

Presidency Steering Note: Working Party on the Environment 15 May 2023 – Carbon Removal Certification Framework (CRCF)

At the WPE on 15 May, the Presidency will invite delegations to return to some of the elements covered during the WPE on 31 March. These cover the administrative aspects of the framework and the sustainability and long-term aspects of the Q.U.A.L.I.T.Y criteria. The Presidency has also invited the Commission to provide additional explanations in relation to Article 7 and the relevant timelines for the certification and relevant reporting requirements.

Similar to the previous WPE, the Presidency proposes certain draft amendments to the Commission's proposal, marked in **bold and underlined**. Delegations are encouraged to provide input based on the draft amended text and/or discussion questions outlined in boxes 1 – 4.

Part 1: Q.U.A.L.I.T.Y CRITERIA

Article 6 Long-term storage

During discussions in the WPE, delegations have requested further clarity regarding the long-term storage aspect of the Q.U.A.L.I.T.Y criteria. Several delegations have also made the link between long-term storage and liability. In these discussions several delegations have reflected on the different nature of the three carbon removal categories as a key consideration.

Several delegations have requested further elements to be added to the regulation, such as references to the appropriate liability mechanisms and/or time periods for the monitoring and/or re-certification.

Based on previous explanations from the Commission, the Presidency proposed during the WPE on 3 March to clarify the link between permanent carbon storage and the relevant provisions of the CCS Directive. The Presidency also proposes to include similar additional references concerning the category carbon storage products, building on the requests for clarification made by several delegations.

The Commission has explained that the appropriate liability mechanisms will be defined in the context of the certification methodologies based on the characteristics of the different types of removal activities. As such, the proposal stipulates that carbon removal projects that cannot offer permanent storage (such as in the case for carbon farming and carbon storage in products) should be able to have shorter commitment (monitoring) periods, subjected to regular audits and re-certification. The carbon stored by these removal activities is considered released to the atmosphere at the end of the monitoring period (Article 6.3).

While the Presidency considers that this approach in principle appears to be supported by delegations, it considers that the Commissions' proposal is nonetheless in need of some further clarification (permanent vs “long-term temporary”). Another aspect concerns the time periods relating to the timing of re-certification and to the frequency of monitoring.

Subsequently, the Presidency suggests a set of clarifications in Article 6, complemented by amendments in the list of definitions in Article 2. The new definition of “*activity period*” aims to clarify the relationship between the expected duration of a carbon removal activity (Annex II, point c), the monitoring period and time period over which carbon removal units would be generated.

It is also proposed that the operator should assess the risk of reversal which would serve as the basis to set the relevant time spans. To clarify that the purpose of the liability mechanism is to address and prevent leakage of emissions, the Presidency also suggest that paragraph 2, point (b) of Article 6, is amended as below. It is also proposed to include a limited set of (non-exhaustive) examples of what could be relevant liability mechanisms.

Amendments proposed by the Presidency:

Article 2

Definitions

1. For the purposes of this Regulation, the following definitions apply:

(f) ‘monitoring period’ means a period, the duration of which is determined in **the applicable certification methodology in** accordance **with** the type of carbon removal activity, over which the storage of carbon is monitored by the operator;

(g) ‘activity period’ means a period, the duration of which is determined in the applicable certification methodology in accordance with the type of carbon removal activity, over which the carbon removal activity generates certified net carbon removal benefit

[...]

(i) ‘carbon storage in products’ means a carbon removal activity that **either permanently chemically binds** atmospheric and biogenic carbon in long-lasting products or materials **or ensures the long-term storage of atmospheric or biogenic carbon in long-lasting products and materials;**

(ia) ‘permanently chemically bound in a product’ means that the carbon does not enter the atmosphere under normal use, including any normal activity taking place after the end of life of the product, in accordance with Article 12(3b) of [the ETS Directive];

Article 6

Long-term storage

1 An operator or group of operators shall demonstrate that a carbon removal activity ~~aims at~~ **ensures the permanent storage of carbon or** the long-term **temporary** storage of carbon.’

2 For the purposes of paragraph 1, an operator or group of operators shall comply with both of the following criteria:

(a) they shall monitor and **provide periodic monitoring reports, that consider the risk of reversal of the carbon removals, to the certification body, as well as** mitigate any **identified** risks of release of the stored carbon occurring during the monitoring period.

(i) For permanent carbon storage, the monitoring period shall be consistent with the monitoring rules referred to in Articles 13 to 16 of Directive 2009/31/EC.

