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Recognition of private certification schemes for public regulation

Lessons learned from the Renewable Energy Directive

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1 Rationale for the study

Concerns regarding the social and environmental impacts of global consumption and production are increasingly being incorporated in public policy and regulation. This creates a need to regulate and monitor production conditions in places outside the state jurisdiction. At the same time, sustainability claims have become an important competition factor for internationally operating companies. Private certification schemes are instruments often used to promote sustainability in supply chains. Although those schemes are far from perfect, they describe one effective way to foster sustainable production and consumption across national boundaries. They lay out sustainable production criteria and can also provide credible verification schemes that are independent from the state.

The idea of ‘co-regulation’ is that states set out sustainability criteria for certain economic sectors and recognise private control mechanisms that assure compliance with those sustainability criteria. States opt for co-regulation because their direct control is limited to the boundaries of the state jurisdiction. While the idea might sound simple, the implementation of co-regulation is complex and is influenced by many technical and political factors. What are the minimum sustainability and assurance criteria a state should set? What are the impacts on the functionality of and competition between certification schemes once they are ‘recognised’ by a state? What capacities are needed at administrative level to develop, implement and maintain such a recognition procedure?

The European Commission (EC) has pioneered in implementing co-regulation, which was established by the Renewable Energy Directive (RED) in the field of biofuel sustainability. This study aims to evaluate experiences gained during the implementation of EC procedures for recognising private certification schemes for sustainable biofuels. In this way, the study analyses the efficiency and effectiveness of

these procedures; lessons learned are made available to policymakers and public administration to inform future co-regulation processes.

The recognition process for biofuel sustainability schemes started in 2010 and has been a continuous learning process for all stakeholders. The experiences made and the lessons learned could be useful for designing future co-regulation processes. Possible future co-regulation processes include the private certification of biomass for producing electricity and heat or compliance with sustainability requirements established by public procurement regulations. It is well understood by the authors of this study that the RED recognition procedure is an on-going learning process. The experiences gathered and analysed up to now represent a snapshot of two years (2010–2012) of implementing co-regulation.

2 Background

2.1 The concept of co-regulation

The term ‘co-regulation’ refers to the combination of private and public regulation. Co-regulation approaches can take different forms with varying levels of intensity. Broadly speaking, we can distinguish at least three different co-regulation pathways:

1. Governments set binding sustainability goals for firms and enforce these by officially recognising and regulating private verification or certification schemes with which firms must comply in order to meet the legal requirements. Details on how to implement the standard and verify compliance are left to the discretion of the standards system (RED approach).
2. Governments may support private schemes without adopting them or making them law, e.g. by creating appropriate legal and regulatory frameworks (e.g. national accreditation), directly supporting implementation by private parties (e.g. by providing loans), or by supporting in the development of private schemes.
3. Governments can adopt private regulations to make them national laws.

If implemented effectively, co-regulation combines the strengths of both private and public regulatory capacities. Strengths in public regulation include democratic legitimacy, applicability to all firms within the jurisdiction, and enforceability through state supervisory agencies. Weaknesses include slow development, no applicability outside the jurisdiction and high implementation costs for private sector parties. On the other hand, private regulation is often flexible, quick and innovative in nature, while being international in terms of focus and applicability. In many cases, private regulation is also linked to economic incentives.

Private regulatory initiatives should complement public regulation. They can support each other, but private schemes cannot substitute public regulation. In co-regulation, private schemes are there to enhance public policy implementation and to create a more efficient regulatory environment.

Co-regulation is especially useful when there is a need to regulate economic activities performed outside the geographic borders of a state, such as markets that have global supply chains. Co-regulation can promote good governance throughout the world by giving private sector parties the freedom and flexibility to act on their specific situations.

However, co-regulation can also be risky. For instance, varying and even contradictory demands on private schemes by different governments may increase implementation costs. Some governments may also view private regulatory initiatives as competing with their own regulations, and may therefore act against them. Furthermore, if governments do not fully understand the dynamics of private schemes, co-regulation may not be efficient. Finally, governments may also misuse co-regulation (e.g. for protectionist purposes) and endanger the neutrality and credibility of private schemes.

2.2 Co-regulation under the Renewable Energy Directive: recognition of private certification schemes

Biofuels have been strongly debated due to their sometimes doubtful potential for reducing greenhouse gas emissions and the mounting pressure they cause on arable land, peat lands, forests, biodiversity and water use. This debate also addresses the potential, and possibly severe, negative impacts on labour con-

ditions, land rights and food prices. This is especially the case for countries where law enforcement instruments are weak.

The RED introduced mandatory and non-mandatory sustainability requirements for biofuels. Mandatory requirements are conditions biofuels have to fulfill in order to be counted towards national renewable energy targets and be eligible for financial support. Mandatory requirements are related to greenhouse gas savings, land with high biodiversity value, land with high carbon stock and, in the case of Member States, agro-environmental practices. Other requirements, including socio-economic sustainability (such as labour conditions, the availability of foodstuffs at affordable prices, and the respect of land-use rights) are non-mandatory. The EC may decide in future that non-mandatory requirements will become mandatory. Further requirements related to indirect land-use change effects were under discussion in 2012. Member States are obliged to transpose the RED sustainability requirements for biofuels and bioliquids into their state legislation.

Economic operators bringing biofuels onto the EU market have the following options for proving compliance with the RED sustainability requirements:

1. Using a private voluntary certification scheme recognised by the EC or a Member State for such purpose;
2. Using a national certification or verification sustainability scheme if one exists in the Member State where the biofuel is used;

3. Referring to bilateral or multilateral agreements between the European Union and other regions. These agreements must be recognised by the EC for this purpose. So far, no such agreements exist.

