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COMMISSION STAFF WORKING DOCUMENT

Subsidiarity Grid

Accompanying the document

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) 2018/842 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement

{COM(2021) 555 final} - {SEC(2021) 555 final} - {SWD(2021) 611 final} - {SWD(2021) 612 final}

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?
The revision of the Effort Sharing Regulation builds upon the feedback received during the preparation and after the presentation of the 2030 Climate Target Plan The Commission published on 29 October 2020 an inception impact assessment specific to the revision of the Effort Sharing Regulation where it outlined the initial considerations and policy options of the revision. The inception impact assessment was open for feedback from 29 October 2020 to 26 November 2020 and it received 101 contributions. In addition, the Commission carried out a public consultation from 13 November 2020 to 5 February 2021. In addition, the Commission services engaged in extensive bilateral consultations with public authorities within the EU and third countries, as well as with business associations, social partners, individual companies and NGOs. The Effort Sharing Regulation sets national targets for greenhouse gas emission reduction by 2030 in accordance with the different capacities of Member States and enabling the Union to achieve its 2030 emission reduction target set in the European Climate Law. By its own nature, this framework cannot be established at national level. 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.

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?

The explanatory memorandum accompanying the legal proposal and the impact assessment (section 3) contain sections on the principle of subsidiarity.

Subsidiarity is a key and inbuilt element of the Effort Sharing Regulation. While establishing Union and national targets on emission reductions, it leaves up to the Member States to decide how to be better achieve them. Action at the EU level is therefore indispensable and coordinated EU policies have a much bigger chance of leading to a true transformation towards a climate neutral economy by 2050, while avoiding fragmentation of the internal market. Coordinated action at the EU level furthermore facilitates the full consideration of the different capabilities to act among Member States. Nevertheless, the role of Member State action is crucial to achieve the increased overall EU ambition, in particular in areas where the competence for specific policies and measures lies mainly with Member States for reasons of subsidiarity.

Climate change is a transboundary problem where coordinated EU action supplements and reinforces national and local action effectively. Coordinated action allows for high EU-wide ambition while recognising subsidiarity and different capabilities to act among Member States, since the Regulation primarily addresses Member States, while allowing for increased cost efficiency through appropriate flexibilities within and between Member States and with other sectoral legislation (Emission Trading System, Land Use, Land Use Change and Forestry Regulation).

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)?

No. Climate change is a global transboundary problem it needs to be tackled by all Member States, and can only be tackled if all Member States contribute. The absence of a Union initiative coordinating the efforts at national level would compromise the attainment of the Union's climate change goals.

(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?

The absence of a Union initiative coordinating the efforts at national level would compromise the attainment of the Union's climate change goals. The Effort Sharing Regulation also ensures that the efforts made by some Member States are not in vain due to the inactivity of other Member States (which could be the case if Member States were let free to decide on whether or not to take

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

measures to reduce greenhouse gas emissions). Coordinated action at the EU level furthermore facilitates the full consideration of the different capabilities to act among Member States. Action at the EU level is therefore indispensable and coordinated EU policies have a much bigger chance of leading to a true transformation towards a climate neutral economy by 2050, while avoiding fragmentation of the internal market. The EU single market moreover acts as a strong driver for cost-efficient change.
(c) To what extent do Member States have the ability or possibility to enact appropriate measures?
The role of Member State action is crucial to achieve the increased overall EU ambition. The legally binding national targets under the Effort Sharing Regulation leave it to Member States to decide how to achieve them allowing for certain flexibilities between Member States and other legislative instruments, such as LULUCF and ETS. Other EU wide policies support action taken by Member States and contribute to the achievement of the MS targets. While Member States decide and implement relevant measures at national level, the EU legal framework provides for a monitoring and compliance mechanism designed to ensure that the 2030 emission reduction targets are achieved with the contribution of all Member States, in particular through their National Energy and Climate Plans under Regulation (EU) 2018/1999 on the Governance of the Energy Union and Climate Action (Governance Regulation).
(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?
The problem and its causes 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 and reduce greenhouse gas emissions from the sectors covered by the Effort Sharing Regulation (road transport, heating of buildings, agriculture, small industrial installations and waste management) 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 the different policy options and respective impacts. The proposal sets targets that are at the same time ambitious and achievable. Fairness and cost efficiency will remain key principles for the Effort Sharing Regulation. This includes a target setting approach that takes into account differences in capacity to act while considering adjustments to take into account specific national circumstances.
(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?
The policy instrument of setting national greenhouse gas emission reduction targets is recognized as a key tool for reducing emissions from the sectors not currently covered by the EU ETS.
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 is a trans-boundary issue that requires effective action at the largest possible scale. Coordinated EU action effectively supplements and reinforces national and local action and facilitates the full consideration of the different capabilities to act among Member States. The EU single market moreover acts as a strong driver for cost-

efficient change and gradual convergence of greenhouse gas emissions per capita.
(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 benefits per unit cost)? Will the functioning of the internal market be improved?
Yes, the reduction of greenhouse gas emissions across the European Union benefits from coordination at the EU level given the EU's single market, impacting all sectors covered by the Regulation. The impacts of the 2030 ambition increase and related policies on growth and jobs creation, fairness and cost-effectiveness are examples of elements that can be better considered at the EU level. Coordinated EU policies have a much bigger chance of leading to a true transformation, particularly in light of the global dimension of the challenge. The approach must take into account different mitigation potential between Member States, as well as the EU single market as a strong driver for cost-efficient change and gradual convergence of GHG emissions per capita.
(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?
The main target of the ESR is to reduce emissions at Union and national levels, ensuring that all Member States contribute to the common goal according to an equitable distribution of efforts. However, the ESR does not impose a homogenous policy approach in terms of what measures and policies should be adopted. Coordinated EU policies have a much bigger chance of leading to a true transformation, particularly in light of the global dimension of the challenge. The approach must take into account different mitigation potential between Member States, as well as the EU single market as a strong driver for cost-efficient change and upward convergence.
(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 on which measures should be taken in order to reduce greenhouse gas emissions, the initiative updates the minimum level of emission reductions foreseen in the Regulation, leaving to Member States, local and regional authorities the choice of the best means to achieve it.
(e) Will there be improved legal clarity for those having to implement the legislation?
The proposal is merely updating the emission reduction targets of the existing Regulation in line with the increase in EU climate ambition for 2030. No issues of legal clarity have been raised for the current Regulation.
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?
This 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. Achieving increased ambition in greenhouse gas emission reductions will require additional action, both at the EU level and at Member States level. The Effort Sharing Regulation is a tool to ensure action by EU Member States in a flexible and appropriate manner, and does so in coherence with other EU legislation. The proposed action is proportionate in order to achieve the climate objectives that the EU has committed itself to.
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 that has demonstrated its ability to ensure emission reductions in the sectors covered.
(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 suitable for achieving the objective of updating the nationally binding targets for the sectors covered.
(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?
The initiative primarily addresses Member States as institutional actors and thus mostly affects their national administrations directly. Without creating new obligations for Member States, the initiative will require Member States to revise and implement more ambitious climate action strategies. The Commission will support Member States in this endeavour with capacity building actions.
(e) While respecting the Union law, have special circumstances applying in individual Member States been taken into account?
Yes. Fairness and cost efficiency remain key principles for the Effort Sharing Regulation. The target

setting approach takes into account differences in capacity to act while considering adjustments for specific national circumstances, in line with the guidance provided by the European Council in December 2020 and May 2021.