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Voluntary Bioenergy Certification: A Legitimate Approach to Account for Social Aspects in Environmental Governance?

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Abstract

While initially hailed to be the silver bullet for tackling climate change, reducing oil dependency and providing an opportunity for rural development especially in poorer regions, severe criticism concerning the environmental and social performance of bioenergy has been raised recently. One potential solution for this problem that is increasingly discussed now is the certification of bioenergy. In the wake of this discussion, a broad range of certification initiatives emerged during the last years. However, this issue is predominantly debated in terms of the environmental implications. Accordingly, governmental approaches to this issue often neglect the need for including social aspects into sustainability principles and criteria, most prominently here the EU Renewable Energies Directive (RED). Non-state voluntary certification initiatives, by accounting for the social implications of increased bioenergy production, could therefore be seen as complementary governance instruments that are able to fill the void left by state regulations in this respect.

After briefly addressing the reasons why state regulations tend to neglect social aspects concerning this matter, this paper seeks to explore whether voluntary bioenergy certification schemes could really be able to fulfill these hopes and provide the solution for the missing consideration of social criteria for sustainable bioenergy. And how could these private non-state initiatives do so in a politically and democratically legitimate way? So as to deal with these issues from a scientific perspective, a distinct analytical framework to evaluate the legitimacy of private governance is presented. Based on this framework, five voluntary bioenergy certification schemes are selected and their consideration given to its social dimension is examined. In order to address the characteristics of our conception of non-state legitimacy, the actor constellations behind these certification initiatives are analyzed with a view to determine the structural representation of social interests. Furthermore, we also give attention to the control and accountability mechanisms incorporated into the certification schemes that are supposed to safeguard the common welfare-orientation of the initiatives. The results of this analysis shed some light on the particular challenges and bottlenecks of ensuring social sustainability via non-state voluntary certification systems in the bioenergy sector. In the concluding chapter, these results are put into perspective and a more general discussion on the potential of non-state voluntary governance approaches regarding the social dimension of environmental governance are presented.

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1 Introduction

From 2006 onwards, the public discussion about sense and senselessness of promoting biofuels has heated up and led to substantial controversy. While initially hailed to be the silver bullet for tackling various problems, severe criticism concerning the environmental and social performance of first generation biofuels has recently been raised. Pursuant to this argument, the production and use of biofuels, especially in developing countries, would be counterproductive or at best irrelevant to combating climate change and poverty of rural populations as well as to contributing to energy security in developed countries. Accordingly, a large number of studies circulating on the ecological and social impacts of bioenergy production, particularly in relation to developing countries, are indicating that neither the CO₂ balance of bio-energy nor the social consequences of increased biofuel production correspond to the expected effects (see e.g. Franco et al. 2010). The definition of sustainability criteria for the production of biomass and bioenergy is therefore seen as a key solution to ensure an expansion of bioenergy use while ensuring their social and environmental sustainability. It also constitutes an integral part of national and European legislation in the bioenergy sector.

Especially the EU's Renewable Energy Directive (RED), which was adopted in April 2009, plays a significant role in this context. Since it sets mandatory standards for sustainable biofuels for the EU Member States, these sustainability criteria will have an impact on biofuel production also in other parts of the world, as the EU Member States will have to rely on imports to meet the 10 percent target for biofuels also set up by the RED. To count towards this target or to be eligible for tax exemptions in EU Member States, biofuels have to fulfill the following requirements.

Table 1.1: EU Sustainability Criteria for Biofuels

<p>1. Reduction of greenhouse gas emissions by at least 35%</p> <ul style="list-style-type: none"> • in effect immediately, but solely for biofuels produced in installations that were put into service after 23 January 2008 (for biofuels, which were produced in older plants, this criterion applies only from 1 April 2013) • at least 50% GHG savings as of January 2017 (for all biofuels) • at least 60% GHG savings as of January 2018 (only for biofuels produced in installations that were put into service after January 2017) <p>2. No raw material from land with high biodiversity value:</p> <ul style="list-style-type: none"> • Forest undisturbed by significant human activity • Highly biodiverse grassland • Nature protection areas (unless compatible with nature protection) <p>3. No raw material from land with high carbon stocks:</p> <ul style="list-style-type: none"> • Wetlands • Continuously forested area • Undrained peatland <p>4. Cross Compliance</p> <ul style="list-style-type: none"> • Agricultural raw materials cultivated in the EU must also meet EU agricultural "cross compliance" rules applied under the EU Common Agricultural Policy
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In addition to direct presentation of information on greenhouse gas savings and to meet other sustainability criteria by the respective operators on the basis of a mass balance system, there are two

alternative ways of demonstrating compliance with the criteria. It can be done through voluntary certification systems, or through bilateral or multilateral agreements. For the proof of compliance with the sustainability criteria through voluntary national or international certification schemes, these systems have to be recognized by the Commission. This recognition process is ongoing at the moment.

Sustainability criteria of the EU RED, however, do not include any social criteria. In the context of our article, the EU regulation of sustainability for biofuels points to two important aspects. First, there is no binding regulation regarding the social aspects of biofuels production. This is representative for biofuels certification, as there is a trend that “environmental conditionality is the main thrust of most sustainable biofuels initiatives” (Charnovitz et al. 2008: 1). This inadequateness of governmental regulation regarding social criteria in the field of bioenergy is exemplified by the EU RED, which has been heavily criticised by non-governmental organizations (NGOs)¹.

But why are environmental concerns much more prominent when it comes to the certification of bioenergy? Is there some special difficulty about social aspects? This is mainly due to trade regulations, especially the WTO provisions under the GATT, which inter alia deal with non-discrimination of imported products and national treatment (Articles I and III), and the TBT Agreement, which requires that technical regulations not constitute an unnecessary obstacle to. According to these regulations, the certification of bioenergy, and especially the inclusion of social criteria, could be seen as a trade limitation. However, these WTO issues could be circumvented in case the regulation would fall under the exceptions mentioned by article XX GATT (for more details on this issue see Charnovitz et al. 2008; Echols 2009; Kahl 2008). However, it is not ultimately clarified if social criteria within bioenergy certification and the conjunction of these with subsidies or the counting towards mandatory targets are WTO compatible. Therefore, WTO trade regulations may often be a reason for social criteria being left out of governmental sustainability criteria.

Voluntary certification schemes are widely seen as a possible way out of this dilemma. Through voluntary certification, WTO regulations that prevent governments from adopting social criteria for bioenergy could be circumvented, because these WTO regulations might not apply to voluntary schemes. In the case of the EU RED, the commission will assess voluntary certification schemes and evaluate to what extent these can fulfill the requirement of safeguarding bioenergy sustainability as defined in the RED (i.e. only environmental criteria). If a voluntary certification scheme is approved by the EU, the certificates it issues serve as a proof that EU sustainability criteria have been met. If now these voluntary certification schemes additionally address social criteria, these social criteria would be incorporated into the RED provisions “through the backdoor”.

Second, national or international voluntary bioenergy certification systems from outside of the EU may be recognized by the Commission to contain accurate data to proof the fulfillment of the EU RED sustainability criteria. During the last years, several voluntary certification initiatives for biomass or agricultural products have emerged. This can be seen as a part of a general rise of non-state market-driven (NSMD) instruments within environmental governance (see e.g. Cashore 2002). This rise and related challenges will be further scrutinized in the second chapter of this pa-

¹ See e.g. the Joint Open Letter to the EU's ad hoc working group on sustainability criteria signed by several NGOs (http://www.foeeurope.org/agrofuels/resources/agrofuels_toolkit/SocialCriteria_for_SustainabilityStandards.pdf).

per. However, the rise of voluntary certification systems could also be seen as a chance to speed up awareness for the social aspects of bioenergy.

For these two reasons, much hope is pinned on voluntary bioenergy certification initiatives. But can voluntary certification schemes really provide the solution for the missing consideration given to social criteria for sustainable bioenergy by state regulation? And how can these private non-state initiatives do so in a politically and democratically legitimate way? In our opinion, these questions are worth a closer look and will therefore be at the heart of our paper.

This article proceeds as follows. The general rise of voluntary environmental certification initiatives and its implications will be described in chapter 2. A special focus will be put on the issue of legitimacy in this respect, which is further scrutinized in chapter 2.1. Here, we will also conceptualize the analytical framework for our paper based on discrete conceptions of legitimacy. In chapter 3, we will first explain on the basis of which criteria we chose to analyze exactly the initiatives we are dealing with in this paper. Thereafter, we introduce these five voluntary certification initiatives and, based on the analytical framework outlined before, check them for their membership and internal governance structures and the social criteria included in their schemes. These results are analyzed in chapter 4 with a view to the main questions of this paper mentioned above and to the conceptions of legitimacy developed in chapter 2. In the concluding chapter, we put results into perspective and look ahead.

This analysis relies on a variety of data sources. It mainly draws on the materials the initiative themselves have uploaded on their web sites. These internal documents like meeting minutes, guidances on principles and criteria and internal governance as well as auditing and grievance procedures. These self-presentations have been backed up by a comprehensive review of reports dealing with bioenergy certification by multilateral organizations, donor organizations, NGOs and published articles in scientific journals, newspapers and trade magazines. In the future, these data is planned to be verified and expanded by interviews with representatives of the involved organizations in order to clarify open questions and update available data.

