

USDA Foreign Agricultural Service

GAIN Report

Global Agricultural Information Network

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POLICY

Voluntary Public

Date: 2010-12-10

GAIN Report Number: E57006

EU-27

Post: Brussels USEU

Transposition of the RED into National Legislation

Report Categories:

Bio-Fuels

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Report Highlights:

According to EU legislation, the Renewable Energy Directive must be transposed into their national legislation by December 5, 2010. Almost all of the EU Member States will not meet the deadline.

It remains unclear how the Commission, and the Member States, will deal with the delays.

General Information:

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General Information:

The Renewable Energy Directive (RED), published on April 23, 2009, must be transposed into national legislation by December 5, 2010. Still most of the EU MS will not be able to meet the deadline.

The RED requires the EU to have:

- A 20 percent reduction in green house gas (GHG) emissions by 2020 compared to 1990.
- A 20 percent improvement in energy efficiency compared to forecasts for 2020.
- A 20 percent share for renewable energy in the EU total energy mix. Part of this 20 percent share is a 10 percent minimum target for renewable energy consumed in transport to be achieved by all (MS).

The goal for 20 percent renewable energy in total energy consumption is an overall EU goal. The RED sets different targets for different MS within this overall target. This means that some MS will have to reach much higher targets than the 20 percent renewable energy by 2020, whereas other MS will have much lower targets.

If a MS has not transposed the Directive into their national legislation but still pays aid to the industry it places the MS in a position to be sued, because of the requirement that all biofuels have to be certified. Biofuels that are not certified will not count towards the target and will not have tax reductions.

There are currently three ways for a biofuel to get certification: Voluntary Certification schemes, Member State Competent authority criteria, or bilateral agreements between the EU and third countries. For further details on the different certification possibilities see GAIN E50070. There are eleven voluntary schemes that have applied for recognition to the Commission in this first round. Eight of these eleven schemes have received comments from the Commission. The Commission is expecting the first voluntary scheme to be published in the spring of 2011.

The European Commission so far has not shown a lot of sympathy with MS difficulties to meet the deadline, saying the MS have been aware of the requirements for 18 months so they should have started the process earlier.

There have been rumors that the Commission would postpone implementation of the RED to give the MS more time. However, Commission officials will note that the industry has raised some practical concerns on the immediate implementation of the Directive, but insist that any response will not likely contradict the Directive. Thus postponing transposition does not seem likely.

This report tries to give an idea of the situation in the EU, but the situation is very different among MS. There are important differences in how MS are approach transposition. Germany is the one that progressed the most, while some of the countries are just starting the process. What is clear is that most MS do not have a plan in place if the Commission act based on MS non-compliance.

Member State	Information
Austria	<p>The RED will be transposed into national law by the Austrian national ordinance BGBl.II Nr. 250/2010. This ordinance lays down criteria for agricultural feedstock used for biofuels and will come into force by December 1, 2010. Companies who wish to certify agricultural feedstock according to the sustainability criteria have to register at the “Agrarmarkt Austria” (AMA). In addition to registration, the AMA is in charge of enforcing the ordinance.</p> <p>Most of the Austrian 2010 crop used for biofuels is expected to meet sustainability criteria which will secure the production of certified bioethanol. But the biodiesel industry will face a lack of certified feedstock since most of the feedstock used is imported from Germany, Hungary, Czech Republic, and Romania and only Germany has got a certification system so far. The Austrian biofuels industry is lobbying for a transition period in 2011 because they believe that next year there will not be sufficient quantities of certified biofuels available to fulfill the mandates, especially biodiesel.</p>
Belgium	<p>The federal Belgian government does not have a clear view when and how the RED will be implemented. This is mainly because parts of the RED will be implemented at the national level and others on a regional level. The sustainability requirements for bioethanol and biodiesel will be implemented at the regional level.</p>

