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Subject:	Proposal for 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 (**first reading**) - Political agreement

1. The Commission submitted the above proposal on 18 October 2012, based on Article 192(1) of the Treaty on the Functioning of the European Union, and Article 114 thereof in relation to a number of proposed provisions.

The proposal aims at amending the Directives on Fuel Quality (98/70/EC as amended through 2009/30/EC, hereinafter Fuel Quality Directive) and on Renewable Energy Sources (2009/28/EC, hereinafter RES Directive) on the basis of the requirement included in those two Directives for the Commission to provide a report reviewing the impact of indirect land-use change[1] on greenhouse gas emissions and addressing ways to minimise the impact, if appropriate accompanied by a proposal.[2]

2. The European Parliament's Committee on Environment, Public Health and Food Safety voted its report on 11 July 2013, followed by the adoption by the European Parliament of its first reading position at its Plenary session of 9-12 September 2013. The European Economic and Social Committee adopted its opinion on 17 April 2013, the Committee of the Regions has decided not to issue an opinion.

3. Building on the intensive work of previous Presidencies, the Presidency invested in wide ranging consultations in order to see how to bring this proposal forward, before presenting possible compromise elements to the Ad hoc Working Party on ILUC on 8 April and 6 May 2014.

On 23 May and 28 May 2014, the Permanent Representatives' Committee considered amended compromise suggestions put forward by the Presidency which focussed on a limited number of adjustments to the text. The overall Presidency compromise text resulting from the discussions can be found in the Annex to this note. It includes notably a set of compromise elements on

- a stronger encouragement for advanced biofuels, while leaving flexibility for Member States, as well as
- additional elements to reflect considerations on estimated ILUC emissions and the possible impact of EU policies.

Coreper was able to reach broad agreement on this text while noting a reservation by the CZ delegation and BE's intention to vote against.

[1] "ILUC"
[2] Article 7d(6) of Directive 2009/30/EC and Article 19(6) of Directive 2009/28/EC.

4. It is noted that one or more statements may be tabled for inclusion in Council's minutes.

5. The Council (TTE - Energy), at its meeting of 13 June 2014, is invited to confirm the political agreement on the text in Annex.

ANNEX

Proposal for 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

(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(2) to 1(9) and Article 2(5) to 2(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 Committee[1],

After consulting the Committee of the Regions[2],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Article 3(4) of Directive 2009/28/EC 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[3] requires Member States to ensure that the share of energy from renewable energy sources in all forms of transport in 2020 is at least 10% of their final energy consumption. 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.

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[1] OJ C **198 of 10 July 2013, p. 56**.

[2] **[…]**.

[3] OJ L 140, 5.6.2009, p. 16.

(2) In view of the Union's objectives to further reduce greenhouse gas emissions and the significant contribution that road transport fuels make to those emissions, Article 7a(2) of Directive 98/70/EC relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EC[1] requires fuel suppliers to reduce by at least 6% by 31 December 2020 the life cycle greenhouse gas emissions per unit of energy ("greenhouse gas intensity") 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.

(3) Article 17 of Directive 2009/28/EC establishes sustainability criteria that biofuels and bioliquids need to comply with in order to be counted towards the targets in the Directive and to qualify for inclusion in public support schemes. These criteria include requirements on the minimum greenhouse gas emission savings that biofuels and bioliquids need to achieve compared to fossil fuels. Identical sustainability criteria are established for biofuels under Article 7b of Directive 98/70/EC.

(4) Where pasture or agricultural land previously destined for the food, feed and fibre 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 represents indirect land-use change and when it involves the conversion of high carbon stock land it can lead to significant greenhouse gas emissions. Directives 98/70/EC and 2009/28/EC should therefore include provisions to address indirect land use change given that current biofuels are mainly produced from crops grown on existing agricultural land.

[1] OJ L 350, 28.12.1998, p. 58.

(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 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, cereals, sugars and other starch containing crops accordingly.

(5a) With a view to avoiding the incentivisation of the deliberately increased 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.

