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From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	COMMISSION STAFF WORKING DOCUMENT Subsidiarity Grid Accompanying the Proposal for a Directive amending Directive (EU) 2018/2001 of the European Parliament and of the Council, Regulation (EU) 2018/1999 of the European Parliament and of the Council and Directive 98/70/EC of the European Parliament and of the Council as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652
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Delegations will find attached document SWD(2021) 620 final.

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SWD(2021) 620 final

COMMISSION STAFF WORKING DOCUMENT

Subsidiarity Grid

Accompanying the

Proposal for a Directive

amending Directive (EU) 2018/2001 of the European Parliament and of the Council, Regulation (EU) 2018/1999 of the European Parliament and of the Council and Directive 98/70/EC of the European Parliament and of the Council as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652

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{SWD(2021) 622 final}

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 194(2) of the Treaty on the Functioning of the European Union (TFEU), which provides the legal basis for proposing measures to develop new and renewable forms of energy, one of the goals of the Union's energy policy, set out in Article 194(1)(c) TFEU. REDII, which will be amended by this proposal, was also adopted under Article 194(2) TFEU in 2018. Article 114 TFEU, the internal market legal base, is added in order to amend Directive 98/70/EC on fuel quality, which is based on that Article.
1.2 Is the Union competence represented by this Treaty article exclusive, shared or supporting in nature?
In the case of renewable energy policy, the Union's competence is shared.
<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:
<ul style="list-style-type: none">- 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 Inception Impact Assessment (Roadmap) was published for feedback from 3 August to 21 September 2020 and 374 replies were received, from stakeholders from 21 Member States and 7 non-EU countries. Most responses came from companies or business associations, followed by NGOs, anonymous and citizens. In addition, the Commission launched an online public consultation (OPC) on 17 November 2020 for 12 weeks, in line with the Commission Better Regulation rules. It contains multiple choice and open questions covering a wide range of issues on the revision of REDII. 39,046 replies were received in total. Stakeholder views were also gathered in two workshops, the first one was held on 11 December 2020 (close to 400 participants) and the second one was on 22 March

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>

2021 (close to 1000 participants).

The explanatory memorandum and the impact assessment both contain a section on the principle of subsidiarity and address this issue in the context of the options analysed, where appropriate.

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 need for EU action

A cost-efficient accelerated development of sustainable renewable energy within a more integrated energy system cannot be sufficiently achieved by Member States alone. An EU approach is needed to provide the right incentives to Member States with different levels of ambition to accelerate, in a coordinated way, the energy transition from the traditional fossil fuel based energy system towards a more integrated and more energy-efficient energy system based on renewables-based generation. Taking into account the different energy policies and priorities among Member States, action at EU level is more likely to achieve the required increased deployment of renewables than national or local action alone.

EU added value.

EU action on renewable energy brings added value because it is more efficient and effective than individual Member States' actions, avoiding a fragmented approach by addressing the transition of the European energy system in a coordinated way. It ensures net reduction of greenhouse gas emissions and pollution, protects biodiversity, harnesses the benefits of the internal market, fully exploits the advantages of economies of scale and technological cooperation in Europe, and it gives investors certainty in an EU-wide regulatory framework. The achievement of an increased share of renewable energy in final EU energy consumption depends on national contributions from each Member State. These will be more ambitious and cost-effective if driven by an agreed common legal and policy framework.

In the impact assessment, chapter 3 explains the need for EU action and its added value.

Taking into account the different energy policies and priorities among Member States, action at EU level is more likely to achieve the required increased deployment of renewables than national or local action alone. This collective effort is also more likely to succeed in reaching Union climate targets, as can be seen by the 2020 renewable energy target, with some Member States likely to deliver below their national contribution but others above, so that in total the contributions exceed the Union target.

By acting at EU-level in combination with action at Member State level, several barriers to public and private investments can be tackled and this will effectively supplement and reinforce national and local action. Addressing the lack of coordination between various bodies at national level as well as improving administrative and technical capacity will incentivise cost-optimal deployment of renewables at city and community level, where issues such as heating, cooling and hot water use remain key and are not decarbonising rapidly enough with more details under the assessment of the measures. Simply setting targets at EU levels and leaving Member States complete freedom as to how to achieve them would however not be an effective way to achieve the agreed targets, as has been recognised by the co-legislators when they agreed the specific measures in the current REDII and the reporting and governance structure set out in Regulation 2018/1999. It also risks causing distortions to the internal market, and would lead to a less effective preservation and improvement of the environment, one of the specific aims of Article 194 TFEU.

