



Brussels, **XXX**
[...] (2022) **XXX** draft

COMMISSION IMPLEMENTING REGULATION (EU) .../...

of **XXX**

on rules to verify sustainability and greenhouse gas emissions saving criteria and low indirect land-use change-risk criteria

(Text with EEA relevance)

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources¹, and in particular Article 30(8) thereof,

Whereas:

- (1) Directive (EU) 2018/2001 expands the role of voluntary schemes to include the certification of the compliance of biomass fuels with sustainability and greenhouse gas (GHG) emissions saving criteria and the compliance of renewable liquid and gaseous transport fuels of non-biological origin and recycled carbon fuels with the respective GHG emissions saving criteria. Furthermore, the voluntary schemes can be used to certify biofuels, bioliquids and biomass fuels with low indirect land-use change-risk.
- (2) In order to establish whether biofuels, bioliquids, biomass fuels, renewable gaseous and liquid transport fuels of non-biological origin and recycled carbon fuels comply with the requirements of Directive (EU) 2018/2001, the correct and harmonised functioning of voluntary schemes is essential. Harmonised rules should therefore be established, to apply across the certification system, bringing about the necessary legal certainty on the rules applicable to economic operators and voluntary schemes.
- (3) With a view to minimising the administrative burden, the implementing rules should be proportionate and limited to what is required to ensure that compliance with the sustainability and GHG emissions saving criteria and other requirements is verified in an adequate and harmonised manner that minimises the risk of fraud to the greatest extent possible. The implementing rules should therefore not be considered as a comprehensive standard but rather as minimum requirements. The voluntary schemes may accordingly complement these rules as appropriate.
- (4) Economic operators may decide at any time to participate in a different voluntary scheme. However, in order to prevent an economic operator that has failed an audit under one scheme from immediately applying for certification under another scheme, all schemes receiving an application from an economic operator should require that operator to supply information about whether it failed an audit in the previous 5 years. This should also apply to situations where the economic operator has a new legal

¹ OJ L 328, 21.12.2018, p. 82

personality but remains the same in substance, so that minor or purely formal changes, for instance, in the governance structure or the scope of activities, do not exempt the new economic operator from such a rule.

- (5) The mass balance system aims to reduce the administrative burden for demonstrating compliance with the sustainability and greenhouse gas saving criteria by allowing mixing of raw material and fuels with differing sustainability characteristics and by allowing reassignment of the sustainability characteristics in a flexible manner to consignments withdrawn from such a mixture. In order to ensure transparency, mixing under the mass balance system is possible if e.g. raw material belong to the same product group. A product group can comprise for instance different types of non-food cellulosic material with similar physical and chemical characteristics, heating values and/or conversion factors or the types of ligno-cellulosic material covered under point q of Annex IX Part A to Directive (EU) 2018/2001. Virgin vegetable oils, used for the production of biofuels and bioliquids, may belong to the same product group. Raw materials, however, that can be used to produce biofuels, bioliquids and biomass fuels which are subject to different rules concerning their contribution towards the targets for renewable energy should generally not be considered to be part of the same product group as this would risk to undermine the objectives of Directive (EU) 2018/2001, which applies differentiated treatment of biofuels, bioliquids and biomass fuels on the basis of the feedstock they are produced from. In case of gaseous fuels, the EU interconnected grid is considered as one single mass balancing system. Gaseous fuels produced and consumed off the grid or through isolated local distribution networks are to be considered as separate mass balancing systems. Further, precautionary measures are required to ensure the consistency of sustainability claims when fuels are exported to third countries which do not apply the mass balance system. To this end, the mass balance system should also include information on quantities of fuels for which no sustainability characteristics have been determined and deliveries of fuels to uncertified operators shall be taken into account in the mass balance system, based on the physical nature of delivered fuels.
- (6) In the preparation of the initial on-site audit as well as during subsequent surveillance or re-certification audits, the auditor should make an appropriate analysis of the overall risk profile of economic operators. Based on the auditor's professional knowledge and the information submitted by the economic operator, this analysis should take into consideration not only the level of risk of the specific economic operator but also of the supply chain (e.g. for economic operators that handle materials listed in Annex IX to Directive (EU) 2018/2001). The audit intensity, its scope, or both, should be adapted to the level of identified overall risk in order to ensure an adequate level of trust in the veracity of the information provided by the economic operators, mitigating the risks for material misstatements.
- (7) In group auditing, where on-site audits are replaced by desk audits, voluntary schemes and certification bodies should ensure that those audits are able to provide the same level of assurance provided by an on-site audit (e.g. availability of high quality satellite images, data on protected areas and peatland that provide information on the relevant time horizon).

- (8) Delegated Regulation (EU) 2019/807², acknowledges that under certain circumstances, the indirect land-use change (ILUC) impacts of biofuels, bioliquids and biomass fuels that are considered as high ILUC-risk can be avoided. In order to ensure a level playing field in the implementation of the low ILUC-risk certification process across voluntary schemes, it is necessary to lay down specific requirements to allow for certification of low ILUC-risk biofuels, bioliquids and biomass fuels. Certified low ILUC-risk biofuels, bioliquids or biomass fuels should be exempted from the limit and gradual reduction set for high ILUC-risk biofuels, bioliquids and biomass fuels produced from food and feed crops, provided that they meet the relevant sustainability and greenhouse gas emissions saving criteria laid down in Article 29 of Directive (EU) 2018/2001.
- (9) Economic operators applying for low ILUC-risk certification can already have obtained a certification for other aspects by a voluntary scheme, or can apply for low ILUC-risk certification at the same time as applying for a certification for other aspects that can be covered by a voluntary scheme. Applicants can be a farm, a group of farmers or a first gathering point or a group manager acting on behalf of a group of farmers. In case of measures being applied to perennial crops, the start of the 10-year validity period of low ILUC certification can be postponed due to the delay between the measure being implemented and the yield increase being observed.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Committee on the Sustainability of Biofuels, Bioliquids and Biomass fuels established by Article 34(2) of Directive (EU) 2018/2001,

HAS ADOPTED THIS REGULATION:

Chapter I Introduction

Article 1

Subject matter

This Regulation lays down implementing rules to ensure that it is verified in an efficient and harmonised manner that economic operators:

- (a) comply with the sustainability criteria set in Article 29(2) to (7) of Directive (EU) 2018/2001;
- (b) provide accurate data on greenhouse gas emission savings for the purposes of Article 25(2) and Article 29(10) of Directive (EU) 2018/2001;
- (c) comply with the criteria for certification of low ILUC-risk biofuels, bioliquids and biomass fuels established by Delegated Regulation (EU) 2019/807.

² Commission Delegated Regulation (EU) 2019/807 of 13 March 2019 supplementing Directive (EU) 2018/2001 of the European Parliament and of the Council as regards the determination of high indirect land-use change-risk feedstock for which a significant expansion of the production area into land with high carbon stock is observed and the certification of low indirect land-use change-risk biofuels, bioliquids and biomass fuels (OJ L 133, 21.5.2019, p. 1).