(6) 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 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 these are currently not commercially available in large quantities, in part due to competition for public subsidies with established food crop based biofuel technologies**. Member States should promote the consumption of such biofuels, through setting non-legally binding sub-targets at national level within the obligation to ensure that the share of energy from renewable energy sources in all forms of transport in 2020 is at least 10% of their final energy consumption**. **It is also appropriate for Member States to report on their achievement 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 for the decarbonisation of transport and the development of low-carbon transport technologies beyond that date. […]**

6a. Distinctions in the 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 control of the biofuel producers. While most biofuel feedstocks are being produced in the EU, the estimated indirect land-use change emissions are mostly expected to take place outside the EU, where the additional production is likely to be realised at the lowest cost. In particular, assumptions with regards to the conversion of tropical forests and peat land drainage outside the European 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 these areas through ongoing international programmes.

(7) In order to ensure the long-term competitiveness of bio-based industrial sectors, and in line with the 2012 Communication "Innovating for Sustainable growth: A Bioeconomy for Europe"[1] and the Roadmap to a Resource Efficient Europe[2], 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 other uses than biofuels.

(7a) A greater use of electricity from renewable sources is a means to address 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 that the multiplication factors for the calculation of the contribution from electricity from renewable sources consumed by electrified rail transport and electric road vehicles be raised so as to enhance their deployment and market penetration.

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1 COM(2012) 60.
2 COM(2011) 571.

(7b) The Waste Framework Directive 2008/98/EC helps move the EU closer to a 'recycling society', 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 waste legislation and policy. Member States should support the use of recyclates in line with the waste hierarchy and with the aim of a recycling society, and should not support the landfilling or incineration of such recyclates whenever possible. Some of the feedstocks that pose low ILUC 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 established in Article 4 of Directive 2008/98/EC. It is therefore appropriate for Member States to pay due attention to the waste hierarchy principle in any incentive measures for the promotion of low ILUC 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, 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.

(8) The minimum greenhouse gas saving threshold for biofuels and bioliquids produced in new installations should be increased with effect from **[date of entry into force]** in order to improve their overall greenhouse gas balance as well as discouraging further investments in installations with low greenhouse gas savings performance. This increase provides for investment safeguards in biofuels and bioliquids production capacities in conformity with Article 19(6) second subparagraph.

(9) 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**, w**ithout restricting the overall use of such biofuels**. […]**

(10) **Such** limit **[…]** does not affect the Member States' freedom to arrange their own trajectory as to compliance with this 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 amending **D**irective does not affect the legitimate expectations of the operators of such installations.

(11) 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.

(11a) 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 support 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 ILUC. To the extent that the resulting ILUC mitigation effect at national or project level can be quantified, measures introduced by this Directive could reflect these productivity improvements both in terms of reduced estimated ILUC 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.

(11b) Voluntary Schemes play an increasingly important role in providing evidence of compliance with the sustainability requirements contained in the Fuel Quality and Renewable Energy Directives. 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. These 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 in view of identifying best practice and submitting, if appropriate, a proposal to further promote it.

(11c) 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.

(11d) Although food and feed crop-based biofuels are generally associated with ILUC risks, there are also exceptions. Member States and the Commission should encourage the development and use of schemes which can reliably prove that a determined amount of biofuel feedstocks produced in a given project did not displace production for other purposes. This may, for example, be the case where the biofuel production equals the amount of additional production achieved through investments into 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.

(12) **[…]**

(13) **[…]**

(14) 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, EU 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, 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.

(15) The objectives of this Directive, to ensure a single market for fuel for road transport and non-road mobile machinery and ensure respect for minimum levels of environmental protection from use of this fuel, cannot be sufficiently achieved by the Member States and can therefore 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.

(16) As a consequence of the entry into force of the Treaty on the Functioning of the European Union, the powers conferred under Directives 2009/28/EC and 98/70/EC upon the Commission need to be aligned to Article 290.

(17) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) 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 the Member States of the Commission's exercise of implementing powers.

(18) In order to permit adaptation to technical and scientific progress of Directive 98/70/EC, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of **[…] the addition of estimated typical and default values for biofuel pathways and** the permitted analytical methods related to the fuel specifications and the vapour pressure waiver permitted for petrol containing bioethanol.

