield baselines are automatically eligible for low ILUC certification, **an ex post assessment of the expected yield taking into**

account weather variables in that year should be included in the calculation methodology.

- b. provides that additionality is assessed over 3 years. 3 years seems very little particularly when dealing with rotational crops, such as wheat. Indeed, in such case, fluctuations would take longer to be measured. **Therefore, we suggest either to increase the timeframe to measure additional feedstock or to delete the possibility to be certified low ILUC thanks to yield increases altogether.**
- Regarding the assessment of the additional feedstock against the sustainability criteria (**Article 5(1)(a)(i)**), we would like to recall that increasing yields most often come with less sustainable agricultural practices (e.g. use of more pesticides and fertilising products, less crop rotation). There is an obvious risk that higher yields lead to higher GHG emissions, biodiversity losses, soil erosion, etc. **These additional adverse effects should be measured, and exclusively allocated to the additional feedstock** (rather than to the entire harvested area) **when assessing the compliance with sustainability criteria** (e.g. GHG emissions reductions) of that biofuel. This allocation principle should be made clear in Article 5(1)(a)(i). In addition, information with relation to the implementation of the additionality measures (e.g. additional machinery needed, quantity of fertilising products used compared to the past, etc.) should be added to the list of information on the additionality measures in **Article 4(2)**.
 - ECOS thinks that the unused land category (**Article 2(3)**) should be defined in more dynamic terms, and **reflect the constant increase in land demand coming from a growing population**. The absence of such considerations could lead to the production of biofuels in land which would have been used for food production instead.
 - Finally, we do not see any added value in having a specific category for 'abandoned land' (**Article 2(4)**). This category is a mere sub-type of unused land. We suggest its deletion. Should 'abandoned land' being kept a separate category, we suggest the following changes to the current definition: - The 5-year criteria applying to unused land should be explicitly referred to. – As far as possible, the definition should avoid socioeconomic values, that make the very nature of abandoned land volatile.

To conclude, ECOS welcomes and agrees with the 60,000+ replies to this feedback mechanism overwhelmingly criticising what **risks to be a poor implementation of RED II. We urge the European Commission to redraft substantially this delegated act so as to bring it in line with the spirit of the Directive and finally phase out public support to high emitting biofuels.**