

## BIOENERGY SERIES – HOW IS FOREST BIOMASS AFFECTED BY RED III?

This is the third of our articles on biomass, which form part of our bioenergy series. Our first article, available [here](#), covered an introduction to biomass and considerations around deforestation and sustainability. Our second article, available [here](#), offered an introduction to the use of biomass as energy in combination with carbon capture and storage, known as BECCS, and considerations affecting the development of BECCS projects. This article considers how forest biomass is affected by the further revision to the Recast Renewable Energy Directive (RED III) and offers analysis on how the biomass market might be impacted.

### Background

Directive (EU) 2023/2413<sup>1</sup> promoting the use of renewable energy was published in the Official Journal on 31 October 2023 and entered into force on 20 November 2023. Member States must transpose RED III into national law by 30 April 2025.

RED III reflects the increasing pace of transition from fossil fuels to renewables and also a move away from more traditional biofuel feedstocks to new feedstocks which can deliver greater savings in greenhouse gas (GHG) emissions. This is a fundamental part of the EU's objective of achieving climate neutrality by 2050.

Our previous article on [RED III](#) set out an overview of the key changes. The purpose of this article is to consider in more detail how the revisions in RED III affect forest biomass and to analyse how the changes might impact the biomass market.

### Existing rules in the Renewable Energy Directive

Whilst Member States have until 30 April 2025 to transpose RED III into their national laws, the EU rules on sustainable biomass which they must already have transposed into national law are set out in the Recast Renewable Energy Directive (RED II), Directive 2018/2001.<sup>2</sup>

RED II sets out a common framework for the promotion of renewable energy in the EU. Amongst other things, it sets targets for the proportion of renewable energy that must be used in the EU's overall energy consumption and sets sustainability and greenhouse gas ("GHG") saving criteria for biofuels, bioliquids and biomass fuels to be used to produce electricity, heating or cooling or for the production of transport fuels.

RED II also allows Member States to introduce measures to meet the relevant targets, including support schemes and joint projects between different Member States and with third countries on the production of electricity from renewable sources.

The first Renewable Energy Directive, Directive 2009/28/EC,<sup>3</sup> originally introduced sustainability criteria for biofuels and bioliquids. The revisions in RED II extended the sustainability criteria to cover biomass used for electricity and heat production and as a feedstock for transportation fuels.

<sup>1</sup> Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652: [EUR-Lex - 32023L2413 - EN - EUR-Lex \(europa.eu\)](https://eur-lex.europa.eu/legal-content/EN/FUR-Lex/europa.eu).

<sup>2</sup> 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 sources (recast): <https://eur-lex.europa.eu/legal-content/AUTO/?uri=CELEX:32018L2001&qid=1710508036699&rid=1>

<sup>3</sup> Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC: <https://eur-lex.europa.eu/legal-content/AUTO/?uri=CELEX:32009L0028&qid=1710508114374&rid=1>

RED II includes in Article 29 criteria for biofuels, bioliquids and biomass to be taken into account for the purposes of contributing towards EU targets, complying with renewable energy obligations and eligibility for financial support. For example:

- In relation to biofuels, bioliquids and biomass produced from agricultural biomass, evidence must be provided that the cultivation and harvesting of raw material does not involve drainage of previously undrained soil.
- Biofuels, bioliquids and biomass fuels produced from forest biomass must meet criteria to minimise the risk of using forest biomass derived from unsustainable production. This includes a requirement that the country in which forest biomass is harvested must have adequate laws and monitoring and enforcement systems in place, including ensuring the legality of harvesting, forest regeneration of harvested areas, laws for nature protection purposes, requiring harvesting be carried out considering soil quality and biodiversity and ensuring that harvesting maintains or improves the long-term production capacity of the forest.
- New installations producing electricity, heating and cooling from biomass must deliver at least 70% fewer GHG emissions compared to fossil fuel alternatives, rising to 80% from 1 January 2026.
- Electricity from biomass fuels must be produced by installations meeting certain criteria. Installations must apply high-efficiency cogeneration technology or meet an energy efficiency level associated with best available techniques (for installations with a total rated thermal input over 50MW), apply high-efficiency cogeneration technology or achieve net-electrical efficiency of at least 36% (for installations with a thermal input over 100MW) or must apply BECCS.

## Key changes concerning biomass introduced by RED III

RED III strengthens the sustainability criteria that were extended by RED II to cover biomass.

The EU targets for the use of renewable energy are increased in RED III. [Our previous article](#) summarised these changes.