(19) In order to permit adaptation to technical and scientific progress of Directive 2009/28/EC, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of **possible additions to** the list of biofuel feedstocks **and fuels whose contribution towards the targets in Article 3(4) should be considered to be twice their energy content and the addition of estimated typical and default values for biofuel and bioliquid pathways.**

(20) 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 **[…]**.

(21) It is of particular importance that the Commission in application of this Directive 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.

(22) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, 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.

(23) 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. The following points 10 to 13 are added to Article 2:

'10. 'starch-rich crops' means crops comprising mainly cereals (regardless whether only the grains are used or the whole plant such as green maize), tubers and root crops (such as potatoes, Jerusalem artichokes, sweet potatoes, cassava and yams), and corm crops (such as taro and cocoyam);

11. 'Low ILUC-risk biofuels' mean biofuels whose feedstocks are a) not listed in Annex V, Part A, or b) are listed in Annex V, Part A, but which 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 contained in Article 7b. Only the amount of feedstocks which corresponds to the actual reduction in displacement achieved through the scheme can be considered. These schemes can 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 these 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' mean residues that are directly produced by agriculture, fisheries, aquaculture and forestry; they do not include residues from related industries or processing.'

1. Article 7a is amended as follows:

(**a**)[1] **P**aragraph 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;

(c) rules to ensure as uniform an approach as possible to Member States' implementation of paragraph 4;

(d) the methodology to calculate the contribution of electric road vehicles, which shall be compatible with Article 3(4) of Directive 2009/28/EC.'

(**b**) the following paragraph **[…]** is inserted:

'6. **As part of the reporting under paragraph 1, Member States shall ensure that f**uel suppliers **report annually […]** to the authority designated by the Member State, 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 these data to the Commission.**'**

[1] Legal-linguistic correction: the order of points (a) and (b) is changed.

2. 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 **[date of entry into force]**. An installation is "in operation" if the physical production of biofuels has taken place.

In the case of installations that were in operation on or before **[date of entry into force]**, 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).'

(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, the Commission shall adopt implementing acts establishing** the criteria and geographic ranges to determine which grassland **is covered by that provision. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 11(3)**.'

2a. Article 7c is amended as follows:

(-a) paragraph 3, 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. It 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.'

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

'Voluntary schemes shall regularly, 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 particular for preventing fraud the Commission may on the basis of a risk analysis or the reports referred to in the second subparagraph of paragraph 6 detail the standards of independent audit and require all voluntary schemes to apply these standards. This shall be done by means of implementing acts adopted in accordance with the examination procedure referred to in Article 11(3). These acts shall set a time frame by which voluntary schemes need to implement this standard. The Commission may repeal Decisions recognising voluntary schemes referred to in paragraph 4 in case they fail to implement these standards in the foreseen time period.'

(b) paragraph 6 is replaced by the following:

'6. Decisions under paragraph 4 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 such voluntary schemes, on which a decision is taken in accordance with paragraph 4, submit by [one year from the entry into force of this Directive], and annually thereafter by 30 April, a report to the Commission covering each of the points set out below. Generally, the reports shall cover the preceding calendar year. The first report of the voluntary schemes shall cover at least six months since [the date of adoption of this Directive]. The requirement to submit a report shall apply only to voluntary schemes that have operated for at least 12 months. By [18 months from the entry into force of this Directive] the Commission shall submit a report to the European Parliament and to the Council analysing the voluntary schemes' reports to the Commission and reviewing the operation of agreements or voluntary schemes for which a decision in accordance with this Article has been adopted, and identifying best practices. The report shall be based on the best information available, including from consultation with stakeholders, and shall be based on practical experience in the application of the agreements or schemes. The report shall analyse the following in general:

- **the independence, modality and frequency of audits, in relation to both that expressed in the scheme documentation at the time the scheme was approved by the Commission and against industry best practice;**

- **the availability, experience and transparency in the application of methods for identifying and dealing with non-compliance, with particular regard to dealing with situations of/allegations of serious wrongdoing on the part of members of the scheme;**

- **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, accessibility of a list of certified operators and relative certificates, accessibility of auditor reports;**

- **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;**

- **overall robustness of the scheme, particularly in light of rules on the accreditation, qualification and independence of auditors and relevant scheme bodies;**

- **market update of the scheme, amount of feedstocks and biofuels certified, by country of origin and type, number of participants;**

- **the ease and effectiveness of implementing a system tracking the proofs of conformity with the sustainability criteria that the scheme gives to its member, such a system intending to serve as a means of preventing fraudulent activity with a particular view 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:

- **options for entities to be authorised to recognise and monitor certification bodies;**

- **criteria for the recognition or accreditation of certification bodies;**

- **rules how the monitoring of the certification bodies is to be conducted.**

A Member State may notify its national scheme to the Commission, who shall give priority to the assessment of such scheme.