The timeline of the development of co-regulation under the RED is shown in Figure 1 below. The RED was adopted by the European Parliament and the Council of the European Union on 23 April 2009. After that, Member States have been obliged to transpose the Directive into their national legislation by 5 December 2010. The first Member State to do so was Germany in their ordinances Biokraft-NachV for the sustainability of biofuels and BioSt-NachV for the sustainability of bioliquids for electricity production. It was not until June 2010 that the EC published its Communication on voluntary schemes and default values in the EU biofuels and bioliquids sustainability scheme. This Communication sets out how the EC intends to carry out its responsibilities leading to the recognition of voluntary schemes, providing information for Member States, third countries, economic operators and non-governmental organisations. Shortly after, in July 2010, the application process for the EC recognition of voluntary schemes commenced. In the same month, Germany already approved the use of two voluntary schemes for demonstrating compliance with sustainability requirements for biofuels and bioliquids used in the German market.

The EC recognised the first batch of seven voluntary schemes only a year after, in July 2011. Six more voluntary schemes were recognised in the period April to November 2012.

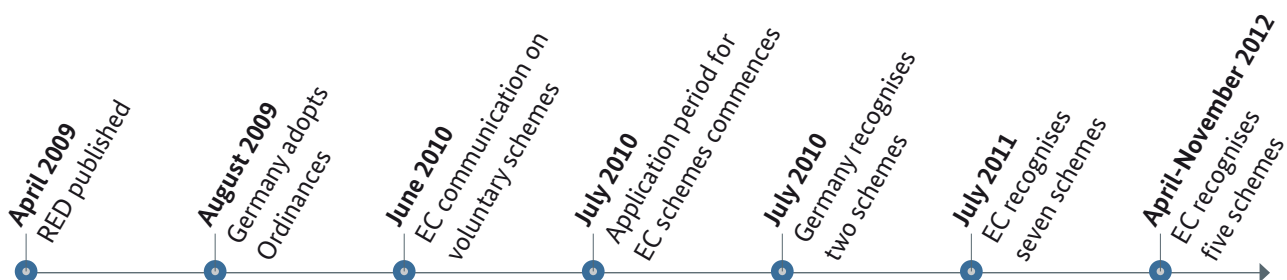


Figure 1: Timeline of the development of co-regulation under the RED

The recognition process is explained in the flow chart presented in Figure 2 below. The Directorate-General for Energy (DG ENER) is in charge of the recognition procedure at the European Commission. The technical assessment of the voluntary schemes is outsourced to a contractor. This technical assessment is an iterative process in which the applicant is requested to find solutions for issues found during the evaluation. If the scheme passes the technical assessment, DG ENER begins an inter-service consultation with other Directorates-General for their co-approval. Once the Directorates-General have approved the technical assessment, DG ENER commences the comitology process with the Member States Advisory Committee. This Advisory Commit-

tee comprises representatives from all Member States. The Advisory Committee votes on its approval, though the result of this voting is not binding for the EC. Once this process is finished, DG ENER makes its recommendation to the EC regarding the adoption of a formal Decision for recognising the voluntary scheme. The EC Decision is valid for 5 years. Recognised schemes can be used by economic operators 20 days after the Decision is published. Private schemes may present modifications following formal recognition. In such cases, DG ENER decides whether they affect the initial recognition. If so, a new assessment would be required, though it is not yet clear if and how the full process is to be applied.



