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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Position of the Council at first reading with a view to the adoption of a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 98/70/EC relating to the quality of petrol and diesel fuels and amending Directive 2009/28/EC on the promotion of the use of energy from renewable sources
- Adopted by the Council on 9 December 2014

DIRECTIVE 2014/.../EU
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

amending Directive 98/70/EC
relating to the quality of petrol and diesel fuels
and amending Directive 2009/28/EC
on the promotion of the use of energy from renewable sources

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof, and Article 114 thereof in relation to Article 1(3) to (13) and Article 2(5) to (7) of this Directive,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure²,

¹ OJ C 198, 10 July 2013, p. 56.

² Position of the European Parliament of 11 September 2013 (OJ C 357 E, 6.12.2013, p. 86) and Position of the Council at first reading of 9 December 2014 (not yet published in the Official Journal). Position of the European Parliament of ...[(not yet published in the Official Journal)] [and decision of the Council of ...].

Whereas:

- (1) Pursuant to Article 3(4) of Directive 2009/28/EC of the European Parliament and of the Council¹ each Member State is to ensure that the share of energy from renewable sources in all forms of transport in 2020 is at least 10 % of the final consumption of energy in transport in that Member State. The blending of biofuels is one of the methods available for Member States to meet this target, and is expected to be the main contributor.
- (2) In view of the Union's objective to further reduce greenhouse gas emissions and the significant contribution that road transport fuels make to those emissions, Member States are pursuant to Article 7a(2) of Directive 98/70/EC of the European Parliament and of the Council² to require suppliers of fuel or energy to reduce by at least 6 % by 31 December 2020 the life cycle greenhouse gas emissions per unit of energy of fuels used in the Union by road vehicles, non-road mobile machinery, agricultural and forestry tractors and recreational craft when not at sea. The blending of biofuels is one of the methods available for fossil fuel suppliers to reduce the greenhouse gas intensity of the fossil fuels supplied.

¹ Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable energy sources and amending and subsequently repealing Directives 2001/777/EC and 2003/30/EC (OJ L 140, 5.6.2009, p. 16).

² Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC (OJ L 350, 28.12.1998, p. 58).

- (3) Directive 2009/28/EC sets out sustainability criteria with which biofuels and bioliquids need to comply in order to be counted towards the targets in that Directive and to qualify for inclusion in public support schemes. The criteria include requirements on the minimum greenhouse gas emission savings that biofuels and bioliquids need to achieve compared to fossil fuels. Identical sustainability criteria for biofuels are set out in Directive 98/70/EC.
- (4) Where pasture or agricultural land previously destined for food and feed markets is diverted to biofuel production, the non-fuel demand will still need to be satisfied either through intensification of current production or by bringing non-agricultural land into production elsewhere. The latter case constitutes indirect land-use change and when it involves the conversion of land with high carbon stock it can lead to significant greenhouse gas emissions. Directives 98/70/EC and 2009/28/EC should therefore be amended to include provisions to address indirect land-use change given that current biofuels are mainly produced from crops grown on existing agricultural land.
- (5) Based on forecasts of biofuel demand provided by the Member States and estimates of indirect land-use change emissions for different biofuel feedstocks, it is likely that greenhouse gas emissions linked to indirect land-use change are significant, and could negate some or all of the greenhouse gas emission savings of individual biofuels. This is because almost the entire biofuel production in 2020 is expected to come from crops grown on land that could be used to satisfy food and feed markets. In order to reduce such emissions, it is appropriate to distinguish between crop groups such as oil crops, sugars and cereals and other starch-rich crops accordingly.

- (6) With a view to avoiding the incentivisation of the deliberate increase in production of processing residues at the expense of the main product, the definition of processing residue should exclude residues resulting from a production process which has been deliberately modified for that purpose.
- (7) Liquid renewable fuels are likely to be required by the transport sector in order to reduce its greenhouse gas emissions. Advanced biofuels, such as those made from wastes and algae, provide high greenhouse gas emission savings, with low risk of causing indirect land-use change, and do not compete directly for agricultural land for the food and feed markets. It is appropriate, therefore, to encourage greater production of such advanced biofuels as they are currently not commercially available in large quantities, in part due to competition for public subsidies with established food crop-based biofuel technologies. Each Member State should promote the consumption of such advanced biofuels, through setting non-legally binding sub-targets at national level within the obligation of ensuring that the share of energy from renewable sources in all forms of transport in 2020 is at least 10 % of the final consumption of energy in transport in that Member State. It is also appropriate for Member States to report on their achievements towards such national sub-targets in 2020, a synthesis report of which should be published, in order to assess the effectiveness of the measures introduced by this Directive in reducing the risk of indirect land-use change greenhouse gas emissions through the promotion of advanced biofuels. Such advanced biofuels and their promotion are expected to continue to play an important role in the decarbonisation of transport and the development of low-carbon transport technologies beyond that date.

- (8) Distinctions in estimated indirect land-use change emissions arise from the different data inputs and key assumptions on agricultural developments such as trends in agricultural yields and productivity, co-product allocation and observed global land-use change and deforestation rates, which are not under the control of biofuel producers. While most biofuel feedstocks are produced in the Union, the estimated indirect land-use change emissions are mostly expected to take place outside the Union, in areas where the additional production is likely to be realised at the lowest cost. In particular, assumptions with regard to the conversion of tropical forests and peat land drainage outside the Union strongly influence the estimated indirect land-use change emissions associated with biodiesel production from oil crops, and as such it is most important to ensure that such data and assumptions are reviewed in line with the latest available information on land conversion and deforestation, including capturing any progress made in those areas through ongoing international programmes.
- (9) In order to ensure the long-term competitiveness of bio-based industrial sectors, and in line with the Commission Communication of 13 February 2012 entitled 'Innovating for Sustainable growth: A Bioeconomy for Europe' and the Commission Communication of 20 September 2011 entitled 'Roadmap to a Resource Efficient Europe', promoting integrated and diversified biorefineries across Europe, enhanced incentives under Directive 2009/28/EC should be set in a way that gives preference to the use of biomass feedstocks that do not have a high economic value for uses other than biofuels.

- (10) A greater use of electricity from renewable sources is a means of addressing many of the challenges in the transport sector as well as in other energy sectors. It is therefore appropriate to provide additional incentives to stimulate the use of electricity from renewable sources in the transport sector, and to increase the multiplication factors for the calculation of the contribution from electricity from renewable sources consumed by electrified rail transport and electric road vehicles so as to enhance their deployment and market penetration.
- (11) Directive 2008/98/EC of the European Parliament and of the Council¹ helps move the Union closer to becoming a 'recycling society', by seeking to avoid waste generation and to use waste as a resource. The waste hierarchy generally lays down a priority order of what constitutes the best overall environmental option in relation to waste legislation and policy. Member States should support the use of recyclates in line with the waste hierarchy and with the aim of becoming a recycling society, and whenever possible not support the landfilling or incineration of such recyclates. Some of the feedstocks that pose low indirect land-use change risks can be considered to be wastes. However, they may still be used for other purposes that would represent a higher priority than energy recovery in the waste hierarchy as established in Article 4 of Directive 2008/98/EC. It is therefore appropriate for Member States to have due regard to the waste hierarchy principle in any incentive measures for the promotion of low indirect land-use change risk biofuels or any measures to minimise incentives for fraud in relation to the production of such biofuels, so that incentives to use such biofuel feedstocks do not counter efforts to reduce waste or increase recycling and the efficient and sustainable use of available resources. Member States may include measures they are taking in that respect in their reporting under Directive 2009/28/EC.

¹ Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).

