Low ILUC-risk certification

Stakeholder consultation summary

Prepared for:

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1. Introduction

The risk of indirect land-use change (ILUC) is addressed in the Renewable Energy Directive (REDII) through the phase out of biofuels made from feedstocks classed as “high ILUC-risk” and the introduction of the concept of “low ILUC-risk” certification which, when used by high ILUC-risk feedstocks, allows these to be counted outside this phase out.

A public consultation was carried out from 24 May 2022 to 24 June 2022 as part of the project to support the Commission in the implementation of the provisions on low ILUC set out in the REDII, which gathers biomass producers, biofuel experts, sustainability standards and certification bodies. The consultation aimed to give stakeholders an opportunity to review the draft guidance on low ILUC-risk certification (hereafter referred to as “the guidance”) that had been developed by the project consortium, and to provide suggestions for improvement. Feedback was especially sought on the following topics: the non-financial barrier “additionality” test, the application of the group certification approach, the approach to determine additional biomass for sequential cropping (also known as intermediate cropping), certification of soy/annual crops, and abandoned and severely degraded lands.

A total of 12 questionnaire submissions were received during the consultation runtime and further 4 stakeholders submitted general comments or questions on the guidance. Most stakeholders who responded were biofuel and feedstock producers, with some responses from institutes and academia.

This summary report aims to reflect the key stakeholder inputs, questions and concerns received, as well as offer answers to questions posed. Furthermore, the report notes how inputs were taken into account in the project and recommendations to the European Commission.

The project consortium would like to thank all stakeholders for their contributions to this study. The feedback has been taken into account and will be used to further shape the guidance going forward. If you feel that some comments or questions have not been adequately addressed, please contact ilucpilots@guidehouse.com.

2. General inputs

In addition to feedback on the specific questions included in the questionnaire, some respondents provided general inputs on the low ILUC-certification approach and guidance. The key inputs are highlighted as follows.

2.1 Scope of certification: Several stakeholders raised concerns that the guidance extends beyond the scope of the low ILUC-risk certification as mentioned in the legislative framework (Delegated Regulation 2019/807). Specifically, stakeholders noted that the methodology should not be applicable to crops that are not currently designated as high ILUC-risk.

Response	Clarification in the guidance
Rationale	We acknowledge that in the context of the legislative framework, the low ILUC-risk certification will be primarily attractive for biomass producers using crops designated as high ILUC-risk. This should be further underlined in the guidance and related communications to avoid any confusion. Current EU policies do not restrict the use of low ILUC-risk certification to high ILUC-risk feedstocks only. Pilots were also conducted on crops that are not high ILUC-risk to test the reliability and consistency of the methodology for different crops, also because it is possible that additional crops could meet the threshold to be classed as high ILUC-risk in the future. Furthermore, there is a context in which low ILUC-risk certification could be relevant for companies willing to reduce ILUC risk for communication or reputational purposes. It could also possible that in the future low ILUC-risk certification could be employed in combination with other incentives, e.g. if crops from severely degraded land were added to EU RED II Annex IX, then the low ILUC-risk certification approach could provide useful guidance.

2.2 Use of low ILUC-risk methodology for perennial crops other than palm: Two stakeholders commented that the application of the methodology in setting the dynamic yield baseline (hereafter “baseline”) is not fully defined for perennial crops other than oil palm. They asked how the methodology would be applied to other perennial crops (e.g., coconut or pongamia)?

Response	Clarification in the guidance
Rationale	A normalised standard growth curve that defines the typical yield pattern over the lifetime of a crop is needed to set a dynamic yield baseline for yield increase projects involving perennial crops. Currently the guidance only includes a standard growth curve for oil palm, as this is the only high ILUC-risk feedstock at present. Sugarcane is also mentioned in the certification guidance as a potential perennial crop. However because of the nature of how it is cultivated, stakeholders interviewed in the context of the project indicated that the annual crop calculation approach could be used for sugarcane. If there is demand to certify yield increase projects for other perennial crops, we recommend that economic operators first contact the voluntary

	scheme. The voluntary scheme would then contact the European Commission who would either: a) Develop a standard growth curve for that crops, or b) Delegate the provision of the standard growth curves to the voluntary schemes as part of the low ILUC-risk certification process.

2.3 Use of low ILUC-risk methodology for semi-perennial crops: Two stakeholders commented that the application of the methodology in setting the dynamic yield baseline is not fully defined for semi-perennial crops. How would the methodology be applied to semi-perennial (e.g., sugarcane) crops with long lifecycles?

