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#### COVER NOTE

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From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

date of receipt: 28 October 2020

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 28.10.2020 amending Annex IV to Regulation (EU) 2018/841 of the European Parliament and of the Council as regards the forest reference levels to be applied by the Member States for the period 2021-2025

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Delegations will find attached document C(2020) 7316 final.

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Encl.: C(2020) 7316 final



Brussels, 28.10.2020  
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**COMMISSION DELEGATED REGULATION (EU) .../...**

**of 28.10.2020**

**amending Annex IV to Regulation (EU) 2018/841 of the European Parliament and of the Council as regards the forest reference levels to be applied by the Member States for the period 2021-2025**

(Text with EEA relevance)

{SWD(2020) 236 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE DELEGATED ACT

Regulation (EU) 2018/841 of the European Parliament and of the Council on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU<sup>1</sup>, adopted on 30 May 2018, is a vital part of the Union's efforts to reduce overall greenhouse gas (GHG) emissions by at least 40% by 2030.

Regulation (EU) 2018/841 integrates, for the first time, the emissions and removals from forestry and other land use sectors into the Union climate policy for the period from 2021 to 2030. This means that the Member States have to ensure that accounted GHG emissions from land use, land use change and forestry are balanced by at least an equivalent accounted removal of CO<sub>2</sub> from the atmosphere.

Regulation (EU) 2018/841 establishes rules for the accounting of emissions and removals that occur in the land accounting categories referred to in Article 2 of Regulation (EU) 2018/841 on the Member States territories. In particular, Article 8 of Regulation (EU) 2018/841 lays down the rules for accounting of the emissions and removals for the land accounting category managed forest land. First, it establishes the rules for determining forest reference levels (FRLs), and, second, it defines the process for the inclusion of the FRLs for the periods from 2021 to 2025 and from 2026 to 2030, in Annex IV to Regulation (EU) 2018/841.

For the first accounting period (from 2021 to 2025), Article 8(3) of Regulation (EU) 2018/841 requires that the Member States determine their forest reference level (FRL) and submit it to the Commission as part of a national forestry accounting plan by 31 December 2018.

Article 8(6) of Regulation (EU) 2018/841 requires that the Commission conducts a technical assessment of national forestry accounting plans, with a view to assessing whether the proposed forest reference levels are in accordance with the principles and requirements set out in paragraphs 4 and 5 of Article 8 and in Article 5(1) of Regulation (EU) 2018/841. It also requires the Commission to consult experts appointed by the Member States, civil society and stakeholders. Moreover, according to recital 18 of Regulation (EU) 2018/841, the technical assessment should build on the good practice and experience of the expert reviews under the United Nations Framework Convention on Climate Change (UNFCCC). The Standing Forestry Committee was informed about the results of the technical assessment in its 154<sup>th</sup> meeting on 20 of September 2019.

During the negotiations of Regulation (EU) 2018/841, the Commission has undertaken, in the Statement addressed to the European Parliament on the involvement of experts, to ensure that Article 8(6) of Regulation (EU) 2018/841 is implemented properly through the establishment of the Commission expert group tasked with the technical assessment. In particular, the Commission stated that the expert group should include individuals appointed in personal capacity, acting independently and in the public interest.

In addition, Article 8 provides a clear timeline and describes other steps that the Member States and the Commission have to take before the establishment of the forest reference levels

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<sup>1</sup> OJ L 156, 19.06.2018, p. 1.

by means of delegated act(s), such as the issuing and publication of technical recommendations and revision of the proposed reference levels.

Articles 8(8) and 8(9) empower the Commission to adopt delegated act(s) amending Annex IV to Regulation (EU) 2018/841, with a view to laying down the forest reference levels to be applied by the Member States for the period from 2021 to 2025. Article 8(10) requires the Commission to adopt the delegated act(s) for the period from 2021 to 2025 by 31 October 2020.

## 2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

On 30 October 2018, the Commission established the Expert Group on Land use, land use change and forestry (LULUCFEG)<sup>2</sup> tasked with assisting the Commission with the technical assessment of the national forestry accounting plans referred to in Article 8(6). The LULUCFEG is comprised of 10 members acting in their individual capacity, 5 members from research institutions and non-governmental organizations, 27<sup>3</sup> members from Member States' competent authorities with up to 2 representatives each, 3 members from other public entities and third countries, and 7 observers. The composition and minutes of the LULUCFEG can be found in the Register of Commission Expert groups<sup>4</sup>.

