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EBB response to DG ENVI consultation on the Implementation of the Fuel Quality Directive Article 7a(5)

Introductory remarks

EBB welcomes the present opportunity to comment on the implementation of Directive 2009/30. The revised Fuel Quality Directive (the "FQD") is a major piece of legislation having far-reaching implications for the biodiesel and biofuels industries.

As a preliminary remark, EBB would like to emphasize that it has consistently advocated the use of a single, comprehensive approach, when it comes to assessing the respective performances of fossil fuels and biofuels. In the view of EBB, the same consistency should be sought when implementing Directive 2009/30. Indeed, the Fuel Quality Directive should not be seen as an isolated piece of legislation. Instead, it has strong connections with the Climate/Energy package, and more specifically with the Renewable Energy Directive 2009/28 (the "RE-D"), which will be implemented following the same timeframe (December 2010).

Already in 2008, the Council and the Parliament agreed that biofuels performances would be assessed and regulated exclusively in the framework of the RE-D. Consequently, the main focus of the FQD is to regulate emissions from fossil fuels pathways.

Therefore, EBB disagrees with the statement¹ that one of the goals of the FQD Article 7a would be to « *optimise GHG performances of biofuels* ».

More specifically, EBB would also like to point out that the methodology for biofuels GHG performances is regulated in the RE-D annex V.

Articles 7b, 7c, 7d, 7e and Annex IV in the FQD are therefore a mere transposition of the biofuels provisions contained in the RE-D.

While the GHG reduction target provided for under the FQD should logically result in more biofuels being blended on the EU market, EBB deems essential to clarify that the genuine objective of the FQD remains to achieve "*reduced GHG emissions from fossil fuels pathways*". The Renewable Energy Directive 2009/28 already provides for a progressive reduction of admitted GHG emission from biofuels LCAs.

There is an obvious linkage between the FQD and the RE-D, which is the calculation of the fossil fuel reference. This baseline GHG intensity of fossil fuels will serve as a benchmark to assess biofuels GHG balance under the RE-D. This strong connection between the two Directives calls for the highest possible consistency in the methodologies, data and references used.

¹ Consultation document, p.1.

EBB would like to highlight the following:

1. The **methodology for calculating fossil fuels GHG emissions** should mirror as far as possible the methodology already defined in the RE-D for biofuels. Indeed, the same methodology should be used where the same objective is followed, i.e. reducing GHG emissions in the transport sector. It is essential that all fuels are benchmarked using the same methodology, in order to secure a level-playing field. Applying the same methodology will also reduce the administrative burden for Member States and operators.
Additionally, EBB believes that when it comes to assessing the life-cycle balance of fossil fuels, not only default values should be considered but also actual GHG calculations. More specifically, EBB considers that actual values should be required from fuel suppliers when reporting the GHG intensity of the extraction step, where variations in GHG emissions are potentially wider (due to the possible use of unconventional extractions, tar sands). Requiring that operators perform actual calculations is the most efficient way to incentivise GHG reduction along the entire fossil fuels chain.
2. The **fossil fuel baseline** should be realistically calculated and verified, as it will be used to benchmark both fossil fuels (under the FOD) and biofuels (under the RE-D). EBB particularly insists to have this fossil fuel reference defined in the most transparent possible way (the source of the input data used should be detailed). EBB also understands that the definition of the fossil baseline in the FOD and the fossil reference in the RE-D currently differ both in their scope and revision process. EBB is deeply worried that such inconsistency may lead to different benchmarks being applied to fossil fuels and biofuels respectively. Both from a practical and a policy perspective, this situation would not be sustainable.
3. The contribution of **electricity** to the GHG reduction obligation should be assessed in a way as to ensure that electricity accounted under the obligation is genuinely produced from non GHG emitting sources.
Furthermore, EBB believes that electricity used in the transport sector should not count under the target until a proper measuring method has been developed, ensuring an accurate assessment of the GHG intensity of the electricity supplied.
To account for the wide variation in the GHG intensity of electricity supplied in the different Member States, EBB considers that national averages, instead of an EU average, should be used.
4. EBB would like to receive confirmation that **emissions from flaring and venting** are already accounted for in the default values and in the fossil fuel baseline. This should be the case in order not to create distortions when applying the baseline GHG intensity formula: if on the one hand fuel suppliers can systematically deduct reductions in flaring and venting emissions, while at the same time those same emissions would not be included in the baseline, this would clearly result in a biased and unbalanced picture of actual fossil fuel performances.

