

## INTRODUCTION

The State administration for agriculture in Poland takes its commitment to the environment very seriously, independent of the concerns and reservations that came into force through law, because the implementation of these commitments is viewed as a good opportunity for agriculture and agricultural regions.

The participation of the Agricultural Market Agency at today's conference (and at other conferences) confirms the statement above. The Agency maintains a register of manufacturers of bio-components and biofuels. In the future it will implement and control compliance with sustainability criteria in production, from cultivation to production of biofuels, bioethanol and ester, taking into account all the nuances, which we will have to deal with and already foresee.

The Agency is represented by:

Director of the Office for Sugar and Biofuels – Mrs. Elżbieta Jerzak, her deputy – Mrs. Marzena Skąpska and the Head of Biofuels – Mr. Wojciech Rylski. Also present: Prof. Antoni Faber from the Institute for Cultivation, Fertilisation and Soil Science (IUNG) in Pulawy. With its 160-year history, this is the second-oldest institute in Europe. Professor Faber will prepare a report for the Ministry of Agriculture on the basis of a comprehensive evaluation, documenting the amount of greenhouse gas emissions during the cultivation of agricultural energy resources.



Ministerstwo Rolnictwa  
i Rozwoju Wsi



# „Legal and practical aspects of the implementation of sustainability criteria

*HEIDELBERG, 2011-04-14*



*Kazimierz Żmuda* – Deputy Director of the Agency for Agricultural Markets

*kazimierz.zmuda@minrol.gov.pl*

2010-09-09

# Directive 2009/28/EG in Poland

- Poland has delayed the implementation of the national law of legal and administrative regulations that serve to implement Directive 2009/28/EC;
- I am not able or responsible to state the reasons for this. Therefore, I can't tell you(or speculate) when these regulations will be implemented into national law.
- However that does not mean that Poland will not introduce more biofuels and bio components onto the fuel market. In 2010 Poland reached (and even slightly exceeded) the proportion of 5.75% biofuels in total fuel consumption according to energy content.
- I also want to stress that the common agricultural policy for the sustainability criteria in Poland and other Member states is the production of biofuels and bio components in Poland (this applies to raw materials, which are obtained in the member states).

# Directive 2009/28/EG – important regulations (1)

- Directive 2009/28/EC provides that Directive 2003/30/EC be repealed effective January 1, 2012, with exception of article 2, paragraph 2,3 and 5 as well as articles 5 and 6 which were repealed effective from April 1, 2010;
- The Directive 2009/28/EG also provides a number of obligation for member states, with regard to the production of biofuels according to sustainability criteria;
- Requirements for raw materials are specified in article 17;
- According to article 17 paragraph 6, the receipt of direct payments to a farmer (payments under the CAP) is sufficient for a finding that energy resources have been produced in accordance with sustainability criteria;
- Article 17 paragraph 2 states that the **agreement reached on the reduction of greenhouse gas emissions through the use of biofuels and liquid biofuels must be at least 35%**. Starting January 1, 2017 this value must be at least 50% and from January 1, 2018 on this value must be at least 60% for plants that begin production on or after January 1, 2017. Article 17, paragraph 2, subparagraph 4 – **“if biofuels and liquid biofuels are produced in plants at were operational on January 23, 2008 then subparagraph 1 will be effective starting April 1, 2013”** The latter means that our delays will not play a role in implementing the important objectives of the Directive, namely climate protection!

# Directive 2009/28/EG – important regulations (2)

- Under Art. 22 Sec. 1 the member states are required to submit a report every two years, starting December 31, 2011, to the commission on the progress in the promotion and use of energy from renewable source; According to Paragraph 2, for the purpose of this report, member states can use typical values for Annex V, Parts A and B.
- According to paragraph 3, in their first report member states will state whether they intend to:
  - a) Applications for the authorization, certification and licensing of facilities for the use of renewable energy,
  - b) Approval of planning and permit applications for facilities in which renewable energy is used,
  - c) Indicating the geographical locations suitable for the use of renewable resources for land use planning

