



ACTIONAID EXPOSE: EUROPEAN COMMISSION FAILS TO RESPECT LISBON TREATY

This exposé summarises a case of failure by the European Commission (EC) to respect the Lisbon Treaty with regard to Policy Coherence for Development (Article 208). A recent report from DG Energy based on a background study by consultancy Ecofys on the social impacts of the Renewable Energy Directive (RED) does not establish an accurate picture of the impacts of EU policy on developing countries¹. The latter features a seriously limited scope, timeframe, set of references, questionable assumptions, methodological flaws and inconsistencies such that it is impossible to even begin to establish a clear picture of the reality on the ground.

The obligation to ensure Policy Coherence for Development requires sufficient analysis to be carried out to establish whether EU policies are having an effect on developing countries and to ensure that any such effects do not harm development countries or contradict EU development objectives. In this particular case, the European Commission has not taken the steps required to even be able to produce a proper analysis of the impacts of the RED. Beyond this, the EC does not even include in its own summary report the full findings of the study it commissioned to paint a picture of the reality on the ground. By failing to do so, DG Energy of the European Commission effectively **ignores and violates the Lisbon Treaty** in relation to its obligation to ensure Policy Coherence for Development.

In its analysis, the EC has looked at three main issues, namely, land rights, labour and food availability. We have addressed both the background study produced by consultancy firm Ecofys (hereafter 'the study') and the summary report ('the report') by the EC. By virtue of our expertise on the ground, we have chosen to focus in particular on the issue of land rights. To this end, we have worked with a land expert who wrote the report which this paper accompanies².

Ten fundamental flaws in the EC's reporting exercise:

1. **Limited data and information sources:** The background study produced by Ecofys fails to take into account a huge body of evidence revealing the impacts of biofuels on communities in some of the world's poorest countries many of which demonstrate linkages to the RED and EU market demand for biofuels³. Ecofys takes into account only one major source, namely, the Land Matrix Database. In its analysis of Land Matrix, the study uses subjective and extremely limited criteria in establishing what amounts to "a land deal with concerns", often based on consulting information on the website of the investor and considering hectares rather than the magnitude or gravity of violations.

¹ In the March 2013 EC Renewable Energy Progress and Biofuels Sustainability Report

http://ec.europa.eu/energy/renewables/reports/doc/2013_renewable_energy_progress.pdf

² Kropiwnicka, M., The European Commission's *Renewable Energy Progress and Biofuels Sustainability Reports 2013: A Critical Analysis of the Coverage of Land Rights and Socio Economic Impacts* (May 2013)

³ For instance, Fuel for Thought, ActionAid (2012), Schoneveld (2011) *The Anatomy of Large-scale Farmland Acquisitions in sub-Saharan Africa*. CIFOR. and Schoneveld, unpublished data, 2013; Nelson *et al.* 2012, JA/ UNAC, 2011, Andrew and Van Vlaenderen, 2011, World Bank/ Deininger *et al.* (2012), etc