A decision on a thus submitted national scheme's compliance with the conditions of 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.'

(c) 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.'

3. Article 7d is amended as follows:

(a) paragraphs 3 to **5** are replaced by the following:

'3. The typical greenhouse gas emissions from cultivation of agricultural raw materials in the reports referred to in Article 7d(2) in the case of Member States, and**, in the case of territories outside the Union,** in reports equivalent to those **and drawn up by competent bodies**, may be submitted 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 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 those reports 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 latest scientific evidence, the Commission shall, as appropriate, submit a legislative proposal to the European Parliament and to the Council.

(b) paragrah 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** modifi**cation of** the methodology laid down in Part C**, 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 Annex IV, Part C, point 9, the Commission may adopt implementing acts setting out detailed technical specifications and definitions.'

4. 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 of 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 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.'

5. **In** Article 8a**, paragraph** 3 is **replaced by the following**:

'3. **In the 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.**

5a. In Article 9, the following point k) 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.'

6. **In** Article 10**, 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).'

7. **The following Article 10a is inserted:**

'Article 10a

Exercise of delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in Articles 7d(7) and 10(1) shall be conferred on the Commission for a period of five years from the date of entry into force of this Directive.

3. The delegation of powers 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.

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.'

8. Article 11 **is amended as follows:**

'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.

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 Committee delivers 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.'

9. 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**, second paragraph, the following points are added**:

'p) ‘waste’ shall be defined as in Article 3(1) of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives[1]. Substances that have been intentionally modified or contaminated to meet that definition are not covered by this category**;**

q) 'starch-rich crops' means crops comprising mainly cereals (regardless whether only the grains are used or the whole plant such as green maize), tubers and root crops (such as potatoes, Jerusalem artichokes, sweet potatoes, cassava and yams), and corm crops (such as taro and cocoyam);

r) 'non-food cellulosic material' means material including 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. These feedstocks are mainly composed of cellulose and hemicellulose, and have a lower lignin-content than ligno-cellulosic material;

[1] OJ L 312 of 22 November 2008, p.3.

s) '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;

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' mean residues that are directly produced by agriculture, fisheries, aquaculture and forestry; they do not include residues from related industries or processing;

(v) 'Low ILUC-risk biofuels and bioliquids' mean biofuels and bioliquids whose feedstocks are a) not listed in Annex VIII, Part A, or b) are listed in Annex VIII, Part A, but which 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 contained in Article 17. Only the amount of feedstocks which corresponds to the actual reduction in displacement achieved through the scheme can be considered. These schemes can 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 these productivity-promoting schemes.'

2. Article 3 is amended as follows:

(a) **[…]**

[…]

(b) in paragraph 1, the following **[…]** subparagraph is added:

'For the purpose of compliance with target referred to in the first subparagraph, 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 Article 3(4)d.'

(c) paragraph 4**, second subparagraph,** is **hereby** amended as follows:

(-i) point (a) is amended as follows:

'(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;'

(i) in point (b), the following phrase is added:

"This indent shall be without prejudice to Articles 17(1)a and 3(4)d;"

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

'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.'

(ii**i**) the following point **[…]** is 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 2020.

(i**v**) the following point**s […] are** added:

"(e) Member States shall seek to achieve the objective of a minimum proportion of biofuels, and other fuels produced from feedstocks listed in Part A of Annex IX, being consumed on their territory. To that effect, each Member State shall set a national target, which they shall endeavour to achieve. A reference value for this target is 0.5 p.p. 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) below 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 this Directive, can be counted towards the national target.

