

Biofuels – Driving best practice in voluntary certification

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Status quo: Good and bad schemes approved with no transparent process

According to the Fuel Quality Directive 98/70/EC (FQD) and the Renewable Energy Directive 2009/28/EC (RED), operators can use voluntary certification schemes recognised by the European Commission (EC) as **proof of compliance** with sustainability criteria. Those schemes are developed and managed by private parties with no control by the EC or other public authority. Their services are provided on the basis of contractual arrangements with biofuels operators.

Both Directives provide that when biofuels are certified under any of the recognised schemes, competent authorities in **all EU Member States** must consider them to be in compliance with the Directives' sustainability criteria and therefore eligible for subsidies under national schemes. Competent authorities may **not seek any further evidence** of sustainability. While the Directives provide alternative instruments to evidence compliance with sustainability criteria, recognised schemes remain the most attractive to operators¹.

With the recognition of and reliance on voluntary certification schemes, **the application and enforcement of EU law is outsourced to private parties**. Although voluntary certification schemes may help competent authorities monitor compliance, it is fundamental to ensure that the schemes themselves are as reliable as possible.

This is not the case under the existing Directives, which only provide **vague criteria** about the minimum quality of schemes. Recognition may thus be granted where voluntary certification schemes meet '*adequate standards of reliability, transparency and independent auditing*'. It is true that the EC has published guidance on certain of these aspects, but that is not legally binding. Moreover, the Directives contain **no provisions governing the recognition process itself**, which has so far been non-transparent and not open to input from the public.

The result is that the quality of recognised schemes varies widely – some schemes are good and reliable, others are not². Because certificates have the same legal value regardless of the scheme granting them, the worse (and cheaper) ones are preferred by operators.

¹ Apart from relying on recognised schemes, operators may show compliance with sustainability criteria in accordance with national schemes (Art. 7c(3) FQD and Art. 18(3) RED) or international agreements concluded between the EU and third countries (first subparagraphs of Art. 7c(4) FQD and Art. 18(4) RED). However, national schemes only prove sustainability in individual Member States, while no relevant international agreement has been concluded to date. Therefore, recognised voluntary certification schemes are in practice the preferred choice for operators to show compliance with the Directives' sustainability criteria.

² Also see NL Agency / Ministry of Economic Affairs, Agriculture and Innovation of the Netherlands | March 2012: '*Selecting a biomass certification scheme – a benchmark on level of assurance, costs and benefits*', which compares 8 out of 13 recognised schemes.

The way forward: More stringent criteria and open recognition process

The Directives should ensure that only sound and reliable schemes can be used to show compliance with the Directives' sustainability criteria. They should **drive best practices** in the field of voluntary certification – not a lowering of safeguards and costs to gain market share. To this end, reform is needed in three areas. First, criteria about the quality and reliability of schemes need to be clearer and more ambitious. Second, transparency and openness of the whole process should be improved. Third, information about the real-world impact of schemes should be used by the EC to monitor their performance and, where appropriate, propose legislative reforms.

Clearer, more ambitious criteria on the quality and reliability of schemes

- **Accreditation** of certification bodies and other relevant bodies and persons such as auditors against relevant international standards (e.g. ISO or equivalent);
- Recognition and resolution of **conflicts of interest**;
- **Audits are conducted in the field** with sufficient frequency by independent and competent auditors, in accordance with clear and documented procedures and with consultation of relevant natural or legal persons who are affected by biofuels operations;
- **Auditor reports** are kept for at least 5 years and accessible by the EC on request;
- Situations of **non-compliance** are identified and addressed without delay, with short grace periods and suspension or revocation of the certificate in case of persistent non-compliance;
- The scheme allows the **public to submit complaints** about biofuels operations in accordance with clear and effective procedures. Those complaints are acted upon effectively;
- A **list of operators certified under each scheme** is made available on a web page, with relevant certificates and summaries of auditor reports and complaints made by the public.

Transparency and openness in the EC recognition process

- **Schemes submitted for recognition are published** on the transparency register as soon as their application is received;
- A **public consultation** is opened to gather observations from stakeholders;
- **Recognised schemes are published in a single document** on the transparency register. Schemes are **translated** in the official language of the country where the scheme operates;
- Recognition decisions indicate the possibility for the **public to submit substantiated concerns** to the EC on the practical operation of the scheme. Decisions are **translated** in the official language of the country where the scheme operates.

Monitoring the real-world impact of voluntary certification schemes

- **The EC should be empowered to verify the practical operation of recognised schemes** by accessing auditor reports and other relevant documents;
- If justified by evidence of shortcomings (e.g. through substantiated concerns) in the operation of the scheme, the EC should **suspend recognition** until the matter is resolved;
- The EC should **report periodically** to the Parliament and the Council **on experience gathered** in relation to voluntary schemes and make proposals for reform as appropriate.