

Delegated Directive amending Annex IX to Directive (EU) 2018/2001 of the European Parliament and of the Council, as regards adding feedstocks for the production of biofuels and biogas**CALL FOR FEEDBACK**
FuelsEurope's main points for consideration

FuelsEurope, the Association representing European fuel manufacturers, strongly supports the EU objective of net climate neutrality in 2050 and the circular economy, and stands ready to support policy makers to reach such goals.

We warmly welcome the initiative of the European Commission to propose a draft DA to update the list of sustainable biofuel and biogas feedstocks in Annex IX of (EU) 2018/2001 as an important element for our members to continue transforming and accelerate the production of advanced biofuels. In view of the draft version kindly published for feedback, we would like to share with the European Commission some relevant aspects to be considered in the final text of the as a result of our industry's analysis.

[Summary - FuelsEurope's feedback](#)

It is essential that the review of Annex IX recognises both the need for a long-term clarity on a feedstock classification and the scalability of available feedstocks.

The timeline over which industry invests and produces fuels is measured in decades – therefore long-term certainty in feedstock classification is a key enabler to secure investment to produce biofuels and biogas at scale in order to achieve the EU's climate neutrality ambitions and energy security, especially for the decarbonisation of the hard to abate transport sectors.

[Detail - FuelsEurope's feedback](#)**Removal of Feedstocks from Annex IX Part A**

RED II Article 28.6 states:

By 25 June 2019 and every two years thereafter, the Commission shall review the list of feedstocks set out in Parts A and B of Annex IX with a view to adding feedstock in accordance with the principles set out in the third subparagraph. The Commission is empowered to adopt delegated acts in accordance with Article 35 to amend the list of feedstocks set out in Parts A and B of Annex IX by **adding, but not removing, feedstock**.

As per the above, we as FuelsEurope question the legality of removing feedstocks from Annex IX Part A, especially as some Member States have been supporting feedstocks which are already interpreted as in Part A (such as Intermediate crops) and moving them to Part B, where they are now capped. As stated in the opening paragraph this "movement" will seriously undermine investment, now and in the future, if for any feedstock that appears in Part A, at every two-year period, when the list is reviewed, **it could be removed and capped under Part B without any grace period or grandfathering clause to protect investments already made**.

In addition, any proposal to move these feedstocks to Part B is not supported by a full, complete technical rationale. Many factors need to be considered besides whether the technology could be considered to be mature, such as the maturity of the collection/harvesting and supply chain of the said feedstock.

Also, reviewing the current proposed Part B list, the consideration for a technology to be considered mature assumes that the main process considered is the production of biogas using an anaerobic digestion, however, these same feedstocks could be potentially used in other non-mature technological pathways such as gasification or pyrolysis.

Annex IX Part B Cap

Annex IX B biofuels and biogas are critical for achieving cost-efficient transport decarbonisation, **adding new feedstocks to Part B will require increasing the cap to avoid limiting the full potential benefits** of the current part B and the new additional feedstocks.

In RED III, we support fully both the Council and Parliament mandates in the ongoing trilogue discussions to increase the cap on part B, which state:

- Council: "Member States may in duly justified cases increase the limit, **taking into account the availability of feedstock**. Any such modification shall be notified to the commission together with the justifications for such an increase"
- Parliament: "If the list in part B of Annex IX is amended in accordance with article 28(6) **the cap on such biofuels and biogas shall be increased accordingly and shall be based on an impact assessment by the commission**"

A **technically credible increase of the cap of Part B** should be set, with the transposition of this directive, as a minimum Union wide level, with the flexibility for Member States to increase this cap based on the availability of feedstocks as per the Council and

Parliament mandates. However, ideally, consideration should be given for the opportunity for the outright removal of the cap of Part B.

Annex IX Part A

Annex IX part A was created to drive the development and growth of advanced biofuels. By the very welcome proposal of adding new feedstocks to Part A and thus increasing the availability and subsequent potential of biofuel production, consideration should be given as to how to continue to incentive production in advanced biofuels without seeing future additions undermine past investments.

Feedstocks and Definitions

Severely degraded land

In terms of the additional feedstocks, in Part A there is the inclusion of **non-food crops grown on severely degraded land, not suitable for food and feed crops**. The classification of severely degraded land would be open to interpretation so we ask that the definition is clarified at EU level as in RED II Annex V C9, namely that:

- “Severely degraded land’ means land that, for a significant period of time, has either been significantly salinated or presented significantly low organic matter content and has been severely eroded.”

However, we also ask that **marginal and polluted, as well as unused and abandoned land** (as defined in High ILUC/Low ILUC risk act Commission Delegated Regulation (EU) 2019/807) be included in Part A.

Intermediate Crops

We welcome the inclusion of those Intermediate crops, which were not already included, but we believe this category **should be listed in Annex IX Part A**.

