

Feedback on the draft revision of the Renewable Energies Directive (EU) 2018/2001 – RED II

Contact: German Bioenergy Association – Bundesverband Bioenergie (BBE)
Phone: +49 (0) 30 27 58 179 - 21
Mail: buecheler@bioenergie.de

The German Bioenergy Association e.V. (BBE) is the umbrella organization of the German bioenergy industry. In BBE, market players are organized along the entire value chain of the biogenic electricity, heat and fuel market: from biomass cultivation and its provision to machinery and plant construction, to the planning and operation of bioenergy plants in the various sectors.

General comments:

BBE welcomes the fact that as a result of the Green Deal and the EU Climate Act, the EU Commission is aiming for a more ambitious expansion of renewable energies. In BBE's view, bioenergy will be able to make a decisive contribution to achieving the EU climate targets, especially in those areas where other greenhouse gas (GHG) mitigation technologies reach their limits. Bioenergy plants provide secure and controllable power in the electricity and heat sectors. In 2020, sustainable liquid and gaseous biofuels accounted for 88 % of renewable energy in the transport sector in Germany, providing the vast majority of GHG mitigation. In 2020, bioenergy¹ supplied 20 % of Germany's renewable gross electricity generation and 85 % of renewable final energy consumption in heating and cooling, respectively, over the course of the year, regardless of weather conditions and at a reliable level. Biomass as a sustainable energy source thus provides an indispensable basic contribution to the required massive expansion of renewable energy sources in all areas of application. The net GHG savings from the use of bioenergy amounted to about 71 million tons of CO₂ across Germany in 2020, which corresponds to about one tenth of the total emissions for the year.²

Overall, BBE sees the revision of the Renewable Energy Directive (Directive (EU) 2018/2001, RED II) as an important intermediate step on the way to a complete shift away from the use of fossil fuels in the EU. However, in view of the political timeframe for the revision of RED II and the experience gained from the implementation of the currently valid regulations on the use of renewable energies, BBE points out that a national implementation of a revised RED II cannot be expected before the middle of the decade. Accordingly, the member states have little time left to ensure their contribution to achieving the EU targets for 2030. With a view to revisions of the EU regulatory framework for renewable energies that may become necessary in the future, BBE believes that, above all, longer-term reliability is needed in order to give economic operators the necessary planning and investment security in line with the fulfillment of the dated international climate targets.

With regard to the interaction of all components of the "Fit for 55" package, BBE is critical of the fact that the expansion targets for renewable energies as a whole, but especially also in the area of heat and buildings, require a significant expansion of bioenergy in general and wood energy in particular, yet the proposals for a revision of the LULUCF Regulation, the EU Forestry Strategy as well as the EU Biodiversity Strategy restrict the sustainable use of forests and significantly reduce the availability of raw materials. Furthermore, a retroactive introduction of a minimum greenhouse gas reduction obligation for bioenergy plants would not only undermine confidence in the policy, but also mean decommissioning for a significant proportion of existing plants, thus creating a gap in the expansion of renewable energies. The impact assessment for the revision of the RED II points out that bioenergy

¹ Including sewage and landfill gas and biogenic waste

² https://www.erneuerbare-energien.de/EE/Navigation/DE/Service/Erneuerbare_Energien_in_Zahlen/Zeitreihen/zeitreihen.html and https://www.umweltbundesamt.de/sites/default/files/medien/2546/dokumente/2021_03_10_trendtabellen_thg_nach_sektoren_v1.0.xlsx

is one of the most cost-effective options for the expansion of renewables in the heat sector. Accordingly, a restriction of bioenergy use through the requirements of the RED II would make the achievement of the targets significantly more expensive and counteract the cost-effective achievement of the renewable targets.

Comments in detail:

Article 3:

Paragraph 1: BBE welcomes the increase of the target for the share of renewable energy sources in gross final energy consumption from 32 to 40 % in 2030. This represents a necessary step from a climate protection perspective. In view of the long-term goal of the EU climate law to achieve greenhouse gas neutrality by 2050, the early definition of further expansion targets beyond 2030 is consequently necessary to provide sufficient investment security for the planning and installation of new renewable energy capacity.

