

Feedback consultation on the draft delegated act supplementing Directive (EU) 2018/2001 as regards the determination of high indirect land-use change (ILUC)-risk feedstock for which a significant expansion of the production area into land with high-carbon stock is observed and the certification of low indirect land-use change (ILUC)-risk biofuels, bioliquids and biomass fuels.

Copa and Cogeca response

I. GENERAL COMMENTS

1. The proportion of palm oil and its derivatives in biodiesel and petrol has increased steadily (see Annex 1). While cold resistance standards previously limited the share of palm oil in biodiesel obtained from conventional esterification technology, new vegetable oil hydrotreating technology makes it possible to depart from them. As a result, palm oil is able to gradually reach the cap on crop-based biofuels and to contribute to achieving the objective to promote renewable energy sources in the transport sector set by this directive, both for diesel and petrol. This will leave less room for biofuels of European origin. For this reason, during the trilogues on the RED II Directive (Directive EU No 2018/2001)¹, Copa and Cogeca supported the EP's position aiming to set the contribution of palm oil at 0% in the objectives to promote renewable energy sources.
2. Copa and Cogeca have taken note of the draft delegated act put forward by the Commission on 8th February 2019 (see Annex 2: summary of the Commission proposals) which stipulates detailed rules for the implementation of Article 26.2 of Directive (EU) No 2018/2001².
3. Although the Commission recognises that oil palm production expands into land with substantial carbon stock and classes it as high ILUC-risk, they propose three alternative additionality measures for the certification of low ILUC-risk feedstock, including the production of palm oil by small farm holders on an agricultural area of between 2 and 5 hectares, or production from unused land, including abandoned or severely degraded land. Copa and Cogeca believe that social issues, such as the inclusion of small holders, have never been addressed in the political compromise which only targets the indirect risk of expansion into land with high-carbon stock. Moreover, the Commission's proposals will be inefficient and will lead to a circumvention of the high ILUC-risk feedstock cap set at the level of consumption recorded in the Member States in 2019. According to Copa and Cogeca, this approach will be inefficient because small-scale palm oil producers are not independent of large plantations and there is no guarantee that they are not associated with deforestation. Moreover, there is considerable production potential on unused land at global level.
4. **It is difficult for any European farmer respecting high environmental standards and facing a cap on biofuels/bioliquids/fuels produced from European agricultural food and feed crops to understand why the Commission is proposing these lax criteria for low ILUC-risk palm oil. There is a genuine**

¹ See position paper BI(18)1270

² Article 26.2 of Directive (EU) No 2018/2001 (RED II) caps high indirect land-use change (ILUC)-risk biofuels, bioliquids or biomass fuels produced from food and feed crops for which a significant expansion of the production area into land with high-carbon stock is observed, at the level of consumption of such fuels recorded in that Member State in 2019, unless they are certified to be low ILUC-risk biofuels, bioliquids or biomass fuels.

risk of circumvention. Without closely monitoring deforestation trends in the third countries in question, it will be impossible to avoid loopholes in the low ILUC-risk certification.

5. For this reason, Copa and Cogeca believe that the delegated act proposed on 8th February 2019 will not lessen the negative impact of using palm oil as a renewable energy source to reduce greenhouse gases in the road and rail transport sector. Copa and Cogeca therefore call on the Commission to propose stricter certification criteria for low ILUC-risk feedstock to prevent biofuels/bioliquids/fuels produced from oil palm from being incorrectly accounted for.
6. Copa and Cogeca call on the Commission to ensure that the final delegated act establishes stringent legally binding measures to prevent exemptions for high ILUC-risk biofuels/bioliquids/fuels produced from oil palm from circumventing Article 26.2. Copa and Cogeca propose that the delegated act put forward on 8th February 2019 be rejected. Copa and Cogeca's proposals to improve the draft delegated act are as follows:

II. SPECIFIC REMARKS

1. The determination of high ILUC-risk feedstock for which a significant expansion of the production area into land with high-carbon stock is observed.

