CONSULTATION RESPONSE FORM

PUBLIC CONSULTATION ON CARBON AND SUSTAINABILITY REPORTING UNDER THE RENEWABLE TRANSPORT FUEL OBLIGATION (RTFO)

PART 1 - Information about you

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Company Name or Organisation (if applicable)	Institute for European Environmental Policy
Please tick one box from the list below that best describes you /your company or organisation.	
Yes	Small to Medium Enterprise (up to 50 employees)
☐	Large Company
☐	Representative Organisation
☐	Trade Union
☐	Interest Group
☐	Local Government
☐	Central Government
☐	Police
☐	Member of the public
Yes	Other – Independent research organisation
If you are responding on behalf of an organisation or interest group how many members do you have and how did you obtain the views of your members: I am responding on behalf of IEEP, this is based on research completed by the Institute and is part of an internal discussion process. IEEP is an independent research organisation actively engaging in the development of policy for biofuels. We have conducted extensive research in terms of their potential in terms of greenhouse gas reduction but also their practical implications for landuse, landuse change and impacts upon the broader environment. Key members of staff, whose opinions and expertise are represented here, include: Malcolm Fergusson, David Baldock, Emma Watkins, Carolina Valsecchi, Tamsin Cooper, Justin Bartley and Andrew Farmer. IEEP has advised the European Commission, UK Government, Environmental NGOs and the UK Nature Conservation Agencies in this field.	

If you would like your response or personal details to be treated **confidentiall**y please explain why:

PART 2 - Your Comments

1. Is the general scope of the reporting requirement set out in chapter 2 appropriate?	Yes	No

If your answer is no please explain your reasons and add any additional comments you wish to make:

- In general the scope of the reporting requirements is considered to be acceptable. It is positive that such thought has been given to developing a detailed approach to reporting.
- The importance of the administrator role and the need to make active use of the reported information should be stressed. The administrator is central to the management of the reporting process and identifying if the reported information is acceptable. They are also responsible for the approval of future qualification standards. Their role is, therefore, fundamental to the effective functioning of the scheme and if they are not appropriately empowered this could undermine the whole approach.
- According to earlier consultations on the RTFO the administrator would be a new Non Departmental Public Body; given that they are external to the government, appropriate responsibilities regarding enforcement need to be conferred. It is desirable that within their remit it is specified that their role is to seek the improved performance of biofuels in terms of C&S. This makes C&S clearly part of their responsibility and would require them to engage to help improve performance.
- Enforcement of the rules and clear, transparent penalties to deal with transgressions are fundamental to ensuring any system operates effectively. There appears to be a need to strengthen the emphasis placed on enforcement within the scheme and to clarify the extent of the administrator's powers. At present the only reference is in relation to failure to submit an annual report ie that this may incur a civil penalty. This limited wording is vague. Additionally, there appears to be no reference to the penalties associated with failure to submit a monthly report or, importantly, if it is discovered that information submitted is erroneous or falsified. Finally there are concerns regarding the very open nature of the targets (see Q6).
- On a related issue, the administrator also needs powers to remove poorly performing schemes from the list of qualification standards. While it is highlighted that they can add schemes, details are not provided as to how qualifying schemes will be monitored to ensure standards are maintained. In the event of monitoring problems being identified there should be a mechanism and powers to allow the administrator to take action against such schemes - the ultimate penalty should be removal from the list.
- More detailed comments are provided under questions 4 and 5

2. Is the meta standard approach suggested in chapter 3 appropriate?	Yes	No

If your answer is no please explain your reasons and add any additional comments you wish to make:

- The meta standards approach appears to be pragmatic given the multitude of schemes currently being put forward. Given the different fuel types and feed stocks the proposal is trying to address there would not be one holistic standard, already in operation, that would be appropriate to use.
- The RTFO is not developing its own standard of excellence but relying on schemes developed by others. This means that ambition in terms sustainability of the RTFO is essentially dictated by others ie those operating the qualifying standards. The UK government will not necessarily be able to control the quality or integrity of these schemes.
- As argued above, a consequence of the lack of direct control over the qualification standard schemes is that it will be important to have robust systems in place not only to ensure that high quality schemes are included, but to monitor existing approved schemes to ensure standards are maintained. In the event of the scheme failing to maintain the quality and reliability of approach there must be a system in place by which it can be removed from the list of qualification standards. At present there are plans outlined for inclusion of new approaches upon request, but not necessarily for the review of approved approaches and their removal if they are shown to be ineffective.
- In addition to emergency powers to remove poor schemes there should be a renewal of qualifying standards over time in order to ensure continual improvement and development. The list of qualified standards should be reviewed on a regular cycle to ensure that the most robust schemes are included and that any that have become outdated and superseded are removed. There are no clear proposals for the renewal and active management of the list of approved standards. This could lead to confusion, stagnation and a failure to achieve the best environmental and social results.
- A clear downside of the meta standard approach is that the plethora of different requirements and approaches to standards may lead to confusion amongst the general public. The public are obviously concerned about the negative impacts of biofuels and a key role of this system would be to reassure them that steps are being taken to protect against the worst types of potential degradation. The RTFO system would not result in a system whereby there would be one gold standard for biofuels that the public could rely upon; it is a system built around minimum requirements to gain RTFC certificates. Under the system biofuels that do not comply can still enter the market, hence, there will be no systematic way, eg a standard logo, for the ultimate consumer to differentiate between fuels.
- The multiple approaches allowed in meeting the standard - ie being able to report any standard benchmarked against the RTFO; that only a proportion needs to meet the qualifying standards; that supplementary checks can be performed and reported; and that the RTFO sustainable biofuel meta-standard and/or its component elements can be reported for a given batch – are in danger of adding to potential confusion amongst operators and a wider public. This in turn could also damage the credibility of the scheme.
- Most importantly, the meta standards approach means that different fuels, even those from the same feedstocks with the same characteristics, may be achieving different standards of sustainability. This will make it very difficult to assess into the future the actual impact of the RTFO both environmentally and socially.
- In conclusion, although practical the meta standard approach is less transparent,

harder to interrogate and control than one standardised approach.

3. Are the Environmental and Social principles set out in chapter 3 the right ones?	Yes	No

If your answer is no please explain your reasons and add any additional comments you wish to make:

- The environmental and social principles presented in Table 1 of chapter 3 are broadly acceptable. These could, however, be termed the 'lowest common denominators' and will not particularly drive up performance or encourage the adoption of best practices. Rather they seem to be encouraging the 'least bad' options and attempting to avoid the most damaging practices.
- There are questions as to the justification for elements of criteria 2.4, 3.2, 3.3 and 4.2 in Annex B being only recommendations rather than minimum requirements. Clearly they are valuable and important requirements within themselves. It is unclear if reporting would be required on these recommendations despite them not being required to be carried out; but without at least a minimum standard of reporting being required, it is open to question whether these criteria with actually add value. If the intention is to indicate the direction of travel for a future mandatory scheme, then it is suggested that this should be articulated more clearly.
- The wording of the indicators for criterion 1.1 under Principle 1 (carbon conservation) could be clearer. 'Direct' land use change is mentioned, but 'indirect' land use change is not – does that mean it is acceptable? It may well be that indirect land use change is difficult or impossible to monitor at batch level, but if so, then this should be made more explicit, and a stronger duty should be placed upon the administrator to monitor and report upon the important issue of indirect land use change at the level of the scheme as a whole. Similar arrangements are currently proposed for the EU level scheme.
- More robust definitions of the terms direct and indirect land use change appear needed than those given on p13 of the consultation document (there is no further definition provided in the annexes). There is also ambiguity around the second indicator ie that biomass production units should not be established on 'soils with a large risk of significant soil stored carbon losses'. The list of examples is not exhaustive.
- Principle 2 (biodiversity conservation), Principle 4 (sustainable water use) and Principle 5 (air quality) seem broadly adequate. However, there are concerns regarding displacement affects in terms of landuse and impacts upon biodiversity. Although this phenomenon is acknowledged within the annexes, it not dealt with in a systematic manner.
- Regarding the biodiversity principles, it should be noted that criteria 2.2 and 2.3 contain references to high biodiversity areas and areas of high conservation value. The footnote on page 47 highlights the difficulties associated with the

definition and practical assessment of HCVs on the ground as there are no comprehensive maps highlighting where these exist. This would mean that it would be necessary to assess whether a HCV is or was present. This is difficult and it is not clear either who would be in a position to make such an assessment (if a farmer were to want to start growing this and an areas is not actively protected how would this be achieved and the site protected) and how it might be enforced. Two of the key requirements in relation to biodiversity hinge on this and it is difficult to identify how they might be enforced.

- In the environmental principles there are not many specifics set out regarding waste – criteria 3.1 under Principle 3 (soil conservation) and 4.1 under Principle 4 (sustainable water use) mention that national and local laws on waste storage and handling should be complied with, and criterion 5.1 under Principle 5 (air quality) mentions that national and local laws on waste management should be complied with, but these are rather general comments. It is questionable that this provides enough evidence that excessive levels of waste are not being created as a result of biofuel production and whether such waste is actually dealt with/disposed of appropriately.
- IEEP is less well-placed to comment on the social criteria, but the comments on recommendations versus minimum requirements outlined above are also relevant here (for criteria 6.9 and 6.12).
- It is unclear what activities would qualify as 'highly mechanised farming', and also how checks would be made that practices defined as 'mechanised' actually are - it is not clearly reported even in the EU who is mechanised and who is not. For example, are all soy, beet, wheat, rape and maize systems necessarily mechanised to the level of less than 5 man days/hectare? All agriculture requires some level of additional labour for harvesting, and this is often provided by casual labourers who receive the least protection, so there are likely to be associated labour issues. If farming is declared as 'mechanised' it would exempt people from complying with the clause 'Biomass production does not adversely affect workers rights and working relationships', which could arguably still apply. It is also arguable that it may primarily be European systems which are mechanised, which raises the question whether it is appropriate for European farmers to be exempt from a requirement protecting workers rights? (See also response to Q10.)
- There are considerable concerns regarding the approach to dealing with displacement and idle land see Q14.

