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ITRE WORKSHOP - 24 April 2008
Opportunities for renewable energy development in Europe

Venue
European Parliament - Strasbourg - Room LOW N 3.3
9.00 – 12.00
In camera (only for MEPs and EP staff)

Programme

9:00 Welcome and opening – Rapporteur MEP Mr Claude TURMES

Part 1: Legal aspects of the RES Directive (articles 8 and 9)

9:10 Presentation by **Angus Johnston**
University Lecturer in Law, Director of Studies at Trinity Hall
Faculty of Law in the University of Cambridge

9:20 Debate: questions and answers session

Part 2: Flexibility mechanisms between Member States

9:50 Presentation by **Mario Ragwitz**
Department of Energy Technology and Energy Policy,
Fraunhofer Institute Systems and Innovation Research, Karlsruhe

10:00 Debate: questions and answers session

Part 3: Reduction of red tape and streamlining of authorisation in the field of RES investments

10:30 Presentation by **Kai Wegrich**
Professor of Public Management
Hertie School of Governance

10:45 Debate: questions and answers session

Part 4: Biofuels sustainability criteria

11:05 Presentation by **Bart Dehue**
Bio energy consultant
Ecofys Netherlands

11:25 Debate: questions and answers session

Conclusions

11: 50 Closing remarks – Rapporteur MEP Mr Claude Turmes and Shadow Rapporteurs

The proposed new EC Renewables directive

A Legal Analysis of the provisions concerning trade between Member States in Guarantees of Origin

Angus Johnston
EPRG and Centre for European Legal Studies
University of Cambridge

Strasbourg, 24 April 2008

Legal Analysis of proposed RES directive - Outline

1. Introduction
2. The two approaches to GO trading
3. Legal issues - preliminaries
4. *PreussenElektra* and ‘trading rules’
5. Justifying trade restrictions
6. Conclusions

1. Introduction

- Binding renewables targets
- Fair burden-sharing among Member States
- Ensure efficient use of available renewable energy resources across the EU
- System of Guarantees of Origin (GOs)

2. The two approaches to GO trading

Article 9 of the proposal:

- Art. 9(1) MSs may trade their surplus of renewable generation at an inter-government level; *and/or*

- Art. 9(3) gives market participants the flexibility to trade GOs in other Member States (GO trade may take place independently of physical trade in the electricity generated);

- but N.B.: Art. 9(2) allows MS prior authorisation of such 'private' GO trade, under certain conditions (see section 5 of this presentation, below).

3. Legal issues - preliminaries

3.1 Pre-emption?

3.2 Introducing the 'Guarantee of Origin' and thus creating a new 'good'

3.3 Free movement of goods – general points:

- Presumption of free movement underlined by Art. 9(3);
- Any national measure which *prima facie* restricts free trade (and thus falls within Art. 28 EC) must be justified, either under Art. 30 EC (any national measure) or (if the measure is not directly discriminatory) using the 'mandatory requirements'.

4. PreussenElektra and 'trading rules'

4.1 The *PreussenElektra* case

- **Old German power feed-in law found *prima facie* to fall within Art. 28 EC, because it was capable of restricting imports;**

- **<u>But</u> the ECJ held that** *"in the current state of Community law concerning the electricity market, legislation such as … [that at issue] is not incompatible with Art. [28] of the Treaty."*

4. PreussenElektra and 'trading rules' (continued)

4.2 'Trading rules' under Article 28 EC

- If such national support measures were not treated as 'trading rules', but instead as a political instrument for the promotion of renewables, then it could be argued that the need to justify such national measures is removed;

- Given the approach of the ECJ (and the Advocate General) in *PreussenElektra* itself, however, caution should be exercised when dealing with this argument.

5. Justifying trade restrictions

5.1 Under the current legal regime

- **Arts. 28 and 30 EC**
  - **Public security; health and life of animals, humans and plants (Art. 30);**
  - **and environmental protection (mandatory requirements, reinforced by Art. 6 EC)**

- **Directive 2001/77/EC**
  - **Recitals 10, 12 and 14;**
  - **Arts. 2(d) and 3.**

5. Justifying trade restrictions (continued)

5.2 Justifications for a 'prior authorisation' system under Art. 9(2) of the proposed RES directive

Provision of proposed directive	Grounds for MS choosing to restrict GO transfers by private parties	GO transfers *out of* MS	GO transfers *into* MS
Art. 9(2), 1st sentence	Impairing MS 's ability to secure a balanced and secure energy supply	√	√
Art. 9(2), 1st sentence	Likely to undermine the achievement of the environmental objectives underlying the MS 's support scheme	√	√
Art. 9(2), 2nd sentence	Impairing MS 's ability to comply with its renewables target in Art. 3(1) / Part A, Annex I	√	X
Art. 9(2), 2nd sentence	Impairing MS 's ability to ensure that share of energy from renewables is ≥ indicative trajectory in Part B, Annex I	√	X

5. Justifying trade restrictions (continued)

5.3 How robust will the proposal be in allowing such justifications?

- Will allowing GO trade be "likely to undermine the achievement of the environmental objectives underlying [the national] support scheme" (Art. 9(2))?
- Feed-in Tariffs are explicitly acknowledged by the Commission as having specific benefits (differentiated rewards) not provided by GOs.
- Vagueness in some aspects of the Commission's explanations of the operation of Art. 9(2) (e.g. precluding prohibition on GO trade 'for one specific year').
- Any national measures must respect proportionality: such exemptions for Member States can only be justified if there is no other tool which would have a lesser impact upon free trade while still achieving the justifiable objective.

