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**COMMUNICATION FROM THE COMMISSION**

**on voluntary schemes and default values in the EU biofuels and bioliquids sustainability scheme**

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#### 1. INTRODUCTION

The EU introduced in 2009 the most comprehensive and advanced binding sustainability scheme of its kind anywhere in the world. The Renewable Energy Directive<sup>1</sup> sets out these sustainability criteria for biofuels and bioliquids. For biofuels, corresponding criteria are set out in the Fuel Quality Directive.<sup>2</sup> They apply to biofuels/bioliquids produced in the EU and to imported biofuels/bioliquids. Member States are responsible for making sure that the sustainability criteria are met by economic operators when biofuels/bioliquids are taken into account for the purposes<sup>3</sup> listed in the Renewable Energy Directive, the Fuel Quality Directive, the Community guidelines on state aid for environmental protection<sup>4</sup> and the Regulation on CO<sub>2</sub> from passenger cars.<sup>5</sup>

The sustainability scheme contains two tools designed to reduce the administrative burden for economic operators:

- (1) The option to use recognised "voluntary schemes" or "bilateral and multilateral agreements" to show compliance with some or all of the sustainability criteria; and
- (2) The option to use "default values" laid down in the Directive to show compliance with the sustainability criterion on greenhouse gas emissions savings.

The Commission can decide that voluntary schemes or bilateral and multilateral agreements concluded by the Union contain accurate data concerning the sustainability criteria. The Commission can add default values for new biofuel/bioliquid production methods and update the existing values. This Communication sets out how the Commission intends to carry out its responsibilities leading to such decisions. It provides information for Member States, third countries, economic operators and non-governmental organisations.

Alongside this Communication, the Commission has adopted a Communication on the practical implementation of the EU biofuels and bioliquids sustainability scheme and on counting rules for biofuels<sup>6</sup> which aims to facilitate consistent implementation of the sustainability scheme.

This Communication uses the article numbers of the Renewable Energy Directive to refer to specific provisions. The table indicates where corresponding provisions for biofuels are found in the Fuel Quality Directive. References in this Communication to "the Directive" refer to the

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<sup>1</sup> Directive 2009/28/EC

<sup>2</sup> Directive 98/70/EC as amended by Directive 2009/30/EC

<sup>3</sup> Further detail is provided in [same reference as in the first footnote on the next page]

<sup>4</sup> Notice OJ 2008/C 82/01

<sup>5</sup> Regulation (EC) No 443/2009

<sup>6</sup> [Reference]

Renewable Energy Directive. Where the Fuel Quality Directive contains a corresponding provision, they apply equally to that Directive.

*Table: Articles and annexes referred to in this Communication*

<b>Renewable Energy Directive</b>	<b>Fuel Quality Directive</b>
Article 17: Sustainability criteria for biofuels and bioliquids	Article 7b: Sustainability criteria for biofuels
Article 18: Verification of compliance with the sustainability criteria for biofuels and bioliquids	Article 7c: Verification of compliance with the sustainability criteria for biofuels
Article 19: Calculation of the greenhouse gas impact of biofuels and bioliquids	Article 7d: Calculation of life cycle greenhouse gas emissions from biofuels
Article 24: Transparency platform <sup>7</sup>	<i>not included</i> <sup>8</sup>
Article 25: Committees	<i>not included</i>
Annex V: Rules for calculating the greenhouse gas impact of biofuels, bioliquids and their fossil fuel comparators	Annex IV: Rules for calculating life cycle greenhouse emissions from biofuels

## 2. VOLUNTARY SCHEMES

Economic operators must show Member States that the sustainability criteria relating to greenhouse gas savings, land with high biodiversity value and land with high carbon stock<sup>9</sup> have been met.<sup>10</sup> They can do this in three ways:

- (1) By providing the relevant national authority with data, in compliance with requirements that the Member State has laid down (a "national system")<sup>11</sup>;
- (2) By using a "voluntary scheme" that the Commission has recognised for the purpose<sup>12</sup>;
- (3) In accordance with the terms of a bilateral or multilateral agreement concluded by the Union with third countries and which the Commission has recognised for the purpose.<sup>13</sup>

<sup>7</sup> Online at: [http://ec.europa.eu/energy/renewables/transparency\\_platform\\_en.htm](http://ec.europa.eu/energy/renewables/transparency_platform_en.htm)

<sup>8</sup> Where documents are relevant for the Fuel Quality Directive, the Commission intends to publish them also on the Fuel Quality Directive's website.

