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**Let's Bargain!**

**Setting Standards for Sustainable Biofuels**

**Philip Schleifer**



European University Institute  
**Robert Schuman Centre for Advanced Studies**  
Global Governance Programme

## **Let's Bargain! Setting Standards for Sustainable Biofuels**

Philip Schleifer

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## **Abstract**

This paper studies the contested nature of new modes of governance two decades after the “participatory paradigm” was announced at the Rio Earth Summit in 1992. With a focus on private multi-stakeholder initiatives, it conducts an in-depth analysis of business-civil society interaction in the Roundtable on Sustainable Biofuels, a scheme created to define an internationally accepted standard for biofuel production. Through its highly inclusive and transparent design, the roundtable provides what could be called ideal institutional scope conditions for participatory governance. However, falling far short of the participatory ideal of open-minded and consensus-oriented deliberation, the analysis uncovers how stakeholder interaction in the roundtable frequently collapsed into power struggles and interest group bargaining. Inquiring into the causes of this deliberation failure, the article identifies the high level of politicization in the biofuels arena as well as the background role of the state as the main explanatory factors.

## **Keywords**

Private governance, sustainability, deliberation, institutional design, biofuels, democratic theory.



## Introduction

Private multi-stakeholder initiatives (MSIs) are a new mode of global sustainability governance. Being developed through the collaboration and contestation between business and civil society actors, these arrangements set standards for sustainable production and often rely on market mechanisms (certification) for their implementation. Today, these arrangements operate in many industry sectors, where they are an important source of social and environmental regulation for the world's forests, factories, farms, and mines.

MSIs are part and parcel of what Bäckstrand *et al.* and others refer to as the “participatory paradigm” or “deliberative turn” in global sustainability politics (Bäckstrand, Khan, Kronsell, & Lövbrand, 2010; Beisheim & Dingwerth, 2008; Bexel & Mörth, 2010; Dingwerth, 2007; Risse, 2004). The background to this are new developments in democratic theory (Dryzek, 2000; Eckersley, 1992; Lövbrand & Khan, 2010; Smith, 2003) and international policy initiatives which see broad public participation in decision-making as a fundamental prerequisite for achieving sustainable development goals (United Nations, 1992). MSIs try to approximate the deliberative ideal through the multi-stakeholder structure of their decision-making and standard-setting bodies, the use consultation mechanisms, and procedural transparency. Because of this, they have been widely praised for their potential to reduce the democratic deficit of global governance institutions (Cashore, Auld, & Newsom, 2004; Dingwerth, 2007; Gulbrandsen, 2008; Schaller, 2007).

However, the deliberative capacity of MSIs remains contested, as scholars criticize the dominance of established stakeholder groups, a focus on selective topics and discourses, as well as power asymmetries between participants (Fransen & Kolk, 2007; Fuchs, Kalfagianni, & Havinga, 2011; Schouten, Glasbergen, & Leroy, 2012). Contributing to a critical re-examination of multi-stakeholder sustainability governance, this paper conducts an in-depth analysis of business-civil society interaction in the Roundtable on Sustainable Biofuels (RSB).<sup>1</sup> Established in 2006 to define a global standard for sustainable biofuel production, the RSB is widely regarded as an exemplary and highly inclusive and transparent initiative (Nuffield Council on Bioethics, 2011). From an institutional design perspective, the scheme's open and experimentalist approach makes it to what could be called a most-likely case of meaningful deliberative governance. However, the in-depth analysis of stakeholder interaction in the RSB reveals that with regard to important decisions and over extended periods of time bargaining, and not deliberation, dominated the internal debate. Business actors and non-governmental organizations (NGOs) struggled fiercely over the balance of power in the fledgling organization and the content of the regulatory outcome, leading many stakeholders to effectively abandon the initiative.

Inquiring into the causes of this deliberation failure, this paper identifies a high level of politicization as well as the background role of the state as the main contributing factors. Regarding the former, it is uncovered how deep-seated divisions and ideologically charged conflicts limited the opportunity structure for meaningful deliberative governance in the biofuels arena. Furthermore, it is shown how (in form of the EU Commission) state actors endorsed a non-participatory model of private sustainability regulation in this policy area, thus reducing the pressure on firms and their industry associations to engage in difficult interactions with critical NGOs.

## The Participatory Paradigm in Theory and Practice

Since the 1990s, democratic theory has taken a strong deliberative turn (Bohman & Regh, 1997; Dryzek, 2000; Elster, 1998). According to Dryzek (2000: 1), this “turn represents a renewed concern with the authenticity of democracy: the degree to which democratic control is substantive rather than

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<sup>1</sup> The RSB recently changed its name to Roundtable on Sustainable Biomaterials.

symbolic, and engaged by competent citizens”. In light of this, deliberative thinkers stress the importance of process over the idea of formal accountability which permeates liberal democratic theory. In essence, the deliberative argument goes that true democratic legitimacy requires that all those affected by a rule have to have the opportunity to actively and equally participate in the rule-making process. As noted by Dryzek (2000: 1-8), this emphasis on deliberation is not an entirely new phenomenon. Elements of deliberative democracy can be found in the *polis* of ancient Greece and in the works of Edmund Burke and John Stuart Mill. However, prior to the 1990s the term deliberative democracy was rarely used. It was invented by Joseph Bessette and given impetus by Bernard Manin and Joshua Cohen. The concept then gained in importance and became the focal point of democratic theory when Jürgen Habermas and John Rawls identified themselves as deliberative democrats in their major works.

Smith (2003: 54) traces the deliberative turn in democratic theory back to a widespread dissatisfaction with the dominating liberal model of democracy. As mentioned above, liberal democracy is based on a principal-agent form of accountability. In this model, individual preferences are aggregated through an electoral mechanism. In this way, a collective choice is made and delegated to an agent (i.e. government) for execution. The model’s legitimacy ultimately rests on the right and ability of the principal to hold its agents to account, to judge whether they have fulfilled their responsibilities and to impose sanctions if these responsibilities have not been met (Grant & Keohane, 2005: 29). Smith notes that although periodic elections have a disciplining effect on the elected to act in the voters’ interests, the mandates that representatives enjoy typically extend over several years in which the electorate has little influence on the decision-making process. He and others criticize that this has given rise to political disillusionment and a growing distance between citizens and their representatives.