PART 1: METHODOLOGY FOR THE CALCULATION OF LIFE CYCLE GREENHOUSE GAS EMISSIONS FROM FUELS OTHER THAN BIOFUELS AND FROM ENERGY

- *Do the options raise specific issues of fairness, accuracy, efficiency, effectiveness, perverse incentives, energy security, carbon leakage or administrative burden?*
- *Do you have any specific comments on the proposed approach for calculating default values or actual values?*
- *Do you have any specific comments on the proposed options for fuel suppliers to calculate their GHG intensity?*

1. EBB favors a combination of default values and actual calculations to measure fossil fuels GHG intensity

EBB welcomes the objective stated in the consultation paper to have a methodology that “reflects actual emissions from different fuels”.

Following this logic, EBB believes that the methodology to account for fossil fuels GHG emissions should be the same as the one defined under the RE-D for biofuels. In other words, the methodology under article 7a should provide a mix of default and actual values.

The consultation document seems to suggest that fuel suppliers should be allowed to systematically draw on pre-calculated default values (Option 1, page 6), whatever their performances are. EBB believes that such an approach would result in perverse effects and will not incentivise better GHG savings at EU refineries.

There is no reason not to request fossil fuels suppliers to submit actual values, if the GHG performances of the fuels they released on the market are deemed to be worse than the fossil baseline. This is actually the only way to incentivise a reduction in the GHG intensity of the fuels released on the EU market and reduce the use of energy products sourced from unconventional oil extractions.

EBB would like to point out the following contradiction: on one hand the consultation document states that there are large variations in the GHG efficiencies of refineries in Europe, and that this would be the justification for using an EU-wide refinery model as developed by Concawe. On the other hand, it is implied that the values for fossil fuel GHG emissions can be captured by default values alone, and do not require actual calculations, since there would be less variation in the emission ranges of fossil fuels than of biofuels.²

Even if this less variation in the emission range was proven to be true, its overall relevance for the implementation of article 7a would be limited. Indeed, even a small saving in the GHG emissions of the fossil fuel portion of the EU fuel blend would result in overall high benefits in terms of GHG savings, given that fossil fuels are set to make up around 90% of the EU fuel mix by 2020.

Also, the systematic use of default values for the reporting obligation under the FQD would be inconsistent with the provisions of the RE-D Annex V point 19, stating that *“the fossil fuel comparator E_f should be the latest available actual average emissions from the fossil part of petrol and diesel consumed in the Community, as reported under Directive 98/70 [...]”*.

EBB would like to emphasize that applying the same methodology for fossil fuels and biofuels (mix of default and actual values) is the only way to:

- draw meaningful comparisons as to the respective performances of different types of fuel;
- ensure a level-playing field on the EU fuel market, where mineral fuels and biofuels trade flows are closely related;
- minimize the administrative burden for operators handling both fossil fuels and biofuels, as well as for the authority in charge of the verification processes;
- reduce the risk of fraud when individual operators will report the GHG emissions of the fuels they release on the market.

2. Security of supply concerns should not interfere with the establishment of a GHG savings methodology for fossil fuels

EBB considers that attempts to justify the exclusive use of default values in the FQD (Option 1) on ground of security of supply concerns are incorrect and misguided. First, this reference to security of supply is highly questionable as the aim of the FQD is to *“reduce the GHG intensity of energy supplied for use in road vehicles and non-road mobile machinery”*, and does not mention ensuring security of supply.

² Consultation document, p. 3.

