Neste comments on the draft IR 2022/996 revision / version seen in May 2026

General remarks

Neste supports the enhancement of the verification rules through the revision of Implementing Regulation (EU) 2022/996. Furthermore, we welcome the more detailed guidance the revision will provide regarding the certification requirements for Annex IX intermediate crops and crops grown on severely degraded land (*Annex IX crops*).

We support creating proportionate implementing rules that ensure compliance with sustainability criteria and other requirements. We believe the draft's expanded auditing, documentation, sampling, and technical verification requirements are excessive, as they overlook market capacity and practical feasibility.

The draft rules on the frequency of on-site audits do not seem fit for purpose. Rather than effectively addressing the core problem, these changes risk creating audit bottlenecks, increasing costs, and overburdening certification bodies. As a result, resources may be diverted away from high risk areas leading to a less effective system overall. To strengthen the verification framework, in particular regarding the high-risk feedstocks, a harmonized risk-based audit framework should be implemented. This framework should ensure the frequency and quality of on-site and unannounced audits across the entire supply chain are proportionate with the actual level of risk. Ultimately, measures should be well-designed to target fraud effectively while minimizing disruption to legitimate economic activity and fostering innovation and growth within the sector.

Furthermore, we would also like to emphasize that a transition period will be necessary when these types of new measures are adopted. This will allow the whole sector including economic operators, certification bodies, voluntary schemes and national authorities the sufficient time to implement and comply with the new requirements.

We advocate for the implementation of clear and enforceable sanctions and penalties for entities involved in fraudulent activities. Furthermore, voluntary schemes should actively use available measures to sanction non-compliant entities, including the revocation of certifications. However, when using retroactive penalties such as the retroactive annulment of proof of sustainability declarations issued by the economic operator, it is imperative to establish clear and transparent rules and apply them consistently in the Member States and by the authorities. This is essential to safeguard legitimate businesses from the severe and potentially unjust consequences. Without well-defined application of retroactive measures, there is a significant risk that companies operating with integrity could face undue penalties, leading to financial losses, reputational damage, and a disruption of their operations, ultimately undermining trust in the certification system itself. Therefore, a robust framework on sanctions, including retroactive application of them is crucial to ensure fairness and maintain stability within biofuel supply chains.

We are very concerned about the approach taken in the draft and the ambiguities regarding the certification of Annex IX intermediate crops and crops grown on severely degraded land. There are issues that create uncertainties and could effectively prevent their deployment. We therefore request that the draft certification rules be revised to allow the implementation of both crop concepts within Annex IX, with feasible certification requirements that are based on agronomic facts and without undue complexity, delays, costs, and administrative burden.

Please find below our more detailed comments on the specific provisions. Some detailed comments on the draft article Annex IX crops certification rules is also provided in the separate document titled *'Annex IX Coalition - views on IR 996 Article 53 - 2nd draft'*.

Article 9: Publication of information by voluntary schemes

- **Paragraph 1 point f):** In smaller Member States or niche feedstock markets, there may only be one producer. A "summary report" for that country would reveal that specific company's exact production volumes and feedstock mix. **We propose adding the "anonymization" clause as a part of Article 9(f)**: "Where the publication of such data would allow for the identification of an individual economic operator due to a limited number of operators in a specific market, the data shall be aggregated at a higher regional level or redacted to ensure the protection of commercially sensitive information as defined in Article 2(34)."