Paragraph 3: BBE supports the principle of the cascade of uses and recognizes the waste hierarchy of the Waste Framework Directive 2008/98/EC. Nevertheless, BBE is critical that member states should take measures to minimize undue distortive effects on raw material markets and harmful impacts on biodiversity through bioenergy production. In the opinion of BBE, such a requirement could lead to a de facto reduction in the use of bioenergy and thus also jeopardize the achievement of renewable targets, without there being any sound reasons or alternatives for this. In addition, it is planned that the EU Commission will prepare a report by 2026 to examine the consequences of biomass use with regard to market distortions and biodiversity. On the basis of this report, further options for restricting support for the use of forest biomass for energy are to be examined. However, both market events and biodiversity trends are the result of multi-layered and multi-factorial processes that are subject to temporal and regional differences and fluctuations, and are also influenced by a variety of externalities (e.g., global economic situation, population trends, climate change, invasive species, etc.). A constructed impact of biomass use must therefore always produce incomplete and unreliable results, which must not form the basis for policy decisions. In contrast, Article 29 already provides for extensive sustainability requirements for bioenergy production. This represents a unique selling point of bioenergy (including residues). In principle, analogous sustainability requirements would have to be introduced for all forms of (fossil and renewable) energy production, which, as in the case of biomass, would also have to be implemented in third countries.

BBE questions the sense of the prohibition of financial incentives for the energetic use of saw logs and veneer logs, since already from a purely market perspective an energetic use of these high-quality wood segments is not viable. Nevertheless, residual and waste materials from processing of these wood segments are used for energy purposes, so that the planned regulation would lead to uncertainties in the market and should therefore be deleted. BBE states that a ban on supporting the energetic use of certain tree components, such as roots and stumps, should not lead to a situation where these parts can no longer be used for energy use, for example, when extracted for infrastructure and construction projects. In forestry, no harvesting of stumps and roots takes place, so that BBE sees no need for further regulation.

BBE supports the proposal that no financial incentives should be granted for electricity-only-installations that use forestry biomass. In BBE's view, electricity-only-installations with efficiencies of up to about 46 % are inefficient processes compared to combined electricity and heat generation in

decentralized heating and CHP-plants as well as pyrolysis plants with efficiencies in the order of 88 and 70 %, respectively.

From a German perspective, BBE sees no need for the Commission to issue a delegated act on the application of the cascade principle one year after the entry into force of the revised directive. The cascading use of wood is already implemented in Germany by the Closed Substance Cycle Waste Management Act (“Kreislaufwirtschaftsgesetz”) and the Waste Wood Ordinance (“Altholzverordnung”) and, independently of this, is already followed by market participants for economic reasons, so that there is no need for further regulation here in accordance with the subsidiarity principle.

Article 15:

The obligation for Member States to set an indicative target for the minimum share of renewable energy in buildings in 2030, consistent with the EU-wide indicative target of 49 %, is welcomed in principle. Also welcomed is the clarification that this target is to be included in the update of the integrated national energy and climate plans pursuant to Regulation (EU) 2018/1999 by June 30th 2024. For BBE, however, it is not comprehensible why only an indicative value and no binding target is introduced.

In the buildings sector, greenhouse gas reductions of around 43 % have already been achieved in Germany since 1990. However, the sector still emits around 120 million tons of CO₂ and has already failed to meet the sector target set out in the Federal Climate Protection Act by 2020.³ The targets of the Effort Sharing Regulation were only met due to the special effects of the Corona pandemic. In order for the other greenhouse gas reduction targets to be met, ambitious EU targets for the expansion of renewable energies will be helpful. Sustainable bioenergy is often the only viable climate-friendly alternative to fossil fuels, especially in existing buildings.

Article 22a:

BBE sees it as basically positive that a benchmark for the average annual minimum increase in the use of renewable energies of 1.1 percentage points is also introduced for the industrial sector and that member states must include measures in the integrated national energy and climate plans to achieve the target. As is the case for the buildings sector, it is not apparent why only a benchmark and not a mandatory target for the expansion of renewable energies is specified for the industrial sector.

