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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on the Environment
Subject:	Revision of the LULUCF Regulation: Presidency non-paper with a view to the WPE on 18 October (pm only)

Delegations will find attached a revised version of the non-paper from the Presidency, with additional draft compromise proposals on the following (p. 6-8)

- AFOLU & review / Post-2030 framework
- Carbon storage products
- European Scientific Advisory Board

The grouping of the points as discussed in the framework of the trilogue negotiations is also included (p. 9).

Non-paper from the Presidency for the WPE on 18 October 2022

Revision of the LULUCF Regulation

The trilogue on the LULUCF Regulation on 12 October focused on five issues 1) Flexibilities and governance 2) Compliance reports; 3) Financial support; 4) Carbon storage products; 5) AFOLU and the Review and the post-2030 framework. Both institutions agreed on a broad political approach, and a mandate for the continuation of the work on the remainder of the text was given to the technical level. The next trilogue will take place on 10 November.

Delegations will find attached draft compromise texts prepared following the trilogue and reflecting discussions at the latest inter-institutional technical meetings.

The suggested text on compliance reports introduces some additional specification, while on the governance of progress towards targets ('flexibilities and governance') and on financial support, the texts are streamlined as much as possible with the Governance Regulation and existing processes.

On the inclusion of carbon storage products, at Coreper delegations expressed a preference for addressing the issue via delegated acts as opposed to the ordinary legislative procedure. However, following clarifications from the Parliament, the Presidency suggests exploring the option of addressing the issue in the review clause (legislative procedure) with concrete text proposals to be provided at a later stage.

On AFOLU and the post-2030 framework, the proposed way is to address the issue via the review clause in Article 17 (rather than Article 4), without prejudging the outcome of the Commission's assessment/report.

Any text in this non-paper is without prejudice to final agreement by both institutions and is provided to the Working Party on the Environment for information purposes to facilitate further work on the proposal.

Text based on the 4-column document marked as follows:

- Original COM proposal /existing language of the Governance Regulation
- **Changes inserted by the Council (general approach) and changes thereto**
- **Necessary adjustments to existing language of Governance Regulation**
- Changes inserted by the EP/ changes against the EP proposal
- Square bracketed texts are not part of the draft compromise

1) Flexibilities and governance - draft compromise text (rows 118 – 125c)

Row 118, 119, 120 – No changes

Row 120a - ~~(aa) the following paragraph –1 is inserted before paragraph 1:~~

Row 120b - Amendment of Article 29(1) of Regulation (EU) 2018/1999 by adding point f):

~~f) -1. Where the Commission finds that a Member State failed to progress made by each Member State towards meeting its [annual target] as set out in Article 4(3) of Regulation (EU) 2018/841 for two consecutive years, it shall issue recommendations to that Member State identifying adequate additional measures in the LULUCF sector to remedy that situation. The Commission shall make such recommendations publicly available.~~

Amendment of Article 32(1) of Regulation (EU) 2018/1999 by adding point f) – to accommodate the amendment of Article 29(1):

Where, on the basis of its assessment pursuant to points (b) and (f) of Article 29(1), the Commission concludes that insufficient progress is made by a Member State towards meeting its objectives, targets and contributions, its reference points for renewable energy, its annual [targets] as set out in Article 4(3) of Regulation (EU) 2018/841 for two consecutive years, or in implementing the policies and measures set out in its integrated national climate and energy plan, it shall issue recommendations to the Member State concerned pursuant to Article 34.

In its recommendations in the area of renewable energy, the Commission shall take into consideration the relevant circumstances indicated by the Member State in accordance with the second subparagraph of Article 5(1). The Commission shall also take into consideration renewable energy projects for which a final investment decision has been taken, provided that those projects become operational in the period 2021-2030 and have a significant impact on a Member State's national contribution.

In its recommendations in the area of energy efficiency, the Commission shall take due account of the objective criteria listed in points (a) and (b) of Article 6(1) and the relevant national circumstances indicated by the Member State in accordance with Article 6(2).

In its recommendations relating to the [annual targets] as set out in Article 4(3) of Regulation (EU) 2018/841, the Commission shall, if appropriate, identify adequate additional measures in the LULUCF sector to address the shortcomings detected. The Commission shall make such recommendations publicly available.