<sup>9</sup> Article 17(2) - (5)

<sup>10</sup> Article 18(1)

<sup>11</sup> Article 18(3)

<sup>12</sup> Article 18(4) second subparagraph; Article 18(7)

<sup>13</sup> Article 18(4) first subparagraph; Article 18(7)

A voluntary scheme should cover some or all of the sustainability criteria in the Directive.<sup>14</sup> It may also cover other sustainability issues<sup>15</sup> that are not covered by the Directive's criteria.<sup>16</sup>

When the Commission receives a request for recognition of a voluntary scheme, it will assess whether the scheme fulfils the relevant requirements. The assessment procedure is set out below.

## **2.1. Assessment and recognition process**

For the assessment of schemes the Commission intends to:

- Start the assessment process upon receipt of a request for recognition;
- Assess a scheme regardless of its origin, whether e.g. developed by government or private organisations;
- Assess a scheme regardless of whether another recognised scheme already covers the same type of feedstocks, area, etc.;
- Assess a scheme against the sustainability criteria of the Directive<sup>17</sup> and the assessment and recognition requirements set out in the next section;
- Assess whether the scheme can also serve as a source of accurate data on other sustainability issues<sup>18</sup> not covered by the sustainability criteria in the Directive.<sup>19</sup>

If its assessment indicates that a scheme meets the sustainability criteria and the assessment and recognition requirements, the Commission intends to:

- Initiate the process<sup>20</sup> leading to the adoption of a Commission decision;
- Recognise the scheme regardless of its origin, whether e.g. developed by government or private organisations;
- Recognise the scheme regardless of whether another recognised scheme already covers the same type of feedstocks, area, etc.;
- As a general rule, recognise the scheme for the maximum permitted period of 5 years<sup>21</sup>;

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<sup>14</sup> Voluntary schemes are not expected to cover the criterion related to agricultural and environmental requirements and standards for EU farmers (Article 17(6)). Cf. Section 2.2 of the Communication on the practical implementation of the sustainability scheme.

<sup>15</sup> This could include the issues referred to in the second subparagraph of Article 18(4)

<sup>16</sup> Member States may not, however, use the inclusion of such other sustainability issues in a voluntary scheme as grounds for a refusal to take into account biofuels/bioliquids that are not covered by the scheme if those biofuels/bioliquids meet the sustainability criteria laid down in the Directive.

<sup>17</sup> Submitting organisations are requested to indicate for which criteria (or aspect related to it) in Articles 17(2) - (5) and for which information in the forthcoming Commission decision referred to in Article 18(3) third subparagraph they ask for recognition.

<sup>18</sup> Cf. Article 18(4) second subparagraph. Submitting organisations are requested to indicate whether such items are covered in the scheme they submit.

<sup>19</sup> Depending on feasibility, the Commission may not do this immediately, but intends to do this as soon as possible.

<sup>20</sup> Involving the Committee on the Sustainability of Biofuels and Bioliquids established under Article 25(2).

- Specify in the decision what part(s) of the Directive's sustainability criteria are covered by a scheme;
- Specify in the decision for what other sustainability issues, if any, the scheme contains accurate data<sup>22</sup>;
- Refer to the decision on the Commission's transparency platform once it is published in the Official Journal.

If the assessment indicates that a scheme does not meet the requirements, the Commission will inform the submitting organisation accordingly.

If a voluntary scheme, after it has been recognised, undergoes changes to its contents in a way that might affect the basis for the initial recognition, the Commission expects such changes be notified to the Commission. The Commission would then be able to assess whether the initial recognition remains valid.

## **2.2. Assessment and recognition requirements**

A voluntary scheme should cover, in part or whole, the sustainability criteria laid down in the Directive.<sup>23</sup> The scheme would need to include a verification<sup>24</sup> system for which requirements are laid down in this section.

### *2.2.1. Documentation management*

It should be a condition of participation in voluntary schemes that economic operators:

- have an auditable system for the evidence related to the claims they make or rely on;
- keep any evidence for a minimum of 5 years; and
- accept responsibility for preparing any information related to the auditing of such evidence.