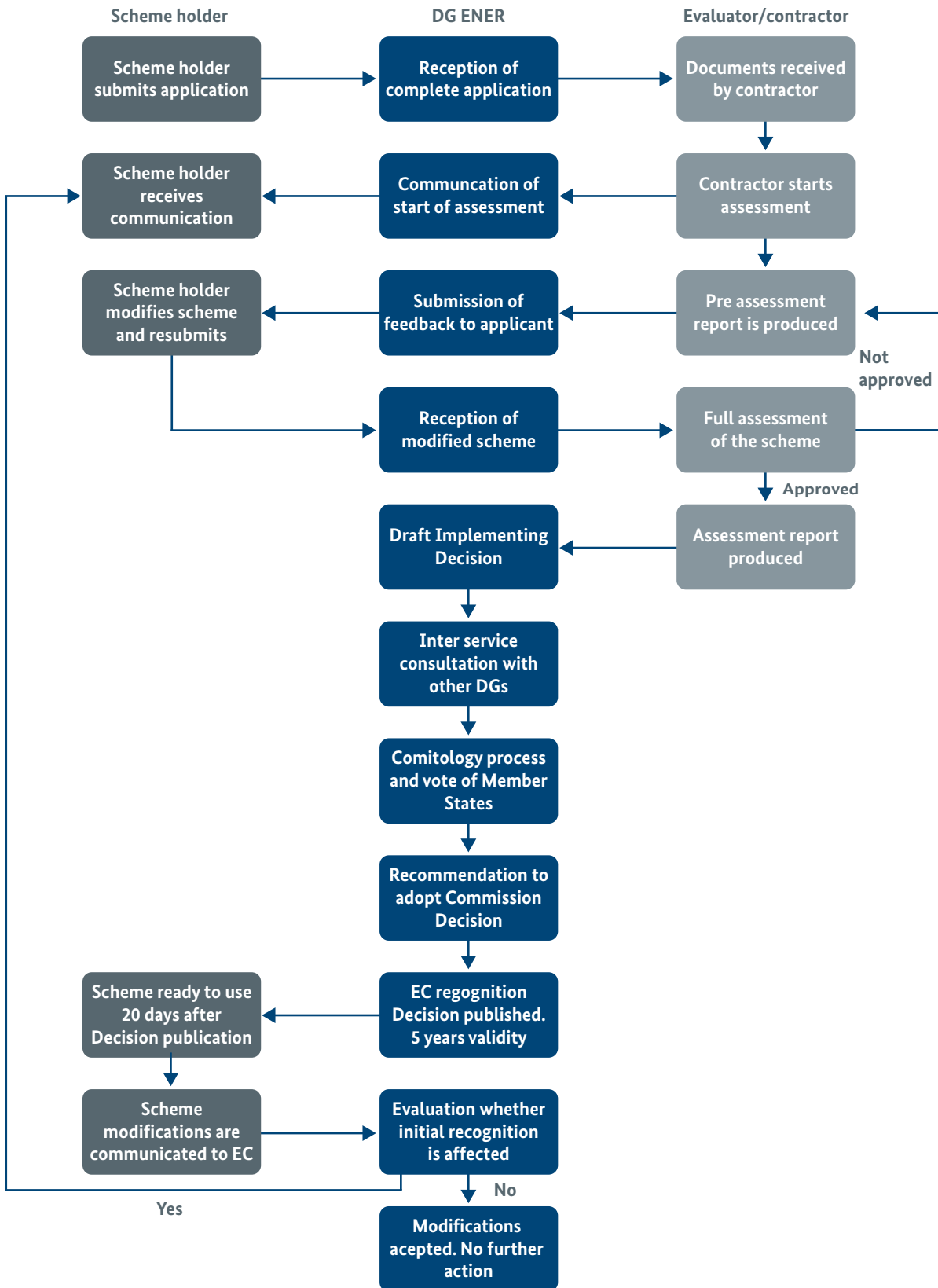


Figure 2: Process of European Commission recognition of certification schemes

By February 2013, the EC had recognised thirteen certification schemes (see Table 1 below). Several other schemes have applied for recognition and are

still in the process of technical evaluation, or are waiting for a final EC decision.

Table 1: European Union-recognised certification schemes

Abbreviation and name of sustainability scheme		Feedstock/ geographic coverage	Date of EC recognition
ISCC-EU	International Sustainability and Carbon Certification EU Scheme	All biomass/ global	19 July 2011
Bonsucro EU	Bonsucro EU Certification Scheme	Sugarcane/ global	19 July 2011
RTRS EU RED	Round Table on Responsible Soy EU RED Scheme	Soy/global (not EU)	19 July 2011
RSB EU RED	Roundtable on Sustainable Biofuels EU RED Scheme	All biomass/ global	19 July 2011
RBSA	Abengoa RED Bioenergy Sustainability Assurance Scheme	All biomass/ global (for Abengoa supply)	19 July 2011
Greenergy	Greenergy Brazilian Bioethanol Verification Programme	All biomass for ethanol/global (for Greenergy supply)	19 July 2011
2BSvs	Biomass Biofuels Voluntary Scheme	All biomass/ global	19 July 2011
ENSUS	Voluntary Scheme under RED for Ensus Bioethanol Production	Wheat/EU feedstock (for Ensus supply)	23 April 2012
Red Tractor	Red Tractor Farm Assurance Combinable Crops & Sugar Beet Scheme	Agricultural biomass/United Kingdom	16 July 2012
SQC	Scottish Quality Farm Assured Combinable Crops Scheme	Agricultural biomass/Scot- land	24 July 2012
REDCert	Renewable Energy Directive Certification Scheme	All biomass/EU 27 + selected countries	24 July 2012
NTA 8080	Netherlands Technical Agreement 8080 Certification Scheme	All biomass/ Global	24 July 2012
RSPO EU RED	Roundtable on Sustainable Palm Oil Production RED Scheme	Palm oil/Global	23 November 2012

2.3 Overview of co-regulation approaches in other sectors

2.3.1 Forestry

The EU Timber Regulation illustrates examples of co-regulation where private certification schemes may be used by companies in their risk assessments proving the timber comes from legal sources. The EU Timber Regulation, which comes into effect in March 2013, will require producers to take concrete steps to minimise the risk of putting illegally harvested timber and timber products onto the EU market. Currently, seven public timber procurement policies in the EU recognise forest certification schemes as instruments for ensuring that the timber products come from certified sustainably managed forests.

Netherlands: Under the Dutch Timber Procurement Policy, public institutions, provinces, local councils, etc. are obliged to use only timber and timber products that comply with national sustainability requirements. In order to show compliance, timber products must be certified by recognised (accredited) certification schemes. The TPAC (Timber Procurement Assessment Committee) has been set up to assess various certification schemes in order to assure that sustainability and governance criteria have been met. An assessment procedure has been developed to assess whether certification schemes meet the procurement criteria.

Germany: Under the German Public Procurement Law, all federal institutions are obliged to procure only certified timber products from sustainable sources. Certificates or individual specifications may be accepted if the bidder is able to satisfactorily prove that the wood products were produced in accordance with the Forest Stewardship Council (FSC), the Programme for the Endorsement of Forest Certification (PEFC) or comparable standards.

United Kingdom: Under the UK Timber Procurement Policy, all central government departments, executive agencies and non-departmental public bodies in England are obliged to use only timber-derived products that stem from legal and sustainable sources, and that are certified by a recognised certification scheme. These schemes need to be

recognised by the national government.

2.3.2 Solid and gaseous biomass used in the production of heat and electricity (extension of the Renewable Energy Directive)

The EC has decided to not yet establish mandatory sustainability requirements for solid and gaseous biomass used in electricity production, heating and cooling.

