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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)
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With a view to the abovementioned WPE meeting delegations will find attached a non-paper from the Presidency.

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.