Council of the European Union

Brussels, 16 July 2021
(OR. en)

Interinstitutional File: 2021/0207(COD)

10917/21
ADD 1

CLIMA 201
ENV 538
AVIATION 211
MI 574
IND 205
ENER 337
CODEC 1111

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	15 July 2021
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2021) 555 final
Subject:	COMMISSION STAFF WORKING DOCUMENT Subsidiarity Grid Accompanying the document Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2003/87/EC as regards aviation's contribution to the Union's economy-wide emission reduction target and appropriately implementing a global market-based measure

Delegations will find attached document SWD(2021) 555 final.

Encl.: SWD(2021) 555 final

EUROPEAN
COMMISSION

Brussels, 14.7.2021
SWD(2021) 555 final

COMMISSION STAFF WORKING DOCUMENT

Subsidiarity Grid

Accompanying the document

Proposal for a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2003/87/EC as regards aviation's contribution to the Union's economy-wide emission reduction target and appropriately implementing a global market-based measure

{COM(2021) 552 final} - {SEC(2021) 552 final} - {SWD(2021) 603 final} - {SWD(2021) 604 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?
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. As regards this specific initiative, an inception impact assessment took place between 3 July 2020 and 28 August 2020 with the aim to collect initial feedback on the project. An open public consultation was also placed on the Commission website, from 1 October 2020 and 14 January 2021, aiming to gather opinions from citizens and organisations on the justifications, objectives, potential design and scope as well as impacts of the initiative. In addition to these, 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. 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 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

[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

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?

Yes, they do. 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. On their own, individual Member States would also represent too small a market to achieve the same level of results, therefore, an EU wide approach is needed to drive industry level changes and to create economies of scale.

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 to reduce GHG emissions in the EU to achieve the updated target for 2030. Due to the transboundary effects of climate change and the largely transnational nature of aviation, an action at EU level will deliver more effectively than an action at Member State level. In addition, an action at EU level will ensure a level playing field while minimising the administrative burden for Member States and aircraft operators.

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

The effects of climate change are transboundary and aviation has a transnational nature. Therefore, acting at EU level is more efficient than acting at the Member State level.
Besides, an uncoordinated action across Member States might threaten the level playing field.
Also, an EU legal act is required for Member States to appropriately apply CORSIA for flights not currently covered by the EU ETS.

(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 EU level action might impede the Union's ability to reach the objectives of the Paris Agreement and might create competition distortions between Member States and thus damage the interest of some Member States.

(c) To what extent do Member States have the ability or possibility to enact appropriate measures?

Given the transnational nature of aviation, a harmonised EU level action will deliver more effectively

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

the climate targets at domestic and international levels.
(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 consequences of climate change are present at local, regional and national level, but the transnational nature of aviation and the transboundary nature of climate change renders the problem a global issue where the cause cannot be efficiently addressed by isolated actions at local, regional or national level.
(e) Is the problem widespread across the EU or limited to a few Member States?
The need to address climate change is widespread across the EU.
(f) Are Member States overstretched in achieving the objectives of the planned measure?
Achieving the Paris Agreement objectives cannot solely rely on national/regional/local initiative as regards aviation emissions, in particular due to the transnational nature of aviation. Also, by reason of its scale and effects, the objectives of the proposal can be better achieved at Union level.
(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?
The stakeholders consultation did not reveal significantly different views/preferred courses of action between national, regional and local authorities across the EU.
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)?
There are clear benefits from EU level action as such an EU level action will bring economies of scale and is the most efficient way to reach the objectives of the initiative. Given the transnational nature of aviation, a harmonised action is the most efficient way to achieve the objectives and to ensure a level playing field.
(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 larger an emissions trading system is, the more cost efficient the emission reductions.
(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?
A harmonised action across the EU prevents distortion of competition by ensuring equal treatment of all airlines flying the same route, and ensures the participation of all Member States in CORSIA.
(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. This harmonised approach through an EU emission reduction tool has allowed for aviation's contribution to the EU 2020 climate objective and is set to ensure consistency with the 2030 target.

(e) Will there be improved legal clarity for those having to implement the legislation?

Yes. A harmonised approach will ensure legal and administrative simplification for operators concerned.

3. Proportionality: How the EU should act

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.
This proposal covers a large part of these greenhouse gas emissions and revises the Directive in order to achieve this objective in a cost-effective manner, while ensuring fairness, environmental integrity, proper functioning of the internal market and implementation of CORSIA.

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 initiative is appropriate to achieve the intended objectives, because a harmonised approach is required to ensure a level playing field across Member States and minimise the administrative burden. The legal instrument chosen (a directive) is the most appropriate instrument which will leave as much scope as possible for national decision, while achieving the objectives of the initiative.

(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. The initiative requires Member States to achieve the objectives and implement the measures in a harmonised way, which would ensure a level playing field across Member States and minimise the administrative costs for airline operators and national authorities.

(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 objectives of the present proposal are best pursued through an amending Directive. This is the most appropriate legal instrument to make amendments to the existing EU ETS Directive, Directive 2003/87/EC. A Directive requires Member States to achieve the objectives and implement the

measures into their national substantive and procedural law systems.
(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. A directive requires Member States to achieve the objectives and implement the measures into their national substantive and procedural law systems.
(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 implementation of CORSIA will lead to an increased administrative burden for the Union and for Member States. The impacts of the implementation of CORSIA on the Union and national administrations should be limited by using the same infrastructures. The implementation of CORSIA will result in an increased level of administrative costs for aircraft operators, but these costs are expected to be small compared to the overall operating costs. The reduction of free allocation of emission allowances will increase the operating costs of airlines. This initiative might have a very limited impact on the price of flight tickets for consumers. However, the impact assessment showed that the initiative will have no negative impact on low-income groups.
(e) While respecting the Union law, have special circumstances applying in individual Member States been taken into account?
Yes. Special considerations have been given to outermost regions, which can be affected to a greater extent by price increases in air transport and changes in the flight frequency than other less-isolated regions, notably because the access of outermost regions residents to education, training, goods and services rely on air transport. A time-limited derogation from the EU ETS is proposed for emissions from flights between an aerodrome located in an outermost region of a Member State and an aerodrome located in the same Member State.