

EU Draft on establishing operational guidance on the evidence for demonstrating compliance with the sustainability criteria for forest biomass laid down in Article 29 of Directive (EU) 2018/2001 of the European Parliament and of the Council

General comments

Swedenergy acknowledges the importance of the guidance to enable robust and harmonised implementation of the new sustainability criteria for forest biomass by Member States and economic operators. However, we are concerned that the draft goes beyond the directive itself. All the parts which do not only specify the directive but takes the regulation further should be removed from the guidance or changed to meet the level of the directive.

Due to the detailed and extensive new criteria, it is difficult to confirm that any national legislation is sufficient in all details, and it leaves room to question the fulfilment of the criteria. This sidelines the intention of the risk-based approach, which was the main pillar of the agreement on sustainability criteria legislated in the Renewable Energy Directive.

The directive is clear on how the criteria shall be considered in the national legislation. According to the directive, when some of the criteria are noted in the national legislation, it is sufficient. If some of the criteria are not regulated in national laws, it could be concluded that the criteria have not been taken into consideration and that specific criteria must be proved in some other way by the operator.

The adequate required level of monitoring is also regulated in implemented national laws and therefore the operators should not be obligated to assess the level by themselves.

Forest biomass from areas where Article 29.6(a) does not apply should not per se be declared as 'high-risk' as Art. 29.6(b) specifically has been created for these cases to allow for another way of providing evidence of the sustainability of the biomass used on forest sourcing area level. The guidance should be restricted to clarify the criteria on sourcing area-level (Art. 29 6(b)) by giving advice on good practices on how to fulfil the requirements (voluntary certificates, existing reporting systems etc.), not to widen the criteria set in the directive.

Some parts of the guidance are defined contrary to how they are defined on the directive. It risks inconsistencies between EU legislations and does not contribute to transparency nor stakeholder confidence in bioenergy. Swedenergy suggests that the inclusion of the following targeted recommendations would improve the document and ease operationalisation of sustainability criteria.

Specific comments

- (9) The recital rightly mentions the important role of voluntary national and international certification schemes and their recognition by the European Commission. Swedenergy

underlines the importance of timeliness in the recognition process, to make sure sufficient tools are available for market operators to demonstrate their compliance.

- Art. 2(j) The definition of *deadwood* includes an unrealistic diameter related requirement for stumps. This should be deleted leaving to the Member States to decide based on local sustainable forest management practices.
- Article 3b(ii) *“forest regeneration, by demonstrating that the applicable laws require natural or artificial regeneration, or a combination of both, aiming at the establishment of a new forest in the same area and within at least five years after the harvesting”*. Swedenergy suggest that the text must be clarified. Due to cold weather, in northern Sweden the establishment may take longer time even if the rejuvenation is normally started three years after the harvesting.
- Article 3.1(b)(iv) *“that forest harvesting is carried out in a way that minimises negative impacts on soil quality and biodiversity, by demonstrating that the applicable laws ensure, during the harvesting operations, the protection of soils, species and habitats, and regulate the removal of stumps, roots, deadwood, and where appropriate, needles or leaves.”* The Swedish Forest Agency estimates that the removal of stumps may at most affect a relatively small area (10 000-20 000 ha) and removal of stumps is not regulated by national authorities, rather is ensured by certification which are in these cases covering more than 90% of the forest area. Change the word *regulate* to ensure.
- Article 4.1(b)(ii) Forest management activities are not driven by the bioenergy sector; for this reason, it is important to specify that the possible negative impacts on biodiversity or soil quality should not be provoked directly by the sector that is regulated by the REDII and present guidance. To precise it, Swedenergy suggest that this must be clarified. Revise the text according to the following suggestion:

“forest regeneration is carried out in a manner that at least maintains the quality and quantity of the harvested forest areas, including by ensuring that the forest is allowed a regeneration period of at least five years after the harvesting operation; and there is no biodiversity degradation in the regenerated forest area, including that primary forests and natural or semi-natural forests are not degraded to or replaced with plantation forests”, as a consequence of management activities carried out for the bioenergy sector.
- Article 4.1(b)(iv) Forest management activities are not driven by the bioenergy sector. For this reason, it is important to specify that the possible negative impacts on biodiversity or soil quality should not be provoked directly by the sector that is regulated by the REDII and present guidance. Biotic and abiotic risks must be considered. Removal of residues could be motivated by the need to avoid wildfire or biotic risk. In addition to facilitate the regeneration of forest. The removal of forest residues is often a prerequisite for subsequent soil preparation and planting to be carried out in a good way. Remaining forest residues make it difficult to prepare soil and to find enough good planting points.

Furthermore, it is mentioned that *“clear-cuts are minimised”*. Without clear-cut there will not be much forest residues and clear cuts are not per se bad from a sustainability perspective. Swedenergy suggest that it will be changed to rationalize or to optimise the clear cut in order to prevent negative impacts on soil quality and biodiversity.
- Art. 4.1(b)(v) *“This includes ensuring that annual felled timber amounts do not exceed net annual increment in the relevant sourcing area on average within the five-year period prior to the harvesting intervention [...]”* should be amended with *“or ensuring that harvest levels are justified by forest inventory and growth data [...]”* to make it clear that even if net annual increments are not reported (like FIA data) you can calculate it through annual inventory and growth data.
- Art. 7 (c): it's our reading that in case there is compliance at national / sub-national level with LULUCF and harvesting criteria, only first and second party auditing are required whereas in case this is not available, an independent third-party auditing is required. As the sentence structure is a bit hard to read, Swedenergy propose to reformulate and clarify

- Art. 8: should be amended with a transitional period to reflect the delays in the publication of the guidance and related delays in national implementation.