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## NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. prev. doc.:	12215/22
No. Cion doc.:	10857/21 + ADD 1
Subject:	Proposal for a Regulation of the European Parliament and of the 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
	- Preparation for the trilogue

## I. INTRODUCTION

1. On 14 July 2021, the Commission submitted the above-mentioned proposal to the European Parliament and to the Council, as part of the Fit for 55 package<sup>1</sup>.
2. The main purpose of the Commission proposal is to strengthen the contribution of the land use, land use change and forestry (LULUCF) sector to the EU's increased overall climate ambition for 2030 by setting an EU-level target of 310 million tonnes of CO<sub>2</sub> equivalent in net greenhouse gas removals in the LULUCF sector by 2030, distributed between Member States in the form of binding national targets.

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<sup>1</sup> Doc. 10857/21 + ADD 1 - 4.

3. In the European Parliament, Mr Ville Niinistö (Greens/EFA, FI) was appointed rapporteur for the Committee on Environment, Public Health and Food Safety (ENVI). Mr Norbert Lins (EPP, DE) was appointed rapporteur for the Committee on Agriculture and Rural Development (AGRI), which is an associated committee with shared competence on specific provisions. The Parliament adopted its position on the proposal on 8 June 2022.
4. The European Economic and Social Committee delivered its opinion on 8 December 2021. The Committee of Regions delivered its opinion at its session on 27-29 April 2022.

## **II. WORK IN THE COUNCIL AND WITH THE EUROPEAN PARLIAMENT**

5. The Council (Environment) agreed on a general approach on the proposal at its meeting on 28 June 2022 as a basis for negotiations with the European Parliament on the Commission proposal in the context of the ordinary legislative procedure.
6. The first trilogue with the Parliament took place on 5 September 2022. Technical meetings at tripartite level were held on 7, 14, 28 and 29 September and 7 October, with four additional meetings scheduled in October after the second trilogue.
7. Good progress has been made at technical level in gaining a better understanding of the positions of the two institutions and identifying areas which require more technical work before submitting them to the political level.
8. While the discussions at technical level have addressed most of the issues within its mandate, it has not yet been possible to cover them in their entirety. The technical aspects of some important topics, such as land-use flexibilities and mechanisms to address natural disturbances as well as monitoring, are scheduled to be discussed at upcoming technical meetings. The recitals will also be discussed at a later stage but should, in the view of the Presidency, be linked to the operational provisions of the proposal and adjusted accordingly in the course of the upcoming negotiations.

### III. SUGGESTED APPROACH IN VIEW OF THE TRILOGUE

9. When it comes to the Council's main priorities, namely those relating to the structure of the targets, the flexibilities, mechanisms to address natural disturbances, and target governance in the 2026-2030 period, the Presidency proposes to firmly maintain the Council's general approach at this stage and only engage in exploratory discussions to provide further explanations or clarifications of the Council's position and gather information of the Parliament's priorities with a view to preparing the ground for further progress in view of the third trilogue, which is scheduled to take place on 10 November.
10. Pending completion of the examination of all issues at technical level and further in-depth discussion on the topics on which possible ways forward have already been identified, the Presidency does not intend to present concrete compromise suggestions in view of the second trilogue on 12 October 2022. Therefore, at this stage the Presidency proposes to maintain unchanged the Council's general approach as well as the four-column table which formed the basis for discussions at the first trilogue (doc. 12215/22).
11. Nevertheless, based on the interinstitutional discussions at technical level so far, the Presidency proposes that the Council could signal some openness towards the Parliament on a certain number of technical or less politically sensitive issues to facilitate further progress and drafting of concrete compromise texts. The Presidency aims to work swiftly towards provisional agreement on those less contentious issues. This on the understanding that any flexibility shown by the Council should be reciprocated by the Parliament and be considered in the context of reaching a balanced overall agreement.
12. Therefore, the Presidency suggests that the Council could take a step towards the Parliament on the issues set out below, together with suggested options/approaches to facilitate further exploration and elaboration of possible compromises in the upcoming negotiations. The row numbers mentioned in connection with each topic refer to those of the four-column table attached to doc. 12215/22.

- a) **AFOLU / Post-2030 framework** (rows 40, 70-81 and 90; rows 91-91b (EP) / rows 191a-191b (Council))

The Parliament and the Council agree that it would not be appropriate to provide, in the framework of the current revision of the LULUCF Regulation, for the integration of non-CO2 emissions from agriculture in the scope of the LULUCF Regulation as from 2031. However, the institutions have a different approach to the post-2030 framework: The Council proposes that the possible creation of a combined land sector would be considered in the context of the review of the Regulation in 2024. The Parliament asks the Commission to present a progress report on removals from the LULUCF sector and emissions from agriculture covered by the ESR and on that basis consider inter alia targets for individual land categories. It also invites the Commission to propose in January 2025 targets for the LULUCF sector for 2035, 2040, 2045 and 2050. In addition, the Parliament proposes including the marine, coastal and freshwater ecosystems in the scope of the LULUCF sector and setting additional separate net removal targets for them.

