

EBA Feedback on Draft delegated act amending Annex IX to Directive (EU) 2018/2001

The **European Biogas Association** (EBA) acknowledges the European Commission's publication of the draft delegated act amending Annex IX and aligns with the EU's increased environmental ambitions of Directive (EU) 2018/2001. The Renewable Energy Directive and Annex IX are and will be key drivers for the roll out of sustainable biogas and biomethane, including bioLNG, bioCNG and bioLPG.

In the framework of the consultation on the draft delegated act amending Annex IX, the biogas and biomethane sector would like to draw attention on a series of issues that, if not addressed, will dramatically hamper the scale up of the sector, in contradiction with the REPowerEU Plan, the Circular Economy Action Plan and climate mitigation objectives.

Explicitly mentioning in Part B materials that are understood to be included in one of the broader definitions in Part A would be a *de facto* limitation of the list rather than an addition of new feedstocks, which is opposite to the scope of this delegated act.

In particular, the Commission's draft:

- Lists under Part B several sustainable feedstocks that are currently accounted as advanced in a number of Member States. This would inevitably result in legal uncertainty for the sector and on projects that are going to start their operations. Furthermore, the relegation of these substrates in Part B would make them subject to the 1.7% limitation in the contribution to the target of renewable energy share for transport in Art 27.1(c)iv¹.
- Does not provide for a rationale for the listing of a number of feedstocks in Part B instead than in Part A considering analogous technological pathways. Often a misguided application of the cascading principle seems to be the main reason for their inclusion in Part B.
- Fails to take into account the agronomic advancement needed for the implementation of sequential cropping ((p) "intermediate crops").
- Sets an inappropriate distinction between Part A and B based on advanced or mature processing technologies. Substrates fit for biogas and biomethane production should always be listed in Part A.
- Does not take into consideration the contribution of residues forms upcoming bioeconomy processes, which should be listed among the feedstocks of Part A.

Biogas and biomethane are sustainable, on-demand and flexible energy sources that provide multiple knock-on socio-economic and environmental benefits, which help abate emissions across the whole value chain. Their utilization is crucial to expedite the reduction of GHG emissions in several sectors, such as agriculture, buildings, industry, and transport. In fact, biogas and biomethane are already a key, concrete decarbonization solution for all of the energy sector: heating, electricity and transport.

¹ REDIII EC Proposal, at the time of writing the EP Report as well as the Council GA include the soft cap at 1.7%.

Biogas and biomethane production through anaerobic digestion is an advanced biological technology that allows nutrient recycling, as well as the production of advanced renewable fuels and energy from all kinds of waste and residues – and thus a fundamental technology for a sustainable, circular and resource efficient society.

As recognized by the European Commission in the [Work Programme](#) of the [Biomethane Industrial Partnership](#), a large quantity of local sustainable biomass feedstock will be needed to reach the 35 bcm target of the REPowerEU Plan. Growth in EU biomethane production will be based on waste and residue feedstocks (food waste, sewage sludge, forestry residues, agricultural residues) and innovative biomass sources. Innovative biomass sources are essential biomethane feedstocks which can be used to produce biomethane yet today are not widely used. These include algae, grass, roadside verge grass, silage crops cultivated in a sequential cropping system² or on contaminated land.

EBA believes that sustainability is a precondition for the further development of the biogas and biomethane sector in Europe. Since 2018, the industry must comply with a set of sustainability criteria to ensure that sourcing feedstock does not negatively impact the environment and biodiversity, that biogas and biomethane are used in an efficient fashion and that substantial greenhouse gas emissions are saved compared to when fossil fuels are used.

The sector needs a level playing field and strong drivers to allow for its market development and scale up. A consistent EU sustainability policy providing the industry with legal certainty and shielding existing investments from sudden changes is of paramount importance.

EBA strongly recommends the Commission to provide adequate drivers for further mobilization of advanced and sustainable feedstocks. To this end, the table annexed to this document includes a number of suggestions to make sure the proposal delivers on the EU objectives and avoids unintended consequences on national markets.

² Sequential cropping is the cultivation of an additional second crop before or after a main crop on a plot of agricultural land, thereby reducing the period during which this land is fallow. The second crop can be used for sustainable biomethane production a low risk on indirect land use change. It is important that nutrients captured in digestate are brought back to the land as biogenic fertiliser to ensure soil health.