- (12) The minimum greenhouse gas emission savings threshold for biofuels and bioliquids produced in new installations should be increased in order to improve their overall greenhouse gas balance as well as to discourage further investments in installations with a low greenhouse gas emission savings performance. This increase provides investment safeguards for biofuels and bioliquids production capacities in conformity with the second subparagraph of Article 19(6) of Directive 2009/28/EC.
- (13) To prepare for the transition towards advanced biofuels and minimise the overall indirect land-use change impacts in the period to 2020, it is appropriate to limit the amount of biofuels and bioliquids obtained from food crops as set out in part A of Annex VIII to Directive 2009/28/EC and part A of Annex V to Directive 98/70/EC, that can be counted towards targets set out in Directive 2009/28/EC, without restricting the overall use of such biofuels and bioliquids.
- (14) Limiting the amount of biofuels and bioliquids obtained from food crops that can be counted towards targets set out in Directive 2009/28/EC does not affect the Member States' freedom to arrange their own trajectory as to compliance with the prescribed share of conventional biofuels within the overall 10 % target. As a consequence, the access to the market of the biofuels produced by the installations in operation before the end of 2013 remains fully open. Therefore this Directive does not affect the legitimate expectations of the operators of such installations.
- (15) The estimated indirect land-use change emissions should be included in the reporting by the Commission of greenhouse gas emissions from biofuels under Directives 98/70/EC and 2009/28/EC. Biofuels made from feedstocks that do not lead to additional demand for land, such as those from waste feedstocks, should be assigned a zero emissions factor.

- (16) Yield increases in agricultural sectors through intensified research, technological development and knowledge transfer beyond levels which would have prevailed in the absence of productivity-promoting schemes for food and feed crop-based biofuels, as well as the cultivation of a second annual crop on areas which were previously not used for growing a second annual crop, can contribute to mitigating indirect land-use change. To the extent that the resulting indirect land-use change mitigation effect at national or project level can be quantified, measures introduced by this Directive could reflect such productivity improvements both in terms of reduced estimated indirect land-use change emission values and the contribution of food and feed crop-based biofuels towards the share of energy from renewable sources in transport to be achieved in 2020.
- (17) Voluntary schemes play an increasingly important role in providing evidence of compliance with the sustainability requirements laid down in Directives 98/70/EC and 2009/28/EC. It is therefore appropriate to mandate the Commission to require voluntary schemes, including those already recognised by the Commission in accordance with Article 7c(6) of Directive 98/70/EC and Article 18(6) of Directive 2009/28/EC, to report regularly on their activity. Such reports should be made public in order to increase transparency and to improve oversight by the Commission. Furthermore, such reporting would provide the necessary information for the Commission to report on the operation of the voluntary schemes with a view to identifying best practice and submitting, if appropriate, a proposal to further promote such best practice.

- (18) In order to facilitate the smooth functioning of the internal market, it is appropriate to clarify the conditions under which the mutual recognition principle applies as between all schemes for verification of compliance with the sustainability criteria for biofuels and bioliquids established in accordance with Directives 98/70/EC and 2009/28/EC.
- (19) Although food and feed crop-based biofuels are generally associated with indirect land-use change risks, there are also exceptions. Member States and the Commission should encourage the development and use of schemes which can reliably prove that a given amount of biofuel feedstock produced in a given project did not displace production for other purposes. This may be the case, for example, where the biofuel production equals the amount of additional production achieved through investments in improved productivity above levels which would have otherwise been achieved, or where biofuel production takes place on land where direct land-use change occurred without significant negative impacts on pre-existing ecosystem services delivered by that land, including protection of carbon stocks and biodiversity.
- (20) It is appropriate to align the rules for using default values to ensure equal treatment for producers regardless of where the production takes place. While third countries are allowed to use default values, Union producers are required to use actual values where they are higher than the default values, or a report has not been submitted by the Member State, thereby increasing their administrative burden. Therefore, current rules should be simplified so that the use of default values is not limited to areas within the Union included in the lists referred to in Article 19(2) of Directive 2009/28/EC and Article 7d(2) of Directive 98/70/EC.

- (21) As a consequence of the entry into force of the Treaty on the Functioning of the European Union (TFEU), the powers conferred under Directives 2009/28/EC and 98/70/EC upon the Commission need to be aligned to Articles 290 and 291 TFEU.
- (22) In order to ensure uniform conditions for the implementation of Directives 98/70/EC and 2009/28/EC, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹.
- (23) In order to permit adaptation to the technical and scientific progress of Directive 98/70/EC, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the addition of estimated typical and default values for biofuel pathways and the adaptation of the permitted analytical methods, relating to the fuel specifications, and of the vapour pressure waiver permitted for petrol containing bioethanol.

¹ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (24) In order to permit adaptation to the technical and scientific progress of Directive 2009/28/EC, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of possible additions to the list of biofuel feedstocks and fuels, the contribution of which towards the targets in Article 3(4) of that Directive should be considered to be twice their energy content, and also in respect of the addition of estimated typical and default values for biofuel and bioliquid pathways.
- (25) It is of particular importance that the Commission in the application of Directives 98/70/EC and 2009/28/EC carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (26) The Commission should review the effectiveness of the measures introduced by this Directive, based on the best and latest available scientific evidence, in limiting indirect land-use change greenhouse gas emissions and addressing ways to further minimise that impact.
- (27) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011¹, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

¹ OJ C 369, 17.12.2011, p. 14.

- (28) Since the objectives of this Directive, namely to ensure a single market for fuel for road transport and non-road mobile machinery and ensure respect for minimum levels of environmental protection in the use of that fuel, cannot be sufficiently achieved by the Member States but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (29) Directives 98/70/EC and 2009/28/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Amendments to Directive 98/70/EC

Directive 98/70/EC is amended as follows:

(1) In Article 2, the following points are added:

- "10. 'starch-rich crops' means crops comprising mainly cereals (regardless of whether only the grains are used or the whole plant, such as in the case of green maize, is used), tubers and root crops (such as potatoes, Jerusalem artichokes, sweet potatoes, cassava and yams), and corm crops (such as taro and cocoyam);
11. 'low indirect land-use change-risk biofuels' means biofuels, the feedstocks of which are not listed in Part A of Annex V, or are listed in Part A of Annex V, but were produced within schemes which reduce the displacement of production for purposes other than for making biofuels and which were produced in accordance with the sustainability criteria for biofuels laid down in Article 7b. Only the amount of feedstock which corresponds to the actual reduction in displacement achieved through the scheme may be considered. Such schemes may either operate as individual projects at a local level or as policy measures covering partly or entirely the territory of a Member State or a third country. Displacement of production for purposes other than for making biofuels can be reduced if the scheme achieves productivity increases within the area it covers beyond levels which would have prevailed in the absence of such productivity-promoting schemes;

12. 'processing residue' means a substance that is not the end product(s) that a production process directly seeks to produce; it is not a primary aim of the production process and the process has not been deliberately modified to produce it;
13. 'agricultural, aquaculture, fisheries and forestry residues' means residues that are directly generated by agriculture, aquaculture, fisheries and forestry; they do not include residues from related industries or processing."

(2) Article 7a is amended as follows:

(a) paragraph 5 is replaced by the following:

"5. In order to ensure the uniform implementation of this Article, the Commission shall adopt implementing acts in accordance with the examination procedure referred to in Article 11(3) to set out:

- (a) the methodology for the calculation of life cycle greenhouse gas emissions from fuels other than biofuels and from energy;
- (b) the methodology specifying, before 1 January 2011, the fuel baseline standard based on the life cycle greenhouse gas emissions per unit of energy from fossil fuels in 2010 for the purposes of paragraph 2 of this Article;
- (c) rules to ensure as uniform an approach as possible for Member States' implementation of paragraph 4 of this Article;
- (d) the methodology for the calculation of the contribution of electric road vehicles, which shall be compatible with Article 3(4) of Directive 2009/28/EC.";

(b) the following paragraph is added:

"6. As part of the reporting under paragraph 1, Member States shall ensure that fuel suppliers report annually to the authority designated by the Member State, on the biofuel production pathways, volumes of biofuels derived from the feedstocks as categorised in Part A of Annex V, and the life cycle greenhouse gas emissions per unit of energy. Member States shall report those data to the Commission."