A European Commission Consultation in early 2011 attracted significant support from market players and the general public for binding sustainability requirements for solid and gaseous biomass used in heat and electricity production. The EC will therefore revisit its decision. However the market is already preparing for policy developments with several private initiatives for certification. Utilities have already developed private certification initiatives for wood pellets; well-known examples are the Green Gold Label from RWE/Essent, the Drax sustainability requirements, the Laborelec scheme from GDF/Suez, and the International Wood Pellet Buyers initiative (IWPB), a joint effort established in 2011 by seven European utility companies.

The market for solid biomass, especially for energy uses (electricity, heating and cooling), is growing at a fast and steady pace. Different forecasts predict that the demand consumption for 2020 will be between 20 million to 80 million tons. Currently, more than 25% of this biomass is imported from outside the EU: Canada, the United States and Russia were by far the main exporters to the EU, but exports from South America, Africa and Australia have also started.

In the case that sustainability requirements for solid and gaseous biomass become mandatory under EU RED, it is likely that a co-regulation system similar to that used for liquid biofuels would be established and that private certification schemes would be chosen for demonstrating compliance.

2.3.3 Public procurement policy plans in Germany

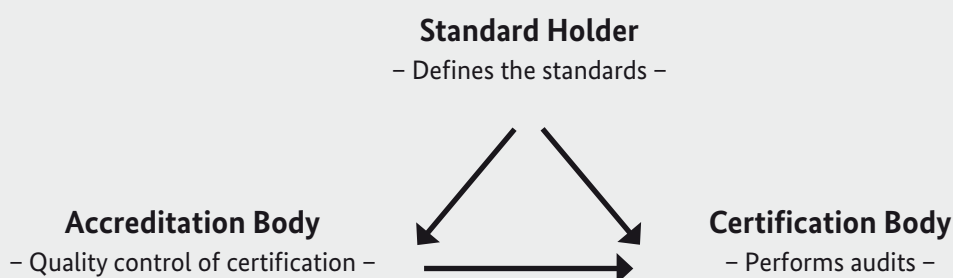
In 2009, Germany laid down options for integrating sustainability considerations into public procurement procedures. Since then, many federal states have included sustainability issues in their laws, though to a very different extent. The common challenge is how to take up sustainability criteria in the actual procurement documents and how contractors can prove their compliance with requirements. Sustainability standards may offer possible

solutions for both situations. EU law forbids procurers from asking for certain certification standards or labels. Existing private standards with their criteria and indicators can, however, inform the formulation of technical specifications in public procurement, e. g., defining the requirements and the evaluation of tenders. Also standards could be used by tenderers as evidence that they fulfil certain conditions. Existing standards offer a cost-effective method of control, as the verification does not have to be done by the procurer.

Key elements in sustainability certification schemes for biomass

Biomass sustainability certification schemes provide assurance that biomass or biomass-based products satisfy certain standards. Private certification schemes can be developed by different parties (governments, NGOs, associations, companies, or any combination thereof) with different interests and priorities. Therefore the scope, approach and complexity vary from scheme to scheme. Some of these certification schemes exist on national level, and others are internationally applicable.

A certification scheme is generally regarded as a structure made up of three institutions: the standard holder, the certification body and the accreditation body. The role of the standard holder is to develop the sustainability criteria governing production, the rules for traceability, verification and any other component needed to establish a certification scheme. The certification body, which is independent of the standard holder, is tasked with determining whether a business operation meets the sustainability criteria established by the standard holder. It is responsible for operational audits. The accreditation body, which is again independent of the standard holder, ensures that the certification body has the necessary expertise and that different certification bodies deliver the same result. They are responsible for quality assurance across all certification bodies.



3 Methodological approach

This study is mainly based on interviews with key informants. It also uses documentation currently available on the EU RED recognition system and other co-regulation processes. A total of 23 interviews with relevant stakeholders were carried out for this study.

Public organisations interviewed include the European Commission and a number of national regulators. Private organisations include owners of private certification schemes, large economic operators using these schemes, certification bodies, organisations involved with the assessment of certification schemes, and organisations involved in scrutinising sustainability policies for biofuels.

Based on the collected information, the EC recognition procedure is analysed in terms of its efficiency and effectiveness. The following aspects were considered in the analysis:

1. **Availability and clarity of the administrative procedure.** Is there an administrative procedure with clear responsibilities and a description of each administrative step? Is this procedure publicly available for applicants and other interested parties? Does this procedure include an indicative timeline for each administrative step? How long does this procedure take in practice?
2. **Transparency and confidentiality.** Is the procedure managed with transparency towards the applicant and other market stakeholders? How is confidentiality of the scheme documents handled? Do all members involved in the evaluation and approval of the scheme have full access to all relevant information?
3. **Technical assessment framework.** Does an assessment framework exist? What elements does it contain and are those elements sufficient for a robust assessment? Who was involved in the establishment and approval of this technical assessment framework? Does this assessment framework contribute to all applicant schemes being evaluated with the same scale?
4. **Cross acceptance rules.** Are there any rules governing the cross-acceptance of certificates by different recognised schemes? Are these rules clear and part of the recognition procedure? How does the current cross-acceptance of certificates impact sustainability assurance? Do those impacts alter the sustainability goals established by the RED?
5. **Parallel recognition procedures in Member States.** Member States may include provisions in their legislation for recognising private voluntary schemes for use in demonstrating compliance of biofuels used in their markets. Are those parallel recognition procedures similar to the EC recognition procedure? Do these parallel procedures use similar assessment frameworks?

