

# Unsustainable and Ineffective: Why EU Forest Biomass Standards won't stop destruction



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# Introduction



**Credit:** Wolf forest protection movement.

Trees cut by Jozef Pencák PaP logging company, and per witnesses delivered to Košická Energetická Spoločnosť 4 MW biomass power plant, in Slivník, Slovakia, March 29, 2019.

## There has been intense criticism of the European Union (EU) Renewable Energy Directive (RED) for leading to adverse impacts on forests in Europe and beyond.

To tackle these concerns, the EU developed sustainability criteria that forest biomass must meet to be counted towards EU renewable energy targets (and therefore be eligible for subsidies). These criteria were included in the second iteration of the RED (REDII), for which the European Commission (EC) is developing a set of Operational Guidelines by means of an implementing regulation.

The EC is now revising REDII, and paying particular attention to these sustainability criteria. It is essential that they look at the effect that current biomass sustainability criteria would have on the ground.

We therefore accompany this legal analysis of the REDII biomass sustainability criteria with several case studies, demonstrating the fundamental weaknesses which render existing criteria practically meaningless. It shows that they fail to **ensure that bioenergy is produced without harming forests, or in a way that helps tackle the climate crisis**, and that only a limited number of EU wood burning facilities are required to abide by them.

The treatment of biomass in EU policy is predicated on the overly simplistic and flawed idea that biomass can be a source of renewable energy that can reduce greenhouse gas emissions without harming forests. For this to start being true, there must be an immediate and substantial revision of current rules.<sup>1</sup>

<sup>1</sup> The EU must protect forests, not burn them for energy. (wemove.eu)



The criteria ignore that the EU forest carbon sink has declined by

# 15%

since 2005, and do nothing to reverse this trend

**Credit:** Jean-Luc Luyssen.

French citizens demonstrating on a clear-cut site in the Morvan region. Much of the wood ends up at the Biosyl pellet manufacturer in the area. See case studies section.

## 1. Legality does not mean it is sustainable or climate friendly

REDII's sustainability criteria dangerously confuse two concepts: the presence of laws and the sustainability of biomass.

To comply with the criteria, REDII (Article 29 (6)) requires the existence of laws regulating forest logging, along with '*monitoring and enforcement systems*' for these laws. This would be the case for the overwhelming majority of countries supplying biomass in the EU, making them automatically compliant. This is problematic, however, as there is no need to show the relevance or effectiveness of such laws on the sustainability of forest biomass production and harvesting. There is no requirement to do a qualitative assessment of the legal framework in the place of harvest, and the rules around ensuring effective monitoring and enforcement systems are unclear. This can only be solved by a fundamental overhaul of REDII criteria.

To ensure that forest biomass would be climate positive, the REDII criteria merely require that countries are a Party to the Paris Agreement; that they have land-use, land-use change and forestry (LULUCF) rules in place; and that their forests are a net sink of carbon dioxide. This makes the overwhelming majority of countries supplying biomass in the EU<sup>2</sup> compliant, but fails to prevent biomass burning that harms the climate.<sup>3</sup>

Furthermore, the criteria ignore that the EU forest carbon sink has declined by 15 per cent since 2005,<sup>4</sup> and do nothing to reverse this trend.

According to findings published by the EU's Joint Research Centre<sup>5</sup>, REDII allows operators to be rewarded for using types of bioenergy that actively increase greenhouse gas emissions over the next fifty years. They find that most forest biomass (primary wood taken from the forest) being burnt in the EU is harmful to the climate, to biodiversity, or both.

Consequently, the current sustainability criteria legitimise destructive forestry practices that are permitted under national laws and fail to "*minimise the risk of using forest biomass derived from unsustainable production*" as set out in Article 29(6) of the REDII.

The EU implementing rules offer no measures to minimise the destructive consequences of wood burning.<sup>6</sup> Compliance with the sustainability criteria will be a simplistic box-ticking exercise to determine the existence of relevant laws, not their adequacy and effectiveness.