Article 2

Definitions

For the purposes of this Regulation, the following definitions apply:

- (1) ‘voluntary scheme’ means an organisation that certifies the compliance of economic operators with criteria and rules including, but not limited to, the sustainability and greenhouse gas saving criteria set out in Directive (EU) 2018/2001 and in Delegated Regulation (EU) 2019/807;
- (2) ‘recognised voluntary scheme’ means a voluntary scheme recognised pursuant to Article 30(4) of Directive (EU) 2018/2001;
- (3) ‘recognised national scheme’ means a national scheme recognised pursuant to with Article 30(6) of Directive (EU) 2018/2001;
- (4) ‘certificate’ means a conformity statement by a certification body within the framework of a voluntary scheme, certifying that an economic operator complies with the requirements of Directive (EU) 2018/2001;
- (5) ‘suspended certificate’ means a certificate temporarily invalidated due to non-conformities identified by the certification body or upon voluntary request of the economic operator;
- (6) ‘withdrawn certificate’ means a certificate that has been permanently cancelled by the certification body or the voluntary scheme;
- (7) ‘terminated certificate’ means a certification that has been voluntarily cancelled while it is still valid;
- (8) ‘expired certificate’ means a certificate that is no longer valid;
- (9) ‘sustainability and greenhouse gas emissions saving characteristics’ means the set of information describing a consignment of raw material or fuel that is required for demonstrating compliance of that consignment with the sustainability and greenhouse gas emissions saving criteria for biofuels, bioliquids and biomass fuels or the greenhouse gas emission savings requirements applicable for renewable liquid and gaseous transport fuels of non-biological origin and recycled carbon fuels;
- (10) ‘mix of raw material for the purpose of further processing’ means the physical mixing of raw material for the sole purpose of producing biofuels, bioliquids or biomass fuels;
- (11) ‘economic operator’ means a producer of raw material, a collector of waste and residues, an operator of installations processing raw material into final fuels or intermediate products, an operator of installations producing energy (electricity, heating or cooling) or any other operator, including of storage facilities or traders that are in physical possession of raw material or fuels, provided that they process information on the sustainability and greenhouse gas emissions saving characteristics of those raw materials or fuels;
- (12) ‘first gathering point’ means a storage or processing facility managed directly by an economic operator or other counterpart under contractual agreement that is sourcing raw material directly from producers of agricultural biomass, forest biomass, wastes and residues or, in the case of renewable fuels of non-biological origin, the plant producing such fuels;

- (13) ‘certification audit’ means an initial audit before participation in a scheme, with the purpose of issuing a certificate under a voluntary scheme;
- (14) ‘certification body’ means an independent accredited or recognised conformity assessment body that concludes an agreement with a voluntary scheme to provide certification services for raw materials or fuels by carrying out audits of economic operators and issuing certificates on behalf of the voluntary schemes using the voluntary scheme’s certification system;
- (15) ‘non-conformity’ means non-compliance of an economic operator or certification body with the rules and procedures, established by the voluntary scheme, of which they are members or under which they operate;
- (16) ‘surveillance audit’ means any follow up audit of certificates issued by a certification body within the framework of a voluntary scheme after certification and before a re-certification audit, which can be carried out quarterly, half-annually or annually;
- (17) ‘re-certification audit’ means an audit with the purpose of renewing a certificate issued by a certification body within the framework of a voluntary scheme;
- (18) ‘interconnected infrastructure’ means a system of infrastructures, including pipelines, LNG terminals and storage facilities, which transports gases, that primarily consist of methane and include biogas and gas from biomass, in particular biomethane, or other types of gas that can technically and safely be injected into, and transported through the natural gas pipeline system, hydrogen systems as well as pipeline networks and transmission or distribution infrastructures for liquid fuels;
- (19) ‘hydrogen system’ means a system of infrastructure, including hydrogen networks, hydrogen storage, and hydrogen terminals, which contains hydrogen of a high grade of purity;
- (20) ‘legal predecessors’ means an economic operator that has been legally replaced by a new one, but no substantive changes or only superficial ones have been made regarding its ownership, management composition, working methods or scope of activity.
- (21) ‘product group’ means raw materials, biofuels, bioliquids, non-gaseous biomass fuels with similar physical and chemical characteristics and similar heating values or gaseous biomass fuels, and LNG with similar chemical characteristics that all are subject to the same rules set out in Articles 7, 26 and 27 of Directive (EU) 2018/2001 for determining the contribution of biofuels, bioliquids and biomass fuels towards achieving the targets for renewable energy;
- (22) ‘site’ means a geographical location, logistical facilities, transmission or distribution infrastructures with precise boundaries within which products can be mixed;
- (23) ‘proof of sustainability’ means a declaration by an economic operator, made on the basis of a certificate issued by a certification body within the framework of a voluntary scheme certifying the compliance of a specific quantity of feedstock or fuels with the sustainability and greenhouse gas emissions savings criteria set out in Articles 25(2) and 29 of Directive (EU) 2018/2001;
- (24) ‘raw material’ means substances that have not yet been processed into fuels including intermediate products;

- (25) ‘fuels’ means fuels that are ready to be supplied for consumption, including biofuels, bioliquids, biomass fuels, renewable liquid and gaseous transport fuels of non-biological origin and recycled carbon fuels.
- (26) ‘financial attractiveness test’ means the calculation of the Net Present Value (NVP) of an investment, based on additionality measures in the context of low ILUC-risk biomass certification;
- (27) ‘non-financial barrier test’ means an assessment of the potential other barriers that are expected to prevent an economic operator from implementing additionality measures in the context of low ILUC-risk biomass certification;
- (28) ‘Union database’ means the database provided for in Article 28, point 2 of Directive (EU) 2018/2001;
- (29) ‘grassland’ has the meaning attributed to it in Article 1, point (1) of Commission Regulation (EU) No 1307/2014³.

Chapter II. General rules on governance, internal monitoring, complaints procedures and transparency of voluntary schemes

Article 3

Governance structure of the voluntary scheme

1. Voluntary schemes shall establish a governance structure to ensure that the scheme has the necessary legal and technical capacity, impartiality and independence to perform its duties. Depending on the scope of the voluntary scheme, it shall set up a technical committee or an equivalent system of technical expert support, which in specific cases shall also allow the engagement of independent external experts to provide advice on technical issues.
2. Voluntary schemes shall include to the extent possible in the governance structure and decision-making a broad range of representatives from various relevant stakeholder groups such as farmers’ or foresters’ associations, environmental non-governmental organisations, indigenous and local communities potentially affected by the scheme, academia, and fuel producers. No individual stakeholder or stakeholder group shall have a dominant position in the decision-making process. Decisions shall only be taken where a quorum of the majority of stakeholders is reached.
3. Voluntary schemes shall set up rules and procedures to avoid conflicts of interest in decision-making. As a minimum standard, they shall enforce a system of checks and balances to ensure that no individual stakeholder, having a vested interest in the outcome of a decision, can have decisive influence on that particular decision.
4. Certification bodies shall set up integrity rules and procedures to ensure their full independence from the economic operators participating in the scheme. Voluntary

³ Commission Regulation (EU) No 1307/2014 of 8 December 2014 on defining the criteria and geographic ranges of highly biodiverse grassland for the purposes of Article 7b(3)(c) of Directive 98/70/EC of the European Parliament and of the Council relating to the quality of petrol and diesel fuels and Article 17(3)(c) of Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources (OJ L 351, 9.12.2014, p. 3).

schemes shall require that the certification bodies operating on behalf of the scheme are accredited to International Organisation for Standardisation (ISO) standard 17065.

5. The governance system of the certification body shall aim at ensuring the highest possible level of independence of the auditors' judgement by applying principles of auditors' rotation or other existing best practices in the area.
6. Persons having a potential conflict of interest shall be excluded from decision-making in both the voluntary scheme and the certification body. Voluntary scheme shall put in place appropriate procedures and an audit trail to identify and document such cases, and shall regularly review them as part of their internal monitoring systems.

Article 4

Non-conformities of economic operators under the scheme

1. Voluntary schemes shall set up a comprehensive system to deal with non-conformities by economic operators. As a minimum standard, that system shall include a clear classification of non-conformities, based on their degree of severity in accordance with the requirements of Article 10. For each type of non-conformity, there shall be a transparent set of rules and procedures to ensure timely enforcement of corrective measures and sanctions, including suspensions, where appropriate. Such enforcement procedures shall be triggered without delay, depending on the severity of the non-conformity and the urgency of the corrective measures.
2. Economic operators whose certificates are suspended, shall not be able to make sustainability claims until the suspension has been lifted. Suspended operators may not join another voluntary scheme during that period. Where the participation of an economic operator, or its legal predecessors, in a voluntary scheme is suspended or terminated by the withdrawal of its certificate following an audit which confirmed critical non-conformity, other voluntary schemes may refuse the participation of that operator for at least two years following the suspension or termination of participation.
3. Where an economic operator that was previously found to be in critical or major non-conformity applies for re-certification, the auditor shall bring that fact to the attention of all voluntary schemes in which the economic operator is currently participating, or to which it has applied for recertification

Article 5

Internal monitoring, complaints procedure and documentation management system

1. Voluntary schemes shall set up a system of internal monitoring to verify compliance of economic operators with the rules and procedures applied by the scheme and to ensure the quality of the work carried out by the auditors of the certification bodies. Internal monitoring shall be undertaken at least once a year and reflect the geographical and raw material coverage of the voluntary scheme, as well as the level of risk of the activities conducted by the economic operators. As part of the monitoring process, voluntary schemes shall require certification bodies to submit all audit reports, and, where applicable, the calculations of actual values for the

greenhouse gas emissions. The monitoring activities shall cover a random and risk-based sample of those audit reports by each certification body.