4 Analysis and main findings

4.1 Availability and clarity of administrative procedures

DG Energy established administrative procedures for accepting and processing scheme applications (see Figure 2). These are however not available in written form and are not pro-actively communicated. The procedures are based on the provisions in the RED and its correspondent Communications (e.g. comitology process), and pragmatic solutions to fulfil the task where no specific guidance exists (e.g. treatment of scheme applications on a first-come, first-served basis and separation into batches). A formal overview of the administrative steps and (indicative) timelines are not available in official written form (e.g. on the DG's online transparency platform). Applicants and interested parties do not immediately know to whom they should send their applications or questions until they contact DG Energy. The recognition procedure is then only communicated verbally or by email to applicants.

No clear administrative procedure exists yet for handling changes in a scheme's documentation. The corresponding Communication by the Commission specifies that all changes have to be submitted to the Commission, and that major changes will result in full re-assessment of the scheme. It remains unclear as to which changes would be considered major or minor. Therefore, schemes indicating that they would like to change certain issues relevant for their performance cannot do so until they are notified by the Commission. No procedure exists yet for monitoring the application of the schemes in the market and for handling scheme failure (e.g. complaint mechanisms, liability issues). Member States can decide to install monitoring mechanisms at Member State level. However, such mechanisms could only cover the nationally accepted schemes and are not capable of tracking and controlling EU-wide material flows.

The length of the recognition process from first contact to official recognition is seen as a major challenge by applicants. Major delays resulted from the waiting times before the technical assessment could begin. Because of the amount of applications (more than 20), DG Energy decided to process the applications in batches. Some schemes in the second batch had to deal with months of waiting before their application could be technically assessed. Following the completion of the technical assessment, the inter-service consultation and the comitology process increased waiting times. The technical assessment itself, however, is in general valued for its speed.

For the schemes in the first batch, the process often took up to one year from first submission to official recognition. While applicants and market players understand that many schemes were applying at the same time and that there was no previous experience with this type of process, they complained that neither a clear timeline nor official reasons for delays were given. The long time between the conclusion of a positive technical assessment and the official recognition decision is severely criticised by most of the interviewed certification schemes. The length of the recognition procedure for the RSPO scheme is the most prominent example cited by market players and some Member States as a strong example of non-transparency and interference by third parties. For RSPO, nine months passed from the positive assessment report to official recognition. Reasons for this delay were not communicated.

Regarding timelines, the German ordinances put strict requirements on the responsible authority by introducing a deadline of six months from the receipt of the formal application within which the authority has to come to a decision (if this does not occur, the scheme is automatically recognised); Dutch legal provisions for the acceptance of voluntary schemes have also established a maximum of

eight weeks from the start of the assessment to preparing the decision for approval.

Most interviewees concluded that the recognition procedure could have been faster had there been more staff assigned to the task at DG Energy. The DG has one person in charge who handles the RED recognition system amongst a number of other tasks. However, some respondents indicated that there was no doubt regarding the willingness of EC staff to enable a process that is as smooth as possible. Interviewees generally acknowledged that the recognition procedure has become more efficient over time, but applicants still lack clear guidance and official information on the procedure and expected timelines.

This lack of procedural clarity and the lengthiness of the process caused inefficiencies in applicants' internal planning processes and contributed to a perceived lack of transparency.

The comitology procedure has undergone changes to reduce workload and increase efficiency. Member States have a strong interest in robust assessments as they will have to later accept the certificates of recognised schemes in their markets. While the Member State Committee first discussed and voted on the schemes in a face to face meeting, the Committee agreed to use a write-in procedure for subsequent votes, reducing costs and time. However, respondents indicated that the procedure has become less transparent as the opinions of Member States are not shared with other Member States. They are simply fed back to the DG Energy who then responds on an individual basis if the DG Energy considers it necessary. DG Energy does not actively share all comments received with the Member States. This is seen to reduce the transparency and the level of effective control of the Committee.

DG Energy sends the assessment reports and a draft decision on the recognition of schemes without prior notice to Member States' representatives in the Committee. Member States are normally given two weeks to review the documents and respond. Member States indicated that the timeframe for their in-

ternal consultations and assessments is rather short and that they are not able to plan ahead because they do not have official information on the number and names of schemes being assessed or on the status of the assessments. The EC has reacted in part and has adapted the process recently so that Member States are first given a deadline to submit comments and a second deadline to submit their vote.

The EC's reactive communication strategy risks affecting the credibility of the process: Many respondents perceive the process as non-transparent and in some cases feel that schemes are assessed on a political rather than a technical basis; sometimes they even suspect that there is a possibility for third parties to influence the process. Moreover, long waiting times and lack of procedures for handling changes in schemes can cause real market implications and lead to unequal competition between schemes.

4.2 Transparency and confidentiality

Incomplete procedural guidance and strict confidentiality rules as well as the absence of (1) proactive communication from the EC, (2) timelines have fostered a strong perception among certification schemes, Member States and market players that the procedure is not transparent enough and leaves room for partiality.

As mentioned in the previous section, respondents are lacking proactive communication from the EC on established procedures. For example, applicants felt that the start of the technical evaluation process was in many cases not officially communicated or communicated with delay. The interviewees thought that the EC does not provide clear responses to requests for information from applicants.

Regarding non-communication or confidentiality, interviewees from Member States expressed that it would be useful if the Member States Committee could receive information on the applicants before the formal comitology process starts (information

on which schemes have applied and are being assessed, information on the status of their assessment). This would improve Member States' planning capacities.