The auditable system should normally be a quality system drawing on points 2 and 5.2 of Module D1 ('Quality assurance of the production process') of Annex II of the Decision on a common framework for the marketing of products.<sup>25</sup>

### *2.2.2. Adequate standard of independent auditing*

As a general rule, a voluntary scheme should ensure that economic operators are audited before allowing them to participate in the scheme.<sup>26</sup>

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<sup>21</sup> Article 18(6)

<sup>22</sup> At least in relation to those mentioned in Article 18(4) second subparagraph.

<sup>23</sup> *Ibid*, footnote [15]

<sup>24</sup> The terms "auditing"/"auditor" and "verification"/"verifier" are considered interchangeable in this Communication.

<sup>25</sup> Decision (EC) No 768/2008

<sup>26</sup> There may be exceptions to this rule due to the particular character of certain schemes (for example, schemes that consist only of standard values for greenhouse gas calculations); in these cases, this should be clearly explained when the scheme is put forward for recognition.

For such auditing, "group auditing" - in particular for smallholder farmers, producer organisations and cooperatives - can be performed. In such cases, verification for all units concerned can be performed based on a sample of units<sup>27</sup>, where appropriate taking into account a relevant standard developed for this purpose.<sup>28</sup> Group auditing for compliance with the scheme's land related criteria is only acceptable when the areas concerned are near each other and have similar characteristics. Group auditing for the purpose of calculating greenhouse gas savings is only acceptable when the units have similar production systems and products.

In addition, the voluntary scheme should arrange for regular, at least yearly, retrospective auditing of a sample of claims made under the scheme.<sup>29</sup> It is the responsibility of the verifiers to define the size of the sample that will permit them to reach the level of confidence necessary to issue a verification statement.

For both types of audit referred to above a verifier should be selected who:

- is external: the audit is not performed by the economic operator or the scheme itself;
- is independent: auditors are independent of the activity being audited and free from conflict of interest;
- has the generic skills: the verification body has the general skills for performing audits; and
- has the appropriate specific skills: auditors have the skills necessary for conducting the audit related to the scheme's criteria.

Voluntary schemes should show in their requests for recognition how they will ensure this in arranging for verifier(s) to be selected. Ways of showing this include those given in Table 2.

It is preferable but not essential that auditors should, whenever possible and where appropriate, be accredited for the kind of auditing tasks they are to undertake.<sup>30</sup>

*Table 2: Examples of ways of showing verifiers' compliance with requirements*

<b>Verifier attribute</b>	<b>Requirements covered</b>
Experience of carrying out audits in conformity with standard ISO <sup>31</sup> 19011 establishing guidelines for quality and/or environmental management systems	<ul style="list-style-type: none"> <li>- Independence</li> <li>- Generic skills</li> </ul>

<sup>27</sup> It is the responsibility of the verifiers to define the size of the sample needed to reach the necessary level of confidence.

<sup>28</sup> E.g. International Social and Environmental Accreditation and Labelling Alliance (ISEAL) standard P035 establishing Common Requirements for the Certification of Producer Groups.

<sup>29</sup> The economic operators included in the sample should vary from one period to another.

<sup>30</sup> Such accreditation would be done by members of the International Accreditation Forum, by the bodies referred to in Article 4 of Regulation (EC) No 765/2008 or by bodies having a bilateral agreement with the European Co-operation for Accreditation.

<sup>31</sup> International Organization for Standardization

auditing.	<ul style="list-style-type: none"> <li>– Specific skills related to the Directive's criteria and other environmental issues</li> </ul>
Accreditation against standard ISO 14065 establishing requirements for greenhouse gas validation and verification bodies for use in accreditation or other forms of recognition. <sup>32</sup>	<ul style="list-style-type: none"> <li>– Independence</li> <li>– Generic skills</li> <li>– Specific skills related to greenhouse gas assertions.</li> </ul>
Experience of carrying out audits in conformity with standard ISO 14064-3 establishing specification with guidance for the validation and verification of greenhouse gas assertions.	<ul style="list-style-type: none"> <li>– Independence</li> <li>– Generic skills</li> <li>– Specific skills related to greenhouse gas assertions</li> </ul>
Experience of carrying out audits in conformity with the International Standard on Assurance Engagements (ISAE) 3000 regarding assurance engagements other than audits or reviews of historical financial information.	<ul style="list-style-type: none"> <li>– Independence</li> <li>– Generic skills</li> </ul>
Accreditation against standard ISO Guide 65 <sup>33</sup> establishing general requirements for bodies operating product certification systems. <sup>34</sup>	<ul style="list-style-type: none"> <li>– Independence</li> <li>– Generic skills</li> </ul>

