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POSITIONPAPER

EBB position on certification of "intermediate crops" and "crops grown on severely degraded land"

1) Introduction

Delegated Directive 2024/1405 of 14 March 2024, amending Annex IX to the Renewable Energy Directive, is a crucial long-awaited development for the EU biofuel sector: the expansion of the list of sustainably sourced feedstocks for the production of advanced and waste and residue-based biofuels is a prerequisite to achieving the ambitious EU decarbonisation targets for the transport sector.

"Intermediate crops" and **"crops grown on severely degraded land"** have been added to the Annex IX feedstocks list[1] and while both of them could be particularly important for the European Biodiesel sector, very **strict and precise criteria are needed** for their certification. To this end, we are aware that the European Commission is working on a revision of Implementing Regulation 2022/996 and additionally, in **May 2024 Guidehouse has published a report** supporting the Commission in the application of Low-ILUC-risk certification. In this context, Guidehouse has also made suggestions on how to define/certify the two abovementioned feedstocks for biofuel production.

A definition of "severely degraded land" is already provided in the Renewable Energy Directive[2], whereas there is no precise definition for "intermediate crops" in the existing EU legislation beyond that they include catch crops and cover crops[3] and the joint definition of cover and ley crops included in article 2(42) of RED III[4].

The main questions that the revision of Regulation 2022/996 should address are:

1) How to prove that the requirements for intermediate crops included in such new points are met[5]?

2) How to prove that the requirements for crops grown on severely degraded land are met?

3) How to assess the amount of biomass that qualifies as an Annex IX crop?

While answering these key questions, the certification requirements and their implementation should enable the scaling up of Annex IX crops. Therefore, the requirements on the certification of Annex IX crops should provide solutions to clearly demonstrate and control that the feedstocks concerned are compliant with

[1] It should be noted that some cover crops are already included in Annex IX, part A, point (p) ("other non-food cellulosic materials"). For the sake of regulatory stability, the new certification/verification rules should only apply to newly added feedstocks.

[2] "Severely degraded land" is defined in Annex V, part C, paragraph 9 of the Renewable Energy Directive: "*Severely degraded land' means land that, for a significant period of time, has either been significantly salinated or presented significantly low organic matter content and has been severely eroded*."

[3] In article 2(40), in point t) of part A and in point f) of part B of Annex IX of the RED III. These latter points do not contain definitions of intermediate crops but the requirements that they have to fulfill in order to be taken into account.

[4] "*Ley and cover crops are understood to be temporary, short-term sown pastures comprising grass-legume mixture with a low starch content to obtain fodder for livestock and improve soil fertility for obtaining higher yields of arable main crops*".

[5] The requirements for intermediate crops in new points t) and f) of parts A and B, respectively, of Annex IX as defined by the Directive 2024/1405 are: "*that are grown in areas where due to a **short vegetation period** the production of food and feed crops is **limited to one harvest** and provided their use **does not trigger demand** for additional land and **provided the soil organic matter content is maintained***".

regulatory definitions and that are also practical, i.e. implementable without unnecessary complexity, delays, costs and administrative burden.

The delegated directive (EU) 2024/1405 should be transposed by Member States by 14.9.2025. To provide clarity for the economic operators and enable the development of Annex IX crops without unnecessary delays, the revision of the implementing regulation (EU) 2022/996 should be applicable in the Member States immediately after its entry into force. In addition, updated voluntary scheme guidance documents regarding certification of Annex IX crops would be necessary and will be dependent on the clarifications provided by the updated Implementing Regulation 996/2022.

2) EBB position on certification of "intermediate crops" for the purpose of RED Annex IX feedstock classification

a. Comments on the criteria proposed in the Guidehouse report

General Statement: any EU definition of intermediate crops shall NOT be limited to specific crops, but rather identify criteria related to the agricultural production of those crops and their use for the production of biofuels. As EBB, we support measures that ensure that the intermediate crop definition is very stringent on its sustainability criteria in order to minimize any risk of fraud.

