

Argentina's comments on the Belgian Draft Law amending the Law of 17 July 2013 concerning the minimum nominal volumes of sustainable biofuels that must be contained in the volumes of fossil fuels released annually for consumption

Argentina notices that on 1 September 2022, the TRIS system published notification 2022/0595/B from the Kingdom of Belgium regarding a Draft Law amending the Law of 17 July 2013 concerning the minimum nominal volumes of sustainable biofuels that must be contained in the volumes of fossil fuels released annually for consumption, hereinafter referred to as the "*Belgian draft Law*".

Argentina would like to express serious concerns regarding the "*Belgian draft law*", which establishes a *de facto* and *de jure* discrimination against soy-based biodiesel without any scientific evidence in violation of pertinent EU law, principles of the internal market and the World Trade Organization (WTO) law.

In particular, the "*Belgian draft law*" adds Article 7/1 to the Law of 17 July 2013 concerning the minimum nominal volumes of sustainable biofuels that must be contained in the volumes of fossil fuels released annually for consumption, as amended by the Law of 26 December 2015.

Article 7/1. § 2. stipulates that: "**From 1 July 2023, biofuels produced from soybean oil, including other products derived directly or indirectly from soybeans, can no longer contribute to achieving the incorporation volume provided for in Article 7, § 1, and those included in the secondary objectives of Article 4, paragraph 1, 1°, 2°, 3° and 4° of the Royal Decree of 4 May 2018 laying down the minimum nominal volumes of sustainable biofuels that must be contained in the volumes of fuels released annually for consumption.**

This paragraph shall not apply to raw materials listed in Annex IV to the Royal Decree of 16 July 2014 and to biofuels, bioliquids or biomass fuels certified as having a low risk of indirect land-use change, in accordance with the provisions and criteria to that effect in Articles 4 and 5 of Delegated Regulation 2019/807" (emphasis added).

In addition, notification 2022/0595/B item 9. "Brief Statement of Grounds" states that: "*The draft transposes Article 26(2) of 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.*

The phasing out of palm or soybean biofuels is based on the broad scientific consensus on the high risk of indirect land-use change associated with the cultivation of these crops (...)" (emphasis in original).

Argentina kindly requests the European Commission and the Member States to consider this statement as flawed. Not only there is not a scientific consensus on the argued high risk of indirect land-use change (ILUC) associated with the cultivation of soybean, but it is also an unjustified and non-science-based assertion. There is no support for this assertion. Not even any report on soybean expansion published by the European Commission reaches such a conclusion.

This flawed assertion is contrary not only to the applicable European Regulations but to the same reasoning included in the "*Belgian draft law*" under consideration trying to provide some legal support to it.

The "*Belgian draft Law*" and the notification 2022/0595/B refer to Article 26.2 of Directive (EU) 2018/2001 and Delegated Regulation 2019/807 to support their conclusions, but Delegated Regulation 2019/807 undoubtedly concludes that soybean is not a high ILUC-risk feedstock for which

a significant expansion of the production area into land with high carbon stock is observed. The Delegated Regulation 2019/807 concludes exactly the contrary, namely that soybean is not a high ILUC-risk feedstock for which a significant expansion of the production area into land with high-carbon stock is observed. The European Regulations clearly oppose the assertion put forward by the "*Belgian draft Law*", which undoubtedly refers to the same European Regulations.

In that sense, recital (11) of the Delegated Regulation 2019/807 clearly prescribes that: "*In accordance with Article 26(2) of Directive (EU) 2018/2001, Member States are required to apply the criteria set out in this Regulation for determining the high indirect land-use change-risk feedstock for which a significant expansion of the production area into land with high-carbon stock is observed (...)*" (emphasis added).

The fourth paragraph of article 26.2 of Directive (EU) 2018/2001 requires the European Commission (EC) to adopt a delegated act to lay down provisions setting out the criteria for determining the high ILUC-risk feedstock for which a significant expansion of the production area into land with high carbon stock is observed (hereinafter referred to as the "*high ILUC-risk criteria*").