2 The Rise of Environmental Certification and its Pitfalls

Since a few decades voluntary certification initiatives spring up like mushrooms. Ever since, there is considerable debate about the potentials and pitfalls of non-state governance instruments like voluntary certification. The certification of forests, wood, paper and paper products can be considered a pioneer in this regard. The Forest Stewardship Council (FSC), an international nonprofit organization that created the first certification system for sustainable forestry, was founded already in 1993. In the meantime, other certification schemes developed in this area (e.g. the Programme for the Endorsement of Forest Certification schemes (PEFC)). As a result, a variety of vertically (from the international to the local level) and horizontal (both by state and economic as well as by civil society actors) recognized instruments to ensure the certification of forest products and their sustainable production, trade and use exists nowadays. In the course of time, it became increasingly clear that these aspects are relevant also in the context of bioenergy. As a result, first certification initiatives were launched from 2003 on in this area.

In this paper, we follow the classification made by Gereffi et al. (2001: 57-58), who distinguish between new corporate- and NGO-led non-state market-driven governance systems as well as between these and state-based standards on a voluntary basis. In doing so, they identify four categories of certification initiatives. According to this, first-party certifications are common forms of purely internal corporate self-regulation, whereby firms set up own rules and reports on compliance without any external verification or whatsoever involved. Second-party certification does involve external actors, but only from the same industry, such as industry associations that develop standards and monitor compliance with these. Third-party certifications have non-corporate coordinating bodies, typically NGOs that set standards and monitor compliance. Fourth-party certifications are coordinated by government or multilateral agency bodies but remain voluntary. The categorization of voluntary certification initiatives described here, despite its fuzziness (because also mixtures of these types are perfectly feasible), is widely applied in the social sciences (see e.g. Reynolds et al. 2007).

Obviously, certain differences between these forms of private governance systems also exist in terms of their credibility. In this respect, first-party certification is regarded to be least trustworthy because of the corporate self-interested nature. Industry-wide certification schemes often replace these schemes in order to improve the legitimacy of standards and procedures, but legitimacy concerns remain also here. Therefore, third-party certification has the best reputation due the participatory structures, clear standards, and credible verification systems they are generally characterized by. This assumption is confirmed by research on credibility and the associated success of third-party non-state governance systems. This success of these can be traced back mainly to their (assumed) corporate independence and their strong market position and consumer appeal (Reynolds et al. 2007: 149; Gereffi et al. 2001; Cashore et al. 2004). For this reason, we will in this paper mainly focus on third-party certification initiatives in the bioenergy sector.

There are several general potentials and challenges related to voluntary certification initiatives that will briefly and non-exhaustively be described in the following. Firstly, voluntary certification initiatives can play an important role in

- (a) facilitating the discussion on certification among stakeholder groups;
- (b) providing a forum for the development of principles, criteria and indicators; and
- (c) the implementation of model studies to better understand the impact of the implementation of certification systems.

Secondly, these non-governmental certification initiatives have the advantage of achieving results in a relatively short time frame compared to multilateral or international governmental processes that are inherently long and complex. Therefore they are possibly able “to fill the void left by eroding state regulations” (Reynolds et al. 2007: 150) and also to pave the way for future governmental regulations or standards. Thirdly, voluntary certification initiatives can raise issues on the public agenda and so sensitize public to sustainability issues. Eventually, this can exert pressure on economic actors who thereupon might change their behavior in a more sustainable way. Lastly, even a small sustainability certification initiative with a limited scope and outreach might be better than no guidance on a sustainability-related issue, for which no governmental regulation exists.

On the other hand, voluntary certification initiatives have to deal with certain bottlenecks. First of all, legitimacy concerns are often raised when comes to non-state governance instruments like voluntary certification, because they do not underlie any democratic control and are not necessarily accountable to the people that they affect. It is “only state actors have the authority to prescribe behavior of others, and legitimacy is not simply transferable from state to non-state actors. Private

governance, i.e., non-state actors prescribing behavior (e.g., how to produce biofuel), demands new sources of legitimacy” (Partzsch 2009: 4). The issue of legitimacy will be dealt with in more detail in chapter 2.1. Secondly, non-state voluntary certification is not necessarily more effective than no regulation at all. That is, companies sometimes may push non-state certification efforts in order to anticipate a stricter governmental regulation that might be looming on the horizon: “Some observers even fear that certification driven by activists and corporations will preempt or supplant altogether the role of states and international organizations in addressing corporate accountability as free trade expands around the globe” (Gereffi et al. 2001: 57). Thirdly, the controllability of the criteria of certification schemes is often limited. Such a hampered monitoring and verification of criteria might lead to reduced reliability of the certification scheme and opens the floodgates to corporate “green-washing” activities. Lastly, an additional problem might be the conflict of goals in relation to sustainability issues. For example, in the case of biofuels, mitigating CO₂ emissions might run contrary to biodiversity goals or social objectives. Certification initiatives might therefore particularly focus on one certain goal, thereby disregarding other goals and eventually not improving the overall situation.

2.1 The Political and Democratic Legitimacy of Voluntary Certification Initiatives

To make an informed judgment about the legitimacy of non-state governance approaches an unambiguous definition of what we mean by “political” and “democratic legitimacy” is needed. According to Susanne Schaller, there are generally two distinct ways of conceptualising legitimacy, a prescriptive-normative and a descriptive one: “Normative approaches refer to the conditions under which authority can be morally evaluated as legitimate, while descriptive approaches focus on the social acceptance of authority” (Schaller 2007: 11). A prescriptive-normative approach here would define legitimacy as “the validity of political decisions and political orders and their claim to legitimacy. From a descriptive perspective, in contrast, the focus is on the societal acceptance of political decisions and political orders” (Zürn 2004: 260). According to this classification, we will in this article adopt both perspectives on legitimacy.

Regarding the descriptive approach, we draw on the framework to analyze “non-state market-driven” (NSMD) governance systems mainly designed by Benjamin Cashore and Steven Bernstein. They define political legitimacy “as the acceptance of shared rule by a community as appropriate and justified” (Bernstein and Cashore 2007: 348). This definition of political legitimacy is obviously closer to the descriptive approach. It builds on the concept of legitimacy in global environmental governance developed by Steven Bernstein, which largely rejects concepts of democratic legitimacy, since the criteria for such a concept would ultimately be “contingent on historical understandings at play and the shared norms of the particular community or communities granting authority” (Bernstein 2005: 162). Therefore, Bernstein’s concept of political legitimacy of newly emerging forms of global environmental governance is based on a variety of contextual factors such as the responsiveness to democratic pressures, the effectiveness of new governance mechanisms, the power balance between states and markets within these newer forms of private or hybrid authority, or the linkage of environmental with other highly valued goals (e.g. economic growth or development).² This finally brings him to conclude “that legitimacy ultimately concerns political authority”

² For a fuller description of this concept of political legitimacy in global environmental governance see Bernstein (2005).

and that political authority, “in turn, results from the meshing of power, legitimacy, and community” (Bernstein 2005: 165). Based on this conception of legitimacy, Bernstein and Cashore divide the process of gaining political legitimacy for NSMD systems into three phases (see table 4.1).

Table 2.1: Characteristics of the three phases of NSMD governance

Based on Bernstein and Cashore (2007).

<p>First phase: Initiation</p> <ul style="list-style-type: none"> • NGOs and companies with a shared set of values and goals team up (based on a convergence of strategic calculations). • A small “political community” based on trust as well as shared norms and understandings emerges around the topic. • Economic demand for certified products is limited or nonexistent. • Virtually no impact “on the ground” yet. <p>Second phase: Widespread support</p> <ul style="list-style-type: none"> • Companies further away from the NSMD system’s behavioural requirements (with higher compliance costs) become attracted. • Increased diversity within the NSMD system leads to divergence of interests. • NSMD system faces pressures to ease behavioural requirements. • Alternative approaches emerge and the NSMD system becomes fragmented. • Normative pressures combined with the emergence of shared norms and learning can lead to a re-definition of disparate interest. • Norm generation begins to occur. • Widespread community building takes place. • NSMD system starts to really have an impact “on the ground”. <p>Third phase: Political legitimacy</p> <ul style="list-style-type: none"> • Virtually all stakeholders within a targeted sector recognize their membership in a political community. • This political community recognizes the NSMD system as a legitimate institution and grants it authority to govern. • No chance for economic actors in the targeted sector to ignore the standards set up by the NSMD system (massive impact “on the ground”).

Within the normative-prescriptive concept of legitimacy, two distinct approaches to conceptualize legitimacy can be discerned, namely “input legitimacy” and “output legitimacy” (see e.g. Partzsch 2007; Partzsch 2009). “Input legitimacy” here refers to the democratic quality of decision-making processes and participation, whereas “output legitimacy” refers to a rather pragmatic understanding of legitimacy, which can be achieved via an effective performance and the support of a common goal (also “de facto”-legitimacy). “Input legitimacy” can also be achieved through a broad stakeholder inclusion, the so-called “throughput legitimacy” (see e.g. Bekkers and Edwards 2007 44-45). In general, non-state governance constitutes “a fundamental shift from an input-oriented towards an enhanced output-oriented understanding of legitimacy” (Partzsch 2009: 5). Three normative conceptions of democratic legitimacy achievable by non-state governance initiatives can be distin-

guished and will in this paper be evaluated regarding voluntary bioenergy certification initiatives.³ The characteristics of these are depicted in the following table.