The Commission consultation paper implies that using actual calculations of GHG emissions for fossil fuels would have a potential adverse impact on the EU security of supply.³ The result would apparently be diesel with a lower GHG emissions intensity from Russia being imported in to Europe, while more polluting diesel would be diverted to other places in the world (so-called “carbon leakage” problem).⁴

If this carbon leakage issue is assumed to be true, this in turn implies that:

- fossil fuel suppliers are aware of their actual GHG emissions of the European Refineries (in order to enable this comparison with imported fossil fuels), and
- fossil fuel suppliers have deliberately reduced the GHG intensity figures of fossil fuels they place on the market (in the name of security of supply).

In view of the above, EBB sees no reason not to incentivise a more efficient process at EU fossil fuels refineries. If refineries in the Former Soviet Union produce fuels at a sufficiently better GHG efficiency (than European refineries) to warrant such a degree of diesel imports that European security of supply is put in danger, this suggests that European refineries’ lower efficiency levels is the real concern, and not the alleged security of supply impact.

To summarize, security of supply considerations have been discarded in the RE-D over GHG performances. This should be the same under the FQD.

Alternatively, if security of supply has to be considered, then biofuels should get a credit under the RE-D for the imported fuel they are displacing (biodiesel replaced 7,5 million tonnes of imported diesel in 2008).

3. Default values provided under the FQD should be set conservatively

In view of what has been developed in the two previous sections, EBB believes that the default values for fossil fuels provided under the FQD should entail a “mark-up” on the processing stage (refining), which would encourage higher GHG savings in the EU refineries. Such “mark-up over expected values” would also create a balance with the penalty provided under the RE-D Annex V on the processing of biofuels (which amounts to no less than 40% of the emissions related to the processing). If a conservative approach has to be adopted, this should be case for both fossil fuels and biofuels.

Furthermore, EBB would like to point that aggregating the total emissions of all actual refineries within the EU into 9 refineries, as done in the Concawe model, is likely to raise the error level.

Not using actual figures results may therefore result in inaccurate and unfairly low figures for fossil fuels GHG emissions, which subsequently puts the emissions ‘bar’ against which biofuels are compared incorrectly and unfairly high.

4. Mandatory use of actual values for the extraction step

In the view of EBB, the FQD should go further by requiring the use of actual calculations for the extraction step, when unconventional sources of crude oil are being used. This should be provided in order to ensure that fuels produced from the most polluting sources of crude oil (tar sands, oil shale) are not benefiting from the default values, but instead valued on an actual basis. This is also the only way to ensure a fair fossil reference in the RE-D, since this reference will be based on the actual data reported by fuel suppliers under the RE-D for petrol and diesel only.

It should be reminded that at the current crude oil price, the use of unconventional oil sources becomes economically viable. The share of unconventional oil extraction in the world’s crude oil supply mix is increasing steadily. While Canada supplied 0,6 million barrels/day, the country’s proportion in the global crude oil supply raised to 1,03 million barrels/day in 2008.

The above will not result in a disproportionate administrative burden for operators. Furthermore, EBB considers that there should be a balance between the administrative burden being imposed upon biofuels under the RE-D and the requirements imposed upon fossil fuels in the FQD.

³ Consultation document, p.4.

⁴ Consultation document, p.5.

5. Regular updates of the default values

Furthermore, EBB considers it essential that the default values for fossil fuels are regularly assessed and revised, following the same logic as the biofuels default values in the RE-D. In both cases, EBB reiterates that this revision process should be performed by a common panel of experts, in full transparency, and with involvement of all stakeholders (also biofuels producers etc).

