

Jarmo Honkamäe

29 October 2010

Günther Oettinger
European Commissioner for Energy
European Commission
B-1049 Brussels
Belgium

CC:
Connie Hedegaard
European Commissioner for Climate Action
European Commission
B-1049 Brussels
Belgium

Dear Commissioner Oettinger,

Neste Oil Corporation supports the European Commission's actions to reduce the climate impact of the transportation sector. We aim at becoming the global leader and standard-setter for the development and production of renewable fuels. Neste Oil has made renewable diesel its strategic development priority.

With this letter Neste Oil wishes to raise three aspects pertaining to *Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources (...)* (referred to as Renewable Energy Directive or RED), which are of great importance for the proper, non-discriminatory and accurate implementation and enforcement of this directive and for the further development of the renewable energy industries in European Union.

In particular, Neste Oils considers that the Commission's formal recognition of certain biobased fuels through their addition in Annex V of the RED would remove uncertainty of the Member States authorities as to the formal acceptance of these products to national markets. Moreover, in Neste Oil's opinion, for the proper functioning of the internal market it is crucial to harmonize the approach in all Member States towards all products based on the renewable energy that are sustainable. The same can be said about the need for the unified interpretation of the RED Article 18(1) among the Member States authorities. This is important in order to ensure proper transposition and enforcement of the mass balance provisions in all markets. Neste Oil also asks the Commission to ensure that the RED compliant biofuels are allowed to the Member States markets as from the 5th of December 2010 and are treated equally to biofuels which already today are distributed in these markets. Finally, Neste Oil would like to draw the Commission's attention to the fact, that introduction of decimals to the energetic values of transport fuels as listed in the Annex III of the RED, would create more transparent and level playing field for all energy products which are allowed under the RED. Each of these issues is explained in the text below.

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Greenhouse gas emissions and new biofuels pathways

Neste Oil requests the European Commission to recognize renewable fuels that are covered by the definition of "biofuels" in the RED, but are not specifically listed in the Annex V of the directive. This recognition is important for non-biased and equal treatment of all products, which, according to the RED, can contribute towards the achievement of the European targets for renewable energy and greenhouse gas (GHG) emissions reductions; yet are refused this status in several Member States at the moment. A number of national legislations and practices of authorities in the Member States fail to recognize these renewable fuels and refuse their access to the markets or to incentive schemes currently applicable to 1st generation biofuels, only because these products are not listed under Annex V of the RED. Examples of this unequal treatment in Germany and Spain are provided further in the text.

Neste Oil is looking for recognition of biobased gasoline, jet fuel and liquefied petroleum gas (LPG) produced using HVO (hydrotreated vegetable oil) technology. These products have potential for significant contribution towards the European climate related targets and are also products of very good quality. Molecular structure of HVO jet and HVO LPG is similar to their fossil fuel counterpart and HVO jet fuel exceeds the quality of conventional kerosene. This means that there are no technical problems with blending of these renewable fuels. HVO gasoline can be used as a gasoline component similarly to fossil-based gasoline components and can be counted as a renewable part of gasoline.

Technologically neutral enforcement in Member States

Technological neutrality is one of the main elements the RED is based on. It is understandable that the aim of this legislation is to open the European market to those renewable products, which are in compliance with all the requirements set out in the RED, and in particular can contribute towards the achievement of the targets for renewable energy and greenhouse gas (GHG) emissions reductions.

Looking for the efficient and environmentally acceptable alternative to fossil fuels, Neste Oil has developed a particularly low-emission renewable diesel in the form of its HVO diesel fuel NExBTL. The molecular structure of this renewable diesel is identical to pure paraffinic fossil diesel, making it untraceable from fuel blend. Its great advantage is that it is a drop-in fuel that can be used as any blends in diesel (0 - 100 vol-%) without causing technical problems (to any part of the vehicle and fuel distribution infrastructure).

Against this background Neste Oil would like to draw the Commission's attention to the current practice of authorities in several Member States that seriously contravenes the rule of technological neutrality, promoted by the Renewable Energy Directive, and introduces an obstacle for the free circulation of goods by not allowing or restricting the entrance of our HVO renewable diesel (NExBTL) to national markets. This practice is particularly visible today in Germany and Spain, as described below, and it is mainly resulting from the fact that the Member States do not know how to measure HVO and to distinguish it from diesel. Neste Oil's position is that HVO levels can be measured with mass balance methodology as prescribed by the RED and therefore we are looking for the Commission's support for this process against the Member States.

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In Germany, the German Federal Emissions Protection Act, introducing the mandatory biofuels target for fuel suppliers, based this target on the actual energy content and actual biogenic content of biofuels. As a consequence, NExBTL accounts for 98.5% as renewable fuel (1.5% is a fossil [hydrogen] part of NExBTL). This approach would be understandable and acceptable if only it were equally applicable to all other biofuels. Unfortunately this is not the case, because an exception is created for the biodiesel FAME (fatty acid methyl ester), where a fossil content of around 10% (from methanol used in a production process) is not taken into account and thus FAME counts towards the biofuels target in 100%. As a result, HVO has a significant value disadvantage in fulfilling renewable mandate, even though its true renewable content is clearly higher than that of FAME. This practice results in a significant distortion of competition and free access to the market as well as contradicts the technology-neutral approach enshrined in the Renewable Energy Directive.