It is this dissatisfaction with the liberal conception of democracy which has renewed interest in the process of political decision-making. It is believed that “getting the process right” can help to revitalize and restore democratic legitimacy (Bohman & Rehg, 1997; Dryzek, 2000; Elster, 1998). Strongly influenced by Habermas’ theory of communicative action, the deliberative approach essentially boils down to two procedural criteria: inclusiveness and unconstrained dialogue (Löfbrand & Khan, 2010; Smith, 2003). Inclusiveness requires that all those affected by a rule need to be given the opportunity to participate in the rule-making process. The second criterion necessitates that the only authority is that of a good argument. In other words, the deliberative process needs to be free from domination, manipulation, and strategic behavior. The theory goes that if these criteria are met meaningful deliberation, and thus democratic legitimacy, becomes possible.

Because of its focus on process instead of formal accountability, deliberative democracy has been proposed as a model to increase the legitimacy of global governance institutions. The background to this is that at the global level no clearly defined *demos* or self-governing community exists. Preference aggregation and principal-agent accountability are therefore not well suited for the reality of transnational rule-making with its multitude of actors and diffuse authority. Therefore, many scholars agree that deliberative democracy is an attractive model not only for revitalizing democratic legitimacy at the national level but also for the organization of good governance beyond the nation state (Dingwerth, 2007: 21; Dryzek, 2000: 116).

Ideas about participatory governance are now a constitutive element of global sustainability politics. This is evidenced by the fact that procedural principles such as stakeholder consultation, inclusiveness, and transparency have been given emphasis in central policy documents in this area. One important example is Agenda 21. As one of the main policy outputs of the United Nations Conference on Environment and Development held in Rio de Janeiro in 1992, Agenda 21 defined an action plan for the United Nations, other intergovernmental organizations (IGOs), and individual governments to advance social and environmental sustainability in four key areas: social and economic sustainability; conservation and management of resources for development; strengthening the role of major groups; and means of implementation. With regard to implementation, the policy

documents states that “[o]ne of the fundamental prerequisites for the achievement of sustainable development is broad public participation in decision-making” (United Nations, 1992). In a similar vein, the United Nations’ Commission on Global Governance in its final report called for “more inclusive and more participatory” mechanisms of global governance (Commission on Global Governance, 1995: 5). In practice, these calls for participation and inclusiveness have given rise to a large variety of ‘new modes of governance’. In an attempt to map the emerging governance infrastructure, Kronsell and Bäckstrand (2010) identify citizen juries at the national level, the inclusion of civil society actors in intergovernmental policy-making processes, public-private partnerships, as well as private multi-stakeholder arrangements (the subject of this paper) as forming part of the deliberative turn or participatory paradigm in global sustainability politics.

### **Organizing Deliberative Private Governance**

In the area of private governance, MSIs have become an important source of global sustainability regulation in recent years. In form of the Forest Stewardship Council (FSC), the multi-stakeholder model first emerged in the forestry sector in the early 1990s and from there spread rapidly and widely in the global economy. Today, multi-stakeholder schemes operate in many industry sectors, ranging from garment manufacturing and diamond mining to aquaculture production and soybean farming (see Table 1). Involving stakeholders from across these industries, they set standards for socially and environmentally sustainable production and often rely on market-based mechanisms for their implementation.

**Table 1: Multi-Stakeholder Initiatives for Sustainability**

Sector	Multi-Stakeholder Initiative	Main Focus	Year of Foundation
Forestry	Forest Stewardship Council (FSC)	Environment	1993
	Programme for the Endorsement of Forest Certification (PEFC)	Environment	1999
Apparel	Fair Labor Association (FLA)	Labor rights	1998
	Ethical Trading Initiative (ETI)	Labor rights	1998
	Fair Wear Foundation (FWF)	Labor rights	1999
	Rugmark International/Good Weave (GW)	Labor rights	1995
	Social Accountability International (SAI)	Labor rights	1997
Agriculture	Better Cotton Initiative (BCI)	Environment	2009
	Better Sugarcane Initiative (BSI) /Bonsucro	Environment	2009
	Fairtrade Labelling Organization (FLO)	Fair trade	1997
	Flower Label Programme (FLP)	Labor rights	1999
	Global Roundtable for Sustainable Beef (GRSB)	Environment	2012
	International Cocoa Initiative (ICI)		
	International Sustainability and Carbon Certification (ISCC)	Labor rights	2002
		Environment	2010
	Roundtable on Responsible Soy (RTRS)		
	Roundtable on Sustainable Biofuels (RSB)	Environment	2006
	Roundtable on Sustainable Palm Oil (RSPO)	Environment	2009
	Sustainable Rice Platform (SRP)	Environment	2004
	Utz Certified	Environment	in formation
Common Code for the Coffee Community Association (4C)	Environment	2002	
	Environment	2006	
Fishery	Aquaculture Stewardship Council (ASC)	Environment	2009
	Marine Stewardship Council (MSC)	Environment	1999
	Marine Aquarium Council (MAC)	Environment	1998
Mining	Extractive Industries Transparency Initiative (EITI)	Corruption	2002
	Kimberly Process Certification Scheme (KPCS)	Illicit trade	2003
	Initiative for Responsible Mining Assurance (IRMA)	Environment	in formation
Tourism	Global Sustainable Tourism Council (GSTC)	Environment	2008
Energy	Equitable Origin (EQ)	Environment	2009
	Hydropower Sustainability Assessment Protocol (HSAP)	Environment	2013

MSIs seek to approximate the deliberative ideal through participatory elements and procedural transparency. These institutional design features directly follow from the two core principles of deliberative democratic theory: inclusiveness and unconstrained dialogue (Lövbrand & Khan, 2010; Smith, 2003). In this regard, multi-stakeholder boards, observer councils, public outreach meetings, and other consultation mechanisms are intended to ensure that a wide range of stakeholders is included in their decision-making and standard-setting activities. Although transparency is not equivalent to unconstrained dialogue, it is widely regarded as a key element of good governance. According to Esty (2007: 525), seeing the decision-makers in action and observing who has influenced a decision is essential to establishing a sense of fairness, rationality, and neutrality. Also, it exposes the decision-making process to public scrutiny and thus discourages rent-seeking and other forms of self-serving behavior. Against this background, it has been argued that MSIs “frequently base their decisions on sincere and meaningful deliberation among participants” (Dingwerth, 2007: 9). In a similar vein, Gulbrandsen (2008) and Cashore *et al.* (2004: 298) refer to them as a “good governance model” and “one of the most innovative and startling institutional designs of the past 50 years”.