Such a definition should take into account the following elements:

- It should work for FARMERS. Provide additional income for farmers as they keep delivering food security and they adopt more sustainable agriculture practices. A variety of seeds should fit such a definition in order to adapt to local weather and soil across Europe.
- It should be SCALABLE. Intermediate crops can sustain the competitiveness of the EU crush of vegetable oils industry, enhancing synergies across the EU Bioeconomy supply chain from farmers to biofuels producers.
- It should be SUSTAINABLE. It is paramount to make sure that the risk of fraudulent Annex IX certification is minimized by designing stringent sustainability criteria.

1. As a general principle, EBB would like to stress the importance of **involving the agricultural community and the broader biofuels value chain, from farmers, to crushers and biofuels producers** when defining such criteria, which require technical and agronomical knowledge.
2. As to **how to define the "main crop"**, EBB essentially agrees with the reasoning proposed by Guidehouse in table 9 of its report (page C-7): **in case there is only one crop grown on agricultural land over a harvest year, that should be classified by default as a main crop. In the case where more than one crop is grown, any crop could be classified as intermediate crop, provided it fulfills all the criteria set in Annex IX to the RED (see above). Therefore, the guiding criteria should be taken into account**, and at least one (the most appropriate one according to local specificities: see point 4 below) of the following "guiding criteria" should be fulfilled to differentiate a main crop from an intermediate crop: **economic value** (highest for the main crop), the **conditions for land occupation** (which are the most favourable for the main crop) and the **duration of the occupation** (longest growing period for the main crop).
3. At the same time though, it is **important that the new certification rules and the auditors take into account some specificities when differentiating main crops and intermediate crops** and applying at least one of the "guiding criteria".
    - For example, in the case of the "economic value" (which typically should be higher for the main crop), it is crucial that a **clear methodology to measure the "economic value"** be provided. We suggest taking the **average prices over a year,** and considering **Euros/hectar** rather than Euros/ton.

More specifically, it should be acknowledged that such a value can vary based e.g. on the final fuel use (expected to be higher for aviation, because of the latest Annex IX amendment). In general, the focus should be in keeping the "main crops" production stable or increasing while adding the intermediate crop. Intermediate crops very often provide ecosystem / environmental benefits that increase the yield or reduce the risk of yield loss for "main crops". Moreover, **one option could be to consider, rather than (or besides) the "economic (market) value" as such, the dry yields associated to the different crops**, which should be most often higher for the main crops. **Even in this case though, specificities should be taken into account**, and there should be some space for innovation that allows development of intermediate crops fit into ideal cycles with main crops. For example, in some cases while the main crop is cultivated year-over-year, the "corresponding" intermediate crop has a 1:3 or even 1:4 year rotation before it is planted back in the same field: in these cases, the entire rotation cycle needs to be taken into account when assessing the yields (and/or the economic value) associated with the intermediate crop.

- As to the criteria "**duration of land occupation", and "conditions for land occupation", the auditors' assessment should consider the different crops' agronomic needs**, and how one specific land has been historically used. For example, the new rules should be flexible enough to allow auditors to certify as "intermediate crops" winter cover crops, in spite of the fact that, in some cases, they occupy the land longer than the main crop.