Table 2.2: Three conceptions of democratic legitimacy of non-state governance initiatives
Based on Partzsch (2009).

<p>“De facto” legitimacy</p> <ul style="list-style-type: none"> • Democratic legitimacy is gained through effectively solving a common problem → “de facto” legitimated by output. • The manner, in which this is achieved, e.g. who participates and how (input), is secondary to the result (output). • An informed consensus both on what the common problem is and on what should be done to solve this problem is presupposed. • Acceptance within the social system that is affected by/cares about the problem arises ex post. <p>Legitimacy through stakeholder inclusion</p> <ul style="list-style-type: none"> • Broad involvement of affected stakeholder groups makes up for the lack of democratic (i.e. by publicly elected representatives) decision-making. • Refers to the participation in process of decision-making → input-oriented conception of legitimacy (also called “throughput” legitimacy). • Is based on the assumption that who participates in the decision-making process and how determines the output of that process. <p>Legitimacy through control and accountability</p> <ul style="list-style-type: none"> • According to this conception a system of internal “checks and balances” can ensure that the results serve the common welfare and thus the achievement of democratic legitimacy → again an out-oriented conception of democratic legitimacy. • This includes the question of who controls whom and how as well as the question who is accountable to whom and the associated procedures. • This also includes the possibility to retake decisions.
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In the following, we use this framework to examine the normative legitimacy of five voluntary bioenergy certification initiatives. Therefore, the characteristics analyzed for each of the initiatives were chosen with a view to reflect the three conceptions of normative legitimacy described above. The fact of one or all of these conditions being fulfilled (or not) does not necessarily generate legitimacy. Accordingly, this set of conditions can only serve as a guideline for analyzing initiatives of private governance and certification.

³ This analytical framework for evaluating the legitimacy of private governance was developed by Lena Partzsch. A more detailed description of it can be found in Partzsch (2007: 101-105).

3 Certification Initiatives for Sustainable Bioenergy

Since particularly biofuels came under increased criticism since the mid-2000s, certification schemes for sustainable bioenergy (or its feedstock) became a much debated and much advocated instrument to possibly minimize the negative environmental and social impacts of increased bioenergy production. A pioneering role in Europe regarding the development of certification schemes for biofuels was taken on by the consultancy firm Ecofys that in a study from 2003 firstly mentioned the possibility of introducing a sustainability certification scheme for biofuels (van den Broek et al. 2003). In the meantime, a number of certification schemes have been initiated, each with varying regional reference or object. Especially during the last three years the number of initiatives aiming at safeguarding the sustainability of bioenergy has risen sharply, as the following figure shows.

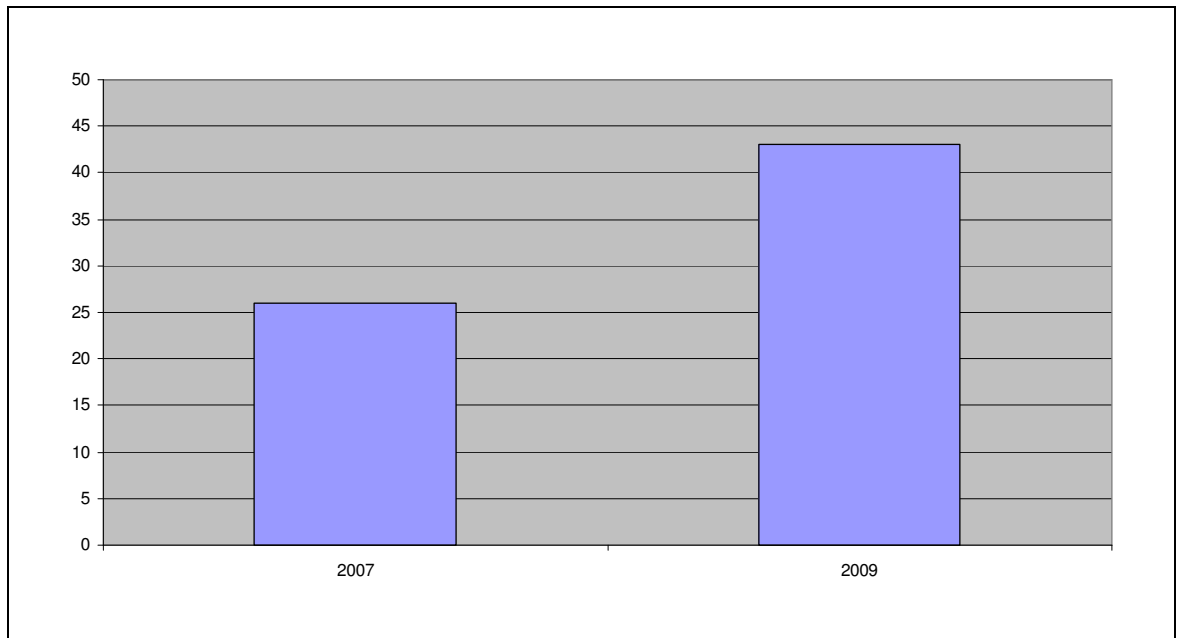


Figure 3.1: Increase of initiatives dealing with sustainability standards for bioenergy
Based on van Dam et al. (2010: 6).

3.1 Overview of Five Voluntary Certification Initiatives for Bioenergy

As the above figure shows, the following five voluntary certification initiatives related to bioenergy only represent a small section of the existing total. This selection has been made according to following criteria. First of all, we only wanted to include voluntary initiatives, that is, only such ones that are not enforced by state authorities. Furthermore, only third-party initiatives should be consid-

ered in order to analyze the initiatives with a considerable share of civil society actors participating. A third criterion was the market position or rather the advanced status of the initiatives (principles and criteria adopted and tested, etc.). Fourthly, we only wanted to include initiatives with an international or global scope. Fifthly, the initiatives should be actual certification initiative, that is, with the aim of setting up a whole certification system and of running it, not only the production of principles and criteria. Last but not least, data availability was a restricting factor that also accounts for the selection of the five voluntary bioenergy certification that will be analyzed in the following.

3.1.1 Roundtable on Sustainable Palm Oil

The Roundtable for Sustainable Palm Oil (RSPO) is an initiative for the sustainable production and use of palm oil that was founded by several corporations from the sector (Aarhus United UK Ltd., Golden Hope Plantations, Migros, Sainsbury, Unilever and the employers' association of the palm oil industry in Malaysia (Malaysian Palm Oil Association, MPOA)) under the auspices of the WWF in 2004. The non-profit organization now consists of many members who represent a majority of the participants in the palm oil supply chain, namely oil palm plantation, palm oil processors and traders, consumer goods manufacturers, distributors, banks, investors, and NGOs for environmental protection and conservation, social affairs and development. Within a few years, the RSPO has thus managed to unite almost the whole industry. In the meantime several annual "round tables" were organized to define the RSPO principles and criteria for sustainable palm oil. In 2007, it adopted the "RSPO Principles and Criteria for Sustainable Palm Oil Production" (RSPO 2007). This set consists of eight principles, which 39 criteria and 123 national indicators are subordinate to. After a two-year test period from 2006 to 2008, the RSPO since the end of 2008 awards seals for sustainable palm oil. It is thus the only initiative in the bioenergy sector that is already in operation and used (even if only for palm oil-based bioenergy). In the beginning, demand for RSPO-sealed palm oil was very low (WWF 2009: 3). However, it rose during 2009 and 2010 (Mongabay.com 2010). In order to become a recognized by the European Commission as a certification scheme fulfilling the requirements set up in the EU RED, RSPO established a Task Force on RED that in July published an additional guidance document for compliance with the EU RED requirements (RSPO 2010). The main focus of this additional guidance concerns a criterion on reducing GHG emission, which before wasn't included in the RSPO principles and criteria.

3.1.2 Roundtable on Sustainable Biofuels

The Roundtable on Sustainable Biofuels (RSB) is an international initiative of the Ecole Polytechnique Fédérale de Lausanne (EPFL) Energy Center and brings together companies, governments and civil society in order to develop principles for sustainable biofuels. The RSB is an initiative that includes stakeholders from all sectors of society includes, but is indirectly funded by the Swiss government and thereby not completely independent. The Main Drivers behind the RSB are industry and NGOs already working on a on a "traffic light" scorecard based certification mechanism. The RSB gathers a variety of corporations, international organizations and NGOs, including Shell, British Petroleum, Petrobras, Toyota, the GM companies Dupont and Genencor, the agricultural traders Bunge, the World Economic Forum, the International Energy Agency, the labeling organizations Max Havelaar and Forest Stewardship Council (FSC) as well as the World Wide Fund for Nature (WWF) and Oxfam. The objective of this roundtable is to develop a global certification system along with minimum standards for biofuels. This process should involve public, private and civil society actors. In December 2009, the RSB Board adopted Version 1.0 of the "RSB Principles & Criteria for Sustainable Biofuel Production" (RSB 2009) for pilot testing. Version 1.0 will be further improved and refined into "Version 2.0", to be released in November 2010. In July 2010, the

RSB issued the “RSB Standard for EU Market Access”, a standard that is supposed to ensure that the RSB gets recognized by the European Commission as a certification scheme fulfilling the requirements set up in the EU RED (RSB 2010).