Article 14: Classification and treatment of non-conformities

- **Paragraph 5 point a):** The draft includes a requirement for the auditors *to identify and annul all proof of sustainability declarations issued by the economic operator in the period since the previous audit that are potentially affected by the identified critical non-conformities along the whole chain of custody*. We believe that this provision requires legal refinement. The Commission and Member States should ensure that the annulment of proof of sustainability declarations is explicitly targeted only to volumes confirmed to have been affected by the critical non-conformity, following a formal decision by a competent authority or court. From a legal standpoint, the term "potentially" is dangerously vague and invites subjective interpretation by different auditors. It is critical that this rule will be applied consistently.
- Furthermore, the draft is also problematic because it assigns individual auditors the responsibility for identifying and annulling PoS within the Union Database (UDB). We consider that this approach places an undue and inappropriate burden on auditors, also risking a distortion of their fundamental role. Specifically, mandating auditors to make such decisions with direct legal and commercial consequences, could expose them to legal action from affected economic operators. This potential liability might make auditors hesitant to take necessary actions, ultimately undermining the system's effectiveness. The decisions of this nature should therefore fall within the remit of competent authorities, rather than individual auditors.
- **Therefore, we propose reformulating the provision as follows:** *The **competent national authorities** ~~auditors~~ shall identify and annul ~~all~~ proof of sustainability declarations issued by the economic operator in the period since the previous audit that are ~~potentially~~ affected by the **confirmed** ~~identified~~ critical non-conformities along the whole chain of custody.*

- **Paragraph 5 point b):** We advocate that the retroactive annulment of proof of sustainability declarations should be strictly reserved for cases of critical non-conformities, addressing fraudulent activities. Conversely, we argue that retroactive annulment should not apply to instances of major non-conformities. This latter category is broad and susceptible to individual interpretation (i.e., distinguishing between major and minor non-conformity), potentially encompassing issues like human errors or IT system glitches that lack malicious intent and can be corrected. Furthermore, major non-conformities may ultimately have no actual impact on the compliance of the physical feedstocks or products. For example an inter-company issue, due to different certification scopes, could result in a major non-conformity, even if the final proof of sustainability declaration accurately reflects the final biofuel and its feedstock.

- **Therefore, we request the deletion of the requirement for retroactive annulment of proof of sustainability declarations in the case of major non-conformities.**
- **We also propose that the classification of customers and suppliers as high-risk economic operators should be reserved for cases of critical non-conformities**.

Article 16: Group auditing

- **Paragraph 3:** The sample size is determined by calculating the equivalent to at least the square root of the total number of group members that should be audited. For high-risk feedstocks, this requirement increases to include at least 25% of the total production or trading volume of the group.
- The 25% requirement for high-risk feedstock group auditing is challenging to implement. For instance, in the case of Annex IX intermediate crops and severely degraded land, production often involves hundreds of small-holder farms, each contributing a small fraction of the total volume. Requiring audits of farmers representing 25% of purchased volume is operationally challenging, resource-intensive, and costly.
- Given that random sampling varies annually and ensures statistical robustness, we propose a more feasible approach. **We recommend setting the additional requirement to a 15% sample size instead.**

Article 17: Auditing of raw materials

- **Paragraph 5:** The current wording of the provision allows too much variation in interpretation. This applies both to voluntary schemes developing verification guidelines and to individual auditors applying those guidelines. It should be clearly defined which analyses are accepted and what results are accepted from the analysis. Our main concern is that there are no well established methodologies in place yet for analysing feedstock composition.
- Radiocarbon analysis (C14) reliably measures biogenic/biobased content in a given sample. However, it cannot differentiate between virgin and waste biogenic origin, or between biogenic feedstock types, and therefore any 'blanket' approach to implementing C14 testing would only serve to impose a significant cost while addressing a small minority of cases – it is best used as a targeted evidence-gathering intervention.
- Furthermore, there is a significant risk that this lack of clarity will lead to divergent guidance across the voluntary schemes. Ultimately, this means that the same analytical results could lead to different consequences depending on the scheme and the auditor.

Article 18: Auditing of waste and residues

- **Paragraph 3 & 4 point a):** The draft proposes to reduce the minimum tonne threshold for the on-site auditing obligation from five tonnes/month to one tonne/month. Furthermore, group auditing will no longer be permitted for certain points of origin of specific feedstocks. Individual restaurants may generate more than one metric tonne (1mt) of Used Cooking Oil (UCO) in a month and requiring on site audits of individual restaurants does not appear to be a proportionate or meaningful measure. Additionally, the UCO volume from a large restaurant might exceed 1mt in one month but fall below this threshold in the subsequent month, introducing inconsistency. We therefore recommend to clarify that individual restaurants will not be subject to separate certification or auditing requirements. The expertise and resources of auditors should instead be directed towards mitigating fraud risks at a different point in the supply chain.