Row 120c, 120d - Covered by Art 34 of Regulation (EU) 2018/1999

Row 120e - See EP proposal in row 125c

Row 121, 122, 123 – No changes/Council's text

Row 124

(b) in order to comply with the [*commitments and targets set out*]~~/commitment~~ in Article 4, the ~~managed forest land flexibility~~**flexibilities** set out in Articles 13 and 13b.

Row 125 - No changes to first part. Second part bracketed, linked to discussion on 5-year budget

Row 125b - Amendment of Article 11(2) of Regulation (EU) 2018/841:

If a Member State is not in compliance with the monitoring requirements laid down in Article 26 of ~~point (da) of Article 7(1) of~~ Regulation (EU) 2018/1999 ~~No 525/2013~~, the Central Administrator designated under Article 20 of Directive 2003/87/EC ('the Central Administrator') shall temporarily prohibit that Member State from transferring ~~or banking~~ pursuant to Article 12(2) ~~and (3)~~ of this Regulation or using the managed forest land flexibility pursuant to Article 13 of this Regulation.

The Commission may also provide additional technical support to that Member State.

Row 125c new addition:

2a. Where, on the basis of the assessment of the Member States progress towards their [annual] [targets] set out in Article 4(3) in accordance with the provisions set out in Chapter 5 of Regulation (EU) 2018/1999, considers that that progress is insufficient to meet the [targets] set out in Article 4, it may, where appropriate, take additional Union initiatives, including through legislative proposals.

The Commission may also provide technical support to Member States to which it has addressed recommendations pursuant to Article 32(1) of Regulation (EU) 2018/1999.

2) Compliance reports – draft compromise text (rows 172 – 178d)

1. By 15 March 2027 for the period from 2021 to 2025, and by 15 March 2032 for the period from 2026 to 2030, Member States shall submit to the Commission a compliance report containing the balance of total emissions and total removals for the relevant period on each of the land accounting categories specified in Article 2(1), points (a) to (f), for the period from 2021 to 2025 and in Article 2(2), points (a) to (j) for the period from 2026 to 2030, using the accounting rules laid down in this Regulation.

The compliance report shall include an assessment based on annual datasets of:

a) the policies and measures regarding possible trade-offs including at least with other Union environmental objectives and strategies such as those laid down in the 8th Environmental Action Programme and in the EU Biodiversity and Bioeconomy Strategies;

[(aa) the measures taken by Member States to comply with Article 4(4a);]

b) the synergies between climate mitigation and adaptation, including policies and measures to reduce the vulnerability of land to natural disturbances and climate change;

c) synergies between climate mitigation and biodiversity.

Such report shall also contain, where applicable, details on the intention to use the flexibilities referred to in Article 11 and related amounts or on the use of such flexibilities and related amounts. ✚ The Member State shall make the reports available to the public pursuant to Article 28 of Regulation (EU) 2018/1999.

Council text rows 178b-178d

The following paragraphs 1a and 1b are added:

[Council text]

'1a. The greenhouse gas emission inventory data submitted by each Member State and validated as conform under Art 38 of Regulation (EU) 2018/1999 may be subject to a ~~technical correction~~ an adjustment by the Commission due to a change of methodology by Member States. However, such ~~technical corrections~~ methodological adjustments shall not, being for the purpose of the assessment of the compliance with the 2030 Union target, shall not affect the value of the 310 million tonnes CO₂ equivalent net removals as a sum of the values of the greenhouse gas net removals (in kt of CO₂ equivalent) in 2030 for Member States set out in Column D of Annex IIa nor the values in column C of that Annex.

[Council text]

1b. Member States that indicate their intention to use the flexibility referred to in Article 13b(5a) shall describe, in dedicated sections of the report, the measures taken to mitigate or reverse the effects mentioned in point (b) of Article 13b(5a), as well as the observed and expected effects of these measures.'