Requests to the Commission for recognition should demonstrate that audits will be properly planned, conducted and reported on. This would normally include that the auditor:

- Identifies the activities undertaken by the economic operator which are relevant to the scheme's criteria;
- Identifies the relevant systems of the economic operator and its overall organisation with respect to the scheme's criteria and checks the effective implementation of relevant control systems;

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<sup>32</sup> Accreditation against this standard often includes at the same time accreditation against a specific "greenhouse gas programme", such as the European Emission Trading Scheme. In such case, any additional requirements of that programme do not have to be considered for the purposes in this table. They should not be considered when they conflict with the Directive.

<sup>33</sup> The equivalent European standard is EN 45011.

<sup>34</sup> Accreditation against this standard often includes at the same time accreditation against specific requirements related to e.g. a product. In such case, any additional requirements of that programme do not have to be considered for the purposes in this table. They should not be considered when they conflict with the Directive.

- Establishes at least a "limited assurance level"<sup>35</sup> in the context of the nature and complexity of the economic operator's activities;
- Analyses the risks which could lead to a material misstatement, based on the verifier's professional knowledge and the information submitted by the economic operator;
- Draws up 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;
- Carries out the verification plan by gathering evidence in accordance with the defined sampling methods, plus all relevant additional evidence, upon which the verifier's verification conclusion will be based;
- Requests the operator to provide any missing elements of audit trails, explain variations, or revise claims or calculations, before reaching a final verification conclusion.

### 2.2.3. *Mass balance system*

Typically, biofuels/bioliquids have a production chain with many links, from field to distribution of the fuel. Feedstock is often transformed into an intermediate product and then into a final product. It is in relation to the final product that compliance with the requirements of the Directive need to be shown. To show this, claims will need to be made about the raw material and/or intermediate products used.

The method by which a connection is made between information or claims concerning raw materials or intermediate products and claims concerning final products is known as the chain of custody. The chain of custody would normally include all the stages from the feedstock production up until the release of the fuels for consumption. The method laid down in the Directive for the chain of custody is the mass balance method.<sup>36</sup>

The voluntary scheme should require verification of the mass balance system to be performed simultaneously with verification of correctness in respecting the scheme's criteria.<sup>37</sup> This should include the verification of any evidence or systems used for the purpose of complying with the requirements of the mass balance system.

The mass balance system means<sup>38</sup> a system in which "sustainability characteristics" remain assigned to "consignments". Sustainability characteristics could include for example:

- Evidence showing compliance with the Directive's sustainability criteria; and/or

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<sup>35</sup> A "limited assurance level" implies a reduction in risk to an acceptable level as the basis for a negative form of expression by the auditor such as "based on our assessment nothing has come to our attention to cause us to believe that there are errors in the evidence", whereas a "reasonable assurance level" implies a reduction in risk to an acceptably low level as the basis for a positive form of expression such as "based on our assessment, the evidence is free from material misstatement". (Cf. ISEA 3000)

<sup>36</sup> Article 18(1)

<sup>37</sup> A voluntary scheme would not need to require this where it covers only a single link in the chain (e.g. the location of production of the raw material).

<sup>38</sup> According to Article 18(1)

- A statement that the raw materials used were obtained in a way that complies with the Directive's land related sustainability criteria; and/or
- A greenhouse gas emission figure; and/or
- A description of the raw material used<sup>39</sup>; and/or
- The statement "production has been awarded a certificate of type X from recognised voluntary scheme Y"; etc.