Others, on the other hand, contend that real-world MSIs often fall far short of the deliberative ideal. For example, in their study of the deliberative capacity of two agricultural commodity roundtables, Schouten *et al.* (2012) find that they include only a limited variety of pragmatic and technical discourses, whilst excluding local knowledge and ideological or emotional styles of communication. A similar criticism has been made by Cheyns (2011), who concludes that small-scale farmers and communities from the global south are often excluded from these arrangements.

Contributing to a critical re-examination of multi-stakeholder sustainability governance, this article conducts an in-depth analysis of stakeholder interaction in the RSB. As mentioned in the introduction to this chapter, the RSB is widely regarded as an exemplary and highly inclusive and transparent private governance institution (Nuffield Council on Bioethics, 2011). The scheme involves a broad range of stakeholders in its governance and standard-setting activities and like few other initiatives has made its internal decision-making process transparent to the public (see below for a more detailed description). Therefore, from an institutional design perspective, the RSB can be considered a most-likely case for meaningful private deliberation to occur. In the words of Risse and Kleine (2010), it provides ideal “institutional scope conditions”. However, empirical studies have shown that instances of meaningful deliberation remain extremely rare in political reality. There is a high risk that so-called deliberative governance arrangements collapse into competitive interest group politics, with strategic bargaining being the dominant mode of interaction rather than deliberation or arguing (Risse, 2004).

In order to examine the relationship between institutional design and the quality of deliberative practices in the RSB, firstly, a definition of deliberation is needed. According to Risse (2000), deliberation is a communicative process in which actors seek to reach a reasoned consensus about an issue, with the objective to define behavioral principles and norms. The dominant mode of interaction is that of arguing which has to be distinguished from bargaining. When actors bargain they act instrumentally. They strategically exchange demands, promises, and threats, with the objective of satisfying given preferences as much as possible. In contrast, “where argumentative rationality prevails, actors do not seek to maximize or to satisfy their given interests and preferences, but to challenge and to justify the validity claims inherent in them – and they are prepared to change their views of the world or even their interests in light of the better argument” (Risse, 2000: 7). Secondly, to begin the empirical analysis, some indicators are needed in order to assess whether the RSB constitutes an arena of meaningful deliberation or whether it is primarily a site of strategic behavior and bargaining. Table 2 summarizes the major differences between deliberation and bargaining and offers some clues how to distinguish which mode of interaction dominates in a given decision-making sequence (cf. Risse, 2000, 2004; Risse & Kleine, 2010).

**Table 2: Deliberation vs. Bargaining**

	<b>Deliberation</b>	<b>Bargaining</b>
<b>Goal</b>	The goal of deliberation is to reach an argumentative consensus.	The goal of bargaining is to maximize given preferences.
<b>Decision-making process</b>	In deliberation mode, actors challenge the validity claims inherent in any causal and normative statement. They are eager to learn more about a problem or situation as they try to define and justify behavioral principles and norms. The nature of deliberative processes is consensus-oriented and open-minded. Power relationships recede into the background and the better argument carries the day (argumentative rationality). This implies that deliberators are willing to change their preferences and normative beliefs.	In bargaining mode, actors communicate primarily to exchange information about preferences, propose deals and make threats. The nature of bargaining is confrontational. Actors try to maximize their given preferences as much as possible, often to the disadvantage of others. The distribution of bargaining power plays an important role in these situations. Essentially, it determines whose preferences prevail.
<b>Possible observable outcome</b>	The outcome of a deliberative process is an argumentative consensus. Typically, this consensus reflects a higher principle or concept that during the deliberative process and in careful consideration of possible alternatives was identified as being superior. An important indicator for meaningful deliberation is if the outcome reflects the position of weak actors.	The outcomes of bargaining processes reflect the preferences of the most powerful actor – often, side payments are made. If no actor is able to dominate the bargaining process, then the outcome reflects the lowest common denominator. Bargaining breaks down, if no ‘zone of possible agreement’ exists.

In the following section, these indicators will be used to examine the nature of stakeholder interaction in the RSB. The case study draws on detailed meeting minutes of the RSB’s Steering Board and stakeholder chambers, the scheme’s central decision-making bodies. It is here where binding decisions about the organization’s structure, strategy, and standards are made. For the empirical analysis, meeting minutes are available for the period of 2006-2012. Using Atlas.ti, an open coding software for qualitative data, key decision-making sequences were identified and subsequently analyzed as to whether they show signs of meaningful deliberation or whether bargaining was the dominant mode of stakeholder interaction. The information from the meeting minutes was then triangulated with original interview data. To this end, 18 interviews with key stakeholders and observers of the RSB process were conducted during 2011 and 2012.

### **The RSB: A Site of Meaningful Deliberation?**

The biofuel sector is a relatively young global industry. Although biofuel production has existed in countries like Brazil and the USA since the 1970s, the emergence of a global biofuel supply chain and market is a rather recent phenomenon. Over the last decade biofuel production, consumption, and trade have expanded significantly as major industrialized countries around the world have adopted blending mandates and quotas for biofuels (Global Renewable Fuels Alliance, website).

One important example is the European Union Renewable Energy Directive (EU RED). Enacted in 2009, the EU RED established a blending mandate for biofuels in the transport sector of 10 percent to be achieved by 2020 (European Union, 2009). This and supporting policies at the member state level created one of the world’s largest biofuel markets with an estimated volume of currently 14 billion liters or 4.65 percent of total transport fuels (USDA, 2013). As a result of the EU RED and similar policies elsewhere, world biofuel production increased six-fold during 2000-2011, from 315 to 1898

thousand barrels per day (U.S. Energy Information Administration, website). Also, the global trade in biofuels is set to increase strongly, from 4.5 billion liters annually in the previous decade to 12 billion liters by 2021 (OECD-FAO, 2012: 95).

This rapid expansion of biofuel production, trade, and consumption has contributed to a surge in global demand for food commodities, and the Food and Agricultural Organization estimates that this trend will continue in the future (see Table 3).