(3) Article 7b is amended as follows:

(a) paragraph 2 is replaced by the following:

"2. The greenhouse gas emission saving from the use of biofuels taken into account for the purposes referred to in paragraph 1 shall be at least 60 % for biofuels produced in installations starting operation after ...+. An installation shall be considered to be in operation if the physical production of biofuels has taken place.

In the case of installations that were in operation on or before ...+, for the purposes referred to in paragraph 1, biofuels shall achieve a greenhouse gas emission saving of at least 35 % until 31 December 2017 and at least 50 % from 1 January 2018.

The greenhouse gas emission saving from the use of biofuels shall be calculated in accordance with Article 7d(1).";

⁺ OJ: please insert the date of entry into force of this Directive.

- (b) in paragraph 3, the second subparagraph is replaced by the following:

"In order to ensure the uniform application of point (c) of the first subparagraph of this paragraph, the Commission shall adopt implementing acts establishing the criteria and geographic ranges for determining which grassland is covered by that point. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 11(3)."

- (4) Article 7c is amended as follows:

- (a) in paragraph 3, the third subparagraph is replaced by the following:

"The Commission shall adopt implementing acts in accordance with the examination procedure referred to in Article 11(3), to establish the list of appropriate and relevant information referred to in the first two subparagraphs of this paragraph. The Commission shall ensure, in particular, that the provision of that information does not represent an excessive administrative burden for operators in general or for smallholder farmers, producer organisations and cooperatives in particular.";

(b) in paragraph 5, the following subparagraphs are added:

"The voluntary schemes referred to in paragraph 4 ('the voluntary schemes') shall regularly, and at least once per year, publish a list of their certification bodies used for independent auditing, indicating for each certification body by which entity or national public authority it was recognised and which entity or national public authority is monitoring it.

In order in particular to prevent fraud, the Commission may, on the basis of a risk analysis or the reports referred to in the second subparagraph of paragraph 6 of this Article, specify the standards of independent auditing and require all voluntary schemes to apply those standards. This shall be done by means of implementing acts adopted in accordance with the examination procedure referred to in Article 11(3). Such acts shall set a time frame by which voluntary schemes need to implement the standards. The Commission may repeal decisions recognising voluntary schemes in the event that those schemes fail to implement such standards in the time frame provided for.";

(c) paragraph 6 is replaced by the following:

"6. Decisions under paragraph 4 of this Article shall be adopted in accordance with the examination procedure referred to in Article 11(3). Such decisions shall be valid for a period of no more than five years.

The Commission shall require that each voluntary scheme, on which a decision has been adopted under paragraph 4, submit by ...⁺, and annually thereafter by 30 April, a report to the Commission covering each of the points set out in the third subparagraph of this paragraph. Generally, the report shall cover the preceding calendar year. The first report shall cover at least six months from ...⁺⁺. The requirement to submit a report shall apply only to voluntary schemes that have operated for at least 12 months.

⁺ OJ: please insert the date: one year after the entry into force of this Directive.

⁺⁺ OJ: please insert the date of adoption of this Directive.

By ...⁺ the Commission shall submit a report to the European Parliament and to the Council analysing the reports referred to in the second subparagraph of this paragraph, reviewing the operation of the agreements referred to in paragraph 4 or voluntary schemes in respect of which a decision has been adopted in accordance with this Article, and identifying best practices. The report shall be based on the best information available, including following consultations with stakeholders, and on practical experience in the application of the agreements or schemes concerned. The report shall analyse the following:

in general:

- (a) the independence, modality and frequency of audits, both in relation to what is stated on those aspects in the scheme documentation, at the time the scheme concerned was approved by the Commission, and in relation to industry best practice;
- (b) the availability of, and experience and transparency in the application of, methods for identifying and dealing with non-compliance, with particular regard to dealing with situations or allegations of serious wrongdoing on the part of members of the scheme;

⁺ OJ: please insert the date: 18 months after the entry into force of this Directive.

- (c) transparency, particularly in relation to the accessibility of the scheme, the availability of translations in the applicable languages of the countries and regions from which raw materials originate, the accessibility of a list of certified operators and relevant certificates, and the accessibility of auditor reports;
- (d) stakeholder involvement, particularly as regards the consultation of indigenous and local communities prior to decision making during the drafting and reviewing of the scheme as well as during audits and the response given to their contributions;
- (e) the overall robustness of the scheme, particularly in light of rules on the accreditation, qualification and independence of auditors and relevant scheme bodies;
- (f) market updates of the scheme, the amount of feedstocks and biofuels certified, by country of origin and type, the number of participants;
- (g) the ease and effectiveness of implementing a system that tracks the proofs of conformity with the sustainability criteria that the scheme gives to its member(s), such a system intended to serve as a means of preventing fraudulent activity with a view, in particular, to the detection, treatment and follow-up of suspected fraud and other irregularities and where appropriate, number of cases of fraud or irregularities detected;

and in particular:

- (h) options for entities to be authorised to recognise and monitor certification bodies;
- (i) criteria for the recognition or accreditation of certification bodies;
- (j) rules on how the monitoring of the certification bodies is to be conducted.

A Member State may notify its national scheme to the Commission. The Commission shall give priority to the assessment of such a scheme. A decision on the compliance of such a notified national scheme with the conditions set out in this Directive shall be adopted in accordance with the examination procedure referred to in Article 11(3), in order to facilitate mutual bilateral and multilateral recognition of schemes for verification of compliance with the sustainability criteria for biofuels. Where the decision is positive, schemes established in accordance with this Article shall not refuse mutual recognition with that Member State's scheme.";

(d) paragraph 8 is replaced by the following:

"8. At the request of a Member State or on its own initiative, the Commission shall examine the application of Article 7b in relation to a source of biofuel and, within six months of receipt of a request decide, in accordance with the examination procedure referred to in Article 11(3), whether the Member State concerned may take biofuel from that source into account for the purposes of Article 7a."

(5) Article 7d is amended as follows:

(a) paragraphs 3, 4 and 5 are replaced by the following:

"3. The typical greenhouse gas emissions from cultivation of agricultural raw materials included in the reports referred to in paragraph 2 in the case of Member States, and, in the case of territories outside the Union, in reports equivalent to those referred to in paragraph 2 and drawn up by competent bodies, may be reported to the Commission.

4. The Commission may decide, by means of an implementing act adopted in accordance with the examination procedure referred to in Article 11(3), that the reports referred to in paragraph 3 of this Article contain accurate data for the purposes of measuring the greenhouse gas emissions associated with the cultivation of biofuel feedstocks typically produced in those areas for the purposes of Article 7b(2).

5. By 31 December 2012 at the latest and every two years thereafter, the Commission shall draw up a report on the estimated typical and default values in Parts B and E of Annex IV, paying special attention to greenhouse gas emissions from transport and processing.

In the event that the reports referred to in the first subparagraph indicate that the estimated typical and default values in Parts B and E of Annex IV might need to be adjusted on the basis of the latest scientific evidence, the Commission shall, as appropriate, submit a legislative proposal to the European Parliament and to the Council.";

- (b) paragraph 6 is deleted;
- (c) in paragraph 7, the first, second and third subparagraphs are replaced by the following:

"7. The Commission shall keep Annex IV under review, with a view, where justified, to the addition of values for further biofuel production pathways for the same or for other raw materials. That review shall also consider the modification of the methodology laid down in Part C of Annex IV, particularly with regard to:

- the method of accounting for wastes and residues;
- the method of accounting for co-products;

- the method of accounting for cogeneration; and
- the status given to agricultural crop residues as co-products.

The default values for waste vegetable or animal oil biodiesel shall be reviewed as soon as possible. In the event that the Commission's review concludes that additions to Annex IV should be made, the Commission shall be empowered to adopt delegated acts pursuant to Article 10a to add, but not to remove or amend, estimated typical and default values in Parts A, B, D and E of Annex IV for biofuel pathways for which specific values are not yet included in that Annex.";

(d) paragraph 8 is replaced by the following:

"8. Where necessary in order to ensure the uniform application of point 9 of Part C of Annex IV, the Commission may adopt implementing acts setting out detailed technical specifications and definitions. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 11(3)."