Indeed, in RED II non-food cellulosic cover crops are already included in Annex IX Part A under the definition of “**other non-food cellulosic materials**” which states:

“Feedstock mainly composed of cellulose and hemicellulose, and having a lower lignin content than ligno-cellulosic material, including food and feed crop residues, such as straw, stover, husks and shells; grassy energy crops with a low starch content, such as ryegrass, switchgrass, miscanthus, giant cane; **cover crops before and after main crops**; ley crops; industrial residues, including from food and feed crops after vegetal oils, sugars, starches and protein have been extracted; and material from biowaste, where ley and cover crops are understood to be temporary, short-term sown pastures comprising grass-legume mixture with a low starch content to obtain fodder for livestock and improve soil fertility for obtaining higher yields of arable main crops”

In addition, the definition of “Intermediate crops” shouldn’t be limited to where food and feed crops are limited to one harvest and should be amended to be in-line with RED II definition Art 2 (44) which states that:

“Intermediate crops, such as catch crops and cover crops which are not considered food and feed crops provided that the use of such intermediate crops does not trigger demand for additional land and provided that the soil organic matter content is maintained”

Justification:

Annex IX part A was created to drive the development of advanced biofuels and the term “advanced” also refers to other attributes of the value chain than just “technologies” as **proposed in the preamble point 3**, but also “advanced cultivation concepts”. This approach is seen as an analogy for some current Part A feedstocks, such as algae. They also have positive impacts on the environment, markets, society, security of food supply energy supply and the creation of new value chains and therefore should be included in the scope of Part A.

By definition “intermediate crops” and “crops grown on severely degraded land” don’t create demand for additional land (**nor would cause distortive effects on the market with a robust certification scheme and a functioning Union database**) Thus, the quality of the crop and whether the feedstock is fit for food or feed chain is not a valid criterion.

By already being included in Part A under “Other non-food cellulosic materials” we question the legality of moving the feedstock out of part A to part B as it seems to directly contradict article 28.6

Coherence with other regulations

With the publication of the Fit for 55 package by the Commission, the role and purpose of Annex IX has gained even more importance in relation to various legislative proposals which prescribe the use of those feedstocks in specific transport sectors.

We believe that no other restrictions should be prescribed in regulations relying on RED classification, such as, for example, those included in the Parliament position of ReFuelEU aviation, where certain feedstocks are proposed to be excluded from the SAF target, including some currently Annex IX feedstocks and the proposed intermediate crops

Furthermore, a proposed Parliament amendment in RED III also looks to exclude primary woody biomass, which would limit the Annex IX Part A availability of cellulosic material.

We stress that the fundamental guiding role of Annex IX on feedstock classification should be retained and ask that the coherence with other initiatives in progress is ensured.

Recital 4

Recital 4	EC (initial draft for feedback)	FuelsEurope's proposal
	Feedstocks that are fit for use in the food or feed chain should not be added in Annex IX to Directive (EU) 2018/2001, as their use may cause market distortions and additional demand for land. However, the suitability of a feedstock category as food or feed may depend on the detailed characteristics as well as local circumstances. It is therefore appropriate to include a qualification in the description of the feedstock that reflects this complexity and requires a case-by-case assessment determining whether a feedstock is fit for use in the food and feed chain. Such assessment should be based on indicators such as the nutritional value of the feedstock compared to other alternatives as well as existing demand for such feedstock in the local food and feed chain.	<p>Feedstocks that are fit for use in the food or feed chain should not be added in Annex IX to Directive (EU) 2018/2001, as their use may cause market distortions and additional demand for land. However, the suitability of a feedstock category as food or feed may depend on the detailed characteristics as well as local circumstances. It is therefore appropriate to include a qualification in the description of the feedstock that reflects this complexity and requires a case-by-case assessment determining whether a feedstock is fit for use in the food and feed chain. Such assessment should be based on indicators such as the nutritional value of the feedstock compared to other alternatives as well as existing demand for such feedstock in the local food and feed chain.</p> <p><i>The Commission shall establish clear protocols for assessment and validation via a Guidance to the voluntary schemes.</i></p>

Justification:

Terms such as detailed characteristics, local circumstances and on a case by case basis, will lead to Member States each interpreting the recital in a different way without clear guidance.

We as FuelsEurope thank you for taking these points into consideration

FuelsEurope, the voice of the European petroleum refining industry

FuelsEurope represents with the EU institutions the interest of 39 companies operating refineries in the EU. Members account for almost 100% of EU petroleum refining capacity and more than 75% of EU motor fuel retail sales.

FuelsEurope aims to promote economically and environmentally sustainable refining, supply and use of petroleum products in the EU, by providing input and expert advice to the EU institutions, Member State Governments and the wider community and thus contributing in a constructive and pro-active way to the development and implementation of EU policies and regulations.

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