

March 7, 2019

Jean-Claude Juncker  
President  
European Commission  
Rue de la Loi/Wetstraat 200  
1049 Brussels  
Belgium

Submitted via the European Commission's website - <https://ec.europa.eu>

Re: Feedback on the European Commission's draft delegated regulation on "High and Low Indirect Land-Use Change (ILUC) - Risks Biofuels, Bioliquids and Biomass Fuels," published on February 8, 2019

Dear President Juncker,

The Clean Air Task Force (CATF) is a U.S.-based non-profit environmental organization that works to help safeguard against the worst impacts of climate change by catalyzing the rapid global development and deployment of low carbon energy and other climate-protecting technologies through research and analysis, public advocacy leadership, and partnership with the private sector.

CATF welcomes the opportunity to provide feedback on the European Commission's draft delegated regulation on "High and Low Indirect Land-Use Change (ILUC) - Risks Biofuels, Bioliquids and Biomass Fuels," published on February 8, 2019.

The recast of the Renewable Energy Directive (RED) aims to limit European Union (EU) support of food-based biofuels after 2020 and end support for the highest emitting biofuels on the EU market by 2030 at the latest. Unfortunately, without changes, the proposed delegated regulation is too weak to make these goals a reality. On the contrary, it could lead to the same or even greater levels of palm oil biofuels to be consumed in the EU.

The Globiom study for the European Commission revealed that biodiesel from palm oil is three times worse for the climate than regular diesel, while soy biodiesel is two times worse.<sup>1</sup> However, palm oil consumption in the EU has increased significantly over the past two decades, largely due to increased use of palm oil biodiesel.<sup>2</sup> The EU is the second largest importer of crude palm oil in the world, and 45% of the palm oil imported by the EU is used to produce biodiesel.<sup>3</sup>

Based on the most recent available data, a recent briefing<sup>4</sup> by NGO Transport & Environment (T&E) concluded that soy and palm as well as their co-products should be included in the category of high ILUC-risk biofuels associated with significant expansion on high carbon stocks. These high ILUC-risk biofuels should be phased out of the renewable

<sup>1</sup> Hugo Valin, et al. 2015. *The Land Use Change Impact of Biofuels Consumed in the EU: Quantification of Area and Greenhouse Gas Impacts*, at 39 (Fig. 15)

([https://ec.europa.eu/energy/sites/ener/files/documents/Final%20Report\\_GLOBIOM\\_publication.pdf](https://ec.europa.eu/energy/sites/ener/files/documents/Final%20Report_GLOBIOM_publication.pdf))

<sup>2</sup> Deborah Bentivoglio, et al. 2018. Revisiting the Palm Oil Boom in Europe as a Source of Renewable Energy: Evidence from Time Series Analysis. *Quality - Access to Success* 19(S1): 59-66.

([https://www.researchgate.net/publication/324057391\\_Revisiting\\_the\\_palm\\_oil\\_boom\\_in\\_europe\\_as\\_a\\_source\\_of\\_renewable\\_energy\\_Evidence\\_from\\_time\\_series\\_analysis](https://www.researchgate.net/publication/324057391_Revisiting_the_palm_oil_boom_in_europe_as_a_source_of_renewable_energy_Evidence_from_time_series_analysis)).

<sup>3</sup> Bentivoglio et al. (2018) at 59.

<sup>4</sup> Transport and Environment, *High & Low ILUC Risk Biofuels Policy Recommendations for the EU Delegated Act* (Jan. 2019)

([https://www.transportenvironment.org/sites/te/files/publications/2019\\_01\\_High\\_low\\_ILUC\\_TE\\_briefing\\_a\\_final.pdf](https://www.transportenvironment.org/sites/te/files/publications/2019_01_High_low_ILUC_TE_briefing_a_final.pdf)).



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energy targets. Regarding the low ILUC-risk category, T&E concluded that the available evidence at this stage did not provide a workable and sufficiently robust system for certification, thus recommending the Commission close the door to this option.

The draft delegated regulation released by the European Commission rightly includes palm oil in the category of high ILUC-risk biofuels, due to its massive expansion on high carbon stocks since 2008 (an average of 45% of oil palm expansion has occurred on peatland and other carbon-rich landscapes). This is an important element of the Commission's draft and constitutes a landmark decision.

We do not, however, support the proposal to broadly categorize biofuels made from crops that do not exceed a 10% high carbon stock conversion threshold as "low ILUC-risk." The Commission's draft would effectively categorize soy biodiesel as a low ILUC-risk biofuel, even though soy—like palm—has been identified as a forest risk commodity in various initiatives (e.g. the Amsterdam Declaration). Classifying soy as high ILUC-risk would be consistent with findings that a significant share (8%) of soybean expansion has taken place on high carbon stocks since 2008. We recommend that the Commission establish a lower threshold to ensure that the use of soy biodiesel does not undermine the goal of the new policy to limit the conversion of high carbon stock land to biofuels.

Regarding the low ILUC-risk criteria, the draft delegated act unfortunately keeps this option open for high ILUC-risk biofuels. It includes a requirement for an additionality test, to ensure that a project would not have happened in the absence of the "low ILUC risk" certification. But it also includes broad exemptions regarding "unused" land and smallholder farmers which could lead to a business-as-usual situation. For example, the International Council on Clean Transportation (ICCT) concluded that up to 5 million tonnes of palm oil could be produced in 2030 in Indonesia and Malaysia on land which would be considered "low ILUC-risk," according to the draft regulation.<sup>5</sup> This land will be needed to meet increased demand for food, feed, and oleochemicals so its use for biofuels will still indirectly result in further palm expansion—or in other words, more ILUC. Also, the definition of "unused" land does not capture cases of uses by local communities or important ecosystem services provided by this land. Regarding smallholders, the size of a plantation or the type of land tenure has no relation to the risk of indirect deforestation or ILUC.

For these reasons, we respectfully recommend that the Commission incorporate the following changes into its final regulation:

1. When finalizing the "high ILUC-risk" category, the Commission should set the lower threshold for the conversion of high carbon stocks at no more than 5%. Soy would consequently (and appropriately) fall into the "high ILUC-risk" category, together with palm and these crops' respective co-products.
2. Completely eliminate the provisions that would allow certain "high ILUC-risk" feedstocks to qualify as "low ILUC-risk" to avoid bringing significant quantities of palm oil into the EU biofuels market.

Thank you for the opportunity to provide feedback on this draft delegated regulation. We hope that our comments prove useful in making your final decisions.

Sincerely,

Jonathan Lewis  
Sheila Karpf  
Clean Air Task Force

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<sup>5</sup> Stephanie Searle and Jacopo Giuntoli, *Analysis of High and Low Indirect Land-use Change Definitions in European Union Renewable Fuel Policy*, International Council on Clean Transportation (2018), at 102 ([https://www.theicct.org/sites/default/files/publications/High\\_low\\_ILUC\\_risk\\_EU\\_20181115.pdf](https://www.theicct.org/sites/default/files/publications/High_low_ILUC_risk_EU_20181115.pdf)).

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