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COMMISSION STAFF WORKING DOCUMENT

Subsidiarity Grid

Accompanying the document

Proposal for a Regulation of the European Parliament and Council

amending Regulations (EU) 2018/841 as regards the scope, simplifying the compliance rules, setting out the targets of the Member States for 2030 and committing to the collective achievement of climate neutrality by 2035 in the land use, forestry and agriculture sector, and (EU) 2018/1999 as regards improvement in monitoring, reporting, tracking of progress and review

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Subsidiarity Grid

1. Can the Union act? What is the legal basis and competence of the Unions' intended action?
1.1 Which article(s) of the Treaty are used to support the legislative proposal or policy initiative?
The legal basis for this proposal is Article 192 of the Treaty of the Functioning of the European Union (TFEU). In accordance with Article 191 and 192(1) TFEU, the European Union shall contribute to the pursuit, inter alia, of the following objectives: preserving, protecting and improving the quality of the environment; promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.
1.2 Is the Union competence represented by this Treaty article exclusive, shared or supporting in nature?
In the case of environment, the Union's competence is shared.
*Subsidiarity does not apply for policy areas where the Union has **exclusive** competence as defined in Article 3 TFEU[1]. It is the specific legal basis which determines whether the proposal falls under the subsidiarity control mechanism. Article 4 TFEU[2] sets out the areas where competence is shared between the Union and the Member States. Article 6 TFEU[3] sets out the areas for which the Unions has competence only to support the actions of the Member States.*
2. Subsidiarity Principle: Why should the EU act?
2.1 Does the proposal fulfil the procedural requirements of Protocol No. 2[4]: - Has there been a wide consultation before proposing the act? - Is there a detailed statement with qualitative and, where possible, quantitative indicators allowing an appraisal of whether the action can best be achieved at Union level?
An inception impact assessment was published on 29 October 2020 for four weeks on the Better Regulation Portal of the Commission with the aim to collect initial feedback on the project. In total, 93 responses arrived. In order to collect evidence and ensure greater transparency, the Commission organised a public consultation for each of the proposals from 13 November 2020 to 5 February 2021: the consultation on the revision of the LULUCF Regulation reached 235 respondents. Opinions from citizens and organisations on the justifications, objectives, potential design and scope as well as impacts of the initiative were received. In addition to these, the Commission services engaged in extensive bilateral consultations with public authorities, business associations, individual companies and NGOs. Articles 191 to 193 of the TFEU confirm and specify EU competencies in the area of climate change. Climate change is a trans-boundary problem, which cannot be solved by national or local action alone. Coordination of climate action must be taken at European level and, where possible, at global level. EU action is justified on grounds of subsidiarity as set out in Article 5 of the Treaty of the European Union. Since 1992, the European Union has worked to develop joint solutions and drive

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E003&from=EN
[2] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E004&from=EN
[3] https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E006:EN:HTML
[4] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E/PRO/02&from=EN

forward global action to tackle climate change. More specifically, action at EU level will provide for cost effective delivery of the 2030 and long-term emission reduction objectives while ensuring fairness and environmental integrity.

In light of the emission reduction target for 2030, and in the perspective of the climate neutrality objective to be achieved by 2050, stronger EU action is needed.

The explanatory memorandum of the proposal and the impact assessment under chapter 3 contain sections on the principle of subsidiarity.

2.2 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the conformity with the principle of subsidiarity?

In the explanatory memorandum accompanying the proposal for the new legislation as well as impact assessment, the principle of subsidiarity is addressed in special sections.

Climate change is by its very nature a trans-boundary challenge that cannot be solved by national or local action alone. Coordinated EU action can effectively supplement and reinforce national and local action and enhances climate action. Coordination of climate action is necessary at EU level and, where possible, at global level, and EU action is justified on grounds of subsidiarity.

Although initiatives at the national, regional and local level can create synergies, alone they will not be sufficient. Lack of coordinated EU action setting out individual targets for Member States would not produce sufficient incentive to increase carbon removals and look for new possibilities of doing so.
An increase in the 2030 target for EU GHG reductions will impact most, if not all, sectors across the EU economy. The increase of that target may furthermore require policy responses in many fields, including beyond climate, forestry and land use policy. The actions taken by Member States under the amended LULUCF Regulation framework have strong linkages with other policies, in particular agriculture, biodiversity and habitat protection, adaptation, and also energy policy due to the renewable energy aspects. While emissions reduction and removal targets are determined per Member State, interdependencies between the different policies involved have a cross-national impact, and principles, on which basis the Member States will report on their achievements and measure their progress towards reaching their individual targets and targets of the EU as a whole, are laid down in Regulation (EU) 2018/1999. Action at the EU level is indispensable and coordinated EU policies have a much bigger chance of leading to a true transformation towards a climate neutral economy by 2050.

