

GAR Feedback to the Delegated Act Consultation

GAR believes that there are serious flaws in the findings of the Commission's report on production expansion as well as unfair criteria and inconsistent application of ILUC across all feedstocks, which result in discrimination towards palm oil. As a result, GAR objects to the current draft delegated act and proposes concrete and justified recommendations to improve it.

Fundamentally, the delegated act has failed to treat all feedstock producers equally by taking a "global feedstocks approach" instead of a "producer-level approach", resulting in sustainable palm oil producers having to respect a greater number of conditions than other feedstock producers even if they are themselves not responsible for land expansion. Specifically, palm oil producers are clearly disadvantaged, because they are restricted to only sell "additional volumes" based on strict additionality measures.

While the European Commission has not used ILUC modelling, as it cannot be observed or measured, it has used the concept selectively in a way that discriminates against palm oil by not controlling for shifts from food to biofuel production for all other feedstocks. The ILUC criteria should therefore be replaced by fair criteria and the same standards applied to all feedstocks.

Furthermore, the delegated act should be informed by an expert impact assessment. The European Commission has not considered the negative ILUC impacts that could result from the application of the current delegated act. Palm oil is four (4) to ten (10) times more productive than other vegetable oils, which means that phasing out palm oil while allowing other vegetable oils to meet the EU's biofuel market demand may lead to a larger negative impact in terms of the land area needed as well as increased GHG emissions.

Below, GAR expands on the flaws in the current delegated act; outlines general principles that would result in a fair delegated act; and provides specific recommendations to improve the current draft delegated act.

I. Flaws in the current approach of the delegated act

Understating the productivity advantage of palm oil

- In Article 3 (b), the European Commission assigns permanent crops a Productivity Factor (PF) value of 2.5. However, the 2017 study on the environmental impact of palm oil consumption and on existing sustainability standards (figure 14) commissioned by the European Commission shows that palm oil productivity is at least 7 times that of soy oil. The PF value for palm should therefore be at least 7.

Partial and selective use of ILUC

- While ILUC is a flawed tool that cannot account for real developments on the ground, the delegated act looks instead at past land expansion (i.e. direct land use change), which is also an unreliable way to predict and therefore prevent future ILUC effects.

- The delegated act does not consider potential ILUC effects of feedstocks other than oil palm as it assumes no shifts from food to biofuel production for those other feedstocks. However, if palm oil is replaced as a feedstock in the EU biofuels market by other vegetable oils, then their use in food production would logically have to be replaced. Assuming like for like replacement, those feedstocks should also be considered high ILUC-risk based on the logic applied to oil palm by the Commission.

The delegated act does not treat all sustainably produced feedstocks fairly

- Palm oil is the only feedstock which has to meet additionality requirement on top of the directive's sustainability requirements. These requirements apply to palm oil's entire production, but only the additional volume counts towards emission reduction targets. Other feedstock, however, only need to comply with directive's sustainability requirements yet the entire production can be counted towards the targets. This selective application of the additionality criterion is therefore discriminatory, unfair, and unjustified.
- This unequal treatment is the result of the European Commission's "global feedstocks approach", which penalises individual producers with having to meet extra conditions even if they are not responsible for the global average land expansion associated with their feedstock.
- As a consequence, the additionality requirement combined with the global feedstocks approach leads to discrimination of palm oil and would therefore not qualify under WTO rules.

The additionality measures are not applicable to a permanent crop, such as palm oil

- The chosen timeframe for additionality effects in the delegated act makes sense for annual crops, such as rapeseed, but is not suitable for a tree crop, such as oil palm. Rather than comparing the yield improvement in one tree's life cycle, it would make more sense to compare the yield of one tree planted X years ago to the yield of another tree planted Y years ago in the same certified operational unit.

The delegated act disincentivises sustainable palm oil production rather than incentivising it

- It does not make economic sense for a producer to apply sustainability measures to his entire plantation if only additional feedstock can qualify as sustainable biofuels.
- For example, if GAR can demonstrate additionality of 1 tonne CPO/Ha on top of the 7 tonnes already produced, then only the 1 tonne can be counted towards renewable targets and not the total 8 tonnes. Essentially, demand drops by 87% and then the investment in ISCC certification and sustainable production is not worthwhile.
- In addition, the chosen approach to calculate additionality creates uncertainty for investors considering investing in sustainability practices. For investments in sustainability practices to be economically viable, there must be certainty in the quantity of sustainable biofuel that can be exported. As a consequence, the permit to export to the EU market cannot depend on certification of yield increase limited by an arbitrarily set time-frame if it is to create incentives for bettering practices in biofuel production.

