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COMMISSION STAFF WORKING DOCUMENT

Subsidiarity Grid

Accompanying the document

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on a monitoring framework for resilient European forests

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Subsidiarity Grid

- As proposed by the Committee of the Regions with guidance in blue
- Obviously, the answers to the questions below, the explanatory memorandum and – if applicable – the impact assessment should be consistent. This may require some iterations.
- Please try to stay under 10 pages.

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?
Article 192(1) of the Treaty on the Functioning of the European Union (TFEU) gives the Union the right to act in to achieve objectives of its policy on the environment, as defined in Article 191(1). These include preserving, protecting, and improving the quality of the environment; a prudent and rational utilisation of natural resources; and promoting measures at international level to deal with regional or worldwide environmental problems, in particular combating climate change. Forest ecosystems are part of the EU natural heritage.
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. While the Treaties do not explicitly mention 'forest policy', the EU has a range of competences that may relate to forests such as climate, environment, rural development, and disaster prevention. The EU has already exercised these competences, and forests are covered by several legal texts of the Union. The protection the natural heritage of forest ecosystems falls under shared EU environmental competence as stated by the EU Court of Justice (joint cases C-164/97 and C-165/97).
<i>Subsidiarity does not apply for policy areas where the Union has exclusive competence as defined in Article 3 TFEU¹. It is the specific legal basis which determines whether the proposal falls under the subsidiarity control mechanism. Article 4 TFEU² sets out the areas where competence is shared between the Union and the Member States. Article 6 TFEU³ sets out the areas for which the Unions has competence only to support the actions of the Member States.</i>
2. Subsidiarity Principle: Why should the EU act?
2.1 Does the proposal fulfil the procedural requirements of Protocol No. 2⁴:
- 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?
The Commission carried out broad consultation activities, starting with the Call for Evidence and following up with an Open Public Consultation (OPC). Contributions were received from

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>

a broad range of stakeholder groups representing EU, national, regional and local level. A series of four thematic expert workshops were also organised between October and November 2022. A dedicated sub-group under the Standing Forest Committee facilitated technical exchange with the Member States (four meetings held between November 2022 and May 2023), complemented by thematic workshops organised by the Czech and Swedish Presidencies of the Council, respectively, in September 2022 and February 2023, in which the Commission actively engaged. Several meetings were held with forest owners, administrations and forest industry representatives at EU, national and regional or local level (reflecting the multi-level governance of forest monitoring and planning) and with civil society organizations. A summary of the discussions and feedback received is provided in the impact assessment.

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?

The explanatory memorandum and the impact assessment (chapter 3) contain a dedicated section on the principle of subsidiarity with justification of the necessity to act at Union level and description of the proportionality of the proposed measures.

Subsidiarity

Forest monitoring is currently patchy and fragmented, which prevents the Union from acting in a timely manner against stressors and threats. While forest ecosystems often stretch across boundaries, forests are often seen as sovereign entities and no consistent, transnational data gathering approach has been fully developed so far. Action at EU level is justified because of the scale and transboundary nature of forest-dependent markets and growing risks connected to climate change (increasing damage risks by bark beetle, wildfires and windstorm resulting in higher costs, biodiversity loss, and market distortions, with particular effects on SMEs).

In addition, EU action allows to make the most out of cost-effective technological developments and digital innovation, particularly in relation to Earth Observation.

A common structure and integrated governance ensure that forest plans, including at regional level, better delivery on forest-related policies.

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)?

The EU initiative targets aspects of common interest and which, due to scale economies, needs for harmonisation and transboundary dimension, cannot be achieved by the Member States acting alone.

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

Disturbances such as bark beetle outbreaks, wildfires or windstorms result in greenhouse gas emissions, biodiversity loss and market distortions that have a significant transboundary dimension. These may also cause abrupt increases of salvage logging with a direct impact on the market, irrespectively of the political borders. Moreover, there is a transboundary long-term dimension due to the fact that climate and forest zones will shift northwards and upwards (altitude) within the next few decades, making comparability of long-term datasets across borders a growing necessity. Quantified examples on the effects of recent disturbances are provided.

(b) Would national action or the absence of the EU level action conflict with core objectives of the Treaty⁵ or significantly damage the interests of other Member States? Yes, since there are EU level policy and targets that relate to forests and consistent monitoring and planning are needed for the Union to deliver on its objectives. Absence of EU level action would also prevent having better knowledge of forests dynamics including their resilience to disturbances based on comparable data sets and a related high level of protection and adaptation across the EU level. In the case of major disturbances (which are on the rise) the risk of market distortions due to salvage logging could significantly damage the interests of certain Members States (particularly the neighbouring ones). Smaller Member States have a comparative economic disadvantage in accessing to Earth Observation innovative technologies due to scale economies, acting at the level of the EU would allow these Member States to profit by cost-saving technologies.
(c) To what extent do Member States have the ability or possibility to enact appropriate measures? The EU initiative is based on Art 192(1) TFUE and Member States would be able to maintain or introduce more stringent protective measures pursuant to Art. 193 TFUE, if compatible with the Treaties. In the absence of EU action, Member States are free to enact measures on forest monitoring at national level, however these would not cover the transboundary dimension nor be necessarily compatible with each other and therefore be comparable. Not all Member States would be able to access Earth Observation technology at a competitive cost.
(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 need for better comparable information and knowledge on forests indicators concerns potentially all governance levels depending on the structure of ownership/management of forests.
(e) Is the problem widespread across the EU or limited to a few Member States?
Although the share of forest as a proportion of total land and the relative importance of forests both environmentally and economically varies across Member States (some MS have more than 60% of their land covered by forests, the average is 43%, the minimum is around 10% - with the exception of Malta, which has less than 1%), the need for better data and information on forests is shared across the EU.
(f) Are Member States overstretched in achieving the objectives of the planned measure?
All Member States collect data on forests already, though not on all relevant indicators and not in a comparable manner. The action concerns harmonising/standardizing the information according to comparable criteria and it builds on existing monitoring infrastructure in the Member States such as National Forest Inventories.