Table

Feedstock	EC Draft	EBA analysis and recommendations
<p>(p) Intermediate crops, such as catch crops and cover crops that are grown in areas where due to a short vegetation period the production of food and feed crops is limited to one harvest and provided their use does not trigger demand for additional land and provided the soil organic matter content is maintained.</p>	<p>Part B</p>	<p>Letter (p) is classified as advanced feedstock in a number of Member States, such as in the German³, Italian⁴, Croatian⁵ and Swiss market.</p> <p>EBA believes that the introduction of intermediate crops in Annex IX is a very positive signal from the European Commission. However, its inclusion in part B does not take into account the agronomic advancement needed for the implementation of intermediate cropping.</p> <p>Catch crops are an essential tool for maintaining soil fertility and groundwater quality (e.g., reducing nitrate leaching). Digestate recirculation minimizes nutrient losses and improves soil quality (including SOC).</p> <p>Listing this feedstock under Part A would improve consistency with the current Annex IX list, which includes certain types of intermediate crops under Part A via the definition of (p) “Other non-food cellulosic material”.</p> <p>As long as no land use change or impact on food production occur, intermediate crops should include those with a high biomass and biomethane yield.</p> <p>Therefore, by recognizing the capacity of sequential cropping to increase carbon sequestration, additional sustainable feedstocks can be used. The inclusion of sequential crops in the list of advanced feedstocks is an important step in doing so and would allow sequential crops to count towards the advanced biofuel target.</p> <p>Finally, biogas and biomethane must demonstrate compliance with sustainability criteria via third party certification. This covers verification of additional land demand and applied independently of geographical provenance of biomass.</p> <p>Therefore, EBA recommends the inclusion of intermediate crops in Part A of the delegated act.</p>
<p>(e) Fruit and vegetable residues and waste not fit for use in the food and feed chain, excluding tails, leaves, stalks and husks.</p>	<p>Part B</p>	<p>Letter (e) is classified as advanced feedstock in a number of Member States, such as in the German⁶, Croatian⁷, Italian⁸ and, in selected cases, Finnish market.</p> <p>EBA believes that the subcategory “fruit and vegetable residues” should include all agro-industrial waste and residues of vegetable origin, derived from processing of fruits and vegetables, including</p>

³ [Nabisy-Biomassearten - Stand 11/22](#)

⁴ [Italian Legislative Decree 8th November 2021, n. 199](#) / Italian Interministerial Decree 2nd March 2018

⁵ Act on Biofuels for Transport of the Republic of Croatia (Official Gazette 140/22)

⁶ [Nabisy-Biomassearten - Stand 11/22](#)

⁷ Act on Biofuels for Transport of the Republic of Croatia (Official Gazette 140/22)

⁸ [Italian Legislative Decree 8th November 2021, n. 199](#) / Italian Interministerial Decree 2nd March 2018

		<p>leaves, peelings, stalks, husks, cores, processing residues, other residues, as well as final products before packaging that do not comply with quality product standards. This feedstock is characterized by high water content, high heterogeneity, and chemical-physical and quantitative variability – i.e., it is highly seasonal. Its further use in food or feed production is not always technically feasible and it sometimes entails very high storage costs, when storage is allowed.</p> <p>Listing this feedstock under Part A would improve consistency with the current Annex IX list, which includes fruit and vegetable residues and waste not fit for use in the food and feed chain under Part A via the definition of (d) “Biomass fraction of industrial waste not fit for use in the food or feed chain, including material from retail and wholesale and the agro-food and fish and aquaculture industry, and excluding feedstocks listed in part B of this Annex”. Explicitly mentioning in Part B materials that were understood to be included in one of the broader definitions in Part A would <i>de facto</i> reduce/limit the list rather than adding feedstocks.</p> <p>Therefore, EBA recommends the inclusion of fruit and vegetable residues and waste not fit for use in the food and feed chain in Part A of the delegated act.</p>
<p>(d) Drink production residues and waste not fit for use in the food and feed chain.</p>	<p>Part B</p>	<p>Letter (d) is classified as advanced feedstock in a number of Member States.</p> <p>EBA believes that the subcategory “Drink production residues and waste not fit for use in the food and feed chain” should include all waste and residues from this industry, including final products before packaging that do not comply with quality product standards. This feedstock is characterized by high water content, high heterogeneity, and chemical-physical and quantitative variability – i.e., it is highly seasonal. Its further use in food or feed production is not always technically feasible and it sometimes entails very high storage costs, when storage is allowed.</p> <p>Listing this feedstock under Part A would improve consistency with the current Annex IX list, which includes drink production residues and waste not fit for use in the food and feed chain under Part A via the definition of (d) “Biomass fraction of industrial waste not fit for use in the food or feed chain, including material from retail and wholesale and the agro-food and fish and aquaculture industry, and excluding feedstocks listed in part B of this Annex”. Explicitly mentioning in Part B materials that were understood to be included in one of the broader definitions in Part A would <i>de facto</i> reduce/limit the list rather than adding feedstocks.</p>