(ii) For carbon permanently chemically bound in products, the monitoring period shall be consistent with the rules concerning the requirements for considering that greenhouse gases have become permanently chemically bound, adopted pursuant to Article 12(3b) of Directive 2003/87/EC.

(iii) For carbon farming and carbon storage in products the monitoring period shall be set out in accordance with the rules laid down in the certification methodologies, set out in the delegated acts adopted pursuant to Article 8.

(aa) they shall provide an initial assessment of the risk of reversal of the carbon removals to the certification body;

(b) they shall be subject to appropriate liability mechanisms in order to address any release of the stored carbon occurring during the monitoring period **with the purpose of preventing increased emissions.**

(i) For permanent carbon storage, the appropriate liability mechanisms shall be consistent with the liability mechanisms referred to in Articles 17 and 18 of Directive 2009/31/EC.

(ii) For carbon permanently chemically bound in products, the appropriate liability mechanisms shall be consistent with the rules concerning the requirements for considering that greenhouse gases have become permanently chemically bound, adopted pursuant to Article 12(3b) of Directive 2003/87/EC.

(iii) For carbon storage in products and carbon farming, the appropriate liability mechanisms, such as up-front insurance, or collective buffers or accounts of carbon removal units, or discounting of carbon removal units, shall be set out and duly justified in the applicable certification methodology.

- 3 For carbon farming and carbon storage in products, the carbon ~~stored~~ **removed** by a carbon removal activity shall be considered released to the atmosphere at the end of the monitoring period.

1. Questions for discussion

- a) Do you consider the general direction proposed by the Presidency an appropriate way forward?
- b) Building on the assumption that the characteristics of the different carbon removal categories should be reflected in the assessment of long-term (temporary) storage and monitoring, do you see the need for any further clarifications in Article 6 or Article 2?
- c) Can you agree to more clearly link the removal categories to other EU legislation, either in the operative part of the text as proposed or in recitals?
- d) Would the addition of the definition “activity period” as a complement to “monitoring period” help facilitate the assessment and certification of certain carbon farming activities?
- e) Do you have any other comments relating to long-term storage and liability?

Article 7 Sustainability

According to the Commissions’ proposal, a carbon removal activity shall have a neutral impact or generate co-benefits in relation to the sustainability objectives listed in Article 7. The sustainability objectives are based on the Taxonomy regulation (Regulation (EU) 2020/852).

The Commission has in previous working parties underlined the intention to seek positive synergies between the CRCF and other Union environmental policies and objectives. It is assumed that removal units generated by carbon

removal activities with high co-benefits would likely have a higher monetary value than removal units with few or no co-benefits. Moreover, Article 7(3) holds that the “certification methodologies shall incentivise as much as possible generation of co-benefits going beyond the minimum sustainability requirements”.

In the context of Article 7, several delegations have highlighted the interlinkages between carbon removal activities and biodiversity, especially in the context of carbon farming. Several delegations have raised questions for clarification regarding *inter alia* which environmental standards/requirements would be applicable, how the co-benefits would be accounted for, and the level of assessment. To further advance discussions, the Presidency has invited the Commission to provide further clarifications on this aspect of the proposal.

In discussions to date, several delegations have questioned the lack of explicit references to socio-economic objectives/co-benefits (e.g. job creation, bio-economy, land rights, the protection of small-scale farmers). During the policy debate held at the AGIRFISH Council 25 April, several delegations also underlined that the primary objective of agricultural land is the production of food. Building on this input, the Presidency proposed a set of amendments in recital 16 ahead of the WPE on 28 April.

As these aspects of sustainability can be considered as fundamental in the context of carbon farming practices, in particular on agricultural land, the Presidency proposes to include an additional element related to food production in Article 8(3). The Presidency proposes an amendment to recital 9, clarifying the link between a decrease in food production in the EU and the risk of carbon leakage and thereby increase in indirect emissions.

Amendments proposed by the Presidency

Article 8

Certification methodologies

1. An operator or a group of operators shall apply the relevant certification ~~methodologies~~ **methodology** to comply with the criteria laid down in Articles 4 to 7.

[...]

3. When preparing those delegated acts, the Commission shall take into account the following elements:

- (a) the objectives of ensuring the robustness of carbon removals and recognising the protection and restoration of ecosystems ;
- (b) the objective of minimising administrative burden for operators, particularly for small-scale carbon farming operators;

(ba) the objective of sustained food production in the Union;

- (c) relevant Union and national law;
- (d) relevant **national** Union and international certification methodologies and standards.