Sustainability characteristics would have to include information on the country of origin of the feedstock, except for bioliquids.<sup>40</sup>

When consignments with different (or no) sustainability characteristics are mixed<sup>41</sup>, the separate sizes<sup>42</sup> and sustainability characteristics of each consignment remain assigned to the mixture.<sup>43</sup> If a mixture is split up, any consignment taken out of it can be assigned any of the sets of sustainability characteristics<sup>44</sup> (accompanied with sizes) as long as the combination of all consignments taken out of the mixture has the same sizes for each of the sets of sustainability characteristics that were in the mixture. A "mixture" can have any form where consignments would normally be in contact, such as in a container, processing or logistical facility or site (defined as a geographical location with precise boundaries within which products can be mixed).

The balance in the system can be continuous in time, in which case a "deficit", i.e. that at any point in time more sustainable material has been withdrawn than has been added, is required not to occur. Alternatively the balance could be achieved over an appropriate period of time and regularly verified. In both cases it is necessary for appropriate arrangements to be in place to ensure that the balance is respected.

### 2.3. Non-typical voluntary schemes

Section 2.2 describes the requirements the Commission intends to assess for recognition of "typical" voluntary schemes that cover directly one or more of the Directive's criteria. "Non-typical" schemes may have different forms such as maps showing that certain geographical areas are compliant or not compliant with the criteria, calculation tools for assessment of greenhouse gas savings or regional agricultural greenhouse gas values associated with a particular feedstock. For these schemes, the Commission will determine an appropriate assessment procedure when it receives a request for recognition of such a scheme. The

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<sup>39</sup> E.g. to claim a default value

<sup>40</sup> Cf. Article 7a (1)(a) of the Fuel Quality Directive

<sup>41</sup> When consignments with the same sustainability characteristics are mixed only the size of the consignment is adjusted accordingly. Sustainability characteristics are likely to be the same where the same feedstocks are used and use is made of "default values" or "regional actual values".

<sup>42</sup> Where a processing step or losses are involved, appropriate conversion factors should be used to adjust the size of a consignment accordingly.

<sup>43</sup> Thus, if the characteristics include different figures on greenhouse gas emissions they remain separate; these figures cannot be averaged for the purpose of showing compliance with the sustainability requirements.

<sup>44</sup> This means that when a "sustainability characteristic" would be the description of the feedstock, e.g. "rapeseed", this characteristic can be different from what the consignment physically contains, e.g. a mix of rapeseed and sunflower oil.

Commission will consider whether the principles and requirements set out above need to be applied or whether different approaches are necessary.

## **2.4. Updating**

As experience will only be gained once assessments have started, flexibility may be necessary. The Commission may review the procedure laid down here, based on the experience gathered or developments in the market, including work done by standardisation bodies. In such cases, the Commission intends to make appropriate reference on the transparency platform.

## **2.5. Voluntary schemes for bioliquids**

For bioliquids, the Commission cannot explicitly recognize a voluntary scheme as a source of accurate data for the land related criteria.<sup>45</sup> However, where the Commission decides that a voluntary scheme provides accurate data as far as biofuels are concerned, the Commission encourages Member States to accept such schemes equally for bioliquids.

## **2.6. Recognition of bilateral or multilateral agreements**

The Union can conclude bilateral or multilateral agreements with third countries containing provisions on sustainability criteria that correspond to those of the Directive.<sup>46</sup> Such an agreement would, after conclusion, still need to be recognised for the purposes of the Directive in a similar way as for voluntary schemes.<sup>47</sup> This process could include taking into account relevant parts of section 2.2.2.

# **3. DEFAULT VALUES**

The Directive includes "default values" which economic operators can use to show compliance with the sustainability criterion on greenhouse gas savings. This should reduce the administrative burden for economic operators, because companies will be able to choose to use these predetermined values instead of calculating an actual value.<sup>48</sup> The default values are set at a conservative level to make it unlikely for economic operators - by using default values - to be claiming values that are better than their actual value. The default values can be updated to technical and scientific progress.<sup>49</sup>

## **3.1. Background on the calculation of the default values**

The default values in the Directive are constructed on the basis of three elements: a scientific data set, the methodology in the Directive<sup>50</sup>; and a rule for transforming typical values into default values. The scientific data for a particular biofuel/bioliquid production pathway are processed in accordance with the methodology to produce a typical value for the pathway. A factor of +40% is then applied to the emissions from the "processing" element to transform

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<sup>45</sup> Cf. Article 18(4) and the mention of Article 17(3) - 17(5) therein

<sup>46</sup> The mechanism for the Union to conclude an international agreement is set out in Article 218 of the Treaty on the Functioning of the European Union.

