

## E-ALERT | Clean Energy and Climate

October 23, 2012

### THE EUROPEAN COMMISSION PROPOSES NEW REQUIREMENTS ON BIOFUELS MARKETED IN EUROPE

On October 17, 2012, the European Commission presented a proposal that would limit the consumption of food crop biofuels and bioliquids in Europe.<sup>1</sup> The proposal is intended to respond to allegations that food crop biofuels and bioliquids result in higher world food prices and indirect land use change (“ILUC”) gas emissions. It could result in a U-turn from the EU’s biofuels policy and significantly affect current and future investments in the sector.

The Commission’s proposal must now be considered for adoption by the European Parliament and Council. The following are likely to be the most controversial issues during the legislative procedure:

- A 5% cap on the contribution of food crop biofuels to the current 10% renewable energy transport target. This cap would significantly prevent any further increase of the market share of food crop biofuels in Europe.
- An increase of the greenhouse gas emission savings compared to emissions from fossil fuels that biofuels and bioliquids must achieve, and the extent to which installations already in operation may be grandfathered.
- The possibility to include ILUC emission factors in the methodology to calculate the greenhouse gas emission savings required for biofuels and bioliquids. Such factors could effectively prevent the marketing of biodiesel in Europe.
- The extent to which food crop biofuels should benefit from EU and Member State support.

This note briefly reviews the most important proposed changes affecting the production and consumption of biofuels in Europe and explains the legislative procedure that will follow.

#### THE RED AND FQD

The proposal would amend the rules on biofuels and bioliquids of the EU’s Renewable Energies Directive (“RED”) and Fuel Quality Directive (“FQD”). The current RED requires Member States to achieve by 2020 specific national renewable energy targets, so that overall the EU achieves a 20% target. It also requires all Member States to achieve a target of 10% of share of energy from renewable sources in their final consumption of energy in transport. The Directive establishes sustainability criteria that biofuels and bioliquids must comply with in order to be counted towards the targets and to qualify for subsidies. Among these criteria is a requirement that biofuels and bioliquids must achieve a greenhouse gas emission saving of 35% compared to emissions from fossil fuels by mid-2010, and by April 2013 for installations that were already in operation in January 2008. This threshold increases to 50% by 2017, and to 60% by 2018 for biofuels and bioliquids produced in installations whose production started in or after 2017.

The FQD requires fuel suppliers to reduce by at least 6% the life cycle greenhouse gas emissions per unit of energy of fuels used in the EU by road vehicles and other mobile equipment by 2020.

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<sup>1</sup> The Commission’s legislative proposal is available on the Internet at [http://ec.europa.eu/clima/policies/transport/fuel/docs/com\\_2012\\_595\\_en.pdf](http://ec.europa.eu/clima/policies/transport/fuel/docs/com_2012_595_en.pdf).

Biofuels may be used to achieve this target only if they meet specific sustainability criteria, including the greenhouse gas emissions savings specified above.

## PROPOSED AMENDMENTS

The Commission's proposal aims to limit the consumption of food crop biofuels and to promote second and third generation biofuels. It would introduce the following significant amendments to the RED and FQD:

- **Cap to 5% the Contribution of Food Crop Biofuels to the Renewable Energy Transport Target:** The proposal limits to 5% the maximum contribution of biofuels produced from cereals, other starch rich crops, sugars and oil crops towards the 10% renewable energy transport target. Thus, these food crop biofuels would not be able to contribute to more than half of the renewable energy transport target that Member States must achieve by 2020. This 5% cap was already the estimated market share of food crop biofuels in 2011. While the market share of food crop biofuels may in theory continue to grow in the different Member States, such higher market share would not count towards Member States' renewable energy targets.

In a memorandum accompanying its proposal, the Commission also states the view that biofuels that do not lead to substantial greenhouse gas savings (when ILUC emissions are included) and that are produced from food crops, should not be subsidized after 2020.

- **Increase the Energy Contribution of Second and Third Generation Biofuels Towards the 10% Renewable Energy Transport Target:** The proposal encourages Member States to promote the production and consumption of second and third generation biofuels by increasing their energy contribution when calculating Member States' progress to achieve the 10% renewable energy transport target. Algae, various types of waste, straw, animal manure, sewage sludge, tall oil pitch, crude glycerin, bagasse, grape marcs and wine lees, nut shells, husks, palm oil mill effluent and empty palm fruit bunches, cobs, bark, branches, leaves, saw dust and cutter shavings would have an energy contribution four times their energy content. In turn, used cooking oil, certain animal fats, non-food cellulosic material and ligno cellulosic material would have an energy contribution two times their energy content.
- **Significantly Increase the Greenhouse Gas Emission Saving Requirements of the RED and FQD:** Biofuels and bioliquids would qualify to meet the renewable energy targets of the RED, and biofuels would qualify to meet the 6% life cycle greenhouse gas emissions reduction target of the FQD, only if they reach a 60% greenhouse gas emissions saving for biofuels and bioliquids produced in installations starting operation after 1 July 2014. Biofuels and bioliquids produced in installations in operation before 1 July 2014 would have to achieve a greenhouse gas emission saving target of at least 35% until the end of 2017 and 50% from January 2018. The proposal specifies that an installation would be considered to be in operation only if "the physical production of biofuels has taken place."
- **Require Fuel Suppliers and Member States to Report on Estimated Indirect Land Use Change Emissions:** Fuel suppliers and Member States would be required to report estimated indirect land use change emissions on the basis of predefined ILUC values (gCO<sub>2eq</sub>/MJ) of 12 for cereals and other starch rich crops, 13 for sugars, and 55 for oil crops.

Thus, under the Commission's proposal, ILUC factors would not have to be taken into account when calculating the mandatory greenhouse gas emission savings of the RED and FQD, but would have to be reported to Member States and the Commission. The Commission proposes to further review whether ILUC factors should be included in the calculation of greenhouse gas emissions after 2020. This is likely to be strongly contested in the European Parliament.

- **Empower the Commission to Adopt a Significant Number of Technical Measures Affecting the Marketability of Biofuels and Bioliqids:** For example, the Commission would be empowered to define by means of delegated acts the energy contribution of second and third generation biofuels and bioliqids; ILUC values, including new values for biofuel feedstocks that come into the market; and methods and values to calculate the greenhouse gas emissions of biofuels and bioliqids and their fossil fuel comparators.

## LEGISLATIVE PROCESS AND NEXT STEPS

The Commission's proposal must now be debated and adopted by the European Parliament and Council through the so-called "ordinary legislative procedure." The Parliament and Council are likely to start reviewing the proposal and considering amendments before the end of the year. Key actors in the Parliament will be the Energy ("ITRE") Committee and the Environment ("ENVI") Committee. The legislative procedure will provide opportunities for all stakeholders to influence the final texts of the amendments.

Importantly, the proposal will be affected by the political imperatives of the upcoming Parliament elections in June 2014, the heavy investments in food crop biofuels already made in some Member States, and similar discussions in other jurisdictions. In particular, it is worth observing that in the United States similar issues about how to "count" life cycle and ILUC in calculating biofuel emissions are also being debated in the finalizing of California's Low Carbon Fuel Standard. There are also scientific and modelling issues that cross national boundaries and are entwined with the political and economic debate in both California and the EU. Thus, the debate in the European Parliament and Council may be informed by California's experience, and vice versa may also influence developments in the United States and other jurisdictions.

Unlike the European Commission's proposal, California has proposed to include ILUC immediately in calculating each fuel's emissions. However, California has not drawn a sharp distinction between food and non-food feed stocks.

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