2. Voluntary schemes shall establish rules and procedures to ensure effective follow up of the results of the internal monitoring and, where necessary, the application of sanctions. On the basis of the results of the internal monitoring, corrective measures shall be taken at the level of the governance structure or of the internal monitoring process of the voluntary scheme in order to improve its functioning in the future. The results of the annual monitoring activities of the voluntary scheme shall be summarised in the annual activity report submitted to the Commission.
3. Voluntary schemes shall establish procedures for the lodging of complaints against economic operators or certification bodies. The complaints procedure shall be accessible on the voluntary scheme's website and allow complaints to be sent electronically or by post. The complaints procedure shall also ensure the protection of persons who report infringements or log complainants in good faith in accordance with Directive (EU) 2019/1937. The website shall indicate at least all of the following information:
 - (a) the information and the evidence to be provided to file a complaint, as well as the postal address or email address to which it is to be sent;
 - (b) guidance on which complaints are within the scope of the procedure;
 - (c) a step-by-step overview of how complaints are handled, from the receipt of the initial complaint through to resolution, and the associated timeframe for each step;
 - (d) the decision-making process for complaints and the process for appealing decisions;
 - (e) the consequences of the voluntary scheme finding a non-conformity as result of a complaint.
4. Voluntary schemes shall keep a register of all complaints, and provide a summary of those complaints to the Commission in the annual activity report. Upon request by the Commission or a Member State, they shall provide all documents related to a complaint and its handling.
5. Voluntary schemes and certification bodies shall establish a documentation management system that addresses each of the following elements:
 - (a) general management system documentation (e.g. manuals, policies, definition of responsibilities);
 - (b) control of documents and records;
 - (c) management review of management system;
 - (d) internal auditing/ internal monitoring;
 - (e) procedures for identification and management of non-conformities; and
 - (f) procedures for taking preventive actions to eliminate the causes of potential non-conformities.

Documentation shall be kept for a minimum of 5 years, or longer if required by the relevant national authority.

Article 6

Publication of information by voluntary schemes

Voluntary schemes shall make the following information publicly and freely available on a website:

- (a) their governance structure, describing the roles of all relevant bodies, details on the ownership structure, composition and experience of the Board of Directors, Secretariat and Technical committee, or equivalent, as well as the list of members with voting rights or participants in the scheme, as appropriate;
- (b) the list of economic operators participating in the scheme, their certification status, with their respective date of certificate issuance, suspension, withdrawal, termination or expiry, as well as the certificates or the summary audit reports drawn up in accordance with Annex II. Where audits identify critical or major non-conformities, voluntary schemes shall publish an aggregated list of these non-conformities together with a respective action plan and timing for their correction as agreed with the economic operators concerned. Specific information on the certificates or summary audit reports may be redacted to comply with personal data protection legislation. Economic operators whose certificates are withdrawn, terminated or expired shall be listed on the website for at least 24 months after the withdrawal, termination or expiration date. Changes in the certification status of economic operators shall be made public without delay;
- (c) the latest version of their scheme documentation and the guidelines for audits. The documents shall include a date and version number and, where applicable, summarise any changes made compared to the previous document version;
- (d) the contact details of the scheme, including telephone number, email address and correspondence address;
- (e) the list of certification bodies carrying out independent auditing under the scheme, indicating for each certification body which national public authority or entity accredited or recognised it and which entity or national public authority of the Member State supervises it, in accordance with Article 30(9), second subparagraph, of Directive (EU) 2018/2001. Certification bodies that are no longer entitled to conduct independent auditing under the scheme shall be listed for at least 12 months after the last audit with an indication to that effect;
- (f) the results of the annual monitoring activities of the voluntary scheme as summarised in the annual activity report.

Article 7

Change of scheme by economic operators

1. Voluntary schemes shall require economic operators to disclose the following information in their applications for certification:
 - (a) whether they or their legal predecessor are currently participating in another voluntary scheme or have participated in another voluntary scheme in the last 5 years;

- (b) all relevant information, including the mass balance data and the auditing reports and, where applicable, any decisions to suspend or withdraw their certificates in the last 5 years;
 - (c) whether they withdrew from a scheme before the first surveillance audit.
2. Voluntary schemes shall exclude from the scheme economic operators in the following cases:
- (a) they do not disclose the information in paragraph 1, point (a) and point (b);
 - (b) they or their legal predecessor failed the initial audit under another scheme, unless such initial audit took place more than 3 years before the application or if in the meantime the other scheme ceased its certification activities, which prevented the economic operator for reapplying. Where a voluntary scheme accepts the justification of the economic operators and decides to assess their application, the scope of the initial audit shall be adjusted to cover all relevant issues and specifically focus on the shortcomings identified in the initial audit that they failed in the other scheme;
 - (c) they or their legal predecessor withdrew from another scheme before the first surveillance audit took place, unless the operator can prove that it had a valid reason for doing so. Where a voluntary scheme accepts the justification provided by the economic operator, the scope of the initial audit shall be adjusted to cover all relevant issues of the surveillance audit.

Article 8

Recognition of other voluntary schemes

Where part of the supply chain relies on other voluntary schemes, they shall accept evidence of voluntary schemes recognised in accordance with Article 30(4) of Directive (EU) 2018/2001, only to the extent of the scope of their recognition.

Article 9

Recognition of national schemes

Voluntary schemes shall not refuse recognition of recognised national schemes as regards the verification of compliance with the sustainability and GHG emissions saving criteria set out in Article 29(2) to (7) and (10) of Directive (EU) 2018/2001, with the GHG savings thresholds set out in Article 25(2) of that Directive and with the criteria for certification of low ILUC-risk biofuels, bioliquids and biomass fuels set out in Delegated Regulation (EU) 2019/807.

Chapter III. Audit process, audit scope, qualifications of auditors and audit supervision

Article 10

Audit process and levels of assurance

1. Voluntary schemes shall require that economic operators successfully pass an initial audit before allowing them to participate in the scheme. The initial audit of a new scheme participant or a re-certification of existing scheme participant under a revised regulatory framework shall always be on-site and shall as a minimum provide reasonable assurance on the effectiveness of its internal processes. Depending on the risk profile of the economic operator, a limited assurance level can be applied on the veracity of its statements. On the basis of the results of the initial audit, those economic operators who are considered low risk may be subject to subsequent limited assurance audits.
2. Voluntary schemes may authorise a certification body to perform the verification of compliance with different certification frameworks during the same auditing process, as long as the certification body certifies that economic operators satisfy the requirements in line with Article 1. Voluntary schemes that allow a certificate duration longer than one year shall ensure the carrying out of an annual surveillance audit of all economic operators participating in the scheme. However, in the case of group audits, the annual audit may cover a sample of the group members in accordance with Article 12. The frequency of surveillance audits shall be increased on the basis of the level of overall risk related to the profile of the economic operator, the supply chain and the results of previous audits. The technical reviewer shall be responsible for validating the results of surveillance audits.