Response	Clarification in the guidance
Rationale	After discussion with stakeholders in the context of the project, the guidance currently suggests that sugar cane shall be treated as an annual crop by taking an average of the 3 latest years of data.

2.4 Penalising front-runners: Two stakeholders noted their concern that using a historical yield and global slope can penalise “front-runner” farmers, who already implemented measures. Conversely, they argued that farmers that had not yet implemented measures would benefit most from the low ILUC-risk certification

Response	No action
Rationale	The aim of low ILUC-risk certification is to stimulate and certify additionality measures that go beyond business as usual to produce additional biomass that would not have been produced in the absence of this mechanism. The mechanism does allow for certification of additionality measures taken up to 10 years in the past, as long as sufficient data is available to prove compliance with the criteria and indicators. However, the focus of the mechanism is to stimulate yield increases compared to the situation today to provide additional biomass for the bioenergy sector, rather than diverting material from farms that already produce high yields to the bioenergy sector.

2.5 Natural variation in yield: One stakeholder questioned how the impact of unexpected weather conditions on yields would be addressed. They noted that unexpected weather conditions could lead to a yield below the baseline, even if additionality measures are implemented. Furthermore, two stakeholders suggested that farmers could be rewarded with an annual amount of additional biomass they could claim regardless of their actual yield after implementing additionality measures, to remove some of the risk for farmers from the mechanism.

Response	No action
Rationale	Natural variation in the yield is an expected occurrence in agriculture. Therefore, the dynamic yield baseline is calculated using yields from a 3-year period to even out natural variations. Over the 10-year validity of low ILUC-risk certification, there may be some years with unexpected weather conditions when no low ILUC-risk biomass can be claimed because yields are below the baseline. However, the additionality measure should lead to higher yields on average over that timeframe.

	Allowing all farmers who have implemented an additionality measure to claim a certain amount of low ILUC-risk biomass each year would require a detailed register of default yield increase values for every measure used for every crop in every distinct region. No such register or literature is available. Furthermore, the aim of the mechanism is to stimulate actual volumes of additional biomass that can be used in the bioenergy sector. Therefore, retaining an approach based on additional biomass over a dynamic yield baseline, determined at a farm level, is the preferred and more practical approach.
2.6 Slope step: Two stakeholders noted that they thought the approach of using a slope in the dynamic yield baseline was clear, but one stakeholder found it unclear.	
Response	Clarification in the guidance
Rationale	Throughout the pilots we have found that applying the global trendline slope to the dynamic yield baseline was often not clear to the pilot participants – both from the perspective of correctly applying the slope to calculate the baseline and from the perspective of understanding the justification for why a global trendline should be applied to their farm yields. The experience from the pilots showed that the global trendline generally makes only a small difference to the level of the baseline. Removing the slope would therefore not significantly impact the volumes of low ILUC-risk biomass and would simplify the methodology. The European Commission could consider removing the slope step from future updates to the legislation to reduce the administrative burden and the risk of mistakes in the calculation and verification. However, in the meantime as the concept of including a yield trendline in the baseline calculation is clearly set out in the Delegated Regulation and important to ensure that the mechanism only counts biomass that would not have otherwise been produced in a business as usual scenario, we will seek to provide clear calculation steps and worked examples in the certification guidance, to ensure the methodology is clear and the steps can be easily followed.

3. Non-financial barrier analysis

●	Stakeholders had mixed responses regarding the applicability of the non-financial barrier approach to demonstrating additionality of the project being certified. About 60% of respondents found the approach clear but offered various suggestions and questions nonetheless. The key inputs are highlighted in this section.

3.1 Non-financial barrier examples: Several stakeholders noted that they found the examples provided for the barrier analysis test unclear as they did not feel the barriers used as examples could be proven in practice, or they were unsure what evidence would count as “satisfactory”. One comment suggested that most of the examples could be converted into a financial barrier, thus questioning whether these should be relevant examples of non-financial barriers. One stakeholder provided commentary on perceived flaws with each example, e.g.:

- Access to inputs: The stakeholder suggests this could be converted to a financial barrier since a premium for low ILUC-risk certified biomass would unlock new transportation means.
- Access to knowledge: The stakeholder questions how "common practice” should be defined.