<sup>2</sup> European Commission, Technical Assistance for the preparation of guidance for the implementation of the new bioenergy sustainability criteria set out in the revised Renewable Energy Directive: [https://ec.europa.eu/energy/studies\\_main/final\\_studies/technical-assistance-preparation-guidance-implementation-new-bioenergy\\_et](https://ec.europa.eu/energy/studies_main/final_studies/technical-assistance-preparation-guidance-implementation-new-bioenergy_et)

<sup>3</sup> European Commission, JRC report – *The use of woody biomass for energy production in the EU*: <https://publications.jrc.ec.europa.eu/repository/handle/JRC122719>.

<sup>4</sup> *Stepping up Europe's 2030 climate ambition Investing in a climate-neutral future for the benefit of our people*, EUR-Lex - 52020SC0176 - EN - EUR-Lex (europa.eu)

<sup>5</sup> European Commission, JRC report – *The use of woody biomass for energy production in the EU*: <https://publications.jrc.ec.europa.eu/repository/handle/JRC122719>

<sup>6</sup> See more at ClientEarth's contribution to the public consultation on the draft Implementing Regulation on the guidance for demonstrating compliance with the sustainability criteria under the Renewable Energy Directive: <https://www.clientearth.org/latest/documents/clientearth-s-contribution-to-the-public-consultation-on-the-draft-implementing-regulation-on-the-guidance-for-demonstrating-compliance-with-the-sustainability-criteria-under-the-renewable-energy-directive/>





The current sustainability criteria legitimise destructive forestry practices that are permitted under national laws and fail to “minimise the risk of using forest biomass derived from unsustainable production”

**Credit:** Dogwood Alliance.

Aerial view of Enviva pellet manufacturing plant in Northampton, North Carolina, April 2019.

## 2. The role for Member States – who is auditing the auditors?

Article 30 of REDII significantly limits Member States' accountability for assessing compliance with the sustainability criteria.

Essentially, Member States receive information from biomass operators, but are not required to assess or verify its reliability. The vague wording merely obliges Member States to “*require economic operators to show that the sustainability and greenhouse gas emissions saving criteria [...] have been fulfilled*”, and to “*take measures to ensure that economic operators submit reliable information*”.

EU implementing rules as drafted do not guide Member States on how to ensure adherence to the sustainability criteria, such as verifying reliability of information received.

## 3. An inflated role for certification

REDII allows operators to use third-party certification schemes to demonstrate compliance with sustainability criteria.

Certification schemes have well-documented limitations<sup>7</sup> and are not an alternative to setting clear obligations on operators to demonstrate their compliance with the sustainability criteria and a proper assessment of operators' compliance by Member States.

Operators should only be allowed to use third-party certification to assess and mitigate the risk of wood being unsustainably harvested. Third party certification, and audits conducted for the purpose of third party certification, should not, however, be considered satisfactory evidence of an operator's compliance with the sustainability criteria. Verification of whether the operator has met the sustainability criteria should be done by Member States according to rigorous, uniform and binding requirements.

<sup>7</sup> “The certification schemes still come with some principal limitations to be handled [...] one key issue is the challenge of monitoring, disclosure and enforcement”. ECOFYS, Milieu & COWI, Feasibility study on options to step up EU action against deforestation, 2018. p.128. Greenpeace International, “Destruction: Certified”, [https://www.greenpeace.org/static/planet4-international-stateless/2021/04/b1e486be-greenpeace-international-report-destruction-certified\\_finaloptimised.pdf](https://www.greenpeace.org/static/planet4-international-stateless/2021/04/b1e486be-greenpeace-international-report-destruction-certified_finaloptimised.pdf), and “Not Fit For Purpose”.

Alignment and consistency with the 'do no harm' principle should be at the basis of any criteria to ensure the sustainability of forest biomass harvests

**Credit:** Biofuelwatch.

Log stacks and woodchip pile at Osula Graanul pellet mill in Võru County, Estonia, July 25, 2019.