Most Member States' representatives strongly oppose the confidentiality rules between the EC and applicants. Member States do not necessarily receive the schemes' complete documentation together with the assessment reports for their comments. Schemes have the option to declare all or part of their documentation as commercially sensitive. That information is then blacked out in the documentation sent to the Member States Committee. The challenge for Member States is that they have to come to an informed opinion about the scheme in order to vote on it. As the assessment reports only contain quotes from the scheme documents that are taken out of context, a full assessment is difficult or not possible. This is especially relevant for the details regarding the audit requirements of schemes. Schemes like Bonsucro and the Scottish Quality Farm Assured Combinable Crops (SQC) have blacked out entire documents relating to their assurance system. In some instances, schemes did not even want to disclose their full identity. This means that Member States cannot communicate with scheme holders to inform and request information for their national regulatory procedures. Their regulatory capacity is therefore negatively affected.

Besides applicants and Member States, civil society also has an interest in receiving information about the process and schemes being assessed. However, there is no official communication to the general public until the final recognition is published in the Official Journal of the European Union. As a comparison, the German ordinances prescribe a six-week public consultation period in which the responsible authority can receive comments from interested parties, and it has to consider those in the following assessment process. While this may prolong the assessment process, it might add transparency and even efficiency because any concern from the public can be voiced and dealt with at this stage and not when the formal process is finished.

In conclusion, the limited communication and the impossibility for stakeholders to track what is happening have contributed to a strong perception of insufficient transparency and possibly to reduced efficiency in the process. In addition, the confidentiality rules applied in the comitology procedure have an impact on the effectiveness of Member States' assessments and votes.

4.3 Technical assessment framework

The assessment framework was developed by a team of evaluators contracted by the EC. It contains the provisions from the RED and the relevant EC Communications, which form the legal basis. It does not further define the evaluation criteria. While the Communications do provide some level of clarity on criteria that were left loosely defined in the RED, many issues were not fully determined in this assessment framework, leaving room for interpretation by the schemes. This includes, for example, the greenhouse gas emission calculation methodology and the specific requirements related to the mass balance. In particular, assurance criteria were largely undefined¹. Most respondents felt that the evaluation criteria for assurance are not robust enough. One criterion was left without a clear official definition: 'highly biodiverse grasslands'. There was no official guidance available to applicants from the Commission on how to deal with this situation. In practice, two acceptable approaches were developed: i) prohibit any conversion of grasslands; and ii) leave the grasslands aspect out of the recognition process. The first option could be complemented by the scheme's own definitions of highly biodiverse grasslands. The difference between both options is that the first received full recognition and the latter partial recognition.

¹ Assurance means the probability that non-conformities with the standard's requirements are consistently, correctly and timely identified. Assurance encompasses at least six aspects: Management of the scheme, quality requirements for auditors (incl. accreditation requirements), auditing procedures sampling, group and multi-site certification procedures, chain of custody requirements and procedures, recognition or affiliation of schemes and acceptance of other schemes.

Partial recognition means that a scheme can only be used in combination with a complementary scheme that covers the missing criterion. Other criteria left out in the evaluations are related to waste residues and double counting.

The lack of clarity in the recognition criteria led to an ongoing clarification process following the commencement of the technical assessment. Schemes presented their solutions to loosely defined issues and were not sure whether this would be accepted by the EC. Following back-and-forth communication between the schemes, the assessors and the Commission – which occurred in many cases – some issues were clarified on individual basis. In some areas, the assessment framework was adapted over time. Some interviewees felt that the first batch of seven schemes was evaluated with less strictness than the schemes evaluated at later stage. On the one hand, this shows a pragmatism, flexibility and learning. On the other hand, schemes are accepted based on changing criteria, which nurtured some perception that schemes could have been treated unequally.

The ambiguity of the assessment framework meant that scheme documentation was often considered inadequate at first assessment and underwent several changes during the clarification process. Those inefficiencies were gradually reduced as the assessment framework was adapted. However, a scheme's market competition is affected if they are not recognised on an equal basis. The process loses credibility. As it was a learning-by-doing process, the flexibility to adapt the framework is high, but also requires clear rules on how to handle post-recognition changes in schemes. Due to the largely undefined assurance criteria, a number of schemes offer a rather low level of assurance. A scheme's assurance system greatly defines its complexity and cost structure. Therefore, schemes that offer a better level of assurance are penalised. This negatively affects the effectiveness of the RED recognition system.

There are no guidelines or templates for the scheme documentation. The assessment framework is applied to the documentation that the scheme submits to the Commission. The assessment framework only became known during the recognition process and was not officially published (at least until the first recognition documents were posted on the EC website one year into the process). Consequently, documentation was designed at the schemes' discretion and amended as requested on individual basis by the EC. For the applicant, this meant a relative level of freedom in the documentation on the one hand; on the other, and because there were many unclear aspects related to specific criteria, this could mean additional approval cycles. For the assessors, including the contractor and the DGs, it made the assessment process more time-consuming. It was not always clear where and how a scheme addressed the assessment criteria; some schemes submitted documentation consisting of several hundred pages. Especially when schemes were originally designed for different purposes, the structure and content of the documentation followed a different logic from the mandatory EC criteria.

This might also be a reason why, at some instances, critical issues were not spotted at first and were later raised in following assessments. This caused confusion on the side of the schemes about the robustness of the assessment procedure as they found themselves back at step one when they thought they had passed to step two.