		Therefore, EBA recommends the inclusion of drink production residues and waste not fit for use in the food and feed chain in Part A of the delegated act.
(n) Vinasse excluding thin stillage and sugarbeet vinasse.	Part B	<p>Letter (n) is classified as advanced feedstock in a number of Member States.</p> <p>EBA believes that the subcategory “Vinasse” should include all waste and residues from this industry. This feedstock is characterized by, high heterogeneity, and chemical-physical and quantitative variability – i.e., it is highly seasonal. It has no use in food sector and its further use in feed production is not always technically feasible.</p> <p>Listing this feedstock under Part A would improve consistency with the current Annex IX list, which includes vinasse excluding thin stillage and sugarbeet vinasse under Part A via the definition of (d) “Biomass fraction of industrial waste not fit for use in the food or feed chain, including material from retail and wholesale and the agro-food and fish and aquaculture industry, and excluding feedstocks listed in part B of this Annex”. Explicitly mentioning in Part B materials that were understood to be included in one of the broader definitions in Part A would <i>de facto</i> reduce/limit the list rather than adding feedstocks.</p> <p>Therefore, EBA recommends the inclusion of vinasse in Part A of the delegated act.</p>
(c) Bakery and confectionary residues and waste not fit for use in the food and feed chain.	Part B	<p>Letter (c) is classified as advanced feedstock in a number of Member States, such as in the German⁹, Italian¹⁰ and, in selected cases, Finnish market.</p> <p>This category does not pose any competition risk with food and feed.</p> <p>Due to their high energy content, bakery and confectionary residues are valuable substrates for biogas and biomethane production, and their end use must be assessed by the market demand. Moreover, these residues need to be removed in timely fashion to avoid cross-contamination at production site.</p> <p>Listing this feedstock under Part A would improve consistency with the current Annex IX list, which includes bakery and confectionary residues under Part A via the definition of (d) “Biomass fraction of industrial waste not fit for use in the food or feed chain, including material from retail and wholesale and the agro-food and fish and aquaculture industry, and excluding feedstocks listed in part B of this Annex”. Explicitly mentioning in Part B materials that were</p>

⁹ [Nabisy-Biomassearten - Stand 11/22](#)

¹⁰ Italian Interministerial Decree 2nd March 2018

		<p>understood to be included in one of the broader definitions in Part A would <i>de facto</i> reduce/limit the list rather than adding feedstocks.</p> <p>Therefore, EBA recommends the inclusion of bakery and confectionary residues and waste not fit for use in the food and feed chain in Part A of the delegated act.</p>
(i) Deoiled olive pomace.	Part B	<p>Letter (i) is classified as advanced feedstock in a number of Member States, such as in the Italian¹¹ and Croatian¹² market.</p> <p>Listing this feedstock under Part A would improve consistency with the current Annex IX list, which includes deoiled olive pomace under Part A via the definition of (d) “Biomass fraction of industrial waste not fit for use in the food or feed chain, including material from retail and wholesale and the agro-food and fish and aquaculture industry, and excluding feedstocks listed in part B of this Annex”, as residues of food crops after oil extraction.</p> <p>Deoiled olive pomace is obtained from three-phase pomace, after drying and chemical extraction. This residue of olive oil production does not compete with the production of food and feedstock and is generally combusted. A slurry wet pomace, with about 70-80% of water content, results from a two-phase extraction method (averagely 800 kg/tons of olives). The two-phase extraction method is currently the most common in Mediterranean countries, including Italy and Spain. At present, facilities that extract oil from olive pomace are generally not equipped to treat wet pomace. For this reason, two-phase wet pomace does not have any other use but biogas and biomethane production.</p> <p>Therefore, EBA recommends the inclusion of deoiled and two-phased olive pomace in Part A of the delegated act.</p>
(t) Non-food crops grown on severely degraded land, not suitable for food and feed crops.	Part A	<p>Letter (t) is classified as advanced feedstock in a number of Member States, such as in the Croatian¹³ market. For consistency with Art 26 of Regulation (EU) 2022/996¹⁴, EBA recommends amending this letter as follows:</p> <p>(t) Non-food crops grown on unused, abandoned or severely degraded land, not suitable for food and feed crops;</p>
(p) Other non-food cellulosic material.	Part A	<p>Meadow mixtures are covered in Annex IX Part A of RED II under point (p).</p> <p>In order to clarify point (p) in Part A, EBA recommends amending this letter as follows:</p>

