

Guidelines for compliance with the agreed extra-legal criteria for the co-firing of biomass

EN translation of the 'Versie 1.0 – 18 september 2018'

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Version 1.0 EN – 18 september 2018

Introduction

With the Biomass Covenant (18 March 2015; Annex A) sustainability criteria were agreed upon for the co-firing of biomass. It concerns criteria that are included in the SDE+ operating grant for the production of renewable energy, and criteria that do not fit a statutory basis.

For compliance of these so-called legal and extra-legal criteria the Covenant imposes a reporting obligation to the energy companies to show that they met with the criteria. For sustainable forest management certification must be used; for all other criteria verification may also be applied:

Article 1.3 – The energy companies shall show in their annual report, as meant in Article 7, that the use of biomass complies with the legal criteria and all extra-legal criteria as agreed upon between parties to the Covenant.

Article 1.4 – Demonstration of the requirements regarding sustainable forest management is done by certification. For the other criteria certification is preferred, but verification may also be used when the market does not provide fitting certification systems for these other criteria.

Implementation of the legal and extra-legal criteria is strictly separate because of the specific nature of the extra-legal criteria that do not fit a statutory basis:

▪ Legal criteria

The legal criteria have been laid down in the Decree and Regulation for the conformity assessment of solid biomass for energy applications (“Besluit en Regeling conformiteitsbeoordeling vaste biomassa voor energietoepassingen”). It also specifies the certification schemes and verification protocol for the showing of compliance with the legal criteria (see Figure 1). The scope of the designated verification protocol concerns the legal criteria; this scope is also used in the review of existing certification schemes by the Dutch advisory commission on sustainability of biomass for energy applications (ADBE).

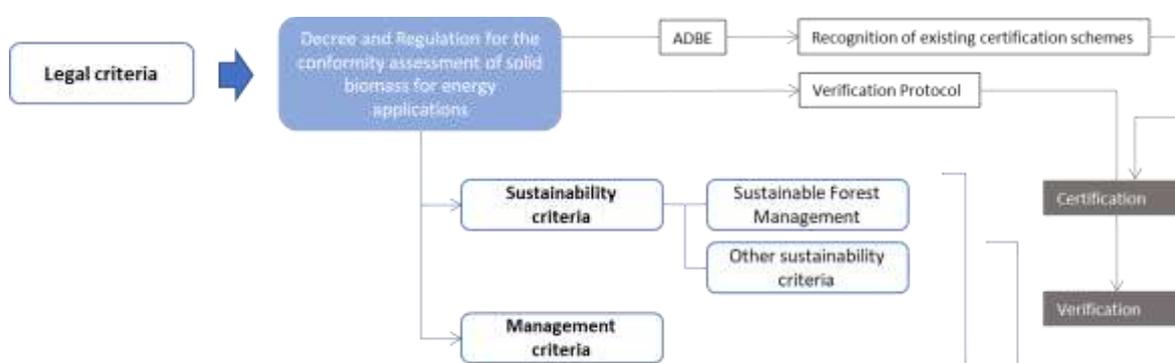
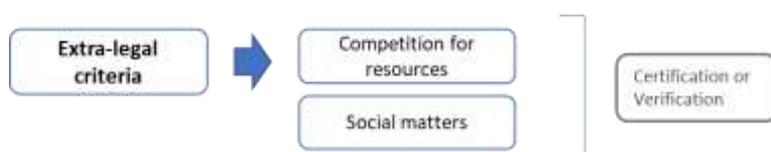


Figure 1. Schematic overview of the implementation of the legal criteria.

- **Extra-legal criteria**

The extra-legal criteria were agreed upon on a voluntary basis by the parties to the Covenant. In mutual consultation the NGOs and the energy companies detailed the extra-legal criteria. It addresses competition for resources and social matters. Also, a general *guidance* was drafted for when these criteria do not apply. The outcomes have been included in the annex to this Guideline, 'ANNEX 1 – Agreed criteria that do not fit a statutory basis'. Figure 2 presents an overview of the implementation of the extra-legal criteria.



Figuur 2. Schematisch overzicht van de implementatie van de bovenwettelijke criteria.