## 4. Limited role for Non-Governmental Organisations

Legal assessments and reports prepared by national or international governmental organisations are the only evidentiary sources that REDII names as eligible.

This implies that other information is not a reliable source of proof. It is also based on the false assumption that national legal assessments or reports include all relevant information about gaps in domestic law enforcement.

By only allowing international or national organisations to provide evidence, EU implementing rules create the peculiar situation where evidence to assess law enforcement is collected by the authorities in charge of enforcing the law – state authorities involved in forest management.

As already acknowledged by the EC,<sup>8</sup> Non-Governmental Organisations (NGOs) play a vital role in ensuring compliance with EU environmental law. NGO reports should be considered valuable evidence in assessing compliance with sustainability criteria, and in monitoring failures to enforce legislation.

## 5. (In)consistency with the Treaty on the Functioning of the EU

Compliance with the sustainability criteria does not mean per se that the use of forest biomass for energy production is not harmful to forests.

**Even if harvesting laws were properly enforced, it would only mean that forest biomass has been produced in compliance with certain minimum criteria.** This falls far short of ensuring that forests will not be destroyed or the climate harmed.

In addition, the current criteria do not align with the environmental and energy policy set out in Articles 191 and 194 of the Treaty on the Functioning of the EU, including the need to preserve and improve the environment, as well as with the 'do no harm' principle pursued by the European Green Deal.<sup>9</sup>

Alignment and consistency with these principles should be at the basis of any criteria to ensure the sustainability of forest biomass harvests.

<sup>8</sup> Communication from the Commission of 28 April 2017 on Access to Justice in Environmental Matters, par. 38.

<sup>9</sup> EU Green Deal Communication: COM (2019) 640 final, point 2.2.5.



# Case studies

Many of the most infamous cases of destructive biomass would have been allowed in the REDII.



**Credit:** ZERO.

In the small town of Fundão, a biomass plant burns roundwood which they classify as waste despite it coming from clearcuts in the pine forest.



## Case study 1: High risk of RWE sourcing pellets for Dutch power plants from old growth forests in British Columbia

### Summary

Pellets from British Columbia are being shipped to the Netherlands to feed RWE's Eemshaven and Amer power stations. There is a high risk that the pellet mills harvest their neighbouring primary forest (endangered caribou habitat). This practice is legal according to British Columbian sub-national laws, and hence will not stop after REDII implementation.



Credit: Michelle Connolly for Conservation North.

### Is the project smaller than 20MW? Would the sustainability criteria apply?

Yes. RWE co-fires wood in two large coal power stations, the Eemshaven and Amer plants. They are increasing co-firing in the Amer plant from one to 1.7 million tonnes of pellets/year and want to double the amount burned in the Eemshaven plant to 1.6 million tonnes this year.

### Is the harvesting happening in a country with Sustainable Forest Management (SFM) laws?

British Columbia has the relevant SFM laws required by the operational guidelines.

### Does the country have an infringement case against it?

Research for commissioned Stand.earth shows that these laws are not sufficient as they will allow the logging of over 75% of the remaining primary and old growth forests. National policy makers have not responded to NGO concerns.

### If there are no SFM laws, and no infringement cases against them, can they demonstrate that harvesting is happening legally?

Not applicable as British Columbia has relevant SFM laws.

### Does the wood come from a country with a Nationally Determined Contributions (NDC – a country's plan for how it meets the Paris Climate Agreement goals) that includes LULUCF and were forests a sink in the last decade?

LULUCF is included in Canada's NDC.

### If the NDC is not linked to LULUCF, or the country's forests are a source of emissions, can they demonstrate compliance with LULUCF at forest sourcing level?

Would not apply because Canada has relevant LULUCF accounting as required by Article 5.

### Verdict:

The REDII criteria would not have prevented logging from increasing as a result of forest biomass being considered a renewable form of energy.