3.1.3 Roundtable on Responsible Soy

According to its web site, the main objective of the Roundtable on Responsible Soy (RTRS) is to promote economic, socially just and environmentally sustainable production, processing, and trade of soy. The first informal meeting of the RTRS was held in March 2005 in Brazilian Foz de Iguazu. In November 2006, it was then officially founded in Switzerland mainly by representatives from the soy industry, retailers (e.g. COOP from Switzerland) and the WWF. It is furthermore supported by Swiss and German governmental development organization (Swiss State Secretariat for Economic Affairs (SECO) and Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ)). The objective of this multi-stakeholder process is to develop jointly with all concerned parties broad-based criteria for responsible soy cultivation, and then implement them. The Basel Criteria are included here as an important basis in the international process. The RTRS is based on other processes for improving the sustainability of globally traded goods (e.g. in the areas of coffee, sugar cane, cotton and palm oil). After 1 year of field testing a draft version, in June 2010, the General Assembly approved the “RTRS Standard for Responsible Soy Production Version 1.0” (RTRS 2010a). Based on this version, RTRS certification is planned to start in the beginning of 2011. In order to gain recognition by the European Commission regarding the fulfillment of the EU RED sustainability criteria, the RTRS has set up a working group to draw up an annex to the RTRS Standard that complies with the EU RED. In August 2010, the RTRS has submitted this additional scheme to European Commission and is now waiting for recognition. It contains the requirements of the directive, and “will be optional for those farmers that produce soy for biofuels meant to be exported into the European Union” (RTRS 2010b).

3.1.4 Better Sugar Cane Initiative

The Better Sugar Cane Initiative (BSI) also is a multi-stakeholder process that has made the promotion of measurable improvements on the main environmental and social impact of growing and the primary processing of sugar cane its business. The BSI tries to incorporate the diverse and geographically different implications regarding the production of sugar cane and the processing of it. To achieve this, the BSI aims to integrate a multitude of players of the various interest groups in the area of sugar cane and intends to involve them in a dialogue that is geared to the definition, development, and the adoption and implementation of practical and verifiable performance-based measures and principles for the production and initial processing of sugar cane on a global level. The BSI was founded in 2005 by WWF, together with the Department of International Finance Corporation (IFC) of the World Bank and several corporations of the sugar cane producing and processing industry. The ambition and also the activity of the BSI at the beginning seemed to be lower than the ones of other roundtables and it appeared to make “little progress in defining what constitutes ‘better sugarcane’” (CEO 2008). However, in July 2010, the BSI finally adopted the BSI Production Standard that consists of five principles and subsequent criteria and indicators for the “better” production of sugar cane (BSI 2010a) as well as an audit guidance document and a certification protocol (the latter two are not publicly available though). This BSI certification scheme has then been submitted to the European Commission for recognition as a voluntary scheme fulfilling the EU RED sustainability criteria and is currently being evaluated by the European Commission (BSI 2010b).

3.1.5 International Sustainability & Carbon Certification

The International Sustainability & Carbon Certification (ISCC) is an association as well as a certification company based upon a German governmental initiative. In 2006, the German government initiated a project that was supposed to develop a specific proposal for the certification of biofuels. This project was led by meo consulting, a private consulting firm, who in collaboration with various companies and institutions developed a concept that has been field-tested in a two-year pilot phase as of 2008, again funded by the German government. However, the ISCC association as well as the ISCC certification company, which developed out these governmentally funded projects, is now totally private and independent from the state, which is why we included it in this study under the criteria mentioned above.

Table 3.1: General Overview of Major Bioenergy Certification Initiatives

Based on information provided on the initiatives' websites.

Initiative	Year established	Regional Focus	Status	Membership Fees (in €/a)
RSPO	2004	Global (but focus on Southeast Asia, the major palm oil producing region)	In operation	2.000 ^a
RTRS	2006	Global (but focus on South America, the major soy producing region)	Version 1.0 approved; certification should start in 2011	250 - 2.500 ^b
RSB	2006	Global	Version 1.0 approved; now pilot testing	\$250 - \$10.000 ^c
BSI	2005	Global (but focus on Brazil, the major sugar cane producing country)	Production Standard formally adopted; certification to start soon.	Unknown ^d
ISCC	2006	Global	In operation	100 - 6.000 ^e

Legend:

a = Fee for small growers (less than 500 ha) is reduced to 500€.

b = Fee is 2.500€ for larger producers (more than 10.000 ha), larger NGOs (international, from a developed country and with an annual operating budget of more than 250.000€) and industry; fee for all other amounts to 250€.

c = Ranging from \$250 for small NGOs (less than 15 mill. € annual operating budget) to \$10.000 for large companies (more than 2 bill. € turnover).

d = According to the Corporate Europe Observatory, the annual fee for a membership with voting rights regarding the BSI amounts to \$25.000 (CEO 2008). This is, however, not verified.

e = Ranging from 100€ for individuals to 1.000€ for NGOs and small companies (less than 10 mill. € turnover) up to 6.000€ for large companies (more than 250 mill. € turnover).

The ISCC has the overall goal to implement an internationally oriented, pragmatic sustainability certification system for biofuels, which keeps low the administrative burden, reduces the risk of non-sustainable production, and serves as a proof for the greenhouse gas emissions from biofuels

over the lifecycle. The ISCC aimed to develop an implementable certification concept together with representatives from industry, commerce, agriculture, and their interest groups, and representatives from government and from NGOs. The certification system should be designed in a way that all requirements of the German Biomass Sustainability Ordinance (BSO) as well as of the EU RED are met. The sustainability requirements for the production of biomass under the ISCC system as well as the basics of the certification system have been finalized in April 2010 (ISCC 2010a; ISCC 2010b). In July 2010, the ISCC certification system has been finally recognized by the Federal Agency for Agriculture and Food (BLE) as complying with the requirements set up in the BSO. Recognition under the EU RED is therefore said to be certain.

3.2 Social Criteria in Bioenergy Certification Initiatives

Though all five bioenergy certifications address issues of social sustainability, actual standards vary significantly. First, we checked whether the initiatives comply with the eight ILO Conventions mentioned in the RED. These are:

- Convention concerning Forced or Compulsory Labour (No 29)
- Convention concerning Freedom of Association and Protection of the Right to Organise (No 87)
- Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively (No 98)
- Convention concerning Equal Remuneration of Men and Women Workers for Work of Equal Value (No 100)
- Convention concerning the Abolition of Forced Labour (No 105)
- Convention concerning Discrimination in Respect of Employment and Occupation (No 111)
- Convention concerning Minimum Age for Admission to Employment (No 138)
- Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No 182)

There are some other social aspects about bioenergy that are specific to this commodity and that therefore deserve special attention. Especially food security and land rights have to be taken into account, because these are social criteria with special importance in the context of bioenergy.

Table 3.2: Selected social criteria coverage in bioenergy certification initiatives

Based on van Dam et al. (2010: 15-16) and information from the initiatives' websites.

Initiative	No child labour	Minimum age (in years)	Freedom of discrimination	Freedom of labour: no forced labour	Freedom of association and collective bargaining	Right of indigenous people explicitly mentioned	Safe-guarding local food security	Land Rights explicitly mentioned
RSPO	Yes (ILO 138, 182)	15 or older ^{a,b}	Yes (ILO 100, 111)	Yes (ILO 29, 105)	Yes (ILO 87, 98)	Yes (ILO 169)	No ^c	Yes
RTRS	Yes (ILO 138, 182)	15 or older ^{a,b}	Yes (ILO 100, 111)	Yes (ILO 29, 105)	Yes (ILO 87, 98)	Yes (ILO 169)	No	Yes
RSB	Yes (ILO 138)	14 or older ^{a,b}	Yes (ILO 111)	Yes (ILO 29)	Yes (ILO 87, 98)	Yes (ILO 169)	Yes ^d	Yes
BSI	Yes (ILO 138, 182)	15 (non-hazardous)	Yes (ILO 100, 111)	Yes (ILO 29, 105)	Yes (ILO 87, 98)	Yes (ILO 169)	No	Yes
		18 (hazardous)						
ISCC	Yes (ILO 138, 182)	15 (non-hazardous)	Yes (ILO 100, 111)	Yes (ILO 29, 105)	Yes (ILO 87, 98)	No	Yes	Yes
		18 (hazardous)						

Legend: a = With the exception of family farms as further described in criteria.
b = Older if defined in national regulation.
c = Only very vaguely mentioned in the guidance for criterion 7.1.
d = Only valid for food insecure regions.

This overview of selected social criteria shows that most of the voluntary certification schemes analyzed do actually give consideration to the social dimension of producing biofuels. The ILO Conventions mentioned in the RED are included almost entirely. Only the ISCC does not explicitly mention indigenous people's rights. The consideration of biofuel specific social criteria, however, paints a different picture. Only the RSB and the ISCC explicitly included the issue of food security in their certification systems. In case of the RSB this issue is treated as a discrete principle with several criteria and indicators. The RSPO only mentions this issue in the guidance for criterion 7.1 where it is stated that "listing unacceptable negative social impacts (e.g., displacement, loss of the food secu-

rity of local people, etc.)“ (RSPO 2007: 39) should be considered in the national context. The BSI and RTRS do not mention this critical issue at all in their principles and criteria. The issue of land rights, in contrast, is considered by all the initiatives analyzed here. However, the way this issue is treated is differs between the initiatives. The RSB treats land rights as a discrete principle with several criteria and indicators. Concerning the other four initiatives, the issue of land rights is less accentuated and among the provisions for compliance with applicable laws and regulations (RSPO, BSI), responsible community relations (RTRS), or social sustainability (ISCC).