Voluntary schemes shall establish detailed procedures setting out how audits are planned and conducted and how audit reports are drawn up. Voluntary schemes shall ensure that certification bodies conduct audits in accordance with ISO 19011 or the equivalent. Voluntary schemes shall also ensure an efficient and timely exchange of audit information between them to support the effective preparation and conduct of the audit. The audit shall include at least the following elements:

- (a) identification of the activities undertaken by the economic operator which are relevant to the scheme's criteria;
- (b) identification of the relevant systems of the economic operator and its overall organisation with respect to the scheme's criteria and checks of the effective implementation of relevant control systems;
- (c) analysis of the risks which could lead to a material misstatement, based on the auditor's professional knowledge and the information submitted by the economic operator. That analysis shall take into consideration the overall risk profile of the activities, depending on the level of risk of the economic operator and the supply chain, above all at the immediately upstream and downstream stages, for example, for economic operators that handle material listed in Annex IX. The audit intensity or scope, or both, shall be adapted to the level of overall risk identified, also based on plausibility checks of the production capacity of a plant and the declared quantities of produced fuels; a verification plan which corresponds to the risk analysis and the scope and complexity of the economic operator's activities, and which defines the sampling methods to be used with respect to that operator's activities;
- (d) implementation of the verification plan by gathering evidence in accordance with the defined sampling methods, plus all relevant additional evidence, upon which the verifier's conclusion will be based;

- (e) a request to the operator for the provision of any missing elements of audit trails, an explanation of variations, or the revision of claims or calculations, before reaching a final verification conclusion;
 - (f) verification of the accuracy of data recorded by the economic operators or their representatives in the Union database;
3. Non-conformities identified during an audit shall be classified as critical, major and minor in accordance with the second, third and fourth subparagraphs.

The intentional violation of a voluntary scheme's standards such as fraud, irreversible non-conformity, or a violation that jeopardies the integrity of the voluntary scheme shall be considered to be a critical non-conformity. Critical non-conformities shall include, but are not limited to, the following:

- (a) non-compliance with a mandatory requirement of Directive (EU) 2018/2001, such as land conversion which contravenes Article 29(3), (4) and (5) of that Directive;
- (b) fraudulent issuance of a proof of sustainability or self-declarations, for example, intentional duplication of a proof of sustainability to seek financial benefit;
- (c) deliberate misstatement of raw material description, falsification of GHG values or input data as well as the deliberate production of wastes or residues, for example, the deliberate modification of a production process to produce additional residue material, or the deliberate contamination of a material with the intention of classifying it as a waste;

Failure to comply with a mandatory requirement of Directive (EU) 2018/2001, where the non-conformity is potentially reversible, repeated and reveals systematic problems, or aspects that alone, or in combination with further non-conformities, may result in a fundamental system failure, shall be considered to be a major non-conformity. Major non-conformities shall include, but are not limited to, the following:

- (a) systematic problems with mass balance or GHG data reported for example, incorrect documentation is identified in more than 10% of the claims included in the representative sample;
- (b) the omission of an economic operator to declare its participation in other voluntary schemes during the certification process;
- (c) failure to provide relevant information to auditors for example, mass balance data and audit reports.

A non-conformity that has a limited impact, constitutes an isolated or temporary lapse, is not systematic and does not result in a fundamental failure if not corrected, shall be considered to be a minor non-conformity.

4. The consequences of non-conformities for economic operators shall be the following:
- (a) in the case of critical non-conformities, economic operators applying for certification shall not be issued a certificate. Economic operators may re-apply for certification after the lapse of a fixed period of time, determined by the voluntary scheme. Critical non-conformities identified during surveillance or re-certification audits, or through a voluntary scheme's internal monitoring or

- complaints process, shall lead to the immediate withdrawal of the economic operator's certificate;
- (b) in the case of major non-conformities, economic operators applying for certification shall not be issued a certificate. Major non-conformities identified during surveillance or re-certification audits, or through a voluntary scheme's internal monitoring or complaints process, shall lead to the immediate suspension of the economic operator's certificate. Where economic operators do not provide a remedy for any major non-conformities within 90 days from notification, the certificate shall be withdrawn;
 - (c) in the case of minor non-conformities, voluntary schemes may define the time period for their resolution, not exceeding 12 months from their notification and the date of next surveillance or re-certification audit.
5. Voluntary schemes shall only certify economic operators where they comply with all the following requirements:
- (a) have a documentation management system;
 - (b) have an auditable system for safekeeping and reviewing all evidence related to the claims they make or rely on;
 - (c) keep all evidence necessary to comply with this Regulation and Directive (EU) 2018/2001 for a minimum of 5 years, or longer where it is required by the relevant national authority;
 - (d) accept responsibility for preparing any information related to the auditing of such evidence.
6. The audit reports and summary audit reports or certificates drawn up or issued by a certification body within the framework of a voluntary scheme shall at least include the elements set out in Annex II.

Article 11

Auditor competence

1. A certification body performing audits on behalf of a voluntary scheme shall be accredited to ISO 17065, and to ISO 14065 where it performs audits on actual GHG values.

Certification bodies shall also be accredited by a national accreditation body and in accordance with Regulation (EC) 765/2008, or recognised by a competent authority to cover the scope of Directive (EU) 2018/2001 or the specific scope of the voluntary scheme. Where no use of such accreditation or recognition is made, Member States may allow voluntary schemes to use a system of independent oversight that covers the scope of Directive (EU) 2018/2001 or the specific scope of the voluntary scheme, for the territory of that Member State. The Commission shall review the effectiveness of the systems described in this paragraph with regard to their suitability to ensure adequate surveillance and issue guidance if appropriate.

The certification body shall select and appoint the audit team in accordance with ISO 19011, taking into account the competence needed to achieve the objectives of the audit.

2. The audit team shall have the competence, experience and the generic and specific skills necessary for conducting the audit taking into account the scope of the audit. Where there is only one auditor, the auditor shall also have the competence to perform the duties of an audit team leader applicable for that audit. The certification body shall ensure that the certification decision is taken by a technical reviewer that was not part of the audit team.
3. Auditors shall:
 - (a) be independent of the activity being audited, except for audits concerning Article 29(6), point (a), and Article 29(7), point (a) of Directive (EU) 2018/2001, for which first or second party auditing may be carried out up to the first gathering point;
 - (b) be free from conflict of interest;
 - (c) have the specific skills necessary for conducting the audit related to the scheme's criteria, including:
 - (i) for land-use criteria laid down in Article 29, points (2) to (9) of Directive (EU) 2018/2001 as well as the low ILUC risk certification methodology set in Chapter V and Annex VIII of this implementing regulation: experience in agriculture, agronomy, ecology, natural science, forestry, silviculture or a related field, including specific technical skills needed to verify compliance with the highly biodiverse grasslands and highly biodiverse forest criteria;
 - (ii) for GHG emissions saving criteria laid down in Article 29(10) of Directive (EU) 2018/2001 or when determining the GHG emissions of recycled carbon fuels and renewable fuels of non-biological origin in accordance with the methodology set out in Article 28(5) of Directive (EU) 2018/2001: a minimum of 2 years' experience in fuel life-cycle assessment, and specific experience in auditing GHG emission calculations in accordance with the methodology set out in Annexes V and VI to Directive (EU) 2018/2001, that is relevant for the type of audits to be conducted by the individual auditor. Depending on the specific scope of the audit, that experience shall be complemented by experience in agriculture, agronomy, ecology, forestry, natural science, silviculture, engineering, energy management or a related field. Where the scope of the audit includes verifying soil organic carbon levels, for the purpose of applying the emission saving credit for soil carbon accumulation, technical knowledge on soil science shall also be required;
 - (iii) for the chain of custody criteria laid down in Article 30, points (1) to (2) of Directive (EU) 2018/2001: experience in mass balance systems, supply chain logistics, bookkeeping, traceability, and data handling or a related field;
 - (iv) for group auditing: experience in conducting group audits.
4. Voluntary schemes shall set up training courses for auditors, covering all aspects relevant to the scope of the scheme. The courses shall include an examination to demonstrate the participants' compliance with the training requirements in the technical area or areas in which they are active. Auditors shall participate in the training courses, before performing audits on behalf of the voluntary scheme.