4. As to the **identification of "intermediate crops" included in points t) and f) of parts A and B (of RED Annex IX), respectively**, the **"core criteria" should essentially correspond to the requirements mentioned in such points**: an intermediate crop must be grown before or after the main crop is harvested on the same agricultural land, must not trigger demand for additional land and must maintain the soil organic matter content.
   Moreover, to be consistent with the criteria to identify the main crop, **while all guiding criteria should be assessed during the auditing phase, only one of the potential guiding criteria aligned with the main crop guiding criteria should be met**: lower economic value, occupying the land during the worst growing period, or shorter growing period than the main crop. For example, if the guiding criterion for the main crop is "occupying the land on the most favorable season" the equivalent guiding criteria for identifying the intermediate crop should be "occupying the land during the worst growing season".
5. Concerning how to make sure that **intermediate crops "do not trigger demand for additional land"**, the **growing season of the main crop shall be used as the main indicator.** If the growing season of the main crop is unchanged, within a reasonable tolerance, this means that the intermediate crop does not interfere with the growing and harvesting cycle of the main crop. **Therefore, all yield of the intermediate crop is to be counted as Annex IX**. A reasonable tolerance should be allowed as weather conditions can have a substantial impact on the start and end of the season. **Observed yield of the main crop**, combined with an assumed impact of intermediate crops on it, **should not be used to assess if the intermediate crop does not trigger demand for additional land** as there is natural year-on-year variation on yields, even without intermediate cropping (as acknowledged by the Guidehouse report).
   Additionally, **EBB also supports Guidehouse's focus on the importance of proving that the land on which intermediate crops are grown would otherwise have been unproductive** (fallow, or growing crops that are not harvested such as catch crops for soil cover).
6. Concerning how to **proof that intermediate crops "maintain soil organic matter content"**, EBB agrees with the Guidehouse report's focus on the fact that "**a practical way should be provided** for a farmer to demonstrate that soil organic matter content is maintained at a farm level, to avoid costly on-farm measurements and to minimise administrative burden". As an example of a practice that could be taken into account to this end, if it can be proved that **residues of intermediate crops are left on the field**, the "soil organic matter content" criterion is considered to be fulfilled. If the residues are not left in the field, other regenerative agricultural practices may be used. First of all, Annex VI of EU Implementing

Regulation 2022/996 lists examples of essential soil management practices to promote carbon sequestration (given the absence of residues) and promote soil quality. Moreover, voluntary schemes could provide a list of additional alternative regenerative agricultural practices that fit the purpose. It should be noted that referring to criteria in the EU Soil Health Law is not a viable option, as this piece of legislation is still being negotiated by co-legislators. Finally, EBB also acknowledges the importance of cover crops as a practice not only for maintaining but also for *improving* soil fertility.

7. As to how to demonstrate that "*due to a short vegetation period the production of food and feed crops is limited to one harvest*", we refer to point 1 in subparagraph b.

b. Certification/verification principles

1. It is crucial for the Commission to develop a binding methodology to ensure **that intermediate crops only originate from areas with one possible main crop harvest per growing season.**
2. Certification bodies will ensure that the biomass actually results from intermediate crop cultivation and that a main crop was cultivated on the same area before or after by **inspecting the management documentation of the farms of origin**. For this purpose, the auditor is given access to all relevant documents and records, in particular with regard to the type and yield of the main crop, sowing and harvesting time, as well as sowing of the intermediate crop. Verification of the certification requirements could also be supported by remote sensing tools and maps.
3. In the **case of group audits for agricultural points of origin growing intermediate crops**, the sample size - in addition to the existing square root rule - must be at least 25% of all points of origin assigned to the group manager. All points of origin within the sample must be audited on site by the certification body.
4. **EBB opposes a positive list of "approved" intermediate crops** (or alternatively a negative list of non-approved crops). Such a distinction would not be practicable, as numerous crop species can be cultivated both as intermediate and main crops.
5. If the economic value of intermediate crops exceeds that of the respective main crop, there is an increased risk that producers will change their farming practices in favor of the intermediate crop yield. This also increases the risk of additional land demand due to intermediate crops, as main crop yields may be reduced. To minimize this risk, **certification bodies regularly compare at regional level (e.g. NUTS2 level or another applicable tool) whether the average yields of intermediate crops have moved very close to those of main crops** (per unit area) or even exceed them. In this case, the certification body is obliged to notify the certification scheme and the Commission immediately and to carry out special audits of the first gathering points and producers concerned. The Commission determines the exact requirements of such special audits as binding for all certification systems. During the auditing process, **specificities in assessing the yields associated with intermediate crops** should be taken into account, as described in point 3 of subparagraph a.
6. A prerequisite for the crediting of intermediate crop-based biofuels towards the targets of RED, ReFuelEU Aviation and FuelEU Maritime should be that **the points of origin and the respective country of origin of the intermediate crops allow witness audits by the competent authorities** of the Member States.
7. Concerning mass balancing, the EBB would like to remind and highlight that **current EU mass balancing rules exclude the possibility of mass balancing raw materials belonging to different product groups (e.g. Annex IX and non-Annex IX feedstocks)**, except in very specific situations. In the case of intermediate crops, implementing this measure will be key to make sure that non-qualifying (intermediate) crops do not illegally enter the supply chain labelled as "Annex IX-compliant" intermediate crops.