6. Conclusions

Possible approaches to developing the proposed directive:

6.1 Clarifying the position on GO transfer between private parties

6.2 Clarifying the grounds for justifying restrictions upon free trade in GOs

6.3 Discard private party trade in GOs and emphasise MS freedom to develop national support mechanisms

Flexibility mechanisms between Member States

Mario Ragwitz
Fraunhofer Institute Systems and Innovation Research

Gustav Resch
Vienna University of Technology
Karsten Neuhoff
University of Cambridge

ITRE WORKSHOP

Opportunities for renewable energy development in Europe

April 24th 2008

Rationale for Flexibility and options in the Directive proposal

Proposed RES directive: flexibility based on GO trade

Rationale for flexibility in general

►Renewable energy potentials are distributed unevenly across Europe.

►A trading option could help MS with low RE potential to achieve their targets at lower societal cost (depending on the trade design).

►Potentially, this could lead to lower overall costs for reaching the European 2020 targets (up to 8 bn €/a according to Directive impact assessment).

Proposed RES directive: flexibility based on GO trade

In order to give MS a maximum of flexibility for reaching their targets different options for trade of guarantees of origin are foreseen

Main Challenges:

►National governments need national targets and action plans to deliver necessary regime for planning, grid access, balancing and congestion management

►Investment risk to be minimised in a potentially complex policy environment

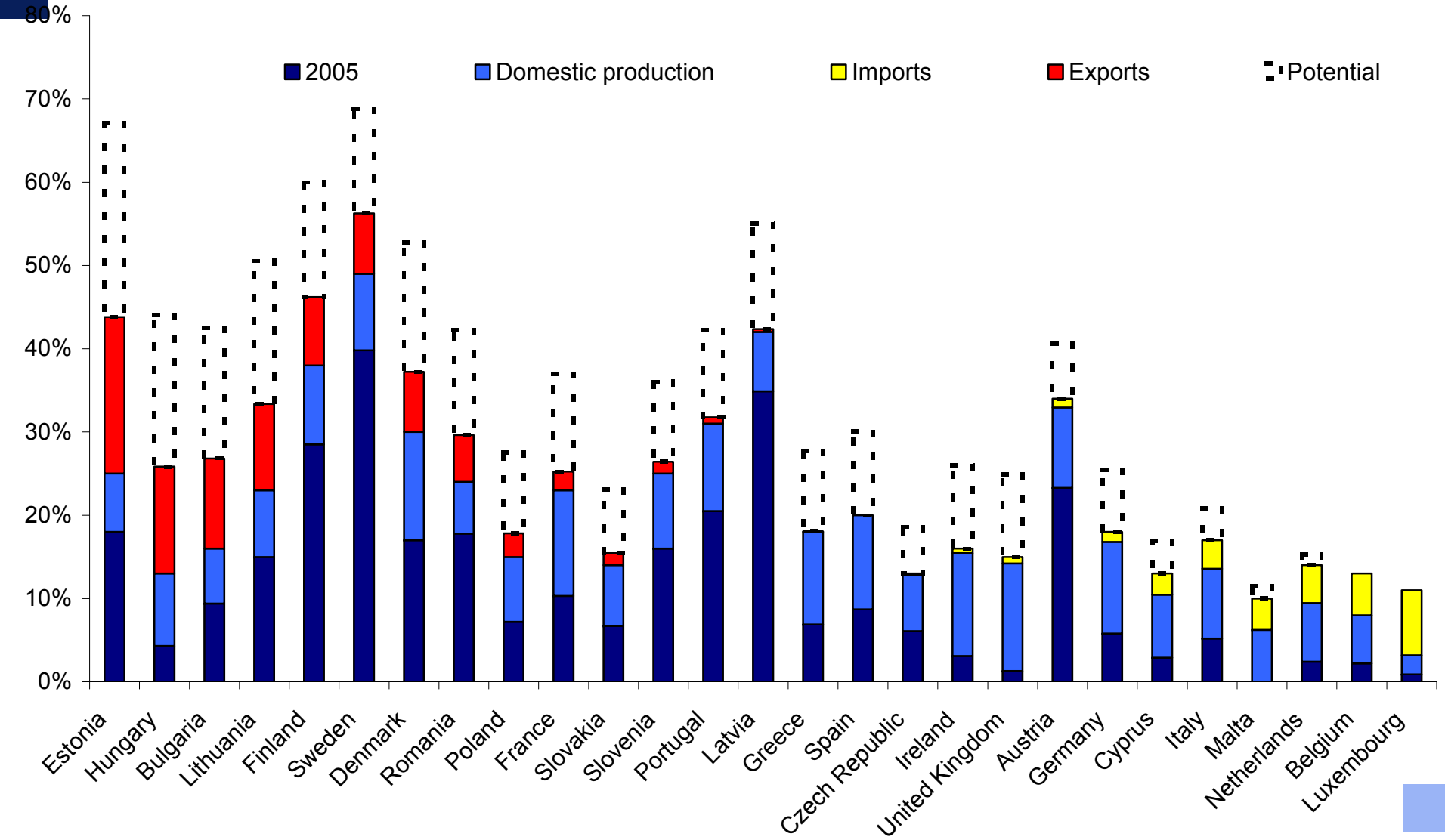
►One support price creates potentially large windfall profits and fails to support technology portfolio

Implementation of GO trade in the Directive proposal

- Directive aims to open the opportunity for both private party trade as well as MS trade
- The default option is private participant trade according to art. 8.1 (b), 8.2 and 9.3
- MS may restrict private participant trade using "prior authorisation" based on art. 9.2 – it is however unclear, whether such restrictions will be effectively possible under EU law
- **Trade between MS is possible based on art. 8.1 (a) and 9.1 - only between MS, which have reached their interim targets**

Design options for Member State transfer between governments

Who are the importers / exporters?