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

(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?
In general Member States which have more advanced or detailed monitoring schemes are keen to maintain their systems in place, especially regarding in situ observation. The EU initiative is fully compatible with this objective. Interest for cost-effective additional solutions based on Earth Observation is shared across the Member States.
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)?
(a) Are there clear benefits from EU level action?
Yes. Clear benefits stem from better comparability, time-relevance and transparency which will allow to better face challenges and protect forest ecosystems, including timber resources, in view of the growing importance of forests for climate, biodiversity and the bioeconomy. The uptake of new Earth Observation technologies will lead to cost effectiveness-related benefits and reduce the risk of not meeting forest-related policy objectives, such as those under the LULUCF Regulation or Habitats Directive, which will benefit from access to better data on forest extent and condition.
(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?
Economies of scale are very important aspect in relation to Earth Observation (satellite, airborne-lidar monitoring) where the cost per hectare can be considerably reduced the larger the surface to monitor. Moreover, past frontload investments into Copernicus monitoring services means that these systems are already in place and putting them into practice will contribute to cost-efficient use of this EU investment while avoiding that it becomes a stranded investment.
(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?
A “common language” in forest monitoring will allow to better assess the delivery of EU policies, compare situations, and adjust to growing pressures, including climate change, leading to better resilience of forest resources. Having, where appropriate, one monitoring methodology instead of 27 will allow for consistency and cost-efficiency gains.
(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)?
The EU has already exercised its competence on forests. In this case, the EU framework would rather provide a service for cost-effective monitoring and build on existing monitoring infrastructures in the Member States. Member States competences on forest management are not affected.
(e) Will there be improved legal clarity for those having to implement the legislation?
Yes. The common definitions/indicators will facilitate implementation and create a level playing field allowing for greater legal clarity.

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?

The combination of elements selected in the preferred option is proportionate insofar it is limited to those aspects that Member States need to implement to achieve satisfactorily the objectives of this Regulation. To that end, data collection is required from the Member States, only on forest data that are linked to EU legislation and policy objectives. The proposed Regulation will moreover be based on sharing of harmonised data from existing national data collection systems, mainly National Forest Inventories (NFIs), which will minimise the extent to which Member States will have to adapt their data acquisition methods. The definitions of the forest data have been selected based on existing harmonisation work done by Member States experts at the EU level to ensure low adjustment costs. The proposal also aims to work with existing reported data where this meets the required definition, avoiding duplication of reporting obligations.

Because of the scale of the issue at stake and its cross-border dimensions, the EU is the only body that can ensure a consistent monitoring framework bringing together the Member States. Common standards for data collection, monitoring and long-term integrated planning cannot be developed at a Member State level.

No option would involve transferring powers from Member States to the EU beyond the necessary monitoring and planning harmonisation and standardisation (no transfer of powers on the operational choices related to forest management).

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 proposal is based on an impact assessment which considered five different policy options. Three of these options including one with two sub-options on the level of intervention were fully analysed. The analysis was reviewed by the regulatory scrutiny board and finalised based on the board's comments. The resulting final analysis has informed the current proposal.

- (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, Member States on their own are by definition not in a condition to harmonize/standardize forest monitoring at EU level nor to reach scale-economies on new Earth Observation technologies such as satellite and airborne LIDAR). The proposal only touches on aspects which Member States cannot address on their own.

- (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 this proposal are best pursued through a regulation. This will ensure direct and uniform applicability of the provisions in the Union at the same time and hence serve the purposes of harmonisation and provision of timely data. A regulation will allow to set

common standards that are directly applicable in all Member States without the administrative burden of and the delay for transposing the instrument into national law. It will also provide for greater legal clarity on definitions and monitoring specifications.
(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?)
The EU framework is precisely based on providing common elements on forest monitoring (e.g. common definitions and indicators, transparency rules, access to innovative technology) while leaving MS fully in charge on how to use the information collected for the purpose of forest management.
(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?
Costs of implementing the proposed Regulation would fall on the Union and the national or regional governments, namely to adopt their current monitoring systems to meet the proposed data collection requirements. At the EU level, the continuous production of frequent remote sensing data will come with some additional costs to improve the frequency and accuracy compared to the current data products. At the national level, these costs would be relatively minor in Member States with developed monitoring systems, while countries where systematic data collection is currently lacking will face higher costs related to setting up the data collection infrastructure. These costs are considered commensurate with the stated objectives, as having access to high quality data on forest will be indispensable to reduce the impacts of climate change, with consequent economic gains, and meet forest-related policy objectives.
(e) While respecting the Union law, have special circumstances applying in individual Member States been taken into account?
N.A.