4. Do the proposals for the content of monthly reports set out in chapter 3 provide enough detail - is there other information we should require?	Yes	No

Please explain your answer:

- The information in table 3 is clearly set out and covers the majority of the key issues. It is positive that monthly reporting is so clearly and directly linked to receipt of RTFCs. The basis of recording, built around batches defined by sustainability criteria, is a very useful way of splitting this and will provide detailed, useful information for analysis. In future this would allow understanding of exactly what materials are coming into the UK, their quantity and the standards with which they should comply, resulting in the effective monitoring and evolution of the scheme.
- Verification will be a fundamental step in ensuring the quality of data recorded,

and its importance must be emphasised (see Q9). The system set up for reporting is useful but it must be shown to be rigorous.

- At present information reported on provenance is limited to the feedstock. It would be useful to also know if the raw material or the actual fuel is being imported and where that fuel was processed. Biodiesel is generally exported as the raw feedstock and might be refined at an intermediate location. Bioethanol, currently, is normally exported as the finished fuel. Being able to track this process is important to understanding the dynamic of the market and also the C&S characteristics. The refining process is fundamental to the carbon balance of the fuel itself. The whole chain not just the origin of the fuel needs to be considered to ensure the environmental impacts of the entire production process are considered. The consultation states that monitoring will be expanded to consider this in future, but there is no timetable provided. This should be clearly set out to ensure transparency but also to provide a clear framework allowing suppliers to prepare for the changes.
- As highlighted elsewhere, the quality of analysis by the administrator and the feedback they provide to suppliers based on this, will be fundamental to the continued improvement of the scheme. Feedback on performance publicly, and direct to the supplier, is an essential element of any system of monitoring and reporting. It will help stakeholders to understand the gaps within the system, the standards people are working to, the levels of imports into the UK, the quantities of the different biofuels made use of and their feedstocks. Given that this is a new area of legislation, and one in which likely impacts upon the biofuels market are as yet poorly understood, especially when set alongside other schemes planned or operating internationally, it is especially important that as much is learnt from, and use is made of, the reporting as possible. Throughout the scheme the administrator role is crucial.

5. Is there other information that should be required in the annual reporting requirements set out in chapter 4?	Yes	No

If yes, please give details

- That reports will be made publicly available by the administrator is welcomed. It is important that information surrounding the scheme is made available to stakeholders.
- That the supplier should report on their policies and plans for improving sourcing of sustainable biofuels is essential. This emphasis on future intentions and plans is vital if the sustainable fuels market is to develop and improve. It is important that the annual reports not only reflect on the past but also on the future; this duel emphasis must not be lost.
- There are broader concerns regarding the promotion of activities on idle land – see Q14.
- Within the annual reporting it is essential that there is some reflection on the quality of the data ie the uncertainties underpinning for example aggregated monthly data.
- It is very important that the performance of different fuel suppliers can be publicly compared. Section 4.5 permits the administrator to do this. This ability should be emphasised and certainly not lost from the administrator's repertoire.
- Arguably while the fuel supplier must supply environmental management system

certificates and reports on their environmental performance, one element regarding the reporting of procedures appears to be absent. In order to implement the requirements effectively there will be a need to set up clear and effective systems for internal management to supply the data needed under the RTFO. This will include management of information regarding C&S requirement, filing of details on accreditation, organisation verification for gap criteria, organising the broader year end verification etc. The consultation specifically states that one lead person must be designated to be in control of such systems. It is therefore desirable that the procedures and measures put in place to ensure the smooth administration of the system and the reliability of data provided are set out in the annual report.

- Section 4.5 outlines how the administrator will use the annual reporting data. According to the list the administrator's role appears relatively limited. It would be desirable for the administrator to act more as an overseer of the scheme, to conduct detailed investigations into: the implications for the market's development; market trends; and sustainability. The administrator is central to the success and legitimacy of the scheme, therefore must appear to be proactively providing information that will help improve the system. The administrator is the only body that will be able to identify if unsustainable trends or distortions in the market place are emerging. They need to be actively involved in systematically reviewing the different elements of the scheme. This is a new approach to regulation, therefore there will be a significant learning curve. The administrator is central to ensuring the steepness of the curve and the speed at which improvements can be made. They must have a clear role in terms of feeding back their findings to the government and making recommendations for policy improvements. There should be a schedule set out in advance outlining the timetable for the review of the scheme.