3.3 Membership and Internal Governance Structures

In order to assess the legitimacy through stakeholder inclusion of bioenergy certification initiatives it is important to incorporate the analysis of the membership structures of the initiatives into our study. Therefore, we analyzed the initiatives' websites to determine the membership diversity of the initiatives. We divided the initiatives' members⁴ into three categories (see figure 3.1), namely

- Producers / Industry / Finance
 - This category consists of highly diverse actors. This means that, in order to get a consistent categorization that works for all of the initiatives, farmers and growers of biofuel feedstocks, industrial biofuel producers as well as retailers/blenders, transportation industry and banks/investors were grouped together in this category.⁵
- NGOs
 - This category consists of social (rights-based, rural development, food security, etc.) and environmental (nature conservation, climate change, etc.) NGOs as well as trade unions and indigenous people organizations.
- Government / Science / Consultants
 - This category consists of governmental actors (e.g. IGOs), scientific advisors (standard-setters, certification agencies, researchers, etc.) and consultant experts.
- Other

⁴ We only accounted for ordinary members with comprehensive voting rights.

⁵ This was necessary because the distinction between the different groups of actors could not always be made regarding the various initiatives. Therefore, we grouped all actors with in economic interest in biofuel production, use or trade into one single category. This can be justified by our approach, which aims to contrast the quantity of members with an economic (self-)interest in the issue with those mainly seeking common welfare interests. Whenever possible, smallholder farmers or smallholder farmer organizations were classified into the NGO category. However, this entails the consequence that highly diverse actors such as small growers and large agrifood-sector companies may be grouped together in this category.

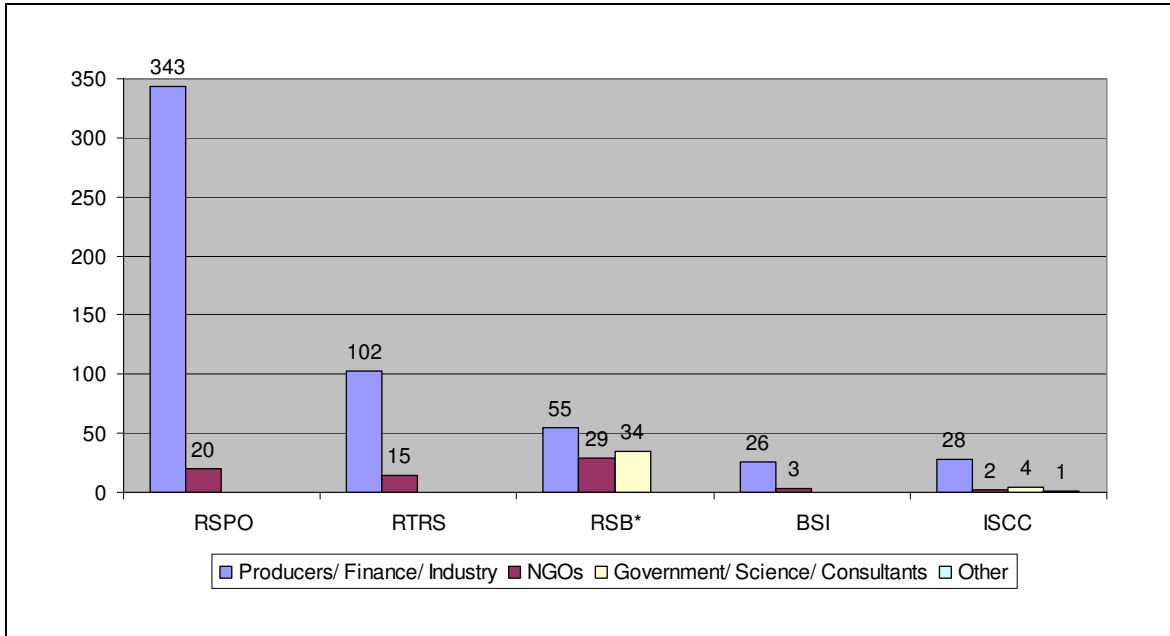


Figure 3.2: Membership Structure in Major Bioenergy Certification Initiatives

Based on information provided on the initiatives' websites.

Results show that the membership structures of the initiatives are rather similar to each other. In almost all of them representatives from group of producers/ finance/ industry are dominating. They constitute the absolute majority of members in all of the initiatives analyzed, except for the RSB. Only in the case of the RSB, this group, while still being the largest of the three, accounts for less than 50% (46.6%). On average, representatives from the first group account for almost 80% of the initiative's members. Excluding the RSB, this value rises to almost 88%.

The most striking disproportion between (supposedly self-interested) economic actors and (supposedly common welfare-oriented) civil society and governmental actors is to be found in case of the RSPO. Here, almost 95% of the members (343) belong to the first category. However, the relation between these membership groups regarding the RTRS (87%), the BSI (90%) and ISCC (80%) is similarly imbalanced.

In addition to the general membership structure of the initiatives, we also analyzed the membership structure within the highest decision-making bodies after the general assemblies (hereinafter named executive boards)⁶ of major bioenergy certification initiatives. The proportion of economic and non-economic actors in these bodies is usually regulated through the bylaws of the initiatives. Therefore, the membership structure of these is generally more balanced than that of general membership (see figure 3.3).

⁶ The names of these bodies differ from initiative to initiative. In the case of the RSPO and the RTRS these bodies are called „Executive Boards“, in the case of the RSB it is the „Steering Board“ (it is the highest decision-making body of the RSB, since there is no General Assembly), in the case of the BSI it is the „Supervisory Board“ and in the case of the ISCC it is the „Board“. For reasons of simplicity these bodies are all named „Executive Boards“ hereinafter.

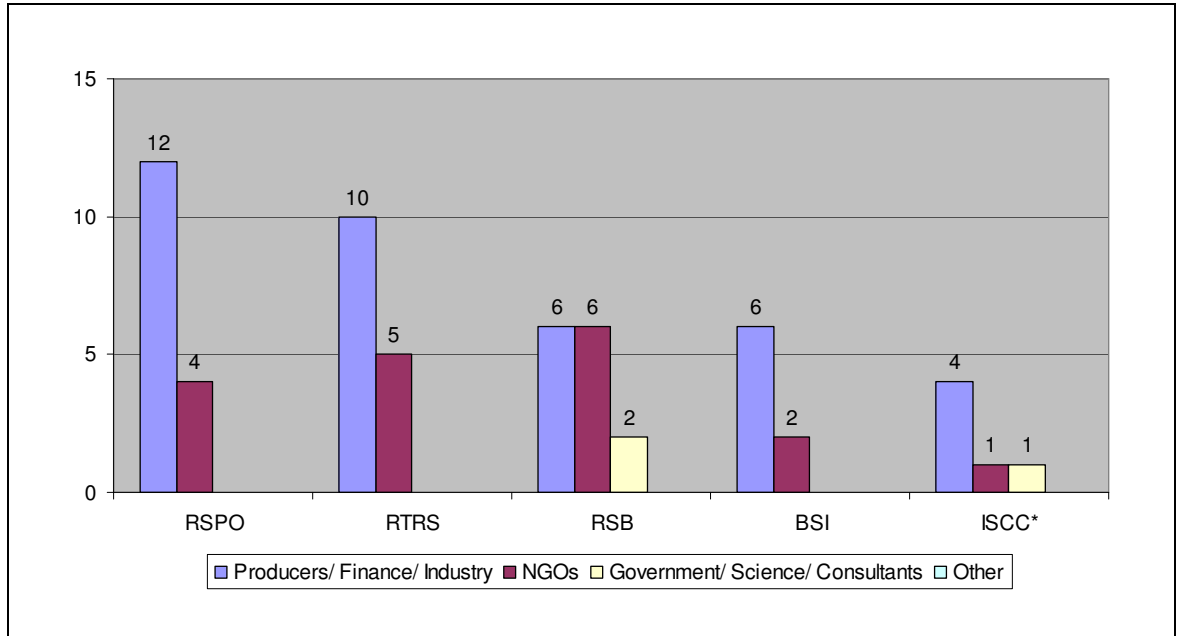


Figure 3.3: Executive Boards Membership Structure in Major Bioenergy Certification Initiatives

Based on information provided on the initiatives' websites.

* The ISCC Board consists of at most two members each from the groups "Biomass Producers and Processors", "Trade, Logistics and Users" and "NGOs, Social Sector, Science and Research, Public Sector". Since the latter group consists of two categories chosen for this paper, the two seats of this group were split (one for each category) for this figure. This, at the moment, also reflects the actual composition of the ISCC Board.

However, also regarding the composition of the Executive Boards the producer/ finance/ industry sectors are dominating, again with the exception of the RSB. On average, representatives from the first group account for almost two thirds of the initiatives' executive board's members. Excluding the RSB, this value rises to more than 70%.

For achieving legitimacy through control and accountability a functioning monitoring system of the certification process is indispensable. The following table provides an overview of the initiatives' monitoring systems.