2.3 Based on the answers to the questions below, can the objectives of the proposed action be achieved sufficiently by the Member States acting alone (necessity for EU action)?

This proposal aims at contributing to the achievement of the 55% emissions reductions target at the EU level as an important milestone on the way to EU-wide climate neutrality in 2050. The proposal commits to the achievement of EU-wide climate neutrality in the land use, forestry and agriculture sector already in 2035 and to achieve the updated target for 2030. Sufficient progress towards slowing down global warming and effective combat of climate change could not be achieved at the level of the Member States without coordinated actions and efforts at the EU level.

(a) Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?

The problem tackled, i.e. climate change, is inherently of a transnational/cross-border nature.
(b) Would national action or the absence of the EU level action conflict with core objectives of the Treaty[5] or significantly damage the interests of other Member States?
Lack of supra-national coordination and the absence of a Union initiative coordinating the actions at national level would compromise the attainment of the Union's climate change goals.
(c) To what extent do Member States have the ability or possibility to enact appropriate measures?
The EU target of achieving net removals of 310 Mt of CO2 equivalent in 2030 is distributed among the Member States, so their role in enhancing the EU carbon sink is substantial. The Member State are those to put in place the necessary policies to make this happen. The targets are, however, distributed in a way which reflects the emissions mitigation possibilities of the land used and forestry sector in the each Member State and the capacity to increase the performance due to improvement in land management practices or changes in land use that benefit the climate and biodiversity. And the governance framework offers a certain degree of flexibility in how the Member States comply with their targets – the better performing ones may sell their surplus to those falling behind or Member States may give up on some annual emissions allocations under the Effort Sharing framework to improve on their compliance in the land use and forestry sector. In addition, Member States severely hit by natural disasters may benefit from the solidarity of the over-performing Member States.
(d) How does the problem and its causes (e.g. negative externalities, spill-over effects) vary across the national, regional and local levels of the EU?
Global warming has its impacts not only on most sectors of the economy and clearly on land use, forestry and agriculture, but its effects are present across national, regional and local levels throughout the EU.
(e) Is the problem widespread across the EU or limited to a few Member States?
The need to address climate change, reduce greenhouse gas emissions and enhance possibilities to remove CO2 from the atmosphere is widespread across the EU.
(f) Are Member States overstretched in achieving the objectives of the planned measure?
The proposal is based on an in-depth assessment of different policy options and their respective impacts. The proposed targets are sufficiently ambitious to generate progress towards the Union objectives of climate neutrality, as well as attainable, respecting the potential of the CO2 removal capacity of the land use, forestry and agriculture sector in each Member State. In addition, the Member States may take the opportunity of various flexibilities within the land use and forestry framework as well as the Effort Sharing legislation. A certain safety network is proposed for Member States whose compliance is in threatened by natural disasters, without however compromising the efforts and performance by each Member State.
(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?
The policy instrument of setting out minimum national carbon removal targets and creating incentives across the land sector to explore innovative possibilities of nature-based carbon removal