Motivation for trade at government level

In order to **tap potential efficiency gains** but **avoid large windfall profits** flexibility should be implemented between Member States for example by

Bilateral agreements – based on Memoranda of Understanding (MoU)

In this case currently functioning national support systems will not be undermined and

national governments have the information to deliver necessary regime for planning, grid access, balancing and congestion management

Motivation for government agreements

Some Member States claim they have a "quantity problem" under a MS-trade as compared to the "price problem" in a private party trade

Therefore Member States seek some security to obtain the needed amount of GOs from other States

A long term price security may be beneficial for importing and exporting Member State

Government agreements may address complementing measures such as assistance w.r.t. administration and regulation

Important design elements of government agreements

Bilateral vs. Multilateral agreements?

Bilateral agreements preferable due to lower complexity although multilateral agreements may mitigate risk

Long term vs. short term agreements?

Long term agreements preferable due to long term stability and creation of clarity for complementing measures (grid, planning,…)

Price for the transferred GOs may be adjusted according to the actual development of generation costs and conventional energy prices

Negotiated prices vs. clear ex-ante rules for price setting

Option 1 – negotiated prices:

If a clear penalty of X €/MWh for countries with non-compliance would be defined in the Directive a bonus of Y €/MWh could be paid from non-compliance budget for countries over-complying (Y<X)

Importing and exporting countries would have an incentive for "trade" at a price <X and >Y

Option 2 – ex-ante rules:

- The maximum price at which countries may sell their guarantees of origin (GO) is regulated by the EC.
- This price of a GO is based on the actual costs of the production of the specific renewable technology in the Member State that wants to sell.
- Costs like grid integration can be taken into account as well.
- In case a Member State produces a surplus by using a mix of technologies, and these technologies have different cost prices, the EC sets different maximum selling prices for these GO's.

Option 2 – ex-ante rules:

Prices can be defined based on

a) on a clear European benchmark, e.g. average EU support level for the technology mix traded

b) the average support level for all new RES plants of the exporting country

c) the average support level for all additional RES plants above domestic target of the exporting country

National action plans:

- should address the imports and exports foreseen,
- should address the accompanying measures like institutional changes and grid extension – which may be assisted by bilateral cooperation
- may address the methodology for price determination,

Compliance

How do the two or more countries share the responsibility for compliance?

Generally the exporting country should have the responsibility for the quantity to be delivered

A penalty mechanism in the Directive could provide a buy-out option for the importing country and therefore act as a "safety valve"

Conclusion

Government agreements can be a useful tool to

- They assist the implementation of MS trade as foreseen in Art.9.1 of the Directive proposal

-Create long term security on quantities and prices for importing and exporting countries

- Lead to better compliance properties as additional measures for institutional cooperation between participating Member States may be included

Thank you for your attention

Contact

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ITRE WORKSHOP - 24 April 2008 Opportunities for renewable energy development in Europe

Topic no 3: "Reduction of red tape and streamlining of authorisation in the field of renewable energy sources investments"

Kai Wegrich

Hertie School of Governance, Berlin, Professorship for Public Management

Overview

- ‘Barriers’ and ‘simplification’
- Assessment of suggested measures
- Recommendations

‘Barriers’ and ‘Simplification’

- ‘Red Tape’, administrative barriers etc
  - **Costs** of complying with regulations
  - **Time** of approval procedures
  - **Opportunity costs** of dealing with administrative procedures
  - **Uncertainty** of outcome of approval procedures

- Different underlying sources

Sources of Barriers

- Substantial **regulatory standards** (political regulation)
  - To high standards, cumulative effects of different standards
  - Rationale: Politically set level of protection
  - *Renewables: Nature conservation, land use planning*
- **Administrative standards** (information obligations)
  - Administrative burden for companies in approval procedures
  - Knowledge basis for administrative and political decisions
  - *Renewables: Technical expertises, engineering opinions (as part of applications)*
- **Bureaucratic procedures**: inter-agency coordination
  - Time consuming procedures, conflicts between agencies
  - Specialization of agencies
  - *Renewables: Multiple agencies in approval procedures*
- **Bureaucratic behaviour**: within agency
  - Limited responsiveness and motivation of individual agencies
  - Bureaucratic procedures
  - *Renewables: expertise, size and scope of agencies (?)*

‘Simplification’
with critical breaking points

- **Political deregulation**: Reducing substantial regulatory standards
  - Political demand in individual sectors (nature conservation, local planning)
- **Administrative deregulation**: Reducing administrative standards (information obligations)
  - Administrative demand of individual agencies/ministries
- Improving **inter-agency coordination**: streamlining procedures
  - Selective attention of individual agencies
  - Limits to integration of specialised agencies (in one-stop-shops)
- Improving **agency performance**: qualification and professionalism
  - High expertise and specialisation needed, resource intensive

Approaches
in the proposal for a Directive

- How promising are the suggested measures?
  - 1 general principle (proportionality)
  - 7 more specific measures

- Tentative assessment of these measures
  - Broad scoring (limited, minor, high, unclear)
  - Based on research on national reforms

Assessment of options*

Suggestion	Type of Instrument	Assumption	Limit	Impact*
Principle: proportionate	Political & administrative deregulation	Acceptance of principles will guide regulatory design	Broad principles are open to various interpretations, no binding effect	**Limited**
Deadline for approval procedures	Administrative deregulation	Binding deadlines speed up procedures	'gaming' by agencies: last minute information requests to extend time limit	**Medium/high**
Streamlining procedures & appropriate administrative level	Inter-agency	Changing procedural rules will followed by change of real world coordination	More a broad goal than a specific instrument	**unclear**