5. Auditors shall undertake refresher training courses on a regular basis. Voluntary schemes shall implement a system to monitor the training status of active scheme auditors. Voluntary schemes shall also provide guidance to certification bodies, as required, on aspects that are relevant to the certification process. That guidance may include updates to the regulatory framework or relevant findings from the voluntary scheme's internal monitoring process.

Article 12

Group auditing

1. Voluntary schemes may perform group auditing only in the following cases:
 - (a) for producers of raw material, in particular smallholders, producer organisations and cooperatives as well as waste collectors;
 - (b) for compliance with the scheme's land-related criteria, where the areas concerned are in proximity and have similar characteristics, such as climatic or soil conditions;
 - (c) for the purpose of calculating GHG savings, where the units have similar production systems and types of crops.

Economic operators included in a group audit shall designate a group manager. First gathering points, producer organisations or cooperatives, may also act as group managers, representing the economic operators included in the group audit.

2. Group auditing may carry out verification for all units concerned on the basis of sample of units. Voluntary schemes shall set out guidelines on the implementation of a group auditing approach, including at least the following elements:
 - (a) role of the group manager, covering specifications for the internal management system and internal group inspection procedures;
 - (b) determination of sample size;
3. A sample consisting of a number of group members equivalent to the square root of the total number of group members shall be audited individually at least once a year. That number shall be increased in the event of a higher level of risk. Voluntary schemes shall establish criteria for determining the general level of risk in the areas and the consequences of that level of risk for the auditing approach. The sample shall be representative of the whole group and determined using a combination of risk and random selection. Random selection shall represent at least 25% of the sample. The producer of raw material selected for the audit shall vary from year to year.
4. Group auditing shall be performed on-site, unless it is considered that desk audits are able to provide the same level of assurance as an on-site audit. Voluntary schemes shall set out the evidence required to allow for desk audits. Self-declarations from economic operators shall not be considered to be sufficient evidence. Audits of the group manager shall always be conducted on-site.
5. Critical or major non-compliance of individual group members identified during an audit shall be addressed according to process set out under paragraph 4 (a) and (b) of Article 10, as applicable. If a critical or major non-compliance is identified in the whole initial group sample, then an additional sample of group members of the same size shall also be audited. Systemic non-compliance of the majority of group

members across the whole sample shall lead to the suspension or withdrawal of the whole group certification, as applicable.

Article 13

Auditing of waste and residues

1. Voluntary schemes and the certification bodies working on their behalf shall apply the requirements for the verification of the supply chain of biofuels and bioliquids made from waste and residues set out in paragraphs 2 to 7, and for biomass fuels the requirements set out in paragraphs 2 to 5.
2. The whole supply chain shall be covered starting from its origin, that is to say, the economic operator where the waste or residue material arises;
3. All economic operators shall be audited individually. However, group auditing approaches may be carried out at the origin of the supply chain, for example, restaurants and waste or residue producers;
4. The frequency and intensity of the auditing procedure shall reflect the overall level of risk. Voluntary schemes shall define clear rules, commensurate to the level of specific risk associated with the type of residues or waste. For biofuels and bioliquids, points of origin supplying five or more tonnes per month of waste or residue listed in part A and B of Annex IX to Directive (EU) 2018/2001 shall be subject to an on-site audit. The on-site audit may be based on a sample where a group auditing approach is taken.
5. Collection points shall be required to submit a list of all points of origin that have signed a self-declaration to the auditor prior to the audit of the collection point. The amount of waste generated monthly or annually shall be clearly stated on the self-declaration. Evidence or documents for all individual deliveries shall be available at the collection point and verified by the auditor, including waste disposal agreement, delivery slips and self-declarations;
6. The auditor shall verify the existence of a number of points of origin equivalent to at least the square root of all the points of origin on the list. The verification may be performed remotely, unless there is doubt concerning the existence of the point of origin or where it meets the criteria for on-site audit pursuant to point (4). Auditors shall check deliveries of sustainable material to downstream recipients by verifying the copies of the sustainability declaration issued by the collecting point to recipients of those deliveries, based on a random and risk-based sample;
7. The certification body shall carry out a mandatory surveillance audit within 6 months after the first certification. For collection points and traders that deal with both waste and residues and with virgin materials such as vegetable oils, an additional surveillance audit shall be conducted 3 months after the first certification audit, covering the first mass balance period. Where a collection point has multiple storage sites, the auditor shall audit the mass balance of every storage site.
8. If there are reasonable doubts about the nature of the declared waste and residues, the auditor is authorised to take samples and to have them analysed by an independent laboratory.

Article 14

Auditing of actual GHG emission calculations

1. Voluntary schemes shall require economic operators to provide auditors with all the relevant and up to date information concerning the calculation of actual GHG emissions, in advance of the planned audit. That information shall include input data and any other relevant evidence, information on the emission and conversion factors and standard values applied and their reference sources, GHG emission calculations and evidence relating to the application of GHG emission saving credits.
2. The auditor shall record the emissions occurring at the audited site in the audit report. For the processing of final biofuels, the auditor shall record the emissions after allocation and the achieved savings. Where the emissions deviate significantly from typical values or calculated actual values of emissions savings are abnormally high, reasons shall be given for the deviations in the report. Voluntary schemes shall establish procedures requiring certification bodies to immediately inform them of such deviations.
3. Auditors shall verify that the estimate of emissions saving from capture and replacement of CO₂ is limited to emissions avoided through the capture of CO₂ of which the carbon originates from biomass and which is used to replace fossil-derived CO₂. That verification requires access to the following information:
 - (a) the purpose for which the captured CO₂ is used;
 - (b) the origin of the CO₂ that is replaced;
 - (c) the origin of the CO₂ that is captured;
 - (d) information on emissions due to capturing and processing of CO₂.

For the purposes of point (b), economic operators using captured CO₂ may state how the CO₂ that is replaced was previously generated and declare, in writing, that emissions equivalent to that quantity are avoided as a consequence of the replacement. That evidence shall be considered sufficient to verify compliance with the requirements of Directive (EU) 2018/2001 and the avoidance of emissions.
4. Economic operators may only make actual GHG values claims after their capability to conduct actual value calculations has been verified by an audit.
5. Upon request, voluntary schemes shall provide access to actual GHG calculations certified under their voluntary scheme together with the respective audit reports to the Commission and the national authorities responsible for supervision of the certification bodies.

Article 15

Audits of mass balance systems

Voluntary schemes shall ensure that economic operators provide auditors with all mass balance data in advance of the audit.

During the initial audit, carried out before an economic operator is allowed to participate in a scheme, the auditor shall check the existence and functioning of the mass balance system.

During subsequent annual audits, the auditor shall check at least the following elements:

- (a) list of all sites, that are under the scope of certification. Each site shall have its own mass balance records;

- (b) list of all inputs per site and the description of material handled and details of all suppliers;
- (c) list of all outputs per site and the description of material handled and details of all customers;
- (d) conversion factors applied, in particular in the case of installations processing waste or residues to ensure that the process is not modified to produce more waste or residue material;
- (e) any discrepancies between book keeping system and inputs, outputs and balances;
- (f) allocation of sustainability characteristics;
- (g) equivalence of the sustainability data and the physical stock at the end of the mass balance period.