Under RED III, energy from biofuels, bioliquids and biomass fuels will need to meet the strengthened sustainability and GHG saving criteria to be taken into account for the purposes of contributing towards these increased EU targets, complying with renewable energy obligations and eligibility for financial support.<sup>4</sup> As with RED II, biofuels, bioliquids and biomass produced from waste and residues (with some exceptions) must only meet the GHG saving criteria, not the sustainability criteria.<sup>5</sup>

The key changes to the sustainability criteria that impact on biomass, set out in Article 29, include the following:

- Restrictions on biofuels, bioliquids and biomass produced from raw materials obtained from land with high biodiversity value have been extended to cover not only primary forest and other wooded land, but also old growth forest and heathland.
- Restrictions on biofuels, bioliquids and biomass produced from forest biomass have been amended to extend the applicable criteria that minimise the risk of using forest biomass derived from unsustainable production. In particular:
  - The existing requirement that the country of production has laws applicable in the place of harvesting and monitoring and enforcement systems in place has been extended to ensure that areas designated for protection include grassland and heathland (as well as wetlands and peatlands) and, crucially, to ensure that the forest from which the forest biomass is harvested does not have the status of primary or old growth forest, highly biodiverse forest and woodland, highly biodiverse grassland or heathland.
  - Harvesting must be carried out considering not only maintenance of soil quality and biodiversity with the aim of minimising negative impacts (as apply in RED II), but also in accordance with sustainable forest management in a way that avoids harvesting of stumps and roots, degradation of primary and old growth forests or their conversion into plantation forests, harvesting on vulnerable soils and that minimises the risk of clear-cuts.
  - Installations producing biofuels, bioliquids and biomass fuels from forest biomass must also issue a statement of assurance that the forest biomass is not sourced from these lands.

(It is important to note that RED II and RED III will be implemented differently in each Member State and so parties should seek local law advice in the jurisdictions relevant to their business and the trades they are contemplating.)

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<sup>4</sup> RED III, Article 29(1)

<sup>5</sup> RED III, Article 29(2)

## Potential impact on the biomass market

**Due diligence:** The changes to the sustainability criteria for biomass will make it increasingly important to undertake effective due diligence on the source, raw materials used in, means of production, harvesting of and documentation for forest biomass to ensure strict compliance with the enhanced and sustainability criteria.

**Potential shortage of supply:** A consequence of the enhanced sustainability criteria may be that there is a shortage of supply of forest biomass that is compliant with the new requirements.

**Wider regulatory regime:** The amendments introduced by RED III and impact on the forest biomass market must also be viewed in the context of developments in the wider sustainable and low carbon commodities regulatory regime. For instance:

- The EU Deforestation Regulation ("EUDR")<sup>6</sup> requires that products derived from timber cannot enter or leave the EU market unless they are (i) deforestation-free; (ii) produced in compliance with the laws of the country of production (e.g., human rights, rights of indigenous people); and (iii) covered by a compliant due diligence statement. EUDR applies to all operators and traders who make available EUDR commodities or products on the EU market or export from the EU. It therefore imposes further due diligence and documentation obligations on EU biomass producers and traders.
- The ReFuelEU Aviation Regulation<sup>7</sup> will impose targets to increase the production, supply and demand for sustainable aviation fuels ("SAF"), with eligible SAF being synthetic aviation fuels, including advanced biofuels, renewable fuels of non-biological origin ("RNFB") and recycled carbon aviation fuels complying with RED III sustainability and emissions savings criteria. It therefore will increase demand for advanced biofuels for the production of SAF. A consequential impact may be that other biofuels, bioliquids and biomass are used to satisfy the increased targets for the use of renewable energy that apply in RED III. This may lead to increased demand for forest biomass.

**Price volatility:** Increased demand for forest biomass coupled with a shortage of supply of forest biomass compliant with the sustainability criteria in RED III may lead to price volatility. The increased due diligence and regulatory compliance burden on producers, importers, exporters and traders may also increase costs, impacting further on biomass prices.

**Trading risks:** Price volatility may in turn lead to defaults in performance of contracts and counterparty risk. These considerations reinforce the importance of clearly drafted supply contracts with robust terms and conditions and appropriate provisions concerning due diligence obligations, compliance with relevant regulations and warranties in respect of the source and production of forest biomass throughout the supply chain.

**Increased installation investment:** The enhanced GHG saving criteria introduced under RED III in order for biomass to be taken into account for the purpose of contributing towards the increased EU targets means that installations will need to invest further in BECCS or other technology required to meet applicable efficiency levels. This additional investment cost may impact on whether installations are willing to continue using biomass. If they are not, there is a risk of a negative impact on the demand for and physical market in biomass.

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<sup>6</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32023R1115>

<sup>7</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32023R2405>

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