* Cf Article 12

Assessment of Options

Suggestion	**Type of Instrument**	**Assumption**	**Limit**	**Impact**
Rules for **authorization**	Administrative (de-) regulation	Specification of criteria for authorisation reduces scope for agency to 'bend rules'	Adaptation of rules to 'local' conditions (i.e. local planning, nature conservation etc.) could 'water down' rules	**Medium**
Clear **guidelines** for inter-agency coordination	Inter-agency coordination	Guidelines would reduce conflict, facilitate coordination	- No solution to conflict of interest between agencies - Subordinate to 'hard' administrative regulation	**Limited**

Assessment of Options

Suggestions	**Type of Instrument**	**Assumption**	**Limit**	**Impact**
Charges: transparent and cost related	Administrative regulation	- Direct limit of costs	Specification dependent on national conditions	**High**
Burden reduction for **smaller projects**	Political deregulation	- Limiting costs for 'special cases'	Impossible if smaller projects affect other sectors/interests (nature conservation); if not, burdens are lower anyway	**Limited**
Mediator for conflict resolution	Hybrid of inter-agency coordination and political regulation	- Neutral mediator can resolve conflicts	Unlikely that a mediator will be accepted	**unclear**

Recommendations

- Summary of Assessment
  - High: deadline, charges
  - Medium: rules for authorization
  - Limited: principle of proportionality, guidelines for inter-agency coordination
  - Unclear: Streamlining procedure, Mediator
- Options
  - Keep the high and medium options
  - Change or drop the limited ones
  - Clarification of the unclear ones
- Other mechanisms
  - Benchmarking
  - Reporting
  - Goal Setting – national implementation plan?
  - “Inspiration”: Service Directive – single contact point

Biofuel sustainability and the RED

24 April 2008

Bart Dehue, Ecofys
b.dehue@ecofys.nl

Is biofuel sustainability an issue?

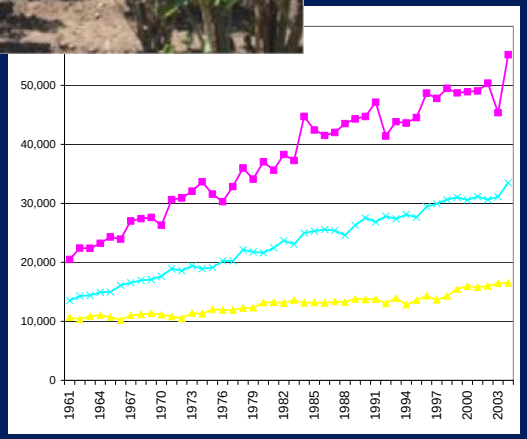
Land needed for 10% *biodiesel* EU-27

- Rapeseed: 4 *
- Soya: 10 *
- Palm oil: $1^{1/3}$ *

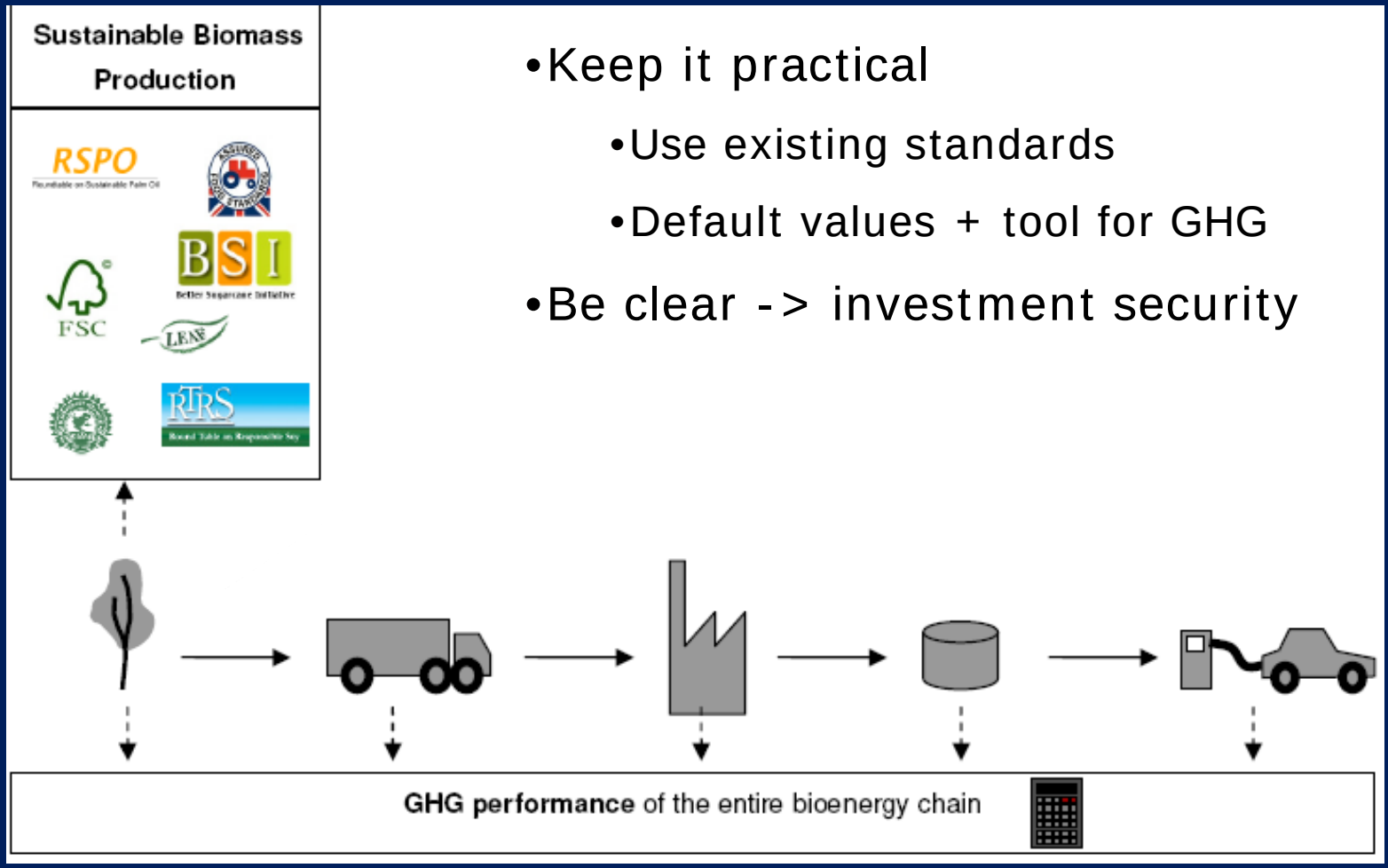
-> GHG emissions from LUC
-> Biodiversity
-> Land rights