6. Are the targets for reporting in chapter 4 appropriate - should they be higher / lower?	Right	Higher	Lower

Please explain your answer:

- The fact that the consultation contains specific targets to be achieved is highly commendable. These are considered to be ambitious, especially the Annual GHG saving for 2010 to 2011, which is positive given that this system is intended to ensure the sustainability of the UK's biofuels market and the high pressure to prove this. However, the targets do need to be realistic and reporting requirements must be adequate in order to allow the achievement of such targets to be interrogated ie how are the targets being met, what impact has this had on fuel sourcing, has this encouraged more carbon efficient approaches to the broad production of biofuels or just meant that the UK sources biofuels from sources that were already more carbon efficient ie targets have been met purely by sourcing from Brazilian bioethanol. It needs to be clear that the administrator not only needs to report on the targets' achievement but how and in what way they have been met, or for what reasons targets have been missed.
- In terms of the targets the key criticism is not their ambition but, as stated in section 4.4, that 'there will be no penalty for failing to meet the targets, but the targets are intended to illustrate the level of performance which the Government expects fuel suppliers to deliver'. These targets are, therefore, indicative ie there

is no incentive to meet it for example a reward if it is achieved, or disincentive ie a punishment if it is missed. If there is no mechanism for encouraging compliance this makes the targets relatively meaningless and could risk undermining confidence in the system especially among the public. The targets are central to driving the adoption of sustainable biofuels, as it is possible to receive RTFCs even when reporting the use of unsustainable fuels. Without a robust system for ensuring progress towards them the whole system would simply become an exercise in data collection, rather than promoting real change. The proposed approach is deemed weaker than a traditional voluntary agreement, as at least under these the organisation has committed to the government to achieve a given level and is therefore under greater pressure to comply. As soon as a target is set there is an expectation it should be met. While the system may be successful ie that standards are improving, it may be undermined in reports, media etc due to companies' failure to meet these indicative targets. Separately the government has committed to introducing full carbon certification by 2010, and sustainability standards by 2011; in practice it would be helpful if the existing targets were more closely linked to the future commitment, and that the government should commit fully to introducing both parts of the system together, preferably in 2010.

- While it may be inappropriate to make the relatively ambitious targets binding at present, this must be considered in future reviews of the system when the approach is more established. The fact that binding targets will be put in place in future should also be highlighted in any guidance etc in order to encourage early action by suppliers and ensure the targets are seen to be meaningful – the threat of legislation is a key mechanism used in voluntary agreements and without such a threat schemes are often seen to fail. In the meantime there should be some mechanisms to encourage compliance. This could involve revisiting the targets or perhaps setting binding minimum levels for GHG savings and percentage of feedstock meeting quality standards of achievement in the latter period. Alternatively a system that rewards those achieving good results in some way could be put in place – although this should not relate to production due to WTO rules. As an absolute minimum it must be clear that the administrator will report not only on the achievement of the target overall but that it will clearly set out the achievements of all suppliers in relation to the targets allowing those performing best to be congratulated and any conspicuously poor performers to be 'named and shamed' in due time. That this will occur must be set out transparently in advance in order to give industry an incentive and a fair opportunity to respond. As the RTFO is market-led an appropriate mechanism for inducing the market to change should be found. Given the high profile of biofuel issues at present the publication of individual results, with the threat of future binding targets in the event of failure to comply, may be adequate for the time being.
- The targets at present do not extend beyond 2011. One of the roles of the scheme proposed would be to encourage the development of second generation, more carbon efficient fuels. Even the most optimistic estimates for the bringing to market of second generation fuels estimates a date around 2015 for any significant contribution. While it is not considered to be appropriate at present to set targets all the way up until 2015, or even 2020, there should be a clear and transparent review process set out in the Regulations. This would ensure that the industry understands targets are expected to become more demanding after 2011. The timetable for the development of future targets should be set out taking into consideration the fact that over the next two years the EU will be negotiating a new Directive on renewable energy and biofuels with stringent and possibly

binding targets for 2020.

- The division of the targets into the three different categories is a good approach. Importantly the target on data reporting is considered to be very useful in terms of understanding the errors within the data sets and helping to interpret the figures.
- While the targets may be set as an overall target for all fuels and feedstocks, when the administrator reports on the achievement of the targets these should not only be presented as a generic figure. In order to ensure that stakeholders and the government understand the true impacts of the scheme the reporting should be broken down by feedstock, fuel and provenance. This will allow an assessment to be made as to where compliant materials are being sourced from, and identification of areas where there is a need to focus on improving schemes and supply chains to allow standards to be pushed up. If the reporting is not broken down into its constituent parts this would limit its usefulness and potentially allow negative trends to go unnoticed.
- Arguably, as the targets in Table 5 of the consultation are only indicative there should be a percentage stated in the 2008-2009 feedstock meeting qualifying standards section. The presence of a complete blank appears somewhat odd, especially as this then rises quickly to 50% by 2009-2010.