Article 23:

The mandatory annual increase of the share of renewable energies in the heating and cooling sector for each member state by at least 1.1 percentage points is welcomed by BBE. The addition that in the case of waste heat the annual increase should be 1.5 percentage points and could be up to 40 % of the increase should be supplemented to the effect that only waste heat from renewable energies should be accounted, but not from fossil energy. It is important to avoid offsetting waste heat from fossil energy plants against the target for the expansion of renewable energy. The consequence

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https://www.umweltbundesamt.de/sites/default/files/medien/361/dokumente/2021_03_10_trendtabellen_thg_nach_sektoren_v1.0.xlsx

would be windfall effects, which would reduce the target and, with a maximum accountability of 40 %, only an increase in the share of renewable energies of 0.9 instead of 1.1 percentage points would remain.

On the other hand, BBE welcomes the fact that Annex 1a also sets national targets for the share of renewable heating and cooling in gross final energy consumption in 2030.

Article 24:

BBE welcomes the increase of the target of increasing the share of renewable energies in district heating from 1 to 2.1 percentage points per year. Nevertheless, BBE criticizes that the member states are only required to endeavour to increase the share. A more strict target would be more effective in achieving the climate and energy goals as a whole. In addition, BBE advocates that waste heat from fossil energy cannot be counted towards the target in order to avoid incentives that would result in lock-in effects for the heating infrastructure.

Furthermore, it is not comprehensible why, in view of the long-term goal of greenhouse gas neutrality, the target for an increase in the share of renewable energies should be dropped for member states that use at least 60 % renewable energies or waste heat in district heating. In view of the climate targets, only when the share is close to 100 % a further increase can be dispensed.

Article 25:

BBE welcomes the fact that the conversion of the minimum energy requirement for renewable energies to a greenhouse gas reduction obligation will anchor a real reduction of greenhouse gases for the transport sector in a binding manner for the member states. BBE also welcomes the fact that, in order to achieve the target, multi counting, e.g. for charging electricity, are to be eliminated in the future. Double and multi counting of selected energy sources towards the climate mitigation targets overstate their contribution to the reduction of greenhouse gases.⁴

In view of the EU's climate protection target, the planned increase in the greenhouse gas reduction target to at least 13 % in 2030 should be significantly increased and be binding for all member states. The target in Germany for the year 2030 is 25 % greenhouse gas reduction including multi counting, which according to BBE estimates corresponds to about 16 % real GHG reduction. It is also advisable to increase the target annually in equal steps so that consumers and economic operators can adjust to the gradual increase.

BBE also advises that the minimum energy quota for advanced biofuels in accordance with Part A Annex IX for the year 2030 should be raised significantly from 2.2 to 2.6 percent and increase in equal steps until then. This is already provided for in the current regulations in Germany (38th BImSchV). European targets should not lag behind more ambitious national targets. Any expansion of the feedstock base for advanced biofuels should be accompanied by an authorization for member states to increase the minimum target. Regarding the counting of charging electricity to the GHG reduction quota, BBE requests the introduction of a mechanism to automatically increase the quota in order to avoid that the charging electricity that can be counted towards the GHG reduction quota crowds out the climate protection performance of renewable fuels. The adjustment mechanism anchored in German law (§ 37 h) BImSchG-neu) should serve as a model here.

⁴ https://www.bdbe.de/application/files/1716/2281/1003/Gutachten_bbh.pdf

Article 26:

In view of the time pressure on climate protection and the need for rapid reduction of emissions in the transport sector, BBE questions the retention of the cap on the counting of sustainable biofuels from cultivated biomass. In BBE's view, successful climate protection requires that all sustainably available options for greenhouse gas reductions are quickly used in order to achieve a significant contribution to climate protection in the vehicle fleet. Sustainable biofuels from agricultural biomass are immediately available, can be used in the existing filling station infrastructure, and are cost-efficient in terms of their climate protection contribution compared to liquid energy sources from renewable electricity.

In the opinion of BBE, the share of sustainable biofuels from cultivated biomass in the targets for the use of renewable energies and greenhouse gas reduction in the transport sector must therefore be increased. To this end, the restriction in Art. 26 should be dropped, according to which the share of sustainable biofuels in 2030 may not be higher than the percentage share of energy consumption in the transport sector in 2020 plus a further percentage point, but no more than 7 %. The absolute upper limit for the accounting of sustainable biofuels should be noticeably increased in line with the rising greenhouse gas reduction targets and the target for renewable energies in order to take into account the declining energy consumption in transport. This would keep the absolute climate protection contribution of sustainable biofuels constant.