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)?
Not effectively.
(a) Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?
The issue of cross-border cooperation on support schemes for renewable energy and for offshore renewable energy, in particular joint offshore energy capacity planning per sea basin, are both considered in detail in the impact assessment and the impacts have been quantified to the extent possible.
(b) Would national action or the absence of the EU level action conflict with core objectives of the Treaty ⁵ or significantly damage the interests of other Member States?
In accordance with Article 194(1) TFEU, one of the aims of Union energy policy shall be to promote the development of new and renewable forms of energy. If no action were taken at level this aim would be jeopardised.
In its Conclusions of 10 and 11 December 2020, the European Council endorsed a binding EU target of a net domestic reduction of at least 55% in greenhouse gas emissions by 2030 compared to 1990. Reaching this target without additional action regarding the deployment of renewable energy at EU level would not be cost efficient (see the detailed analysis included in the Impact Assessment).
(c) To what extent do Member States have the ability or possibility to enact appropriate measures?
Member States have shown, in their transposition and implementation of the first renewable energy Directive, that they can enact appropriate measures to reach the goals of the Directive. The text of REDII as agreed by the co-legislator, contains a number of measures binding and optional measures which will give Member States a sufficient range of possibilities.
(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 to increase the use of renewable energy as one of the ways to reduce greenhouse gas emissions is a global issue. Some Member States have, historically, a greater reliance on fossil fuels, others use more biomass and others use more solar or wind energy. This does not change the nature of the problem, but rather the possible solutions to it.
(e) Is the problem widespread across the EU or limited to a few Member States?
The problems addressed by this initiative are widespread across the EU.
(f) Are Member States overstretched in achieving the objectives of the planned measure?
No, the qualitative and quantitative analysis of the impacts of the planned policies on the Member States, in particular the economic and social impacts, do not point to the conclusion that the Member States are overstretched (section 6 of the Impact Assessment).
(g) How do the views/preferred courses of action of national, regional and local authorities

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

differ across the EU?
Member States will have sufficient room of manoeuvre in the implementation of the Directive considering also the availability of different renewable resources available at national, regional or local level.
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)?
Yes, the objectives of the proposed action are better achieved at Union level.
(a) Are there clear benefits from EU level action?
Yes, it sets a clear and common framework for the Member States and increases the chances of reaching the Union's climate ambition.
(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?
The coordinated action of the EU and the Member States allows for cost-efficient achievement of the agreed targets, economies of scale in development and deployment of the necessary technologies as well as better functioning of the internal energy market by fostering cross-border cooperation.
(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?
A coordinated action across the Member States aims at increasing cost-efficiency of the achievement of the agreed climate target and of the necessary deployment of renewable energy. It allows for effective tackling of existing barriers, and for increasing the integration of the energy system, thus avoiding fragmentation and the related negative impacts. It also increases predictability of the policy framework for investors across the EU. A specific example is that the transport target will now be expressed in terms of GHG intensity reduction, rather than leaving Member States the choice between the GHG and energy based approaches, and this will simplify reporting and allow better comparisons.
(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)?
Yes, as presented in the Impact Assessment accompanying the initiative (section 6).
(e) Will there be improved legal clarity for those having to implement the legislation?
Yes. Because of the fairly recent adoption of REDII, only those provisions directly linked to the achievement of the Green Deal and the Climate Target Plan are being amended. Regarding the provisions that are being amended, these have been simplified and aligned with other, linked, Union legislation. For example, the provisions on renewable energy in buildings have been grouped in a single Article and aligned to the extent possible with the Energy Performance of Buildings Directive.
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 Impact Assessment includes an analysis regarding proportionality of the proposal (section 7.5). The preferred package of policy options is considered proportionate and builds to the extent possible on current policy design. Several options set a target or a benchmark to be achieved, but leave the means to achieve those targets up to the Member States. The balance between obligations and the flexibility left to the Member States on how to achieve the objectives is considered appropriate given the imperative of achieving climate neutrality.
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?
Yes. The problem to be tackled is not limited to individual Member States but is Union-wide. Increasing the level of renewable energy in order to reduce GHG emissions and achieve climate neutrality cannot be achieved by action at national level alone. The measures proposed are a mix of Union level targets and action at Member State level which is considered proportionate and cost-effective. The individual situations of Member States have been taken into account to the extent possible. The costs are commensurate with the objectives.
(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, various levels of the scope and intensification of the measures have been analysed (sections 5 and 6 of the Impact Assessment). The measures chosen fulfil the proportionality principle. Reducing GHG emissions and achieving climate neutrality cannot be achieved by action at national level alone.
(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.)?
Yes. This proposal is for an amending Directive. Given its relatively recent adoption, this review of REDII is limited to what is considered necessary to contribute in a cost-effective way to the Union's 2030 climate ambition. As a Directive, it leaves flexibility to Member States to choose how to implement its provisions so as to achieve the agreed goal.
(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?)
Member States are left as much scope as possible, but given the critical importance of increasing the use of renewable energy in order to reduce GHG emissions and tackle the climate emergency, some measures are stringent.
(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?
The impacts related to the costs of the initiative have been analysed where appropriate and possible (section 6 of the Impact Assessment). The analysis shows that the costs are commensurate with the objectives.

(e) While respecting the Union law, have special circumstances applying in individual Member States been taken into account?

Yes. For example, the indicative 'top-ups' to increase the use of renewables in the heating and cooling sector are based on GDP and cost-effective per each Member State. Member States with outermost regions may derogate from certain sustainability criteria for biomass.