Member States may set a national target lower than the reference value of 0.5 p.p., based on one or more of the following grounds:

(i) objective factors such as the limited potential for the sustainable production of biofuels from feedstocks and other fuels listed in Part A of Annex IX, or 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 this Directive];

(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, when applicable, the grounds for differentiation of their national target as compared to the reference value, notified in accordance with Article 4(2) [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**.**

[…]

(d) paragraph 4, third subparagraph, is hereby amended as follows:

'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.'

(e) the following additional subparagraph is added in paragraph 4:

'For the purpose of complying with the targets set out in paragraphs 1, 2 and 4 of this Article, the contribution made by biofuels produced from feedstocks listed in Part A of Annex IX shall be considered to be twice their energy content.'

(f) the following new paragraph 5 is added:

'5. With a view to minimising the risk of single consignments being claimed more than once in the EU, 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 report on the measures they have taken by 31 December 2017, and every two years thereafter, 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 25b to amend the list of feedstocks in Part A of Annex IX in order to add feedstocks, but not to remove feedstocks. 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 latest scientific and technical progress, taking due account of the principles of the waste hierarchy, allowing to consider that the feedstock in question does not create an additional demand for land nor significant distortive effects on markets for (by-)products, wastes or residues, delivers substantial greenhouse gas savings compared to fossil fuels, and does not risk to create negative impacts on the environment and biodiversity.'

3. **In** Article 5**, paragraph** 5 **is deleted.**

[…]

4. **[…]** Article 6 **is amended as follows:**

(a) paragraph 1 is 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).

(b) paragraph 2 is replaced by the following:

‘2. The arrangements referred to in paragraph 1 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 **[date of entry into force]**. An installation is “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 **[date of entry into force]**, 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, the Commission shall adopt implementing acts establishing the criteria and geographic ranges to determine which grassland **is covered by that provision. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 25(3).**'

6. **[…]** Article 18 **[…] is hereby amended as follows:**

(-a) paragraph 3, 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. It 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.'

(a) 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) to (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).'

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

'Voluntary schemes shall regularly, 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 particular for preventing fraud the Commission may on the basis of a risk analysis or the reports referred to in the second subparagraph of paragraph 6 detail the standards of independent audit and require all voluntary schemes to apply these standards. This shall be done by means of implementing acts adopted in accordance with the examination procedure referred to in Article 25(3). These acts shall set a time frame by which voluntary schemes need to implement this standard. The Commission may repeal Decisions recognising voluntary schemes referred to in paragraph 4 in case they fail to implement these standards in the foreseen time period.'

(c) paragraph 6 is replaced by the following:

'6. Decisions under paragraph 4 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 such voluntary schemes, on which a decision is taken in accordance with paragraph 4, submit by [one year from the entry into force of this Directive], and annually thereafter by 30 April, a report to the Commission covering each of the points set out below. Generally, the reports shall cover the preceding calendar year. The first report of the voluntary schemes shall cover at least six months since [the date of adoption of this Directive]. The requirement to submit a report shall apply only to voluntary schemes that have operated for at least 12 months. By [18 months from the entry into force of this Directive], 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 voluntary schemes' reports to the Commission and reviewing the operation of agreements or voluntary schemes for which a decision in accordance with this Article has been adopted, and identifying best practices. The report shall be based on the best information available, including from consultation with stakeholders, and shall be based on practical experience in the application of the agreements or schemes. The report shall analyse the following in general:

- **the independence, modality and frequency of audits, in relation to both that expressed in the scheme documentation at the time the scheme was approved by the Commission and against industry best practice;**

- **the availability, experience and transparency in the application of methods for identifying and dealing with non-compliance, with particular regard to dealing with situations of/allegations of serious wrongdoing on the part of members of the scheme;**

- **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, accessibility of a list of certified operators and relative certificates, accessibility of auditor reports;**

- **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;**

- **overall robustness of the scheme, particularly in light of rules on the accreditation, qualification and independence of auditors and relevant scheme bodies;**

- **market update of the scheme, amount of feedstocks and biofuels certified, by country of origin and type, number of participants;**

- **the ease and effectiveness of implementing a system tracking the proofs of conformity with the sustainability criteria that the scheme gives to its member, such a system intending to serve as a means of preventing fraudulent activity with a particular view 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:

- **options for entities to be authorised to recognise and monitor certification bodies;**

- **criteria for the recognition or accreditation of certification bodies;**

- **rules 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, who shall give priority to the assessment of such scheme.

