►B ►M1 **COMMISSION DELEGATED REGULATION (EU) 2023/1184**

of 10 February 2023

supplementing Directive (EU) 2018/2001 of the European Parliament and of the Council by establishing a Union methodology setting out detailed rules for the production of renewable fuels of non-biological origin ◄

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COMMISSION DELEGATED REGULATION (EU) 2023/1184

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supplementing Directive (EU) 2018/2001 of the European Parliament and of the Council by establishing a Union methodology setting out detailed rules for the production of renewable fuels of non-biological origin

Article 1

Subject matter

This Regulation lays down detailed rules for determining when electricity used for the production of renewable fuels of non-biological origin can be considered fully renewable. These rules shall apply to the production of renewable fuels of non-biological origin via electrolysis and analogously for less common production pathways.

They shall apply regardless of whether the renewable fuel of non-biological origin is produced inside or outside the territory of the Union.

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Article 2

Definitions

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

(1) ‘bidding zone’ means bidding zone as defined in Article 2, point (65), of Regulation (EU) 2019/943 of the European Parliament and of the Council ([1]) for Member States, or an equivalent concept for third countries;

(2) ‘direct line’ means direct line as defined in Article 2, point (41), of Directive (EU) 2019/944 of the European Parliament and of the Council ([2]);

(3) ‘installation generating renewable electricity’ means individual units, or groups of units, producing electricity in one or several locations from the same or from different renewable sources, as defined in Article 2, point (1) of Directive (EU) 2018/2001, excluding units producing electricity from biomass and storage units;

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(4) ‘fuel producer’ means an economic operator that produces renewable fuel of non-biological origin;

([1]) Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (OJ L 158, 14.6.2019, p. 54).

([2]) Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (OJ L 158, 14.6.2019, p. 125).

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(5) ‘come into operation’ means starting production of renewable fuels of non-biological origin or renewable electricity for the first time or following a repowering as defined under Article 2, point (10) of Directive (EU) 2018/2001 requiring investments exceeding 30 % of the investment that would be needed to build a similar new installation;

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(6) ‘smart metering system’ means smart metering system as defined in Article 2, point (23) of Directive (EU) 2019/944;

(7) ‘imbalance settlement period’ means imbalance settlement period as defined in Article 2, point (15) of Regulation (EU) 2019/943 within the Union, or an equivalent concept for third countries.

Article 3

Rules for counting electricity obtained from direct connection to an installation generating renewable electricity as fully renewable

For the purpose of demonstrating compliance with the criteria set out in Article 27(3), fifth subparagraph of Directive (EU) 2018/2001 for counting electricity obtained from direct connection to an installation generating renewable electricity as fully renewable, the fuel producer shall provide evidence on the following:

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(a) the installations generating renewable electricity are connected to the installation producing renewable fuel of non-biological origin via a direct line, or the renewable electricity production and production of renewable fuel of non-biological origin take place within the same installation;

(b) the installations generating renewable electricity came into operation not earlier than 36 months before the installation producing renewable fuel of non-biological origin; where additional production capacity is added to an existing installation producing renewable fuel of non-biological origin, the added capacity shall be considered to be part of the existing installation, provided that the capacity is added at the same site and the addition takes place no later than 36 months after the initial installation came into operation;

(c) the installation producing electricity is not connected to the grid, or the installation producing electricity is connected to the grid but a smart metering system that measures all electricity flows from the grid shows that no electricity has been taken from the grid to produce renewable fuel of non-biological origin.

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If the fuel producer also uses electricity from the grid, it may count it as fully renewable if it complies with the rules set out in Article 4.

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Article 4

General rules for counting electricity taken from the grid as fully renewable

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1. Fuel producers may count electricity taken from the grid as fully renewable if the installation producing the renewable fuel of non-biological origin is located in a bidding zone where the average proportion of renewable electricity exceeded 90 % in the previous calendar year and the production of renewable fuel of non-biological origin does not exceed a maximum number of hours set in relation to the proportion of renewable electricity in the bidding zone.

This maximum number of hours shall be calculated by multiplying the total number of hours in each calendar year by the share of renewable electricity reported for the bidding zone where the renewable fuel of non-biological origin is produced. The average share of renewable electricity shall be determined by dividing the gross final consumption of electricity from renewable sources in the bidding zone calculated by analogy to the rules set out in Article 7(2) of Directive (EU) 2018/2001 by the gross electricity production from all energy sources as defined in Annex B to Regulation (EC) No 1099/2008 of the European Parliament and of the Council ([3]), except from water previously pumped uphill, plus imports minus exports of electricity to the bidding zone. Once the average share of renewable electricity exceeds 90 % in a calendar year, it shall be continued to be considered to be higher than 90 % for the subsequent five calendar years.

