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EBB POSITION

FUTURE COMMISSION COMMUNICATION ON THE BIOFUELS SUSTAINABILITY SCHEME

In the context of the current inter-service consultation process on the Communication interpreting the Renewable Energy Directive biofuels sustainability scheme, EBB would like to provide Commission services with the following comments on the items, it believes, need urgent clarification by the Commission.

MASS BALANCE AND CHAIN OF CUSTODY ISSUES

- The definition of "mixture" for the purpose of the mass balance assessment should imperatively go beyond the concept of "physical mixture". It would not be in line with the reality of the biodiesel and biofuels industry to restrict the definition of a "mixture" to a physical mixture within one single container (storage tank, vessel, truck), where greenhouse gas and sustainability data would have to be kept strictly segregated. Current industry practices involve the use of energy crops from different regions and the use of multi-feedstock processes for biodiesel manufacturing.

- A stricter definition of the "mixture" would impose a significant economical and administrative burden on the industry without any additional sustainability benefit attached to it. It would also create real difficulties for verification of compliance, thus increasing the risk of unintentional and intentional fraud.

- GHG and sustainability data for the biofuels feedstock step needs to be aggregated, provided the biomass is RE-D compliant. Under current practices, rapeseed from different regions can be mixed with other types of oils or fats to produce biodiesel meeting the EU technical specifications (EN14214 standard). When such mix of oil/fats is processed into biodiesel, it should be avoided that the many different greenhouse gas and sustainability data would remain tied to very small quantities of biodiesel, which means that a limited volume of biodiesel (a truck) would bear several dozens different greenhouse gas and sustainability data.

- A proper time and spatial definition of the mass balance is necessary. EBB recommends that the mass balance is defined over one year and performed at the level of the "site", a concept encompassing port and storage facilities.

GHG ISSUES

Grandfathering clause for the application of the 35% GHG saving requirement (Article 17-2)

- The expression "in operation" needs to be fully clarified and operationalized in a way that allows unambiguous distinction between compliant and non-compliant installations. This is absolutely vital in order to create legal certainty and predictability for biofuels operators.

- EBB would consider inappropriate to make the grandfathering clause conditional to a certain production threshold in 2007, as many biodiesel plants were lying idle because of market conditions (US "B99" competition). At the same time, the reality of biodiesel investments should be taken into account, i.e. there are committed at least two years before the facility is in place. Consequently, the date of decision to invest in a biodiesel facility, (which makes the choice of the technology irreversible), should be the reference to identify and installation "in operation".

Accordingly, EBB proposes the following wording:

For the purpose of the application of Article 17-2 §4 of Directive 2009/28, biofuels installations will be considered as being in operation at the date set by the Directive (January 23rd, 2008) provided the production capacity had received the licence to start construction from the competent national authorities by this date, and had started production by the date of entry into force of Directive 2009/28 (25 June 2009).

Calculation and update of biofuels default values – General principles

- Default values should be updated regularly, taking into full consideration new and improved data submitted by the biofuels industry. The revision process itself should involve biofuels experts, not only the JEC Consortium (JRC Ispra, Concawe, Eucar), or alternatively an enlarged JEC consortium where experts from biofuels and agriculture would work on an equal footing with mineral oil and car industry experts.

- The 40% penalty currently applied on the calculation of GHG emissions form the biofuels processing stage should be reconsidered. Indeed, the 40% mark-up was designed by the Commission as an incentive to increase production efficiencies, while actual possibilities to improve it are scarce and this step does not even represent the majority of emissions caused by biodiesel production.

Calculation of actual values – General principles

- Contrary to the CEN proposal to define "standard values" beyond which actual calculation would no longer be possible, EBB strongly believes that it should be left to the operator to decide about the level of accuracy for their GHG calculation (balancing between default and actual data).

Impact of energy crops in the agricultural rotation and consequence for GHG accounting from biofuels feedstock

- The positive impact of energy crops on the yields of the following crops should be fully recognised, in order to mitigate the impact of fertilizer use for the purpose of actual and default GHG calculations. The current RE-D system denies the benefit to have energy crops such as rapeseed introduced in the rotation: while most of the nitrogen-fertilizer used for rapeseed cultivation will remain in the soil and will benefit following crops yields, the GHG-emissions relating to the fertilizer remain fully assigned to the rapeseed cultivation step.
  EBB believes that, on the contrary, there needs to be a fair allocation of the fertilizer impact over the full crop rotation. Scientific references are not missing in this respect. Several studies demonstrate and quantify the positive impact of rapeseed cultivation on soft wheat yields, which is as high as 600 kg/hectare yield increase for soft wheat cultivated after rapeseed, compared to soft wheat after soft wheat (see for instance O. Christen, *Yield, yield formation and yield stability of wheat, barley and rapeseed in different crop rotations,* University of Halle-Wittenberg, Institut für Acker- und Pflanzenbau, 2001).

Methodology for N_2O calculations

- Two main models exist in this respect: IPCC and DNDC. Beyond the choice of a particular model, it will be essential that the same model is used by all operators, in order to ensure a level-playing field. If the Commission endorses the IPCC model as a reference for GHG actual calculations, then this needs to be consistent with the model used for the default values calculations by JEC.

Methodology for calculation of GHG intensity of electricity use

- In the view of EBB, it is important that national averages are retained, not the EU-wide average, in order to take into account the wide variation in Member States performances (depending on the share of nuclear or renewable electricity use).

- In the RE-D, the possibility to use locally-produced green electricity is useful for multi-process plants, but does not account for the possibility to purchase green electricity from the grid. This latter option should be explicitly allowed.

Fossil fuel comparator

- The fossil fuel comparator should be revised regularly. It should be calculated using the same methodology and the same level of accuracy/constraints than for the biofuels default values, in order to ensure a level-playing field between operators and reduce the risk of fraud.

OTHER ISSUES

Definition of waste and residues

- Legal certainty for operators calls for a precise and unambiguous definition of products to be considered as waste/residues under the Renewable Energy Directive, and ideally a comprehensive list of those. This will enable operators to know whether their biofuels will count double towards the EU targets and whether GHG emissions from biofuels can or cannot be allocated to a specific product within the production chain.

Treatment of animal fats biodiesel under the RE-D

- An equal treatment of all animal fats biodiesel as waste/residues should be ensured: all animal fats, regardless of the category should be defined as processing residues.

- RE-D Annex V currently excludes biodiesel produced from category 3 by-products from the list of biofuels default values. As all categories of animal fats are to be considered as residues, there is no solid ground for maintaining this exclusion. Therefore biodiesel produced from all three categories of animal by-products should be allowed to claim the Annex V Part A and D default values.

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