A decision on a thus submitted national scheme's compliance with the conditions of 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.'

(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 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 and 4 are replaced by the following:

'3. The typical greenhouse gas emissions from cultivation of agricultural raw materials in the reports referred to in Article 19(2) in the case of Member States, and in reports equivalent to those in the case of territories outside the Union, may be submitted 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 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). '

(b) **P**aragraph 5 **is replaced by the following:**

'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 those reports 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 latest scientific evidence, the Commission shall, as appropriate, submit a legislative proposal to the European Parliament and to the Council.'

(c) **paragraph 6 is deleted.**

(d) in paragraph 7, the first**, second and third** subparagraph**s 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** modifi**cation of** the methodology laid down in Part C**, 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 25b 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.'

(e) **Paragraph 8 is replaced by the following:**

'8. Where necessary in order to ensure the uniform application of Annex V, Part C, point 9, the Commission may adopt implementing acts setting out detailed technical specifications and definitions.'

8. Article 21 is deleted.

9. **[…]** Article 22 **is amended as follows:**

(a) point i) of paragraph 1 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 related to the effect of the replacement of human and animal food products for biofuel production, taking due account of the principles of the waste hierarchy established in the Waste Framework 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) a new point (o) is added to paragraph 1:

'(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 in Article 3(1) and (2), and the first subparagraph in Article 3(4).'

[…]

[…]

9a. Article 23 is amended as follows:

(a) paragraph 4 is amended as follows:

'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 Article 22(1)(o), 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 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.'

(b) 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 human and animal food products for biofuel production, taking due account of the principles of the waste hierarchy established in the Waste Framework 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; and

(f) an assessment whether the range of uncertainty identified in the analysis underlying the estimations of indirect land-use change emissions can be narrowed and possible impact of EU policies, such as environment, climate and agricultural policies, can be factored in.'

(c) in paragraph 8, first subparagraph, point (b) 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 on which transport fuels represent more than half of the final energy consumption, and markets which are fully dependent on imported biofuels;'

10. 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.

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 Committee delivers 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.'

11. **The following Article 25b is inserted:**

'Article 25 b

Exercise of the delegation

1. The powers to adopt delegated acts are conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in Articles 3(5) and 19(7) shall be conferred on the Commission for a period of five years from [the date of 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 2 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 2 months at the initiative of the European Parliament or the Council.'

12. 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 [one year after the entry into force of this Directive], 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 EU 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 ILUC-risk biofuels and bioliquids, with a view to adjusting Annex V of Directive 98/70/EC and Annex VIII of Directive 2009/28/EC, if appropriate.

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, such report shall also include the latest available information with regards to the key assumptions influencing the results from the modeling 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 EU policies, such as environment, climate and agricultural policies, involving stakeholders in such review process. This report shall also examine developments in relation to certification schemes for low ILUC-risk biofuel and bioliquid feedstocks, contained in Annex V of Directive 98/70/EC and Annex VIII of Directive 2009/28/EC but produced under low risk of ILUC by way of project-level mitigation measures, and their effectiveness.**

Such report 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 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 this report, in the light of Member States' reports pursuant to Article 3(5) of Directive 2009/28/EC, the Commission shall 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 the light of the reports by the voluntary schemes in accordance with Article 7c(6) of Directive 98/70/EC and 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 [*24 months after adoption*] **at the latest […]**. They shall **immediately inform** the Commission the**reof […]**.

   When Member States adopt those provisions, they shall contain a reference to this Directive or **shall** be accompanied by such **[…]** 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 on their national targets set in accordance with Article 3(4)(e) 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 their respective achievement towards their national targets set in accordance with Article 3(4)(e) 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

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

ANNEX I

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

(1) Annex IV, part C is amended as follows:

(a) point 7 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 these emissions the following rule shall be applied:

$$e_l = (CS_R - CS_A) \times 3{,}664 \times 1/20 \times 1/P - \boldsymbol{e_B},$$ [1]

where

e_l = annualised greenhouse gas emissions from carbon stock change due to land-use change (measured as mass (grams) of CO_2-equivalent per unit biofuel energy (megajoules))**. 'Cropland'**[2] **and 'perennial cropland'**[3] **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;**[…]**

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1 **The quotient obtained by dividing the molecular weight of CO_2 (44,010 g/mol) by the molecular weight of carbon (12,011 g/mol) is equal to 3,664.**

2 **Cropland as defined by IPCC.**

3 **Perennial crops are defined as multi-annual crops whose stem is usually not annually harvested such as short rotation coppice and oil palm as defined in (2010/C 160/02).**

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.'