At the same time, the option for member states to reduce the greenhouse gas reduction target must be removed if the climate protection contribution of biofuels from cultivated biomass is below the upper limit. In 2019, their share of renewable energies was in some cases significantly below the 7 % cap in all EU member states.⁵ In 2020, this is expected to have changed only slightly. This would give most member states the option of reducing the greenhouse gas reduction target for transport, with the consequence that either emission savings would have to be made in other sectors or the climate mitigation targets would be missed in total. This is not justifiable due to the existing sustainable potential for biofuels from biomass and the time pressure in climate mitigation, especially since the renewable energy target is to be raised at the same time and a GHG reduction obligation is to be introduced.

The expiring option of accounting for biofuels from agricultural raw materials, which can be assumed to pose a high risk of indirect land use change (iLUC), already adequately addresses competing uses. The strict EU sustainability criteria prevent the direct conversion of land areas worthy of protection for the production of agricultural raw materials for biofuel production.

Article 27:

In the opinion of BBE, the calculation rules for determining greenhouse gas reductions in the transport sector must be designed in such a way that they reflect the greenhouse gas savings actually achieved by the renewable energy sources used. In particular, this is not the case when calculating the reduction in greenhouse gas savings from renewable electricity - despite the elimination of multi counting. A calculation of greenhouse gas reductions from the use of renewable electricity in the transport sector that does not reflect actual conditions thwarts the ambitious climate mitigation targets as a whole and shifts greenhouse gas reduction efforts to other sectors outside the transport sector. In light of the time pressure on climate mitigation and the need to rapidly reduce emissions in

⁵ <https://ec.europa.eu/eurostat/web/energy/data/shares>

the transport sector, BBE questions the retention of the cap on the crediting of sustainable biofuels from Annex IX Part B feedstocks.

In BBE's view, successful climate mitigation requires the rapid use of all sustainably available options for greenhouse gas reduction in order to be able to reduce greenhouse gases in the vehicle fleet as well. Biofuels from used cooking oils and animal fats are also immediately available, can be used in the existing filling station infrastructure and are cost-effective in terms of their contribution to climate mitigation. The cap on the crediting of the share of biofuels from Part B Annex IX should be increased. In particular, the possibility for member states to raise the cap according to the potential of waste-based biomass should be maintained.

BBE rejects the counting of renewable fuels from Annex IX Part A feedstocks in shipping with a factor of 1.2, as this could only result in a shift of feedstocks from other transport sectors without an additional GHG reduction emission.

Article 29:

BBE calls for the sustainability and greenhouse gas reduction criteria applicable to bioenergy use to be extended to the use of electricity in transport and for appropriate requirements to be set for this in Article 29. The assumption associated with electromobility that electrically powered vehicles are emission-free does not take into account the fact that the approach used to calculate greenhouse gas emissions does not consider the greenhouse gas emissions from fossil sources that occur e.g. during battery production. This is associated with a neglect of greenhouse gas emissions in the upstream chain for the life cycle assessment. The energy used for the extraction of raw materials, production and recycling of batteries must be included in the overall greenhouse gas balance in the sense of a proper climate assessment. The aim is equal treatment for the evaluation of the different forms of propulsion, also in terms of consumer information. This concerns, for example, the mining and processing of raw materials for battery production and the obvious (also humanitarian) risks, which must be taken into account in the sense of a comprehensive sustainability assessment. In this case the EU Commission must create a database, analogous to biomass certification. In line with the established sustainability criteria for biofuels, BBE also calls for the introduction of strict and verifiable sustainability criteria for other renewable forms of propulsion, such as electromobility or hydrogen, as a prerequisite for funding and eligibility towards renewable energy targets. This involves, analogously to biomass, the development and approval of certification systems. This is the more urgent in view of the fact, that a massive increase in e-mobility can be expected as a result of government subsidies.