All parties agree that there has been a steep learning curve among the evaluators assessing the schemes. In general, it was perceived that evaluators did their work at reasonable quality and speed considering the large number of applications. Evaluators were available for questions and clarifications regarding their evaluations or for feedback. The general view was that evaluators had good knowledge on the sustainability criteria, but in many cases did not have sufficient knowledge about the auditing and certification procedures. This situation greatly affects the evaluation of the level of assurance of schemes.

The analysis shows that an unspecific and in some parts unambitious legal basis and an imprecise assessment framework reduced the efficiency of the process. In addition, in the case of assurance criteria, this could hamper the effectiveness of the regulation. It contributes to unfair market competition between schemes where more comprehensive schemes might lose out. According to interviewees, the importance of a high minimum level of assurance is largely underestimated in the recognition procedure. There is a perception that the current minimum level of assurance may result in the acceptance of schemes that do not adequately assure sustainability requirements established by the RED.

4.4 Cross-acceptance rules

Cross acceptance means the situation where a certification scheme A allows its users downstream in the production chain (e.g., biomass traders, conversion plants) to accept material that was certified and traded up to that user under a second scheme B as equivalent to scheme A material. The user can then sell material from scheme B with the claim from scheme A. The next buyer will only see the scheme A claim.

The RED does not contain any rules on the cross acceptance of schemes; there are also no guidelines from the EC side. However, all stakeholders consider this a relevant and necessary issue. Schemes cannot accept material certified under other EC approved schemes by default unless such rules are part of their scheme documentation. If a scheme would like to introduce such rules after its official recognition, the Commission would review the respective clause and decide whether the change is acceptable.

Content and level of assurance of the recognised schemes are issues for most respondents. **Many stakeholders see cross acceptance as a useful instrument for handling the quantity of schemes on the market. At the same time there is a concern regarding the potential to ‘greenwash’ less ambi-**

tious systems. Put differently, there is no incentive for the market to move towards higher standards. About half of the schemes recognised cover non-mandatory criteria (e.g. protection of High Conservation Areas, respect of ILO Core Labour Standards). They also provide a level of assurance that exceeds the requirements of the EC assessment framework. Companies who want to make a choice in certification schemes in order to show their commitment to sustainability are prevented from doing so. Using the description given above, the production standard of scheme B only covers mandatory criteria. The production standard of scheme A, instead, covers mandatory and non-mandatory criteria. If scheme A allows users to accept material from any other RED-approved schemes, and sell that material as scheme A material, the buyer cannot distinguish whether that material came from a scheme A certified source (i.e. the production respected ILO Core Labour Standards) or a source where production only complied with mandatory criteria. Also, Member States would not be able to use such certification schemes as a credible source of data for reports on non-mandatory criteria.

A concern related to cross acceptance expressed by many stakeholders is that there is no overarching control of trade with certified biomass (‘clearing-house’) at EU level. Producers and traders can hold multiple certifications and sell certified biomass under those various schemes. If, in addition, the biomass is then traded across borders in Europe, multiple reporting at Member State level is a real danger, no matter if intentional or in good faith. Cross acceptance, especially without clear rules, raises the risk level even more.

4.5 Parallel recognition procedures in Member States

The EU RED replicates the idea of co-recognition at Member State level: Member States have the option of approving private certification schemes for their own markets. The United Kingdom, Germany and subsequently the Netherlands have done so. These

three Member States began their national recognition processes earlier than the EU Commission began its EU wide recognition process. This allowed the Member States to start the implementation of EU RED via co-regulation independently from the Commission's co-regulation process and therefore bridge the time until the Commission officially recognised schemes in July 2011. These procedures at Member State level also allow for flexibility in accepting a scheme especially designed for local/regional characteristics.

However, the assessment frameworks at Member State level and Commission level were not exactly the same. For this reason, schemes that had already been accepted at Member State level were asked to change their documentation. This resulted in two different standard versions of one scheme.

Market actors feel that these double structures are confusing and costly, and, at least in the case of internationally operating schemes, useless once schemes are EC-recognised. In some contexts though, such measures might make sense for creating local solutions for local peculiarities.



5 Ten lessons from Renewable Energy Directive co-regulation

The following lessons are drawn from the analysis of stakeholder interviews and available documentation. They do not necessarily reflect the opinion of all interviewees.

5.1 Lesson One: Communicate pro-actively

The analysis shows that the communication strategy shapes the perception of the process credibility and also efficiency.

While it is important that respective contact persons at the recognising institution are available for questions from applicants and other relevant parties (e.g. Member States), pro-active communication on clear administrative procedures, status of applications and timelines, reasons for delays, etc. towards all parties (and not on an individual basis) adds to transparency and credibility of the process. This could be done via the agencies' websites, newsletters and/or mailing lists. In particular, efficiency can be increased if solutions to open issues in the assessment framework are communicated openly and not on an individual scheme basis.

In case of consultation processes with several actors (e.g. the Member States Advisory Committee), comments and concerns regarding the technical assessment results should be shared amongst stakeholders in order to enable cross learning and knowledge exchange, making the process more effective. Also, to increase efficiency, actors that have an advisory or decision-making role should be informed in a timely manner about the list of applicants in the pipelines and the status assessments.

5.2 Lesson Two: Have a clear and complete assessment framework

The assessment framework needs to be complete, containing clear criteria and guidance. There are clear benefits in allowing diversity in the schemes, i.e. allowing for nationally appropriate, or crop-specific solutions. However, there should be a highest common denominator in all schemes, which assures an adequate level of credibility and performance. Stakeholder consultations on recognition criteria can be a useful tool for including expert and civil society inputs and reaching broad-based acceptance of the framework.