- **Paragraph 4 point b):** We require clarification on the definition of "trader" within this provision, as the current wording makes it difficult to ascertain which economic operators fall within the scope.

- **Paragraph 4 point c):** The draft introduces a requirement for rotation of the certification body (entity) every three years when auditing waste and residues. We consider this new requirement disproportionate, as it will significantly increase the administrative and operational burden without providing additional value. We therefore recommend harmonizing this requirement with the general rotation requirement for the individual auditor as set out in draft Article 3(5). Auditor rotation is a more proportionate and effective measure to address risks related to independence and familiarity, while avoiding the disruption, additional costs, and loss of institutional knowledge associated with changing certification bodies.

Article 19: Auditing of production and conversion units

- Increasing the frequency of audits for production and conversion units, alongside other stricter requirements such as shortening the validity periods for certificates held by virgin and waste biomass traders, would significantly elevate the administrative workload across the entire supply chain.
- This intensification of requirements is anticipated to substantially raise the administrative and operational burden on economic operators. Specifically, managing increased workload would necessitate a greater number of full-time equivalents (FTEs). Certification audits are significant administrative events, typically demanding around three months of preparation. Furthermore, these changes are likely to exacerbate pressure on the pool of qualified auditors, which is already limited. Moreover it is likely to create barriers of entry to small and even middle size producers.

Article 26: Traceability and Union database

- **Paragraph 3:** The requirement to submit customs clearance documents to the UDB would significantly increase the administrative burden and increase the likelihood of operational delays. Because customs documentation does not contribute to the traceability of feedstocks or biofuels, its integration into the UDB is unnecessary for a tool of this nature. Furthermore, the UDB's reporting timelines are already more rigorous than existing industry standards; adding requirements for customs documentation would impede economic operators' ability to adhere to these deadlines. Ultimately, this additional layer of complexity risks further delaying the deployment of the UDB itself.

Article 30: Cyber security and protection of personal data and commercially sensitive information

- The Article 30 requires legal refinement. The Commission and Member states should ensure that the revised text explicitly assigns the Controller role, clarifies the specific categories of data processed and applies the data minimization principle to restrict "full access" granted to all user types, particularly auditors and other competent authorities.
- While we fully support the UDB as a vital tool for investigating fraud suspicion and mitigating market abuse, its effectiveness depends on legal clarity. The Commission must ensure that access rights are clearly defined by law rather than left to administrative discretion. We recommend that the text explicitly:
    - **Paragraph 1:** Assigns the "Controller" role to "Union database manager" explicitly. This is crucial for defining who is responsible for data security and responding to legal inquiries. Secondly, paragraph 3 needs to clearly define data categories (clarifying exactly what personal info is collected).

- **Paragraph 4:** Applies the "Data Minimisation" principle to all levels of access. Proportional access is needed for auditors. Granting auditors "Full Access" to an operator's entire transaction history and account data is excessive. Access must be limited to the minimum dataset strictly necessary for the specific audit. Auditors should see relevant compliance data, not the operator's entire commercial history.
- **Paragraphs 6&7:** We support access for Customs, OLAF, and investigative authorities to detect and prevent fraud. However, to prevent legal challenges that could undermine an investigation, "ad hoc" access must be tied to a mandatory legal requirement (e.g., a specific criminal procedure or statutory duty). Access should be a legal mandate, not a discretionary grant by the database manager.
- **Paragraph 2b:** We highlight the need to protect commercial confidentiality within UDB. In small or niche markets, "aggregated" data can inadvertently lead to the re-identification of specific operators or sensitive trade secrets. The Commission must mandate robust aggregation standards that guarantee operator anonymity, preventing the unintended disclosure of commercially sensitive strategies.