Objective

These Guidelines were developed based on the extra-legal criteria as detailed in the mutual consultation of NGOs and energy companies and the general guidance, and are meant to support the energy companies in meeting the reporting obligation for compliance with the extra-legal criteria.

The annual reporting obligation provides accountability for the efforts made and results achieved in compliance with the legal and extra-legal criteria. The Annual Report is shared with all parties to the Covenant. The Covenant also provides for a meeting of the parties to the Covenant, chaired by the Chairman of the so-called Borgingscommissie, to discuss the Annual Report including compliance with the extra-legal criteria.

The Guidelines were developed by Stichting Dutch Biomass Certification (DBC). DBC was established under the Covenant to support the realization of the certification objectives. DBC is governed by an Executive Board representing energy companies. Also, a seat is available to the environmental organizations that have signed the Covenant.

Guidelines

This document presents three possible methods for the reporting on compliance with the extra-legal criteria. These methods can be used by the energy companies on a voluntary basis and dependent on need and applicability.

1. The use of existing certification schemes

Energy companies can use existing certification schemes which have included the extra-legal criteria into its principles and criteria. When existing certification schemes cover for only part of the extra-legal criteria, a combination of existing certification schemes, or other methods as described below, shall be used to show compliance.

When existing certification schemes are used, implementation must have been controlled by an independent, accredited (ISO/IEC 17065) conformity assessment body.

The use of existing certification schemes for the compliance with the extra-legal criteria does not need to be limited to certification schemes recognized by the Dutch minister of Economic Affairs. This recognition concerns a different scope, namely compliance with the legal criteria.

2. The use of verification

Energy companies can use verification to have the the biomass supply chain controlled by an independent third party (conformity assessment body) to show that the biomass delivered complies with the extra-legal criteria. The conformity assessment body issues verification statements afterwards for the concerning biomass deliveries. This method can be used in combination with the use of certification schemes and applied for those extra-legal criteria not covered by existing certification schemes.

3. The use of a risk-based approach

Energy companies can apply verification at a regional level for compliance with the extra-legal criteria. This prevents every individual forest owner from having to be audited. The risk-analysis is done by the biomass producer and controlled afterwards by an independent, accredited (ISO/IEC 17065) conformity assessment body.

Execution of the risk-based approach may follow the same procedure as is described in the verification protocol for the risk-based analysis of controlled biomass and the sustainable forest management by small forest owners (Category 2 biomass). The biomass producer performs the following five steps:

- i. Determination of the region;
- ii. Collection of information related to the extra-legal criteria;
- iii. Risk-assessment;
- iv. Identify and monitor measures to prevent the sourcing of biomass linked to a specific risk (mitigating measures);
- v. Monitoring of the risk-assessment and the mitigating measures.

Competition for resources	I.P1. Biomass production for energy purposes may not jeopardize the local food supply and local biomass applications.
	<p><u>C 1.1. Areas and means that are of pivotal importance to meet the basic needs of the local or indigenous communities (for livelihood, health, nutrition, water, etc.) are identified, protected and monitored in a thorough process. This process is like the approach (criteria and guidance) for areas with a high protection value as mentioned in C2.1 in document [XXX] *. Local or indigenous peoples are involved in identifying these needs, in developing and implementing measures to protect areas and resources, and in monitoring.</u></p>
Social aspects	
Stakeholders interests	II.P2. Account must be taken of the interests of directly and indirectly involved stakeholders.
Property and user rights	<p>C 2.1. The legal status of the management of forest management units and the rights of the local population, including indigenous peoples, with respect to property and user rights, both legal and traditional, regarding the forest management unit or any part of it have been identified and must be respected.</p> <p><u>Explanation:</u></p> <p>This criteria describes a process in which first an inventory is made of individual's rights and how these are respected. The first step, the inventory, consists of two parts. One, the identification of 'indigenous peoples' and of 'local population' with potential (legal and) traditional property and user rights. Two, the inventory of the these rights. For both parts, the opinion, experience and expertise of the indigenous peoples and local population must be involved.</p> <p>The second step, the respecting of existing rights, demands that the forest manager does not deploy activities that would violate the rights of the indigenous or local communities.</p>
Consultation and permission	<p>C 2.2. With regard to forest management, effective communication with, and consultation and participation of stakeholders takes place.</p> <p><u>Explanation:</u> Reports are available on how and when communication with stakeholders took place and how stakeholders are involved.</p> <p><u>Explanation:</u> Consultation includes both participation on the basis of free, prior and informed consent, as mentioned in C2.3, as well as through engagement.</p> <p>The table below indicates where engagement applies to the sustainability criteria.</p> <p>Effective communication is both part of engagement, as well as a stand-alone 'activity'. In any case, a public summary of the forest management plan and / or audit report and of the results of monitoring will be made available to stakeholders.</p> <p>C 2.3. The local population and indigenous peoples must have participation in the forest management based on free, prior and informed consent, and they have the right to grant or refuse permission, and, when applicable, to receive compensation where their possessions / users rights are at stake.</p> <p><u>Explanation:</u> Free, prior and informed consent means: the right of indigenous peoples and local communities to grant or refuse permission for activities planned on their lands or in their living areas, that will be of influence on their culture and traditional knowledge, or through which this will be used or which otherwise affect their rights,</p>