3) Financial support (rows 91d and 91e)

Row 91d - New recital explaining the amendment in row 91e:

Given the importance of financial support to land and forest owners or managers to achieve the targets set out in this Regulation, the Commission should, when assessing the draft updates of the latest notified integrated national energy and Climate Plans under Regulation (EU) 2018/1999, ensure that the financial support is directed to policies and measures that are tailor made to achieve the [targets] of the Member States set out in this Regulation. *In its assessment, the Commission should pay particular attention to the promotion of ecosystem-based approaches and the need to ensure permanence of additional greenhouse gas removals, taking into account existing legislation.*

Row 91e - Amendment of Article 9(2) of Regulation (EU) 2018/1999 by introducing a new point e):

e) consistency of relevant financing measures, including Union support and the use of Union funds e.g. instruments of the Common Agricultural Policy, policies and measures, with respect to the achievement of [targets] of the Member States set out in Article 4(3) of Regulation (EU) 2018/841.

Draft compromise proposals - LULUCF, 24.10.2022

- AFOLU & review / Post-2030 framework (90-91a, 190-192a / rows 39a & 89b-89c)
- Carbon storage products (rows 20 and 111-113b)
- European Scientific Advisory Board

*Changes or additions to Council position are marked in **bold underlined**, topics that are not part of the compromise/opened for discussion are marked in [square brackets].*

AFOLU & review / Post-2030 framework

Article 17

Review

1. This Regulation shall be kept under review taking into account, inter alia, international developments, efforts undertaken to achieve the long-term objectives of the Paris Agreement and Union law **[including on nature restoration]**.

On the basis of the findings of the report prepared pursuant to Article 14(3) and the results of the assessment carried out pursuant to point (b) of Article 13(2), the Commission shall, where appropriate, make proposals to ensure that the integrity of the Union's overall 2030 greenhouse gas emission reduction target and its contribution to the goals of the Paris Agreement are respected.

2. The Commission shall submit a report to the European Parliament and to the Council, no later than six months after the first global stocktake agreed under Article 14 of the Paris Agreement, on the operation of this Regulation. **The report shall be based on the most recent data available as provided by the Member States under Regulation (EU) 2018/1999, and Article 4(4) of Regulation (EU) 2021/1119.** In view of the necessary increase in greenhouse gas emissions reductions and removals in the Union and with regard to the need for additional Union policies and measures, the report shall include, where relevant, the following:

(a) an assessment of the impacts of the flexibilities referred to in Article 11,

(b) an assessment of the contribution of this Regulation to the climate neutrality objective and intermediary climate targets set out in Regulation (EU) 2021/1119;

(c) an assessment of the contribution of this Regulation to the goals of the Paris Agreement;

(d) an assessment of the current trends and future projections of emissions and removals of greenhouse gases from cropland, grassland and wetlands and regulatory options to ensure their consistency with the objective of achieving long-term greenhouse gas emission reductions in all sectors of the economy in accordance with the Union's climate-neutrality objective and the Union's intermediary climate targets set out in Regulation (EU) 2021/1119;

(e) an assessment of the current trends and future projections of emissions of greenhouse gases from the following reporting categories and regulatory options to ensure their consistency with the objective of achieving long-term greenhouse gas emission reductions in all sectors of the economy in accordance with the Union's climate-neutrality objective and the Union's intermediary climate targets set out in Regulation (EU) 2021/1119;

- (i) enteric fermentation;
- (ii) manure management;
- (iii) rice cultivation;
- (iv) agricultural soils;
- (v) prescribed burning of savannas;
- (vi) field burning of agricultural residues;
- (vii) liming;
- (viii) urea application;
- (ix) 'other carbon-containing fertilizers';
- (x) 'other'.

[That report shall take into account the effects of the forest age structure where they result in diminishing sinks or excess emissions within the territory of individual Member States, including the effects linked to the occupation of the territory of a Member State, or the wartime or post-war circumstances that had an impact on forest management within its territory.]

That report may also, subsequent to the adoption of a reporting methodology [at international level] and based on the progress in reporting and the latest scientific information available, assess the feasibility of analysis and the impact of reporting greenhouse gas emissions and removals from additional sectors, such as the marine and freshwater environment, as well as relevant regulatory options.