(6) Paragraph 2 of Article 7e is replaced by the following:

"2. The reports by the Commission to the European Parliament and to the Council referred to in Article 7b(7), Article 7c(2), Article 7c(9) and Article 7d(4) and (5), as well as the reports and information submitted pursuant to the first and fifth subparagraphs of Article 7c(3) and Article 7d(2), shall be prepared and transmitted for the purposes of both Directive 2009/28/EC and this Directive."

(7) Article 8 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. Member States shall monitor compliance with the requirements of Articles 3 and 4, in respect of petrol and diesel fuels, on the basis of the analytical methods referred to in Annexes I and II respectively.";

(b) paragraph 3 is replaced by the following:

"3. Each year by 31 August, the Member States shall submit a report on national fuel quality data for the preceding calendar year. The Commission shall establish a common format for the submission of a summary of national fuel quality data by means of an implementing act adopted in accordance with the examination procedure referred to in Article 11(3). The first report shall be submitted by 30 June 2002. From 1 January 2004, the format for this report shall be consistent with that described in the relevant European standard. In addition, Member States shall report the total volumes of petrol and diesel fuels marketed in their territories and the volumes of unleaded petrol and diesel fuels marketed with a maximum sulphur content of 10 mg/kg. Furthermore, Member States shall report annually on the availability, on an appropriately balanced geographical basis, of petrol and diesel fuels with a maximum sulphur content of 10 mg/kg that are marketed within their territory."

(8) In Article 8a, paragraph 3 is replaced by the following:

"3. In light of the assessment carried out using the test methodology referred to in paragraph 1, the European Parliament and the Council may revise the limit for the MMT content of fuel specified in paragraph 2, on the basis of a legislative proposal from the Commission."

(9) In Article 9(1), the following point is added:

"(k) the production pathways, volumes and the life cycle greenhouse gas emissions per unit of energy, including the provisional mean values of the estimated indirect land-use change emissions and the associated range derived from the sensitivity analysis as per Annex V, of the biofuels consumed in the Union. The Commission shall make data on provisional estimated indirect land-use change emissions and the associated range derived from the sensitivity analysis publicly available."

(10) Article 10 is amended as follows:

(a) the title is replaced by the following:

"Procedure for adaptation of permitted analytical methods and permitted vapour pressure waivers";

(b) paragraph 1 is replaced by the following:

"1. The Commission shall be empowered to adopt delegated acts pursuant to Article 10a to the extent necessary to adapt the permitted analytical methods in order to ensure consistency with any revision of the European standards referred to in Annex I or II. The Commission shall also be empowered to adopt delegated acts in accordance with Article 10a to adapt the permitted vapour pressure waivers in kPa for the ethanol content of petrol set out in Annex III within the limit set in the first subparagraph of Article 3(4). Such delegated acts shall be without prejudice to waivers granted pursuant to Article 3(4)."

(11) The following Article is inserted:

"Article 10a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 7d(7) and 10(1) shall be conferred on the Commission for a period of five years from ...⁺.
3. The delegation of power referred to in Articles 7d(7) and 10(1) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

⁺ OJ: please insert the date of entry into force of this Directive.

5. A delegated act adopted pursuant to Articles 7d(7) and 10(1) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council."

(12) Article 11 is replaced by the following:

"Article 11

Committee procedure

1. Except in the cases referred to in paragraph 2, the Commission shall be assisted by the Committee on Fuel Quality. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council*.
2. For matters relating to the sustainability of biofuels under Articles 7b, 7c and 7d, the Commission shall be assisted by the Committee on the Sustainability of Biofuels and Bioliquids referred to in Article 25(2) of Directive 2009/28/EC. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the Committees deliver no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

* Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13)."

- (13) Annex IV is amended and Annex V is added in accordance with Annex I to this Directive.

Article 2
Amendments to Directive 2009/28/EC

Directive 2009/28/EC is amended as follows:

(1) In Article 2, the following points are added to the second paragraph:

- "(p) 'waste' shall be defined as in Article 3(1) of Directive 2008/98/EC of the European Parliament and of the Council*; substances that have been intentionally modified or contaminated to meet that definition are not covered by this definition;
- (q) 'starch-rich crops' means crops comprising mainly cereals (regardless of whether only the grains are used, or the whole plant, such as in the case of green maize, is used), tubers and root crops (such as potatoes, Jerusalem artichokes, sweet potatoes, cassava and yams), and corm crops (such as taro and cocoyam);
- (r) 'ligno-cellulosic material' means material composed of lignin, cellulose and hemicellulose such as biomass sourced from forests, woody energy crops and forest-based industries' residues and wastes;

- (s) 'non-food cellulosic material' means feedstocks mainly composed of cellulose and hemicellulose, and having a lower lignin-content than ligno-cellulosic material; it includes food and feed crop residues (such as straw, stover, husks and shells), grassy energy crops with a low starch content (such as switchgrass, miscanthus, giant cane), industrial residues (including from food and feed crops after vegetal oils, sugars, starches and protein have been extracted), and material from biowaste ;
- (t) 'processing residue' means a substance that is not the end product(s) that a production process directly seeks to produce; it is not a primary aim of the production process and the process has not been deliberately modified to produce it;
- (u) 'agricultural, aquaculture, fisheries and forestry residues' means residues that are directly generated by agriculture, aquaculture, fisheries and forestry; they do not include residues from related industries or processing;

- (v) 'low indirect land-use change-risk biofuels and bioliquids' means biofuels and bioliquids, the feedstocks of which are not listed in part A of Annex VIII, or are listed in part A of Annex VIII, but were produced within schemes which reduce the displacement of production for purposes other than for making biofuels and bioliquids and which were produced in accordance with the sustainability criteria for biofuels and bioliquids laid down in Article 17. Only the amount of feedstock which corresponds to the actual reduction in displacement achieved through the scheme may be considered. Such schemes may either operate as individual projects at a local level or as policy measures covering partly or entirely the territory of a Member State or a third country. Displacement of production for purposes other than for making biofuels and bioliquids can be reduced if the scheme achieves productivity increases within the area it covers beyond levels which would have prevailed in the absence of such productivity-promoting schemes.

* Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3)."

(2) Article 3 is amended as follows:

(a) in paragraph 1, the following subparagraph is added:

"For the purpose of compliance with the targets referred to in the first subparagraph of this paragraph, the maximum joint contribution from biofuels and bioliquids produced from cereal and other starch-rich crops, sugars and oil crops shall be no more than the energy quantity corresponding to the maximum contribution as set out in paragraph 4(d).";

(b) in paragraph 4, the second subparagraph is amended as follows:

(i) point (a) is replaced by the following:

"(a) for the calculation of the denominator, that is the total amount of energy consumed in transport for the purposes of the first subparagraph, only petrol, diesel, biofuels consumed in road and rail transport, and electricity, including electricity used for the production of renewable liquid and gaseous fuels of non-biological origin, shall be taken into account;"

(ii) in point (b), the following sentence is added:

"This point shall be without prejudice to point (d) of this paragraph and Article 17(1)(a);"

(iii) point (c) is replaced by the following:

"(c) for the calculation of the contribution from electricity produced from renewable sources and consumed in all types of electric vehicles and for the production of renewable liquid and gaseous fuels of non-biological origin for the purpose of points (a) and (b), Member States may choose to use either the average share of electricity from renewable energy sources in the Union or the share of electricity from renewable energy sources in their own country as measured two years before the year in question. Furthermore, for the calculation of the electricity from renewable energy sources consumed by electrified rail transport, that consumption shall be considered to be 2,5 times the energy content of the input of electricity from renewable energy sources. For the calculation of the electricity from renewable energy sources consumed by electric road vehicles in point (b), that consumption shall be considered to be five times the energy content of the input of electricity from renewable energy sources."