	legally or traditionally. The information on which they should base their decisions must be complete, presented in an understandable way and made available on time.
Public accessibility	<p>C 2.4. The forest management plan and associated maps, relevant monitoring results and information about the forest management measures to be applied are publicly accessible, except for strictly confidential company information.</p> <p><u>Explanation:</u> Public accessibility means that if stakeholders have limited access to certain media, the management plan is distributed through other channels. Depending on the level of detail of the management plan, either the complete plan or a summary thereof must be available, including associated maps, except for strictly confidential company information.</p> <p><u>Explanation:</u> As much as possible and necessary, information about forest management can also be communicated to the people in the forest by means of markings or information panels to be placed on the spot.</p>
Dispute settlement	<p>C 2.5. Adequate mechanisms exist for the settling of disputes relating to forest management, property and user rights, working conditions or social services.</p> <p><u>Explanation:</u> In the event of a conflict of considerable size, the forest management unit is not certified.</p> <p><u>Explanation:</u> Appropriate mechanisms include mechanisms for dispute settlement, where complaints or disputes are dealt with in a documented, transparent process, including engagement with those involved. The handling of complaints is documented.</p> <p><u>Explanation:</u> In the event of demonstrable damage or loss of assets / users rights, it must be compensated proportionally.</p>
Areas of cultural and economic value	C 2.6. In consultation with stakeholders areas of cultural and traditional economic value are mapped, identified and respected.
Contribution to the local economy	<p>C 2.7. The forest manager deploys extra activities; a contribution is made to the development of local physical infrastructure, social services and programs for the local population, including indigenous peoples. This contribution is made in consultation with the local population.</p> <p><u>Explanation:</u> the forest manager is exempt from this requirement when local and/or national governments, with consent of the local population. provide for sufficient extra activities.</p>
Health and labour conditions	II.P3. Safety, health and labour conditions must be guaranteed and improved where necessary.
Health and safety	<p>C 3.1. The (forest) manager must take health- and safety measures that comply minimally with the relevant legislation and are in accordance with all applicable ILO-labour standards, for the protection of employees, including contractors and their personnel, and, to the extent applicable, the local and indigenous communities.</p> <p><u>Explanation:</u> Related to this criteria are the core ILO-Conventions:</p> <p>Convention 155 - Occupational Safety and Health Convention and the accompanying Recommendation R164;</p> <p>Convention 161 - Occupational Health Services Convention and the accompanying Recommendation R171;</p>