<sup>47</sup> Article 18(4)

<sup>48</sup> Article 19(1)

<sup>49</sup> Article 19(7)

<sup>50</sup> Annex V, part C

typical values into conservative default values. No such factor is applied to "transport and distribution", because its contribution to the overall emissions is small.<sup>51</sup> Nor is a factor applied to "cultivation", because on this point the issue of conservatism is dealt with by certain restrictions on the use of default values.<sup>52</sup>

### 3.2. Future updates and addition of default values

The scientific data are compiled by independent experts<sup>53</sup> and published on the JRC website.<sup>54</sup> To comment on the data with scientifically justified claims, direct contact with the experts must be made in order that the data could be reviewed as appropriate during the next cycle of updates.<sup>55</sup>

The Directive contains both:

- "general pathways", i.e. pathways that are characterised by the type of feedstock and type of biofuel/bioliquid, such as "sugar beet ethanol"; and
- "specific pathways", i.e. pathways that are characterised by more specific description than general pathways, such as "wheat ethanol (straw as process fuel in CHP plant)".

The Commission intends to include default values for additional general pathways if:

- these have significance in the EU market and at least one plant/pathway exists; or it is a general pathway reliably expected to come into use for the EU in the near future; and
- there are relevant data available of a satisfactory quality and certainty as judged by the independent experts.

For the introduction of specific pathways the Commission intends to take into account two additional criteria:

- whether the difference between the default values for the specific and general pathways is significant in size; and
- (in the case of specific pathways with default values of greenhouse gas savings less than that for the general pathway) whether it is estimated that at least a tenth of EU consumption of the general biofuel/bioliquid pathway concerned is produced using practices that lead to emissions that are greater than those depicted by the default value for that general pathway.

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<sup>51</sup> Cf. Article 19(7)(a)

<sup>52</sup> Article 19(2) - 19(4)

<sup>53</sup> The Institute for Environment and Sustainability of the Commission's Joint Research Centre (JRC), as part of the JEC Consortium (consortium composed of the Commission's Joint Research Centre, the automotive manufacturers' association for Research & Development in Europe (EUCAR) and the oil companies' European association of environment, health and safety in refining (CONCAWE)).

<sup>54</sup> [http://re.jrc.ec.europa.eu/biof/html/input\\_data\\_ghg.htm](http://re.jrc.ec.europa.eu/biof/html/input_data_ghg.htm); the Commission intends to publish on its transparency platform a spreadsheet showing the calculation of the default values from those data.

<sup>55</sup> Cf. Recital 83 of the Renewable Energy Directive

The Commission does not intend to introduce default values for specific pathways according to the geographical origin of where the feedstocks or biofuels/bioliquids are produced, but rather related to specific practices, technologies, etc.

The Commission intends to update/add default values, if appropriate, every two years starting in 2010 and subsequently along with the required report that the Commission has to prepare in 2012 and every two years thereafter on the default values for future biofuels.<sup>56</sup> However, updates may take place in the intermediate period if circumstances require. In preparation for this, the Commission will assess whether the conditions for the inclusion of specific pathways, as set out above, are met. The process for stakeholders to suggest amendment of the pathways or new pathways is the same as the process for comments on data (see above).

#### **4. CONCLUSIONS**

The EU introduced in 2009 the most comprehensive and advanced binding sustainability scheme of its kind anywhere in the world. In this Communication the Commission has set out how it intends to deal in the coming years with two tools of the sustainability scheme designed to reduce the administrative burden for economic operators: the assessment and recognition of voluntary schemes and bilateral or multilateral agreements; and the adding and updating of default values. This should facilitate the operation of the sustainability scheme. Voluntary schemes may have an impact in commodity markets broader than biofuels and bioliquids, potentially enhancing sustainable production of agricultural raw materials as a side-effect. Bilateral or multilateral agreements could enhance this further. Apart from these processes set in motion by the EU's new renewable energy policy, the Commission will also work via international fora actively to promote sustainability criteria on a global level.

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<sup>56</sup> Those included in Annex V parts B and E; Cf. Article 19(5).