## Case study 2: High nature value Estonian forests turned into pellets and burnt in medium-sized district heating

### Summary

Relaxation of logging regulations in Natura 2000 forest habitats meant 60,000 hectares of logging permits were issued between 2008-2018. Much of this wood is being transformed into pellets and other energy wood. The REDII criteria would not prevent the harmful logging practices as it was considered legal in Estonia.



Credit: Biofuelwatch.

Stacks of roundwood at Imavere Graanul Invest plant in Jarva County, Estonia, April 28, 2018

### Is the project smaller than 20MW? Would the sustainability criteria apply?

No. In smaller towns, a large proportion of primary forest biomass is burnt in central heating plants that do not exceed 20 MW capacity. It would therefore not need to comply with REDII criteria.

Roughly one third of Estonia's wood is exported for energy, mainly to the UK, Netherlands, Germany and Denmark.

### Is the harvesting happening in a country with Sustainable Forest Management (SFM) laws?

Estonia has the relevant SFM laws required by the operational guidelines, including the Forest Act, and the Nature Conservation Act. National authorities have recently approved a relaxation of rules against logging in Natura 2000 forested areas.

### Does the country have an infringement case against it?

Estonia does not have any infringement cases against it, though NGOs have filed a complaint.

### Are law implementors responding to concerns?

NGO reports such as failure to save key habitats and Natura 2000 are critical of forest management but have not triggered a response from national policy makers. Despite these concerns, implementation is not effective.

### If there are no SFM laws, and no infringement cases against them, can they demonstrate that harvesting is happening legally?

Not applicable as Estonia has relevant SFM laws and relaxation of logging rules was approved by the Estonian government.

Most forests in Estonia are Programme for the Endorsement of Forest Certification (PEFC) certified, so operators would rely on these criteria to demonstrate compliance.

### Does the wood come from a country with a Nationally Determined Contributions (NDC – a country's plan for how it meets the Paris Climate Agreement goals) that includes LULUCF and were forests a sink in the last decade?

Estonia is part of the EU's NDC that includes LULUCF.

### If the NDC is not linked to LULUCF, or the country's forests are a source of emissions, can they demonstrate compliance with LULUCF at forest sourcing level?

Would not apply because Estonia has relevant LULUCF accounting as required by Article 5. NGOs have concerns about the accounting methods used by Estonia.

### Verdict:

The REDII criteria would not have prevented logging from increasing as a result of forest biomass being considered a renewable form of energy.

### Case study 3: French pellet maker clearcuts natural forests and transforms whole trees into pellets

#### Summary

French pellet maker, Biosyl transforms whole trees sourced from clearcuts into pellets. This is the dominant practice in the area and has increased since Biosyl's factory was developed. The local forests are rapidly being transformed into pine plantations.



Credit: Jean-Luc Luyssen

#### Is the project smaller than 20MW? Would the sustainability criteria apply?

No. The operators are mostly individual buyers so it would not need to comply with REDII criteria.

#### Is the harvesting happening in a country with Sustainable Forest Management (SFM) laws?

France has the relevant SFM laws as required by the operational guidelines, including transposition of the Habitats Directive, National Biodiversity strategy, and implementation of Natura 2000.

#### Does the country have an infringement case against it?

France does not have any infringement cases against it.

#### Are law implementors responding to concerns?

NGO reports such as Forêts Françaises en crise and this report by Canopée are critical of forest management but have not triggered a response from national policy makers.

#### If there are no SFM laws, and no infringement cases against them, can they demonstrate that harvesting is happening legally?

Not applicable as France has relevant SFM laws.

#### Does the wood come from a country with a Nationally Determined Contributions (NDC – a country's plan for how it meets the Paris Climate Agreement goals) that includes LULUCF and were forests a sink in the last decade?

France is part of the EU's NDC that includes LULUCF.