- As a company which helps smallholders transition to more sustainable agriculture through sustainability programmes, GAR's efforts would be undermined by a strict definition of "independent" smallholder. It is key to acknowledge that smallholders need to be provided with expertise and financial aid to be able to implement sustainability practices, which is why smallholders getting this kind of support from companies should not be disqualified from the smallholder criterion.

II. General recommendations for a fair delegated act

For the EU to adopt fair rules that encourage sustainable production worldwide and prevent land expansion by all feedstocks, GAR recommends the following alterations to the delegated act:

- The delegated act should have a **producer-based approach** instead of a global feedstock approach, because the latter approach penalises virtuous producers for the bad practices of other producers of the same feedstock.
- The **additionality requirement**, which only applies to palm oil, **should be replaced by common criteria for all feedstocks** to ensure that GHG-emission savings are not mitigated. This could be achieved by introducing measures such as a no-land-expansion criterion for first-generation biofuels, applicable to all feedstocks, not just palm oil.
- The design of the assessment of GHG-emission savings in biofuels must be based on a system that respects the different nature and life-cycles of different crops. Thus, comparative time-frames to ascertain the effectiveness of sustainability measures must be designed in relation to crop type.
- The **smallholders' criterion should not disqualify smallholders receiving financial and technical support** under company schemes to improve their sustainability practices and yield.

III. Specific recommendations to improve the current draft delegated act

While GAR believes that the overall approach of the delegated act does not produce fair treatment towards sustainable palm oil producers, there are more specific issues with the current draft delegated act that could be improved, namely:

Impact assessment

- The lack of an impact assessment of the delegated act has made it difficult for many stakeholders to understand the implications and possible effects, both in terms of market and environmental effects, creating uncertainty for businesses as well as for the environment.
- The European Commission should therefore **provide an impact assessment**, including an evaluation of the impact of phasing out palm oil as a result of the established ILUC-risk criteria.

Residues from food and feed crops

- The delegated act should **clarify that residues are not within its scope**, as the residues and waste generated by crops do not contribute to expansion of cultivated land nor ILUC.

Additionality principle and measures

- It is important to note that currently certified palm oil producers are not the cause of land expansion into HCS areas. Yet they must respect additionality conditions clearly delineating between food and biofuel production. None of the other feedstocks have to comply with the “additionality” requirement. Yet, they are free to switch their entire production from food to biofuel, causing ILUC, without any mitigation measure required. This clearly constitutes discrimination and a selective application of the ILUC concept.
- Additionality measures penalise producers who already achieve high productivity. Sustainable producers invest in productivity improvements, because they aim to be less reliant on plantation expansion for growth. The delegated act, however, rewards low yield producers, who have historically focused on expansion but will now invest in productivity in order to sell into Europe.

GAR would like to suggest improvements to the current framework of the additionality condition, namely:

- The European Commission should **acknowledge that the yield timeframe for perennial crops is not the same as for non-perennial crops and adapt the criteria to this reality.**
- For instance, the 3-year average taken to compare yields is not pertinent for palm oil as yield improvement is implemented on a life-cycle basis (26 + years), not an annual basis. GAR therefore **recommends a lifecycle approach**, namely comparing the yield of one tree planted X years ago with the yield of another tree planted Y years ago within the same certified operational unit.
- For the same reasons, the 10 years certification limit does not make sense as it is shorter than the lifecycle of oil palm. Instead, the **time limit to certify additional feedstocks should be fixed to 2008** in Article 5 (b), which is the time after which feedstock producers received incentives from the RED to improve yields per hectare.

Smallholders’ definition

- The European Commission should **explain how the number of hectares was chosen**, as international definitions have established different ranges, such as FAO (less or equal to 10 hectares), RSPO and ISCC (less than 50 hectares), and ISPO (less than 25 hectares).
- The European Commission should **explicitly define “independent smallholder”** and consider the impacts of too strict a definition of what constitutes independence. Smallholders tend to face many organisational, productivity, financial, legal, and sustainability challenges, which is why cooperation with companies, including assistance and support in all these areas, is beneficial to smallholders.
- Therefore, the European Commission **should not exclude schemed or associated smallholders from the smallholder definition.** Without support by companies, smallholders will not be able to comply with sustainability requirements nor increase their productivity.