2. Where the conditions set out under paragraph 1 are not met, fuel producers may count electricity taken from the grid as fully renewable if the installation producing the renewable fuel of non-biological origin is located in a bidding zone where the emission intensity of electricity is lower than 18 gCO_2eq/MJ, provided that the following criteria are met:

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(a) the fuel producers have concluded directly, or via intermediaries, one or more renewables power purchase agreements with economic operators producing renewable electricity in one or more installations generating renewable electricity for an amount that is at least equivalent to the amount of electricity that is claimed as fully renewable and the electricity claimed is effectively produced in this or these installations;

(b) the conditions on temporal and geographical correlation in accordance with Articles 6 and 7 are met.

([3]) Regulation (EC) No 1099/2008 of the European Parliament and of the Council of 22 October 2008 on energy statistics (OJ L 304, 14.11.2008, p. 1, ELI: http://data.europa.eu/eli/reg/2008/1099/oj)

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The emission intensity of electricity shall be determined following the approach for calculating the average carbon intensity of grid electricity in the methodology for determining the greenhouse gas emissions savings from renewable fuels of non-biological origin and from recycled carbon fuels set out in the delegated act adopted pursuant to Article 28(5) of Directive (EU) 2018/2001 based on latest available data.

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Once the emission intensity of electricity is lower than 18 gCO_2eq/MJ in a calendar year, the average emission intensity of electricity shall be continued to be considered to be lower than 18 gCO_2eq/MJ for the subsequent five calendar years.

3. ►M1 Electricity taken from the grid that is used to produce renewable fuel of non-biological origin may also be counted as fully renewable if the electricity used to produce renewable fuel of non-biological origin is consumed during an imbalance settlement period during which the fuel producer can demonstrate, based on evidence from the national transmission system operator, that: ◄

(a) power-generating installations using renewable energy sources were redispatched downwards in accordance with Article 13 of Regulation (EU) 2019/943;

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(b) the electricity consumed for the production of renewable fuel of non-biological origin reduced the need for redispatching by a corresponding amount.

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4. Where the conditions in paragraphs 1, 2 and 3 are not met, fuel producers may count electricity taken from the grid as fully renewable if it complies with the conditions on additionality, temporal correlation and geographic correlation in accordance with Articles 5, 6 and 7.

Article 5

Additionality

The additionality condition referred to in Article 4(4), first subparagraph shall be considered complied with if fuel producers produce an amount of renewable electricity in their own installations that is at least equivalent to the amount of electricity claimed as fully renewable, or have concluded directly, or via intermediaries, one or more renewables power purchase agreements with economic operators producing renewable electricity in one or more installations for an amount of renewable electricity that is at least equivalent to the amount of electricity that is claimed as fully renewable and the electricity claimed is effectively produced in this or these installations, provided that the following criteria are met:

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(a) The installation generating renewable electricity came into operation not earlier than 36 months before the installation producing the renewable fuel of non-biological origin.

Where an installation generating renewable electricity complied with the requirements set out in the first subparagraph of this paragraph under a renewables power purchase agreement with a fuel producer that has ended, it shall be considered to have come into operation at the same time as the installation producing the renewable fuel of non-biological origin under a new renewables power purchase agreement.

Where additional production capacity is added to an existing installation producing renewable fuel of non-biological origin, the added capacity shall be considered to have come into operation at the same time as the initial installation, provided that the capacity is added at the same site and the addition takes place no later than 36 months after the initial installation came into operation.

(b) The installation generating renewable electricity has not received support in the form of operating aid or investment aid, excluding support received by installations before their repowering, financial support for land or for grid connections, support that does not constitute net support, such as support that is fully repaid and support for installations generating renewable electricity that are supplying installations producing renewable fuel of non-biological origin used for research, testing and demonstration.

Article 6

Temporal correlation

Until 31 December 2029 the temporal correlation condition referred to in Article 4(2) and (4), shall be considered complied with if the renewable fuel of non-biological origin is produced during the same calendar month as the renewable electricity produced under the renewables power purchase agreement or from renewable electricity from a new storage asset that is located behind the same network connection point as the electrolyser or the installation generating renewable electricity, that has been charged during the same calendar month in which the electricity under the renewables power purchase agreement has been produced.

From 1 January 2030, the temporal correlation condition shall be considered complied with if the renewable fuel of non-biological origin is produced during the same one-hour period as the renewable electricity produced under the renewables power purchase agreement or from renewable electricity from a new storage asset that is located behind the same network connection point as the electrolyser or the installation generating renewable electricity, that has been charged during the same one-hour period in which the electricity under the renewables power purchase agreement has been produced. Following a notification to the Commission, Member States may apply the rules set out in this paragraph from 1 July 2027 for renewable fuel of non-biological origin produced in their territory.