Article 16

Auditing of natural and non-natural highly-biodiverse grassland

1. Auditors verifying whether land is highly biodiverse grassland as referred to in Article 29(3), point (d), of Directive (EU) 2018/2001 shall verify whether the land is or has been highly biodiverse grassland at any moment since January 2008. In their system documents, voluntary schemes shall inform the economic operators about the type of evidence, which their certification bodies may accept to prove historical area status since January 2008.
2. Where land remains grassland, or would have remained grassland in the absence of human intervention, and is located in any of the geographic ranges listed in Regulation (EU) No 1307/2014, it shall be considered as natural, highly biodiverse grassland.
3. For land that is located outside the areas referred to in paragraph 2, the auditor shall assess whether the grassland maintains, or would have maintained in the absence of human intervention, the natural species composition and ecological characteristics and processes. Where that is the case, the land shall be considered as being, or having been, natural, highly biodiverse grassland. Where grassland has already been converted to arable land and it is not possible to assess the characteristics of the land itself through information available from the national competent authorities or satellite imagery, the auditor shall consider such land as not having been highly biodiverse grassland at the moment of conversion.
4. Where the land ceased, or would have ceased in the absence of human intervention, to be grassland, is species-rich and not degraded and has been identified as being highly biodiverse by the relevant competent authority, then the land shall be considered as non-natural, highly biodiverse grassland.
5. Any land that is, or was, non-natural, highly biodiverse grassland in or after January 2008 may be used for fuels production on condition that harvesting of the raw material is necessary to preserve the status of the grassland as highly biodiverse grassland and that current management practices do not present a risk of causing biodiversity decline of the grassland.

Economic operators shall provide evidence that the harvesting of the raw material is necessary to preserve the highly biodiverse grassland status and that management practices do not present a risk of causing biodiversity decline of the grassland.

Where economic operators are unable to provide the evidence referred to in the second subparagraph, they shall provide evidence that they have been granted permission by the relevant competent authority, or designated agency, to harvest the raw material in order to preserve the highly biodiverse grassland status.

The technical assessment of the land shall be conducted by a qualified specialist who is external and independent of the activity being audited and free from conflict of interest, and who may be part of the audit team. The assessment and its result shall be reviewed as part of the audit.

Article 17

Supervision by the Member States and the Commission

1. Voluntary schemes shall require economic operators participating in the scheme as well as certification bodies conducting audits under the scheme to cooperate with the Commission and the competent authorities of the Member States, including granting access to the premises of economic operators where requested as well as making available to the Commission and the competent authorities of the Member States all information needed to fulfil their tasks under Directive (EU) 2018/2001. For those purposes, certification bodies shall also be required to:
 - (a) provide the information needed by Member States to supervise the operation of certification bodies pursuant to Article 30(9) of Directive (EU) 2018/2001;
 - (b) provide the information required by the Commission to comply with Article 30(10) of Directive (EU) 2018/2001;
 - (c) verify the accuracy of information entered into the Union database or relevant national database pursuant to Article 28(4) of Directive (EU) 2018/2001.
2. In the context of the supervision provided for in Article 30(9) of Directive (EU) 2018/2001, Member States shall establish procedures allowing certification bodies, regardless of whether their head office is located in a Member State or in a third country, to register for supervision and for carrying out the supervision.
3. Member States shall exchange information and share best practices on how to supervise the operation of the certification bodies in the context of a formal cooperation framework. Where certification bodies carry out the certification of raw materials, biofuels, bioliquids, biomass or other fuels in more than one Member State, the Member States concerned shall set up a common framework to supervise such certification bodies, including appointing one Member State as lead audit supervisor.
4. The lead audit supervisor shall be responsible, in cooperation with the other Member States concerned, for consolidating and sharing information about the outcome of the supervision of the certification bodies.
5. Member States shall to the extent possible establish cooperation frameworks with third countries for the supervision of certification bodies auditing in their territories, where relevant, in order to ensure the same level of information flow and the

application of audit supervision standards to certification bodies operating in third countries.

6. Where a Member State has reasonable doubts about the ability of a specific certification body, located in the Union or in a third country, to carry out its audit work, it shall share that information with the other Member States, the Commission and the voluntary scheme under which the certification body operates. The voluntary scheme concerned shall immediately investigate the case. Upon completion of its investigation, the voluntary scheme shall inform the Member States and the Commission of the outcome of the investigation and of any corrective actions taken.
7. Economic operators and certification bodies failing or unwilling to comply with the requirements set out in paragraphs 1 to 6 of this Article shall be respectively excluded from participating in and conducting audits under voluntary schemes. Voluntary schemes shall submit annual activity reports to the Commission pursuant to Article 30(5) of Directive (EU) 2018/2001. The structure and content of the annual activity reports provided for in Article 30(5) of Directive (EU) 2018/2001 shall follow the minimum requirements set out in Annex III to this Regulation. The main report shall not contain confidential information and shall be published in full. Data shall be supplied separately in a format to be determined by the Commission.
8. Voluntary schemes shall notify the Commission without delay, about all substantial changes to the content of the scheme that might affect the basis for the recognition of the scheme. Such changes may include any of the following:
 - (a) changes to the mandatory sustainability criteria covered by the scheme;
 - (b) extension of the scope of the scheme beyond what is described in the Implementing act, recognising the scheme;
 - (c) extension of the scope of feedstock or biofuels referred to in the original scheme documents where the risk profile of added feedstock differs, for example, with the inclusion of wastes or residues, or where specific procedures are applied;
 - (d) changes to the mass balance rules;
 - (e) changes to auditing procedures or requirements for auditors;
 - (f) changes in, or extension of the GHG calculation methodology;
 - (g) any other change that could be considered to affect the basis for the recognition of the scheme.

Chapter IV. Specific rules on the implementation of the mass balance system, the Union database and the establishment of GHG emissions and biological fraction of fuels

Article 18

Traceability and Union database

1. The sustainability and GHG emissions saving characteristics and other information describing raw materials or fuel, required for the purposes of Directive (EU) 2018/2001, together with transaction data shall be thoroughly documented and

passed on from economic operator to economic operator through the supply chain. Such information shall include data to be transmitted through the whole supply chain as well as data that is specific for the individual transaction, as described in Annex I.

2. The information to be transmitted through the supply chain shall be included in the documentation accompanying the physical shipments of raw material or fuels. It shall also be included in the Union database as soon as this starts operation, in the case of liquid and gaseous transport fuels that are eligible for being counted towards the numerator referred to in Article 27(1), point (b) of Directive (EU) 2018/2001, or that are taken into account for the purposes referred to in Article 29(1), points (a), (b) and (c), first subparagraph, of that Directive.
3. For the purpose of tracing consignments of liquid or gaseous fuels in an interconnected infrastructure and subject to the same mass balancing system, the sustainability and GHG emissions saving characteristics and the other information as described in paragraph 1 shall be registered in the Union database at the first entry point and registered out as consumed at the point of final consumption. If gaseous fuels are withdrawn from an interconnected infrastructure and further transformed into gaseous or liquid fuels, the point of final consumption is considered to be the point of final consumption of the final gaseous or liquid fuels. In such a case, all intermediary stages from the withdrawal of the gaseous fuels from the interconnected infrastructure until the point of final consumption of the final gaseous or liquid fuels have to be registered in the Union Database.

Article 19

Implementation of the mass balance system

1. Voluntary schemes shall require the economic operators participating in the scheme to use a mass balance system, in accordance with Article 30(1) of Directive (EU) 2018/2001 that allows the mixing of raw material or fuels that differ in their sustainability and GHG emissions saving characteristics.
2. Voluntary schemes shall apply the following rules in the implementation of the mass balance system:
 - (a) raw material or fuels shall only be considered to be part of a mixture if they are mixed in a container, at a processing or logistical facility, or at a transmission and distribution infrastructure or site;
 - (b) different raw materials shall only be considered to be part of a mixture if they belong to the same product group, except where the raw material is mixed for the purpose of further processing;
 - (c) raw materials or fuels shall only be considered to be part of a mixture if they are physically mixed unless they are physically identical or belong to the same product group. Where raw materials or fuels are physically identical or belong to the same product group, they must be stored in the same interconnected infrastructure, processing or logistical facility, transmission and distribution infrastructure or site;
 - (d) fuels introduced into a logistical facility or a transmission or distribution infrastructure such as the gas grid or a pipeline network for liquid fuels, stored in LNG or other storage facilities shall only be considered to be part of a mixture pursuant to point (c) where that infrastructure is interconnected;