7. Is our approach to the chain of custody set out in chapter 5 a sensible one?	Yes	No

If your answer is no please explain your reasons and add any additional comments you wish to make:

- The approach to the chain of custody is felt generally to be rigorous and clearly a great deal of effort has been expended in order to provide a transparent approach with detailed examples.
- Given that these schemes are in their inception, as highlighted in the scope under section 5.1, there may be instances where the legal owner of the product does not keep the required records. In this event the chain of custody is broken and 'don't know' must be recorded as the provenance of the biofuel. This approach is logical and should maintain the integrity of the system. It is, however, vital that instances where the chain of custody has broken down are in some way recorded and monitored. It will be important to understand how often this is occurring, if possible to identify at what stage in the chain and why this arises. Some chains may be more complex than others, therefore chains of custody are more problematic to implement. In terms of improving the implementation of the scheme this information would be a useful resource. As the RTFO will be one of the first systems to implement such rules for biofuels this would also assist others to understand the problem areas and how difficulties might be avoided.
- Section 5.2 of the consultation highlights that for products of unknown origin it is only necessary to record the product's description eg rapeseed or rapeseed oil and the volume. It must be possible to interrogate the volumes of material from unknown origin entering the system. If sustainable production of biofuels is to be ensured it is vital to understand what volumes of material are not being covered by requirements. Figures regarding the volume of products of unknown origin should be presented with a breakdown by the type of material and quantity. It is essential to understand the potential gaps in the system and their extent. Only with this type of knowledge can the administrator, producers and government

hope to systematically improve the approach over time and gain an accurate picture of potential levels of impact.

8. Are we right not to allow C & S information to be transferred in an equivalence trade - chapter 5?	Yes	No

If your answer is no please explain your reasons and add any additional comments you wish to make:

Yes, the EU scheme is essentially a financial one, and is unrelated to C&S. It focuses upon the products purely as a commodity. While the produce may be similar, allowing such a trade under CAP rules, its production method may differ so substituting C&S should in our view not be allowed, but we consider that this point merits further consideration if it is likely that a significant equivalence trade would develop, as the existing mechanism is little used, and generally not for this purpose. This would add complexity to the system and potentially set an undesirable precedent. At the very least there must be a clear and transparent way of reporting such switches and the associated C&S information, in order to avoid double counting or leakage.

9. Is our approach to verification set out in chapter 6 appropriate?	Yes	No

If your answer is no please explain your reasons and add any additional comments you wish to make:

- Verification is a vital step within any compliance system and the prevalence given to this within the report is commended. The sections relating to good practice are especially useful. Based on experiences with verification and the set up of novel systems for verification, for example under the EU emissions trading scheme, the following suggestions are made.
- Verification is an important process central to ensuring the credibility of the C&S system, however, it can also be used as a mechanism to aid the continued improvement of the system and, especially early in the life of a scheme, provide valuable information. Section 6.5 outlines details on verifier opinion statements. It is suggested that this section be amended to add a category whereby reports are approved but approved with comments. These comments do not amount to material errors, but relate to the overall approach to the report, areas for improvement etc. This is the system employed under the EU ETS and the comments have proved invaluable to the regulator and the operators in terms of helping to understand and improve performance. This also helps to make the most of the verifier's expertise and add value to their service.
- It has been shown from other systems that key to ensuring the quality of reporting and monitoring systems is early engagement with the verifier. While they need to maintain their independence ie they should not be responsible for consulting on

the set up of a monitoring system and then verify their own work, it is beneficial for the producer and the overall success of the scheme that verifiers be consulted as early as possible. This means that errors in procedures can be picked up early and addressed, rather than having to wait until the year end. This improves the reliability of the scheme and means that operators do not face lots of unexpected, complex and potentially costly requests from the verifier late in the day. It also means that reports are more likely to be submitted on time. This is especially vital when a new scheme is being set up. Verifiers are more experienced in understanding what is needed in terms of reporting and early engagement allows more effective and efficient use of this knowledge. Annex 3 is a summary produced for a best practice guide to verification under the EU ETS of Defra's guidance on staged verification designed to lead to early engagement and the associated benefits. Full details of the good practice guide to verification can be provided upon request from Catherine Bowyer cbowyer@ieep.eu