EBB supports:

- **Option 3 (“hybrid with default values and option to calculate actual values”).**
- **Conservative default values (mark-up on the processing step).**
- **Mandatory use of actual values for the extraction step when unconventional crude oil sources are used.**
- **Regular updates of the fossil default values, involving a panel of experts and stakeholders.**

6. Specific issues relating to the draft default values for fossil fuels (Annex 1)

Regarding the specific default values provided in Annex 1 of the consultation document, EBB would like to raise the following points:

- In the draft table of default values on p. 16, the source for the diesel and gasoline values is missing. EBB assumes that such values are derived from the JEC Well-To-Tank study (for the extraction, refining, transport, distribution steps) and from the Well-To-Wheel study (for the combustion steps) but would like to receive confirmation of this.
- In Annex 1, it is stated that “values for the extraction portion of the life-cycle were adjusted to be more consistent with values calculated in other regions of the world”. EBB would appreciate further clarification on how such an adjustment was performed.
- For the “Tar Sands” pathway: Annex 1 states that the default value refers to a “combined in-situ mine and upgrader” as a basis. EBB would like to receive clarify as to why the “in-situ” extraction technology is taken as a reference. EBB understands that the use of this technology is still limited today although it might develop significantly in the future.⁵ According to the Trucost study⁶ referenced on the consultation document the most widespread technology is still the “ex-situ” (surface) mining, which is far more polluting. The report only states that deep oil sands deposits are “likely to be extracted through in situ recovery” because surface mining can obviously not be considered in that case.
Also, even when considering only in-situ projects, several extraction pathways may be considered, mainly steam-assisted gravity drainage (SAGD) and cyclic steam stimulation (CSS). It is EBB’s understanding that these thermal processes result in different GHG emission levels.
In this context, EBB believes that the default value assigned to the “tar sands” pathway should reflect the actual mix of extracting technologies and the GHG emissions attached to each of them.

⁵ G. Plouchart: *Évaluation des émissions de CO2 des filières énergétiques conventionnelles et non conventionnelles de production de carburants à partir de ressources fossiles*, Institut Français du Pétrole, Avril 2001, p. 13.

⁶ TRUCOST: *Oil sands: Exposure to energy and carbon costs*, Research Note, July 2008, p.2: “About 80% of oil sands are currently mined at the surface.”

PART 2: METHODOLOGY FOR THE CALCULATION OF LIFE CYCLE GREENHOUSE GAS BASELINE

- *Do you have any comments on the proposed options for calculating the baseline GHG intensity?*

EBB sees the definition of the baseline GHG intensity of fossil fuels as one of the major implications of the new Fuel Quality Directive, considering that such baseline will serve to assess both fossil fuels and biofuels GHG performances.

1. Maximal consistency between the FQD and RE-D approaches to the fossil fuel baseline should be ensured

The second comment that EBB would like to formulate is the necessary consistency between the fossil baseline in the FQD and fossil reference in the RE-D.

At present, there is a discrepancy between the fossil baseline for the FQD as proposed in the Commission consultation, and the fossil fuel reference defined in Annex V point 19 of the RE-D. Indeed:

- The FQD (Commission proposal) fossil baseline would cover: diesel, non-road gasoil, petrol, LPG and CNG.
- In the RE-D reference is made to the "latest available actual average emissions from the fossil part of petrol and diesel as reported under [the FQD...]".

EBB raises its concern that such discrepancy will result in more confusion and increased administrative burden for operators.

Also in the perspective of ensuring maximal consistency between the FQD and the RE-D, the same methodology should be used to weight the different fuel types included in the fossil baseline. Accordingly, an allocation by energy content seems the most appropriated option (Option 3 as proposed in the consultation document).

2. Differentiated treatment of petrol and diesel for the purpose of establishing the fossil baseline

Furthermore, EBB believes that the fossil fuels baseline should distinguish between petrol and diesel, considering that diesel is more energy intensive to produce, in particular as a result of desulphurization processes at the refining steps. Under the RE-D, biodiesel pathways should compare with average actual emissions from fossil diesel and ethanol pathways with average actual emissions from petrol.

EBB also notes that there is so far no default value for non-road gasoil and would like to get clarification on this point: is it the Commission intention to come up with a default value at later stage, or will fuel suppliers have to calculate their actual value when this will release non-road gasoil on the market?

- *In view of the fact that the value proposed herein will only vary slightly between now and 2010, is there merit in fixing the currently calculated value as the baseline value?*

EBB deems it essential that regular updates of the baseline GHG intensity of fossil fuel values is performed under the RE-D. This would be consistent with the revision of the default values stated above (Part 1, §4).