- (e) economic operators shall be required to keep separate mass balances for raw materials and fuels which cannot be considered part of a mixture. Transfer of information about the sustainability and GHG emissions saving characteristics and sizes between different mass balances shall not be allowed. Pursuant to subparagraphs (a) to (c), raw materials inside biofuels, bioliquids or biomass fuels production facilities are considered to be part of a mixture. Therefore, the requirement to keep separate mass balances shall not apply to such facilities and a single mass balance can be kept;
- (f) the mass balance system shall include information about the sustainability and the GHG characteristics and quantities of raw material and fuels, including information about the quantities of raw material and fuels for which no sustainability or GHG characteristics have been determined;
- (g) where a consignment of raw material or fuel is delivered to an economic operator that is not participating in a voluntary scheme or national scheme, the delivery shall be reflected in the mass balance by withdrawing an equivalent quantity of raw material or fuel. The type of fuel to be booked out shall correspond to the physical nature of the raw material or fuel delivered;
- (h) where a consignment of fuel is used to comply with an obligation placed on a fuel supplier by a Member State, it shall be considered to be withdrawn from the mixture of the mass balance;
- (i) where biofuels, bioliquids or biomass fuels are blended with fossil fuels, the information about the sustainability and GHG emissions saving characteristics assigned to the blend shall correspond to the physical share of the biofuel, bioliquids or biomass fuels in the blend. For biofuels and bioliquids, Member States may further check the veracity of this information in accordance with Article 23;
- (j) the sustainability and GHG emissions saving characteristics of a consignment of raw material or fuel shall be considered as a set. Where consignments are withdrawn from a mixture, any of the sets of sustainability characteristics may be assigned to them provided that the sets of sustainability and GHG emissions saving characteristics are not split and the mass balance is achieved over the appropriate period of time;
- (k) where relevant for transparency reasons, the mass balance system shall include information on whether support has been provided for the production of the fuel or fuel precursor, and if so, the type of support;
- (l) the appropriate period of time for achieving the mass balance shall be 12 months for producers of agricultural biomass and forest biomass and first gathering points sourcing only agricultural biomass and forest biomass, and 3 months for all other economic operators. The start and end of the period shall be aligned with the calendar year or, where applicable, the four quarters of the calendar year. As alternatives to the calendar year, economic operators may also use either the economic year that they use for bookkeeping purposes or another starting point for the mass balance period, provided that the choice is clearly indicated and applied consistently. At the end of the mass balance period, the sustainability data carried forward should be equivalent to the physical stock in the container, processing or logistical facility, transmission and distribution infrastructure or site;

- (m) voluntary schemes shall specify the minimum set of sustainability and GHG emissions saving characteristics, in accordance with Annex I, that need to be passed down the supply chain as well as other information necessary to trace the consignments. In case of liquid or gaseous fuels introduced into an interconnected infrastructure and subject to the same mass balancing system, the respective sustainability and GHG emissions saving characteristics shall be assigned to the consignments entering and exiting the interconnected infrastructure. The voluntary schemes shall also ensure that economic operators correctly enter all relevant information in the Union database.

Article 20

Determining the GHG emissions of biofuels, biomass fuels and bioliquids

1. Voluntary schemes shall require economic operators to apply the methodology set out in Article 31 of Directive (EU) 2018/2001 when determining the GHG emissions of biofuels, bioliquids and biomass fuels.
2. For the purpose of determining the GHG emissions of biofuels, bioliquids and biomass fuels referred to in paragraph 1, the following specific rules shall apply:
 - (a) in taking into account the GHG emissions of inputs, where standard values of emission factors are used, the ones set out in Annex IX shall be applied;
 - (b) in determining the emissions from the extraction or cultivation of raw material, the methodology set out in Annex VII shall be applied;
 - (c) in determining the emission savings from soil carbon accumulation via improved agricultural management (e_{sca}), the methodology set out in Annex V shall be applied.
3. EU Member States may submit updated values of the emission factors of their national electricity mix to be considered by the Commission for updating the respective emission factors in Annex IX. After assessing these updated values, the Commission may accept them or alternatively provide the Member State concerned with a justification of the reasons for not doing so. Accepted updated figures will be made available in the section devoted to voluntary schemes and certification on the Commission's EUROPA website.
4. Emission savings from CO₂ capture and geological storage (Eccs) may only be taken into account where there is valid evidence that CO₂ was effectively captured and safely stored in accordance with Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide. Where the CO₂ is geologically stored, voluntary schemes shall verify the evidence provided on the integrity of the storage site and the volume of the CO₂ stored. Where a third party carries out the transport or geological storage, proof of storage may be provided through the relevant contracts with and invoices of that third party.

Article 21

Specific rules for waste and residues

1. Voluntary schemes shall apply the specific rules and exemptions for waste and residues set out in Directive (EU) 2018/2001 only if such raw material falls within the scope of the respective definitions in Article 2 of that Directive.

2. Whether a raw material is to be considered as a waste or residue shall be determined at the point in the supply chain where the material originates. Raw materials shall not be considered as a waste or residue where they or the process for their production have been deliberately modified for the purpose of declaring those materials as wastes or residues.
3. The waste and residues listed in Annex IV shall not be considered as waste or residues where they have been deliberately modified to be declared as a waste or residue.
4. Voluntary schemes shall provide economic operators with instructions and support on how they assess whether raw materials are considered waste and residues. Economic operators shall keep and present to auditors the underlying evidence for their assessments. Voluntary schemes shall establish specific rules for auditing such evidence.
5. For the purposes of complying with the requirements of Article 29(2) of Directive (EU) 2018/2001, voluntary schemes shall verify that the harvesting of agricultural waste and residues does not have a negative impact on the soil quality and the soil carbon stock. Such verification shall ensure that a relevant set of essential soil management or monitoring practices is applied on the land to promote soil carbon sequestration and soil quality, in accordance with Annex VI.
6. The application of the practices, referred to in paragraph 5, may be required and monitored either at national level or at the level of economic operators. At national level, voluntary schemes shall verify that the country of origin, whether it is a Member State or a third country, requires the application of essential soil management practices to address the potential impact of harvesting such residues on soil quality and soil carbon, and has in place mechanisms to monitor and enforce the implementation of those practices. At the level of economic operators, voluntary schemes shall verify that such management practices are effectively applied and monitored at the level of the farm holdings supplying the biomass. Where group auditing is used, voluntary schemes shall verify that those practices are applied by all the economic operators covered by the group audit.

Article 22

Specific rules for recycled carbon fuels and renewable fuels of non-biological origin

Voluntary schemes shall require economic operators participating in the scheme to apply the methodology set out in Article 28(5) of Directive (EU) 2018/2001 when determining the GHG emissions of recycled carbon fuels and renewable fuels of non-biological origin.

Article 23

Specific rules for co-processing

1. Voluntary schemes shall require economic operators participating in the scheme to apply the methodology set out in delegated acts adopted pursuant to Article 28(5) of Directive (EU) 2018/2001 when determining the share of biofuel, and biogas for transport, resulting from biomass being processed with fossil fuels in a common process.

2. Economic operators shall be required to thoroughly document the amounts and types of biomass entering the process as well as the amounts of biofuel and biogas that are produced from that biomass. Claims shall be substantiated with evidence including the results of control tests.
3. The frequency for carrying out the control tests referred to in paragraph 2 shall be determined by taking into account the complexity and variability of the key parameters of the co-processing, in such a way as to ensure that at any time the share of biofuels and biogas claimed reflect their actual shares.
4. In conducting audits, particular emphasis shall be placed on verifying the consistency between the amounts of biomass entering the process and the amounts of biofuel and biogas that are recorded as being produced from the biomass. For that purpose, the evidence supplied by the economic operators shall be thoroughly verified and the plausibility of claims shall be checked and compared with industry standards. In carrying out such assessment, particular attention shall be paid to the testing method applied by the economic operator, the system of additional controls put in place, and the calculation method used to incorporate the results of all tests into the calculation of the final share of biofuels and biogas. Auditors shall treat as a major non-compliance any identified deviation in the testing method or inaccuracy in incorporating the results of such tests into the final calculation by the economic operator.