- 1) Copa and Cogeca support the Commission's proposals with regard to the two criteria, their additionality, the application of the formula and the 10% figure for the share of expansion into land with high-carbon stock, which leads to the determination of palm oil as a high ILUC-risk feedstock. However, Copa and Cogeca question the justification for the 2.5 productivity factor for perennial crops. The Commission's proposals lead to the indisputable classification of palm oil as a high ILUC-risk feedstock. However, Copa and Cogeca believe that it is necessary to determine not only palm oil but also all the co-products of processed oil palm fruits and trees.
- 2) Copa and Cogeca reiterate that biofuels from European arable crops are an efficient way of reducing the greenhouse gas emissions of the transport sector. Given the EU's ambitious climate objectives and the greater relative effort required of the non-ETS sectors in the Effort Sharing Decision³, the EU should not limit the contribution of biofuels/bioliquids/fuels produced from food and feed crops in the objectives to promote renewable energy sources to a maximum of 7% of the final consumption of energy in the road and rail transport sectors in that Member State (see Article 26.1 of Directive (EU) No 2018/2001). However, according to Copa and Cogeca, the EU should limit the accounting of biofuels/bioliquids/fuels produced from processed oil palm and completely exclude it much sooner than 2030, i.e. as of 2021.

2. *Low ILUC-risk biofuels, bioliquids and biomass fuels*

- 1) Copa and Cogeca take note of the definition of low ILUC-risk biofuels, bioliquids and biomass fuels which contain a volume of feedstock exempt from the high-risk category.
- 2) Copa and Cogeca welcome the general certification criteria. However, the three alternative additionality measures to produce low ILUC-risk feedstock, as proposed by the Commission, will lead to a circumvention of the cap on high ILUC-risk biofuels/bioliquids/fuels produced from food and feed crops for which a significant

Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013

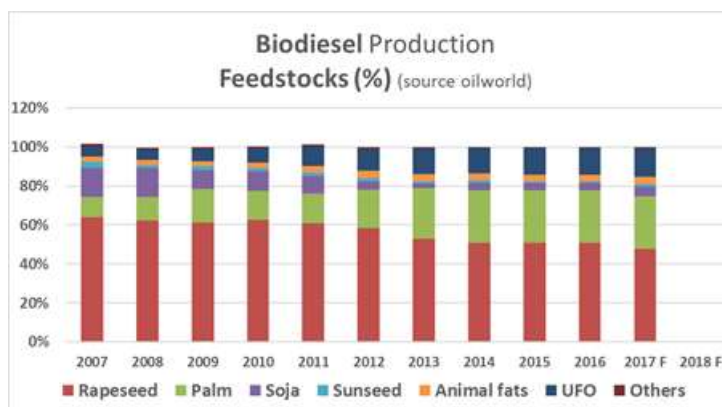
expansion of the production area into land with high-carbon stock is observed. According to Copa and Cogeca, this situation is unacceptable. Indeed, 30-40% of palm oil in Indonesia comes from small-scale producers⁴ and the notion of unused land could be misused. This is why Copa and Cogeca call for the certification of low ILUC-risk feedstock to be regionalised. Copa and Cogeca propose that:

- the European Commission, together with the competent authorities in the countries concerned, establish an observatory to monitor deforestation and the conservation of high-carbon stock land. In addition to this, deforestation could be monitored by European satellites.
 - the European Commission submit a periodic report on the state of deforestation, if necessary accompanied by a European Commission decision prohibiting the issuance of low ILUC-risk certificates when deforestation persists in the countries concerned.
- 3) All low ILUC-risk certification criteria, whether increasing productivity or production on unused land, must meet the condition that the financial profitability of the additional measures depends exclusively on EU biofuel demand.
 - 4) The definition of unused land must be made stricter with a period of non-use of at least ten consecutive years before the start of cultivation.
 - 5) Small-scale producers must be excluded from the low ILUC-risk certification in order to reduce the risks of fraud and the burden of controls.
 - 6) With regard to verifying compliance with the sustainability criteria, Copa and Cogeca reject the Commission's proposal which allows for the use of systems that are not recognised by the EU. Copa and Cogeca call for economic operators to be obliged to use voluntary national or international certification systems recognised by the EU.
 - 7) Copa and Cogeca propose that additional feedstock production methods be reinforced by establishing a reference standard equal to an additional 3% of the average yield of the plot in the three years immediately preceding certification. Any issuance of low ILUC-risk certificates must be subject to meeting this requirement.
 - 8) Copa and Cogeca are against economic operators being able to use the mass balance system which allows batches certified as low ILUC-risk to be mixed with batches certified as high ILUC-risk. Copa and Cogeca call for economic operators to separate high ILUC-risk palm oil from low ILUC-risk palm oil.
 - 9) Copa and Cogeca underline that the models are not able to distinguish indirect land-use changes. This is why the volume of products certified as low ILUC-risk should not exceed the cap on the volume of high ILUC-risk products in the Member States.
 - 10) Copa and Cogeca criticise the fact that the proposed delegated act is not supported by an impact assessment. A literature review and an analysis of the available scientific data are not sufficient to estimate the consequences, changes and benefits of the set criteria for low ILUC-risk feedstock certification, neither in terms of production expansion nor greenhouse gas emissions.

