

UPEI POSITION PAPER

AVOIDING REGULATORY INCONSISTENCIES IN FUTURE POLICY FRAMEWORKS



EXECUTIVE SUMMARY

The EU Green Deal and the various legislative proposals planned for 2021, aiming to review policies to increase EU climate objective for 2030, provides a key opportunity to improve the consistency between different pieces of legislation and foster synergies, for an efficient and cost-effective approach to GHG emission reductions across sectors.

The fuel supply sector, in particular, currently faces a patchwork situation. Indeed, it is subjected to a number of requirements set out by different regulations, which however aim at diverging objectives and are materialised in different obligations.

Inconsistencies can be demonstrated in the particularly problematic relationship between the Fuel Quality Directive (FQD)¹ and the Renewable Energy Directive² (REDII), the incomplete support of carbon neutral solutions under the recently adopted CO₂ Standards for Light-Duty Vehicles³, and insufficient incentivisation of technology-neutral solutions under the Alternative Fuels Infrastructure Directive⁴ (AFID).

There is a mismatch definition of obligated parties, scope and target formulation between REDII and FQD. The FQD does not reward the use of specific types of renew-

able energy, contrary to REDII. In addition, blending walls in FQD undermine delivery of REDII, while REDII food-crop limitations undermine delivery of FQD.

CO₂ standards do not support uptake of fuels covered under REDII, and misses opportunity to support FQD GHG emissions reduction objective. Lack of life-cycle emissions assessment does not reveal actual emission levels of various energy carriers, disproportionately favouring emissions

from the vehicle itself and not considering the process. In addition, the definition of zero-and-low-emission vehicles in CO₂ standards does not align with AFID, as it incentivises only a particular type of alternative fuels.

Finally, under the ETD, there is inadequate

support for alternative fuels by providing more leeway to fossil fuels than biofuels due to a volume-based taxation system not accounting for CO₂ emissions. This directly contradicts aims of decarbonising transport.

This paper aims at raising awareness on existing regulatory inconsistencies at EU level impacting the fuel supply sector, and proposes solutions for a more effective framework.

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¹ Directive 2009/30/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 98/70/EC as regards the specification of petrol, diesel and gas-oil and introducing a mechanism to monitor and reduce greenhouse gas emissions and amending Council Directive 1999/32/EC as regards the specification of fuel used by inland waterway vessels and repealing Directive 93/12/EEC.

² Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources.

³ Regulation (EU) 2019/631 of the European Parliament and of the Council of 17 April 2019 setting CO₂ emission performance standards for new passenger cars and for new light commercial vehicles, and repealing Regulations (EC) No 443/2009 and (EU) No 510/2011; Regulation (EU).

⁴ Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure.



UPEI'S COMMITMENT TO CLIMATE NEUTRALITY

UPEI and its members have embraced the European Union ambition to reach a climate-neutral economy by 2050, and are fully committed to contributing to achieving this target through the supply of carbon-neutral fuels by 2050.

While our industry has rallied behind this collective objective, this monumental ambition will have to be sustained by policies and regulatory frameworks that provide legal coherence, clarity and predictability to allow businesses to successfully transition to sustainable supply chains and mobilising funding for solutions that reflect changing market realities.

Such regulatory frameworks will need to promote all forms of low carbon and carbon-neutral solutions, as this will be necessary to reach climate neutrality efficiently. However, regulatory inconsistencies amongst existing legislation complicate investment certainty for the necessary steps that need to be taken by fuel suppliers to reach net zero emissions by 2050.

UPEI argues that addressing these points of regulatory failure would allow independent fuel suppliers to transition towards carbon-neutral solutions, ensuring that all transport customers can benefit from the promise of Europe being the world's most climate-ambitious continent.

1. FQD AND REDII INCOMPATIBILITIES PREVENTING CLIMATE-NEUTRAL FUELS

UPEI acknowledges that the Fuel Quality Directive has been an appropriate instrument to promote the production of low-carbon biofuels and other alternative sustainable fuels meeting the climate and energy policy goals, technology development and research in this area.

However, the recent REDII has taken over role as the primary means of promoting the supply of low emission fuels by providing additional regulatory support to sustainable renewable fuels. In order to achieve its objectives, REDII not only obliges fuel suppliers to achieve a 14% renewable energy target – including minimum levels for advanced biofuels - but also sets limits for biofuels produced from food and feed crops regardless of their climate impact. Yet according to the comments by the Commission's

Legal Services, the simultaneous FQD decarbonisation requirements will continue past 2020, which presents a complicated relationship between the two laws, resulting in a very inconsistent regime difficult to comply with for the obligated parties. These inconsistencies are linked to mismatch between obligated parties, the differences in the scope of the targets, the respective formulations of targets, the use of multipliers only under the REDII, as well as the ongoing blending walls in the FQD.

