

Biomass Sustainability Ordinance (BioNachV) - Germany

Country/ Organization	Germany	Year and status	2007 (not in implementation)
Initiative	Ordinance on requirements applying to the sustainable production of biomass for use as biofuel (Biomass Sustainability Ordinance - BioNachV)		
Membership	-		
Governing bodies	-		
Type and implementation approach	Legislation	Geographical coverage	National (including imports)
Feedstock covered	All	Supply chain coverage	Biofuel feedstock production, processing, and biofuel transportation/distribution and use
Type(s) of biofuels covered	All		
Link	http://ec.europa.eu/enterprise/tris/pisa/cfcontent.cfm?vFile=120070679EN.DOC		

Overview.

In December 2006, Germany adopted the Biofuel Quota Act (BioKraftQuG), which prescribed the compulsory blending of biodiesel and bioethanol (with diesel and gasoline, respectively). In 2007, the Ordinance on requirements applying to the sustainable production of biomass for use as biofuel (Biomass Sustainability Ordinance - BioNachV) was approved by the Federal Government.

This ordinance, which consists of nineteen articles divided into three sections, identified a series of minimum environmental sustainability requirements (including default values) for the production of biomass for biofuels. In particular, the ordinance addresses the following environmental dimensions:

- sustainable land management;
- protection of natural habitats; and
- potential for greenhouse gas reduction.

The Biomass Sustainability Ordinance, which was notified to the EU in December 2007, was subsequently overruled by the EU Renewable Energy Directive¹.

For citation:

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¹ Germany adopted two ordinances in 2009 to transpose this directive into its legislative system.

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BIOMASS SUSTAINABILITY ORDER (BIONACHV) - GERMANY	
ASPECTS/ISSUES	ARTICLES
1. ENVIRONMENTAL	
1.2 Biodiversity and ecosystem services	<p>See Section 1, Article 2(3)(4) on degradation of species and ecosystem diversity at aspect/issue 1.3 Productive capacity of land.</p> <p>Section 1: Requirements of biofuels and their production Article 3: Protection of natural habitats</p> <p>(1) The requirements relating to the protection of natural habitats within the meaning of Article 1(1)(1)(b) are met if the biomass used is not grown in protected areas or in areas which were classified as high conservation value areas as of 1 January 2005 or thereafter.</p> <p>(2) High conservation value areas are areas which, as rare ecosystems, are extremely valuable in terms of conservation or that offer a habitat to particularly rare plant or animal species. They have one or more of the following properties:</p> <ol style="list-style-type: none"> 1. Areas which contain globally or regionally significant quantities of items that require protection in order to promote biological diversity (such as endemic or endangered species, areas in which animals or plants can live undisturbed), 2. Areas in which globally or regionally rare, threatened or endangered ecosystems lie or which contain them, 3. Areas that fulfil fundamental protective functions.
1.3 Productive capacity of land Back to table of contents	<p>Section 1: Requirements of biofuels and their production Article 2: Sustainable land management</p> <p>(3) The requirements of Article 1(1)(1)(a) are also regarded as met if, despite the absence of equivalent legal regulations on requirements of competent good practice or other comparable systems (such as cross compliance) referred to in paragraph 2, biomass produced in states outside the scope of this Order is cultivated in accordance with the following requirements affecting worldwide conservation in particular:</p> <ol style="list-style-type: none"> 1. no significant increase in emissions of acidifying, eutrophying, ozone-depleting or toxic substances, 2. no significant degradation of soil function and soil fertility (for example, retention of organic matter, protection against erosion), 3. no significant degradation of water quality or water supply, 4. no significant degradation of species and ecosystem diversity, and 5. environmentally acceptable use of fertilisers and crop protection products. <p>[Also relevant to aspect(s)/issue(s): 1.2 Biodiversity and ecosystem services;</p>