Table 3.3: Auditing Requirements & Procedures of Major Bioenergy Certification Initiatives
Based on information provided on the initiatives' websites and on van Dam et al. (2010: 22).

Initiative	Field visits required	Reporting required	Auditing frequency (no/year)	External stakeholder consultation required	Validation certification contract (years)	Possibility of unannounced visits
RSPO	Yes	Yes	1	Yes	5	No
RTRS	Yes	Yes	1	Yes	5	No
RSB	Yes	Yes	Varying ^a	Yes	Ranging from 3 months to 2 years ^a	No
BSI^b	O	O	O	O	O	O
ISCC	(yes) ^c	Yes	1 ^b	(no) ^e	1	Yes

Legend:

- a = Frequency and intensity of audits as well as duration of a RSB certificate will depend on the level of risk assessed.
- b = Documents on "Audit Guidance" and a "Certification Protocol" do exist. They are not publicly accessible though. Therefore, there is no information on the auditing requirements and procedures regarding the BSI at this moment.
- c = Not explicitly mentioned in the ISCC auditing guidelines, but very probable that field visits would be part of the auditing process.
- d = Minimum (more often, if risk is assessed to be higher).
- e = Not apparent from ISCC auditing guidelines.

With the exception of the BSI, the auditing procedures of the initiatives are, at first glance, again quite similar. All initiatives with an established auditing procedure require field visits by the auditors and reporting of the auditing processes. Auditing usually takes place on a yearly basis. However, according to the risk level assessed, auditing frequency can be significantly higher in case of high risk regarding RSB and ISCC. External stakeholder inclusion is required in all of the initiatives' auditing processes, except for the ISCC. The duration of validity of the certificates is 5 years regarding the RSPO and the RTRS, whereas it is only one year concerning the ISCC or even less in case of the RSB (depending on risk assessment results). However, since annual auditing is mandatory also concerning RSPO and RTRS, this doesn't make so much of a difference. The possibility of unannounced control visits is the only category where the initiatives really differ considerably from each other. Only the ISCC has provisions for this measure, whereas the other four initiatives don't foresee this possibility.

Furthermore, the accountability towards the concerned community of the bioenergy certification initiatives also depends from the possibility to retake decisions (Partzsch 2009: 3). This also means that transparency concerning the internal procedures as well as openness towards external complaints is crucial. Therefore, we examined to what extent grievance or conflict resolution procedures are transparently incorporated into the certification schemes.

This analysis paints a differentiated picture. Whereas all of the initiatives do mention this issue, they differ considerably concerning the institutionalisation and detailing of the provisions made. The RSPO has installed a grievance panel that also non-members can appeal to. The information on this issue provided by the RTRS is rather poor. There is information on grievance or conflict resolution procedures except for an announcement that a transparent complaints and grievance proce-

cedure will be developed by February 2010. However, information on this procedure, if it exists by now, is not publicly available yet. Regarding the BSI, there is no established grievance or conflict resolution procedure for non-members. Grievances or conflicts within BSI or between BSI members are to be solved “in accordance with the grievance procedures”. However, there is no information on these BSI-internal grievance procedures. The RSB as well as the ISCC have formally established a detailed and transparent conflict management and resolution procedure. In case of the ISCC, external stakeholders are entitled to appeal to this procedure. In case of the RSB, the dispute resolution procedure is restricted to the constituents of the RSB certification system.

4 Analysis of Results: Do the Initiatives Fulfill Legitimacy Criteria?

In this chapter, we analyze to what extent the results presented in chapter 3 do present a reasonable basis for an appraisal of the political and democratic legitimacy of the bioenergy certification initiatives regarded in this paper.

Political legitimacy as defined in chapter 2 refers to the “acceptance of shared rule by a community as appropriate and justified” (Bernstein and Cashore 2007: 348). Applied to the case at hand, this means that we assess in which of three phases of NSMD governance the various bioenergy certification schemes are right now. Is there already one that has achieved political legitimacy?

Reflecting Bernstein’s and Cashore’s three phases of NSMD governance on its way to political legitimacy, we can conclude that none of the bioenergy certification initiatives analyzed here is close to reaching phase III. So far, only the RSPO is in operation for a considerable period of time (since 2008). However, the pressure exerted on the palm oil using sectors to use RSPO certified palm oil is not very high. Therefore, demand for RSPO certified palm oil remains limited (WWF 2009: 3). Even though demand seems to have been rising during the last year, RSPO is, at most, at the brink from phase I to phase II. The impact on the ground has until now remained rather small. However, more and more companies of the palm oil sectors are taking part in the RSPO certification process. The other initiatives analyzed here are actually too young to be in another phase than phase I. They are either not yet operational or just very recently started to be. Thus, they obviously haven’t made much progress on the way to political legitimacy so far.

A clear statement can be made concerning the membership structures of the initiatives. Chapter 3.2 shows the overwhelming dominance of actors from business and industry, which points to the highly unbalanced membership structure of most of the initiatives. Therefore, it can be concluded that, with the exception of the RSB, the initiatives analyzed here do not achieve throughput legitimacy as defined in chapter 2. This picture doesn’t change much when the membership structure of the initiatives’ executive boards is taken into account. Here as well, social and environmental stakeholders are heavily underrepresented. This disproportion could, theoretically, be due to the membership fees to be paid. However, most initiatives have reduced fees for (small) NGOs and the RSB fee is not considerably lower than the ones of the RTRS, RSPO and ISCC. Only in the case of the BSI, which doesn’t make public the membership fee to be paid, this may be the case. Apart from the possible reason for these unbalanced membership structures, this clearly shows that, except maybe for the RSB, the bioenergy certification initiatives analyzed here do not fulfill the criteria for legitimacy through stakeholder inclusion raised in chapter 2.

A question that arises from the unbalanced membership structures is whether this is reflected in the inclusion of social criteria in the certification schemes or not. However, there is no straightforward answer to this question. Notwithstanding the dominance of actors from business and industry all of the initiatives do pay considerable attention to social standards in their schemes. Nevertheless, some differences are identifiable and these can also be related to the membership structure of the initiatives. Thus, it is not just incidental that only the RSB, the initiative with the most balanced membership structure, takes into account the broad range of social implications the production, use and trade of biofuels might have. One exception to this is the ISCC, because it also takes into consideration issues like food security. On the other hand, the ISCC is the only initiative analyzed here that doesn't explicitly mention indigenous peoples' rights. This may have to do with the provenience and the membership structure of the ISCC, being based in Western Europe and not including many actors representing developing countries (also see Palmujoki 2009: 146 for this argument). However, it has to be said that, at least on this level of analysis, no direct relation between membership structure and the inclusion of social criteria could be found. To make a more substantiated statement on this issue, a more exhaustive analysis of the way social criteria are incorporated into the schemes might be necessary. For example, what are the precise procedures of taking into account food security and land rights? Therefore, a more exhaustive analysis taking into account such issues, which was beyond the scope of this paper, would possibly produce different results.

Since, except for the RSPO, the bioenergy certification schemes are not yet or only since recently operational, it is hardly possible to evaluate the "de facto"-legitimacy according to the actual impacts "on the ground" the initiatives have on the social dimensions of bioenergy production. However, the output of the initiatives in terms of the consideration given to social criteria can be assessed. At a first glance, it seems like all of the initiatives analyzed here perform quite well in this regard. The ILO Conventions mentioned in the EU RED, e.g., are almost entirely incorporated by all of the initiatives. However, "de facto"-legitimacy is a normative concept and refers to acceptance of the output by relevant stakeholders. The question is, whether the results, by their quality, can compensate for the lack of democratic accountability of the initiatives. Is this the case regarding the analyzed bioenergy initiatives? Whereas it is laudable that all of the initiatives analyzed here have incorporated social criteria in their schemes, it can be said that their social sustainability is still somewhat away from being consensus. It is, for example, questionable that three of the initiatives do not mention the issue of food security, arguably the most controversial social issue regarding bioenergy, in their schemes. This has - inter alia, but principally - led to severe criticism of some of the schemes, especially regarding the RTRS⁷ and RSPO⁸, even though some of them haven't even started to certify. However, due to the early statuses of the initiatives analyzed here, "de facto"-legitimacy can only be assessed to a limited extent.

⁷ The RTRS has been severely criticized for facilitating the expansion of soy plantations and thereby disregarding land rights and severely impacting on and compromising the indigenous and rural communities who have traditionally lived on these lands (see e.g. CAPOMA et al. 2009). For example, an open letter signed by several hundreds of organizations, many of them from South America, has been sent to RTRS, stating that the RTRS "will aggravate the problems caused by industrial soy production, instead of providing solutions" (Anon 2010: 1).

⁸ The RSPO has similarly been exposed to harsh criticism. The International Union of Foodworkers, e.g., decried the RSPO as a branding operation that certifies "the brutal exploitation which characterizes the industry (...) as acceptable, responsible or sustainable" (IUF 2006: 1) and that thereby risks "being (...) perceived as a hollow front for corporate greed and violence" (IUF 2006: 10), after RSPO member Musim Mas fired nearly 1,000 trade union members. Furthermore, in 2008, an "International Declaration Against the 'Greenwashing' of Palm Oil by the Roundtable on Sustainable Palm Oil" (Anon 2008) has been signed by 250 organisations (also see Pye 2009 on this).