Not only is it inappropriate to fix the fossil baseline as from now rather than at the end of 2010, but EBB sees no reason to have a fixed value even beyond 2010. Instead, the fossil baseline under the FQD should be revised regularly. This would also be consistent with the fact that under the RE-D will be compared to a "moving target" in the RE-D.

EBB supports:

- **option 3 “Average based on energy” for the weighting of the different fuel types included in the baseline.**
- **maximal consistency between the FQD and the RE-D when defining the fossil baseline.**
- **separate baseline values for diesel and petrol.**
- **regular updates of the fossil fuel baseline, taking into account changes in the EU crude oil supply mix.**

PART 3: ISSUES RELATING TO ELECTRICITY

- *Do you have any comments on the proposed approach to accounting for the GHG intensity of the use of electricity in road vehicles?*
- *Do you have any suggestions on how to devise and implement a scheme for measuring and verifying electricity use in electric vehicles at decentralized locations (e.g. residential complexes and individual homes).*

1. EU vs. national values

EBB agrees with the course of action proposed in the consultation document, i.e. using national averages rather than EU averages for the purpose of assessing the baseline GHG intensity of the electricity supplied in the transport sector. The consultation paper acknowledges that “there is a wide variation in the GHG intensity of electricity used in different Member States.” The use of an EU average value would therefore be inconsistent with the objective of the FQD, which is to reduce the use of GHG intensive sources of energy and to reward the use of low GHG sources.

2. Accurate measuring of the GHG intensity of the electricity used in the transport sector

As rightfully pointed out in the consultation document, important issues of monitoring and measuring of the GHG intensity arise when the electricity used in vehicles is supplied in individual homes or other buildings not subject to an official metering system.

In view of the above, EBB believes that there is a need to establish a dedicated methodology to account for the electricity used in vehicles and to track the source of energy used to supply this electricity.

Until such methodology is established and validated at EU level (EU standard), EBB strongly believes that the electricity supplied outside regulated authorized points (i.e. without a proper monitoring of the GHG intensity) should be excluded from the purpose of the FQD. In other words, this electricity supply should not count under the 6% GHG reduction target.

Finally, EBB would like to recall Article 7a (6) of the FQD, which states that “the methodology to calculate the contribution of electric road vehicles [...] shall be compatible with Article 3(4) of Directive 2009/28/EC”. Consequently, the same methodology should be developed and applied under both Directives.

EBB supports:

- **the use of national averages to calculate the GHG intensity of the electricity supplied in the transport sector.**
- **the development of an EU methodology in the form of an EU standard ensuring an accurate measuring of the GHG intensity of the electricity used in the transport sector**
- **in the absence of such methodology and standard, no electricity supplied in private homes and other unmonitored buildings should qualify under the FQD GHG reduction target.**

PART 4: FLARING AND VENTING

- *Do you have any comments on the options put forward to account for the GHG reductions achieved through flaring and venting reduction and for including these in a supplier's reported GHG intensity?*

EBB wishes to raise some concerns regarding the methodology proposed in the Commission document to account reductions in emissions from flaring and venting under the FQD.

The equation provided in Annex 2, Point 1⁷ appears to be suggesting that any reduction in flaring and venting emissions (FVR) could be used to reduce a fossil fuel supplier's GHG intensity.

In the view of EBB, this possibility is only acceptable provided that emissions from flaring and venting are clearly included in the fossil GHG intensity (" $\sum MJ_{a \text{ to } z}$ " in the formula), which does not seem to be the case at present.

EBB notes that in the default values table on page 16, the values for the extraction step do not clearly identify the amount of GHG emissions relating to flaring and venting. Accordingly, EBB would appreciate to receive confirmation that such emissions have been effectively included in the default values and in the baseline. The statement that "reduction can be counted without modifying the default values"⁸ seems rather illogical in that respect.

Regarding the options put forward in the consultation paper to define the scope of the savings, EBB supports the first option, whereby reduction in flaring and venting emissions would be allocated proportionally between all the different oil products.

