



FIVEBARGATE
CONSULTANTS

**Response to RFA consultation on “Red-ready”
RTFO C&S systems for 2010/11**

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FiveBarGate Consultants Ltd

FiveBarGate Consultants Ltd has produced structured formal management procedures for C&S management and reporting for a number of companies including private companies in biofuels and energy. A selection of the key relevant experience and networks offered by FiveBarGate Consultants Ltd are as follows:

- Produced formal C&S management systems for a number of bio-fuel companies operating in Europe. These have helped all these companies sell their bio-fuels with full C&S provenance reports using actual supply chain data. Client business turnover in excess of 1Mn tonnes per annum of bio-fuel currently with growth forecast to 2-3Mn tonnes per annum.
- Providing detailed advice on carbon and sustainability management systems for bio-energy companies active in heat and power. These include establishing, reviewing and amending C&S management systems for business with supply chain turnover in excess of 0.5Mn tonnes per annum, with growth to 6 Mn tonnes per annum already forecast.
- Developed supply chain sustainability assurance verification services in partnership with Inspectorate Ltd, a recognised international audit, analysis and inspection company.
- Worked with the Low Carbon Vehicle Partnership to originally develop the Carbon & Sustainability (C&S) reporting standards currently applied by the Renewable Fuels Agency in the UK. These are internationally recognised as world leading standards.
- Advised the UK Renewable Fuels Agency in relation to a review of the Renewable Transport Fuel Obligation, including the impact of market phenomena and regulation on supply chain business. This review also considered the impact of C&S management systems.
- Developed on-farm C&S reporting systems for agricultural supply chains sector to open up new value streams to farmers by capturing and improving C&S data.
- FiveBarGate Consultants Ltd has, in total, advised some 3-4 million tonnes of biomass supply chains to date, to an international client base. This is expected to grow well beyond 10 million tonnes in the next 5 years.

Consultation questions

General

1. Do you agree with the RFA's overall approach to move the RTFO towards the RED from April 2010, without implementing changes that have a significant risk of having to be reversed?
 - a) *It is our understanding that the RFA's suggested approach was made in October 2009 in the expectation that:*
 - *The UK would transpose the transport elements of the RED by 5 December 2010*

- *The Commission's Communication on the implementation of the RED would be available by December 2009*
- *Those aspects of the RED requiring decisions under Comitology would be well underway, if not finalised, by summer 2010*

In these circumstances, the RFA's approach was pragmatic and helpful.

However, the Commission's timetable for both its Communication and Comitology has slipped significantly. The Communication is not likely to be available until well into March and as far as the REA is aware the Comitology process is barely underway.

Furthermore the DfT has indicated (and this view is reported in the RFA's formal consultation documents) that it is unlikely that the transport elements of the RED will have been transposed (via an amended RTFO) until March 2011 at the earliest. The indications are that the FQD will be transposed even later than this.

Therefore, the reasons for a "RED-ready" approach have largely receded and there is a stronger argument for retaining the current Technical Guidance. Continuity of reporting will allow the RFA to put in place better 3 year trend comparison which would be useful feedback to global sustainability standards. It may also be argued that until there should be complete clarity on outstanding issues from the Commission which would indicate more precisely what changes will be required. This would still allow the RFA to have a fully RED-compliant reporting system in place, to run from April 2011-12. The additional value of being RED-ready, if the RED is not to be transposed until March/April, 2011 is questionable. The RFA's own evidence suggests that many companies have benefitted from establishing C&S reporting systems already. On balance, consistent supply chain evidence would be more valuable feedback than any partial move to RED readiness.

b) FiveBarGate notes the proposal in Q19 may go beyond RED-readiness. This was not was not part of the informal consultation held from October 2009. Such methodology developments should arguably be the subject of broader consultation and consideration within industry groups such as the CEN TC383 structure that had been established. While the intent is sound, there do seem to be issues associated with the proposal that tend to move the RFA more closely towards an OFGEM type role, where development projects may be delayed due to poor administrative structures within regulatory systems. Furthermore, there would need to be assurance of confidentiality and sensitivity of IP created before such systems are established within an RFA remit. FiveBarGate suggests a solution that would allow a scheme to be considered that delivers the sustainability requirements without the risk of RFA regulatory uncertainty.