**Table 3: World Use of Food Crops for Biofuel Production**

<b>Crop</b>	<b>Unit</b>	<b>2005</b>	<b>2030</b>
Cereals	Million tons	65	182
	Percent of total use	3.2	6.7
Vegetable oils	Million tons	7	29
	Percent of total use	4.8	12.6
Sugarcane	Million tons	28	81
	Percent of total use	15.1	27.4

Source: FAO 2012

This development has triggered much debate about the sustainability of industrial biofuel production. One of the major issues raised is the carbon intensity of biofuels. Often, biofuels are promoted as a means to reduce greenhouse gas (GHG) emissions and thus to reach climate change reduction targets. But official figures often do not consider emissions emanating from direct and indirect land use change. Direct land use change occurs when previously uncultivated land is converted to the production of energy crops. On the other hand, indirect land use change is a process in which biofuels displace other agricultural activities to previously uncultivated areas. Direct and indirect land use changes are problematic as they can result in an overall negative GHG balance of biofuels. This is the case if, for example, forests, peatlands, or wetlands are cultivated (Nuffield Council on Bioethics, 2011, pp. 32-33).

Also, the social impact of biofuels has become a highly contentious issue. Besides poor labor standards in producer countries and problems with land grabbing, it was particularly the global food crisis of 2007/2008 which sparked much controversy about biofuels. The debate was further fuelled by the release of the Gallagher Review in July 2008. Commissioned by the British Secretary of State for Transport, the review concluded that without safeguards biofuel policies in the EU and elsewhere will: (1) reduce biodiversity; (2) may cause GHG emissions rather than savings; and (3) that increasing demand for biofuels contributes to rising prices for some food commodities such as oil seeds (Renewable Fuels Agency, 2008, pp. 7-15).

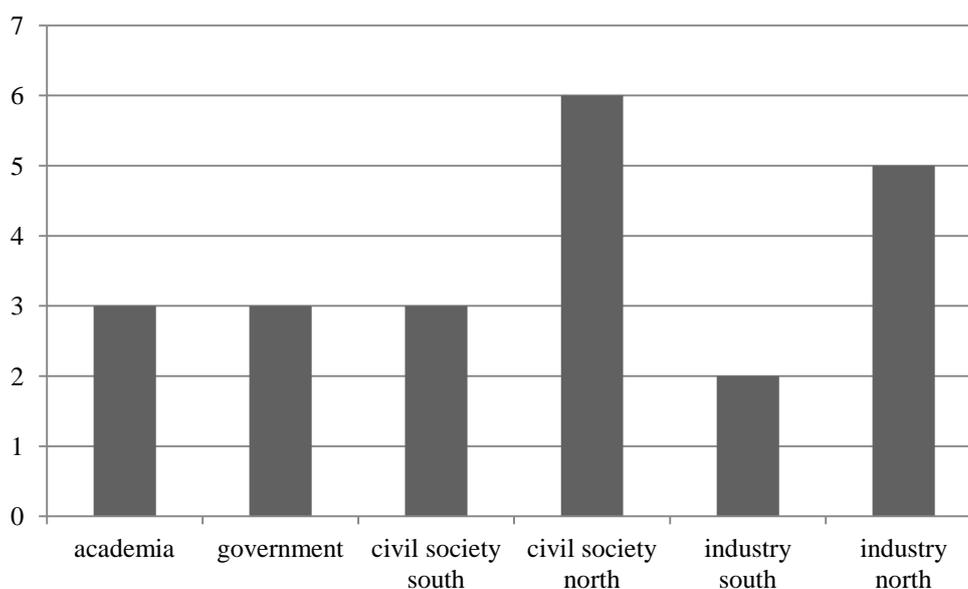
To address this situation, several private governance arrangements were created to mitigate the social and environmental impact of biofuel production. The growth of private governance in the biofuel sector was further spurred by the EU's decision to rely on private certification schemes for implementing the EU RED. In addition to a blending mandate, the EU RED included a mandatory sustainability scheme which all biofuels produced or imported to the EU must meet. The emerging system of private governance in the biofuel sector includes firm-level self-regulation, industry-level initiatives, and MSIs. These arrangements are now a major source of environmental and social regulation in the industry (Schleifer, 2013).

### ***Adopting a Good Governance Model***

The idea of launching a roundtable discussion on sustainable biofuel production was first invoked at a conference organized by the German NGO Forum and the UN Environmental Programme in Bonn in October 2006. A month later, a group of approximately twenty stakeholders from industry, civil

society, academia and government met to further explore the issue at a workshop hosted by the École Polytechnique Fédérale de Lausanne (EPFL). The workshop served as a forum to analyze the social and environmental impact of commercial biofuel production and to investigate “the potential for developing an internationally accepted and implementable standards for sustainable biofuels” (RSB, 2006). A major outcome of the meeting was the decision to create a Founding Steering Board and a small Secretariat based at the EPFL Energy Center. From the very beginning, the initiators of the RSB tried to maintain a high level of inclusiveness and transparency. In this regard, the Founding Steering Board (FSB) included the industry’s major stakeholder groups and detailed meeting minutes were made publicly available on the RSB’s website (see Figure 1) (RSB, website).