With regard to allocating the savings over a given period of time, it would appear more logical and more predictable for economic operators to allocate these savings over the whole compliance period.

Finally, EBB would like to underline that when it comes to allocating savings from flaring and venting, there is considerable uncertainty as to which production site should be considered as being relevant for the EU. EBB believes that robust and fraud-resistant guidelines should be developed by the Commission to ensure that flaring and venting projects are only accounted under the EU target when they are actually related to fuels consumed within the EU.

- *Do you consider CDM verification methodologies adequate to corroborate GHG savings associated with flaring and venting projects?*

EBB notes that CDM verification methodologies rely extensively on default values. For instance, in the case of open flares, an efficiency ratio of 50% is assumed, provided that it can be demonstrated that the flare is operational through a flame detection system reporting electronically on continuous basis. For enclosed flares, operators can use either a 90% or 50% default efficiency ratio, depending on the rate of compliance with the manufacturer's specifications⁹.

Following the logic detailed above (Part 2 §4) EBB believes that, if available, preference should rather be given to methodological tools allowing the calculation of actual values.

EBB also understands that CDM methodologies are still being updated and revised and encourages the Commission to take into account the latest available methodological guidelines available.

⁷ Consultation document, p.17.

⁸ Consultation document, p.10.

⁹ UNFCCC – CDM Executive Board : Methodological "Tool to determine project emissions from flaring gases containing methane", p.2-3.

EBB supports:

- **allocation of flaring and venting emission reduction proportionally to the different oil products**
- **allocation of the savings along the whole compliance period**
- **development of robust and fraud-resistant guidelines ensuring that flaring and venting projects are only accounted under the EU target when they are actually related to fuels consumed within the EU.**

PART 5: ADMINISTRATIVE BURDEN FOR MEMBER STATES

While measuring the need to keep a proportionate administrative burden for Member States, EBB considers that the reporting obligations under the Fuel Quality Directive should be harmonized as much as possible at an EU level. As highlighted in the successive Commission Reports on the quality of petrol and diesel fuels consumed in the Community (Commission reporting under the FQD) significant disparities still remain between national systems for monitoring the quality of fuels placed on the market.

In the view of EBB, such discrepancies should be remedied to ensure that the reporting on the GHG intensity of fossil fuels placed on the market is done on the same basis in all Member States and to provide transparent and comparable results. This is particularly important to ensure a level-playing field with biofuels, which are going to be benchmarked against the average actual emission from petrol and diesel reported by fuel suppliers under the FQD. It would not be acceptable that biofuels are benchmarked against an artificially low level of emissions from diesel and petrol, in case the reporting by fuel suppliers located in different Member States is not consistent.

From a practical point of view, it would seem preferable to encourage Member States' reporting using the EN14274:2003 standard, as provided for under Directive 2003/17/EC.

Furthermore, EBB notes that data collection on the basis of CN codes 27101941 for diesel does not appear to be appropriate, as it only allows the identification of diesel with a sulfur content lower or higher than the 0,05% threshold. Instead, Member States should be required to collect data on a disaggregated basis, allowing the identification of the different fuel types reported under the FQD.

More specifically, in order to ensure consistency with the need for fuel suppliers to provide actual data on the GHG intensity of the fuels they place on the market, but also to ensure compliance with the other requirements of the FQD (sulfur content etc) EBB believes it is necessary to ensure in each Member State a system of sampling of all refineries and imported batches of fossil fuels.

**PART 6: RULES NEEDED TO GIVE EFFECT TO ARTICLE 7A (4)
– JOINT REPORTING**

- *Do you think that specific rules are needed in relation to the possibility for suppliers to jointly comply with the requirements of Article 7a as foreseen in Article 7a (4).*

When it comes to implementing Article 7a(4) of the Fuel Quality Directive, EBB would like to underline that joint reporting of fossil fuel suppliers GHG intensity should remain the exception. It should be reminded that a similar possibility for biofuels producers to jointly report their GHG intensity has not been provided under the RE-D.