3) EBB position on certification of "crops grown on severely degraded land" for the purpose of RED Annex IX feedstock classification

a. Comments on the criteria proposed in the Guidehouse report

1. As for "intermediate crops", EBB would like first of all to stress the importance of **involving the agricultural community and the broader biofuels value chain, from farmers, to crushers and biofuels producers,** when defining such criteria, which require technical and agronomical knowledge.
2. As a starting point, EBB would seek some clarification on the explicit exclusion of food and feed crops (FFs) from the category of crops grown on severely degraded land (SDL) in RED Annex IX. In fact, FFs are defined in the RED as "produced on agricultural land", which SDL should not be. Therefore, should we interpret that, *by definition*, **no crop grown on SDL can ever be considered as "FF"**?
3. At a general level of analysis, **EBB supports Guidehouse's approach to use the three criteria (salination, organic matter content and erosion)** currently included in the RED definition (see footnote 2) as a starting point. However, **the EBB is not (yet) in a position to comment or propose precise thresholds to fulfill said criteria**.
4. When looking at the definition of SDL in Annex V, part C, paragraph 9 of the Renewable Energy Directive, **our interpretation is that one of the three criteria is a binding one (erosion: "*AND has been severely eroded*")**, while only one of the two remaining criteria has to be fulfilled ("*has EITHER been significantly salinated OR presented significantly low organic matter content*"). The same logic should apply when identifying SDL for the purpose of Annex IX compliance. Moreover, to **take into account exceptional local specificities**, under special circumstances and based on solid scientific rationale other quantitative criteria than the proposed thresholds could be considered to identify "severely degraded land" (e.g. FAO, WOCAT-LADA).
5. As for "intermediate crops", in EBB's opinion **crops grown on severely degraded land do not need to meet the low-ILUC-risk additionality criteria** for the purpose of Annex IX.

b. Certification/verification principles

1. For the **identification of eroded soils**, we recommend conducting verification through reports by qualified agronomists supported by photographic evidence and global maps. For measurements and verification of **soil organic carbon content**, appropriate remote sensing techniques that guarantee the same accuracy as on-site sampling should also be accepted.
2. More generally, EBB believes that **digital tools are not promoted enough**, despite their significance in transitioning to a more efficient and sustainable agriculture. For instance, satellite imagery, drones, and other digital tools can greatly simplify the process of accurately certifying farms and feedstocks.
3. Concerning the **validity of a certificate of "severely degraded land"** for the purposes of Annex IX, EBB supports Guidehouse's recommendation that such a certificate should be **valid for more than 10 years**. As indicated in the Guidehouse report, "*Allowing for more than 10 years certification would give the farmer more security to undergo this time investment*", especially in those cases where "*a majority of the eligible yield would occur after the initial 10-year period has ended*". More specifically:
    - For **perennial crops**, we recommend allowing the certification of "severely degraded land" to be valid for the lifetime of the crops.
    - When the land is used for the **cultivation of annual crops**, we recommend allowing the certification of "severely degraded land" to be valid for a minimum 20 years. Crop rotations are complicated and the intended crop producing biofuel raw material (e.g an oil crop) cannot be cultivated every year in the same field.

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