<p>Bulgaria</p>	<p>RED is in the process of transposing into the Renewable Energy Bill. The Bill is drafted and available for a public discussion at the Ministry of Economy and Energy web site. The public discussion may take some time, most likely till end-December. According to officials at the Ministry of Economy and Energy, the bill should be approved by the Cabinet in end December with the goal of being submitted to the Parliament before the end of 2010 or in early 2011. Realistically, the bill is expected to become a law in January/February 2011.</p> <p>Sustainability criteria for biofuels are transposed in the bill, articles 37- 40. However, further details are planned to be introduced in by-laws which will be approved after the law is passed by the Parliament.</p> <p>To date, the industry has been more concerned about the national mandates since Bulgaria is behind other EU member states. According to the proposed bill, the national mandate for biodiesel is 4 percent starting March 2011 and 6 percent from September 2011. The bill calls for an ethanol mandate of 4 percent by 2014, gradually increasing to 6 percent by 2016 and 9 percent by 2018. There is some resistance from certain interest groups against bioethanol mandates on the expense of higher biodiesel blends. Reportedly, the industry is concerned about the authorities' ability to effectively introduce and apply the sustainability criteria on imports, especially if imports are coming from the Commonwealth of Independent States (CIS).</p>
<p>Czech Republic</p>	<p>The Czech Republic will not make the transposition by the December deadline; officials expect to complete the process sometime in February 2011.</p> <p>Sustainability criteria will be introduced in a new amendment in the Air Protection Act no. 86/2002. The amendment is now going through the legislative process and implementation is expected in June or July 2011. Until then, the Czech Republic will not be able to certify biofuels as meeting the sustainability criteria. Most of the Czech producers, however, already have certification from German companies, since they supply them with with methyl ester of rapeseed oil.</p> <p>In the Czech Republic, there is a tax incentive only for high-percentage biofuels such as E85. High-percentage biofuels are exempted from the excise tax (the bio-component part).</p>
<p>Cyprus</p>	<p>No report available</p>
<p>Denmark</p>	<p>Denmark transposed the RED-Directive into national legislation by adopting a new law "The Act on Sustainable Biofuels (Act No. 468 of 12 June 2009)", which sets out the requirements on biofuel shares and certification of sustainability. The certification schemes are not addressed in this law, but guidelines for a self declaration form for the 2010 harvest have been set out temporarily. A more detailed certification schemes are expected to be ready sometime during 2011.</p>

Estonia	<p>While the Ministry of Economy completed its portion of transposition in spring 2010, the Ministry of Environment has yet to take action. The stalemate is not expected to change until after parliamentary elections scheduled for March 2011. No information was provided related to what additional actions the government would take or how it would deal with any EU penalty, if imposed, given its non-compliance with the December 5 requirement.</p>
Finland	<p>Finland will not be able to transpose the RED by December 5, 2010. It will most likely be delayed by a couple of months. A new law on the implementation of the Renewable Energy Directive was proposed on October 15, 2010.</p>
France	<p>France will not transpose the RED until January 2011. The Ministries of Agriculture, Ecology, and Budget and Customs are currently working on this through an inter-ministerial process, and decrees are being currently prepared to implement the RED.</p> <p>Sustainability criteria is the main point of contention. The technical services of the French Ministries involved are currently working on (1) how biofuels processed from crops planted before sustainability criteria were defined in 2009 and 2010 can be eligible, and (2) the French Ministry of Agriculture's perspective is to have a fair approach of the sustainability criteria for both domestically-grown and imported products, so that domestic products are not penalized with stricter criteria imposed on them than on imported products.</p> <p>French farmers are facing uncertainty on the implementation of the sustainability criteria for the eligibility of biofuels to national support in 2011. The French biodiesel and bioethanol sectors, including farmers, elevators and processors, submitted a voluntary scheme to the European Commission in July 2010, validated by a certifying organization, Bureau Veritas, detailing the actions they are willing to take to implement the sustainability criteria on France's biofuels production, whether processing domestically-grown or imported crops. The voluntary scheme is currently reviewed by the European Commission, and the French industry hopes it will be validated by the end of the year.</p>
Germany	<p>Germany was the first MS to transpose the RED requirements regarding sustainable production into national law. For administrative reasons the implementation was split into two separate regulations, one for biomass used for electricity production (BioSt-NachV) and one for biomass used for biofuel production (Biokraft-NachV). These regulations were published in the German Federal Gazette (BGBL) on July 29, 2009, and October 5, 2009, respectively. The requirements pertaining to sustainable production and sustainability certificates become effective January 1, 2011. The German Ministry for Food, Agriculture, and Consumer Protection (BMELV) estimates that to date about 70-80 percent of the German rapeseed crop is certified. According to Agricultural Market Information (AMI) the market currently pays a €10/MT premium for certified sustainable rapeseed oil.</p>