1.1 Obligated parties

A clear example of the divergent thinking between the FQD and REDII is the definition of obligated parties. The FQD states that the "supplier means the entity responsible for passing fuel or energy through an excise duty point or, if no excise is due, any other relevant entity designated by a Member State". Member States have taken diverging approaches about the type of companies that are subjected to the Directive's obligations, and in some cases companies transferring fuels under duty suspension are subjected to FQD obligations as well.

On the other hand, REDII makes Member States responsible for achieving the overall renewables targets, with trajectories set under National Energy and Climate Plans developed and approved as per the Governance Regulation. Yet, the REDII requires Member States to set obligations on suppliers to ensure that the share of renewable energy within the final consumption of energy in the transport sector is at least 14 % by 2030. However, this gives the Member States a wide-ranging option to implement the renewables in transport target, which leads to the fracturing of the internal market in renewable fuels.

1.2 Differences in the scope and formulations of targets

One of the clearest inconsistencies is the differences in scope between the two directives. On the one hand, the scope of Article 7A of the FQD covers all types of fuels (including both renewables and non-renewables), while Articles 27 of the REDII covers renewable fuels, renewable liquid and gaseous transport fuels of non-biological origin and recycled carbon fuels, thus excluding fossil fuels. As these two sides of the scopes do not match, this produces incompatibilities when the fuel suppliers seek to fulfil their obligations.



Similarly, the two targets are formulated in drastically different ways. The FQD formulates its target by counting life cycle emission per unit of energy from fuel and energy supplied. As Article 2 of the FQD explains, this is done through the means of calculating the total mass of CO₂ equivalent greenhouse gas emissions associated with the fuel or energy supplied, divided by the total energy content of the fuel or energy supplied. Yet, the REDII sets its obligations based on specific targets for the supply of renewable fuels, calculated as a percentage of the total of energy consumed in transport of every Member State. According to our own experience, these two approaches represent a clear mismatch, since meeting the supply obligations in terms of volume set in the REDII would not automatically mean meeting the decarbonisation obligations set in the FQD. This would mean that the missing decarbonisation efforts to meet the FQD target would have to be done through a drastic change in fossil fuel supply chains or through the trading of Upstream Emission Reduction certificates (UERs), a global market that continues showing shortcomings and dysfunctionalities.

Vice-versa, meeting the FQD decarbonisation target would not automatically mean fulfilling the supply obligations set under the REDII, leading to an artificial inflation of both sets of targets. This becomes even more destabilising for investors since the REDII allows for the implementation of the renewable energy obligations as GHG reduction targets, without providing any safeguards for the alignment with Article 7a of the FQD.

Moreover, there is a significant divergence introduced in the calculations, as the FQD does not reward the use of specific types of renewable energy such as advanced biofuels, biogas, and electricity in transport. On the other hand, REDII specifies multipliers with 4x for electricity for road transport and 1.5x for rail transport, 1.2x for biofuels non-food and feed based biofuels for aviation and maritime, and a 2x multiplier for using advanced biofuels and biogas from Annex IX. The FQD does not reflect this policy focus due to its lack of multipliers in reaching its 6% GHG reductions, meaning it does not sufficiently reward the roll-out of sustainable liquid and gaseous biofuel.

This situation is further complicated due a lack of a unified system for UERs and existing blending walls, as can be seen below.

1.3 Upstream Emission Reductions

Since the FQD and its implementing directive of April 2015 (Directive 2015/652) failed to lay the foundation for an EU-wide, harmonised Upstream Emission Reduction (UERs) market or an EU-wide UER recognition system, there is no functioning market for UERs existing in the EU. Instead, the national implementation of FQD varies significantly between Member States and only very few Member States have created a possibility for accountability of UERs approved in other Member States. This divergence between the national implementations applies also to the problem of the recognition and accountability of CERs (Certified Emission Reductions under the Kyoto Protocol) as UERs.

The absence of an EU-wide system for UERs and uncertainty with eligibility of projects undermines the effort of oil producers to certify upstream projects and offer these reductions to European fuel suppliers, which led to a critical shortage of eligible allowances and creates a big challenge to fuel suppliers in meeting the emission reduction obligation. Furthermore, the approval of these certificates is burdensome, and additional sustainability criteria at national restrict the availability of UERs. There is currently uncertainty around the uptake of this market in 2020 and additional UERs contribution to the target is limited in certain countries.