Response	Clarification in the guidance
Rationale	The guidance specifies that “any barrier whose cost can be estimated shall be included in the financial attractiveness analysis rather than in the non-financial barrier analysis.” The project consortium acknowledges that some of the examples provided could be seen as financial barriers in certain circumstances. However it is not always realistic to put a price on a barrier even if it is possible in practice. Therefore, the guidance should provide a more nuanced approach to allow further flexibility in choosing between the additionality tests and further examples of barriers.

3.2 Evidence requirements: Several stakeholders noted potential difficulties to prove the existence of the barriers. Two stakeholders noted that the evidence requirements were not specific enough and that non-specific wording such as “satisfactory” should be avoided.

Response	Clarification in the guidance
Rationale	The project consortium will provide more detail and more examples of the types of evidence that would be sufficient to prove the existence of a barrier. This detailed breakdown will aim to provide objective criteria to consider as sufficient evidence for verification purposes.

3.3 Additional objectives or indicators: Stakeholders were asked to suggest additional objectives or indicators, which could potentially be added to the guidance to demonstrate non-financial barriers.

Stakeholders suggested the following additional possible sources of evidence that could be included in the guidance: Pest and disease records, soil tests, rainfall records, detailed maps of region (including draining or flood issues), internal company's policy, social and environmental conditions, optimal land preparation methods, quality seed & seedling access, fertiliser application, ecosystem services.

Response	Clarification in the guidance
Rationale	The project consortium will take these suggestions into account in providing more detailed guidance on the barrier analysis.

4. Group certification approach and smallholders

●	Four stakeholders noted that they understood the approach on group certification, while two stakeholders did not understand it. Many stakeholders noted that the process was the same as the existing ISCC group certification, hence making it easily implementable. Some stakeholders offered suggestions and questions. The key inputs are highlighted in this section.

4.1 Whole group commitment to low ILUC-risk approach and measures: Five stakeholders disagreed that the whole group being certified should commit to the low ILUC-risk approach, while one agreed. Stakeholders noted that every producer in the group has different conditions and should therefore be allowed to implement different measures.

Response	Clarification in the guidance
Rationale	We have noted the input and will clarify the rules in the guidance to allow the flexibility for some members of an existing certified group to opt for the low ILUC-risk add-on certification, whilst other members of the group do not. Individual group members who wish to make a low ILUC-risk claim will have to meet the low ILUC-risk criteria individually (i.e. set a dynamic yield baseline and pass the additionality test) but the calculations and approach to auditing can be coordinated at group level. The auditing approach will need to be adapted accordingly, to ensure that the low ILUC members of the group have the right level of auditing.

4.2 Oil palm group certification: Five stakeholders agreed that the approach to allow an oil palm group to calculate a baseline based on the average yield from the group would work for palm oil. Some stakeholders were unsure about how the dynamic yield baseline would be calculated. Two stakeholders judge that the restriction on the group certification approach for palm oil requiring that no more than 20% of the volume in the group comes from the same plantation, or that no more than 5% of the total area in the group is being replanted in the same year, was too restrictive. They noted that plantation sizes varied and that replanting usually easily exceeds 5%.

Response	Clarification in the guidance
Rationale	This feedback will be taken on board to clarify the methodology in the final guidance. In principle for group certification, all members of the group wishing to make a low ILUC-risk claim need to comply with the low ILUC-risk criteria individually; only the auditing and data collection approach can be coordinated. For a palm oil mill sourcing from a consistent area of plantations year on year with an even distribution of tree ages, it may be possible to set a baseline at the mill level. However, it must always be possible to prove that the additional biomass is the direct result of applying an additionality measure on a specific delineated plot of land (Delegated Regulation 2019/807, Article 2(6)) – which could be a whole plantation or a sub-plot within that..

4.4 Mill as First Gathering Point: One stakeholder noted that an example should be provided on how a mill would act as a First Gathering Point.

Response	Clarification in the guidance
Rationale	A more detailed explanation will be provided on how a group with a mill as First Gathering Point would have to pass the additionality tests, calculate the dynamic yield baseline and the additional biomass.

4.5 Definition of small holders: All respondents to this question (7) argued that the definition of small holders (<2ha) was too restrictive. Many referenced the existing definitions of small holder in other schemes that use a larger area limit, specifically the Roundtable on Sustainable Palm Oil (RSPO) definition of <50ha, the Indonesian Sustainable Palm Oil (ISPO) definition of <25ha and the Malaysian Sustainable Palm Oil (MSPO) definition of <40ha.

Response	Information for the European Commission
Rationale	We acknowledge that the definition in the Delegated Regulation (EU) 2019/807 Article 2(9) has a smaller area limit than other definitions. This point will be discussed with the European Commission.

