



CONFEDERATION OF INDUSTRY OF THE CZECH REPUBLIC RESPONSE TO PUBLIC CONSULTATION - DRAFT COMMISSION IMPLEMENTING REGULATION 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

Confederation of Industry of the Czech Republic (SP CR) welcomes the opportunity to comment the draft Commission implementing regulation 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 (Regulation).

Sustainable forest biomass plays and will continue to play a crucial role in the energy transition. It is one of the already available and proven solutions to cut CO₂ emissions and reduce the dependence on fossil fuels. However meeting the ambitious general target and renewable heating and cooling targets will require predictable and stable conditions for investments. Therefore, the focus should be on the robust and harmonised implementation of the existing stringent sustainability criteria. This will ensure that the biomass meets a high standard of environmental protection while maintaining the legal certainty required for the development of new projects.

Given the delay in the publication of the present implementing regulation, SP CR calls for swift adoption, as well as a speedy process for the recognition of certification schemes to guarantee that sufficient tools are in place to demonstrate compliance for DHC operators. If this cannot be guaranteed, we would need to call for an additional transitional period to be able to meet and demonstrate compliance with the criteria with all the tools in place.

SP CR would like to submit following suggestions to improve the draft implementing regulation:

General suggestions for changes:

1. The draft of the Regulation does not take into account a diversity among biomass producers, namely in terms of their size. As for those smaller ones, auditing as well as verification obligations shall be made easier.
2. Further for auditing and verification process, an exact specification of their periodicity is not mentioned. This shall be set once again taking into account the cost and benefits of that process.

Specific suggestions for changes:

3. Whereas:

(6) Where there is no evidence of compliance at the national level with one or more of the harvesting criteria laid down in point (a) of Article 29 (6) of Directive (EU) 2018/2001, ~~forest biomass should be considered high-risk. In such cases,~~ economic operators should provide more detailed evidence that the harvesting criteria set out in point (b) of Article 29 (6) of Directive (EU) 2018/2001 are complied with through management systems at the sourcing area level. In that respect, it is necessary to establish in more detail the sustainability evidence which should be provided by economic operators through management systems at forest sourcing area level, when compared to that required under the national and sub-national compliance assessment. That will ensure that the harvesting criteria are effectively met, in particular the criterion on forest regeneration, conservation of protected areas, minimisation of harvesting impacts on soil quality and biodiversity, and on the maintenance or improvement of forest's long-term production capacity.

Justification: Part of the sentence does not make sense. Economic operators have other options to prove that biomass is sustainable.

4. Article 2 (c)

(c) ~~'harvesting sustainability~~ criteria at national or sub-national level' means the criteria laid down by point (a) of Article 29 (6) of Directive (EU) 2018/2001;

Justification: Consistency in the terms used in the RED II should be kept in the implementing regulation.

5. Article 2 (d)

(d) ~~'harvesting sustainability~~ criteria at sourcing area level' means the criteria laid down by point (b) of Article 29 (6) of Directive (EU) 2018/2001;

Justification: Consistency in the terms used in the RED II should be kept in the implementing regulation.

6. Article 2 (g)

(g) 'semi-natural forests' means ~~forests which are neither 'natural forests' nor 'plantation forests' managed natural forests which, over time, has taken on a number of natural characteristics, including layered canopy, enriched species diversity, random spacing; or, planted forests which acquire more natural characteristics over time, including abandoned plantation forests that diversify with age and which experience natural regeneration of indigenous species;~~

Justification: All forests should fall to one of the three categories. By defining two of them the third one should cover the rest.

7. Article 2 (j)

'deadwood' means all non-living woody biomass not contained in the litter, either standing, lying on the ground, or in the soil, including wood lying on the surface, coarse debris, dead roots, and ~~large~~ stumps ~~larger than or equal to 10 cm in diameter~~ or any other ~~diameter definition~~ used by the country concerned;

Justification: National definitions should be allowed.

8. Article 2, missing definition of economic operator

Proposal: Include definition of economic operator

Justification: Throughout the regulation term economic operator is used. However its definition is missing. It should be clear to which organizations the regulation applies. In our opinion it should also apply on producers of forest biomass.

9. Article 2, missing definition of recovered post-consumer wood

Proposal: Include definition of recovered post-consumer wood

Justification: Term recovered post-consumer wood is used in Article 2. However its definition is missing. An accurate definition shall be given.

10. Article 3 (1) (b) (ii)

(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 operation,~~ and that ~~there is no~~ biodiversity degradation in the regenerated forest area **is minimized**, including that primary forests and natural or semi-natural forests are not degraded to or replaced with plantation forests;

Justification: The optimal time span for regeneration very much depends on local natural conditions. The requirement is too detailed and falls in competence of Member States. It is difficult to prove that there was no biodiversity degradation. This requirement goes beyond the scope of article 29 (6) of RED II.

11. Article 3 (1) (b) (iii)

(iii) the effective protection of areas designated by international or national law, or by the relevant competent authority, for nature protection purposes, including areas being defined ~~as in~~ wetlands and peatlands;

Justification: Article 29 (6) (a) (iii) of Directive (EU) 2018/2001 refers to areas designated by international law or by the relevant competent authority, for nature protection purposes, including areas being defined IN wetlands and peatlands. This means areas that are part of wetlands and peatlands rather than all wetlands and peatlands.