Labour conditions	<p>C 3.2. Employees have the right to organize themselves and to negotiate about salary and labour conditions, in agreement with national legislation and the core ILO-agreements.</p> <p><u>Explanation:</u> The following ILO labour standards are of relevance:</p> <ul style="list-style-type: none"> • 'Freedom of Association and Protection of the Right to Organise' and 'Right to Organise and Collective Bargaining' (Conventions 87 and 98); • 'Forced Labour' and 'Abolition of Forced Labour' (Conventions 29 and 105); • 'Equal Remuneration' and 'Discrimination (Employment and Occupation)' (Conventions 100 and 111); • Minimum Age Convention, 1973 (no. 138) • Worst Forms of Child Labour Convention, 1999 (No. 182)
GMOs	C 4.7. Genetically modified organisms (gmo's) may not be used.
	Chain of custody
	<p>The mixing of Categories 1 and 2 materials that complies with different sustainability criteria is allowed when the mixture with the end-user contains a minimum of 70% that complies with all relevant principles from Table 1 (of Annex 4 to the SDE regulation) and the underlying criteria, and the remaining material complies with the following requirements:</p> <ul style="list-style-type: none"> • The mixing of wood with genetically modified wood is not allowed in the entire supply chain. • The wood is not harvested in violation with fundamental human rights. <p><u>Explanation:</u> Mixing means: mixing with other wood of Categories 1 and 2 that does not comply with the different sustainability criteria.</p> <p>The organization making a claim regarding compliance with this criterion has a working Due Diligence System with which it is demonstrated that there is a low risk that the other material does not meet these requirements. Examples for such a Due Diligence System are the FSC Standard 40-005 V3.0 and the Sustainable Biomass Partnership.</p>

Below, an overview of the criteria that involve engagement and how this should be met: table belonging to C2.2.

Criteria + issue	Involvement of stakeholders
C11.1 and C11.2 Management plan and -system and EIA	When drawing up the management plan and the recurring adjustment of the planning, the results of stakeholder involvement is used. There is proactive and transparent involvement of affected stakeholders and involvement of interested stakeholders on request.
II 11.4 Monitoring	The periodic monitoring of the management activities involves the proactive and transparent involvement of affected stakeholders and the involvement of interested stakeholders on request.
C7.1 Land with a high protection value	When determining the sites (values), information is used from the consultation of interested and affected stakeholders. Interested and affected stakeholders are involved in the development of the measures. Part of the monitoring involves involving interested and affected stakeholders.

Definitions:

Involvement of stakeholders / Engagement: The process in which the forest manager communicates with interested and/or affected stakeholders, consults them and/or allows the participation of these stakeholders, ensuring that the rights and views of these stakeholders with regard to their interests have been taken into account in the drafting, implementation and updating of the management plan.

Genetically modified organism An organism that has been transformed by the introduction of one or more transgenes. (TPAS)

Affected stakeholders: Any person, group of persons or entity that is or is likely to be subject to the effects of the activities of a forest management unit. This includes persons, groups of persons or entities who live or are located in the vicinity of the management unit. Examples of affected stakeholders are:

- Local population
- Indigenous peoples
- Employers/employees
- Downstream landowners
- Those with land- or land use rights, including landowners
- Organizations that are authorized or known to act on behalf of affected stakeholders, such as social and environmental NGOs, trade unions etc.

Interested stakeholders: Any person, group of persons or entity that has demonstrated an interest in the activities of the forest manager, or of which it is known that he/she has an interest. Examples of interested stakeholders include:

- Social and environmental NGOs
- (trade or labor) unions
- Local and national governments
- National or regional offices of certification systems

Traditional property and user rights: The rights of indigenous peoples and local population to possess, use, develop and exercise control over land, territories and resources, which were traditionally owned, occupied or in use or otherwise acquired, them. (In accordance with UNDRIP article 26)

Local population: A community of any size in or in the vicinity of the management unit, and also those who are as close as to have a significant impact on the economy or the environmental values of the forest management unit, or whose economies, rights or living environment is significantly influenced by the management activities or the bio-physical aspects of the management unit.

Indigenous peoples: Persons or groups of persons that can be identified or characterized as follows:

- The key-characteristic is self-identity as an indigenous person at individual level and acceptance by the community as a member
- Historic continuity with pre-colonial and/or pre-settler communities
- Strong connections with the land or territory and the accompanying natural resources
- A separate, distinctive social, economic or political system
- Distinctive language, culture and religion
- Forms a non-dominant part of the community
- The determination to preserve and reproduce their ancestral environments and systems as distinct peoples and communities

Traditional knowledge: Information, know-how, skills and practices that were developed, continued and passed on from generation to generation within a community, often as part of their cultural or spiritual identity.
