

# **Third time lucky? RED III trilogue another opportunity to move beyond unsustainable fuels**

T&E recommendations for RED III trilogue process

---

October 2022

## **Summary**

The RED trilogue process is another opportunity to accelerate the move away from burning crop biofuels for energy in transport and prioritize the use of genuinely renewable fuels for the long-term decarbonisation of transport – renewable electricity, renewable hydrogen and e-fuels.

In light of this, this T&E briefing outlines the following key priorities for the trilogue negotiations:

- A lower target for renewables in transport, to avoid incentivising the use of unsustainable fuels such as crop biofuels
- Immediate phase out of palm and soy and a progressive phase out of all crop based biofuels
- A more realistic RFNBO target for transport, targeting renewable hydrogen and efuels at aviation and at shipping in particular.
- Swiftly organize an informed debate and present delegated acts on RFNBOs to Parliament and Council
- Enabling renewable electricity charged by Electric Vehicles to play as big a role as possible
- Apply the cascading principle and a realistic target to biofuels in Annex IX
- Keep the change proposed by the European Commission on Annex V

## **1. Immediate phase out of palm and soy and a progressive phase out of all crop based biofuels by 2030**

We welcome the proposal by the European Parliament to immediately phase out palm and soy, the worst performing of all crop-based biofuels. This represents an important progress compared to the status quo we see in the Commission's proposal - a phase out of only palm and quite late, by 2030. Palm oil is so far the only biofuel recognised in the delegated act developed by the Commission in 2019 as "high ILUC risk biofuel for which a significant expansion onto high carbon stock areas is observed". This type of biofuels are to be frozen and eventually phased out of the target by 2030. A study conducted by Ceruly in 2020

finds that soy meets the criteria to be categorized as high-ILUC risk<sup>1</sup> as well. **We call on the Council to accept Parliament’s position on soy and palm oil**, since several Member States in Europe are already phasing out palm and are also including soy as well :

## Palm and soy phase-outs in Europe








[transportenvironment.org](https://transportenvironment.org)

If we are to ensure that soy is properly phased out, then the intermediate crop loophole should be fully closed, to avoid soy being introduced to Europe as an intermediate crop. It is also important to tackle the overall food and feed cap to avoid replacing these crop biofuels with others. So far, the provisions on the cap remain unchanged. But now more than ever, it is crucial to move away from burning crops for fuels and to focus on cleaner alternatives. A reduction of food and feed based biofuels would have been an important response to the unprecedented global food crisis that is [pushing millions of people](#) to the brink of starvation and many more into severe food poverty. Food prices, already high, skyrocketed in the wake of Russia’s invasion of Ukraine. Record droughts across Europe and other parts of the world will only add to the crisis. If the palm and soy get immediately phased out but the overall transport target and food and feed cap remain the same, other crop based biofuels will just replace soy and palm’s place. For this reason **it is necessary to deduct palm and soy’s part from the food and cap and reduce the cap to zero by 2030.**

## 2. A more realistic RFNBO target for transport, targeting renewable hydrogen and efuels at aviation and at shipping in particular.

**T&E advocated a lower RFNBO target - 1.6% - for the transport sector** than what has recently been included in the Commission’s #RePowerEU plan and what was endorsed by the European Parliament, namely 5.7%. In terms of level of ambition, the Council position strikes a better balance between a high level of ambition, while remaining realistic about the volumes of RFNBOs that can be achieved by 2030 (5.2% with double counting, i.e. the same volume as the 2.6% in the Commission proposal). However, we regret that the Council only supports an indicative RFNBO target. Given the much higher costs of

<sup>1</sup> Based on recent evidence, the fraction of soy expansion affecting high carbon stock areas is at 10.5%, which is above the threshold stipulated in the delegated act for categorisation as a high ILUC-risk biofuel. For details see Cerulogy (2020) [Soy, land use change and ILUC-risk](#)

producing RFNBOs - compared to e.g. biofuels or even advanced biofuels - a mandatory target/mandate will be necessary to ensure that fuel suppliers make the e-kerosene for planes or green ammonia for ships available to airlines and ship operators.