[5] https://europa.eu/european-union/about-eu/eu-in-brief_en

and storage such as carbon farming, production of durable bio-products etc. are recognized as a key tool for reducing greenhouse gas emissions and combating climate change across the EU. How these targets and initiatives are achieved is left upon the authorities of the Member States, which are involved at different levels.
2.4 Based on the answer to the questions below, can the objectives of the proposed action be better achieved at Union level by reason of scale or effects of that action (EU added value)?
Reducing greenhouse gas emissions and increasing removals is a trans-boundary issue that requires effective action at the largest possible scale. Coordinated EU action enables to address different capacities of the Member States to enhance carbon removals, supports cooperation in reaching the targets, increases clarity concerning the conditions of compliance, and still leaves up to the consideration of the Member States the measures they take upon achieving the targets in 2030 and 2035.
(a) Are there clear benefits from EU level action?
Yes, actions coordinated at EU level, such as facilitated by the Common Agricultural Policy, have a much higher chance to succeed and make a stronger impact in combat against climate change than uncoordinated actions of individual Member States.
(b) Are there economies of scale? Can the objectives be met more efficiently at EU level (larger benefits per unit cost)? Will the functioning of the internal market be improved?
Yes
(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?
The proposal is not replacing national policies, it merely reinforces the effects of national efforts through coordinated actions, since coordinated EU policies have a bigger chance to succeed and make a difference. The Member States contribute their share towards the -310 Mt net removals EU target and to the 2035 climate neutrality in land use, forestry and agriculture, however, the amended Regulation does not impose a homogenous policy approach in terms of what measures and policies should be adopted in which Member State.
(d) Do the benefits of EU-level action outweigh the loss of competence of the Member States and the local and regional authorities (beyond the costs and benefits of acting at national, regional and local levels)?
Reducing GHG emissions is fundamentally a trans-boundary issue that requires effective action at the largest possible scale. The EU, as a supranational organisation is well-placed to establish effective climate policy in the EU. Member States do not lose competencies to choose the measures they wish to adopt in order to enhance their carbon removals and reduce GHG emissions in the land use, forestry and agriculture sector. The proposal sets their minimum contributions for 2030 and leaves upon their consideration until 2024 when they update in this respect their National Energy and Climate Plans, what measures they adopt in order to contribute their bit towards climate neutrality in the sector in 2035.
(e) Will there be improved legal clarity for those having to implement the legislation?
The proposal sets clear targets of how the Member States will contribute to the EU 2030 climate targets and provides legal clarity for the use of certain flexibilities, by further specifying their

condition of use at a higher level of detail.

3.1 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the proportionality of the proposal and a statement allowing appraisal of the compliance of the proposal with the principle of proportionality?

The proposal complies with the proportionality principle because it does not go beyond what is necessary in order to achieve the Union's objectives of reducing greenhouse gas emissions in a cost-effective manner, while ensuring fairness and environmental integrity.
The Climate Law agreed by the European Parliament and the Council has endorsed an overall economy-wide and domestic reduction in greenhouse gas emissions of at least 55% below 1990 levels by 2030 and climate neutrality by 2050. This proposal covers a significant part of these emissions, and revises the Regulation in order to achieve this objective.

This proposal respects the proportionality principle because it does not go beyond what is necessary in order to achieve the objectives of implementing the EU's target for reducing greenhouse gas emissions for the period 2021 to 2030 in a cost-effective manner, while ensuring fairness and environmental integrity.

3.2 Based on the answers to the questions below and information available from any impact assessment, the explanatory memorandum or other sources, is the proposed action an appropriate way to achieve the intended objectives?

The proposed action builds on an existing and well-functioning policy, simplifies its regulatory framework and newly sets individual targets for the Member States, on one hand respecting their individual circumstances and potentials in carbon removals, on the other hand providing incentives to create more climate-friendly agriculture and forestry, promoting more sustainable use of biomass, supporting the bio-economy, including the use of durable harvested wood products, in full respect of ecological principles fostering biodiversity.

(a) Is the initiative limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the Union can do better?

Yes

(b) Is the form of Union action (choice of instrument) justified, as simple as possible, and coherent with the satisfactory achievement of, and ensuring compliance with the objectives pursued (e.g. choice between regulation, (framework) directive, recommendation, or alternative regulatory methods such as co-legislation, etc.)?

The proposal sets out amendments to an existing Regulation. This instrument is appropriate for achieving the objective of simplifying the compliance rules, setting out nationally binding targets for the Member States and improving the quality of reporting on GHG emissions and removals within the scope of the Regulation to better track progress towards the targets.

(c) Does the Union action leave as much scope for national decision as possible while achieving satisfactorily the objectives set? (e.g. is it possible to limit the European action to minimum standards or use a less stringent policy instrument or approach?)

Yes

(d) Does the initiative create financial or administrative cost for the Union, national governments, regional or local authorities, economic operators or citizens? Are these costs commensurate with the objective to be achieved?
Budgetary implications for the Member States are related to the possibility of trading surpluses when overachieving their targets, and to the necessity of high quality monitoring and reporting in the land use, forestry and agriculture sector involving e.g. re-use of EU programmes (e.g. Copernicus) and data sources already used e.g. in agriculture. For the EU, the costs are connected with the necessity to carry out a comprehensive review of national inventories in 2025 in order to propose the annual net removals targets of the Member States and to provide IT solutions for operating the Union Registry to track compliance, where Member States carry out their account operations, e.g. trade surpluses.
(e) While respecting the Union law, have special circumstances applying in individual Member States been taken into account?
The amended regulatory framework takes into account individual situation of the Member States in their land and forestry sector, setting out their targets for 2030 in respect to the carbon removal potential of the sector and e.g. providing access to special flexibility to those Member States hit by natural disasters.