2. Are there any aspects of the RED requirements, as they are currently defined, which you feel are not adequately reflected in the RFA's proposed approach? Are there any other changes you would foresee as being important when moving the RTFO towards the RED?

See Q1 a) above. It seems more appropriate to move to the RED in 2011 and maintain consistency in C&S reporting.

3. Do you have any comments on the new monthly reporting format in ROS (the RFA Operating System), and the inclusion of an indicative RED compliant box? [Section 3]

a) Work commissioned by DfT on regional emissions from biofuels cultivation has not yet been completed. In the light of the comments above it would seem premature to add a column to the monthly reports at this stage. This reinforces the suggestion to defer moves towards RED and retain consistent reporting, as the UK's own reporting systems to comply with the proposed RFA systems are incomplete.

b) The concept of "Responsible Cultivation Areas" introduces a new policy element to the implementation of the RED and FQD. (This is discussed further below in Q19 comments on Annex E "Guideline on reporting on Responsible Cultivation Areas").

Carbon reporting

4. The RFA has considered whether to introduce a carbon penalty for unknown land-use change. This could be either through applying a carbon emission equivalent to a land-use conversion e.g. from grassland or forest, or by applying an arbitrary carbon penalty. The former may be overly conservative as in the majority of cases no land-use change appears likely to have occurred since January 2008 (the RED land-use change cut-off). Identifying an alternative, appropriate carbon penalty would inevitably involve a considerable degree of subjectivity as it could not be based on sound science. Neither approach is likely to reflect the actual situation. Given that the RED will not allow unknown land-use reporting, and fuels that do not meet the RED criteria will be publicly identified ahead of mandatory requirements, the RFA considers on balance that this is not a necessary penalty at the current time.
- a) Do you agree with the decision not to implement a carbon penalty for unknown land-use change at this stage?

Yes

- b) Do you agree with the reasoning used?

Not entirely. The concept of a default value for land use change was raised by FiveBarGate as part of the RTFO Carbon Advisory Group before the RTFO came into force, but the notion was rejected. It would seem inappropriate to introduce it now before the RED is implemented, but not because it is an ineffective concept, rather to retain consistency of reporting and allow industry and academia more time to develop appropriate iLUC systems.

- c) If you disagree, what would an appropriate carbon penalty be?
5. Do you agree with the RFA's proposed approach to integrating the RED default carbon values and methodology into the RTFO reporting system?

Yes.

6. Do you have any comments on the RFA's application of the methodology?

Note, that the country of origin no longer affects the biofuel carbon intensity, but that information on the process used to convert the biofuel can be included. Fuel level defaults (unknown feedstock) have been retained for the time being, though are unlikely to be allowed under RED. [Section 2.1, Annex G]

We would support the use of country level defaults across the EU. However, as it would seem unlikely that this will be the case, the country of origin column should be removed. Other Member States can be expected to implement the RED by 5 December 2010. The retention of the country of origin column would therefore put the UK biofuels industry at a competitive disadvantage.

7. Are there any feedstocks likely to enter the market in significant volumes for which a carbon default has not been provided? (Annex G)

Not without carbon linkage. Carbon Linkage should provide the market incentive to invest in higher risk supply chains from international sources and would deliver new feed-stocks in more significant volumes. FiveBarGate would like to see RFA pursue and promote the findings from its annual report that obligated parties currently do not value C&S. RED doesn't provide an incentive to invest in anything other than a minimum compliance. Carbon linkage is a key tool to drive supply chain investment.

8. Will the use of spreadsheets to provide the detailed fuel chain information previously listed in Part 2 make this part of the Technical Guidance more user friendly? Do you have any comments on the format and/or content? [Part 2]

It would be preferable to retain existing systems for a further year to allow trend analysis over a 3 year period. Switching systems now may add costs into supply chains but deliver little value. Suppliers into the UK have already indicated that their experience of the RTF to date is useful in becoming RED ready. It would be preferable to have one switch over to RED compliance rather than a series of steps that may be partially or wholly reversed and that destroy trend analysis.

Further REA comments on Carbon Reporting

Carbon calculator: FiveBarGate has experience of using the RFA's own calculator and other software tools. We recommend that there should be a single common methodology to apply across the whole EU. Industry sectors may adopt their own calculators but these must be demonstrably compliant with the EU methodology and include appropriate verification procedures to demonstrate that the results from calculators are compliant.