Greece	<p>Greece will not be able to transpose the RED Directive by December 5, 2010.</p> <p>The new law 3851/2010 (OG A/85/4th June 2010) “Accelerating the development of Renewable Energy Sources (RES) to deal with climate change and other regulations in topics under the authority of the Ministry of Environment, Energy and Climate Change”, sets RES transport share at 10 percent, in order to achieve the national target of 20 percent contribution of the energy produced from RES to the gross final energy consumption.</p>
Hungary	<p>The Hungarian Parliament has approved a new bill governing bio-fuels. The Bill contains the general framework for the transposition of the RED into the Hungarian legislation. A draft Regulation containing some of the implementation details has also been prepared and coordinated with several Ministries, producer organizations, and major companies. The regulation will not be promulgated before December 5, but will likely be in place January, 2011. There is a Competent Authority already in place to handle the administration, there are registered clients meeting the default criteria, and there is an accredited German certifier. However, some parts that require Department level executive orders will not be completed until the first quarter of 2011.</p>
Ireland	No report available
Italy	<p>Italy will not be able to transpose the RED Directive by December 5, 2010. The transposition will likely be postponed until January-February 2011, which could change if the current government falls during the next few weeks due to ongoing instability in the leading party.</p> <p>The Italian Government provided tax incentives to encourage biofuel production. In 2010, it greatly reduced the incentives for biofuels due to budget constraints:</p> <ul style="list-style-type: none"> • the amount of biodiesel eligible for tax incentives was reduced from 250MMT to 18MMT. • the total amount of tax incentives available for bioethanol was reduced from €73 mil in 2009 to €3.8 million in 2010. Starting in 2011, the €3.8 million will be reduced by €0.1 million each year. <p>Italy’s 2011 budget is expected to reduce the incentives further.</p> <p>In 2010 Italy raised the mandatory share of biofuels in auto fuels to 3.5 percent from 3.0 percent in 2009. The target will be raised to 4.0 percent next year and to 4.5 percent in 2012 to catch up to EU goals.</p>
Latvia	<p>The Renewable Energy Law is in progress with the first draft submitted to the Parliament. Parliamentary Elections that took place on October 2nd interrupted movement of the bill but Parliament is expected to vote on the Renewable Energy</p>

	Law in early 2011. Latvia will not meet the December 5 deadline but it remains unclear what action the Latvian government will take or how it will deal with a penalty from the Commission due to not meeting the deadline.
Lithuania	The Ministry of Environment confirmed that the Renewable Energy Directive 2009/28/ has been transposed into national legislation and will be implemented through the following legal acts: The Strategy for Renewable Energy Development and The Action Plan for the Implementation of the Strategy for Renewable Energy Development. Currently, the Renewable Energy Law is under discussion within the Lithuanian Parliament. The Ministry of Environment expects that the law will be passed by December 5 th , 2010.
Luxemburg	No report available
Malta	No report available
Netherlands	The transposition of the RED into Dutch law has been delayed by the installation of the new Dutch government. The implementation is waiting to be discussed and passed by the Parliament. The final outcome of this is uncertain. It is anticipated by government officials that enforcement could be delayed by a few months. Dutch law grants second generation biofuels for double counting, ahead of EU legislation. The sustainability requirements for biofuels, determining if blending is counted, are however, not yet executed in Dutch law. However, these requirements could possibly be enforced retroactively over the months the RED is not implemented.
Poland	<p>Currently the Ministry is working on the new Renewable Energy Law which is expected to pass during the first half of 2011. Once the Law is passed, the Ministry will work on supporting acts which will allow implementation, which is expected during second half of 2011.</p> <p>No information was provided relating to what additional actions the government would take or how it would deal with any EU penalty, if imposed, given its non-compliance with the Dec. 5 requirement.</p> <p>There exists legislation that provides excise tax for buying bio components which should cover production until end of April 2011.</p>
Portugal	RED is already partially transposed by Decreto-Lei n° 117/2010. This addresses the sustainability criteria for biofuels, in particular it transposes into national legislation articles 17, 18, and 19, and annexes III and V of the Directive 2009/28/EC. Legislation covering the remaining points is ready and waiting for the final approval, at the level of the Presidency of the Republic, before being published.
Romania	RED has been partially transposed into the national legislation, but not the articles on sustainability criteria. Several RED articles have been transposed through Law 139/2010 published in August 2010: <ul style="list-style-type: none"> Articles 1-4 covering definitions, mandatory national objectives, and national