Do we have enough potential for sustainable biomass?

- Production on idle land
  - Palm oil: >10 Mha Imperata grasslands
- Yield increases / new crops
- Residues (2nd generation)
  - Palm kernel shell
  - Saw dust
  - Etc.



How do we exclude the unsustainable without killing the sustainable?



- Keep it practical
  - Use existing standards
  - Default values + tool for GHG
- Be clear -> investment security

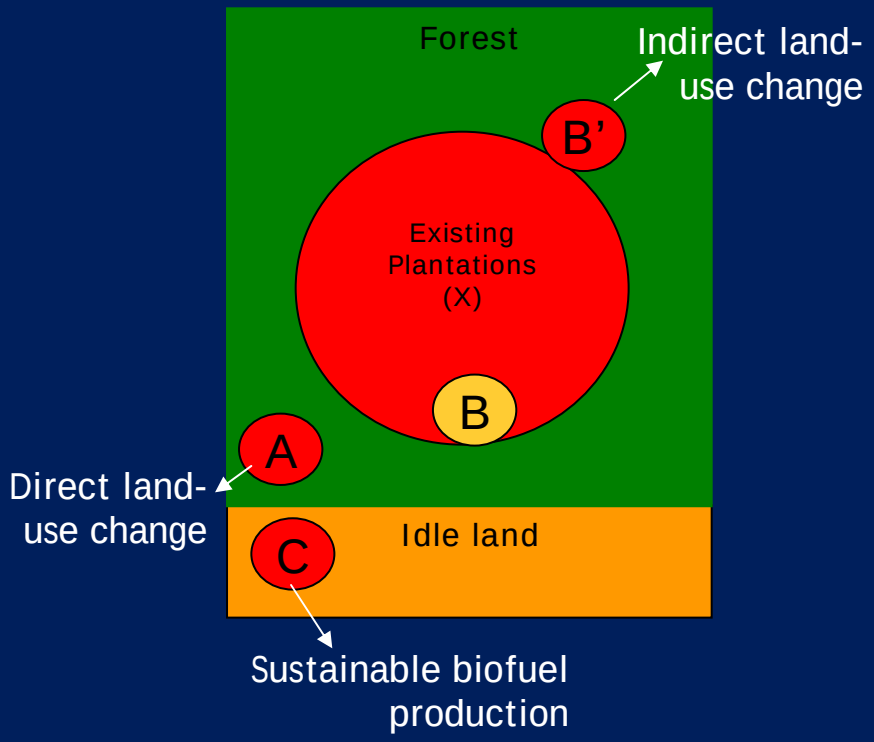
What is covered in the RED?

- What it covers
  - GHG emissions including direct LUC
  - Biodiversity (direct LUC)
  - GAP in EU (e.g. soil)

- What it does not cover
  - ***Indirect LUC***
    - GHG emissions
    - Biodiversity
  - Soil/Air/Water pollution outside EU
  - Social issues
    - Land rights
    - Labor conditions

1. Indirect LUC

What is it?



Indirect LUC = uncontrolled LUC

How do we solve it?

- Residues = No LUC
- Yield increase = No LUC
- Idle land = controlled LUC

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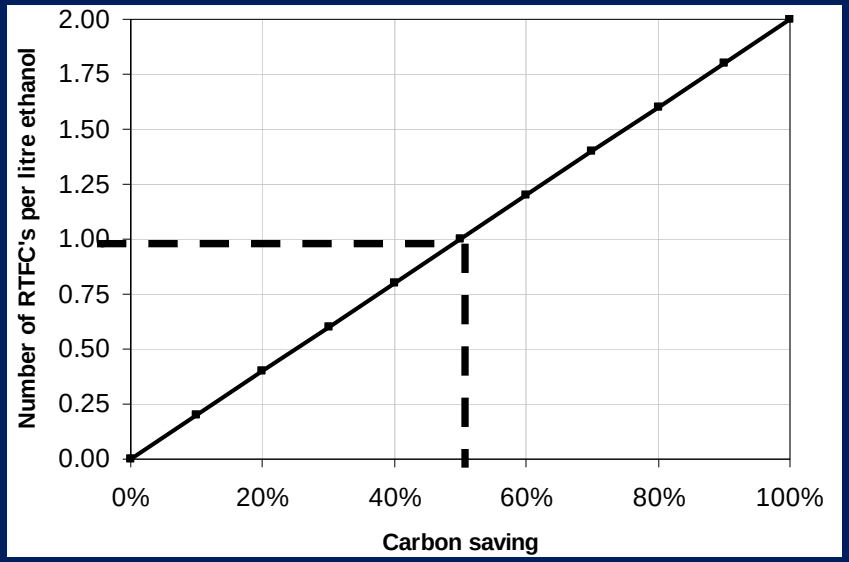
2. Competition with food

- What you need to know first:
  - Biofuels currently still small (other factors more important) but growing fast
  - It does not matter if your biofuel tastes good
  - Higher food prices: Good or Bad? It depends…
    - Exporters win – importers loose
    - Rural poor with excess production win – urban poor loose
  - Impact on food prices depends more on *speed* at which biofuel develop than on *eventual size* of biofuels -> how fast do we increase the target?