Recital (9) A carbon removal activity delivers a net carbon removal benefit when the carbon removals above the baseline outweigh any increase in greenhouse gas emissions due to the implementation of the carbon removal activity. For instance, in the case of activities that deliver permanent carbon storage by injecting carbon underground, the amount of permanently stored carbon should outweigh the energy-related greenhouse gas emissions from the industrial process. In the case of carbon farming **any activity taking place within the Union may generate a decrease in food production and therefore lead to carbon leakage from indirect land use change. Any** ^{the} carbon captured by an afforestation activity or the carbon kept in the ground by a peatland rewetting activity should outweigh the emissions from the machinery used to carry out the carbon removal activity or the indirect land use change emissions that can be caused by carbon leakage.

2. Questions for discussion

- (a) Do you consider the general direction proposed by the Presidency an appropriate way forward?
- (b) Would you agree that the list of sustainability objectives under Article 7(1) is sufficient? Would it be relevant to further elaborate on these in recitals and/or in Annex I? If so, how?
- (c) Do you see any need to further specify how the co-benefits generated in relation to carbon removal activities are reflected in the removal certificates/registries/methodologies?
- (d) Do you have any other comments relating to sustainability?

Part 2: Certification process

Delegations have during the discussion to date raised various questions for clarification regarding the certification process, including the different entities. The Commission has referred in particular to the regulatory framework and certification experiences under the Renewable Energy Directive as a source of inspiration.

Based on these discussions, the Presidency proposes a set of clarifications and amendments concerning Articles 9 – 12.

Article 9, Annex II Certification of compliance, including timelines

Delegations have requested clarity on definitions relating to the timeframes of certificates and permanence of removals. In addition, they have requested further clarity on how these timeframes relate to concepts such as the update of baselines and re-certification of carbon removal activities. Several of these discussions overlap with the discussions on long-term storage and liability as outlined in the context of Article 6 above. The Presidency has invited the Commission to further clarify the relevant time periods within the proposal.

Building on the discussions and additional information provided by the Commission in the WPE, the Presidency suggests a set of clarifications and amendments in Article 9 and Annex II, which are also reflected in the list of definitions in Article 2. These align with some of the amendments proposed in relation to Article 6 above.

One aspect raised by several delegations concerns the appropriate time period for re-certification, also seen in conjunction with the update of baselines. The Presidency proposes to return to this discussion at a later stage, but welcomes further guidance from delegations on this topic.

To harmonize the process of implementation of the certification framework, the implementing acts will be very important since they will set out the minimum standard that all stakeholders involved will have to follow. Based on discussion in the WPE, the Presidency proposes that the COM “shall” rather than “may” adopt implementing acts in Article 9(5).

Amendments proposed by the Presidency:

Article 9

Certification of compliance

1. To apply for a certification of compliance with this Regulation, an operator or a group of operators shall submit an application to a certification scheme. Upon acceptance of that application, the operator or a group of operators shall submit to a certification body a **carbon removal activity plan**, including **evidence of** compliance with Articles 4 to 7, **a monitoring plan**, and the expected total carbon removals and net carbon removal benefit **generated by the carbon removal activity**. Groups of operators shall also specify how advisory services on carbon removal activities are provided, in particular to small-scale carbon farming

3. The certification body shall carry out **periodic regular** re-certification audits **based on the risk of reversal of the carbon removals and monitoring period of the activity** to reconfirm compliance of the carbon removal activity with Articles 4 to 7 and verify the generated carbon benefit. **The frequency of re-certification audits shall be set out in the applicable certification methodology, depending on the characteristics of the relevant carbon removal activity**. As a result of that re-certification audit, the certification body shall issue a re-certification audit report, that includes a summary, and an updated certificate. The certification scheme shall control the re-certification audit report and the updated certificate, and make the summary of the re-certification audit report, the updated certificate and the certified carbon removal units publicly available in a registry referred to in Article 12.

[...]

5. The Commission ~~may~~ **shall** adopt implementing acts to set out the structure, format, technical details of the carbon removal activity plan ~~comprehensive description of the carbon removal activity~~ referred to in paragraph 1, and of the certification and re-certification audit reports referred to in paragraphs 2 and 3. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17.