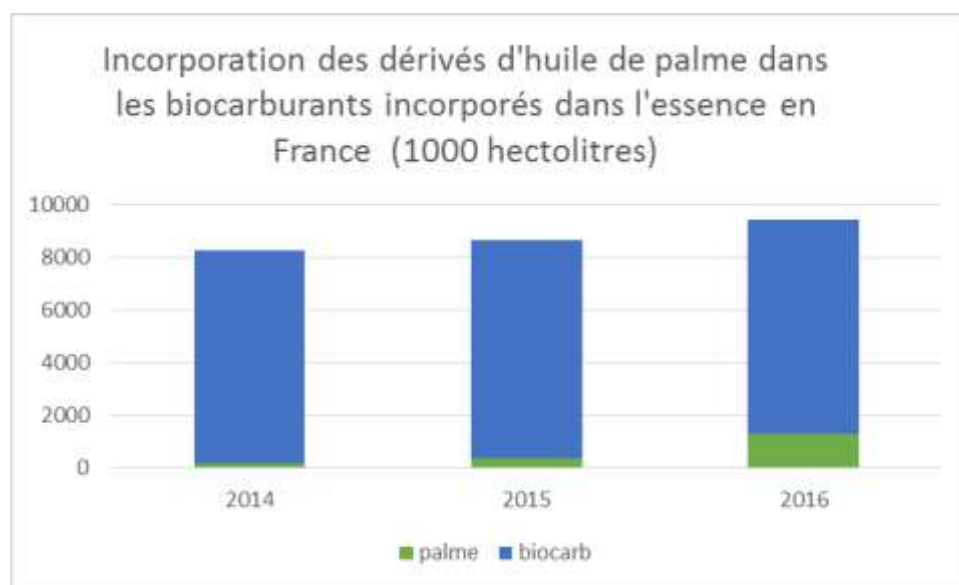
⁴ Palm Oil Facts & Figures on Sustainability and Trade, European Union External Action Service, 2018

ANNEX 1

A) PERCENTAGE OF FEEDSTOCKS USED IN BIODIESEL IN THE EU



B) VOLUME (1000 HECTOLITRES) OF PALM OIL DERIVATIVES IN BIOFUELS INCORPORATED INTO PETROL IN FRANCE OVER THE PERIOD 2014-2016



In 2016, hydrotreated palm oil derivatives represented 10% of the volume of biofuels incorporated into petrol in France.

Source: Syndicat National des Producteurs d'Alcool agricole (SNPA/France, Association of French Alcohol Producers)

1,000 hectolitres	2014	2015	2016
Proportion of petrol from hydrotreated palm oil	137	278	915
Conversion into bioethanol equivalent to take into account the LHV (X 1.42)	196	397	1,307
Total volume of biofuel incorporated into petrol	8,246	8,647	9,451

ANNEX 2

Summary of the Commission's proposals

The Commission proposes two cumulative criteria: the average annual expansion of the global production area of the feedstock since 2008 must be higher than 1% and affect more than 100,000 ha, and the share of such expansion into land with high-carbon stock must be higher than 10%.

The definition of low indirect land-use change-risk biofuels, bioliquids or biomass fuels is laid out in Article 26 paragraph 2 of Directive (EU) No 2018/2001 (RED II).

The definition of unused land refers to a period of non-use of at least five consecutive years before the start of cultivation.

The Commission proposes four general criteria for the certification of low indirect land-use change-risk biofuels, bioliquids or biomass fuels, namely: compliance with the sustainability criteria set out in Article 29 of Directive (EU) No 2018/2001, additionality measures for the production of additional feedstock, requirements regarding the collection of evidence to verify the production of additional feedstock, and an average yield reference basis at plot level of 3 years immediately preceding the year when the additionality measure was applied.

The Commission proposes three alternative additionality measures to produce the additional feedstock. These concern the financial attractiveness of the objectives to promote renewable energy sources in the EU, the cultivation of food and feed on unused land, including abandoned land or severely degraded land, or production by independent small farm holders on an agricultural area between 2 and 5 hectares.

In order to verify the compliance of low indirect land-use change-risk biofuels, bioliquids and biomass fuels with the sustainability criteria, the Commission proposes that operators use a mass balance system and makes it optional for operators to use voluntary national or international certification schemes recognised by the EU.

The Commission proposes a revision of the report on feedstock expansion by 2021.

BI(19)1393:2