¹¹ Italian Interministerial Decree 2nd March 2018

¹² Act on Biofuels for Transport of the Republic of Croatia (Official Gazette 140/22)

¹³ Act on Biofuels for Transport of the Republic of Croatia (Official Gazette 140/22)

¹⁴ Commission Implementing Regulation (EU) 2022/996 of 14 June 2022 on rules to verify sustainability and greenhouse gas emissions saving criteria and low indirect land-use change-risk criteria

		(p) Other non-food cellulosic material, including meadow mixtures such as timothies, tall fescues, clovers and legumes;
(j) Damaged crops that are not fit for use in the food or feed chain, excluding substances that have been intentionally modified or contaminated in order to meet this definition.	Part B	<p>Letter (j) is classified as advanced feedstock in a number of Member States, such as in the Croatian¹⁵ market.</p> <p>This category does not pose any competition risk with food and feed. On the contrary, the use of these biomasses to produce advanced biofuels ensures, on the one hand, the preservation of high-quality standards for food production, and, on the other hand, an adequate income for farmers even in years with unfavorable conditions.</p> <p>For example, mycotoxins contaminated food crops or severely hail damaged crops should be accounted under this category.</p> <p>Therefore, EBA recommends the inclusion of damaged crops that are not fit for use in the food or feed chain in Part A of the delegated act.</p>
(k) Municipal wastewater and derivatives other than sewage sludge.	Part B	<p>The rationale behind differentiate wastewater and derivatives from sewage sludge is not based on technological related considerations.</p> <p>This category does not pose any competition risk with food and feed. Moreover, letter (k) is classified as advanced feedstock in the Italian¹⁶ and Finnish¹⁷ market.</p> <p>Therefore, EBA recommends the inclusion of municipal wastewater and derivatives in Part A of the delegated act.</p>
(l) Brown grease.	Part B	<p>Letter (l) is classified as advanced feedstock in the Finnish¹⁸ and Spanish¹⁹ market.</p> <p>This category does not pose any competition risk with food and feed. Therefore, EBA recommends the inclusion of brown grease in Part A of the delegated act.</p>

About the EBA

The European Biogas Association is the voice of renewable gas in Europe since 2009. EBA advocates the recognition of biomethane and other renewable gases as sustainable, on demand and flexible energy sources that provide multiple knock-on socio-economic and environmental benefits. Supported by its members, EBA is committed to work with European institutions, industry, agricultural partners, NGOs and academia to develop policies which can enable the large-scale deployment of renewable gases and organic fertilisers throughout Europe, supported by transparent, well established sustainability certification bodies to ensure that sustainability remains at the core of the industry. The association counts today on a well-established network of over 200 national organisations, scientific institutes, and companies from Europe and beyond.

¹⁵ Act on Biofuels for Transport of the Republic of Croatia (Official Gazette 140/22)

¹⁶ [Italian Legislative Decree 8th November 2021, n. 199](#)

¹⁷ [Biofuels Act: 603/2021](#): no differentiation between sewage sludge and other derivatives.

¹⁸ [Biofuels Act: 603/2021](#): Brown grease (for example from restaurants) is classified as municipal waste in Finland

¹⁹ [BIOS/DE/002/20](#)