June **2022**

UFE's reply to the public consultation on the draft delegated act setting out rules for the production of RFNBO used in transports

UFE takes note of the publication of the long-awaited draft delegated act establishing the criteria for the production of RFNBOs used in transports. It was of utmost importance that this delegated act be published before the end of the process of revision of the Renewables Directive (RED II), to ensure both texts can be analysed and discussed simultaneously. UFE thanks the Commission for the possibility to share its analysis on the proposed draft delegated act.

First of all, **UFE recalls its strong support to the general case laid down in article 27(3) of RED II**, which reads that where electricity is used for the production of RFNBO, the average share of electricity from renewable sources in the country of production, as measured two years before the year in question, shall be used to determine the share of RFNBO produced.

UFE welcomes the Commission's approach to focus on physical properties of electricity and RFNBO production (geographical and temporal correlation) to ensure the renewable nature of the energy produced. This approach is more relevant than a methodology based on guarantees of origin, as proposed by some stakeholders: GOs should only be used as a disclosure instrument for consumers.

More specifically:

- **UFE welcomes the relative flexibility introduced in relation to the additionality principle, with the proposed 36-month delay** between the entry into operation of the installation producing electricity and the electrolyser, identical for direct connections and electricity taken from the grid. This will help build up the electrolysis sector.
- **The transitional phase and grandfathering clause are useful provisions** which will help take advantage of existing renewable assets to ramp up the production of electrolytic RFNBO.
- **The application of the rules regardless of whether the RNFBO are produced inside the EU or in a third country is of utmost importance** to ensure a level-playing field with imported RNFBO producers.

- **Regarding art.4(1), the proposed threshold of 90% of renewable electricity in the mix in the previous calendar year seems appropriate to facilitate the calculation of RFNBO produced, while being broadly consistent with actual GHG emissions and flows of electricity.**

Nevertheless, other provisions raise concerns and UFE would like to suggest the following amendments to the Commission's proposal:

Regarding the transitional phase:

Choosing 2027 as the closing date for the transitional phase seems arbitrary.

- **UFE recommends introducing the possibility to extend the transitional phase depending on market developments and the evolution of permitting procedures for renewable assets.**

According to art.7, projects receiving State aid in the form of operating aid cannot benefit from the transitional phase, and will be required to respect the hourly temporal correlation before 2027.

- **UFE recommends removing this provision, which is not duly justified and would be detrimental to many projects, as several Member States have designed support schemes based on CfD**.

Regarding the cumulative nature of the proposed methodologies:

- **UFE calls on the Commission to clarify whether the proposed methodologies are cumulative**. For instance, would a RFNBO producer be allowed to use the general case foreseen in art.27(3) of RED II (based on the share of renewable electricity in the mix 2 years beforehand) and complement it with the methodology based on PPAs, to qualify its production as 100% renewable?

Regarding data disclosure:

Art.5 of the draft delegated act details the information that shall be documented every hour, in relation to the amount of renewable electricity and RFNBO produced.

- **This section should be further clarified as it is unclear which actors are concerned by this obligation, and which entity they should report to**. Some data would be better reported by electricity generators, and others by RFNBO producers.
- The delegated act should also include a more detailed framework describing the verification process for compliance with the rules set out for the production of RFNBO.