(iv) the following points are added:

"(d) for the calculation of biofuels in the numerator, the share of energy from biofuels produced from cereal and other starch-rich crops, sugars and oil crops shall be no more than 7 % of the final consumption of energy in transport in the Member States in 2020;

- (e) Member States shall seek to achieve the objective of a minimum proportion of biofuels produced from feedstocks and other fuels, listed in part A of Annex IX, being consumed on their territory. To that effect, each Member State shall set a national target, which it shall endeavour to achieve. A reference value for this target is 0,5 percentage points in energy content of the share of energy from renewable sources in all forms of transport in 2020 referred to in the first subparagraph, to be met with biofuels produced from feedstocks and other fuels, listed in part A of Annex IX, and which shall be considered to be twice their energy content in accordance with point (f) of this subparagraph and part A of Annex IX. In addition, biofuels made from feedstocks not listed in Annex IX that were determined to be wastes, residues, non-food cellulosic material or ligno-cellulosic material by the competent national authorities and are used in existing installations prior to the adoption of Directive 2014/.../EU⁺ of the European Parliament and of the Council*, may be counted towards the national target.

⁺ OJ: please insert the number of this Directive.

Member States may set a national target lower than the reference value of 0,5 percentage points, based on one or more of the following grounds:

- (i) objective factors such as the limited potential for the sustainable production of biofuels produced from feedstocks and other fuels, listed in part A of Annex IX, or the limited availability of such biofuels at cost-efficient prices on the market, taking into account the assessment contained in the Commission report referred to in Article 3(1) of Directive 2014/.../EU⁺;
- (ii) the specific technical or climatic characteristics of the national market for transport fuels, such as the composition and condition of the road vehicle fleet; or
- (iii) national policies allocating commensurate financial resources to incentivising the use of electricity from renewable energy sources in transport.

The Commission shall publish:

- the national targets of the Member States and, where applicable, the grounds for differentiation of their national target as compared to the reference value, notified in accordance with Article 4(2) of Directive 2014/.../EU⁺;

⁺ OJ: please insert the number of this Directive.

- a synthesis report on Member States' achievements towards their national targets.;
- (f) biofuels produced from feedstocks listed in Annex IX shall be considered to be twice their energy content.";
- (c) in paragraph 4, the third subparagraph is replaced by the following:

"By 31 December 2017, the Commission shall present, if appropriate, a proposal permitting, subject to certain conditions, the whole amount of the electricity originating from renewable sources used to power all types of electric vehicles, and for the production of renewable liquid and gaseous fuels of non-biological origin to be considered.";
- (d) in paragraph 4, the following subparagraph is added:

"For the purpose of complying with the targets set out in paragraphs 1 and 2 and this paragraph, the contribution made by biofuels produced from feedstocks listed in part A of Annex IX shall be considered to be twice their energy content.";

(e) the following paragraph is added:

"5. With a view to minimising the risk of single consignments being claimed more than once in the Union, Member States and the Commission shall endeavour to strengthen cooperation among national systems and between national systems and voluntary schemes established pursuant to Article 18, including where appropriate the exchange of data. To prevent materials from being intentionally modified or discarded in order to fall under Annex IX, Member States shall encourage the development and use of systems which track and trace feedstocks and the resulting biofuels over the whole value chain. Member States shall ensure that when fraud is detected, appropriate action is taken. Member States shall by 31 December 2017, and every two years thereafter, report on the measures they have taken if they have not provided equivalent information on reliability and protection against fraud in their reports on progress in the promotion and use of energy from renewable sources drawn up in accordance with Article 22(1)(d).

The Commission shall be empowered to adopt delegated acts in accordance with Article 25a to amend the list of feedstocks in part A of Annex IX in order to add feedstocks, but not to remove them. The Commission shall adopt a separate delegated act in respect of each feedstock to be added to the list in part A of Annex IX. Each delegated act shall be based on an analysis of the latest scientific and technical progress, taking due account of the principles of the waste hierarchy, and supporting the conclusion that the feedstock in question does not create an additional demand for land or cause significant distortive effects on markets for (by-)products, wastes or residues, that it delivers substantial greenhouse gas emission savings compared to fossil fuels, and that it does not risk creating negative impacts on the environment and biodiversity.

* Directive 2014/.../EU of the European Parliament and of the Council of ... amending Directive 98/70/EC relating to the quality of petrol and diesel fuels and amending Directive 2009/28/EC on the promotion of the use of energy from renewable sources (OJ L ..., p. ...)."

(3) In Article 5, paragraph 5 is deleted.

(4) In Article 6, paragraphs 1 and 2 are replaced by the following:

- "1. Member States may agree on and may make arrangements for the statistical transfer of a specified amount of energy from renewable sources from one Member State to another Member State. The transferred quantity shall be:
- (a) deducted from the amount of energy from renewable sources that is taken into account in measuring compliance by the Member State making the transfer with the requirements of Article 3(1), (2) and (4); and
 - (b) added to the amount of energy from renewable sources that is taken into account in measuring compliance by another Member State accepting the transfer with the requirements of Article 3(1), (2) and (4).
2. The arrangements referred to in paragraph 1 of this Article in respect of Article 3(1), (2) and (4) may have a duration of one or more years. They shall be notified to the Commission not later than three months after the end of each year in which they have effect. The information sent to the Commission shall include the quantity and price of the energy involved."

(5) Article 17 is amended as follows:

(a) paragraph 2 is replaced by the following:

"2. The greenhouse gas emission saving from the use of biofuels and bioliquids taken into account for the purposes referred to in paragraph 1 shall be at least 60 % for biofuels and bioliquids produced in installations starting operation after ...⁺. An installation shall be considered to be in operation if the physical production of biofuels or bioliquids has taken place.

In the case of installations that were in operation on or before ...⁺, for the purposes referred to in paragraph 1, biofuels and bioliquids shall achieve a greenhouse gas emission saving of at least 35 % until 31 December 2017 and at least 50 % from 1 January 2018.

The greenhouse gas emission saving from the use of biofuels and bioliquids shall be calculated in accordance with Article 19(1).";

(b) in paragraph 3, the second subparagraph is replaced by the following:

"In order to ensure the uniform application of point (c) of the first subparagraph of this paragraph, the Commission shall adopt implementing acts establishing the criteria and geographic ranges for determining which grassland is covered by that point. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 25(3)."

⁺ OJ: please insert the date of entry into force of this Directive.

(6) Article 18 is amended as follows:

(a) in paragraph 3, the third subparagraph is replaced by the following:

"The Commission shall adopt implementing acts in accordance with the examination procedure referred to in Article 25(3), to establish the list of appropriate and relevant information referred to in the first two subparagraphs of this paragraph. The Commission shall ensure, in particular, that the provision of that information does not represent an excessive administrative burden for operators in general or for smallholder farmers, producer organisations and cooperatives in particular.";

- (b) in paragraph 4, the second subparagraph is replaced by the following:

"The Commission may decide that voluntary national or international schemes setting standards for the production of biomass products contain accurate data for the purposes of Article 17(2), and/or demonstrate that consignments of biofuel or bioliquid comply with the sustainability criteria set out in Article 17(3), (4) and (5), and/or that no materials have been intentionally modified or discarded so that the consignment or part thereof would fall under Annex IX. The Commission may decide that those schemes contain accurate data for the purposes of information on measures taken for the conservation of areas that provide, in critical situations, basic ecosystem services (such as watershed protection and erosion control), for soil, water and air protection, the restoration of degraded land, the avoidance of excessive water consumption in areas where water is scarce and on the issues referred to in the second subparagraph of Article 17(7). The Commission may also recognise areas for the protection of rare, threatened or endangered ecosystems or species recognised by international agreements or included in lists drawn up by intergovernmental organisations or the International Union for the Conservation of Nature for the purposes of Article 17(3)(b)(ii).";

- (c) in paragraph 5, the following subparagraphs are added:

"The voluntary schemes referred to in paragraph 4 ('the voluntary schemes') shall regularly, and at least once per year, publish a list of their certification bodies used for independent auditing, indicating for each certification body by which entity or national public authority it was recognised and which entity or national public authority is monitoring it.