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The temporal correlation condition shall always be considered complied with if the renewable fuel of non-biological origin is produced during a one-hour period where the clearing price of electricity resulting from single day-ahead market coupling in the bidding zone, as referred to in Article 39(2), point (a) of Commission Regulation (EU) 2015/1222 ([4]), is lower or equal to EUR 20 per MWh or lower than 0,36 times the price of an allowance to emit 1 tonne of carbon dioxide equivalent during the relevant period for the purpose of meeting the requirements of Directive 2003/87/EC of the European Parliament and of the Council ([5]).

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Article 7

Geographical correlation

1. The geographical correlation condition referred to in Article 4(2) and (4) shall be considered complied with if at least one of the following criteria relating to the location of the electrolyser is fulfilled:

(a) the installation generating renewable electricity under the renewables power purchase agreement is located, or was located at the time when it came into operation, in the same bidding zone as the electrolyser;

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(b) the installation generating renewable electricity is located in an interconnected bidding zone, including in another Member State, and electricity prices in the relevant time period on the day-ahead market referred to in Article 6 in the interconnected bidding zone is equal or higher than in the bidding zone where the renewable fuel of non-biological origin is produced;

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(c) the installation generating renewable electricity under the renewables power purchase agreement is located in an offshore bidding zone that is interconnected with the bidding zone where the electrolyser is located.

2. Without prejudice to Articles 14 and 15 of Regulation (EU) 2019/943, Member States may introduce additional criteria concerning the location of electrolysers and the installation producing renewable electricity to the criteria set out in paragraph 1, in order to ensure compatibility of capacity additions with the national planning of the hydrogen and electricity grid. Any additional criteria shall have no negative impact on the functioning of the internal electricity market.

([4]) Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (OJ L 197, 25.7.2015, p. 24, ELI: http://data.europa.eu/eli/reg/2015/1222/oj).

([5]) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32, ELI: http://data.europa.eu/eli/dir/2003/87/oj).

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Article 8

Common rules

Fuel producers shall provide reliable information demonstrating that all requirements set out in Articles 3 to 7 are complied with, including for each hour as relevant:

(a) ►M1 the amount of electricity used to produce renewable fuel of non-biological origin, further detailed as follows: ◄

(i) the amount of electricity sourced from the grid that does not count as fully renewable as well as the proportion of renewable electricity;

(ii) the amount of electricity that counts as fully renewable because it has been obtained from a direct connection to an installation generating renewable electricity as set out in Article 3;

(iii) the amount of electricity sourced from the grid that counts as fully renewable in accordance with the criteria set out in Article 4(1);

(iv) the amount of electricity that counts as fully renewable in accordance with the criteria set out in Article 4(2);

(v) the amount of electricity that counts as fully renewable in accordance with the criteria set out in Article 4(3);

(vi) the amount of electricity that counts as fully renewable in accordance with the criteria set out in Article 4(4);

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(b) the amount of renewable electricity generated by the installations generating renewable electricity, regardless of whether they are directly connected to an electrolyser and regardless of whether the renewable electricity is used for the production of the renewable fuel of non-biological origin or for other purposes;

(c) the amounts of renewable and non-renewable fuel of non-biological origin produced by the fuel producer.

Article 9

Certification of compliance

Regardless of whether the renewable fuel of non-biological origin is produced inside or outside the territory of the Union, fuel producers may make use of national schemes or international voluntary schemes recognised by the Commission pursuant to Article 30(4) of Directive (EU) 2018/2001 to demonstrate compliance with the criteria set out in Articles 3 to 7 of this Regulation, in line with Article 8, as relevant.

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Where a fuel producer provides evidence or data obtained in accordance with a scheme that has been the subject of a decision in accordance with Article 30(4) of Directive (EU) 2018/2001, to the extent that such decision covers the demonstrating of compliance of the scheme with Article 27(3), fifth and sixth subparagraphs of that Directive, a Member State shall not require the suppliers of renewable fuels of non-biological origin to provide further evidence of compliance with the criteria set out in this Regulation.

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Article 10

Reporting

By 1 July 2028, the Commission shall submit a report to the European Parliament and the Council assessing the impact of the requirements set out in this Regulation, including the impact of temporal correlation, on production costs, greenhouse gas emission savings and the energy system.

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Article 11

Transitional phase

Article 5, points (a) and (b) shall not apply until 1 January 2038 to installations producing renewable fuel of non-biological origin that come into operation before 1 January 2028. This exemption shall not apply to capacity added after 1 January 2028 for the production of renewable fuel of non-biological origin.

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Article 12

Entry into force

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

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