Multifunctional forestry in Germany is not only regulated by strict national laws, but lives and operates according to the principle of sustainability, which dates back to Hans Carl von Carlowitz (1645-1714) and originated in German forestry. Sustainability is the basic principle of forestry, which lives and works in timeframes of 100 years and more. Accordingly, the entire value chain of the forestry and timber industry, including the wood energy sector, is committed to maintaining sustainability and acting in a way that spans generations, as this is the only way to preserve the forest as an economic and livelihood resource. Excessive bureaucratic and organizational requirements for the implementation of the sustainability principle, as contained in the Commission's draft for the revision of RED II, are not expedient from the industry's point of view, as they impede bioeconomic management methods through unnecessary and small-scale regulations and slow down the transition to a climate-neutral circular economy. In addition, they run counter to the principle of subsidiarity.

Paragraph 1: BBE opposes the lowering of the threshold for the sustainability criteria from 20 to 5 MW total rated thermal input. For a large number of decentralized electricity and heat suppliers, this would introduce additional barriers, with the consequence of increasing direct and indirect costs due to certification and related bureaucracy and administration. This would be offset by only a small amount of biomass that would fall under the sustainability criteria in addition to the current limit of 20 MW of total rated thermal input, so the disadvantages outweigh the advantages: While plants above 20 MW use 75 % of the biomass used but represent less than 15 % (456 plants) of all European wood energy plants, plants in the 5-20 MW range use only about 18 % of the total biomass, but, with more than 1060 plants, represent around one-third of all plants.⁶ Lowering the threshold would therefore entail a disproportionate cost and administrative burden to the sector and would contradict efficient and proportionate legislation as well as renewable energy expansion.

However, a positive aspect in this context is the provision in paragraph 6 for the member states to provide for simplified verification of sustainability and greenhouse gas reduction for plants with a total rated thermal input between 5 and 10 MW. In case that the threshold for the sustainability requirements is lowered, the possibility of simplified verification must be extended to all newly affected plants up to 20 MW.

With the introduction of a flow rate of more than 200 m³/h methane equivalent to the threshold in the biogas sector in subparagraph 4, b), BBE asks for the elimination of the total rated thermal input of 2 MW: The total rated thermal input is not suitable to properly reflect flexible power generation from biogas plants. In recent years, the German government has encouraged a flexibilization of biogas plants via the Renewable Energy Sources Act (EEG). In recent years, biogas plant operators have installed additional electricity generation capacities in the form of additional combined heat and power plants. The total rated thermal capacity has been increased accordingly without increasing the fuel input.

Paragraphs 3-5: BBE considers the general introduction of prohibitions on the use of forest biomass from primary forests (paragraph 3), wetlands (paragraph 4) or drained peat soils (paragraph 5) to be not expedient, as is the restriction on use in highly biodiverse forests and protected areas (paragraph 3). The aforementioned land categories were defined as no-go areas for agricultural raw materials in order to exclude land conversions for biofuel production. An extension to forest biomass would not only contradict the intention of the initial regulation, but would deeply interfere with (national) forest laws and protected area policies through European energy law. EU law, for example, includes directives specifically created for nature conservation, e.g. the Habitats Directive (Directive 92/43/EEC), while the task of the RED is to promote renewable energy and not to interfere with conservation purposes. In addition, the listed land categories are already effectively protected by national laws in Germany, so there is no general need for EU action here. Instead, the introduction of usage bans and restrictions in energy law threatens new bureaucratic proof and control obligations as well as legal uncertainties, without any recognizable added value. BBE asks for exempting member states that already effectively provide protection for the affected land categories from the requirements. In addition, the introduction of the restrictions on energy use would also negatively affect the material use of wood: Harvesting wood for material purposes results in wood assortments that cannot be used for other purposes, which are therefore utilized for energy and would thus no longer be usable as residual and by-products of material utilization.

Paragraph 6: BBE considers the introduction of new regulations on soil and biodiversity protection for the harvesting of forestry biomass as a detailed regulation that unnecessary and should not be

⁶ Results „Basis Bioenergie EU“, https://www.fachverband-holzenergie.de/download_file/force/767/201 and https://www.fachverband-holzenergie.de/download_file/force/766/201

regulated at EU level. In addition, the intended objectives are already guaranteed in Germany by existing forestry laws and are complied with in multifunctional, sustainable forestry practice, so that there is no need for regulation in this regard. Instead, the regulations introduces new bureaucratic requirements without added value for sustainability, so that member states in which compliance is already guaranteed by national law, should be exempted.