This has meant that UERs cannot be used as intended to reduce upstream emissions for both fuel producers and suppliers, and thus cut off a significant leg of potential decarbonisation of the sector.

1.4 Blending walls limiting full decarbonisation potential

In 2017, 5.51% (17,240 Ktoe) of fuel actually used in transport in Europe (EU28) was of renewable origin (mainly from compliant biofuels)¹.

These volumes would have to increase sharply in 2020 to reach the FQD's Article 7a 6% target. There are no other options than physical blending of biofuels and alternative fuels introduction to meet the 6% target.

¹ Bioenergy Europe statistical report, 2019, based on Eurostat data.



Very few countries have adopted mandatory blending rates or certain fuel blends are simply not available. If more production was possible in Europe, there would still be some usage limitations due to the 7% blending wall in EN590, and other requirements from the standard limiting ethanol blending in practice. In addition to the EN standard, some Member States further restrict the use of certain feedstocks. Moreover, used cooking oil and hydrotreated vegetable oil supplies are limited in certain countries.

Furthermore, the food-crop cap of REDII limits the possibility to use conventional biofuels to reach the FQD target. This also limits the capacity to import, which does not bring any benefits from a climate perspective, and only very limited volumes are currently available on the European market. Some additional feedstock restriction at national level further limit the available volume (see Annex). Even if suppliers sell these products with no profit to fulfil their FQD obligations, the cost remains unattractive to the consumers due to lack of incentives and tax benefits.

The blending walls are not only of a huge concern for fuels producers, but consequently retailers as well. There are not enough available advanced biofuels, or waste origin biofuels, on the market. The demand has led to price increases, and with big market players more likely to achieve the FQD Article 7 obligation. However, independent fuel suppliers (UPEI members) are especially struggling to fulfil their obligations, which is problematic since they account for 30% of the fuel supplier market share and ensure competition in this market.

2. CO₂ STANDARDS FOR VEHICLES

The EU's recently adopted CO₂ standards for light-duty vehicles and heavy-duty vehicles are going to prove to be important tools in the decarbonisation of new vehicles introduced to European markets. That is why an effective design and implementation of the ambitious CO₂ reduction targets will require both the automobile and energy sectors to follow the most optimal ways to see fast cuts in GHG emissions. Unfortunately, the current standards, while certainly ambitious,

are not designed to be as effective as possible to incentivise the uptake of all low carbon energy sources that could bring tangible decarbonisation and ultimately net-zero emissions to the transport sector.

This can be clearly exemplified by the lack of a life-cycle assessment and the consequent reliance on a tailpipe approach. While this approach may make sense at a quick glance, this focus disproportionately favours emissions from the vehicle itself and not considering the process. As an EEA Report from 2018 shows, this assessment has its limitations in countries which have a more intensive CO₂ power sector.² The introduction of life-cycle assessments is sorely needed, as it could help ensure that the fleet decarbonisation targets for cars and vans achieve the most cost-efficient decarbonisation pathways with readily available yet currently under-incentivised technologies.

This would also solve an inconsistency in the current legislative framework, as advanced biofuels and fuels of non-biological origin, which are clearly promoted under the REDII, not having a sufficient impact on decarbonising future transport due to a lack of a life-cycle assessment of their CO₂ impacts. Similarly, the focus on tailpipe emissions does not fit well with the incentivisation of alternative fuel infrastructure under AFID, as it does not only incentivise charging infrastructure but also alternative refuelling infrastructure.

Another example of incoherence is that the calculation of emissions under both CO₂ standards does not reflect the targets established under REDII for advanced renewable energy. This must be addressed through a Carbon Correction Factor, which would account for the amount of advanced liquid and gaseous fuels sold at the stations and be deducted from the CO₂ emissions reported at the type-approval phase of vehicles. Similarly, if investments are to materialise for the deployment of infrastructure for the broadest possible use of alternative fuels under Directive 2014/94, a coherent vision taking account of both alternative fuels and the definition of zero and low emission technologies is required.

² European Environmental Agency, Electric vehicles from life cycle and circular economy perspectives, TERM 2018 https://www.eea.europa.eu/publications/electric-vehicles-from-life-cycle/at_download/file



UPEI commends the Commission for endeavouring to revise CO₂ standards for vehicles sooner than required by the respective legal provisions. The review should include a technology-neutral life-cycle assessment, which would allow all technologies based on their merits, and be adapted to national energy and climate realities of each Member State.

3. AFID

The Alternative Fuels Infrastructure Directive of 2014 has been a clear step in the right direction at the time of its drafting, setting out a definition of alternative fuels, requiring Member States to develop national policy frameworks for the roll-out alternative fuels infrastructure.