# Directive 2009/28/EG – Problems

- The obligation to implement sustainability criteria and reporting to the extent that is provided under Articles 17 and 22, prepares a variety of legal issues that overlap with existing legislation. This is connected to considerable costs for companies and member states because of the heavy administrative burden.
- This is a result of the fact that the economy is much more complicated than the assumptions in EU law. I will discuss this topic momentarily

# From the field to the fuel tank

- **The regulations for the implementation of a system that is controlled in the framework of compliance with sustainability criteria relates to a number of areas and covers numerous operators. Therefore for the production and supply of bio components there are many conditions that can be defined as follows:**
- various farming methods and renewable sources for raw materials for energy purposes;
- various methods for processing renewable raw materials into intermediate products;
- various technologies to produce bio components;
- various ways to produce bio components (from raw materials to finished products):
  - Farmer – Biofuel producer – manufacturer of the fuel;
  - Farmer – initial processor – Biofuel producer – manufacturer of the fuel;
  - Farmer – broker - initial processor – Biofuel producer – manufacturer of the fuel;
  - Farmer – broker – initial processor – broker –Biofuel producer – manufacturer of the fuel;
  - Farmer – broker – initial processor – broker –Biofuel producer – broker – manufacturer of the fuel;

# **Important prerequisites for the implementation of Directive 2009/28/EG**

- Options where non-renewable raw materials are used in the production of bio components
- The design for the supply of raw materials, intermediate products, and bio components in the intra-community trade and imports is no less complicated;
- The energy balance of biomass which were used for the production of bio-components, taking into account their diversity, source and origin;
- Financial impact of the regulations in the final phase (e.g. costs for the implementation of the system; costs are borne by the implementation operators ( including reporting obligations) and supervision (cost of the aggregation and preparation of reports) sanctions for missing the national benchmark target, granting or withholding aid, etc.);



# Important prerequisites for the implementation of Directive 2009/28/EG

- Regardless of the variety of possible economic developments, the “guarantee of origin” is the only proof that “a certain percentage or amount of energy from renewable sources was produced in accordance to the requirements of Article 3, paragraph 6 of Directive 2003/54/EC”. The omission of an area on the basis of previously given evidence, which is covered by the proposed legislation, creates a legal loophole, causing a negative impact by giving some stakeholders a competitive advantage over companies that comply with existing laws of the legislature.
- The preparation a legislation draft would require extensive knowledge:
- Market developments with existing legislation,
- Provide the desired market model and the capacity to analyze the impact of new legislation

# Sustainability criteria for the collection of raw materials (1)

- The reform of the Common Agricultural Policy in 2003 substantially changed the promotion of agriculture in the EU. It was at that time that the so-called single payment regulation (SPS) was introduced which took the place of the previously provided direct aid that was given to certain agricultural production activities. Production and aid will be decoupled with the introduction of the single payment regulation. Farmers can therefore direct their production to market needs and thus earn a satisfactory income.
- Granting payments no longer depends on the product that is produced. Rather the prerequisite for the receipt of payments is compliance with specific management requirement, such as:
- Preservation of agricultural land in good agricultural and environmental condition (Good Agricultural and Environmental Conditions – GAEC) according to Annex III of Regulation (EG) Nr. 79/2009 , which has been in effect since 2004,
- Compliance Baseline requirements for farm management (Statutory Management Requirements – SMR) according to Annex II of Regulation (EG) Nr. 73/2009

# **Sustainability criteria for the collection of raw materials (2)**

- Together these requirements form the Cross Compliance Regulations. Cross Compliance means that the receipt of direct payments is tied to compliance of certain obligations. These relate to the protection of wild animals and plants, the protection of water against pollution, the conservation of wild birds and natural habitats, etc. Compliance with these requirements is monitored by the Agency for Restructuring and Modernization of Agriculture as part of the single payment regulation.
- The Ministry of Agriculture takes the stance that the single payment to a farmer in the EU, including in Poland, is sufficient to establish that agricultural production including the cultivation of raw materials for biofuel production, in compliance with the criteria according to Article 17 section 3-6 of Directive 2009/28/EC.