Chapter V. Specific rules on compliance with the requirements on low ILUC-risk certification

Article 24

Specific requirements for low ILUC-risk certification

1. Voluntary schemes shall require economic operators seeking to receive a low ILUC-risk certification to submit an application to a certification body having the competence to deliver such certification. Upon acceptance of the application, the economic operator shall submit a management plan containing the minimum information set out in Annex VIII. Where more than one additionality measure is applied, all additionality measures shall be documented in the management plan.
2. The certification body shall conduct an on-site baseline audit to verify the content of the management plan, as well as to establish and document the dynamic yield baseline.
3. As part of the baseline audit, the certification body shall assess whether the additionality measure(s), are expected to lead to an increase in yields in accordance with Article 2(5) of Delegated Regulation (EU) 2019/807 and compliance with the sustainability criteria set out in Directive (EU) 2018/2001.
4. The auditors carrying out the baseline audit on behalf of the certification body shall indicate in the baseline audit report any sustainability issues, stemming from the implementation of the additionality measures, which may potentially constitute a breach of the national or regional legal framework or do not comply with local specific conditions. Any sustainability issues shall be included in the annual audits.

5. Voluntary schemes shall issue low ILUC-risk certificates in accordance with the requirements on minimum content set out in point 4 of Annex VIII, and shall publish a list of those certificates on their website.
6. In the case of applications including additionality measures to be applied after certification, the baseline audit, the results of the additionality test, and the dynamic yield baseline shall be valid for 10 years. In the case of a perennial crops, an economic operator can choose to delay the start of the 10-year validity period by up to 2 years in the case of operational additionality measures or up to 5 years in the case of replanting.
7. Where the additionality measures have been already applied before certification, the baseline audit, the results of the additionality test, and the dynamic yield baseline shall be valid for 10 years from the starting year of the implementation of the additionality measure. In such a case, the baseline may be accepted for additionality measures taken not more than 10 years before, as long as sufficient data and documentary evidence is available providing the same level of assurances of a situation where the baseline audit was conducted before the implementation of the additionality measure(s).
8. Only additional biomass that has been produced after the low ILUC risk certification has been granted shall be eligible for a low ILUC-risk declaration. The actual amount of annual additional biomass declared by the economic operator shall be subject to annual audits.
9. The implementation of the management plan shall be subject to annual audits to verify that the content of the management plan is implemented correctly and that the quantities of additionally produced and claimed biomass for the purposes of low-ILUC certification, against the dynamic yield baseline, are correct.
10. An economic operator may apply more than one additionality measure over the years. Where two or more additionality measures are applied together in the same year on the same delineated plot of land, the additional biomass produced as a result shall be evaluated against the same dynamic yield baseline. The additional biomass may be certified as low ILUC-risk under the same certificate.
11. Where two or more additionality measures are applied at different times on the same delineated plot of land, the economic operator may choose either of the following options:
 - (a) update the dynamic yield baseline and the additionality test to create a new baseline valid for another 10 years;
 - (b) keep the original validity period of 10 years for the dynamic yield baseline and the additionality test following the initial certification year.

Article 25

Specific requirements for proving additionality

1. For the purposes of certifying biofuels, bioliquids, or biomass fuels as low ILUC-risk, voluntary schemes and certification bodies working on their behalf shall verify that economic operators have applied measures effectively increasing feedstock productivity beyond a business-as-usual scenario. Where such measures are applied on abandoned or severely degraded land or by small holders, the baseline audit shall verify that economic operators comply with the appropriate requirements of

Delegated Regulation (EU) 2019/807. In all other situations, proof of additionality shall be provided by carrying out a financial attractiveness or barrier analysis assessment.

2. In order to comply with the requirements set out in Article 5(1) (a) of Delegated Regulation (EU) 2019/807 regarding additionality measures, proposed investments shall either pass a financial attractiveness test or non-financial barrier test in accordance with Annex VIII.
3. Measures shall be eligible for the purpose of low ILUC-risk certification only where either their financial attractiveness test is negative, that is to say a negative net present value (NPV) of the investment without the inclusion of a market premium, or they demonstrate the presence of non-financial barriers that can be overcome only because the biofuels, bioliquids and biomass fuels produced from the additional feedstock can be counted towards the targets for renewable energy set out in Directive (EU) 2018/2001.

Article 26

Production on unused, abandoned or severely degraded land

1. For the purpose of complying with the requirements for production on unused or abandoned land as defined in Article 2, points (2) and (3), of Delegated Regulation (EU) 2019/807, economic operators shall provide evidence that for a consecutive period of at least 5 years before the start of cultivation of the feedstock used for the production of biofuels, bioliquids and biomass fuels, the delineated areas were used neither for the cultivation of food and feed crops or other energy crops nor for the cultivation of any substantial amount of fodder for grazing animals.
2. For land to qualify as abandoned land, the economic operator shall provide additional evidence that food or feed crops were once grown on the delineated area before the consecutive period referred to in paragraph 1. That evidence shall also prove that the production ceased for biophysical or socioeconomic reasons.

Biophysical changes which adversely affect the growing of food and feed crops may include, but are not limited to, the following events:

- (a) an increased frequency of severe weather events such as droughts, storms or floods;
 - (b) changes in seasonal temperature patterns which affect plant phenology;
 - (c) increased pests and diseases;
 - (d) damage to irrigation systems;
 - (e) damage to soil such as severe salination, depletion of organic matter and erosion rendering them “severely degraded”.
3. Socioeconomic factors adversely affecting the economic viability of production, leading to the abandonment of the land may include, but are not limited to, the following events:
 - (a) changes in market prices: (for example increased input or labour costs, or both, or reductions in the price fetched by finished crops);
 - (b) labour becoming unavailable (for example as a result of migration);

- (c) failure of the supply chain (for example through the closure of a local market or a transport link);
 - (d) disputes about ownership (for example in the context of inheritance);
 - (e) political instability (for example confiscation or nationalization of the land).
4. An application for the certification of feedstock as having been produced on severely degraded land, as defined in part C, point (9) of Annex V to Directive (EU) 2018/2001, shall be accompanied by the following soil test results, as applicable:
- (a) in the case of salinisation, the results of testing by a qualified agronomist of the electroconductivity of the soil using the saturated paste method;
 - (b) in the case of low soil organic matter, results from an appropriate number of samples of soil from the delineated plot, determined by a qualified agronomist, using the dry combustion method;
 - (c) in the case of severe erosion, at least 25% of the delineated plot shall have been eroded as determined by a qualified agronomist, supported by photographs.
5. Where a delineated area qualifies as unused land, it shall pass an additionality test as set out in point (4) of Annex VIII in order to be eligible for low ILUC-risk certification. Delineated areas that qualify as abandoned or severely degraded land shall not be required to pass the additionality test in order to be eligible for low ILUC-risk certification. In the case of production on unused, abandoned or degraded land, the dynamic yield baseline shall be set to zero with no trend line.

Article 27

Determining additional biomass for yield increase measures

1. The ‘additional biomass’ eligible for low ILUC-risk certification shall be the additional amount of feedstock produced in a clearly delineated area compared to the dynamic yield baseline as a direct result of applying an additionality measure.
2. The dynamic yield baseline shall be established by setting out a starting point, based on historical yield from the delineated plot, and a trend line based on global yield trends for the feedstock, which shall be determined in accordance with the principles set out in Annex VIII.
3. The actual yield for a delineated plot after implementation of the additionality measure shall be compared against the baseline referred to paragraph 2. The difference between the actual yield and the dynamic yield baseline is the additional feedstock eligible to be claimed as low ILUC-risk.

Chapter VI. Final provisions

Article 28

Entry into force and application

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

It shall apply from 18 months after its entry into force.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission
The President
Ursula von der Leyen*