5. Sequential cropping

●	Five stakeholders found the approach on sequential cropping clear. Two further stakeholders offered suggestions and questions. The key inputs are highlighted in this section.

5.1 Definitions: Some stakeholders suggested that the distinction between “main crop” and “sequential crop” should be better defined.

Response	Information for the European Commission and clarification in the guidance
Rationale	Implementation of sequential cropping as an additionality measure requires a clear definition of the main and sequential crop (also referred to as intermediate crop in the REDII). This is relevant for low ILUC-risk certification, but also for other aspects of the REDII including exemption for intermediate crops from the food and feed cap and inclusion of certain catch and cover crops in Annex IX. The consortium provide the Commission with insights on the definitions derived from the sequential cropping pilots and will recommend that the Commission provides clear guidance on how these terms should be defined and implemented in practice, to robustly distinguish a main crop from an intermediate crop.

5.2 Main crop yield increase: Several stakeholders suggested that the main crop yield could also increase as a result of sequential cropping and that any additional biomass from an increase in yield of the main crop should also be considered as low ILUC-risk.

Response	Clarification in the guidance
Rationale	The final guidance will clarify whether or not this would be permitted. Additional biomass needs to be clearly linked to the implementation of an additionality measure, and not just as the result of natural variation in yields. Whilst this distinction can sometimes be difficult to prove in practice, for an economic operator to claim the increase in yield of the main crop as low ILUC-risk (on top of the sequential crop), they would have to prove that the additionality measure implemented has a direct link to the increase in yield of the main crop.

5.3 Established double-cropping: One stakeholder asked how well-established double-cropping in some regions would be treated, for example soybean and corn rotations.

Response	Information for the European Commission and clarification in the guidance
Rationale	The final definition of main crop and intermediate crop from the Commission must clearly distinguish the situation where a new sequential crop is introduced into a rotation at a time when the land would usually be fallow to improve soil quality, from the situation where two crops are already grown commercially for the food market. Counting the latter as low ILUC-risk would not constitute additional biomass, compared to a business as usual situation, unless an additionality measure was applied to specifically increase the yield of one or both of these crops.

5.4 Crop cycle lengths: One stakeholder suggested that average crop cycle lengths could be used to assess and certify sequential cropping instead of using a calculation to determine the yield impact of sequential cropping.

Response	Clarification in the guidance
Rationale	This option will be considered in the development of the final guidance.

6. Unused, abandoned and severely degraded land

	Seven stakeholders noted that they did not understand the approach for unused, abandoned and severely degraded land, while no stakeholder said that they did understand the approach. The key inputs are highlighted in this section.

6.1 Definitions: Several stakeholders asked for clarification on the terms used in the definitions of the different land categories and how to prove them. The specific points are detailed below.

Response	Clarification in the guidance
Rationale	For the following points that were mentioned as being unclear, we will clarify as far as possible in the guidance and provide recommendations to the European Commission: • "Severely degraded": REDII Annex V provides a definition of severely degraded land but there are no thresholds to define what is "significantly" salinated, "significantly" low organic matter content or "severely" eroded. The Low ILUC guidance suggests thresholds based on existing literature. These thresholds will be discussed with the European Commission for the final guidance. • "No cultivation" of food or feed crops needed to prove that land unused or abandoned. • "Substantial amount" of fodder for grazing animal needed to prove that land is unused or abandoned. • Cultivation was stopped due to […] "socioeconomic constraints" needed to prove that land is abandoned. • "Contaminated land" was previously included in REDI but no longer is in the REDII text. We will seek clarification from the European Commission on why crops grown on contaminated land is no longer considered.

6.2 Pastureland subsidies: One stakeholder notes that a lot of degraded land is currently in use as pastureland due to local subsidies and would not be in use in the absence of said subsidies. The stakeholder argues that the land therefore does not qualify as "unused" in the current low ILUC-risk framework but would be unused without those subsidies in place.

Response	No action
Rationale	Proof of the absence of substantial grazing is needed to prove land is unused or abandoned. We will reflect the point about subsidies in our recommendations to the European Commission.

6.3 Access to evidence: Five stakeholders noted that they would not be able to access the evidence required to prove land status, and six noted they would require additional support. Two stakeholders suggested they had access to evidence and would not need support. Specifically, stakeholders noted that they would need support from authorities or local community to find 5 years of data.

Response	Clarification in the guidance
Rationale	The study team will aim to provide flexibility and examples of evidence in the guidance.

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