In order in particular to prevent fraud, the Commission may, on the basis of a risk analysis or the reports referred to in the second subparagraph of paragraph 6 of this Article, specify the standards of independent auditing and require all voluntary schemes to apply those standards. This shall be done by means of implementing acts adopted in accordance with the examination procedure referred to in Article 25(3). Such acts shall set a time frame by which voluntary schemes need to implement the standards. The Commission may repeal decisions recognising voluntary schemes in the event that those schemes fail to implement such standards in the time frame provided for.";

(d) paragraph 6 is replaced by the following:

"6. Decisions under paragraph 4 of this Article shall be adopted in accordance with the examination procedure referred to in Article 25(3). Such decisions shall be valid for a period of no more than five years.

The Commission shall require that each voluntary scheme on which a decision has been adopted under paragraph 4 submit by ...⁺, and annually thereafter by 30 April, a report to the Commission covering each of the points set out in the third subparagraph of this paragraph. Generally, the report shall cover the preceding calendar year. The first report shall cover at least six months from ...⁺⁺. The requirement to submit a report shall apply only to voluntary schemes that have operated for at least 12 months.

⁺ OJ: please insert the date: one year after the entry into force of this Directive.

⁺⁺ OJ: please insert the date of adoption of this Directive.

By ...⁺, and thereafter within its reports in accordance with Article 23(3), the Commission shall submit a report to the European Parliament and to the Council analysing the reports referred to in the second subparagraph of this paragraph, reviewing the operation of the agreements referred to in paragraph 4 or voluntary schemes in respect of which a decision has been adopted in accordance with this Article, and identifying best practices. The report shall be based on the best information available, including following consultations with stakeholders, and on practical experience in the application of the agreements or schemes concerned. The report shall analyse the following:

in general:

- (a) the independence, modality and frequency of audits, both in relation to what is stated on those aspects in the scheme documentation, at the time the scheme concerned was approved by the Commission, and in relation to industry best practice;
- (b) the availability of, and experience and transparency in the application of, methods for identifying and dealing with non-compliance, with particular regard to dealing with situations or allegations of serious wrongdoing on the part of members of the scheme;

⁺ OJ: please insert the date: 18 months after the entry into force of this Directive.

- (c) transparency, particularly in relation to the accessibility of the scheme, the availability of translations in the applicable languages of the countries and regions from which raw materials originate, the accessibility of a list of certified operators and relevant certificates, and the accessibility of auditor reports;
- (d) stakeholder involvement, particularly as regards the consultation of indigenous and local communities prior to decision making during the drafting and reviewing of the scheme as well as during audits and the response to their contributions;
- (e) the overall robustness of the scheme, particularly in light of rules on the accreditation, qualification and independence of auditors and relevant scheme bodies;
- (f) market updates of the scheme, the amount of feedstocks and biofuels certified, by country of origin and type, the number of participants;
- (g) the ease and effectiveness of implementing a system that tracks the proofs of conformity with the sustainability criteria that the scheme gives to its member(s), such a system intended to serve as a means of preventing fraudulent activity with a view, in particular, to the detection, treatment and follow-up of suspected fraud and other irregularities and where appropriate, number of cases of fraud or irregularities detected;

and in particular:

- (h) options for entities to be authorised to recognise and monitor certification bodies;
- (i) criteria for the recognition or accreditation of certification bodies;
- (j) rules on how the monitoring of the certification bodies is to be conducted.

The Commission shall make the reports drawn up by the voluntary schemes available, in an aggregated form or in full if appropriate, on the transparency platform referred to in Article 24.

A Member State may notify its national scheme to the Commission. The Commission shall give priority to the assessment of such a scheme. A decision on the compliance of such a notified national scheme with the conditions set out in this Directive shall be adopted in accordance with the examination procedure referred to in Article 25(3), in order to facilitate mutual bilateral and multilateral recognition of schemes for verification of compliance with the sustainability criteria for biofuels and bioliquids. Where the decision is positive, schemes established in accordance with this Article shall not refuse mutual recognition with that Member State's scheme.";

(e) paragraph 8 is replaced by the following:

"8. At the request of a Member State or on its own initiative, the Commission shall examine the application of Article 17 in relation to a source of biofuel and, within six months of receipt of a request decide, in accordance with the examination procedure referred to in Article 25(3), whether the Member State concerned may take biofuel from that source into account for the purposes of Article 17(1)."

(7) Article 19 is amended as follows:

(a) paragraphs 3, 4 and 5 are replaced by the following:

"3. The typical greenhouse gas emissions from cultivation of agricultural raw materials included in the reports referred to in paragraph 2 in the case of Member States, and, in the case of territories outside the Union, in reports equivalent to those referred to in paragraph 2 and drawn up by competent bodies, may be reported to the Commission.

4. The Commission may decide, by means of an implementing act adopted in accordance with the examination procedure referred to in Article 25(3), that the reports referred to in paragraph 3 of this Article contain accurate data for the purposes of measuring the greenhouse gas emissions associated with the cultivation of biofuel and bioliquid feedstocks typically produced in those areas for the purposes of Article 17(2).

5. By 31 December 2012 at the latest and every two years thereafter, the Commission shall draw up a report on the estimated typical and default values in parts B and E of Annex V, paying special attention to greenhouse gas emissions from transport and processing.

In the event that the reports referred to in the first subparagraph indicate that the estimated typical and default values in parts B and E of Annex V might need to be adjusted on the basis of the latest scientific evidence, the Commission shall, as appropriate, submit a legislative proposal to the European Parliament and to the Council.";

- (b) paragraph 6 is deleted;
- (c) in paragraph 7, the first, second and third subparagraphs are replaced by the following:

"7. The Commission shall keep Annex V under review, with a view, where justified, to the addition of values for further biofuel production pathways for the same or for other raw materials. That review shall also consider the modification of the methodology laid down in part C of Annex V, particularly with regard to:

- the method of accounting for wastes and residues;
- the method of accounting for co-products;
- the method of accounting for cogeneration; and
- the status given to agricultural crop residues as co-products.

The default values for waste vegetable or animal oil biodiesel shall be reviewed as soon as possible. In the event that the Commission's review concludes that additions to Annex V should be made, the Commission shall be empowered to adopt delegated acts pursuant to Article 25a to add, but not to remove or amend, estimated typical and default values in parts A, B, D and E of Annex V for biofuel and bioliquid pathways for which specific values are not yet included in that Annex.;

(d) paragraph 8 is replaced by the following:

"8. Where necessary in order to ensure the uniform application of point 9 of Part C of Annex V, the Commission may adopt implementing acts setting out detailed technical specifications and definitions. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 25(3).".

(8) Article 21 is deleted.