**Secondly, we strongly support a dedicated push to make RFNBOs available for the shipping sector.**

The proposal by the Parliament for a 1.2% mandatory subtarget for fuel suppliers to supply RFNBOs to the maritime sector is to be welcomed. [T&E has warned time and again](#) that the technology-neutral target of the Commission's FuelEU maritime proposal will likely result in the acceleration of fossil LNG uptake as the cheapest alternative fuel eligible until 2040, as well as biofuels from dubious origin. To address this shortcoming, T&E had advocated for a 0.8% RFNBO mandate in the RED for ships (equivalent to 6% of the energy demand used by ships by 2030) as the most straightforward way to ensure demand for sustainable fuels in shipping and that can provide business predictability to the fuel suppliers. In that context, we welcome the high-ambition 1.2% subtarget proposed by the Parliament and prefer this proposal over the Council's suggestion to allow, but not oblige Member States to set separate targets for e.g. the maritime sector. Another disadvantage of the Council proposal is that all renewable fuels including crops are potentially included in the scope, not just RFNBOs.

### **3. Swiftly organize an informed debate and present delegated acts on RFNBOs to Parliament and Council**

The European Parliament voted very narrowly in favor of an amendment that takes the drastic step of eliminating the legal basis for a delegated act on Renewable Fuels of Non-Biological Origin (RFNBOs). As a result of this vote, no additional renewables will be deployed that can meet the additional demand from new electrolyzers. This is especially problematic given the very high RFNBO targets that were endorsed by the Parliament. We regret this decision, as it seeks to derail the almost final stages of the decision-making process in the Commission on the RFNBO delegated acts. The European Parliament will have had an opportunity later this year to object to a final text rather than basing its decision on various draft versions of the delegated act. This position of the European Parliament is not helpful for a nascent industry, whose first and foremost priority is regulatory certainty. Instead of a clear framework by the end of 2022, directly applicable across the EU27 and providing guidance on imports, the hydrogen industry would be faced with a long drawn out process to transpose a Directive into 27 sets of national law, if the Parliament position is adopted. We call on the Council to not support this ask by the Parliament.

### **4. Enabling renewable electricity charged by Electric Vehicles to play as big a role as possible**

Both Parliament and Council supported the Commission's proposal to require Member States to introduce a fuel-neutral credit mechanism for all renewable fuels. T&E has been an early supporter of allowing fuel suppliers to use renewable electricity to meet their targets. The Commission's proposal is a step in the right direction. Past experience in the Netherlands has shown that crediting renewable electricity does not only provide an additional compliance option for fuel suppliers, but the revenues that

are generated also boost the rolling out of public recharging stations. With these revenues, charge point operators can roll out public recharging stations even in areas, where the business case is still more difficult.

**T&E supports the Parliament’s proposal to allow the scope of the credit mechanism to be widened to also include private recharging.** This is an important addition, as more than 70% of all recharging of EVs will happen at home or in the workplace, and will give an impetus for operators of fleets of cars, vans and trucks to electrify their vehicles. The Parliament added the condition that renewable electricity can only be credited if “renewable electricity supplied to those private recharging stations is provided solely to electric vehicles”. In other words, the charging must be separately metered. For T&E, this is not essential: The [German system](#) whereby EV owners are credited for the renewable share of the electricity charged on the basis of a flat rate estimate (2MWh/year, ~ 13.000 kms), offers a credible alternative.

Taking renewable electricity seriously as a transport fuel also implies [recognizing the higher efficiency of electric vehicles](#). T&E supports the Council position to allow both the energy-based multiplier of 4 from the 2018 RED as well as the newly proposed higher fossil fuel comparator. The complicated wording added to Article 27.1 by the Parliament is unnecessary. Any downgrade of the fossil fuel comparator for renewable electricity will undermine the contribution of high-efficiency EVs and make it more difficult to achieve the (too) high overall RES-T targets, leaving a gap to be filled with more biofuels.