# **The implementation of the important climate related criteria may not restrict the economic development of the community (1)**

- It is our opinion that a versatile assessment should be carried out of the impact from already existing legislation introduced by Directive 2009/28/EG. During the implementation of the objectives associated with climate protection we must not forget other targets that were the basis for the creation of Directive 2009/28/EG, i.e.:
- **Reduce the dependence on oil imports in the transport sector where the issue of secure energy supplies is most important**
- Economic growth through the use of raw material and processing potential of the community as well as by developing innovative new technologies that primarily use by products and scrap from food production (2<sup>nd</sup> generation biofuels)
- Opportunities for further development and increased employment that, in the member states, are often local or regional small and medium sized enterprises.

## **The implementation of the important climate related criteria may not restrict the economic development of the community (2)**

- The information from the EC on the projected increase in imports of bio components from 3 to 8.5 billion liters gave us great concern. This forecast indicates that the established mechanisms do not guarantee reaching the goals that I stated in the last slide;
- We believe that an objective review based on a previously performed analysis of the impact is required, which we have to do for the application of Directive 2003/30/EW and the ones predicted for the duration of Directive 2009/28/WE (economic, financial, climate related impacts and consequences in rural and agricultural areas);
- Renewable energy goals from biomass should result in this area of transport fuels from the EU accessible raw materials and manufacturing capabilities;
- **If an important goal of implementing the directive is the improvement of fuel safety then the creation of reserves of the imported bioethanol and biodiesel, taking into account the import dimension, (which are converted into energy value) must be made compulsory in the same way that the reserve creation of mineral fuels is compulsory.**

Without putting into question political goals that result from the adopted climate and energy package, factual answers to the following points are important :

- What are the benefits for the reduction of greenhouse gas emissions does the long distance import of biomass bring, which often (contrary to statements and indignation of the supplier **in response to the question**) is detrimental to the environmental and climate, and the violation of fundamental human rights – hiring underage workers, etc?
- If the production potential of EU agriculture is not fully utilized and the liberalization of trade in agricultural products and food products proceeds, then should the EU as a rule not implement the objectives of the “K-E” packets on the basis of its own raw material resources?
- What proposals does the EU have to maintain the income and living standards of its own farmers?
- Should responsibilities related to environmental and climate protection that are imposed on EU farmers, not be related to the objectives of the climate and energy packages? If yes, then this area of the EU climate, energy, finance and agricultural politics should be coherent. Too many examples testify that this is not the case.

# Sustainability criteria for Biofuels

- Sustainable production of biofuels – we don't question this obligation which includes the following:
- Reduction of greenhouse gas emissions of 35% throughout the entire production process of biofuels (60% by 2018)
- Use of raw materials that do not originate from areas with a high biological differentiation, areas that are rich in Carbon, that come from moors
- Production of raw materials should be in accordance of the minimum requirements for the principles of good agricultural practice and the environmental protection requirements
- How will the practical control of that duty look in relation to imported biofuels(or semi-products)?
- What kind of control will there be when these products are transported to other countries as community products and enter the territory of a member state?
- Is this the correct approach and does it give the farmers and manufacturers in the community a fair chance at competing in this market?

# Poland's position on the use of agricultural biomass for energy is clear:

- The basic task of agriculture is to ensure food production at a level that results from the food needs a country, the EU, and the world.
- Primarily by-products and leftovers from the agriculture and food industry should be used for energy purposes
- The agricultural crops for energy purposes should contribute to maintaining the good culture for agricultural land and their gradual provision for food production, in accordance with the rising demand (predictions state that in the next 20-30 years food demand will increase by 50% )
- Agricultural biomass for energy usage is to be used locally, which means a preference for dispersed energetics on the basis of mini and micro objects with a low capacity. The transport of biomass at distances of more than 50-100 km does not promote the development of climate and energy policies.
- **The import of agricultural biomass for energy purposes, particularly for fuel, shall be limited to the rational supplement of existing needs and does not constitute a basis for implementing the principles set out in the climate and energy policy objectives.**