FiveBarGate strongly supports "carbon linkage" in UK legislation. If this is not introduced, obligated fuel suppliers opt for the lowest carbon savings at least cost and frustrate the key GHG savings objectives of the Government. This is demonstrated in the RFA's own annual report. Consistent GHG calculation methodology will have added importance in this context.

Sustainability reporting

9. RED biodiversity criteria

- a) Do you agree with the approach to reporting compliance with the RED Biodiversity criteria via the existing Qualifying Standard system?

The concept of a Qualifying Standard is particular to the operation of the RTFO in the UK. This is a useful construct to demonstrate compliance under the RED and should be a continued reporting format for 2010-11 in order to maintain a consistent reporting format for the RTFO. It may prove to be a useful tool for some supply chain parties for compliance with the RED also. However it is unclear whether, it should not be the only option that is recognised. For example, it may be simpler to simply ask for a RED ready compliance statement/check box in RFA reporting that is subject to more detailed assurance by verifiers. Such an approach would simplify the RFA systems, but require operators to maintain C&S assurance systems that record the necessary compliance information. Those parties early on in supply chains that choose to put in RED ready compliance can then simply report and assure compliance to their counterparties, creating down-stream supply chain efficiencies. Having more time to consider these matters is part of the argument for retaining existing systems for now.

- b) Do you agree with the addition of the new option to report independently verified compliance with the RED biodiversity criteria? [Section 2.3, Section 3.3.4]

Yes, see comments at Q9 a) above.

10. Do you agree with the approach to reporting on high carbon stock land via the previous land-use category, as proposed, where it is not already covered by the feedstock standard? [Section 2.3, Section 3.3.4]

Yes. This would be appropriate once the RTFO is made RED ready. It should be left as is for now, allowing consistent analysis from each years' reporting.

11. Do you agree with the proposed approach to degraded land? [Annex H.1]

The proposal made seems sensible for becoming RED ready, but these should be deferred until 2011-12, to allow the 2010-11 reporting data to be consistently measured against the first 2 years of operation of the RTFO.

12. Do you agree with the proposed changes to the RTFO Meta-Standard, to change the reference date for previous land-use and biodiversity, and to add forest to criterion 1.1? [Annex C, Annex H]

The proposal made seems sensible for becoming RED ready, but these should be deferred until 2011-12, to allow the 2010-11 reporting data to be consistently measured against the first 2 years of operation of the RTFO.

13. Do you agree with the proposed changes to the monthly reporting format to show indicative 'RED-readiness'? [Table 4, Section 3.4.1]

The proposal made seems sensible for becoming RED ready, but these should be deferred until 2011-12, to allow the 2010-11 reporting data to be consistently measured against the first 2 years of operation of the RTFO.

14. Do you see value in keeping the concepts of the Qualifying Standard and the RTFO Meta-Standard? [Section 2.3, Section 3.3]

Yes. The particular strength of the UK work in this area is allowing benchmarking of standards. For consistent systems management practicalities, there may be an argument for downgrading the meta-standard to match the RED. However, FiveBarGate would not support this approach. It is better to reinforce the RTFO meta-standard and additionally benchmark standards against the RED, such that a standard may be RED ready, RTFO QS or RTFO meta-standard compliant.

15. Do you agree with the proposed approach to reporting wastes and by-products? [Section 2.3, Annex B]

More work needs to be done in this area to assure consistency of approach across member states. The risk of downgrading vegetable oils to wastes with minimal processing/ use could effectively create a larger indirect effect as it tends to be these supply chains that are less well regulated. This forms part of an argument to allow more time to get agreement on how to implement the RED before amending the RTFO. The additional benefit of consistent reporting format for trend analysis follows.

16. Do you agree with the proposal *not* to make any material changes at the present time to the Chain of Custody requirements, to be in line with the RED? [Chapter 6]

In the light of the comments at Q1 a) above, the chain of custody requirements under the RTFO should remain as they are for the time being. The issue of verification is a key area where clarification and decision are still awaited from the European Commission. The UK should wait until this available before making any changes. It is misleading to describe the process of “not making any material changes” as being “in line with the RED” as we do not know what the Commission’s final position will be. Furthermore, the RFA should join a developing industry position that should require economic operators and their verifiers to agree key factors in any chain of custody system, such as the scale and frequency of the boundaries. So, if an economic operator and their verifier feel most comfortable maintaining chain of custody records at tank level, then this should be allowed. However, if an economic operator and their verifier are most comfortable maintaining records at a site or even country level this should also be allowed. Many operators already have some kind of chain of custody systems in place that can be amended to incorporate C&S management and reporting.