**Figure 1: Composition of the RSB Founding Steering Board (seats/stakeholder group)**



Based on RSB 2011

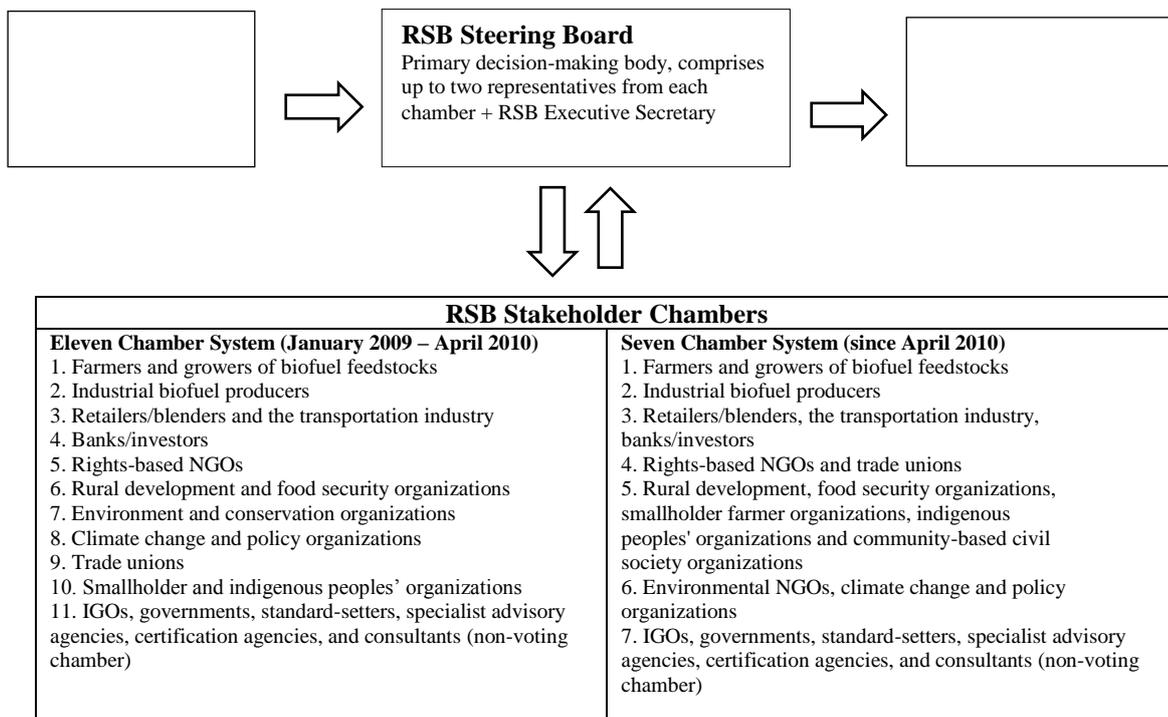
Standard-setting in the RSB took place in four working groups (WGs) on environmental impacts, social impacts, greenhouse gases and implementation. Participation in the WGs was free of charge and open to all interested parties. Decisions over draft principles and criteria were reached by consensus or simple majority in the case of deadlock. Regarding the composition of the WGs, there was no formal balance between sectors or regions. However, the secretariat and working group coordinators aimed to maintain an overall balance in order to prevent single interest groups from capturing the process (interview with a member of the RSB Secretariat). Overall, some 280 organizations and individuals registered with the working groups (RSB, 2007a, 2007c). Communication between the members of the WGs took place via teleconferences and through a so-called Bioenergy Wiki. Openly accessible to the public, the Bioenergy Wiki is a website which contains detailed documentation of the standard-setting process of the RSB, including meeting minutes of the WGs as well as background documents (Bioenergy Wiki, website).

Taken together, the process leading to Version Zero of the RSB standard involved more than 50 working group teleconferences and four stakeholder outreach meetings in Brazil, China, South Africa and India (RSB, 2008a). In August 2008, the 12 principles and related criteria of Version Zero were formally adopted by the Founding Steering Board. Following the guidelines of the International Social and Environmental Accreditation and Labelling (ISEAL) Alliance, an association defining standards of good practices for private standard-setting organizations, the standard was then made available for public scrutiny and comments (RSB, 2009). During the consultations, the RSB Secretariat organized 15 stakeholder outreach meetings around the globe and received comments via phone and its website.

Furthermore, the Kluyver Centre for Genomics of Industrial Fermentation in Delft, Netherlands was commissioned to conduct an expert workshop to review the RSB standard (Kluyver Centre, 2008). Documentation about stakeholder engagement during this period provides evidence that nearly 900 individuals and organizations from over 40 countries participated in the feedback process to improve Version Zero of the RSB standard (RSB, 2009).

In January 2009, the RSB was launched as a membership organization with a formal governance structure. The FSB and the four WGs were dissolved and replaced by a formally elected Steering Board (SB) and a corresponding chamber system. Later, three expert groups on genetically modified organisms (GMOs), GHGs, and indirect impacts were formed to work out the technical details of the RSB Principles and Criteria. Initially, the chamber system consisted of eleven stakeholder chambers. The private sector was represented by four chambers and environmental and social groups by a further six. The eleventh chamber, comprising government agencies, IGOs, consultancy firms, academics and certification agencies, was set up as a non-voting chamber. Early in 2010, a decision was made to reduce the number of stakeholder chambers from eleven to seven. The revised chamber structure consisted of three industry chambers, three civil society chambers, and the former Chamber 11 as a non-voting chamber (see Figure 2) (RSB, 2011d).

**Figure 2: Organizational Chart of the RSB**



In the formal organization, the decision-making process has two stages. In a first stage, a decision about an agenda item is reached at the chamber-level. Chamber meetings are held via teleconference or in person and have a quorum if at least 25 percent of its membership or three members, whichever is highest, participate. Chambers reach their decisions by consensus. However, if in a third consecutive meeting no consensus can be reached regarding a particular agenda item, then decisions may be reached by a vote of two-thirds of the members present (RSB, 2010h). In a second stage, the agenda item is passed on to the SB. The composition of the SB follows from the chamber structure. Each chamber elects up to two representatives, known as co-chairs, who represent the chamber at the SB-level. Like the FSB before it, the SB meets several times a year via teleconference or in person and is

deemed to be quorate if at least 60 percent of its members are present. Similar to decision-making in the chambers, the SB strives to reach consensus. However, in the case of deadlock (i.e. no consensus in a third consecutive meeting) a decision can be reached by a vote of two-thirds of the voting members present (RSB, 2010h).

Overall, the RSB can be characterized as a private governance institution with a strongly participatory approach. The organization's primary decision-making and standard-setting bodies maintain a careful balance between industry and civil society stakeholders as well as organizations from developed and developing countries. Furthermore, through its high level of procedural transparency the scheme enables public scrutiny, thus creating favorable conditions for unconstrained dialogue between its various constituencies.

### ***Analyzing the Nature of Stakeholder Interaction in the RSB***

Using the ideal-typical distinction between deliberation and bargaining as a baseline for comparison, this section now examines the hypothesized link between institutional scope conditions and the quality of deliberative practices in the RSB. To reiterate, in deliberation mode decisions are reached through consensus-oriented arguing. Principally, stakeholders are willing to change their previously held beliefs and preferences in light of the better argument, whilst power relationships recede into the background. In contrast, in bargaining situations communication primarily serves the purpose to exchange information about preferences, to propose deals, and to make threats. The ultimate goal is to maximize given preferences as much as possible.