- How do we minimize the risk? Again,
  - Residues -> no competition for food/land
  - Higher yields -> no competition for food/land
  - Idle land -> no competition with existing food production

3. GHG emissions

- RED does not stimulate higher GHG savings
- It does stimulates *types of biofuels:* ligno + residues
  - Count twice
  - But no incentive to improve GHG
- Alternative: weigh biofuels in target based on their GHG



4. Include criteria on soil / water / air

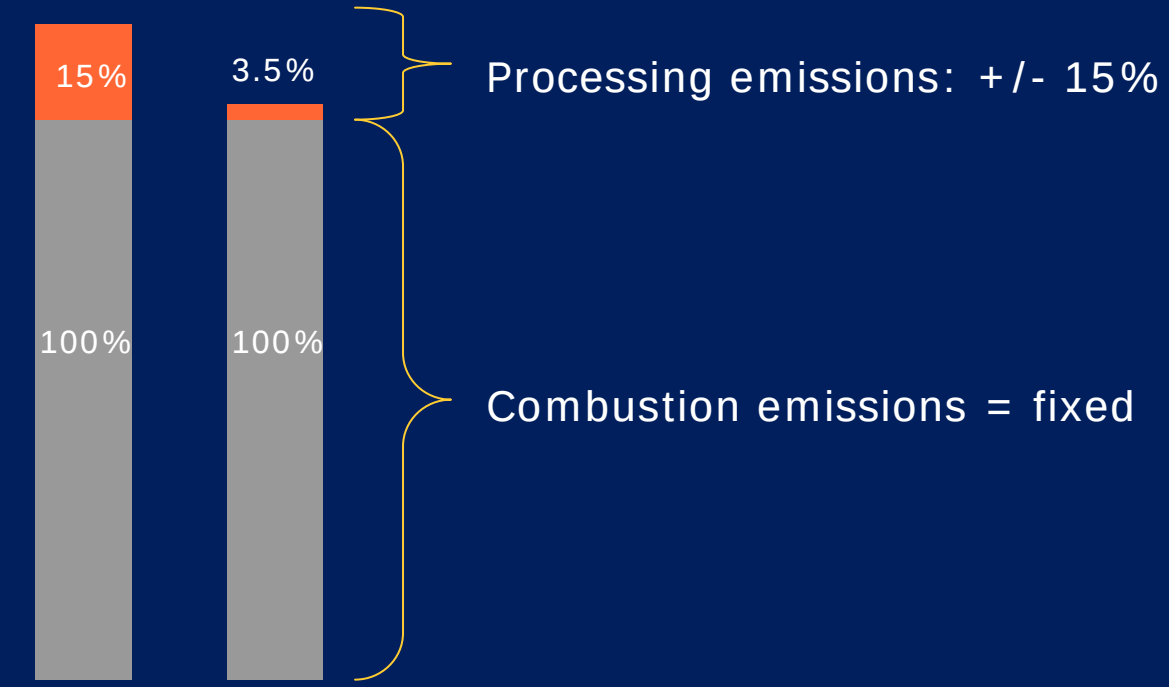
- Soil and water crucial for long term sustainability
- Includes responsible use of agro-chemical
- Covered in most existing certification schemes
- Included in UK
- Included in NL and DE draft

5. Social criteria

- Three alternatives by Ad-hoc working group:
  - Ratification of ILO conventions (verification at country level)
  - Sustainability criteria (verification at farm level)
  - Reporting by EC
- Effectiveness ILO conventions:
  - ILO 182 on Child labour: ratified by Brazil and Indonesia
  - ILO 29 on forced labour: ratified by Brazil and Indonesia
  - However, NGOs report forced and child labour in these countries
- Alternative: certification against existing standards
  - RSPO palm oil
  - SAN/RA working on general standard for biofuel crops
  - RTRS, BSI, FSC, etc.
- Reporting should be by companies for their feedstock, not only by EC for countries in general -> incentive for companies

FQD: Will biofuels play big role in 10% GHG target?

For 10% target: processing emission would need to be reduced by 80%



115% * 0.9 = 103.5%

Other needs

- Capacity building in developing countries
  - Certification may act as entry barrier
  - Especially for Small Holders
  - Yield improvements critical to future biomass potential