17. Do you agree that the RFA should continue to allow approved Book and Claim systems (namely GreenPalm for RSPO certified palm oil and Cross Compliance) until the Commission have assessed their future acceptance under RED?

Yes.

18. Do you agree with the proposed approach to allow flexible allocation of C&S data between different ‘feedstock-derived products’? [Section 6.4.7]

Yes, noting that this should await final decisions at EU level. Also noting that this contradicts the approach taken in 6.4.6, where at a bio-fuel level proportionate feedstock reporting is required. It is difficult to see how different approaches can be supported at different steps in the supply chain. The approach at 6.4.6 should be altered to be consistent with the approach in 6.4.7 but within the bounds of mass balance reporting controls and with the additional demand that a party shall not sell more of an administrative batch than they hold in stock in anticipation of securing future volumes of this same administrative batch type.

19. Do you agree with the introduction of the proposed approach to being able to demonstrate land with a low risk indirect land-use change, termed ‘Responsible Cultivation Areas’? [Annex E]

No. *The concept of “Responsible Cultivation Areas” introduces a new policy element to the implementation of the RED and FQD. This concept should be the subject of further industry and academic development and remitted back to policy makers for Ministerial clearance. In the development of Technical Guidance for the RTFO, the process was the responsibility of the DfT, with input (as acknowledged by the RFA) of the Carbon and Sustainability Advisory Groups. This is the appropriate process for the development of policy (which is now being taken forward by the DfT with input from the RED/FQD Stakeholder Advisory Group).*

While the approach has some merit, it seems premature to pre-empt the outcome of the extensive debate, within the EU and worldwide, that is continuing on Indirect Land Use Change. The European Commission has a responsibility under the RED (Article 19 (6)) to “submit a report to the European Parliament and to the Council reviewing the impact of indirect land use change on greenhouse gas emissions and addressing ways to minimise that impact.” If the concept of “Responsible Cultivation Areas” after consideration in due process is recommended as a way to minimise ILUC impact, that would be the time for the RFA to offer guidance in this area. At present this is not only inappropriate but the methodology offered is incomplete and risks unacceptable bias against biofuel crops that produce animal feed co-products.

On the specific suggestion that the RFA approve projects, this puts the regulator into a position where project developers timescales are subject to regulatory body administrative procedures. These are very rarely matched, as shown by experience from OFGEM. There should be alternative means by which a developer could develop projects and allow the RFA and other regulators to retain confidence in the approach taken. For example, by having a developer maintain records in accordance with the guidance given and having these records verified and assured by third party independent parties, in the same way as obligated parties C&S claims are verified. This allows development at commercial scale on commercial timescales without the need for regulatory involvement, but retaining sustainability assurance.

20. Do you agree with our benchmarks of standards against the RTFO MS? [Annex C, and full benchmarks on the [RFA website](#)].

Note that the RFA has re-assessed the benchmarks in light of moving towards future RED compliance (specific question below), particularly with respect to carbon conservation. In light of this, ACCS and Genesis QA have been downgraded to meeting the RTFO qualifying standard level from meeting the RTFO Meta-Standard for the environmental criteria. This relates to a partial compliance on the carbon stock criteria, which was previously assessed as a full compliance, as we assessed that any changes in carbon stock would be reflected in the reported previous land-use and GHG savings of the biofuel. Although these standards require an assessment of any carbon stock changes, our experience of the

operation of the chain of custody from the first year of the RTFO suggests that this information may not be passed down the supply chain and thus does not provide a guarantee of carbon conservation. There is therefore a risk that some ACCS certified feedstocks could be produced from land that does not meet the strict requirements of the RED.

FiveBarGate has not reviewed this in detail at this time. However, there does seem to be a potential for inconsistency in approach at EU Member State level as it is understood that some Member States may adopt national schemes demonstrating CAP compliance, such as those administered by the Rural Payments Agency as meeting many RED requirements. This argues for delaying changes to the RTFO until there is more clarity across member states.