The in-depth analysis of the meeting minutes and interview material revealed that with regard to important decisions and over extended periods of time bargaining, and not deliberation, dominated the internal debate in the RSB. Instead of seeking an argumentative consensus, industry and civil society actors tried to maximize their material and normative preferences as well as their influence over the institution. In order to illustrate this point, this section describes two episodes from the recent history of the RSB. The first episode shows how industry and civil society stakeholders struggled fiercely over the balance of power in the RSB. Thus, in violation of the deliberative ideal, power relationships did not recede into the background, but dominated the internal debate in the RSB over an extended period of time. The second episode documents how producer groups clashed with NGOs over the content of the standard and the design of the certification system. During the negotiations, both bargaining blocs insisted on their positions. After a lengthy internal struggle it became clear that there was little room for compromise and eventually bargaining broke down. Since then, the RSB has completed the rolling out of its certification scheme, but many stakeholders have effectively abandoned the initiative.

It was in late 2007 when discussions in the RSB first turned toward the issue of governance. Until then, the RSB had been governed by the FSB, an *ad hoc* group of people who had volunteered at the initiative's foundational meeting in November 2006. As the organization evolved and the standard-setting process was launched, the members of the FSB began discussing the necessity of providing the RSB with a formal governance structure.

“[T]he more we communicate, the more people who ask on whose behalf we are communicating, and request some clear governance structure” (RSB, 2007b: 8).

The issue received further attention during subsequent board meetings. Whereas some felt that it was important to quickly formalize the RSB, others feared that “roundtables are very slow when they start with governance” (RSB, 2007b: 8). However, most FSB members agreed that a formal structure and procedures were needed and at a meeting in June 2008 a decision was made to move forward with the issue. To this end, a governance committee was formed and charged with developing a proposal for a formal governance structure. Participation in the governance committee was open to all members of the FSB, but those who volunteered were mostly people with previous experience of multi-stakeholder regulation. In fact, only one industry representative volunteered to serve on the committee (RSB,

2008b). In the following months, the committee conducted a survey among the members of the RSB WGs which was used to identify stakeholder categories and to develop a chamber system for the RSB (interview with members of the governance committee). In October 2008, the governance committee presented its proposal to the FSB which approved it unanimously (RSB, 2008c). In its final version, the governance committee's proposal recommended the creation of eleven stakeholder chambers: six civil society chambers, four industry chambers, and one non-voting chamber for government agencies, IGOs, consultancy firms, academics, and certification agencies (see Figure 2). The composition of the newly created SB followed from the chamber structure. Each chamber elected up to two representatives, called co-chairs, who represented the chamber at the SB-level.

In January 2009, the eleven chamber system came into effect and the RSB was launched as a formal membership organization. It was also during 2009 when the RSB membership base increased rapidly. In particular, feedstock growers and biofuel producers joined the initiative. They soon became the largest constituency groups, with Chamber 1 and 2 soon counting more than 30 members (interview with one of co-chairs of Chamber 2). These companies joined the RSB at a time in which the organization's governance structure had already been formalized, putting civil society actors in a strong position (they controlled six out of the ten voting chambers). Worried about the level of NGO influence, and that the resulting standard would turn out to be too demanding and costly to implement, upstream industry actors began to challenge the institutional status quo in the RSB. In autumn 2009, Chamber 2 wrote a letter to the SB, requesting that the eleven chamber system be revised. Their position was that voting power in the RSB should more strongly reflect actual participation. In this regard, it was argued that many of the civil society chambers had only very few members and that they often failed to reach a quorum during their meetings. In an interview, one of the co-chairs of Chamber 2 stated that "we did not think it was fair that a chamber with thirty members had the same vote, which is one vote, as a chamber with four members". Not surprisingly, the group of civil society organizations strongly disagreed with the biofuel producers' demand for more influence over the decision-making process. They pointed out that many NGOs are umbrella organizations, representing many members:

"[J]ust having more members isn't a fair measure either, since a single organization may represent more stakeholders in the field than another entire chamber has members. For example this is the case for some member-based NGOs, representing several hundreds of villagers over broad geographic areas" (RSB, 2010f: 3).

The conflict over governance dominated much of the internal debate in 2010 and at some point a decision was made to put the RSB's other activities on hold until a solution was found (RSB, 2010f). During the often heated discussions at the SB-level, the group of biofuel producers threatened that "if the governance in the RSB is not changed to its satisfaction, some members of Chamber 2 will get out" (RSB, 2010f: 3). In fact, several members of Chamber 2, among them the European Biodiesel Board and the European Bioethanol Association, announced their resignation during this period and left the RSB (Biofuel Digest, 2010; European Biodiesel Board, 2010).

In an attempt to overcome the crisis, a second governance committee was established. This time a careful balance was maintained between industry and civil society actors as well as organizations from the global north and south (RSB, 2010f). In its reform proposal, the committee recommenced reducing the number of stakeholder chambers from eleven to seven. The new structure would consist of three civil society chambers, three industry chambers, and the former Chamber 11 as a non-voting chamber. However, the seven chamber system also did not find support among the biofuel producers. Instead, they proposed to merge civil society Chamber 4 (land, water, human and labor rights NGOs, and trade unions) and 5 (rural development, food security, and community-based organizations), arguing that these chambers had very few members. Again, the group of NGOs opposed the idea. In a statement, the representatives of Chamber 4 and 5 criticized that they "see the proposal as a step backward for their constituencies returning to the 'top-down' approach, which denies the rights of small-scale and vulnerable stakeholders" (RSB, 2010d: 21).

At a meeting of the SB in November 2010, Chamber 2 made a last attempt to renegotiate the constitutional rules of the RSB. It proposed to merge all existing chambers into a unique private sector chamber, a unique civil society chamber, and a third non-voting chamber for government agencies, IGOs, consultancy firms, academics, and certification agencies. Furthermore, the proposal included a method for resolving deadlocks through a two-thirds majority vote of all voting members present (RSB, 2010e). But again, NGOs and many of the downstream industry actors in the RSB opposed the idea of a three chamber system. They argued that “reducing stakeholders to 3 total and only 2 voting chambers would impact the ‘roundtable’ spirit of the RSB by effectively making it a ‘triangle’ discussion, with a consequent polarization of discussions and members” (RSB, 2010d: 21). Furthermore, concerns were expressed that “the deadlock breaking method would turn RSB decision-making into a numbers game – the group mustering the most members would win. That is contrary to the spirit of multi-stakeholder roundtables, where all voices are entitled to consideration regardless of their numbers” (RSB, 2010d: 21). Eventually, Chamber 2’s proposal was voted down at the SB-level and the seven chamber system was confirmed as the new structure of the RSB (RSB, 2010e).