BIOMASS SUSTAINABILITY ORDER (BIONACHV) - GERMANY	
ASPECTS/ISSUES	ARTICLES
1.3 Productive capacity of land (continued)	1.4 Crop management and agrochemical use; 1.5 Water availability and quality; and 1.7 Air quality.]
1.4 Crop management and agrochemical use	See Section 1, Article 2(3)(5) on use of fertilisers and crop protection products at aspect/issue 1.3 Productive capacity of land.
1.5 Water availability and quality	See Section 1, Article 2(3)(1) on emissions of eutrophying or toxic substances; Article 2(3)(2) on protection against erosion, and Article 2(3)(3) on degradation of water quality or supply at aspect/issue 1.3 Productive capacity of land.
1.6 GHG emissions	Section 1: Requirements of biofuels and their production Article 4: Potential for greenhouse gas reduction (1) Biofuels must have a greenhouse gas reduction potential of at least 30 per cent and as from 1 January 2011 at least 40 per cent (baseline value). The potential for greenhouse gas reduction is calculated in the light of the principles set out in Annex 1. Unless specific values are shown, the values given in Annex 2 shall be used.
1.7 Air quality	See Section 1, Article 2(3)(1) on emissions of toxic substances at aspect/issue 1.3 Productive capacity of land.
3. GOVERNANCE	
3.1 Compliance Back to table of contents	Section 1: Requirements of biofuels and their production Article 1: Recognition of biofuels (1) Biofuels are considered to comply with the obligations laid down in Article 37a(1)(1) and in conjunction with Article 37a(3) of the Federal Pollution Control Act and are eligible for tax exemption in accordance with Article 50(1)(1) to (3) of the Energy Taxation Act only if it can be demonstrated that 1. in the cultivation of the biomass used to produce them a) the requirements laid down in Article 2 for sustainable management of agricultural land and b) the requirements laid down in Article 3 for the protection of natural habitats are met, and 2. the biofuels have the potential for greenhouse gas reduction referred to in Article 4(1) . Section 2: Certification Article 5 : Certification scheme, interfaces (1) A certification scheme will specify the particular provisions for compliance with the conditions set out in Articles 1 to 4 for undertakings in all the production, processing and supply stages referred to in paragraph 2. In particular, the following provisions must be laid down:

BIOMASS SUSTAINABILITY ORDER (BIONACHV) - GERMANY	
ASPECTS/ISSUES	ARTICLES
<p>3.1 Compliance (continued)</p> <p>Back to table of contents</p>	<ol style="list-style-type: none"> 1. provisions indicating how Articles 1 to 4 are to be implemented in the certification scheme and how compliance with the provisions of the scheme is to be ensured, 2. in the case of undertakings as described in paragraph 2, provisions specifying the records which must be kept to demonstrate compliance with the requirements of Articles 1 to 4 and to assess the risks of defective records as "high", "medium" or "low", 3. provisions relating to the measures taken to ensure that records are treated confidentially and not made accessible to unauthorised third parties, 4. provisions relating to the inspection of the certification scheme which is applied at all production, processing and supply stages (internal inspections), including inspections carried out by an independent inspection body recognised by the authority responsible for recognising inspection bodies, 5. provisions relating to the measures taken to ensure that the inspections referred to in Article 8 are carried out, and 6. provisions relating to the action taken against the interfaces as described in paragraph 2 if they fail to comply with Articles 1 to 4. <p>(2) The body from which data recording compliance with the specific provisions relating to Articles 1 to 4 for the entire production, processing and supply stage must be collected, processed or transmitted (interface) is the undertaking that manufactures biofuel from the biomass raw material. If this undertaking obtains its raw material from an oil mill, then the oil mill is an additional interface. Interfaces must be members of a certification scheme. It must be possible to link undertakings operating upstream of the interfaces to a certification scheme on the basis of contractual agreements with the interfaces. These agreements must specify that the undertakings operating upstream of the interface are required to collect data to record compliance with the specific provisions relating to Articles 1 to 4.</p> <p>Section 2: Certification Article 8: Inspections</p> <p>(1) Interfaces as described in Article 5(2), shall be inspected by an independent inspection body at least once a year. Agricultural undertakings that are subject to cross compliance rules are regarded as meeting the requirements of Article 2 a priori. In this case the inspection body shall every year inspect the undertakings for compliance with the requirements laid down in Articles 3 and 4, and shall also inspect at least 5 per cent of all other undertakings operating upstream of the undertakings referred to in sentence 1 in every production, processing and supply stage.</p>