Much of the quality of certification schemes depends on the auditing procedures as well as on the possibility (also for non-members) to appeal to an established grievance or conflict resolution procedure. This holds true even more since the membership structures are often very unbalanced. An open and transparent conflict resolution mechanism could provide marginalized stakeholders to regain some of their right to have a say in the matter. The auditing procedures of the initiatives analyzed here are quite similar to each other. With the exception of the BSI, which does not disclose its auditing procedures, they cover the main points in order to regulate the type of auditing, the reporting on it, its frequency and participatory issues. Only the issue of unannounced control visits, which only the ISCC provides for. However, the ISCC is the only of the initiatives that does not require an external stakeholder consultation during the auditing process. The status of the grievance or conflict resolution procedures, however, is rather diverse. Though some initiatives have established an elaborate grievance procedure (RSPO, ISCC, RSB), the one of the RSB is only open to its constituents. In general, however, it has to be remarked that all of those grievance or conflict resolution procedures are neither involving state actors nor are they embedded in any legal system. Therefore, the existence of such a procedure can be no guarantee for an adequate process or just results. All in all, regarding the concept of legitimacy through control and accountability, none of the initiatives analyzed has achieved full legitimacy. However, the RSB, RSPO and especially ISCC have established extensive arrangements regarding control and accountability, whereas RTRS and BSI seem to be more negligent on these issues.

Based on these findings, the democratic legitimacy, as defined normative-prescriptively in chapter 2.1, of the voluntary bioenergy certification initiatives analyzed here can be evaluated regarding their legitimacy through stakeholder inclusion and through control and accountability, leaving out their “de facto”-legitimacy, which largely resembles the concept of political legitimacy by Bernstein and Cashore used here anyway. The following table summarises these findings.

Table 4.1: Evaluating the democratic legitimacy of major bioenergy certification initiatives

Initiative	Legitimacy through stakeholder inclusion	Legitimacy through control and accountability
RSPO	Not fulfilled: Dominance of business and industry	Mainly fulfilled: established grievance panel (also for non-members) and auditing procedure (without unannounced visits)
RTRS	Not fulfilled: Dominance of business and industry	Rudimentarily fulfilled: poor information on conflict resolution and auditing procedure
RSB	Mainly fulfilled: Rather balanced membership structure	Mainly fulfilled: established grievance mechanism (only for constituents) and auditing procedure (without unannounced visits)
BSI	Not fulfilled: Dominance of business and industry	Not fulfilled: no information on (supposedly existing) grievance nor on auditing procedures
ISCC	Not fulfilled: Dominance of business and industry	Mainly fulfilled: established grievance (also for non-members) and auditing procedure (without external stakeholder inclusion)

5 Discussion and Conclusion

In this paper we analyzed the performance of five voluntary certification initiatives (RSPO, RTRS, RSB, BSI, ISCC) in the field of bioenergy regarding the latter's social implications and their potential to legitimately make up for the lack of consideration given to social issue by governmental regulation. This inadequateness of governmental regulation in the field of bioenergy, exemplified through the EU RED in the introduction, is mainly due to trade issues, which do not apply to voluntary certification. Thus, the disregard of social criteria in the EU RED could theoretically be eased through the recognition of voluntary certification schemes, which comprise social criteria, for the purposes of the EU RED by the EU. Thus, voluntary certification initiatives can be seen as a possible solution for missing social criteria in governmental regulation, as they could provide for the inclusion of the social aspects of biofuels into the EU RED (or other governmental regulation) "through the backdoor".

While this can be regarded as the main potential of voluntary certification schemes for bioenergy, the current situation is still somewhat far away from this goal. This is mainly due to status of most of the schemes, as they are still in their infancy. Thus, none of the schemes analyzed here has made much progress on its way to political legitimacy as defined in chapter 2, i.e. descriptively. Even though the RSPO is already in operation for a couple of years now, all of the initiatives are still in the initiation phase, while economic demand for their certified products remains limited and there is virtually no impact on the "ground".

However, we were also building on a normative definition of legitimacy in order to assess the democratic legitimacy of these initiatives. The question was whether the full potential of voluntary bioenergy certification schemes could also be tapped in a democratically legitimate way. Therefore, we were drawing on an analytical framework that allowed us to (at least partially) evaluate democratic legitimacy along three conditions ("de facto"-legitimacy, legitimacy through stakeholder inclusion, and legitimacy through control and accountability). The results of this analysis are, however, rather sobering. "De facto"-legitimacy could be evaluated to a limited extent only because of the early statuses of the initiatives. However, bearing in mind the scathing criticism the RSPO and the RTRS came under because of their allegedly unsustainable behavior, it is at least questionable that the initiatives analyzed here are able to achieve legitimacy only based on their output (which already is a weak form of legitimacy). In terms of legitimacy through stakeholder inclusion, the results are even more disillusioning. With the exception of the RSB, the membership structures of the RSPO, RTRS, BSI and ISCC are highly unbalanced towards actors from business and industry. Except for the WWF, which is present in all the initiatives here, there are almost no state or civil society actors represented. The RSB performs better in this respect, being the only of the initiatives where actors from state and civil society do form a majority. Regarding legitimacy through control and accountability a differentiated picture emerges. All initiatives have established auditing guidelines as well as grievance or conflict resolution procedures or at least claim to do so. However, there are important differences concerning the elaborateness as well the transparency of these guidelines and procedures. Whereas the RSB, RSPO and ISCC established detailed and publicly accessible provisions on these issues, far less information referring to this is available in case of the RTRS and almost no at all in case of the BSI. All in all, the initiatives analyzed have made differing progress on their way to achieving democratic legitimacy. Whereas the RTRS and BSI are still far from achieving democratic legitimacy in all of the ways this was conceptualized here, RSPO and ISCC are at least regarding control and accountability partly fulfilling legitimacy criteria. However, given the persistent criticism the RSPO comes under and especially the highly unbalanced membership structures of the two initiatives (also see Palmujoki 2009: 142 regarding the RSPO), it is

highly questionable if they can make further progress on their ways to democratic legitimacy unless they intensely deal with these issues. Thus, only the RSB, which performs rather well in all of the ways democratic legitimacy was conceptualized here, can be evaluated as having a sound basis for achieving democratic legitimacy.⁹ However, since the RSB certification is still in its infancy and not yet operational, it is still a long way to go and there are many pitfalls along the track.

In general, although voluntary certification in the field of bioenergy undoubtedly has its potentials as regards a more socially sustainable production of bioenergy, the results presented here clearly show the challenges to tapping these potentials. Thus, the results seem to be generally in line with findings from other studies analyzing voluntary certification in the agrifood sector, according to which “certification schemes are predominantly driven by the need of companies to control reputational risk while the position, power and security of some of the most vulnerable actors is not likely to change for the better” (Partzsch 2009: 11). Concerning the participation and actor constellations in bioenergy certification systems, the situation seems to be even worse than in other agrifood sectors. Bioenergy certification seems to be even more business-led or even business-dominated compared, e.g., to voluntary certification schemes in the coffee sector (see e.g. Raynolds et al. 2007).

However, voluntary bioenergy certification should not be condemned right away. Of course, voluntary certification is a fundamentally private, not public, strategy and limits to democratic participation must be acknowledged. Nonetheless, while “it may not be possible to make private regulatory initiatives fully democratic, all efforts should be made to integrate producers and consumers in coordinating bodies and at the very least make certification systems transparent and accountable” (Raynolds et al. 2007: 159). Voluntary bioenergy certification may thus still help promote social and environmental sustainability in this sector. And maybe it already has. As mentioned in chapter 2, in principle, voluntary certification initiatives play an important role in the development of standards in a particular sector. Thus, the voluntary certification initiatives may have, at least to a certain extent, raised the issue of sustainability regarding bioenergy and led the way towards the legal adoption of sustainability in several countries as well as in the EU.

In conclusion, voluntary certification cannot, and will not, replace the state. However, there is a strong complementary and dynamic relationship between public and private regulation in promoting social justice and ecological concerns in global markets. Therefore, “the challenge is for states to accept certification not as a threat but as an opportunity to reinforce labour and environmental goals within their sovereign territory and beyond” (Gereffi et al. 2001: 65). Furthermore, this overview and analysis of the integration of social aspects in bioenergy certification schemes also points to a crucial point concerning the reconciliation of social aspects with environmental and economic governance in general. That is, we have to broaden the scope to get to the crux of the matter. Global environmental governance can not be thought of separately from international trade and economic policy.

Regarding the future prospects of voluntary bioenergy certification, however, it seems like the events so far are not going to be much more than the introduction to the whole story. At this moment, all of the initiatives analyzed here are applying for recognition by the EU for its sustainability

⁹ In line with this, other studies dealing with voluntary biofuels certification arrive at a similar conclusion regarding the legitimacy potential of the RSB because of its openness and transparency (Schlegel and Kaphengst 2007: 8; Palmujoki 2009: 141).

certification system. Undoubtedly, the amount of certified bioenergy will rise sharply during the next years. Much will then depend on what impact the increased certification of bioenergy and its feedstock will have “on the ground”. It will be of massive importance that the social implications of bioenergy production are not neglected in this regard. This will also decide on whether the certification of bioenergy will function as a role model for the certification of all biomass (regardless of what will be produced from it afterwards) and maybe eventually for all agricultural products.

