

***Comments from Malaysian Palm Oil Council (MPOC) in the
Consultation on the
Draft Decision amending the Dutch Transport Energy Decree***

https://www.internetconsultatie.nl/redii_besluit_energie_vervoer_kalenderjaren_2022_2030

MPOC's Observations and Comments on the Consultation

The Malaysian Palm Oil Council (MPOC) represents the interests of the Malaysian palm oil producers, exporters, end users, and consumers worldwide. It was incorporated under Malaysian law on 25 January 1990 and is charged with the promotion and marketing of Malaysian palm oil globally. Malaysia is the second-largest producer of palm oil globally and a major exporter. The palm oil industry directly employs more than a million Malaysians and the MPOC represents the interests of palm oil growers and small holder (family sized) farmers in Malaysia.

The MPOC welcomes the opportunity to provide its views in the context of the public consultation regarding the draft *Decision amending the Transport Energy Decree in connection with the implementation of Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources and in implementation of the Climate Agreement (i.e., Besluit van ... tot wijziging van het Besluit energie vervoer in verband met de implementatie van Richtlijn (EU) 2018/2001 van het Europees Parlement en de Raad van 11 december 2018 ter bevordering van het gebruik van energie uit hernieuwbare bronnen en ter uitvoering van het Klimaatakkoord)*, hereinafter referred to as 'the draft Decision'.

The MPOC has been closely following the developments in the European Union (EU) related to the recast of the EU's *Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources* through *Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources*.

Palm oil is an extremely important commodity for Malaysia and Malaysia has long recognised the importance of preserving its forest coverage and of ensuring the sustainable cultivation of oil palms and production of palm oil. Today, the forested area in Malaysia amounts to around 53% of the land area.

The MPOC acknowledges the objectives of the EU's renewable energy policies, which are to be implemented by EU Member States.

The MPOC notes that the draft Decision provides that:

*“conventional biofuel is understood to be a biofuel from food and feed crops.
The following has been agreed in the Climate Agreement: “That is why all*

parties agree that in order to achieve this renewable energy target for transport (including the 27 PJ) no more additional biofuels from food and feed crops will be used in the Netherlands than the level of 2020”.

The MPOC further notes that the draft Decision provides that:

“it is stipulated at the legal level that only biofuel supplied from food and feed crops, which according to the delegated regulation (EU) 2019/8079 has a low risk of indirect land use change (ILUC), may be counted. At present, only palm oil is considered a raw material with a high risk of ILUC and therefore a supplied biofuel from palm oil may not be counted, unless the palm oil has a certified low risk of ILUC. (...) From a regulatory point of view, the government therefore follows the interpretation given by Delegated regulation (EU) 2019/807 for crops with a high ILUC risk, but at the same time it will continue to make an active effort to draw the parties’ attention to the agreement from the Climate Agreement in which they commit to continue the current practice in which palm and soybean oil is not used for biofuels”.

In this context, the MPOC recalls that Article 26(2) of Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources provides that:

“For the calculation of a Member State’s gross final consumption of energy from renewable sources referred to in Article 7 and the minimum share referred to in the first subparagraph of Article 25(1), the share of high indirect land-use change-risk biofuels, bioliquids or biomass fuels produced from food and feed crops for which a significant expansion of the production area into land with high-carbon stock is observed shall not exceed the level of consumption of such fuels in that Member State in 2019, unless they are certified to be low indirect land-use change-risk biofuels, bioliquids or biomass fuels pursuant to this paragraph.

From 31 December 2023 until 31 December 2030 at the latest, that limit shall gradually decrease to 0%”.

It appears that, on the basis of the draft Decision, already from 2022 only biofuels supplied from food and feed crops that are certified as having a “*low risk of indirect land use change (ILUC)*” may be counted towards the relevant threshold in the Netherlands. This approach appears to entirely disregard the mechanism agreed by EU Institutions, namely the gradual decrease provided by Article 26(2) of Directive (EU) 2018/2001.

The MPOC is concerned by this strict and extensive transposition and would like to better understand the rationale behind this overly-restrictive approach. Could the Government of the Netherlands kindly confirm its deviation from gradual decrease provided by Article 26(2) of Directive (EU) 2018/2001 and lay out the reasons behind this proposed regulatory approach? It is clear that this restrictive and abrupt approach will have sudden detrimental effects on trade in palm oil products, thereby severely affecting the trading and business relations with Malaysia and Malaysian palm oil producers.

In this regard, the MPOC would like to recall statements by the Netherlands' Foreign Minister Mr. *Stefan Blok*, who reportedly¹ stated in February 2020 that the Netherlands support the production of sustainable palm oil and that the Netherlands did not support any ban on the use of palm oil as a biofuel. The draft Decision appears to conflict with these statements and such approach will ultimately endanger the livelihoods of oil palm farmers around the world, notably in Malaysia.

The MPOC looks forward to hearing back from the Dutch authorities and to a constructive and transparent dialogue with the Netherlands. The MPOC and the Malaysian palm oil industry remain willing to work cooperatively and in partnership with the EU and all of its Member States.

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¹ See <https://www.ofimagazine.com/news/netherlands-against-eu-palm-oil-biofuel-ban> (last accessed, 5 January 2021).