However, AFID does not set direct measures that would require the uptake of alternative infrastructure and vehicles. The Commission's evaluation has shown that the National Framework Plans have led to diverging national efforts, differing ambition and available funding levels.³ Although the Commission has attempted to strengthen the Plans through its Action Plan for Alternative Fuels Infrastructure,⁴ the recommendations given by the Commission are not legally binding on Member States, hence inconsistencies between alternative infrastructures continue and fracture the internal market.

Furthermore, AFID has not enough been used as a leverage for Member States to provide incentives for encouraging the purchase and use of alternative fuelled vehicles. This goes against the objectives of the CO₂ standards for cars and vans, and hamper the development of the necessary infrastructure.

Vehicle deployment would be the carrot, incentivising investment into alternative fuels supply, complementing the stick approach of the AFID to infrastructure development.

These inconsistencies could be addressed through more ambitious and measures under a revised AFID - a reformed framework that would replace the National Framework Plans with clear instruments to support the roll out of alternative fuels infrastructure. Such an approach should also ensure that both liquid and gaseous refuelling and electric charging are treated in a technology neutral way, based on technology

and market maturity, as well as life-cycle assessment for all alternative fuels, power trains and batteries based on varying applications.

These shortcomings are beginning to be recognised by the Commission, as the Von Der Leyen Commission has begun to take the steps to revise the Directive in 2021. The Commission is taking the right steps by assessing the extent to which market forces alone would ensure sufficient coverage and which additional regulatory measures will be required in the upcoming revised AFID.

4. ETD

The tax rates, reductions and exemptions provided for in the current ETD do not adequately support the development of alternative fuels and energy carriers. For example, the current taxation model engrained in the ETD based on fuel volume has led to a situation where renewable alcohol-based fuels are more heavily taxed than fossil fuels. This means that in the EU today sustainable renewable fuels like high-blend ethanol and advanced alcohol-based biofuels cannot compete with fossil fuels without government support. It directly contradicts the objectives of the RED II and FQD, as well EU climate ambition overall.

In this respect, it is important to address the need for a taxation policy that promotes sustainable products whilst being mindful of the impact on taxation revenues that expected consumer behavioural shifts are likely to have in the longer term. Alongside the excise duty, the Commission should explore options to account for GHG emissions over the life cycle of energy products, and their energy content.

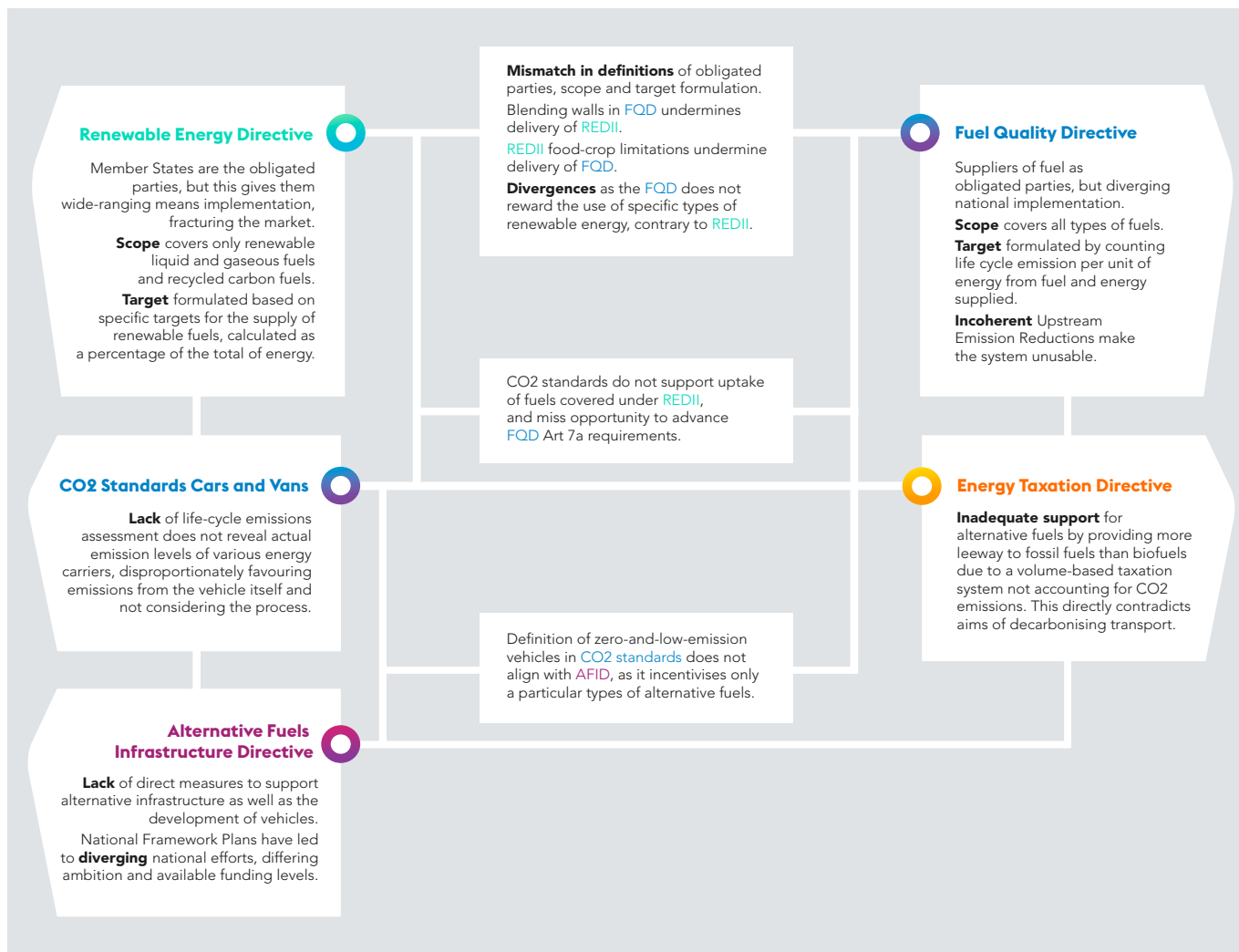
In addition, optional exemptions may only be granted for a period of 6 years, after which they are treated as State Aid. This timeframe does not take account of the high risk and investment cost for developing biofuels and therefore undermines the development of the market, as the rate of return exceeds 6 years. In the case of advanced biofuels, a mandatory tax exemption for a period of 10 years or more would be coherent with the need to stimulate innovation and production in line with the targets agreed under the RED II.