#### If the NDC is not linked to LULUCF, or the country's forests are a source of emissions, can they demonstrate compliance with LULUCF at forest sourcing level?

Would not apply because France has relevant LULUCF accounting as required by Article 5.

#### Verdict:

The REDII criteria would not have prevented logging from increasing as a result of forest biomass being considered a renewable form of energy.



## Case study 4: Natural pine forests in Portugal ground into pellets

### Summary

In the small town of Fundão, a biomass plant burns roundwood which they classify as waste despite it coming from clearcuts in the pine forest. They use 150,000 tonnes/year of roundwood which is devastating the forest and disturbing residents due to the noise, dust, ash and smell.



Credit: Zero

### Is the project smaller than 20MW? Would the sustainability criteria apply?

No. The Fundao plant is 14MW so it would not need to comply with REDII criteria.

### Is the harvesting happening in a country with Sustainable Forest Management (SFM) laws?

Portugal has the relevant SFM laws required by the operational guidelines, including the transposition of the Habitats Directive, the National Strategy for Nature Conservation and Biodiversity 2030, implementation of Natura 2000, the National Strategy for forests, and the legislation that approves the cutting, extraordinary felling, or thinning of trees.

### Does the country have an infringement case against it?

Portugal does not have any infringement cases against it.

### Are law implementors responding to concerns?

NGO reports are critical of forest management, such as this one showing Portugal postponing investment in a more diversified forest, this one demanding an urgent evaluation of residual biomass potential in Portugal, this one warning of risks of widespread use of forest biomass for energy production, Forest management certification or harvest certification?, and Forest biomass for electricity production is "not a serious" investment.

Despite these concerns, implementation is not effective.

### If there are no SFM laws, and no infringement cases against them, can they demonstrate that harvesting is happening legally?

Not applicable as Portugal has relevant SFM laws.

### Does the wood come from a country with a Nationally Determined Contributions (NDC – a country's plan for how it meets the Paris Climate Agreement goals) that includes LULUCF and were forests a sink in the last decade?

Portugal is part of the EU's NDC that includes LULUCF.

### If the NDC is not linked to LULUCF, or the country's forests are a source of emissions, can they demonstrate compliance with LULUCF at forest sourcing level?

Would not apply because Portugal has relevant LULUCF accounting as required by Article 5.

### Verdict:

The REDII criteria would not have prevented logging from increasing as a result of forest biomass being considered a renewable form of energy.

**Case study 5: Lapland forests on Indigenous territory burnt in district heating plants****Summary**

300-year-old round wood is being burnt in district heating plants in Inari. It is also harming the reindeer herding of the Sámi – the only Indigenous Peoples of the EU.



Credit: Greenpeace

**Is the project smaller than 20MW? Would the sustainability criteria apply?**

No. The wood is being burned in three heating plants owned by the company Inergia. The biggest has a nominal capacity of 4.5MW so it would not need to comply with REDII criteria.

**Is the harvesting happening in a country with Sustainable Forest Management (SFM) laws?**

Finland has all the relevant SFM laws as required by the operational guidelines.

**Does the country have an infringement case against it?**

Finland does not have any infringement cases against it.

**If there are no SFM laws, and no infringement cases against them, can they demonstrate that harvesting is happening legally?**

Not applicable as Finland has relevant SFM laws.

**Does the wood come from a country with a Nationally Determined Contributions (NDC – a country's plan for how it meets the Paris Climate Agreement goals) that includes LULUCF and were forests a sink in the last decade?**

Finland is part of the EU's NDC that includes LULUCF.

**If the NDC is not linked to LULUCF, or the country's forests are a source of emissions, can they demonstrate compliance with LULUCF at forest sourcing level?**

Would not apply because Finland has relevant LULUCF accounting as required by Article 5.

**Verdict:**

The REDII criteria would not have prevented logging from increasing as a result of forest biomass being considered a renewable form of energy.





ESTONIAN FUND FOR NATURE

**ClientEarth** 