5.3 Lesson Three: Set robust criteria for verification requirements

An important problem related to the effectiveness and reliability of co-regulation under RED for bio-fuels sustainability lies in the risk of recognising schemes with a low level of assurance. The current differences in assurance among recognised schemes have impacts on the quality of audits, and therefore on the certification costs. A recognition system should include clear and internationally accepted criteria for third party verification of sustainable production practices. This includes the standards like ISO 17065 or 17021 and the principles of the ISEAL Alliance Code of Good Practice for Assuring Conformance with Social and Environmental Standards.

5.4 Lesson Four: Have clear and transparent administrative procedures

Formal guidelines on administrative steps and accompanying (indicative) timelines help foster clarity and reliability in the process. This includes timelines

not only for the internal and/or external advisory and consultation processes, but also for the performance of the entity managing the recognition. Submission of scheme documentation and the assessment can be facilitated on both sides by setting a common format for documentation. Also, public consultation periods are a useful instrument for addressing the concerns of third parties and finding a solution together with the involved stakeholders within the assessment process. Public consultations can also be an instrument for monitoring the post-recognition performance of schemes. It is a way to gather information and process it in order to effectively perform the necessary oversight. Making the procedure publicly available, along with clear guidelines and expectations for applicants, responsibilities and contact persons, helps to create trust and avoid misunderstandings. The procedure should be open to adaptations, especially in a learning-by-doing environment; however, any changes should be openly communicated.

5.5 Lesson Five: Limit confidentiality to a minimum

All documents relevant for the assessment of a scheme should be made available to assessors and to the public, and their identity should be disclosed. All relevant stakeholders must be able to make an informed opinion and/or perform their regulatory duties by reviewing and assessing all relevant application documents. Certification schemes often follow logic of varying complexity and can only be fully assessed when all necessary information is made available. The assurance system is the basis of a scheme's credibility and should especially be available. The information provided to advisory or consultative groups should therefore be adequate and not limited to elements copied and pasted into the assessment framework. The public has an interest in transparency whenever taxpayer money is used to support sustainable production and should therefore be able to examine recognised schemes. This does not prevent the scheme from protecting documents with copyrights and does not mean that the scheme has to display its entire business model.

5.6 Lesson Six: Allocate sufficient human and financial resources and capacities

Recognition of private certification schemes involves a number of tasks: the technical development of the assessment framework, the technical assessment of the applicants' documentation, the administrative steps in establishing the procedures, acceptance and processing of applications, communication with all related parties, collaboration with second- and/or third-party advisors or decision-making structures, as well as the establishment and operation of a monitoring system. To run these processes smoothly and in a timely manner, co-regulators need the specific technical expertise, personnel capacities and funds. The case-specific personnel and financial needs should be carefully analysed and allocated to the respective authorities. Expertise on specific technical issues should be gained through the use of independent experts. Applicants should not underestimate the resources needed for developing a new scheme or adapting an existing one and the approval process. Especially for schemes that rely on multiple stakeholders with often limited capacities, such a process can absorb capacities of several (staff members and/or additional financial funds) may be needed to contract external support.

5.7 Lesson Seven: Establish clear rules for changes in schemes and scheme failure

Co-regulation does not stop with the official recognition of schemes. Co-regulation works with the assumption that states set rules for the private control of certain processes so that private actors can then carry out this control in order to reduce the regulatory burden of states. The public authority recognising schemes should, however, retain the capacity to monitor the performance of such schemes – otherwise the effectiveness of co-regulation might be reduced. Monitoring systems can inform states

that attach financial or other support to proving sustainability (as in the case of the RED), and therefore help to avoid refunding financial support paid in the case of system failure. Such a monitoring system should be established at the respective Member State and/or European level. A co-regulation system should also maintain its flexibility to allow schemes to adapt or improve their systems and should therefore provide a clearly defined mechanism for scheme changes.

5.8 Lesson Eight: Establish a system to control volumes and reporting of certified materials across schemes

Produced and traded certified volumes should be controlled across the system boundaries of one certification scheme. This is important because a given scheme can only control what happens within its system. At the same time it is interlinked with other systems because economic operators often use several certification schemes (hold several certificates) and the systems themselves might accept other certificates into their supply chains (see Lesson Nine). A control mechanism cutting across all schemes at EU level (or national level if applicable) can reduce the risk of (involuntary) double-counting or fraud.

5.9 Lesson Nine: Establish rules for cross acceptance of schemes

Regulators should establish rules for the cross-acceptance of certificates between schemes. These rules should consider the criteria covered by schemes as well as their assurance mechanism, including the chain-of-custody models in particular. All schemes that are recognised under one co-regulation mechanism should be able to accept each other's certificates into the scheme's own supply chain. This enables economic operators to purchase and sell materials independently from a specific scheme while ensuring that the requirements are met. Cross-acceptance of schemes is however, not trivial. A cross-recognition framework should take into

account the differences between schemes in criteria coverage and assurance systems. If those differences are not made transparent, market players are not able to favour sustainability schemes that set stricter sustainability criteria and, what is more, there is a potential for (involuntary) "greenwashing". Consequently, there is no incentive towards continuous improvements in the market.

5.10 Lesson Ten: Avoid duplication of efforts at Member State level and EU level

Having double recognition structures allows for the management of different administrative speeds and accounting for specific local/regional characteristics. The assessment frameworks at national and EU-level should, however, not contradict each other; this would result in different versions of schemes for one scheme holder. If a scheme holder applies first at national level and then at EU level (e.g. to take advantage of different administrative speeds in the implementation of the recognition system), national recognition should be phased out – regardless of the version of scheme approved – as soon as the scheme is recognised at EU level.

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