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Response to the consultation on the amendment of the Environmental Management Act (Wet milieubeheer) in connection with the national RED II implementation

Dear Sirs,

The Mittelstandsverband abfallbasierter Kraftstoffe e.V. (MVaK) represents 22 members from Germany, Austria and The Netherlands. Our medium-sized member companies collect waste and residues, predominantly used cooking oil or waste fatty acids, prepare the feedstock and process it to high-quality waste-based biofuels.

In the following we would like to comment on the drafted amendment of the Environmental Management Act, addressing the following points:

1. The current system of double counting and the sub-target for sustainable biofuels must be maintained;

2. The new HBE category "Fat and Oil" has a limiting effect on the production of biofuels produced from waste streams;

3. Encouraging the use of used cooking oil and animal fats for biofuels in the aviation sector has unintended negative side effects.

1. The current double-counting system and the sub-target for sustainable biofuels must be maintained

The current system of double counting and the sub-target must be retained, because the double-counting system has proven to be the most effective policy measure to promote the use of waste materials with low CO_2 emissions. It sends a clear message to investors and consumers to invest more in these sustainable biofuels and has played a crucial role in creating a market for biodiesel from waste. Furthermore, the Renewable Energy progress report 2017-2018 (published 29 January 2020, commissioned by the Ministry of Economic Affairs and Climate) has shown that the production of sustainable biofuels produced from waste (such as used cooking oil) has increased due to the setting of sub-targets.

The current double-counting system and the sub-target are not included in the draft bill, but the draft bill creates the legal basis to allow for continuation in later AMvB's. The MVaK believes that this option should be used.

If the double-counting mechanism is continued, it should relate to the new Hernieuwbare Energie Eenheid ('HBE') "Fat and Oil."

2. The new HBE category "Fat and Oil" has a limiting effect on the production of biofuels produced from waste streams

The draft bill introduces a new HBE for "Fat and Oil". This concerns biofuels produced from materials listed in the RED II, Annex IX, Part B. This category of biofuels is made from waste such as used cooking oil and animal fats. Hence, these are the most sustainable biofuels; there are no ILUC risks and the production contributes to the sustainable use of waste streams for new purposes.

The naming chosen for the renewable fuel unit "Fat and Oil" is unfavorable and does not do justice to the nature of the biofuels that fall under this. Moreover, the choice of name leads to confusion because the other renewable fuel unit categories can also contain biofuels produced from "fat" or "oil". It is therefore undesirable to limit the naming to "Fat and Oil".

The new HBE category is assigned a limit of 1,7 % in the draft legislative proposal. According to RED II, member states are authorized to deviate from this limit based on the availability of raw materials. The Renewable Energy Progress Report 2017-2018 shows that used cooking oil is the most used raw material for biofuels in the Netherlands. In 2018 the share of this biofuel was already double the proposed 1,7 % and this share is expected to increase. Currently, the availability of raw materials for these biofuels is therefore not a limiting factor in the Dutch market.

Because the Netherlands needs biofuels to achieve the climate targets and the Ministerie van Infrastructuur en Waterstaat has indicated that it wants to use biofuels as much as possible as transition fuel to electro mobility, the proposed 1,7 % limit of the new HBE is counterproductive. After all, this limits the most sustainable type of biofuels. Furthermore, any limit would prevent the development of the sector and will have a negative impact on the contribution of sustainable biofuels making the transport sector more sustainable.

Therefore, MVaK is of the opinion that the new HBE category will have to be reconsidered. In its current form, the category has a restrictive impact on the use of biofuels produced from waste. MVaK asks for a more objective classification of raw materials and states that consumption of biofuels produced from feedstock listed in Annex IX, part B should not be limited in the in the transport sector.

3. Encouraging the use of used cooking oil and animal fats for biofuels in the aviation sector has unintended negative side effects

Article 27(2)(c) of the revised Renewable Energy Directive (REDII [1]) establishes a x1.2 multiple counting incentive for fuel suppliers incorporating alternative fuels produced from feedstock listed in both parts A and B of Annex IX into the aviation sector (x2.4 in Member States applying double counting to Annex IX).