Unsuccessful in increasing their influence over the decision-making process, upstream industry actors in the RSB began to directly challenge the content and design of the RSB’s certification system. In November 2010, the standard-setting process was nearing completion and discussion in the RSB turned toward the rolling out of the certification system. In this context, a proposal was made to introduce a two-tiered certification scheme. The first tier should consist of a less comprehensive, entry-level version and the second tier of the full RSB standard. The rationale behind the two-tiered certification system was to increase the RSB’s competitiveness on the European biofuel certification market. At the time, other biofuel certification schemes were already operational and it was feared that the more demanding RSB standard would discourage firms from becoming RSB certified (RSB, 2010e: 12).

Over the following months, the discussion about the two-tiered certification system developed into a more general debate about the RSB and its standard. On one side of the debate, feedstock growers and biofuel producers were strongly in favor of the two-tiered certification system (interviews with members of Chamber 1 and 2). However, they opposed the idea of a mandatory transition mechanism which would have obliged them to transition to tier two – the full RSB standard – after a period of three years. It was argued that the full standard was too demanding and that there was no market demand for RSB certified products. In this regard, a representative of a large Argentinian farmers association stated during a chamber conference call that “if RSB asks farmers to commit to adoption of RSB full standard (Tier 2) after three years, then most farmers will not sign it” (RSB, 2010a: 2). Others argued that “[c]ivil society knew that by signing up, they would have to work with industry, and if they stick to ‘you must comply with the full RSB standard,’ participation will be nearly non-existent. (...) There is no market in the world today for an RSB certified product. (...) It will not be possible to sell the RSB to industry players when there are other lower cost options (...)” (RSB, 2010c: 3-4). Overall, the meeting minutes provide evidence for the confrontational nature of the discussions during this period:

“It is less important to get consensus with other Chambers than to get the Standard right. There was a problem with representation of Chambers in the RSB all along” (RSB, 2010b: 3).

On the other side of the debate, civil society actors were concerned that the two-tier certification system would effectively result in a watering down of the RSB standard. They also feared that the introduction of tier one would create reputational risks for the RSB and themselves (interview with NGO representatives). Against this background, strong reservations and criticism were expressed against both the two-tier certification system and industry’s opposition against a mandatory transition mechanism:

“A few months ago there was no Tier 1, only people that wanted to join the RSB. It seems strange that we are going to revise our structure for a whole cadre of producers that were not even interested in joining the RSB system a few months ago. (...) If companies are not willing to come

on board to the full RSB system, even after 3 years, then perhaps RSB should not exist” (RSB, 2010g: 3-4).

Despite these concerns, civil society actors eventually agreed to the two-tier certification system under the condition that a set of “incurable” issues was included. In an interview, a member of the RSB Secretariat explained that an issue was considered incurable, if non-compliance with that issue was irreversible; for example, this is the case when forests are cleared or basic human rights are violated (interview with a member of the RSB Secretariat). Furthermore, civil society actors insisted that a transition to tier two had to be mandatory.

The design and content of the two-tiered certification system remained at the center of discussions throughout 2011. A working group was established to define the details of the transition process and several chamber and SB meetings were held to further discuss and negotiate the issue. However, there was little room for compromise between the two groups. Civil society actors regarded most of the content of the full standard as incurable. In this regard, social rights NGOs insisted on the inclusion of human and labor rights and others regarded food security and sustainable livelihoods as indispensable (RSB, 2010d). As a result, the final proposal for the content of tier one still included eleven out of the twelve principles of the full RSB standard (RSB, 2011b: 5). This was not acceptable for the group of biofuel producers which continued to oppose a mandatory transition mechanism and any extra costs resulting from certification:

“Chamber Two considers any economic disadvantage in the fuel market originating from sustainability certification as an incurable. Participating Operators should not be demanded to transition to Tier 2 if at the end of the transitional period there is no market demand for a product complying with all 12 P&C [Principles and Criteria]. Doing so would mean an added cost to producers which they will not be able to recover. This is considered by industrial producers as an incurable issue” (RSB, 2011a: 4).

Eventually, bargaining broke down as no agreement seemed to be possible between the two groups. At a SB meeting in June 2011, a decision was made to not further pursue the issue. The meeting minutes read that “there is no real interest from potential users in a Tier One that imposes limited claims but is not significantly easier to comply with” (RSB, 2011c: 13). As a consequence, many industry actors have effectively abandoned the initiative as evidenced by the scheme’s low market uptake. Today, the European biofuel certification market is dominated by sustainability initiatives which are closely aligned with industry interests such as International Sustainability and Carbon Certification (ISCC), REDcert, and Biomass Biofuels Sustainability Voluntary Scheme (2BSVs), whereas the RSB is largely insignificant (Ponte, 2014; Schleifer, 2013). Asked about the decision to not become RSB certified, one member of Chamber 2 explained in an interview:

“You know, the world moves on and we move on without you if you do not keep up with us. There is almost an industry of certifications schemes out there.”

### ***Exploring the Causes of ‘Deliberation Failure’***

The in-depth analysis of meeting minutes and interview material conducted above revealed that despite ideal institutional scope conditions bargaining, and not deliberation, was the dominant mode of stakeholder interaction in the RSB. What explains this outcome and what can we learn from it? In order to shed some light on these questions, this section uses induction to unravel the causes of deliberation failure in the biofuels arena. In this regard, the case study of the RSB points to the highly politicized nature of the biofuels debate as well as the wider regulatory context as the main contributing factors.

With regard to the former, it was found that the biofuels arena in particular is characterized by deep-seated divisions and ideologically charged conflicts, leaving little room for arguing and compromise. In this regard, the launch of the RSB coincided with the onset of the global food crisis in 2007/2008. During the crisis, biofuels were widely blamed as a key driver behind the price hikes of

agricultural commodities and food shortages in the global south occurring in this period. In the ensuing debate over the sustainability of biofuels, the different parties often took extreme positions. One example is the then United Nations Special Rapporteur on the Right to Food, who went as far as calling them a “crime against humanity” (The Guardian, 2008). Also, many NGOs started campaigning against biofuels, which they argued to be an inherently unsustainable technology (Biofuelwatch, 2007; Friends of the Earth Europe, 2008; Oxfam International, 2008). On the other side of the debate, biofuel producers in the global south and elsewhere were deeply concerned about their investments and that anti-biofuels protests and strict sustainability regulation in the global north could put their industry and businesses at risk. Although consisting of a coalition of more moderate NGOs and progressive firms, these conflicts and struggles in the wider biofuels arena translated into tensions and frictions in the RSB. In the end, the highly politicized nature of the biofuels debate made deliberative reflections about preferences and normative beliefs very difficult, and in many situations bargaining over influence and regulatory outcomes became the dominant mode of stakeholder interaction.