## **5. Apply the cascading principle and a realistic target to advanced and waste-based biofuels**

There are very limited biomass feedstocks that have no other uses and that could be used for biofuels production without any significant impact on existing markets, on the environment and the climate. The Annex IX of the RED includes wastes and residues, but also coproducts and some primary products, with many issues associated with the listed feedstocks<sup>2</sup>. The current changes proposed to Annex IX biofuels risk to push the use of these feedstocks above what is sustainable. These feedstocks exist in limited quantities in Europe and some of them have competing uses in other industries. The European Commission proposed to increase the target of advanced biofuels (part A of Annex IX) to 2,2%. This is a significant increase since the previous target was 3,5% (representing 1,75% fuel in reality, because of a multiplier of two). It kept the limit of 1,7% to Part B of Annex IX (animal fats category I and II and used cooking oil). However, the Commission erased the double counting, de facto doubling the amount of part B feedstocks that can be counted in real terms to reach the limit of 1.7%. Also, Annex IX targets previously applied only to road and rail sectors whereas now they apply to the maritime and shipping sectors as well.

The Council followed the Commission's ambition but with a different structure: it reintroduced the 2x multiplier to the newly suggested target of 2,2% for advanced biofuels (resulting in a 4,4% target).

---

<sup>2</sup> For more details on overall issues with Annex IX, please see our briefing: [A clean shift for EU transport fuels? T&E recommendations for the RED review](#)

It also reintroduced double counting to part B of Annex IX. The European Parliament kept the Commission's target of 2.2% for advanced biofuels but surprised by pushing an additional text allowing new feedstocks to be included in Annex IX and to possibly increase the sub-targets if indicated by an Impact Assessment from the European Commission. **T&E strongly recommends to reject this proposal in the final text of the negotiations and to return to the targets set by the previous RED for Annex IX biofuels. We also strongly recommend to apply the cascading principle to Annex IX so as to exclude or restrict several problematic feedstocks** that are already being used by other industries (such as crude tall oil in part A) or are largely imported to Europe (for ex. used cooking oil in part B<sup>3</sup>).

Beyond Annex IX, the European Commission proposed a change in Annex V<sup>4</sup> of the RED to reflect better the emissions of biofuels not produced from crops and not listed in Annex IX. It would attribute emissions to residues outside of Annex IX equivalent as their closest substitute in the food and feed market. T&E supports this change because this could reduce the advantage of by-products like palm fatty acid distillate (PFAD) that can be counted towards the RED target. This provision would not entirely eliminate the use of these materials, because they also benefit from not being included in the food and feed cap, but it would be an improvement to ensure that their carbon intensity profile is more appropriately reflected. The Council maintained this change by the Commission with some slight modifications<sup>5</sup>. The Parliament on the other hand completely erased this change. **We recommend this important change stays in the final text in one form or the other, preferably with the Commission's proposal.**

## **6. A realistic and lower target for renewables in transport, to avoid incentivising the use of unsustainable fuels**

The European Commission proposed a switch to a GHG based target instead of an energy based one, as is the case in the current Renewable Energy Directive. A GHG approach encourages in theory those fuels with the highest GHG savings to be deployed, but the current accounting rules have major loopholes. These do not account for all emissions, in particular land-use emissions of crop based biofuels and indirect displacement emissions of advanced biofuels. Moreover, further amendments are required to address the complexity that arises from having to compare different target types.

The level of the target proposed by the European Commission - 13% - is too high and will drive further uptake of unsustainable options such as crop biofuels. The Council left the option for Member States to choose between expressing the transport target in energy terms or greenhouse gas emissions savings. It

---

<sup>3</sup> For more information please see our briefing: [A clean shift for EU transport fuels? T&E recommendations for the RED review:](#)

<sup>4</sup> Page 6 of Annex I of RED II review proposal: *Residues that are not included in Annex IX and fit for use in the food or feed market shall be considered to have the same amount of emissions from the extraction, harvesting or cultivation of raw materials, eec as their closest substitute in the food and feed market that is included in the table in part D'*

<sup>5</sup> Instead of suggesting that these residues be counted in the same way as their closest substitute in the food and feed market, the Council suggests they are counted as co-products.

suggested an energy target of 29%, a staggering increase in the level of ambition compared to the current RED target for the transport sector (14%) in energy terms. It's very unclear how this target would be met, especially with only an indicative target for RFNBOs. In addition to that, the current target applies not only to the road and rail sector but also shipping and aviation sectors, so the volumes needed to achieve the target will be higher than before. In parallel, the Parliament increased the carbon intensity reduction target to 16%.