In Spain, on the other hand, the legislation regulating the renewable energy for transport does not address specifically hydrotreated oils, however; the definition of biofuel is open-ended and in Neste Oil's opinion covers such fuels and particularly should not create an obstacle for the introduction of NExBTL in the Spanish market. Despite of this understanding, Spanish authorities present the view that hydrotreated vegetable oils are not allowed in the Spanish market, are not considered biofuels and cannot benefit from any fiscal or other incentives, only because the authorities do not know how to measure the renewable energy content of these fuels. In this situation Neste Oil, being unable to distribute its renewable diesel in Spain, experiences unfair treatment against the FAME producers. In this case, the legislation does not follow the technological development and omits products which can significantly contribute towards the achievement of the European goals rendering from the climate change and energy policies.

How to ensure certainty until the RED is adopted by all Member States

As the current situation in many Member States shows, the RED will most likely not be implemented by the 5th of December 2010. However; these circumstances should not affect European renewable business. Therefore; Neste Oil considers that it would be advantageous for the certainty and stability of the European industry that the Commission guides Member States that until the national regulations are in place all provisions of the RED should be respected and the access to the European markets should not be refused to products covered by this directive.

In particular, Neste Oil asks the European Commission to present its clear interpretation of art. 18(1) of the RED, concerning the mass balance system which is to be used in the EU for the verification of biofuels' compliance with the sustainability criteria. Once the RED was adopted and followed by *Communication from the Commission on voluntary schemes and default values in the EU biofuels and bioliquids sustainability schemes (2010/C 160)* it became clear for the European industry that biofuels can be distributed, stored and sold in a flexible, mass-balanced way, as long as their sustainability is proved and properly reported (and non-proportionate reporting is allowed). However; current information from some of the Member States illustrates, that national governments interpret this provision in a different way, not allowing for the use of mass balance system as designed in the directive. This is causing serious obstacles in the distribution of biofuels in Europe and will result in fragmented markets with different rules applicable to biofuels supply and sustainability verification. In order to avoid this situation, Member States authorities should be provided with a clear interpretation of the mass balance

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provisions of the RED, so that national legislations implementing this directive are in compliance with the rules stipulated herein.

Energy content of transport fuels

Energy content of transport fuels, as listed in Annex III of the Renewable Energy Directive, are to be taken into account in the calculation of the final gross consumption of energy from renewable sources in each Member State. These values are defined for each type of fuel by mass and by volume (lower caloric value, MJ/kg and MJ/l) without any decimal places, contrary to the common practise. In a result, fuel products, whose energetic value is rounded down, are discriminated against those fuel products, whose energy content is rounded up. This is the example of HVO (hydrotreated vegetable oil) diesel with 34 MJ/l (44 MJ/kg) – rounded down from 34.39 MJ/l¹ and FAME (fatty acid methyl ester or biodiesel) with 33 MJ/l (37 MJ/kg) – rounded up from 32.65 MJ/l¹. The discriminatory effect of this stipulation is apparent when considering millions of liters of each of these products delivered to the European market annually in order to fulfil the renewable energy targets the EU is aiming to achieve.

Against this background, Neste Oil proposes to use methodology of calculation that is used by the Member States for tax purposes, that means to rely on the accurate and precise calculations commonly practiced by the European fuel suppliers and to base the energy content values of fuels and biofuels, listed in Annex III of the RED, on the national standards for calorific value measurement (e.g. German DIN51900-1:2000) or other standards (e.g. ASTM D 4809-2009). The measurement according the standards gives the result with three decimals in MJ/kg and it is often reported with two decimals.

In this way the European legislation, building up on the existing national measures, would create a transparent and level playing field for all energy products that are expected to contribute to the European targets.

Neste Oil expects that the relevant changes in Annex III of the RED should not provoke significant formal problems, since they are envisaged to be done under the comitology procedure. As an example of the recently drafted *Commission Directive amending, for the purpose of its adaptation to technical progress, Directive 98/70/EC of the European Parliament and of the Council relating to the quality of petrol and diesel fuels* shows, it was not problematic to alter Annex III of Directive 98/70/EC in accordance with the Standard EN ISO 4259:2006, which defines the rules for rounding results according to the precision of the test method.

¹ Announcement of the Ministry of Finance, Germany.

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Summary

Taking into account the above mentioned background Neste Oil requests the services of the European Commission in charge of energy to take actions aiming at:

- Recognition of new types of biofuels through the introduction of new values of GHG emission savings for new biofuel pathways, provided for in Annex V of the RED;
- Unification of approach in all Member States towards all products based on the renewable energy that are sustainable and that can help the EU to achieve both renewable energy and GHG emission reduction targets;
- Ensuring that the RED compliant biofuels are allowed to the Member States markets as from the 5th of December 2010 and treated equally to biofuels which already today are distributed in these markets;
- Unification of the interpretation of the RED art. 18(1) among Member States' authorities to ensure proper transposition and enforcement of the mass balance provisions in all markets; and
- Introduction of decimals to the energetic values of transport fuels as listed in Annex III of the RED.

Sincerely,

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