Thank you for your attention

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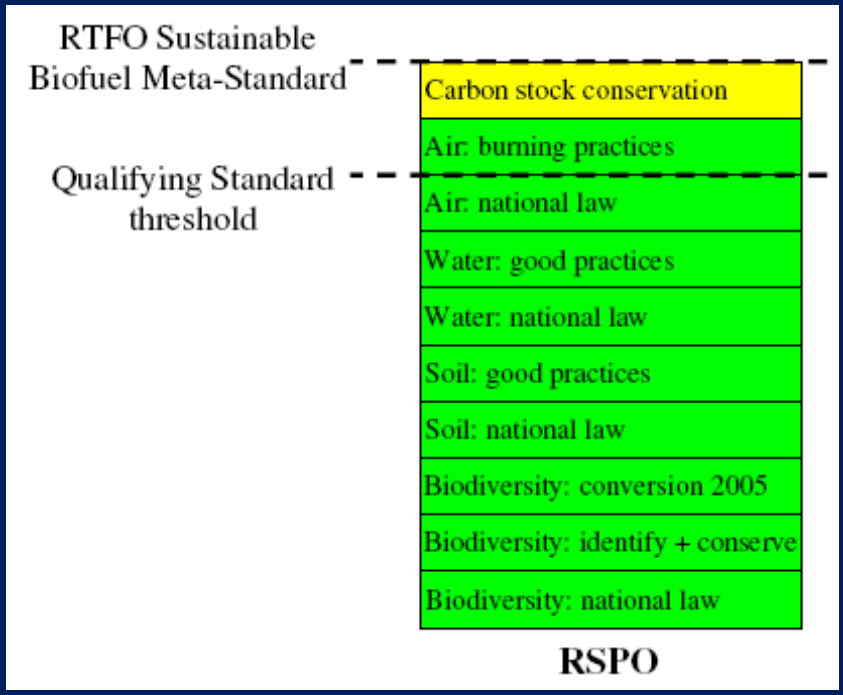
Meta-Standard approach

Use existing standards

- Credible
  - Do not reinvent the wheel
- Market acceptance
  - Producers involved
- Cost-effective
  - No double certification

Benchmark

- Sustainability criteria
- Audit quality



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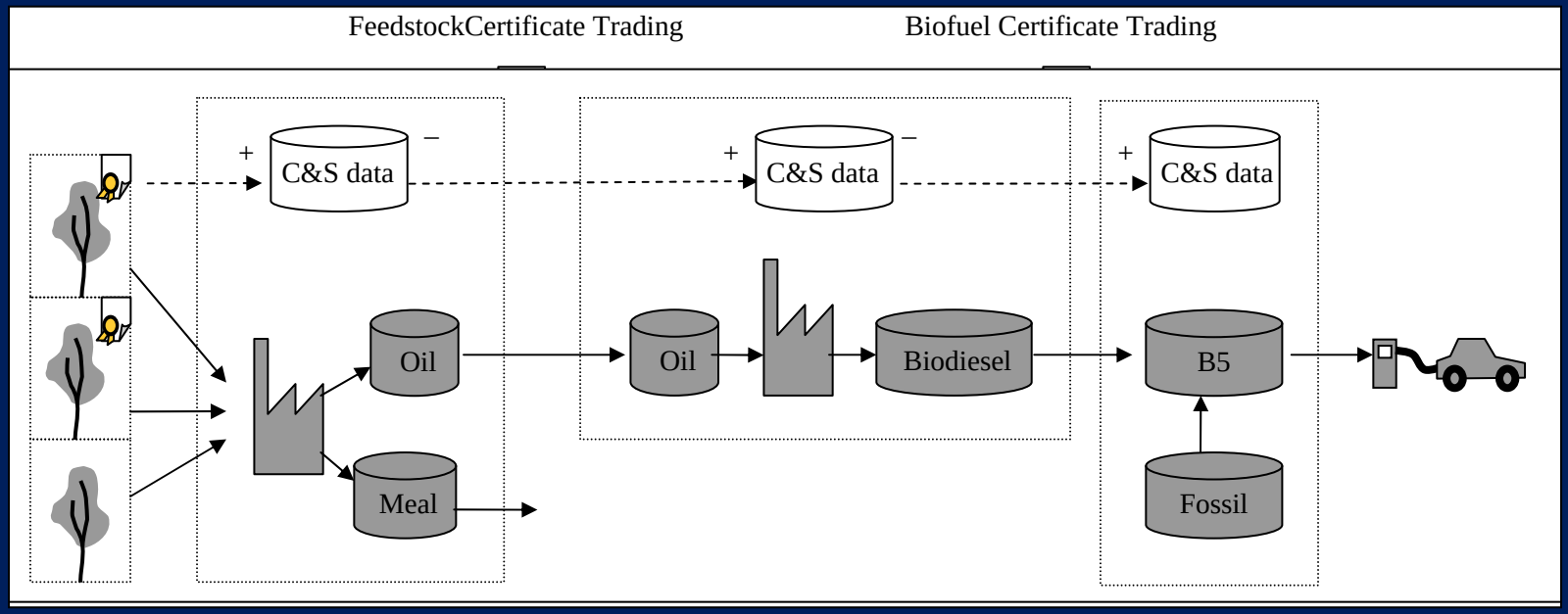
What companies report

General Information				Sustainability Information				Carbon Information	
Fuel type	**Quantity of fuel (litres)**	**Biofuel Feedstock**	**Feedstock Origin**	**Standard**	**Env Level**	**Social Level**	**Land use on 31 Nov 2005**	**Carbon intensity incl LUC g CO_2e / MJ**	**Accuracy level**
Bioethanol	250,000	Wheat	UK	LEAF	QS	-	Cropland	61	2
Bioethanol	100,000	Wheat	France	GlobalGAP	-	-	Grassland	122	2
Bioethanol	250,000	Sugar beet	UK	ACCS	QS	-	Cropland	35	5
Bioethanol	1,000,000	Sugar cane	Brazil	Meta-Standard	RTFO	RTFO	Cropland	24	2
Bioethanol	500,000	Unknown	Unknown	Unknown	-	-	Unknown	61	0
Biodiesel	1,000,000	Oilseed rape	UK	ACCS	RTFO	RTFO	Cropland	55	2

Challenges for the market (2/2)