*The Presidency suggests maintaining the Council's general approach, i.e., keeping the question of AFOLU in the review clause and not accepting the reference to possible sub-targets. However, the Presidency suggests that the Council could accept the reference to scientific evidence and improvements in monitoring and data collection as elements to inform the review as it is foreseen in the Council's general approach.*

*Concerning target-setting post-2030, the Presidency proposes to maintain the approach that the current revision of the Regulation should not prejudice the legislative framework beyond 2030 nor create inconsistency or overlaps with the processes or timelines foreseen in the European Climate Law (ECL). In this respect, reference could be made to the provisions of the ECL concerning the setting of the 2040 target.*

*In addition, to assuage the concern of the Parliament that the review as worded in the Council's general approach would automatically lead to extension of the scope of the LULUCF Regulation to agricultural non-CO2 emissions, the Presidency suggests to explore whether the wording relating to the review could be further clarified to make it clear that the aim is not to prejudge the 2030-framework but to ensure that all options for the post-2030 framework will be looked into. As a further step towards a common position, the Presidency suggests inserting a reference to consideration of the need for and feasibility of including marine, coastal and freshwater ecosystems within the scope of the Regulation.*

**b) Carbon storage products (rows 111-113b)**

The Council did not propose changes to the Commission proposal. The Parliament amended the title to refer to “sustainable” carbon storage products and limited the inclusion of new product categories by delegated acts to harvested wood products (as in the existing Regulation), whereas the inclusion of carbon storage products as proposed by the Commission would require an amendment of the Regulation through co-decision and only after the entry into force of the legal act on the framework for certification of carbon removals and following adoption of new IPCC guidelines.

*The Presidency proposes to accept the EP amendment to the title and the inclusion of the methodological criteria for the inclusion of additional harvested wood products categories (science-based, transparent, verifiable, avoiding double-counting). To move closer to the Parliament on the inclusion of carbon storage products, the Presidency sees two options, which are either to delimit the delegated act by taking on board some of the specific criteria mentioned in the EP amendment or to agree to the EP proposal on their inclusion through an amendment of the Regulation by co-decision, in which case a reference could be introduced in the review clause.*

c) **Compliance report** (rows 172-178a)

The Council's general approach did not propose changes to the provisions on the content of the compliance reports themselves, whereas the Parliament proposes to specify the required content in more detail. The Presidency suggests taking a step towards the Parliament by agreeing to include some of the proposed specifications, as long as they are not overly restrictive or result in undue administrative burden.

*The Presidency suggests accepting the EP amendments in row 175 (reference to possible trade-offs with other environmental objectives and strategies, but without excluding the possibility to refer to other policy areas), row 176 (policies and measures to reduce the vulnerability of land to natural disturbances and climate impacts) and row 178 (public availability of the reports). The Presidency also proposes to accept that the compliance report should be based on annual datasets, including information obtained from soil monitoring systems such as LUCAS surveys (beginning of row 178a) but not the rest of the amendment referring to further specifications of soil monitoring systems.*

*The EP amendment in row 175a refers to the new paragraph 4a to Article 4 inserted by the EP amendment in row 91c and needs to be discussed separately. In principle, the Presidency doubts whether the LULUCF Regulation is the appropriate place for the provisions proposed in the new paragraph (e.g., inclusion of social rights, the “do no significant harm” principle, minimum criteria for biodiversity in monitoring).*

d) **Governance** (rows 120a-120e)

The Parliament wants to ensure that there is a corrective mechanism that is triggered when a Member State is not compliant with its target for two consecutive years, leading to recommendations from the Commission for additional remedial measures and amendment by the Member State of its NECP and long-term strategy. According to the EP amendment, failure to address the recommendations would give rise to an infringement procedure.

*The provisions proposed by the Parliament do not seem to be consistent with the NECP cycle and would not as such fit with the concept of the five-year budget in the Council's general approach. With a view to finding a compromise, the Presidency suggests introducing wording to highlight existing processes on tracking of progress towards 2030 under the Energy Union Governance Regulation, without creating additional obligations nor overlaps with existing provisions. This addition would be seen as a reaction to the Parliament's concerns.*

e) **Financial support and just transition** (rows 91d-91i)

The Parliament proposes to add a new Article on financial support and just transition in the LULUCF sector. Its intention is to streamline existing financial instruments and funds for additional LULUCF action.

*The Presidency notes that the process of amendment of CAP Strategic Plans is regulated under the CAP Strategic Plans Regulation and therefore the EP amendment is not appropriate in the LULUCF Regulation. As a possible way forward, the Presidency suggests to delegations to consider whether the Commission could be invited to assess the availability and consistency of relevant financing measures in respect of the objectives of the LULUCF Regulation in the context of the NECP cycle.*

*As concerns the EP amendment concerning the use of ETS auctioning revenues, the Presidency considers the suggested earmarking to be inappropriate and the setting of guidelines to be outside the scope of the LULUCF Regulation. The Presidency also considers that the evaluation of social and labour impacts, in the form proposed by the Parliament, would result in undue administrative burden for the Member States.*

13. As regards the other outstanding issues (the “do no significant harm” principle and further minimum safeguards, Access to justice, link to international cooperation/instruments), the Presidency suggests tasking the technical level with further exploratory work that would provide additional clarification on positions of both institutions, with a view of finding possible options and paths forward. An important element of this exploratory work is to find maximum possible alignment with existing legislative instruments and currently negotiated proposals relevant for the LULUCF, namely the European Climate Law, the Governance Regulation and the Effort Sharing Regulation.

#### IV. CONCLUSIONS

14. In light of the above, the Permanent Representatives Committee is invited to indicate whether delegations agree with the Presidency's approach as set out in this note, in view of the second trilogue on 12 October 2022
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