2. **Limited analytical scope:** The EC has already acknowledged the existence of Indirect Land Use Change. As such, it also admits that due to growing biofuels in the EU, food or animal feed crops are transferred elsewhere creating additional pressures on land. In spite of this, the EC fails to account for the impact of the RED in creating a solid market for biofuels grown on land, thereby placing additional pressures on land, particularly in developing countries where land is a sensitive issue. Analysing impacts on land rights requires looking at the overall impact of the RED in terms of its contribution to increasing global land pressures.
3. **Excessively narrow timeframe:** the study limits its analysis of land deals in the Land Matrix to 2008-2010, ignoring the 2012 Analytical Report of the Land Matrix. Although EU Member States are not required to report after 2010, the EC can go beyond this itself in analysing socio-economic impacts. By leaving out 2010-2012, the period during which the RED has come into force, the EC has not taken into account the real and current impacts of the Directive, for which data exists⁴. Given that the lead time from the moment of land acquisition to the actual production of biofuels is at least 3-5 years and that land rights violations occur often at the onset of the project, it is impossible to wait for the project's full implementation or for imports to the EU to materialise in order to establish causality between EU demand and biofuels driven changes in land tenure. The socioeconomic damage done by the many projects that fail in their initial years, in particular jatropha, has been huge and is neglected by the EC⁵. In its summary report, the EC now proposes to postpone further analysis of the effects of its biofuel policy to 2014.
4. **Lack of attention to social, economic and developmental concerns and a failure to link environmental concerns to impacts on people:** Despite recognition early on that EU biofuels policy may have undesirable impacts on developing countries and that policies may need to be adapted accordingly⁶, the EC fails to gather the required inputs to even permit analysis of this aspect. No case or field studies have been carried out. This problem is compounded by the fact that Member States are not required to report on the impacts of their national biofuels consumption on third countries. There is furthermore uneven coverage of environmental concerns vis-à-vis social, economic and developmental ones. The report admits negative environmental consequences due to an expansion of biofuels in "third countries", (i.e. water pollution, soil health or biodiversity loss) but fails to link this back to social/economic impacts and concluding the need for corrective action.
5. **The Report does not accurately reflect the background study commissioned by the EC.** In arriving to the conclusion that 'it is not yet clear if EU biofuels demand contributes any abuse of land use rights' the EC fails to take into account Ecofys' finding that, 'as a rough guess, possibly 10% of the biofuels production and new projects in regions with concerns in land-use rights could have eyed the EU market' nor the statement that '0.05-0.16 Mha of land deals with concerns about socio-economic impacts and land-use rights can be linked to anticipated exports to the EU'. These findings are already excessively conservative because of the flawed methodology used, but even they are not used.

⁴Schoneveld, (2011) The Anatomy of Large-scale Farmland Acquisitions in sub-Saharan Africa. CIFOR. and Schoneveld, unpublished data, 2013

⁵ Matlock (2012), Nelson *et al.* (2012), FOEI (2010), JA/ UNAC (2009)

⁶ SEC (2008) 434/2 p.4

6. **Flawed methodology used in the study to assess land rights impacts of biofuel demand in developing countries** based on a small self-selected sample of land deals with unclear and restrictive criteria defining the link between EU biofuel demand and land:
- **It has based its figures on the top five deals in all areas of agriculture**, allowing them to dismiss many of the deals as not linked to biofuels. They state that only 10 % of deals may be linked to concrete exports to the EU without clear argumentation for this figure and implicitly reducing impacts of demand to export/import linkages only, which is highly problematic⁷.
 - **Lack of representativeness of the areas with largest numbers of land deals** e.g. Eastern Africa – with no coverage of biofuel projects in Mozambique, Tanzania or Ethiopia. The researchers selected the top 5 agricultural deals per region. Only 3 deals were selected and subsequently all were dismissed as not biofuel related,
 - **Omission of deals with unspecified dates, smaller deals and those linked to multi-stakeholder governmental programmes**: this also excluded many cases involving large-scale impacts which were concentrated in populated areas and on highly fertile grounds⁸, often in violation of national policy guidelines and objectives⁹.
 - **The report makes no use of country level case studies from the developing countries most targeted for large scale land acquisitions for biofuels** where land rights abuses have been reported¹⁰. DG Devco has conducted its own report on the social impacts of biofuels which involved ground level research and case studies on two affected countries namely Tanzania and Senegal. This work regrettably does not feature at all in the DG Energy report.
 - **Guesswork and errors** made including on key figures and conclusions¹¹, as well as insufficient referencing and transparency in calculations further undermine the quality and legitimacy of this reporting exercise.
7. The report **fails to analyse how the RED and related market potential have impacted government priorities in developing countries**, partly stimulated by donor priorities and investments in support of (EU-oriented) biofuel developments and often to the disadvantage of small-scale farmers and food security. This includes research, policy development and regulation initiatives, partly financed by the EU and/or member states as well as direct or indirect subsidies to businesses investing in biofuels feedstock with wide implications for agricultural development and the political economy at large¹². Neglecting these additional dimensions of the EU's biofuels policy's (RED) indirect but much broader impact on developing countries leaves the analysis incomplete.
8. **Minimising the food price impacts of biofuels** and subsequent social upheaval in many countries and the significant role that biofuels played in this, in spite of strong evidence from UN level and the broad consensus across the policy making and research communities.¹³ It is well established fact that biofuels played one significant role in the food price crisis in 2008,

⁷ Fuel for Thought (ActionAid, 2012) and section on timeframe goes into why import linkage is insufficient.