Following the report **and taking into account the importance of a fair contribution of each sector to the Union's climate-neutrality objective and the Union's intermediary climate targets pursuant to Regulation (EU) 2021/1119,** the Commission shall make legislative proposals, where appropriate. **In particular, the proposals may set out Union and Member States targets for greenhouse gas emissions and removals.**

Carbon Storage Products

– Recital 10 and Article 17(2a) new

(10) In order to enhance greenhouse gas removals, **reach the target of climate neutrality by 2050 and to aim to achieve negative emissions thereafter, it is of utmost importance to consistently ensure that greenhouse gas removals within the Union increase continuously, while maintaining permanence.** In particular, individual farmers, land and forest owners or forest managers should be encouraged to store more carbon on their land and their forests, **prioritising ecosystem-based approaches and biodiversity-friendly practices, such as close to nature forestry practices, proforestation, the restoration of forest carbon stocks, expansion of agroforestry coverage, soil carbon sequestration and restoration of wetlands as well as other innovative solutions.** Such incentives should enhance climate mitigation and overall emission reduction across sectors in the bio-economy, including

through the use of durable harvested wood products, in full respect of ecological principles fostering biodiversity and the circular economy. Sustainably sourced long-lived harvested wood and other bio-based carbon storage products can contribute to the circular bioeconomy by acting as substitutes for fossil-based options, but the potential for carbon storage in those products is determined by the lifespan of those products and may be assessed using Life Cycle Analysis. Therefore, following the establishment of a sound and reliable regulatory framework by means of a legislative act for the certification of carbon removals, it will be appropriate to examine the inclusion of such products in order to complement the framework for harvested wood products and to provide the necessary long-term incentives for storing carbon.

Article 17(2a) new – Review

...
2a. [Within 6 months of the] entry into force of a legislative act concerning a Union regulatory framework for the certification of carbon removals, the Commission shall submit a report to the European Parliament and the Council on the possible benefits and trade-offs of the inclusion of sustainably sourced long-lived carbon storage products that have a net-positive carbon sequestration effect. The report shall assess how to consider direct and indirect emissions and removals of greenhouse gases related to these products, such as those resulting from land use change and consequent risks of leakage of related emissions, as well as possible benefits and trade-offs with other Union environmental objectives, in particular biodiversity objectives. If appropriate, the report may consider a process for inclusion of sustainable carbon storage products under the scope of this Regulation, in a manner consistent with other Union environmental objectives, as well as IPCC Guidelines as adopted by the Conference of the Parties to the UNFCCC or the Conference of the Parties serving as the Meeting of the Parties to the Paris Agreement. The Commission's report may be accompanied, if appropriate, by a legislative proposal to amend this Regulation accordingly.

[...The Commission shall also take into account the need for the lifecycle of carbon storage products not to significantly harm other environmental objectives within the meaning of Article 17 of Regulation (EU) 2020/852.]

The European Scientific Advisory Board on Climate Change

- Compromise text as agreed for the purpose of the ESR + *additional demand from the EP in square brackets.*

The European Scientific Advisory Board on Climate Change established under Article 10a of Regulation (EC) No 401/2009 of the European Parliament and of the Council may, on its own initiative, provide scientific advice or issue reports on Union measures, climate targets, [annual] emissions and removals levels and flexibilities under this Regulation. The Commission shall consider the relevant advice and reports, in particular as regards future measures aiming at further emission reductions and removal increases in the sub-sectors covered by this Regulation. [The Commission shall provide reasons where they have not, or have only partly, taken into account the opinion of the Advisory Board.]

1. Points that were addressed during the 2nd trilogy

- Compliance reports (rows 172-178a)
- Flexibilities and governance (rows 118-125b)
- Financial support (row 91e)
- Carbon storage products (rows 20, 20b and 111-113b)
- AFOLU & review / Post-2030 framework (rows 40, 71-81, 90-91a, 190-192a / rows 39a & 89b-89c)

2. Main political points and other outstanding issues

- Target setting (rows 38, 82-87, 87a, 88-89, 89a, 178b-178c & Annex II)
- General flexibilities (rows 126-130)
- Managed Forest Land Flexibility (rows 131-140)
- Flexibilities and natural disturbance mechanisms for the period 2026-2030 (rows 38, 81b-81c, 85, 87a, 88-89, 114-117a, 156-166l, 178d)
- Governance of the targets (rows 167-171a)
- Do no significant harm & minimum safeguards (row 91c)
- Just Transition (row 91i)
- Access to justice (rows 184a-184k)
- International cooperation (rows 171b-171e)
- Implementing & delegated acts (rows 182, 185-189)
- Amendments to the Governance Regulation (rows 195-209 and Annex III)
- Other elements