Unintended consequences for the waste biodiesel industry

Waste flows are limited worldwide and policy-makers should ensure that they are used in the most appropriate and cost-efficient as well as resource-efficient manner.

Used cooking oil-based biodiesel (UCOME) is produced in an efficient conversion process with advantageous GHG emissions reductions compared to the use of the same feedstocks for aviation purposes; also the biodiesel production process being less energy intensive does not deliver the cold flow properties used in the aviation industry.

By indiscriminately incentivizing all alternative fuels in aviation with multiple counting or via an all-inclusive aviation mandate, used cooking oil-based hydro treated vegetable oil (UCO-HVO, known as HEFA when used as a jet fuel) would obtain an excessive competitive advantage over UCOME highly likely to result in the aviation industry being able to out buy used cooking oil throughout the EU, virtually leaving medium-sized UCOME producers without feedstock, and eradicating road and marine alternative fuels with higher

[1] 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

greenhouse gas savings[2] and lower production costs from the market in the medium term.

And generally, due to low yield for the main product, significant cracking of carbons chains, and lower fossil baseline, HEFA production provides the lowest total greenhouse gas emission reduction per unit of lipid feedstock, about 12% less reduction compared to UCOME production.

An independent analysis of the issue

Our European sister association EWABA commissioned the report "Analysis of aviation fuel demand on waste fats and oil market" prepared by the E4tech consultancy with the following key findings:

1. Road waste biodiesel producers face a significant feedstock shortage risk because of HVO/HEFA competition;

2. A combination of increased HVO/HEFA capacity and no flexibilization of the 1,7 % limit to Part B of Annex IX will result in squeezing road waste biodiesel producers out of the market;

3. Using waste oils and fats in aviation leads to lower greenhouse gas savings today from HVO/HEFA compared to road waste biodiesel due to a more intensive conversion process;

4. Focusing on waste oils and fats for HEFA in the aviation sector negatively affects investment and development of more effective and vastly more abundant alternatives using feedstocks in RED II Annex IX Part A.

The British solution

The UK Renewable Transport Fuel Obligation (RTFO) relies on waste biodiesel to reduce GHG in the road transport sector. British policy-makers identified the risk in promoting aviation renewable fuels at the expense of road fuels and therefore designed a policy that effectively protects and promote waste feedstocks in the road sector.

The RTFO in consequence only incentivizes "development fuels" in the aviation sector and the definition of "development fuels" specifically excludes used cooking oil and animal fats. Relevant excerpts of the RTFO are reproduced below[3]:

2 As established in Annex V of the REDII

3 The definition of development fuels is to be found on page 25 of the 2020 UK RTFO Guidance, accessible at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/855751/rtfo-guidance-part-1-process-guidance-year-2020.pdf.

Development fuels in the RTFO

“2.21 A 'development fuel' is a fuel made from certain (double rewarded) sustainable wastes or residues, ***excluding segregated oils and fats such as UCO and tallow****, or a non-biological renewable fuel (RFNBO), that is also of a specified fuel type.*

2.22 Specifically, eligible development fuel types are defined in the following way:

- *A renewable transport fuel which is either:*
  - *— Made from sustainable wastes or residues which the Administrator considers are eligible for double RTFCs,* ***apart from segregated oils and fats such as used cooking oil and tallow*** *(see Chapter 9 of the C&S Guidance); or*
  - *— A renewable fuel of non-biological origin (RFNBO)*
- *And is one of the following fuel types:*
  - *— Hydrogen*
  - *—* ***Aviation fuel*** *(avtur or avgas) […]”* **(emphasis added)**

Therefore the MVaK asks for the exclusion of used cooking oil and animal fats with regard to aviation incentives - as is the case in the United Kingdom.

Kind regards,

Mittelstandsverband abfallbasierter Kraftstoffe e.V.

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