12. Article 3 (1) (b) (iv)

(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;~~

Justification: The part suggested to be deleted goes beyond RED II criteria. There are also many EU MS which have not inserted this level of details in their specific regulation in their national legislation aiming at protecting soils and biodiversity. Such details are rather subject to practices and operational guidelines. When looking at the implementation time scale, this would mean failure to show compliance by intended

implementation start of July 2021 and moving to the holding level compliance. This has not been the intention of the regulation to exclude MS from national level compliance

13. Article 3 (1) (b) (v)

(v) that the long-term production capacity of the forest is maintained or increased, by demonstrating that the applicable laws ensure that the forest harvesting does not exceed the annual growth on average, except in cases where it is temporarily justified due to documented forest pests, storms or other natural disturbances; ~~and that it does not hamper the forest's health and the related ecosystem services;~~

Justification: It is not clear how it could be documented.

14. Article 3 (3)

3. In order to minimise the administrative burden for economic operators, Member States ~~may~~ **shall** establish public databases with up-to-date information on the elements referred to in this Article.

Justification: Member States should be obliged to establish relevant public databases in order to decrease administrative burden for economic operators.

15. Article 4 (1) (b) (ii)

(ii) 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. That shall be proven by using, ~~inter alia~~ **for example**, forest management plans, operational protocols, environmental impact assessments, and results of relevant compliance audits and inspections;

Justification: It is difficult to prove that there was no biodiversity degradation in the regenerated forest area. It is not defined what that actually means. Changes in biodiversity can occur without relation to wood harvest. 'Inter alia' should be replaced with 'for example' to make clear that one of the listed options is sufficient.

16. Article 4 (1) (b) (iii)

(iii) forest biomass does not originate from areas designated for nature protection, including wetlands and peatlands, unless there is evidence that the harvesting of forest biomass activities does not conflict with the protection objectives of the designated areas. That shall be proven by using, ~~inter alia~~ **for example**, international and national databases, official maps, forest management plans, operational protocols, harvesting protocols, satellite imaging, environmental impact assessments, and official logging permits including conditions or restrictions ensuring that there is no conflict with the relevant nature protection objectives, and results of relevant compliance audits and inspections;

Justification: 'Inter alia' should be replaced with 'for example' to make clear that one of the listed options is sufficient.

17. Article 4 (1) (b) (iv)

(iv) forest harvesting is carried out in a way that aims at least at preventing negative impacts on soil quality and biodiversity. To that end, the relevant risks associated with forest biomass harvesting shall be identified in advance. Unless otherwise duly justified by national, sub-national or local forest management guidelines, the following appropriate mitigation actions shall be implemented, including ~~no~~ **regulated** harvesting of

stumps and roots; no harvesting on vulnerable soils; harvesting is carried out through logging systems minimizing impacts on soils quality, including avoiding soil compaction; harvesting is carried out in a way that minimises impacts on biodiversity features and habitats, including plants and animals protected under international or national legislation; **and where appropriate** a locally appropriate quantity and assortments of deadwood is left in the forest; clear-cuts are ~~minimised~~ **rationalized in order to prevent negative impacts on soil quality and biodiversity**; and harvesting avoids extraction of needles and leaves, ~~where appropriate~~. Those mitigation actions shall be proven by providing, ~~inter alia~~ **for example**, international and national databases, official maps and satellite imaging, forest management plans, operational protocols, and harvesting protocols, results of relevant compliance audits and inspections.

Justification: Ban on stumps removal is stricter than in article 3 (1) b) (iv). Clear-cuts should be rationalised in order to prevent negative impacts on soil quality and biodiversity. ‘Inter alia’ should be replaced with ‘for example’ to make clear that one of the listed options is sufficient. Moving ‘where appropriate’ provides for better clarification that appropriate requirements apply to all respective points.

18. Article 5 (1)

1. Member States shall require economic operators **where primary biomass from forests originates from countries outside European Union** to provide audited information that confirms compliance with the criteria on land use, land use change and forestry (LULUCF) at national level. To that end, economic operators shall provide accurate, up-to-date, and verifiable evidence that the country or regional economic integration organisation from which the forest biomass originates, is Party to the Paris Agreement and fulfils either of the two conditions:

Justification: Condition (i) is automatically fulfilled for primary biomass from forests sourced in all EU member states. It is therefore unnecessary to require economic operators to verify this by audits.

19. Article 5 (1) (ii)

(ii) there are national or sub-national laws, applicable to the area of harvest, to conserve and enhance carbon stocks and sinks in forests. In addition, evidence shall be provided that the reported LULUCF sector emissions do not exceed removals on average over the ten years preceding the harvesting of the forest biomass and that carbon stocks and sinks are conserved or enhanced between the last two successive ten-year periods preceding the harvesting of forest biomass **unless when caused by documented forest pests, storms or other natural disturbance**.

Justification: Cases when increased harvest of wood is caused by forest pests, storms or other natural disturbances should be taken into account.

20. Article 6 (1) (e)

e) compare the average carbon stock and sinks in the relevant forest sourcing area of the projected long-term period with the forest carbon stocks and sinks of the historical reference period. If the average forest carbon stocks and sinks of the projected long-term period are equal to or higher than the average forest carbon stocks and sinks of the historical reference period **or decrease in carbon stocks and sinks is duly justified by adaptation to climate change, change from plantation forests to semi-natural forests, increase in biodiversity or by documented forest pests, storms or other natural disturbance**, the forest biomass is in compliance with the LULUCF criteria at the forest sourcing area level. Economic operators shall put in place adequate monitoring and verification systems of the actual development of carbon stock and sinks in demonstrated compliance with the requirements set out in this article.

Justification: Increase in carbon stock cannot be the only criterion because it can contradict with other objectives such as adaptation to climate change, increase in biodiversity etc. For example replacement of

highly productive, but unstable coniferous stands with less productive broadleaves will lead to decrease in carbon stocks, but higher resilience and biodiversity. There should be exceptions in such justified cases. Natural disturbances should also be taken into account (similar to Article 3 (1) (a) (v)).