According to the third and fourth paragraphs of article 26.2 of Directive (EU) 2018/2001, such provisions should accompany a report on the status of worldwide production expansion of the relevant feedstock (hereinafter referred to as the "*report on feedstock expansion*"), and such report and the accompanying delegated act shall be based on the best available scientific data.

The "*high ILUC-risk criteria*" were already set out in the Delegated Regulation 2019/807, on 13 March 2019. Notably, Delegated Regulation 2019/807 refers to the "*report on feedstock expansion*" (required by the third and fourth paragraphs of article 26.2 of Directive (EU) 2018/2001) submitted to the European Parliament and to the Council on that date. Based on this report, the **Delegated Regulation 2019/807 and its Annex, did not qualify soybean as a high indirect land-use change-risk feedstock for which a significant expansion of the production area into land with high-carbon stock is observed**. Furthermore, Delegated Regulation 2019/807 established that the maximum share of the average annual expansion of the global production area in land with high-carbon stocks should be 10% and found that the soybean share was below such threshold (8%).

The "*Belgian draft law*" does not comply with the requirement prescribed by recital (11) of the Delegated Regulation 2019/807 because it does not apply the criteria set out in that Regulation for determining the high indirect land-use change-risk feedstock for which a significant expansion of the production area into land with high-carbon stock is observed. The only possible conclusion, if applying the criteria set out in Delegated Regulation 2019/807, is that soybean is not a high indirect land-use change-risk feedstock for which a significant expansion of the production area into land with high-carbon stock is observed. Exactly contrary to the assertion included in the "*Belgian draft law*" and the notification 2022/0595/B.

In addition, the aforementioned "*Belgian draft law*" is not only against European Law but also contrary to WTO law. The "*Belgian draft law*" would grant soybean oil biodiesel a less favourable treatment than that granted to similar national and EU biofuels made from other feedstocks. Consequently, this measure would be prima facie inconsistent with obligations undertaken by Belgium and by the EU in the WTO Agreements, in particular with the Most Favoured Nation clause and the, the National Treatment clause. It could even constitute a restriction prohibited by Article XI.1 of the GATT 1994 and a potential violation of the WTO Agreement on Technical Barriers to Trade, Articles 2 and 5.

Consequently, this "*Belgian draft law*" establishes a *de facto* and *de jure* discrimination against soy-based biodiesel produced by Argentina without any scientific evidence, in violation of EU pertinent law, in particular Delegated Regulation 2019/807 and Article 26.2 of Directive (EU) 2018/2001, the related EU legislation and the obligations of the European Union under the WTO Agreements.

Argentina reaffirms its disagreement with the ILUC concept since it is not based on solid scientific grounds or real facts, and is based only on theoretical models, so it cannot be measured, nor demonstrated or determined accurately and reliably.

The impossibility of measuring ILUC has been clearly demonstrated by the fact that the EU has decided to adopt an indirect approach to estimate the ILUC risk, as established in Regulation 2019/807.

Argentina calls particular attention to the recital (4) of the Delegated Regulation 2019/807 in which the EC acknowledged and recognized "the uncertainty in calculating [ILUC emissions]" and, in the same line, to the recital (10) where "taking into account (...) all the relevant scientific information" the EC takes the position that there is "relative availability of complete data".

The above-mentioned "*Belgian draft law*", which if adopted, would be inconsistent with EU regulations and contrary to the EU WTO obligations, has been proposed with no scientific backing.

The characterization of soy-based biodiesel as a high ILUC risk product is extremely difficult to prove and would lead to discrimination against soy-based biodiesel in comparison to other feedstock-based biofuels evaluated by the EU Regulation. Such characterization must be based on objective scientific evidence.

Argentina submitted the technical report "Biodiesel based on Argentine soybean oil", elaborated by the Ministry of Agriculture, Livestock and Fisheries and the National Institute of Agricultural Technology of Argentina, in April 2021, which proves based on scientific evidence that Argentinean soy-based biodiesel cannot be characterized as a high ILUC risk product.

Argentina's soybean production does not pose land use change risk. Soybean cultivation in Argentina is concentrated in a purely agricultural area that has been farmed for more than a century, it was not originally forestland but grassland, and is near crushing plants and ports.