- There is no mention in the text on verification of a specific accreditation body that would oversee verifiers. A strong accreditation body has been shown to be a valuable mechanism by which the quality of verification can be set and maintained. As verifiers are independent but at the same time a fundamental link in the chain of regulating any scheme, it is good practice to have an overseer who can help ensure continued improvement but also help to liaise with the administrator when problems arise and offer guidance as to how systems might be improved. In the event of verifiers failing to perform or being found to be acting inappropriately, the presence of an accreditation body with set rules allows disciplinary action to be taken. In section 6.4 it outlines that suppliers must engage a verifier approved to complete limited assurance audits under ISAE 3000. In the event that it is impractical to set up an accreditation specifically for the RTFO, there should be clear mechanisms for the Administrator to communicate with the ESAE accreditation board to ensure that standards are maintained. There should also be mechanisms whereby suppliers can raise issues with verifiers either with the Administrator or the accreditation body.
- Finally in Section 6.9 it is stated that with respect to sustainability data, certificates of accepted standards are sufficient proof of compliance with the criteria and indicators and that these will not need to be verified again. This appears to be a reasonable approach so long as there is a mechanism that continuously reviews the accepted standards to ensure that verification, monitoring and reporting mechanisms under these are adequate. Annex C presents a good summary of the auditing quality of the standards currently approved. It is important that the administrator continues to oversee and monitor this to ensure that the quality of approach is adequate.

10. Are there any other standards that should be benchmarked from the outset - Annex A?	Yes	No

- As outlined in Q 2 the meta standard approach for the environmental and social criteria of the RFTO is valid and pragmatic. There is a solid rationale for capitalising on existing schemes. The list assessed is gathering important standards which have or promise a good membership. However it would have been useful to know what was the basis on which these 8 schemes have been chosen. For example, two of the eight are focused on food safety and not so much on environmental and social sustainability.

- It would have been useful to open up a possibility of including business driven labels, which are successful, even though this might mean preferential treatment to one operator. For example it might have been helpful to list, from the outset, successful industry launched labels (i.e. Green Gold label developed by Dutch electricity company Essent for its environmental criteria). These companies have developed successful labels that could operate in the UK market .
- The norms used to allow standards to be qualifying environmental standards: Point 2 (p. 40): 'one partial compliance criterion is permitted per principle, with a maximum of three in total'. The area of discretion seems too large here. It would be important to make sure that at least one point per criterion is respected, ensuring that some vital criteria are not skipped altogether.
- It is important to define whether (given that 'full compliance is only awarded if the RFTO criterion is met by a mandatory criterion in the benchmarked standard') voluntary initiatives are automatically excluded by the range of additional standards acceptable.

On labour conditions in mechanised feedstock production (p. 43):

- We do not think it is acceptable to exempt from social standards mechanised crops, even more so because important crops such as rapeseed, maize, wheat, sugar beet and soy beans would be by default considered mechanised by the RTFO system. This clause could cut off a substantial quota of suppliers from reporting on essential social reporting standards.
- Also we do not believe that mechanised farming, and even more because of the intensive use of dangerous machinery and dangerous chemicals, should be exempt from health and safety, contract, child labour wages, working hours rules and other social standards.
- Simplification of legislation does not appear to be an excuse for this exemption because, if the assumptions on which the clause is based are correct, it shouldn't be too onerous for the supplier to provide such information,
- In conclusion, we believe that the definition of 5 man-days/ha/y is not a justification for the absence of social standards in intensive plantations. On a large plantation this could still amount to a high number of different workers.

11. Is excluding by product reporting as suggested in Annex A appropriate? - Are the by-products suggested in Annex A the right ones? – See Q3	Yes	No

If your answer is no please explain your reasons and add any additional comments you wish to make:

- No reporting is required on by-products ie they are exempted from complying with the sustainability principles and it is essentially assumed that they automatically comply. There is, therefore, an implied assumption that by-products are good or at least their impacts are acceptable. This assumption is questionable. Although, there is a logic that the C&S standards need to deal with the most imminent concerns first, the wastes highlighted within the consultation document include some materials with potentially significant sustainability impacts. Those presented include municipal waste and cooking oil; arguably these should still be produced and processed in a responsible manner and there are environment and social risks associated with biofuel production, especially as fuels are increasingly

produced on a large scale. Impacts are obviously more localised than deforestation etc, however, there should still be mechanisms to ensure, for example, producers comply with relevant legislation and act in a responsible manner.

- The principles set out are arguably so broad that those making use of bi-products could relatively easily report on this, even if the format were less rigorous than for standard fuels. If by-products are initially exempt there is an argument that their contribution and production should be kept under review and that the need for more substantial reporting requirements will be assessed at a given point in the future. The timetable for this should be specified.
- More broadly there is the issue of what is termed a by-product. Arguably significant quantities of biofuel may be produced from what might be termed agricultural or forestry waste or by-products. This includes straw, manure eg in producing biogas etc. The issue of agricultural and forestry waste and by-products and where they sit within the system needs to be further considered. The definition of waste is notoriously complex and the issue of by-products needs to be further clarified to assess the true potential impact of this exemption.
- The approach to the implementation of the exemption should be closely monitored. An intermediate step might be that rather just reporting by-product the type of by-product also has to be recorded ie municipal waste, chip fat etc. This will allow an assessment of exactly what is covered by this exemption and whether future revision may be desirable.
- The outline procedure for requesting that an additional feedstock be considered as a by-product seems acceptable, this has yet to be fully defined.