A too ambitious target puts pressure on fuel suppliers to opt for cheaper options to fill the gap, such as crop-based biofuels. There are real concerns that [intermediate crops in particular will surge](#) because they are not subject to the food and feed limit as they are considered not to compete with food production. Still, there are no guidelines to help interpret and implement the rule of not taking additional land for production of biofuels. Intermediate crops are grown in some parts of the world mostly as main crops (for ex. Brazil) and if we divert them from their current use to biofuels additional land will be needed to compensate for the crops 'lost' to biofuels production. This is particularly alarming in the case of soy since 95% of this would be soy biofuel<sup>6</sup>.

**The Council proposal of a 13% GHG target is much more realistic than the Parliament's position of 16%.<sup>7</sup> However, the Council's suggested target of 29% energy share seems unrealistically high. T&E advocates to phase out all crop-based biofuels by 2030 and to set an 8% GHG target for all transport, delivering 8% of actual GHG savings by relying exclusively on advanced biofuels, RES-E and RFNBOs. This could be translated into a 16% energy based target<sup>8</sup>.**

### 3. Conclusions

The revision of the Renewable Energy Directive is a unique opportunity to send a clear signal that Europe is moving away from false solutions such as the burning of crop biofuels for energy towards a more sustainable future where renewable electricity is properly awarded and encouraged to decarbonise the transport sector. This trilogue process is the final stage of intense negotiations that we hope will result in further limiting crop biofuels and immediately phasing out palm and soy. At the same time it is necessary to define realistic targets for advanced and waste based biofuels with the application of the cascading principle. Realistic targets are also crucial for RFNBOs as well as ensuring a delegated act on RFNBOs is adopted. These efforts have to be combined with mechanisms to ensure the renewable electricity

---

<sup>6</sup> According to a modeling developed by the International Council for Clean Transportation (ICCT) : <https://theicct.org/sites/default/files/publications/intermediate-crops-RED-II-eu-oct21.pdf>

<sup>7</sup> Higher GHG or energy-based targets still include crop-based biofuels, so the emission savings of these higher targets actually deliver lower GHG savings, 5%, due to the indirect land use change ( ILUC) effects. Please see for more details page 3 of the briefing by the ICCT *Changes to the Renewable Energy Directive revision and ReFuel EU proposals: Greenhouse gas savings and costs in 2030* : <https://theicct.org/sites/default/files/publications/red-revision-refuel-eu-ghg-updated-sept21.pdf>

<sup>8</sup> For more details, please see : *Advanced renewable fuels in EU Transport - Evaluation of a realistic target for the upcoming RED review*

[https://www.transportenvironment.org/wp-content/uploads/2021/07/202103\\_Advanced\\_renewable\\_fuels\\_EU\\_Transport\\_Final.pdf](https://www.transportenvironment.org/wp-content/uploads/2021/07/202103_Advanced_renewable_fuels_EU_Transport_Final.pdf)

charged by electric vehicles plays as big of a role as possible, in particular by extending the credit mechanism to private charging as well.

## **Further information**

Geert Decock  
Electricity & Energy Manager  
Transport & Environment  
[geert.dc@transportenvironment.org](mailto:geert.dc@transportenvironment.org)  
Mobile: +32(0)484/629.491

Barbara Smailagic  
Fuels Policy Officer  
Transport & Environment  
[barbara.smailagic@transportenvironment.org](mailto:barbara.smailagic@transportenvironment.org)  
Mobile: +32(0)489/310.774