21. Do you agree with our benchmarks of standards against the RED? [on the [RFA website](#)]

If schemes (such as ACCS and Genesis QA) do not qualify against the RED, it seems reasonable that they should be allowed time to see if they can be suitably amended. Indeed Annex A, A.6 ("Procedure for downgrading a standard") says that the standard owner will have 12 months to address non-conformance. The time between February and April 2010 – if the RFA is still determined to go ahead with the RED-ready exercise – is clearly insufficient, although the REA understands that the scheme owners are considering the feasibility of changes.

Verification (Section 7)

In order for a robust carbon and sustainability data reporting system to operate it is important to have an adequate standard of independent verification of the C&S data claims. Under the RED, minimum sustainability requirements will need to be met in order to claim RTFCs, so reliable verification of the data is of increased importance. We have now published our first year's verified data, and supplier's verified annual reports to the RFA. 5.4% of the biofuels supplied in the first year of the RTFO did not receive the limited assurance required. The three main issues were:

- i. late submission of verified reports;*
- ii. failure to submit a verified report;*
- iii. inadequate level of assurance of the data (i.e. a qualified verifier's opinion – the RFA requires limited assurance as a minimum).*

Those suppliers responsible were named in our 'RTFO Year One' Annual Report. For future years we are considering imposing penalties or other sanctions. The options we have identified are below:

- iv. changing all of the supplier's data to 'unknown' in our Annual Report;*

- v. *issuing a civil penalty (up to £50K);*
- vi. *issuing civil penalties for the fraudulent claiming of certificates of two times the buy out price per certificate claimed;*
- vii. *revoking all or a portion of RTFCs*

We are currently taking legal advice on whether options ii, iii or iv could be applied without an amendment to the Order. We may also have to bring the submission date of Annual Reports forward in order to apply these penalties. However, we welcome comments on the following:

22. What would be an appropriate level of response of the RFA to inadequate verification?

FiveBarGate takes the view that the credibility of the whole reporting framework relies on verification and penalties should be as rigorous as possible. Therefore, all four penalties should be applied.

23. Should the penalty differ according to whether the suppliers' verified annual report is late, not received at all, or was inadequately verified?

No

24. Should the penalties apply from RTFO Year 2 (the current obligation year) or Year 3, and should there be a graded increase between the two years?

Penalties should apply from Year 2.

25. (For suppliers and verifiers) Would bringing the date forward for submission of suppliers' Annual Reports pose a problem for suppliers (currently 28 September)?

While FiveBarGate is neither a supplier or verifier, the company has worked closely with supply chain operators at different levels and suggests that such changes should not create a burden.

26. How long is reasonable after the end of the obligation year for the verification process to be completed?

Within 60 business days of the RFA confirming the records they retain are accurate.

The RFA currently has a small supplier exemption (Section 4.1), so that suppliers of <450,000 litres/year of biofuel are not required to have their C&S independently verified. This covered just 0.3% of the biofuels supplied under the RTFO in Year 1. 85% of this biofuel came from used cooking oil. Under the RED it may not be possible to apply the small supplier exemption. A separate issue is that concerns have recently been raised that used cooking oil (UCO) is on the market that has not been fully 'used', and is closer in composition to virgin oil. This is of concern as it has significant implications for the carbon savings of UCO and the RTFO. The RFA is considering removing the small supplier exemption from Year 3. This would help suppliers prepare for the requirements of the RED (as all suppliers may be required to verify their C&S data) and would ensure that claims of supplying used cooking oil are verified.

27. Do you agree that all suppliers claiming RTFCs should be required to have their C&S data claims independently verified?

Yes.

28. If so, should there be a different (less stringent) level of verification, or approach, for small suppliers?

No.

29. Do you agree that the use of partially used or unused cooking oil is a significant issue?

Potentially this could become a significant issue, particularly as the current legislation permitting the continued application of a fuel duty rebate to "used cooking oil" is open to serious abuse.

30. How would a verifier test whether the UCO is genuine or whether it is partially used/unused cooking oil?

The key to this is that the UCO should be a waste and be able to show that it is so under UK regulations. Both the law and HMRC should tighten control systems to prevent wide scale abuse.

31. Do the RFA need to add an appropriate definition of UCO? How should it be defined to exclude partially or unused cooking oil?

If the current proposed legislation does not define UCO, then the RFA should. However, legislation would be the stronger route.

32. Do you agree with the proposal *not* to make any other changes at the present time to the verification systems? [Chapter 7]

Yes.