12. Is the exemption for mechanised farming suggested in Annex A appropriate? – See Q3	Yes	No

If your answer is no please explain your reasons and add any additional comments you wish to make:

- All agriculture, even mechanised, requires some level of labour for harvesting, often using poorly protected casual labour, so there are likely to be associated labour issues that could/should be addressed.
- If farming is declared as ‘mechanised’ it would exempt people from complying with the clause 'Biomass production does not adversely affect workers rights and working relationships', which could arguably still apply. It is also arguable that it may primarily be European systems which are mechanised, which raises the question whether it is appropriate for European farmers to be exempt from a requirement protecting workers rights?
- It is unclear how checks would be made that practices claimed to be ‘mechanised’ actually are - it is not clearly reported even in the EU who is mechanised and who is not. Therefore should all soy bean, sugar beet, wheat, rapeseed and maize systems automatically be defined as highly mechanised by default (less than 5 man days/hectare/year)?
- It is positive that the requirement on land right issues must still be met regardless of the level of mechanisation.

13. Are the carbon intensity default values set out in Annex F correct?	Yes	No

If your answer is no please explain your reasons and add any additional comments you wish to make:

We do not feel able to comment on this without further extensive research, but recognise that considerable effort an expertise been applied to this exercise.

14. Is the approach to assessing the impact of land use change set out in Annex G appropriate?	Yes	No

If your answer is no please explain your reasons and add any additional comments you wish to make:

- Land change or land conversion, in particular from forest and grassland to crop, is the one of the most sensitive points in determining the benefits (or disbenefits) from biofuels in terms of life cycle GHGs. Land use change, especially deforestation, has an enormous impact on GHG balances of biofuels production giving a negative balance on GHG emissions which could not be reversed in some cases in a life time. This is a matter of concern, especially in the light of the evidence that feedstocks for biofuels such as palm oil have been associated with major land use change, including tropical deforestation in Southeast Asia. Owing to the way information is presented, it is currently not entirely clear that the land use impact is included in the GHG balance, although we understand that in fact it is.

- Regarding the approach in Annex G (i.e. regarding croplands of which the whereabouts are known and land use change information is provided by the supplier):
  - It is of fundamental importance that the calculating methodology used for converting from default values in Table 26 to grams CO_2 equivalent per unit of energy for biofuel is solid, is well reviewed and widely accepted by the scientific community.
  - The calculations regarding the carbon payback time should be equally widely reviewed and crucial in terms of justifying the whole RTFO system.

- Regarding the overall approach to the assessment of the impact of land use change on GHG balance in the RTFO system (of which Annex G represents a part):
  - As it stands, the consultation suggests that where information is not provided, the calculation does not include any land-use change carbon impacts. Instead, it is proposed that the Administrator should conduct an ex post facto analysis of the potential emissions associated with 'unknown' land use changes.
  - We believe that this will pose a very difficult task for the Administrator, but an extremely important one. In addition to addressing the 'unknown' quantities in terms of land use, we consider that the Administrator should also report more broadly on the indirect land use impacts of the UK scheme and of the growing demand for biofuels more generally. As argued above, we consider it very unlikely that such effects will be captured at the level of individual fuel batches, but potentially this is one of the most important single impacts of biofuel

production, and the credibility of the scheme risks being undermined if it is not properly addressed.
    - There is no mention as to how the ex post facto analysis would be completed.
    - These points equally apply to the other environmental and social principles, which are difficult to monitor at fuel supplier level, for which the Administrator is required to complete an ex post assessment. These include competition with food prices, and not removing economic possibilities for developing nations.
    - In all of these cases, it may in the future be necessary to consider reducing or removing the eligibility of certain feedstock categories if major sustainability concerns are raised.

- If a supplier can not provide information on the country of origin or the landuse change caused by biomass production it is not considered that they can comply with the environment principles outlined in section 3. This lack of information could lead to conflict with:
    - principle 1 specifically 1.1 in Annex B - 'Preservation of above and below ground carbon stocks (reference date 30-11-2005)' and
    - principle 2 'Biodiversity conservation' criterion 2.1 in Annex B 'Evidence of compliance with national and local laws and regulations with respect to land planning and biodiversity conservation legislation'
    - we are concerned that the impacts on CO_2 stocks and on biodiversity resulting from the 'unknown' portion of biofuels have not been properly considered and that there is a risk that it could cause major adverse environmental impacts. Further work is need and mechanisms must be put in place to properly monitor this unknown portion, to monitor its size, the use made of it by suppliers and how 'unknown' values are arising in the UK in particular.