Paragraph 10: BBE rejects the retroactive introduction for greenhouse gas reduction obligations regardless of the date of operation start. The commission's proposal would mean that existing biomass plants would retroactively fall within the scope of greenhouse gas reduction criteria. This violates the protection of legitimate expectations and calls into question the reliability of policy. This would not only question the investment security for future bioenergy plants, but also (especially in the biogas sector) lead to the closure of existing plants in cases where the retroactively introduced greenhouse gas reduction requirements cannot be met. This would threaten an important pillar of the decentralized decarbonization of energy and heat in rural areas. Instead, BBE demands that the GHG reduction requirements must be limited to new plants, as only in this case can plant manufacturers and operators meet the requirements in the course of technical progress. In addition, BBE criticizes that for many important biogas substrates (e.g., grain silage, flowering plants), but also for solid biomass fuels, no default values are included in Annex VI, Part A. This means that the complex and time-consuming greenhouse gas calculations has to be carried out by the plant operators themselves. This is already a problem in view of the greenhouse gas calculation required in RED II for plants commissioned as of 1.1.2021. BBE therefore calls for the addition of further standard values for the greenhouse gas calculation to Annex VI Part A.

Article 31:

BBE criticizes that with the deletion of paragraph 2, the use of NUTS 2 values for the greenhouse gas calculation is taken. The use of NUTS 2 values for the cultivation of biomass leads to a significantly better and more realistic representation of the greenhouse gas balance compared to the use of default values at European level. It is therefore not clear why the already given level of detail of the greenhouse gas calculation should be abandoned at the expense of a more inaccurate procedure. BBE demands that a region-specific greenhouse gas calculation by using disaggregated standard values for biomass cultivation, on the basis of NUTS 2 regions, must continue to be possible.

Annex II: Amendment of the Fuel Quality Directive 98/70/EC (FQD)

The amendment of Annex II of the Fuel Quality Directive 98/70/EC to increase the permitted blending percentage of biodiesel from 7 to 10 % is welcomed. BBE sees the increase as a further step towards achieving higher greenhouse gas reductions in the vehicle fleet with sustainable biofuels. BBE demands that blends of more than 10 % biodiesel must also be possible, as well as an increase in the blending percentage for bioethanol (e.g. E20).

In addition, E10 should become mandatory throughout Europe and replace E5 as a so-called protective grade. In 15 member states, there is no longer an obligation to offer E5 under the respective national fuel regulations, and two other member states are specifically planning to abolish the corresponding protective variety regulation. Abolishing the petroleum industry's obligation to offer E5 in addition to E10 would automatically lead to an increase in the market share of E10 and thus directly to greater emission savings. The standardization and introduction of gasoline with an ethanol content of more than 10 % should be completed quickly. To this end, the German Institute

for Standardization (DIN) will submit a concrete specification proposal for E20 to the European standardization body CEN before the end of the year so that standardization work can begin.

Annex V:

For residues and wastes not listed in Annex IX, the Commission proposes to include indirect greenhouse gas (GHG) emissions - i.e., emissions not directly associated with the value chain in question - when calculating GHG savings (Annex V, Part C, point 18). This artificially understates the GHG savings from these residues. Fuels from non-Annex IX residues and wastes now account for a significant portion of the sustainable biofuels produced in Europe and are a critical tool for Member States to achieve their national climate targets in the transport sector. This provision would - without justification and adequate impact assessment - reduce the GHG emission saving value of biofuels from these residues and potentially jeopardize their suitability to meet GHG saving targets.

This proposal represents a serious deviation from the direct GHG calculation methodology of RED II. In practice, it will limit the possibility of using and developing new raw material sources that are not included in Annex IX. In addition, this serious intervention in the GHG calculation of residues and waste materials seems too short-sighted, as many member states have not even implemented the current RED II requirements as of today. The proposal will therefore significantly limit the GHG savings potential of biofuels in Europe. This may freeze future investment plans or cause investments already made based on RED II to go to waste. In addition, the regulation will lead to higher prices for consumers, as the choice and availability of biofuel feedstocks in the EU will be massively restricted. In addition, it is likely that these local residues will be exported to biofuel markets overseas (e.g. to the USA) instead of contributing to European climate mitigation efforts.

Berlin, 18th October 2021