The soybean produced outside of this area is unlikely to be used for biofuel due to the distance to processing facilities. Additionally, National Law No. 26,331 enacted in 2007 does not permit the change in land use of native forests.

In the last nine years, there has also been a reduction in the production area of soybeans. No ILUC can result from a decreasing area of production. Neither land expansion of the production of the relevant crop nor the share of this expansion into land with high-carbon stock can be attributed to soybeans production when a reduction in the area of cultivation occurs.

Campaign	Planted area (Ha)
2012/13	19.902.072
2013/14	19.705.342
2014/15	19.792.100
2015/16	20.562.233
2016/17	18.057.162
2017/18	17.259.260
2018/19	17.010.277

2019/20	16.908.238
2020/21	16.650.093
2021/22	16.100.000

Source: Ministry of Agriculture, Livestock and Fisheries

Argentine companies that export biodiesel follow sustainability criteria and are certified through schemes approved by the European Union under their Renewable Energy Directive with RED I and II, as well as with ISCC and 2Bs. This guarantees that Argentina's biodiesel is generated from biomass that has not been produced on deforested soils since the 2008 cut-off date, confirmed by satellite images.

Crushing of soybean results in soymeal (82%) and soy oil (18%). Argentina is the main provider of soymeal to the EU feed industry. Biofuel production is not a driving decision for planting soy. It also is important to note that, in the case of Argentina, of the total soybeans produced, less than a third of the soy oil results in biodiesel production.

Thus, natural location, the regulatory framework, certification, proximity to crushing plants and ports, logistics and no-till farming act in concert to maximize the reduction of greenhouse gas emissions (GHG) of Argentine biodiesel.

The FOB emission-saving value of Argentine biodiesel was calculated to be 70,1% relative to RED I's reference value, and 74% with respect to RED II's. These values comfortably comply with the European Union's requirements for imports in force since 2018.

Argentina is a reliable supplier of protein to the EU through the provision of soymeal and it is also a reliable supplier of energy to the EU through the provision of sustainable soy-based biodiesel that is rapidly produced and delivered to the market. Argentina's biodiesel is a cost-efficient tool to reduce greenhouse gas emissions and is available in the market today.

Amongst other sustainability criteria, as established in RED II, Argentine soy-based biodiesel is certified as deforestation-free in accordance with EU schemes and has been contributing for years to meeting energy consumption and greenhouse gas emission reduction goals in the EU. Our country wants to continue being a regular supplier of soy-based biofuel to the EU.

In Argentina's opinion, characterizing soy-based biofuel as a high ILUC risk product is deemed to have the following negative consequences on the EU:

- More fossil fuel consumption in the EU, running counter to the objective of diversifying energy supplies, which is a pillar of its *REPowerEU Plan*.
- More fossil fuel imports fostering higher and more volatile energy prices.
- Acting against EU energy autonomy strategy and the EU objective of decoupling from unreliable energy providers.
- Creating an unnecessary self-inflicted new constrain in the energy supply.
- Undermining the EU's climate goals.
- Missing the targets of the EU renewable energy and GHG emissions in the transport sector.
- Disregarding Commission proposal of increasing the 2030 target for renewables under the Fit for 55 Package.

Argentina kindly and respectfully requests that, in the context of the assessment of notification 2022/0595/B -submitted by the Kingdom of Belgium under Directive (EU) 2015/1535- the European Commission and the Member States fully take into consideration the above-mentioned arguments, which prove that the "*Belgian draft law*" unlawfully creates obstacles to the free movement of goods within the internal market.

In addition, Argentina kindly and respectfully also requests that the "*Belgian draft law*" be amended in order to make it consistent with EU pertinent law, in particular Delegated Regulation 2019/807 and Article 26(2) of Directive (EU) 2018/2001, and the WTO obligations of the Kingdom of Belgium and the EU, refraining from introducing a discrimination against soybean based biofuel without any scientific evidence, keeping soybean based biodiesel as a sustainable energy source to reach EU climate targets.