⁸ See Dakatcha Kenya case in Fuel for Thought (ActionAid, 2012), UNAC (2009, 2011), Schut et al. (2010)

⁹ Schut et al. (2010)

¹⁰ On Mozambique alone see Aabø and Kring (2012), Oakland Institute (2011), FIAN (2010), FOEI (2010), Nhamumbo and Salomão (2010); JA/ UNAC (2009, 2011).

¹¹ Use of figures and phrases such as 'estimated guess' of 10% without any reference, deals with no reference to country, as well as misleading calculations of 'corrected acreage' in table 71 and 72. See Kropiwnicka (2013).

¹² For instance Ecoenergy (2008); Schut et al. (2010); NL Agency (2012,2013); FMO(2013); Aabø and Kring (2012), Hanlon in Mehler et al. (2012), Zimmerle (2012).

¹³ EU biofuel use and agricultural commodity prices: a review of the evidence base" IEEP (June 2012). See also letter from UN Special Rapporteur on the Right to Food to Commissioner Ciolos:

<http://www.srfood.org/index.php/en/component/content/article/1-latest-news/2813-special-rapporteur-urges-phase-out-of-eu-biofuel-incentives>

among other factors¹⁴. The EU 10% target, 88% of which is to come from first generation biofuels¹⁵, incentivises these food price impacts. Whereas the study found that biofuels 'add to the demand and inelasticity of the market' and, combined with crop distortions, 'can explain a significant part of observed historical price increases'¹⁶, the summary report concludes that there is limited evidence of impact and does not propose any action.

9. The Ecofys study and the summary report **fail to report on wider developmental impacts** though the RED requires the EC to do so¹⁷. It gives no insight on impacts on people. For example, the focus on hectares of land instead of people means that the gravity of impacts on entire communities are ignored. Furthermore, this analysis does not point to the related issues of water grabbing¹⁸ and competition with smallholder farming. It is also **almost entirely gender blind** failing to look at impacts on (increasing) gender disparities, the impact on women's access to natural resources such as land or water, or the impact on the quality and type of employment generated.

ActionAid Recommendations:

The European Commission

1. Must redo its socio-economic impacts reporting bringing in the appropriate development expertise, with proper coverage of issues, drawing upon the wealth of research available on the subject of land and food price impacts and with a clear methodology taking into account ground-level realities. The EC must take into consideration the effects of the EC biofuel markets on global land related developments such as land concentration and speculation. The EC must also address the issue of wider developmental aspects with a particular focus on gendered impacts in accordance with EU development policy and objectives.
2. The EC must incorporate in its upcoming review of impact assessments guidelines (both ex ante and ex post) measures to fully ensure Policy Coherence for Development.
3. The EC must urgently take action to ensure that EU delegations play an active role in monitoring the impacts of EU policies on the ground in accordance with the Council Conclusions of the FAC May 2012.

The European Parliament and Council

4. Must acknowledge the real human rights and social impacts of biofuels and act accordingly: this means that the EC proposal for a 5% cap on biofuels going through the EP and Council must be supported and extended upon to include all land based biofuels, and a roadmap for the cap to be phased out to zero by 2020 in the RED and Fuel Quality Directive.
5. Must support the EC proposal to end all support to dedicated food and land based biofuels but ensure that this has immediate effect
6. Must ensure that the full CO2 emissions from indirect land use change (ILUC) are consistently accounted for in the carbon accounting system for the RED and the FQD

¹⁴ See 'Agrofuels and the Right to Food Q&A' (2012), UN Rapporteur on the Right to Food <http://www.srfood.org/index.php/en/areas-of-work/food-production-and-resources/biofuels>

¹⁵ See EU member state action plans for reference

¹⁶ See p.284

¹⁷ RED article 17 (7)

¹⁸ Mehta et al. (2012)