- Two key points are that there appears to be no evidence estimating how much 'unknown' land use change may occur. Additionally, within the consultation document it was not possible to identify any disincentives to avoid suppliers using this exemption as a potential loophole for avoiding compliance.
- In conclusion, we believe that any risk of excluding the impacts of changes in land use on carbon intensity from the calculations on GHG savings from the use of biofuels would be a major issue and could lead to the invalidation the results on GHG emissions life cycle savings. The biofuel for which the cropland was unknown should be not be considered valid to comply with the target.
- If the approach preferred was to assess ex post the land use change, then the biofuel concerned should count towards the target only ex post, once the ex post analysis was completed and a satisfactory outcome determined.

- Displacement and approach to idle land
    - A key concern in relation to biodiversity and landuse in relation to biofuels is that their production in one area, while not directly affecting an area of high biodiversity value, may increase the level of pressure upon other land areas. While it will not directly affect biodiverse areas it will push out other landuses, which in turn will impact upon areas of concern ie biofuels will result in displacement of landuses.
    - While displacement is not highlighted among the sustainability principles it is highlighted as a concern in Annex D. In an attempt to circumvent the issue, the consultation is proposing prioritising the development of biofuels on what is

termed ‘idle land’. The issue of idle land is also a potential concern, however, as in reality little land is in fact idle; that which deemed so for farming purposes may often be the areas where biodiverse communities reside. In Europe idle land would certainly constitute, at least in part, set-aside and the proposed loss of this resource more broadly is a major cause for concern. The loss of set-aside and areas protected from intensive farming will likely have a negative impact on the biodiversity of Europe’s agricultural land, especially given the potential high intensity of biofuel crops.

- The inclusion in the definition of idle land of the caveats that production on idle land must meet the criteria for carbon storage and biodiversity is welcomed and must not be removed.
- The exact potential impact of biofuel development on idle land must be considered in detail. Work would be welcomed identifying exactly on what types of land development would be promoted if idle land is pushed as the most desirable source of additional biofuels capacity.
- Monitoring indirect landuse impacts will be virtually impossible at the project level, unless direct cause and effect can be established – and it is unlikely this level of certainty could be established in most cases. This a real concern and given the limitations to project level monitoring and reporting it is felt best that the responsibility for reviewing landuse change fall to a suitably-empowered Administrator. The Administrator would be more able to review a broad impact such as displacement. In order to enable the Administrator to effectively perform this role it they would need to have real powers in terms of demanding information and revising the overall system. Additionally, the Administrator should be given the ability and resources to commission research into the impacts of the RTFO in this important, but little understood, area.

15. Are the costs of complying with the guidance as set out in the Partial Regulatory Impact Assessment for the draft Renewable Transport Fuel Obligations Order 2007 broadly correct?	Yes	No
If your answer is no please explain your reasons and add any additional comments you wish to make: This would require more detailed assessment of the figures.		

ANNEX

Staged Verification the UK’s Implementation of Verification under the EU ETS – extract from Options and Proposals for Consistency in the Implementation of the EU Emission Trading Scheme – Verification Good Practice[1].

Verification in the UK is expected to be carried out in accordance with DEFRA’s Annual Verification Guidance and template Verification Opinion Statement, see links below:

[1] A report for IMPEL by the Institute for European Environmental Policy under the EU ETS working group

http://www.defra.gov.uk/environment/climatechange/trading/eu/permits/pdf/annverifguide.pdf
http://www.defra.gov.uk/environment/climatechange/trading/eu/permits/download/verifopin-template.xls
Figure 2 of the Annual Verification Guidance indicates expectation for a staged interaction between the verifier and operator according to:

- By July: Operators contract verification bodies. Contract review, proposals, commissioning. Internal audit planning.
- By September: Stage 1. Strategic analysis. Review, check M&R Plan, transparency, sources, methods, completeness, information management, business environment etc. Discuss any issues with operator. Visit site. Plan detailed verification work and prepare verification plan.
- By Oct/Nov: Stage 2. Perform preliminary verification based on 6 to 9 months of actual data plus full year's forecasted data. Perform data checks, evaluate rules and principles, check systems and QA/QC. Raise any non-compliance issues.
- By early Feb: Stage 3. Year end reconciliation. Reconcile full year forecast (if available) and full year actual emissions, investigate anomalies, final rules and principles evaluation. Raise improvement opportunities. Perform technical review.
- By early Mar: Stage 4. Complete verification opinion statement using template on Defra website, insert verification opinion statement (VOS) into FINAL annual emissions report and send to operator for submission to regulator.

On-going issues are shared (including with verification body representatives) via regular meetings of the ETG WG3 Verification Group.

Please send this response to:

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