Secondly, the wider regulatory context in which the RSB is embedded has contributed to undermining its deliberative approach. In order to mitigate the social and environmental impact of its biofuel policy, the EU included a mandatory sustainability scheme in the EU RED. This scheme stipulates that, in order to count against the overall target of 10 percent of renewable energy in the transport sector, biofuels in the EU are required to comply with a set of environmental sustainability criteria. For example, one criterion requires a minimum level of 35 percent savings in GHG emissions when compared to fossil fuels. Another criterion mandates that biofuels cannot be obtained from land that was categorized in January 2008 as having a high biodiversity value. In the same way, biomass obtained from land with high carbon stock cannot be used for biofuel production (European Union, 2009). However, no public implementation mechanism was created. Instead, the EU Commission relies on private certification schemes like the RSB to monitor and “enforce” compliance. To this end, an accreditation procedure was created, making it possible for private standard systems to apply for formal EU recognition and to act as certifiers under the EU RED. But undermining the good governance approach of the RSB the EU set a very low baseline for recognition – for example, making no requirements for stakeholder inclusion and making no references to social standards. In the first application cycle, seven private schemes were granted the status as qualifying standards, among them several initiatives closely aligned with industry interests (EU Commission, 2011). Legitimized by formal EU recognition, schemes like the above-mentioned ISCC, REDcert, and 2BSvs constituted attractive alternatives for companies operating in the European biofuel market. Choosing these schemes over the RSB allowed them to claim sustainability for their products without having to engage in difficult interactions with critical NGOs.<sup>2</sup>

In sum, these findings caution against too much enthusiasm about the participatory paradigm in global sustainability politics. For the area of private biofuel governance, this paper showed that the practice of “roundtabling” sustainable development (Ponte, 2014) seems to underestimate the huge political differences and conflicts that exist in this arena. While deliberation is not a fair-weather mode of governance, the highly politicized nature of the biofuels debate made it extremely difficult for firms and civil society actors to leave their entrenched positions and to engage in a more open-minded and consensus-oriented discussion about sustainability. Against this background, it could be hypothesized that political environments differ in their opportunity structure for deliberative behavior, and that there was little room for consensus-oriented arguing in the biofuels arena. Also, the case at hand shows that new modes of governance cannot be analyzed independent from the wider institutional context in which these systems operate. Whereas the institutional scope conditions provided by the RSB can be considered ideal, the scheme’s deliberative capacity was undermined through public policies which

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<sup>2</sup> See Schleifer (2013) for a detailed analysis of the interaction of public and private sustainability governance in this policy area.

reduced the pressure on business actors to engage with the more inclusive and transparent approach of the biofuels roundtable.

## **Conclusions**

This article studied the contested nature of deliberative sustainability governance two decades after the participatory paradigm was announced at the United Nations Conference on Environment and Development in Rio de Janeiro. With a focus on private governance at the transnational level, it provided an in-depth analysis of business-civil society interaction in the RSB, a multi-stakeholder scheme created to define an internationally accepted standard for sustainable biofuel production. Through its highly inclusive and transparent design, the RSB provides what could be called ideal institutional scope conditions for meaningful deliberative governance to occur.

However, falling far short of the deliberative ideal of open-minded and consensus-oriented arguing, stakeholder interaction in the RSB was often characterized by strategic bargaining over influence and regulatory outcomes. To illustrate this point, two episodes from the recent history of the RSB were described. The first episode showed how business actors challenged the institutional status quo in the RSB, demanding more influence over the decision-making process. These power struggles paralyzed the organization over an extended period of time, and several producer members left the RSB as a result. The second episode documented how the rolling out of the certification system developed into a prolonged episode of institutional bargaining about the objectives and purpose of the biofuels roundtable. At the heart of this debate, were industry demands for a ratcheted-down version of the RSB production standard, which civil society actors vehemently opposed. Eventually, bargaining broke down as no zone of possible agreement could be identified. Today, many business actors have effectively abandoned the RSB as a forum for defining sustainable standards and – outcompeted by industry-dominated initiatives like the ISCC, REDcert, and 2BSvs – the scheme plays only a marginal role in the global biofuels certification market.

Through an inductive analysis of meeting minutes, interviews, and other materials, the high level of politicization as well as the background role of the state could be identified as the main causes of this deliberation failure. Shaken by the global food crisis and highly contentious topics like indirect land use change, the biofuels arena provided few opportunities for meaningful deliberative governance. As a result, stakeholder interaction in the RSB frequently collapsed into episodes of intergroup bargaining. Furthermore undermining the deliberative approach of the RSB, state actors in the biofuel arena endorsed a non-participatory model of private sustainability governance. This reduced the pressure on biofuel producers to engage with critical NGOs and many sought certification with schemes closely aligned with industry interests. Against this background, this paper concludes on a cautionary note, pointing to the many difficulties of organizing meaningful deliberation for sustainable development.

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**Annex: List of Interviews**

<b>Organisation</b>	<b>Type</b>	<b>Date</b>
Amigos da Terra	Phone interview	16.12.2011
Biojet Corp	Phone interview	09.11.2011
BP	In-person interview	07.12.2011
Cosmo Biofuels	Phone interview	20.12.2011
Ecole Polytechnique Fédérale de Lausanne	In-person interview	18.11.2011
Forest Stewardship Council International	Phone interview	23.11.2011
Friends of the Earth Europe	Phone interview	05.12.2011
International Air Transport Association	Phone interview	02.12.2011
International Union for Conservation of Nature	Phone interview	29.11.2011
National Wildlife Federation	Phone interview	14.11.2011
Roundtable on Sustainable Biofuels (two interviews)	In-person interview Phone interview	18.11.2011 01.12.2011
Swiss Energy Ministry	Phone interview	01.11.2011
UN Foundation	Phone interview	02.12.2011
United Nations Conference for Trade and Development	Phone interview	31.10.2011
World Economic Forum	In-person interview	07.12.2011
World Wildlife Fund for Nature International (two Interviews)	Phone interview Phone interview	21.10.2011 28.11.2011

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