- (9) In Article 22(1), the second subparagraph is amended as follows:
- (a) point (i) is replaced by the following:
- "(i) the development and share of biofuels made from feedstocks listed in Annex IX including a resource assessment focusing on the sustainability aspects relating to the effect of the replacement of food and feed products for biofuel production, taking due account of the principles of the waste hierarchy established in Directive 2008/98/EC, the biomass cascading principle, the maintenance of the necessary carbon stock in the soil and the quality of the soil and the ecosystems;"
- (b) the following point is added:
- "(o) the amounts of biofuels and bioliquids in energy units corresponding to each category of feedstock group listed in part A of Annex VIII taken into account by that Member State for the purpose of complying with the targets set out in Article 3(1) and (2), and in the first subparagraph of Article 3(4)."
- (10) Article 23 is amended as follows:
- (a) the last sentence in paragraph 1 is deleted;

(b) paragraph 4 is replaced by the following:

"4. In reporting on greenhouse gas emission savings from the use of biofuels and bioliquids, the Commission shall use the amounts reported by Member States in accordance with point (o) of Article 22(1), including the provisional mean values of the estimated indirect land-use change emissions and the associated range derived from the sensitivity analysis referred to in Annex VIII. The Commission shall make data on provisional estimated indirect land-use change emissions and the associated range derived from the sensitivity analysis publicly available. In addition, the Commission shall evaluate whether and how the estimate for direct emission savings would change if co-products were accounted for using the substitution approach.";

(c) in paragraph 5, points (e) and (f) are replaced by the following:

"(e) the availability and sustainability of biofuels made from feedstocks listed in Annex IX, including an assessment of the effect of the replacement of food and feed products for biofuel production, taking due account of the principles of the waste hierarchy established in Directive 2008/98/EC, the biomass cascading principle, the maintenance of the necessary carbon stock in the soil and the quality of soil and ecosystems; and

- (f) an assessment of whether the range of uncertainty identified in the analysis underlying the estimations of indirect land-use change emissions can be narrowed and the possible impact of Union policies, such as environment, climate and agricultural policies, can be factored in.";
- (d) in paragraph 8, point (b) of the first subparagraph is replaced by the following:
 - "(b) with respect to the targets referred to in Article 3(4), a review of:
 - (i) the cost-efficiency of the measures to be implemented to achieve the targets;
 - (ii) an assessment of the feasibility of reaching the targets whilst ensuring the sustainability of biofuels production in the Union and in third countries, and considering economic, environmental and social impacts, including indirect effects and impacts on biodiversity, as well as the commercial availability of second-generation biofuels;
 - (iii) the impact of the implementation of the targets on the availability of foodstuffs at affordable prices;

- (iv) the commercial availability of electric, hybrid and hydrogen-powered vehicles, as well as the methodology chosen to calculate the share of energy from renewable sources consumed in the transport sector;
- (v) the evaluation of specific market conditions, considering, in particular, markets in which transport fuels represent more than half of the final energy consumption, and markets which are fully dependent on imported biofuels;"

(11) Article 25 is replaced by the following:

"Article 25

Committee procedure

1. Except in the cases referred to in paragraph 2, the Commission shall be assisted by the Committee on Renewable Energy Sources. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council*.
2. For matters relating to the sustainability of biofuels and bioliquids, the Commission shall be assisted by the Committee on the Sustainability of Biofuels and Bioliquids. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the Committees deliver no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

* Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13)."

- (12) The following Article is inserted:

"Article 25a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 3(5) and 19(7) shall be conferred on the Commission for a period of five years from ...⁺.

⁺ OJ: please insert the date of the entry into force of this Directive.

3. The delegation of power referred to in Articles 3(5) and 19(7) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
 4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
 5. A delegated act adopted pursuant to Articles 3(5) and 19(7) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council."
- (13) Annex V is amended and Annexes VIII and IX are added in accordance with Annex II to this Directive.

Article 3

Review

1. The Commission shall at the latest by ...⁺, submit a report to the European Parliament and to the Council including an assessment of the availability of the necessary quantities of cost-efficient biofuels on the Union market from non-land using feedstocks and non-food crops by 2020, including the need for additional criteria to ensure their sustainability, and of the best available scientific evidence on indirect land-use change greenhouse gas emissions associated with the production of biofuels and bioliquids. The report shall, if appropriate, be accompanied by proposals for further measures, taking into account economic, social and environmental considerations. The report shall also set out criteria for the identification and certification of low indirect land-use change-risk biofuels and bioliquids, with a view to adjusting Annex V to Directive 98/70/EC and Annex VIII to Directive 2009/28/EC, if appropriate.

⁺ OJ: please insert the date: one year after the entry into force of this Directive.

2. The Commission shall, by 31 December 2017, submit a report to the European Parliament and to the Council reviewing, on the basis of the best latest available scientific evidence, the effectiveness of the measures introduced by this Directive in limiting indirect land-use change greenhouse gas emissions associated with the production of biofuel and bioliquids. In this respect, the report shall also include the latest available information with regard to the key assumptions influencing the results from the modelling of the indirect land-use change greenhouse gas emissions associated with the production of biofuels and bioliquids, including measured trends in agricultural yields and productivity, co-product allocation and observed global land-use change and deforestation rates, and the possible impact of Union policies, such as environment, climate and agricultural policies, involving stakeholders in such review process. The report shall also examine developments in relation to certification schemes for low indirect land-use change-risk biofuel and bioliquid feedstocks, listed in Annex V to Directive 98/70/EC and Annex VIII to Directive 2009/28/EC but produced under low risk of indirect land-use change by way of project-level mitigation measures, and their effectiveness.

The report referred to in the first subparagraph shall, if appropriate, be accompanied by a legislative proposal, based on the best available scientific evidence, for introducing adjusted estimated indirect land-use change emissions factors into the appropriate sustainability criteria and by a review of the effectiveness of the incentives provided for biofuels from non-land using feedstocks and non-food crops under Article 3(4) of Directive 2009/28/EC. As part of that report, the Commission shall, in light of Member States' reports pursuant to Article 3(5) of Directive 2009/28/EC, assess the effectiveness of measures taken to prevent and fight fraud, and shall, if appropriate, submit proposals for further measures, including on additional measures to be taken at Union level.

3. The Commission shall, if appropriate in light of the reports by the voluntary schemes in accordance with the second subparagraph of Article 7c(6) of Directive 98/70/EC and the second subparagraph of Article 18(6) of Directive 2009/28/EC, submit a proposal to the European Parliament and to the Council for amending the provisions of those Directives relating to voluntary schemes with a view to promoting best practice.

Article 4

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ...⁺. They shall immediately inform the Commission thereof.

⁺ OJ: please insert the date: 24 months after the date of adoption of this Directive.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive. On that occasion, Member States shall inform the Commission of their national targets set in accordance with point (e) of Article 3(4) of Directive 2009/28/EC and, as appropriate, on a differentiation of their national target as compared to the reference value referred to therein, and the grounds therefor.

In 2020, Member States shall report to the Commission on their respective achievements towards their national targets set in accordance with point (e) of Article 3(4) of Directive 2009/28/EC, specifying the reasons for any shortfall.

Article 5
Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 6
Addressees

This Directive is addressed to the Member States.

Done at ...,

For the European Parliament
The President

For the Council
The President

ANNEX I

The Annexes to Directive 98/70/EC are amended as follows:

(1) Point 7 of Part C of Annex IV is replaced by the following:

"7. Annualised emissions from carbon stock changes caused by land-use change, e_l , shall be calculated by dividing total emissions equally over 20 years. For the calculation of those emissions, the following rule shall be applied:

$$e_l = (CS_R - CS_A) \times 3,664 \times 1/20 \times 1/P - e_B,*$$

where

e_l = annualised greenhouse gas emissions from carbon stock change due to land-use change (measured as mass (grams) of CO₂-equivalent per unit biofuel energy (megajoules)). 'Cropland'** and 'perennial cropland'*** shall be regarded as one land use;

CS_R = the carbon stock per unit area associated with the reference land-use (measured as mass (tonnes) of carbon per unit area, including both soil and vegetation). The reference land-use shall be the land use in January 2008 or 20 years before the raw material was obtained, whichever was the later;

CS_A = the carbon stock per unit area associated with the actual land-use (measured as mass (tonnes) of carbon per unit area, including both soil and vegetation). In cases where the carbon stock accumulates over more than one year, the value attributed to CS_A shall be the estimated stock per unit area after 20 years or when the crop reaches maturity, whichever is the earlier;

P = the productivity of the crop (measured as biofuel energy per unit area per year);
and

e_B = bonus of 29 gCO_{2eq}/MJ biofuel if biomass is obtained from restored degraded land under the conditions provided for in point 8.

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- * The quotient obtained by dividing the molecular weight of CO₂ (44,010 g/mol) by the molecular weight of carbon (12,011 g/mol) is equal to 3,664.
 - ** Cropland as defined by IPCC.
 - *** Perennial crops are defined as multi-annual crops, the stem of which is usually not annually harvested such as short rotation coppice and oil palm."