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017SC0365>

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2017%3A652%3AFIN>



OVERVIEW



5. WAY FORWARD

In light of the above, UPEI as the voice of Europe's Independent Fuel Suppliers, would propose that the following points are taken into account in the upcoming revision of Europe's relevant transport, climate and energy policies:

- » **Fix inconsistencies between the FQD and REDII** in the areas of obligated parties, scope, and formulation of targets.
- » Create a **functioning and unified system** of Upstream Emission Reduction.
- » **Lift blending walls** in the FQD and incentivising the switch to E10 blends and develop policies stimulating higher renewable content in fuels more generally.
- » Ensure a **technology-neutral life cycle assessment** in the revision of CO2 standards for cars, vans, complemented with incentives for the promotion of fuels supported under the REDII.
- » **Remove inconsistencies between the ETD and both the FQD and REDII** to introduce fiscal incentives for sustainable fuels.
- » **Remove inconsistencies between calculations of REDII and CO2 Standards** for cars and vans by introducing a correction factor advanced liquid and gaseous fuels sold by suppliers.
- » **Reform the Alternative Fuels Infrastructure Directive** by proposing concrete instruments that would replace National Policy Frameworks to develop both vehicles uptake and related infrastructure in parallel.
- » **Ensure equal and technology neutral treatment forms** of alternative fuels, based on a life-cycle assessment of fuels, power trains, batteries depending on their applications.

WHO WE ARE

UPEI represents nearly 2,000 European importers and wholesale/retail distributors of energy for the transport and heating sectors, supplying Europe's customers independently of the major energy producers. They are the interface between producers and consumers, using their own infrastructure and flexibility to supply existing demand for conventional and renewable liquid fuels, as well as non-liquid alternatives as part of the energy transition. They cover more than a third of Europe's current demand. The organisation brings together national associations and suppliers across Europe.

Independent fuel suppliers bring competition to Europe's energy market and are able to respond rapidly to changes affecting supply, contributing to security on a local, national and regional level. They have developed and maintain a comprehensive infrastructure for the sourcing, storage and distribution of transport and heating fuels, with a commitment to delivering a high-quality service to all consumers, including those in remote areas.

Since 1962 UPEI has been advocating for a level playing field and fair competition to ensure an affordable, sustainable and secure energy supply for Europe's consumers. Today, in the context of the transition to a low carbon economy, UPEI and its members are also addressing the challenges of adapting the product range and meeting consumer demand through market-oriented solutions.

With its strong track record in pioneering the supply of renewable fuels in the EU, UPEI's members remain committed to delivering and embracing new, cost effective solutions which further promote energy efficiency and reduce pollutants and emissions.

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THE VOICE OF EUROPE'S INDEPENDENT FUEL SUPPLIERS