Four meetings of the LULUCFEG and one written consultation on this draft delegated act were held. On 6 of February 2019, the LULUCFEG met for the first time and agreed on its working methods. The LULUCFEG meeting from 1 to 12 of April 2019 aimed at analysing all national forestry accounting plans submitted by the Member States and assessing the proposed forest reference levels. The opinions of the expert group and the minutes of the meeting are publicly available<sup>5</sup>. The expert group met again on 2 and 3 of October 2019 to discuss frequently occurring technical problems and propose solutions. On 26 and 27 of May 2020, the LULUCFEG discussed the Commission's assessment of the revised national forestry accounting plans, including the revised FRLs and the FRLs to be laid down in the delegated act. The LULUCFEG supported the views and steps taken by the Commission.

Finally, from 22 June 2020 to 6 July 2020, the LULUCFEG was consulted, in writing, on the draft delegated Regulation.

In accordance with the Better Regulation requirements, the Commission published the draft delegated Regulation for feedback from 17 August 2020 to 14 September 2020. Thirty-five comments were received from various stakeholders, including Member States public authorities, environmental and non-governmental organisations, academic and research institutions, companies and business associations and citizen from within and outside the EU. Stakeholders noted the clear process laid out towards the adoption of the delegated Regulation. Several responses tackled general aspects of the LULUCF Regulation and provided views how the policy framework could be improved in the light of the climate neutrality in 2050 and the impact of climate change on forest resilience.

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<sup>2</sup> Commission expert group on Land use, land use change and Forestry (LULUCF) (E03638).

<sup>3</sup> The expert group included representatives from the United Kingdom until the date of withdrawal.

<sup>4</sup>

<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3638&nws=1>

<sup>5</sup> <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeeting&meetingId=12931>

### **3. LEGAL ELEMENTS OF THE DELEGATED ACT**

This draft delegated Regulation amends Annex IV to Regulation (EU) 2018/841 by adding a new Section C. Section C consists of a table laying down the forest reference levels to be applied by the Member States for the period from 2021 to 2025.

# COMMISSION DELEGATED REGULATION (EU) .../...

of 28.10.2020

## amending Annex IV to Regulation (EU) 2018/841 of the European Parliament and of the Council as regards the forest reference levels to be applied by the Member States for the period 2021-2025

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU<sup>6</sup>, and in particular Article 8(8) thereof,

Whereas:

- (1) The Member States submitted national forestry accounting plans, including proposed forest reference levels for the period from 2021 to 2025, to the Commission.
- (2) In accordance with Article 8(6) of Regulation (EU) 2018/841, the Commission undertook a technical assessment of the national forestry accounting plans submitted by the Member States with a view to assessing the extent to which the proposed forest reference levels were determined in accordance with the principles and requirements set out in paragraphs 4 and 5 of Article 8 and in Article 5(1) of that Regulation.
- (3) As required by Article 8(6) of Regulation (EU) 2018/841 and in line with the commitment undertaken during the negotiations of that Regulation, as laid down in the Statement on the involvement of experts addressed to the European Parliament, the Commission established on 30 October 2018 a Commission expert group<sup>7</sup> ('the expert group') tasked with assisting the Commission in carrying out the technical assessment. The expert group included, among others, experts appointed by the Member States and individuals appointed in their personal capacity, acting independently and in the public interest, representatives of the research and non-governmental organisations, and stakeholders.
- (4) Based on the views of the expert group and the technical assessment, the Commission issued technical recommendations to the Member States, with a view to facilitating the

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<sup>6</sup> OJ L 156, 19.6.2018, p. 1.

<sup>7</sup> Commission expert group on Land use, land use change and Forestry (LULUCF) (E03638).

technical revision of the proposed forest reference levels. The Commission published the technical recommendations on 18 June 2019<sup>8</sup>.

- (5) As required by Article 8(7) of Regulation (EU) 2018/841, based on the technical assessment and the technical recommendations, the Member States revised their national forestry accounting plans, and, in some cases, proposed forest reference levels, and communicated the information to the Commission. The Commission published the proposed and, where applicable, revised forest reference levels on 25 February 2020.
- (6) The expert group agreed that the forest reference levels that the Commission proposes to include in Annex IV to Regulation (EU) 2018/841, were determined in accordance with the principles and requirements set out in paragraphs 4 and 5 of Article 8 and in Article 5(1) of Regulation (EU) 2018/841.
- (7) The Commission should therefore lay down the forest reference levels to be applied by the Member States for the period from 2021 to 2025.
- (8) This Regulation is in line with the opinion of the Commission expert group on Land use, land use change and forestry,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

Annex IV to Regulation (EU) 2018/841 is amended as set out in the Annex to this Regulation.

#### *Article 2*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 28.10.2020

*For the Commission*  
*The President*  
*Ursula VON DER LEYEN*

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<sup>8</sup> Commission Staff Working Document SWD(2019) 213 final of 18 June 2019 on the Assessment of the National Forestry Accounting plans.