ANNEX II

Minimum information included in the certificate of compliance referred to in Article 9

- (f) (unique) certificate number or code;
- (p) reference to any other carbon removal certification, **and that certification number or code;**
- (q) **type of liability mechanism;**
- (x) **interval for which periodic re-certification shall be performed;**
- (x) duration of the carbon removal activity and length of the monitoring period of the carbon removal activity;
- (x) **quantity and duration of the certified carbon removal units;**
- (x) reference to any other international or national carbon certification, **including the unique certificate number of code.**

3. Questions for discussion

- (a) Do you consider the general direction proposed by the Presidency an appropriate way forward?
- (b) With the amendments proposed by the Presidency, do you consider that Article 9 provide sufficient clarity on the elements to be submitted to the certification scheme?
- (c) On the topic of re-certification audits, to what extent would you consider it relevant to include information on time spans, in the light of the different characteristics of the removal activities?
- (d) Do you see the need for additional amendments in Annex II concerning the certificate of compliance so as to provide a sufficient level of robustness and transparency?
- (e) Do you have any other comments relating to sustainability?

Article 10 – 11 Certification bodies and schemes

The Commission has, in the context of the proposed provisions on certification bodies (chapter 3) and certification schemes (chapter 4), *inter alia* explained the links to the implementing act under the Renewable Energy Directive (REDII) on rules for sustainable certification. Some delegations have asked for more clarity on the implementation of the certification process in the basic act, including on the accreditation process. The Presidency therefore proposes a set of clarifications, as set out below.

Amendments proposed by the Presidency:

Article 10

Certification bodies

- 1 Certification bodies appointed by certification schemes shall be accredited by a national accreditation authority pursuant to Regulation (EC) No 765/2008 of the European Parliament and of the Council¹ **or recognised by a national competent authority to cover the scope of this Regulation or the specific scope of the certification scheme.**

Article 11

Operation of certification schemes

1. To demonstrate compliance with this Regulation an operator or a group of operators shall use a certification scheme recognised by the Commission pursuant to Article 13.
2. Certification schemes shall operate **in a transparent and independent manner** on the basis of reliable and transparent rules and procedures, in particular with regard to internal management and monitoring, handling of complaints and appeals, stakeholder consultation, transparency and publication of information, appointment and training of certification bodies, addressing non-conformity issues, development and management of registries.
3. [...]
4. Certification schemes shall publish, at least annually, a list of the appointed certification bodies, stating for each certification body by which **national accreditation authority it was accredited or by which** national **competent** authority it was recognised and which national **competent** authority is monitoring it.

¹ Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).

Article 12 Registries

A clear majority of delegations have indicated a preference for a Union-wide registry on the grounds that a common system would enhance trust in the certificates, be more efficient and transparent, and thus help avoid double counting. Meanwhile, the Commission has explained that the setting up of a new Union common system would require time and resources that might delay the operationalization of the framework as a whole.

In these discussions, one delegation indicated that a way forward could be that the framework initially operates on the basis of separate public registries as in the Commissions' proposal, but with the aim of moving towards a Union-wide system. The Presidency therefore proposes to amend Article 12 to reflect that a common registry should be the end goal, with separate registers as a transitional solution. This would also require a harmonized set of rules on the operation of the public registries.

Amendments proposed by the Presidency:

Article 12

Registries

1. **Until the establishment of the Union registry, a certification scheme shall establish and duly maintain a certification registry to make publicly accessible the information resulting from the certification process, including the certificates and updated certificates, and to enable the tracing of the quantity of carbon removal units certified in accordance with Article 9. A certification registry shall use automated systems, including electronic templates, and shall be interoperable with registries of other recognised certification schemes in order to avoid double counting.**
- 1'. **Taking into account the reports following Article 30 of [the ETS Directive] and Article 17 of [the LULUCF Regulation], the Commission** ~~A certification scheme shall~~ **carry out an assessment of the options for the** ~~establishment and duly maintain~~ **of a common Union-wide** ~~public registry~~ **(‘Union registry’)** to make

publicly accessible the information related to the certification process, including the certificates and updated certificates, and **to enable the tracing of** the quantity of carbon removal units certified in accordance with Article 9, **and present, if appropriate, a legislative proposal. The Union registry** ~~Those registries~~ shall use automated systems, including electronic templates, ~~and shall be interoperable.~~

2. The Commission ~~may~~ **shall** adopt implementing acts setting out the structure, format, and technical details of the ~~public~~ **certification** registries **and, as appropriate, the Union registry**, and of the recording, holding or use of carbon removal units, as referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 17.

4. Questions for discussion

- (a) Do you consider the general direction proposed by the Presidency an appropriate way forward?
- (b) Do you have any other comments relating to Article 10, 11 or 12?



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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on the Environment
Subject:	Carbon removal certification framework (CRCF): WPE on 15 May 2023 - Presidency Steering note

With a view to the WPE meeting on 15 May on the abovementioned proposal, delegations will find attached a steering note prepared by the Presidency.

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