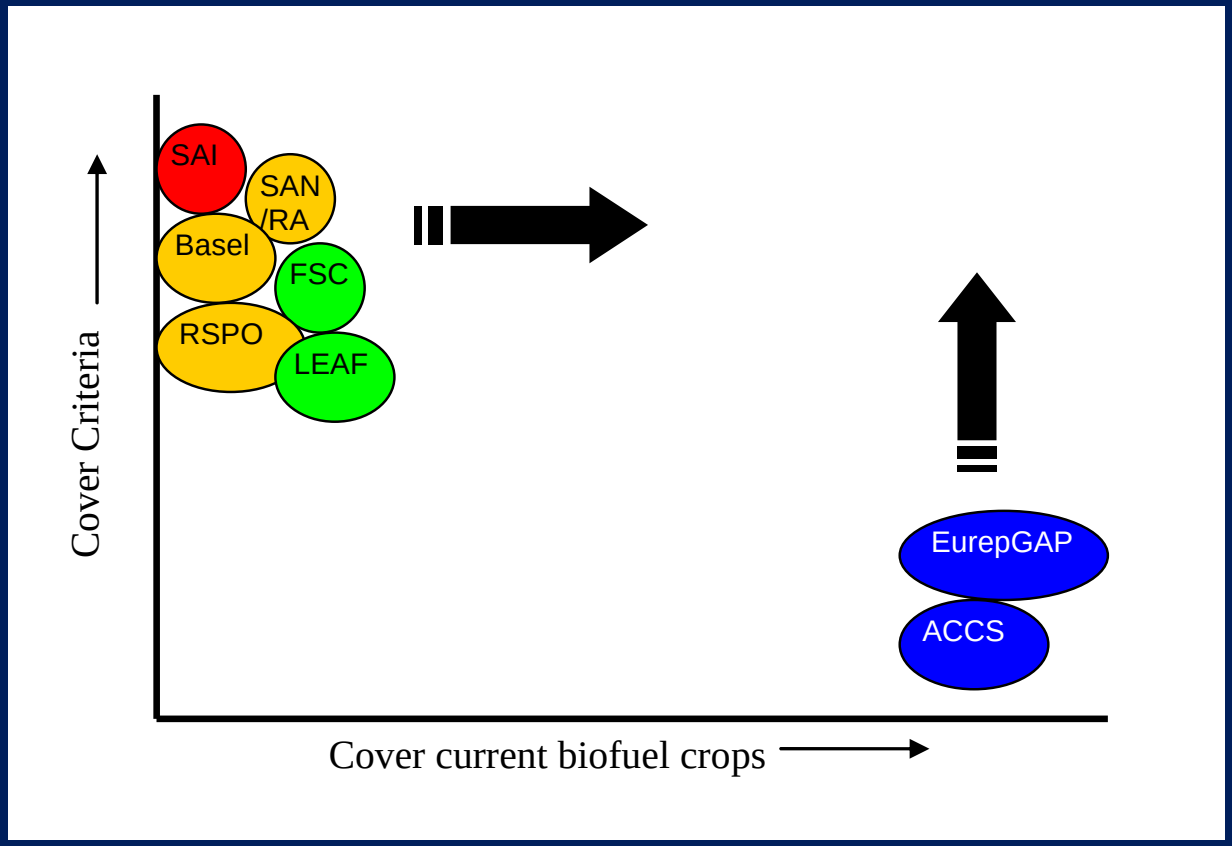
- Setting up a Chain of Custody to collect information
- Which systems will be permitted greatly influences feasibility

	UK	NL	DE	EC
– Track and Trace = physical segregation	+	+		?
– Book and Claim = tradable certificates	+	+	?	-
– Mass Balance	+	+		+



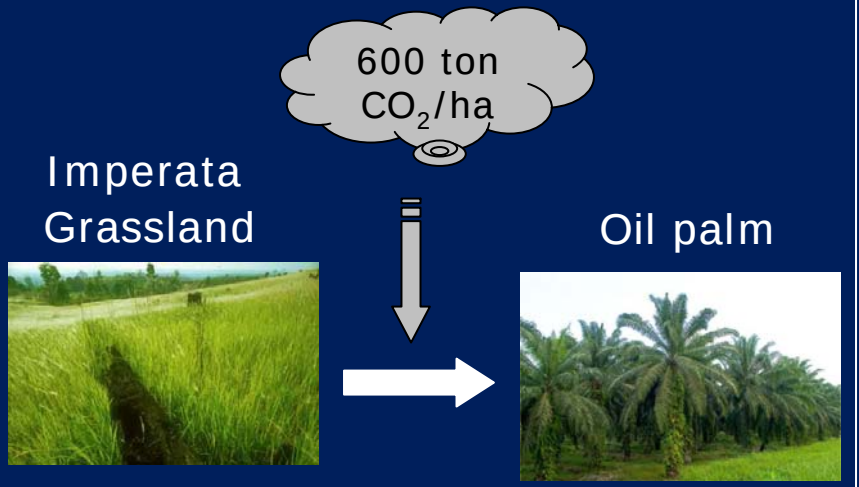
Challenges for the market (1/2)

- Limited availability of certified feedstock in short term



a) Idle land

Example



Potential: SE Asia has more Imperata Grassland than Oil Palm plantations

(> palm oil than entire EU 10% target)

Definition used in UK: 4 criteria

1. No Carbon stock destruction (Carbon payback time < 10 y)
2. Not on HCV areas (biodiversity)
3. Land rights (social)
4. No significant productive use (displacement)

See Annex G RTFO C&S Technical Guidance (RFA website)

a) EEA residue potential
(excl 15 Mtoe forest residues)

Figure 5.2 ***Environmentally-compatible*** **biowaste energy potential in EU-25**