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Research on Laws & Regulations for Logging & Burning Biomass



The legal mandate to record forest biomass-fired energy as contributing to the EU's renewable energy targets has had the perverse effect of creating a demand for trees to be felled in Europe or elsewhere in order to burn them for energy, thus releasing the carbon into the atmosphere which would otherwise stay locked up in the forest, and simultaneously drastically reducing the carbon sink strength of the forest ecosystems.

EU Biomass Legal Case Main Arguments [2019-08-00-eu-biomass-legal-case-main-arguments-english.pdf](#)

This legal document contains the main arguments in the EU Biomass Legal Case where the applicants seek annulment of the inclusion of "forest biomass" – essentially trees, including, stems, stumps, branches and bark – as a renewable fuel within the Renewable Energy Directive (recast) 2018.

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We are analyzing reports and creating & posting new summaries every day. This is time consuming work but we will try to deliver multiple summaries per day. We are currently processing reports from 2019 and will work our way back into the [hundreds of official research reports commissioned the last decade](#).

"...In January 2018, EASAC wrote directly to the President of the European Commission to warn, "The legal mandate to record forest biomass-fired energy as contributing to the EU's renewable energy targets has had the perverse effect of creating a demand for trees to be felled in Europe or elsewhere in order to burn them for energy, thus releasing the carbon into the atmosphere which would otherwise stay locked up in the forest, and simultaneously drastically reducing the carbon sink strength of the forest ecosystems..."

"...The potentially very long payback periods for forest biomass raise important issues given the UNFCCC's aspiration of limiting warming to 1.5 °C above preindustrial levels to 'significantly reduce the risks and impacts of climate change'. On current trends, this may be exceeded in around a decade. Relying on forest biomass for the EU's renewable energy, with its associated initial increase in atmospheric carbon dioxide levels, increases the risk of overshooting the 1.5°C target if payback periods are longer than this..."

"...EU Regulation (EU) 2018/841 ("the LULUCF Regulation") comes into effect in 2021, building on the UNFCCC's reporting approach and aiming to evaluate carbon flux in the land sector on an equal or nearly-equal basis with carbon in other sectors. However, as above, all modelling scenarios constraining global temperature rise to no more than 1.5 °C rely on both a very large increase in carbon uptake, and significant reductions in emissions. Accordingly, simply balancing carbon uptakes and losses (through meeting the FRL) is not enough..."

"...Given the steep reductions in atmospheric carbon loading required, even scenarios that maintain or slightly increase the carbon sink are insufficient. 33. Despite that, the EU promotes the LULUCF Regulation as the means of accounting for emission from biomass combustion for produce energy. It argues that the "no debit rule" (as explained and considered further below) will ensure that those emissions are compensated for elsewhere if emissions occur in the LULUCF sector from harvesting biomass for energy. This approach overstates the degree to which bioenergy emissions are counted in the land sector because it relies on the FRL perfectly accounting for all emissions from harvesting. However, this is not the case..."

"...Thus, claims that the LULUCF Regulation will account for biomass carbon losses are only partially accurate, because they do not acknowledge that biomass burning is treated as having zero emissions if a Member State is meeting or exceeding its FRL target. Yet ton for ton, burning wood that would otherwise be stored or added to a forest increases carbon in the air by the same amount, even if a state is meeting its FRL target..."

"...regions of the US Southeast that supply the wood pellet industry do not have laws requiring that forest buffer strips be maintained along rivers. Clearcutting of bottomland hardwood forests and thin to non-existent buffer strips contribute to flooding and water quality degradation..."

"...As observed in the 2014 European Commission report "Environmental Implications of Increased Reliance of the EU on Biomass from the South East US," biomass demand is expected to drive natural forest conversion and to contribute to loss of natural forests – and there are no laws prohibiting this: "Over the last 50 years, demand for fibre has contributed to a very significant increase in the area of plantation pine coinciding with a loss of natural forests. There are no laws that limit the conversion of natural forests to plantations..."

"...Bioenergy is expected to be the single largest source of new wood demand in the near future, and this is anticipated to drive expansion of pine plantations at the expense of both agricultural land and natural forests of comparatively high biodiversity value. In addition, the conversion of bottomland hardwood forests (often wetland habitats) to pine can involve significant losses of belowground carbon..."

"...As explained...the Directive's claim that the GHG Criteria, the Sustainability Criteria, and the LULUCF Criteria ensure that biomass burned for energy reduces emissions relative to fossil fuels is simply wrong. As a result, insofar as the Directive results in the expansion of energy from forest biomass (one of its stated aims), it undermines its own purpose of reducing GHG emissions, violates the TFEU Article 191 Treaty obligations and infringes the fundamental rights of the Applicants..."

Direct Concerns:

- The renewable energy targets and the legal obligations to meet them;*
- The definition of renewable energy, such that it includes biomass;*
- The definitions of biomass to include forest biomass, and forest biomass to include stems and stumps (i.e. whole trees);*
- The method of calculating the share of energy produced from renewable sources in Article 7 is mandatory, meaning Member States have no discretion to omit energy produced from forest biomass from this calculation;*
- The GHG criteria are mandatory, such that Member States have no discretion to account for biogenic emissions when calculating the impact of the use of forest biomass;*
- The sustainability criteria in relation to biofuels and bioliquids produced from forest biomass are a regulatory ceiling (see Article 29(12)), such that*
- Member States cannot adopt more protective sustainability criteria;*
- There are no possible sustainability criteria for biomass fuels that could obviate the harm such that the discretion notionally given to Member States in*

Article 29(14) in relation to this use of forest biomass is irrelevant (something not changed just by the discretion a Member State has in relation to financial incentives);

- Member States cannot impose additional LULUCF criteria even the most onerous of which is inadequate to prevent harm. The Member States thus have no relevant discretion over the land-use change aspects of the biomass industry.

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Dutch Government (RVO) Bio Energy Input Woody Biomass [2013-08-07-rvo-bio-energie-input-houtige-biomassa-dutch.pdf](#)

This report of the Dutch Government discusses the legal (international /national) framework in which the logging and burning of woody biomass is to be placed.

Environmental laws and regulations

"...A legal basis is concluded that there will always be a gray area under current legislation. Certainty about this is ultimately only possible through a court decision.

Example: Wood chips from energy forests are not waste, because they are the intended product of the energy plantation. Cutting prunings (also in the form of chips) from municipal parks does provide a waste material. Wood production is not the intended purpose of the municipal plantings; the wood chips come from maintenance work. The Municipality must dispose of these residual materials and that is one of the criteria used determined that something is a waste..."

European framework directive on waste

"...For biomass transporters and traders, it is not always clear which permits and documents are required for the transport and storage of biomass.

Currently being viewed on the way in which the European Waste Framework Directive can be designed to tackle the bottleneck of clean biomass (especially woody biomass)..."

Local laws and regulations

"...Policy plans do not take production, harvesting and processing into account.

At the construction of biomass (incineration) plants and the construction of biomass yards is not always clear which permits are required. Such an installation is seen in one municipality as a waste incineration plant, in the other municipality as a power plant..."

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