Article 39: Retroactive annulment in the Union database of the validity of the proof of sustainability unique identifiers in case of identified irregularities or fraud in the supply chains

- As explained above in relation to Article 14, 'Classification and treatment of non-conformities', we reiterate our position: the annulment of proof of sustainability declarations should be explicitly limited to volumes proven to be impacted by a critical non-conformity. Such actions should only occur following a formal ruling by a court or competent authority. Furthermore, we request legal refinement of this article to ensure consistent application of these measures.

Article 41: Rules on the application of a single mass balance system

- **Paragraph 2 point b) and Article 2 paragraph 2 point 20):** The revision's impact, resulting from the change in ‘the product group’ definition from "similar to identical" chemical and physical characteristics, requires assessment and clarification.

Article 43: Specific rules on the allocation of sustainability and the greenhouse gas emissions characteristics in the mass balance system

- **Paragraph 6:** Integrating customs requirements into the RED sustainability framework presents significant risks, including legal inconsistencies, operational difficulties, and increased market fragmentation. Customs procedures have a different purpose than sustainability certification. Assigning sustainability-related duties to national customs authorities, beyond their core mandate, could lead to conflicting obligations, heavier administrative burdens, and supply chain disruptions. Should Member States develop differing approaches, the inconsistencies could worsen, hindering the overarching goal of scaling up renewable fuels in the EU.
- However, greater cooperation and information exchange between customs authorities, Member State competent authorities, and certification bodies could be beneficial, provided the separation between customs enforcement and the sustainability certification framework is maintained.

Article 45: Determining the greenhouse gas emissions of biofuels, bioliquids and biomass fuels

- **Paragraph 3 (c) and Annex V:** The current draft appears to omit references to the rules regarding negative emissions from soil carbon accumulation (esca). We request that this concept be explicitly included within this implementing regulation or directly under the Renewable Energy Directive, specifically in Annex V. Retaining the esca component in the RED calculation for negative emissions from soil carbon accumulation supports the production of vegetable oils with lower greenhouse gas (GHG) emissions, thereby enabling a broader pool of eligible feedstocks.

Article 51: Production on unused, abandoned or severely degraded land

- **Paragraph 5 and Article 2 paragraph 2 point 28:** The draft revises the threshold levels on salinisation, soil organic matter and erosion for severely degraded land (SDL) and clarifies the definition of 'severely degraded land' as defined in point 9 of Annex V, part C to Directive (EU) 2018/2001 (RED). When examining the definition of severely degraded land in Annex V, part C, paragraph 9 of the RED, it can be interpreted that one of the three criteria is mandatory (i.e. severe erosion), and one of the two remaining criteria must be also met (significantly salinated or significantly low organic matter content).
- The application of a combined, strict set of criteria for Annex IX SDLs appears excessively restrictive. This approach likely compromises the practical implementation of the agricultural concept, as the total area meeting two of the threshold requirements simultaneously is significantly smaller than the area meeting individual thresholds. Moreover, it is critical to note that cultivation on highly eroded land can result in a 30% to 50% reduction in crop yields. **Consequently, we propose that fulfilling any single one of the established thresholds should be sufficient for land area to be classified as Annex IX severely degraded land.**

Article 53: Specific rules for certification of feedstocks listed in Annex IX to Directive (EU) 2018/2001

Intermediate crops

- **Paragraph 5 sub paragraph 2:** It is encouraging to note that the draft recognizes the real local agricultural practices. Specifically, the inclusion of "data on actual cultivation practices in the region" as a verification method for point a) of the first sub paragraph represents a very positive development.

- **Paragraph 5 sub paragraph 3:** The draft provision states that *intermediate crops may only be certified in regions where agro-climatic conditions allow no more than one food or feed crop to reach maturity per vegetation period*. This restriction would limit the potential of intermediate crops significantly, particularly if interpreted in a way that supersedes the flexibility laid out in the sub paragraph 2, as eligibility would be tied to the number of theoretical harvests viable in the specific region rather than assessing the actual cultivation practices. Consequently, a significant portion of Southern Europe (including parts of Spain, Italy, Portugal, Greece) could be disqualified, as the climate in these regions typically supports two food or feed crops to mature.
- **Therefore, we ask for deletion of this provision.**