# Directive 2009/28/EG – important regulations

- Annex V C Methodology – Section 6 – “The emissions from the extraction or cultivation of raw materials (eec) include emissions from the extraction or cultivation process itself, the collection of raw materials, waste and leakage as well as the production of chemicals used in the extraction or cultivation. The CO2 binding during the cultivation of raw materials is not considered. Certified reductions of greenhouse gas emissions from flaring at oil production in all parts of the world will be deducted. As an alternative to the actual values, estimates derived from the average values can be used for smaller geographical areas than those used in the calculation of standard values.”
- Point 19 – “For the purposes of calculation in number 4 for biofuels, the fossil benchmark EF is to be used, that under Directive 98/70/EG is last available actual average emissions from the fossil petrol and diesel consumption in the community. **If there is no such data, the value 83.8 gCO<sub>2</sub>eq/MJ is to be used.**”
- I familiarized myself with the Directive 98/70/EC *which refers to the quality of petrol and diesel; the methodology described in Appendix 4 is identical to the above mentioned Directive. The rule is that you do not argue with the current law, but I can't understand the criteria, why the industry of mineral fuel transportation, during its formation, was exempt from the compulsory calculation of emissions, how else can the phrase, “If there is no such data, the value 83.8 gCO<sub>2</sub>eq/MJ is to be used.”, be considered. I have no illusions and know how this provision is used in practice. Simultaneously, the agricultural sector and the biofuel manufacturers obligated to this standard very accurately, even to the extent that the associated costs are not taken into account. In the case of the agricultural sector the emission limitations are excluded that are associated with the assimilation of CO<sub>2</sub> during crop cultivation.*
- *Should we implement climate protection in this way?*

# ***”Report from the Commission on indirect land-use change related to biofuels and bioliquid – (kryterium - ILUC)”***

- „Zdaniem **Ministerstwa Rolnictwa i Rozwoju Wsi** Rzeczypospolitej Polskiej przed ewentualnym podjęciem prac nad kryteriami (ILUC) należy dokonać wszechstronnej oceny skutków już obowiązujących przepisów wdrażanych dyrektywą 2009/28/WE. Realizując cele związane z ochroną klimatu nie należy zapominać również o innych celach, które były podstawą opracowania dyrektywy 2009/28/WE, tj.:
- zmniejszenie uzależnienia Wspólnoty od importu ropy w sektorze transportu, w którym problem zapewnienia dostaw energii jest najdotkliwszy,
- wzrost gospodarczy dzięki wykorzystaniu potencjału surowcowego i przetwórczego Wspólnoty, a także poprzez rozwój innowacji i nowych technologii wykorzystujących głównie produkty uboczne i pozostałości z produkcji żywności (biopaliwa II generacji),
- możliwości dalszego rozwoju i wzrostu zatrudnienia, jakie w państwach członkowskich często stwarzają lokalne lub regionalne małe i średnie przedsiębiorstwa.”
- Polska zauważa i potwierdza, że:
  - „1. rozwój odnawialnych źródeł energii powinien odbywać się zgodnie z zasadami zrównoważonego rozwoju – zasadę tę wprowadziły przepisy Dyrektywy 2009/28/WE”
  - „2. Brak informacji w raporcie czy i w jakim zakresie na obszarze Wspólnoty wystąpiło zjawisko pośredniej zmiany użytkowania gruntów (ILUC) oraz czy jest to możliwe w świetle obowiązujących w UE przepisów .”;
  - „3. Obecnie nie ma podstaw do podejmowania żadnych dodatkowych działań w zakresie wprowadzania kryteriów ILUC - należy kontynuować obserwacje zachowań rynku.”

# **In place of a conclusion**

- I represent the position presented by the person, who supports the development of renewable energy, particularly on the basis of agricultural biomass; therefore I share the following opinions with you:
- The renewable energy industry should not create any new economic, energy or climate problems;
- Renewable energy was returned to after many years to fix economic, energy and climate issues and not to proliferate them .

# **Jak postrzegamy postęp we wdrażaniu biopaliw ?**

- **Za nami i przed nami długa, kręta droga ...;**
- **Rozwiązujemy jedne problemy pojawiają się nowe !;**
- **Postęp zależy od współpracy i zaangażowania .... ?**



**Thank you for your attention**  
and I encourage you to a discussion



*The use of the entire presentation or parts thereof requires the author's consent and the indication of the source.*