6 Bibliography

- Anon (2008): International Declaration Against the "Greenwashing" of Palm Oil by the Roundtable on Sustainable Palm Oil (RSPO). In defence of Human Rights, Food Sovereignty, Biodiversity and Climate Justice. <http://www.biofuelwatch.org.uk/docs/15-10-2008-RSPO-Ingles.pdf> (Accessed 27. September 2010).
- Anon (2010): Open Letter: Growing Opposition to Round Table on Responsible Soy. <http://documents.foodandwaterwatch.org/rtrs-6-June-2010.pdf> (Accessed 27. September 2010).
- Bekkers, Victor, and Arthur Edwards (2007): Legitimacy and Democracy: A Conceptual Framework for Assessing Governance Practices. In *Governance and the Democratic Deficit. Assessing the Democratic Legitimacy of Governance Practices*, ed. Victor Bekkers, Geske Dijkstra, Arthur Edwards, and Menno Fenger, 35-60. Aldershot: Ashgate.
- Bernstein, Steven (2005): Legitimacy in Global Environmental Governance. *Journal of International Law & International Relations* 1 (1-2): 139-166.
- Bernstein, Steven, and Benjamin Cashore (2007): Can non-state global governance be legitimate? An analytical framework. *Regulation & Governance* 1 (4): 347-371.
- van den Broek, Richard, Martijn van Walwijk, Peter Niermeijer, and Michiel Tijmensen (2003): *Biofuels in the Dutch Market: A Fact-Finding Study*. 2GAVE-03.12. Utrecht: Netherlands Agency for Energy and the Environment.
- BSI [Better Sugar Cane Initiative] (2010a): Better Sugar Cane Initiative Production Standard. BSI. [http://www.betersugarcane.org/assets/BSI Production Standard - July 2010 \(280710\).pdf](http://www.betersugarcane.org/assets/BSI%20Production%20Standard%20-%20July%202010%20(280710).pdf) (Accessed 27. September 2010).
- BSI [Better Sugar Cane Initiative] (2010b): Our application to the EU for voluntary scheme recognition. <http://www.betersugarcane.org/certification.html> (Accessed 27. September 2010).
- CAPOMA [Centro de Acción Popular Olga Márquez de Aredez], La Soja Mata, and Chaya Comunicación (2009): Soy and Agribusiness Expansion in Northwest Argentina. Legalized deforestation and community resistance. http://lasojamata.iskra.net/files/Soy_Expansion_Northwest_Argentina.pdf (Accessed 27. September 2010).
- Cashore, Benjamin (2002): Legitimacy and the Privatization of Environmental Governance: How Non-State Market-Driven (NSMD) Governance Systems Gain Rule-Making Authority. *Governance* 15 (4): 503-529.
- Cashore, Benjamin, Graeme Auld, and Deanna Newsom (2004): *Governing through Markets: Forest Certification and the Emergence of Non-State Authority*. New Haven: Yale University Press.
- CEO [Corporate Europe Observatory] (2008): Sugarcane ethanol: a sweet solution for Europe's fuel addiction? <http://archive.corporateeurope.org/ethanolfueladdiction.html> (Accessed 27. September 2010).
- Charnovitz, Steve, Jane Earley, and Robert Howse (2008): *An Examination of Social Standards in Biofuels Sustainability Criteria*. IPC Discussion Paper - Standards Series. Washington, DC: International Food & Agricultural Trade Policy Council.
- van Dam, Jinke, Martin Junginger, and Andre P.C. Faaij (2010): From the global efforts on certification of bioenergy towards an integrated approach based on sustainable land use planning. *Renewable and Sustainable Energy Reviews* 14: 1-28.
- Echols, Marsha A. (2009): *Biofuels Certification and the Law of the World Trade Organization*. Issue Paper No. 19. Geneva: International Center for Trade and Sustainable Development.
- Franco, Jennifer, Les Lewidow, David Fig, Lucia Goldfarb, Mireille Hönicke, and Maria Luisa Mendonça (2010): Assumptions in the European Union biofuels policy: frictions with experiences in Germany, Brazil and Mozambique. *Journal of Peasant Studies* 37 (4): 661-698.
- Gereffi, Gary, Ronie Garcia-Johnson, and Erika Sasser (2001): The NGO-Industrial Complex. *Foreign Policy* 125 (July): 56-65.
- ISCC [International Sustainability & Carbon Certification] (2010a): Sustainability Requirements for the Production of Biomass. ISCC. http://www.iscc-system.org/e865/e890/e1491/e1496/ISCC202SustainabilityRequirements-RequirementsfortheProductionofBiomass_eng.pdf (Accessed 27. September 2010).
- ISCC [International Sustainability & Carbon Certification] (2010b): System Basics for the certification of sustainable biomass and bioenergy. ISCC. http://www.iscc-system.org/e865/e890/e1491/e1493/ISCC201SystemBasics_eng.pdf (Accessed 27. September 2010).
- IUF [International Union of Foodworkers] (2006): *Marketing Sustainability: RSPO Ignores Serious Rights Violations*. Geneva: IUF. <http://www.iufdocuments.org/www/documents/MusimMasPowerPoint.pdf> (Accessed 27. September 2010).

- Kahl, Hartmut (2008): Biokraftstoffe im Rechtsregime der WTO unter besonderer Berücksichtigung ihrer umweltrelevanten Eigenschaften. Berlin: Berliner Wissenschafts-Verlag.
- Mongabay.com (2010): Certified palm oil sales accelerate. February 5. <http://news.mongabay.com/2010/0205-rspo.html> (Accessed 23. September 2010).
- Palmujoki, Eero (2009): Global Principles for Sustainable Biofuel Production. *International Environmental Agreements: Politics, Law and Economics* 9 (3): 135-151.
- Partzsch, Lena (2007): Global Governance in Partnerschaft. Die EU-Initiative "Water for Life". Baden-Baden: Nomos.
- Partzsch, Lena (2009): The Legitimacy of Biofuel Certification. *Agriculture and Human Values* DOI: 10.1007/s10460-009-9235-4: 13 p.
- Pye, Oliver (2009): Greenwash - Agrosprit und der Palmölboom in Südostasien. *südostasien* 1/2009: 11-15.
- Raynolds, Laura T., Douglas Murray, and Andrew Heller (2007): Regulating sustainability in the coffee sector: A comparative analysis of third-party environmental and social certification initiatives. *Agriculture and Human Values* 24 (2): 147-163.
- RSB [Roundtable for Sustainable Biofuels] (2009): RSB Principles & Criteria for Sustainable Biofuel Production. Lausanne: RSB. [http://energycenter.epfl.ch/webdav/site/cgse/shared/Biofuels/Version One/Version 1.0/09-11-17 RSB PCs Version 1 \(clean\).pdf](http://energycenter.epfl.ch/webdav/site/cgse/shared/Biofuels/Version One/Version 1.0/09-11-17 RSB PCs Version 1 (clean).pdf) (Accessed 23. September 2010).
- RSB [Roundtable for Sustainable Biofuels] (2010): RSB Standard for EU market access. Lausanne: RSB. <http://energycenter.epfl.ch/webdav/site/cgse/shared/Biofuels/Certification/June 2010/10-06-15-RSB-STD-11-001-vers1.0-Standard for EU market access.pdf> (Accessed 23. September 2010).
- RSPO [Roundtable for Sustainable Palm Oil] (2007): RSPO Principles and Criteria for Sustainable Palm Oil Production. RSPO. <http://www.rspo.org/sites/default/files/RSPO Principles & Criteria.pdf> (Accessed 23. September 2010).
- RSPO [Roundtable for Sustainable Palm Oil] (2010): RSPO Additional Guidance for compliance with the EU Renewable Energy Directive requirements. RSPO. <http://www.rspo.org/sites/default/files/RSPO%20Additional%20Guidance%20-REDCompliance.pdf> (Accessed 23. September 2010).
- RTRS [Roundtable for Responsible Soy] (2010a): RTRS Standard for Responsible Soy Production Version 1.0. RTRS. http://www.responsiblesoy.org/index.php?option=com_docman&task=doc_download&gid=275&Itemid=40&lang=en (Accessed 23. September 2010).
- RTRS [Round Table on Responsible Soy Association] (2010b): RTRS presents Biofuels annex to meet EU-RED requirements. http://responsiblesoy.org/index.php?option=com_content&view=article&id=134%3AAla-rtrs-presenta-anexo-sobre-biocombustibles-para-el-cumplimiento-de-los-requisitos-de-la-directiva-eu-red&catid=4%3Anoticias&Itemid=3&lang=en (Accessed 27. September 2010).
- Schaller, Susanne (2007): The Democratic Legitimacy of Private Governance. An Analysis of the Ethical Trading Initiative. INEF-Report 91/2007. Duisburg: Institut für Entwicklung und Frieden.
- Schlegel, Katharina, and Timo Kaphengst (2007): European Union Policy on Bioenergy and the Role of Sustainability Criteria and Certification Systems. *Journal of Agricultural & Food Industrial Organization* 5 (2): Article 7.
- WWF [World Wildlife Foundation] (2009): WWF Palm Oil Buyers' Scorecard 2009. WWF. <http://assets.panda.org/downloads/wwfpalmoilbuyersscorecard2009.pdf> (Accessed 23. September 2010).
- Zürn, Michael (2004): Global Governance and Legitimacy Problems. *Government and Opposition* 39 (2): 260-287.