(b) **[…]**

(2) The following Annex V is added:

'Annex V

Part A. Provisional estimated indirect land-use change emissions from biofuels (gCO_{2eq}/MJ)[1]

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**

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 included under Part A of this Annex.

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[1] **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 random variability of key parameters, so-called Monte Carlo analysis, was conducted.**

* **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).**

(2) feedstocks whose production 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[1]. In such a case a "direct land use change emission value (el) should have been calculated in accordance to Part C, paragraph 7 of Annex IV.'

[1] Perennial crops are defined as multi-annual crops whose stem is usually not annually harvested such as short rotation coppice and oil palm as defined in (2010/C 160/02).

ANNEX II

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

(1) Annex V, part C is amended as follows:

(a) point 7 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 these emissions the following rule shall be applied:

$$e_l = (CS_R - CS_A) \times 3{,}664 \times 1/20 \times 1/P \mathbf{- e_B},$$ [1]

where

e_l = annualised greenhouse gas emissions from carbon stock change due to land-use change (measured as mass (grams) of CO_2-equivalent per unit **of** biofuel **or bioliquid** energy (megajoules))**. 'Cropland'**[2] **and 'perennial cropland'**[3] **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; **[…]**

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1 **The quotient obtained by dividing the molecular weight of CO_2 (44,010 g/mol) by the molecular weight of carbon (12,011 g/mol) is equal to 3,664.**

2 **Cropland as defined by IPCC.**

3 **Perennial crops are defined as multi-annual crops whose stem is usually not annually harvested such as short rotation coppice and oil palm as defined in (2010/C 160/02).**

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.'

(b) **[…]**

(2) The following Annex VIII is added:

'Annex VIII

Part A. Provisional estimated indirect land-use change emissions from biofuel and bioliquid feedstocks (gCO_{2eq}/MJ)[1]

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**

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 included under Part A of this Annex.

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[1] **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 random variability of key parameters, so-called Monte Carlo analysis, was conducted.**

* **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).**

(2) feedstocks whose production 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[1]. In such a case a "direct land use change emission value (el) should have been calculated in accordance to Part C, paragraph 7 of Annex V.'

[1] Perennial crops are defined as multi-annual crops whose stem is usually not annually harvested such as short rotation coppice and oil palm as defined in (2010/C 160/02).

(3) The following Annex IX is added:

'Annex IX

Part A. Feedstocks **and fuels** whose contribution 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 Article 11(2)(a) of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives.

(ba) 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.

(c) 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**.

(d) Straw.

(e) Animal manure and sewage sludge.

(f) Palm oil mill effluent and empty palm fruit bunches.

(g) Tall oil pitch.

(h) Crude glycerine.

(i) Bagasse.

(j) Grape marcs and wine lees.

(k) Nut shells.

(l) Husks.

(m) Cobs **cleaned of kernels of corn.**

(n) **Biomass fraction of wastes and residues from forestry and forest-based industries, i.e. b**ark, branches, **pre-commercial thinnings,** leaves, **needles, tree tops,** saw dust**,** cutter shavings**, black liquor, brown liquor, fibre sludge, lignin and tall oil.**

(o) Other non-food cellulosic material as defined in point r) of the second subparagraph of Article 2.

(p) Other ligno-cellulosic material as defined in point s) of the second subparagraph of Article 2 except saw logs and veneer logs.

(q) Renewable liquid and gaseous fuels of non-biological origin.

Part B. Feedstocks whose contribution 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 category I and II in accordance with **Regulation (EC) No 1069/2009** 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)**[1].

(c) **[…]**

(d) **[…]**

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[1] OJ L **300, 14.11.2009, p. 1**