	<p>action plan.</p> <ul style="list-style-type: none"> • Article 5, para (1) covering calculation of the energy share. • Articles 6-10 covering transfers among the MS, possible common projects and their effects. • Article 12, Article 15, para (1) Guarantees of Origin and Article 16 para (2-6) regarding the access to networks. <p>The Ministry of Industry is currently drafting the legislation that will transpose article 17 on Sustainability criteria, but it is very unlikely that it will be ready before the deadline. In addition, upon approval, the Decision must be followed by a Ministerial Order providing details which will delay the implementation process.</p> <p>Currently the blending level is 4 percent for both biodiesel and bioethanol, but according to a recent Government Decision, the blending percentage will increase to 5 percent starting with January 2011, and then to 7 percent starting January 2013 for both biodiesel and bioethanol. Currently, the biofuel component of the blending is excise-free.</p>
Slovakia	In Slovakia the situation is similar to the one in the Czech Republic, they will not meet the deadline, and the transposition is anticipated at the end of the 1 st quarter of 2011.
Slovenia	No report available
Spain	<p>Spain will not transpose RED before December 5. Officials are targeting the first quarter of 2011. There are some technical problems related to the certification of sustainability of the production mode of biofuels and how to create a reliable system for companies to work in.</p> <p>Until the Directive is transposed, all current tax incentives are expected to be kept in place. Spain would like to receive technical support from the Commission to solve problems such as control of mass balance in the biofuels' value chain and double counting.</p>
Sweden	<p>Although the bulk of the Directive already is implemented in Swedish legislation, there are still details that need to be included and the December 5 deadline will most likely not be met.</p> <p>For taxation, the Swedish Government Budget Bill for 2011 proposes extended tax exemption for low-level blends of biofuels, up to 6.5 percent ethanol and 5 percent biodiesel. E85 and other high-blend biofuels are proposed to continue to be tax exempt.</p>
United Kingdom	The RED requires the UK to increase its share of renewable energy in final consumption from 1.3 percent in 2005 to 15 percent 2020. This is the largest proportional increase required of any Member State.

The UK government is currently planning to transpose the RED into national legislation through 2011 by modifying existing legislative frameworks such as the Renewable Transport Fuel Obligation (RTFO) and Renewables Obligation (RO). The RO will be modified to implement the RED for bioenergy for the 1st April 2011, the biofuels sections of the RED are not currently planned for implementation until Q4 2011 at the earliest.

However, since RTFO reporting year runs from April to April, it is conceivable that the UK may not have RED compliant legislation until April 2012.

The Renewable Fuels Agency is one of the NDPB's listed for abolishment under the recent comprehensive spending review. The functions of administrating the RTFO will therefore in 2011 be moved back into the Department for Transport, most likely for the beginning of the next reporting year.

In the meantime, at least six industry certification schemes, such as the UK Assured Food Standards Combinable Crops and Sugar Beet Scheme (Red Tractor), and other international schemes such as the RTRS, have applied to the EU Commission for accreditation, and more are to follow. Given the UK's investment in traceability and farm assurance schemes on the back of multiple food scares in the 1990's, the UK is considered well-placed to comply with RED sustainability requirements once schemes have gained EU approval. This central EU approval will then mean all member states have to accept the scheme as proof of compliance with the RED requirements. The EU approval process is through Comitology and is expected to take around 6 months.

So while national legislation may not be imminent, the UK industry is gearing up to respond, and encouraging consumers to choose sustainable biofuel is very much at the forefront. The concern surrounding indirect land use change and potentially low greenhouse gas savings achieved by the use of some feedstocks is still a dominant issue for UK policy makers. Imports of South American soy oil along with palm oil, the loss of tax rebates on biofuels in 2010 and the numerous policy changes has driven the UK to abandon much of its biodiesel investment. Bioethanol from domestic wheat is instead the product du jour, going from a zero base in January 2010 to an expected 1.22 million liters bioethanol produced from 3.3 million tonnes wheat by 2013. This domestically produced bioethanol is averaging greenhouse gas savings of over 70 percent compared to fossil fuels.

As regards tax incentives, with fiscal austerity measures currently underway in the UK, it is unlikely that the Treasury will provide any tax breaks for this industry.