(2) The following Annex is added:

"ANNEX V

Part A. Provisional estimated indirect land-use change emissions from biofuels

(gCO_{2eq}/MJ)⁺

Feedstock group	Mean*	Interpercentile range derived from the sensitivity analysis**
Cereals and other starch-rich crops	12	8 to 16
Sugars	13	4 to 17
Oil crops	55	33 to 66

* The mean values included here represent a weighted average of the individually modelled feedstock values.

** The range included here reflects 90 % of the results using the fifth and ninety-fifth percentile values resulting from the analysis. The fifth percentile suggests a value below which 5 % of the observations were found (i.e. 5 % of total data used showed results below 8, 4, and 33 gCO_{2eq}/MJ). The ninety-fifth percentile suggests a value below which 95 % of the observations were found (i.e. 5 % of total data used showed results above 16, 17, and 66 gCO_{2eq}/MJ).

Part B. Biofuels for which the estimated indirect land-use change emissions are considered to be zero

Biofuels produced from the following feedstock categories will be considered to have estimated indirect land-use change emissions of zero:

- (1) feedstocks which are not listed under Part A of this Annex.
- (2) feedstocks, the production of which has led to direct land-use change, i.e. a change from one of the following IPCC land cover categories; forest land, grassland, wetlands, settlements, or other land, to cropland or perennial cropland⁺⁺. In such a case a direct land-use change emission value (e_l) should have been calculated in accordance with paragraph 7 of Part C of Annex IV.

+ The mean values reported here represent a weighted average of the individually modelled feedstock values. The magnitude of the values in the Annex is sensitive to the range of assumptions (such as treatment of co-products, yield developments, carbon stocks and displacement of other commodities, etc.) used in the economic models developed for their estimation. Although it is therefore not possible to fully characterise the uncertainty range associated with such estimates, a sensitivity analysis conducted on the results based on a random variability variation of key parameters, a so-called Monte Carlo analysis, was conducted.

++ Perennial crops are defined as multi-annual crops, the stem of which is usually not annually harvested such as short rotation coppice and oil palm."

ANNEX II

The Annexes to Directive 2009/28/EC are amended as follows:

(1) Point 7 of part C of Annex V is replaced by the following:

"7. Annualised emissions from carbon stock changes caused by land-use change, e_l , shall be calculated by dividing total emissions equally over 20 years. For the calculation of those emissions, the following rule shall be applied:

$$e_l = (CS_R - CS_A) \times 3,664 \times 1/20 \times 1/P - e_B,*$$

where

e_l = annualised greenhouse gas emissions from carbon stock change due to land-use change (measured as mass (grams) of CO₂-equivalent per unit of biofuel or bioliquid energy (megajoules)). 'Cropland'** and 'perennial cropland'*** shall be regarded as one land use;

CS_R = the carbon stock per unit area associated with the reference land use (measured as mass (tonnes) of carbon per unit area, including both soil and vegetation). The reference land-use shall be the land-use in January 2008 or 20 years before the raw material was obtained, whichever was the later;

CS_A = the carbon stock per unit area associated with the actual land-use (measured as mass (tonnes) of carbon per unit area, including both soil and vegetation). In cases where the carbon stock accumulates over more than one year, the value attributed to CS_A shall be the estimated stock per unit area after 20 years or when the crop reaches maturity, whichever the earlier;

P = the productivity of the crop (measured as biofuel or bioliquid energy per unit area per year); and

e_B = bonus of 29 gCO_{2eq}/MJ biofuel or bioliquid if biomass is obtained from restored degraded land under the conditions provided for in point 8.

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- * The quotient obtained by dividing the molecular weight of CO₂ (44,010 g/mol) by the molecular weight of carbon (12,011 g/mol) is equal to 3,664.
 - ** Cropland as defined by IPCC.
 - *** Perennial crops are defined as multi-annual crops, the stem of which is usually not annually harvested such as short rotation coppice and oil palm."

(2) The following Annex is added:

"ANNEX VIII

Part A. Provisional estimated indirect land-use change emissions from biofuel and bioliquid feedstocks (gCO_{2eq}/MJ)+

Feedstock group	Mean*	Interpercentile range derived from the sensitivity analysis**
Cereals and other starch-rich crops	12	8 to 16
Sugars	13	4 to 17
Oil crops	55	33 to 66

* The mean values included here represent a weighted average of the individually modelled feedstock values.

** The range included here reflects 90 % of the results using the fifth and ninety-fifth percentile values resulting from the analysis. The fifth percentile suggests a value below which 5 % of the observations were found (i.e. 5 % of total data used showed results below 8, 4, and 33 gCO_{2eq}/MJ). The ninety-fifth percentile suggests a value below which 95 % of the observations were found (i.e. 5 % of total data used showed results above 16, 17, and 66 gCO_{2eq}/MJ).

Part B. Biofuels and bioliquids for which the estimated indirect land-use change emissions are considered to be zero

Biofuels and bioliquids produced from the following feedstock categories will be considered to have estimated indirect land-use change emissions of zero:

- (1) feedstocks which are not listed under part A of this Annex.
- (2) feedstocks, the production of which has led to direct land-use change, i.e. a change from one of the following IPCC land cover categories: forest land, grassland, wetlands, settlements, or other land, to cropland or perennial cropland⁺⁺. In such a case a direct land-use change emission value (e_l) should have been calculated in accordance with point 7 of part C of Annex V.

+ The mean values reported here represent a weighted average of the individually modelled feedstock values. The magnitude of the values in the Annex is sensitive to the range of assumptions (such as treatment of co-products, yield developments, carbon stocks and displacement of other commodities, etc.) used in the economic models developed for their estimation. Although it is therefore not possible to fully characterise the uncertainty range associated with such estimates, a sensitivity analysis conducted on the results based on a random variability variation of key parameters, a so-called Monte Carlo analysis, was conducted.

++ Perennial crops are defined as multi-annual crops, the stem of which is usually not annually harvested such as short rotation coppice and oil palm."

(3) The following Annex is added:

"ANNEX IX

Part A. Feedstocks and fuels, the contribution of which towards the target(s) referred to in Article 3(4) shall be considered to be twice their energy content

- (a) Algae if cultivated on land in ponds or photobioreactors.
- (b) Biomass fraction of mixed municipal waste, but not separated household waste subject to recycling targets under point (a) of Article 11(2) of Directive 2008/98/EC.
- (c) Bio-waste as defined in Article 3(4) of Directive 2008/98/EC from private households subject to separate collection as defined in Article 3(11) of that Directive.
- (d) Biomass fraction of industrial waste not fit for use in the food or feed chain, including material from retail and wholesale and the agro-food and fish and aquaculture industry, and excluding feedstocks listed in part B of this Annex.
- (e) Straw.
- (f) Animal manure and sewage sludge.
- (g) Palm oil mill effluent and empty palm fruit bunches.
- (h) Tall oil pitch.

- (i) Crude glycerine.
- (j) Bagasse.
- (k) Grape marcs and wine lees.
- (l) Nut shells.
- (m) Husks.
- (n) Cobs cleaned of kernels of corn.
- (o) Biomass fraction of wastes and residues from forestry and forest-based industries, i.e. bark, branches, pre-commercial thinnings, leaves, needles, tree tops, saw dust, cutter shavings, black liquor, brown liquor, fibre sludge, lignin and tall oil.
- (p) Other non-food cellulosic material as defined in point (s) of the second paragraph of Article 2.
- (q) Other ligno-cellulosic material as defined in point (r) of the second paragraph of Article 2 except saw logs and veneer logs.
- (r) Renewable liquid and gaseous fuels of non-biological origin.

Part B. Feedstocks, the contribution of which towards the target referred to in the first subparagraph of Article 3(4) shall be considered to be twice their energy content

- (a) Used cooking oil.
- (b) Animal fats classified as categories 1 and 2 in accordance with Regulation (EC) No 1069/2009*

* Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (Animal by-products Regulation) (OJ L 300, 14.11.2009, p. 1)!
