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From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2022) 98 final
Subject:	COMMISSION STAFF WORKING DOCUMENT Subsidiarity Grid Accompanying the document Proposal for a Regulation of the European Parliament and of the Council on substances that deplete the ozone layer and repealing Regulation (EC) No 1005/2009

Delegations will find attached document SWD(2022) 98 final.

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EUROPEAN  
COMMISSION

Strasbourg, 5.4.2022  
SWD(2022) 98 final

## **COMMISSION STAFF WORKING DOCUMENT**

### **Subsidiarity Grid**

#### *Accompanying the document*

**Proposal for a Regulation of the European Parliament and of the Council  
on substances that deplete the ozone layer and repealing Regulation (EC) No 1005/2009**

{COM(2022) 151 final} - {SEC(2022) 157 final} - {SWD(2022) 99 final} -  
{SWD(2022) 100 final}

## Subsidiarity Grid

<b>1. Can the Union act? What is the legal basis and competence of the Unions' intended action?</b>
<b>1.1 Which article(s) of the Treaty are used to support the legislative proposal or policy initiative?</b>
This proposal is based on Article 192(1) of the Treaty on the Functioning of the European Union, in line with the objective to preserve, protect and improve the quality of the environment; protect human health; and to promote measures at international level to deal with climate change.
<b>1.2 Is the Union competence represented by this Treaty article exclusive, shared or supporting in nature?</b>
The Union's competence is shared.
<b>2. Subsidiarity Principle: Why should the EU act?</b>
<b>2.1 Does the proposal fulfil the procedural requirements of Protocol No. 2<sup>1</sup>:</b> <ul style="list-style-type: none"> <li>- Has there been a wide consultation before proposing the act?</li> <li>- 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?</li> </ul>
<p>The explanatory memorandum of the proposal and the impact assessment explain in detail all relevant indicators.</p> <p>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.</p>
<b>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?</b>
<p>The proposal complements EU legislation that has existed at EU level since 2000 and it clearly complies with the subsidiarity principle for the following reasons:</p> <p>Firstly, protecting the climate system is a cross-border issue and the scale of the problem demands action worldwide. Protecting the climate system is a cross-border issue. Individual member states cannot solve the problems alone. The scale of the problem demands EU- wide action as well as action worldwide.</p> <p>Secondly, the ODS Regulation prohibits the production, trade and use of controlled substances and products and equipment using those substances. It is therefore relevant to the functioning of the internal market.</p> <p>Thirdly, the Protocol considers the EU as a regional economic integration organisation (REIO) and the EU must therefore comply with the Protocol's obligations at Union level (e.g. reporting, licensing system, consumption phase-down). This requires relevant legislation at the same level; it would be very difficult if not infeasible to achieve compliance through 27 different national systems.</p>
<b>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)?</b>

<sup>1</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E/PRO/02&from=EN>

The objectives of this Regulation cannot be sufficiently achieved by the Member States, by reason of the transboundary nature of the environmental problem addressed and the effects of this Regulation on the intra-Union and external trade. Thus, the objectives can be better achieved at Union level, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union.
(a) Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?
See above
(b) Would national action or the absence of the EU level action conflict with core objectives of the Treaty <sup>2</sup> or significantly damage the interests of other Member States?
No
(c) To what extent do Member States have the ability or possibility to enact appropriate measures?
In accordance with Article 191(4), Member States are not prevented from maintaining or introducing more stringent measures.
(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?
This measure implements the obligations under the Montreal Protocol to which all Member states are Parties.
(e) Is the problem widespread across the EU or limited to a few Member States?
Global
(f) Are Member States overstretched in achieving the objectives of the planned measure?
No, the impact assessment assesses this in detail
(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?
All Member States are Parties of the Montreal Protocol which this measure implements.
<b>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)?</b>
The objectives of this Regulation cannot be sufficiently achieved by the Member States, by reason of the transboundary nature of the environmental problem addressed and the effects of this Regulation on the intra-Union and external trade. Thus, the objectives can be better achieved at Union level, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union.
(a) Are there clear benefits from EU level action?
Yes
(b) Are there economies of scale? Can the objectives be met more efficiently at EU level (larger

<sup>2</sup> [https://europa.eu/european-union/about-eu/eu-in-brief\\_en](https://europa.eu/european-union/about-eu/eu-in-brief_en)

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 complements EU legislation that has existed at EU level since 2000, in continuation of legislation implementing the Montreal Protocol adopted by all Member States in 1987.
(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)?
See above.
(e) Will there be improved legal clarity for those having to implement the legislation?
Yes, in particular for customs authorities.
<b>3. Proportionality: How the EU should act</b>
<b>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?</b>
<p>The proposal complies with the proportionality principle. The measures are based on a thorough assessment of their cost-effectiveness.</p> <p>In general terms, the proposal mainly improves certain aspects of the ODS Regulation. Where further restrictions are proposed (i.e. recovery obligations) the proposal ensures that technically and economically feasible alternatives are available. If under particular circumstances this is not the case, it allows derogations to be granted.</p> <p>Modifications on reporting are minor and should not entail any significant costs on undertakings. On the other hand certain modifications result in costs savings and prevent unnecessary administrative burden for undertakings and national competent authorities (for example removal of the quota allocation system).</p> <p>No detailed provisions are proposed in areas where the objectives might be better achieved by action in other policy areas, for example by legislation on waste or labelling. This is to avoid overlaps that might lead to the unclear allocation of responsibilities, creating an additional burden for public authorities and companies.</p>
<b>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?</b>
Yes
(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.)?
Yes. The legal instrument chosen is a Regulation because the proposal aims to replace and improve the current ODS Regulation while maintaining its general structure on control measures. The ODS Regulation has proven to be effective. Any major changes (i.e. repeal, or turning it into a Directive) would unduly burden Member States and create additional uncertainty for the undertakings active in this sector.
(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. In accordance with Article 191(4), Member States are not prevented from maintaining or introducing more stringent measures. Notably, in respect of penalties for infringements of the regulation, Member States are free in their choice of national measures as long as they are, overall, dissuasive, effective and proportionate.
(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?
See financial fiche attached to the proposal.
(e) While respecting the Union law, have special circumstances applying in individual Member States been taken into account?
The proposal includes the obligation to adopt penalty measures in cases of infringements, respecting Member States administrative practices and constitutional constraints. Moreover, training of personnel handling such substances is organised at national level in accordance with existing practices.