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

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To: Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

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Subject: COMMISSION STAFF WORKING DOCUMENT Subsidiarity grid  
Accompanying the document Proposal for a Regulation of the European Parliament and of the Council on the accounting of greenhouse gas emissions of transport services

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Delegations will find attached document SWD(2023) 440 final.

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Encl.: SWD(2023) 440 final



Strasbourg, 11.7.2023  
SWD(2023) 440 final

**COMMISSION STAFF WORKING DOCUMENT**

**Subsidiarity grid**

*Accompanying the document*

**Proposal for a Regulation of the European Parliament and of the Council  
on the accounting of greenhouse gas emissions of transport services**

{COM(2023) 441 final} - {SEC(2023) 441 final} - {SWD(2023) 441 final} -  
{SWD(2023) 442 final}

## Subsidiarity Grid

<b>1. Can the Union act? What is the legal basis and competence of the Unions' intended action?</b>
<b>1.1 Which article(s) of the Treaty are used to support the legislative proposal or policy initiative?</b>
The legal basis giving the EU the right to act are Article 91(1) and Article 100(2) of the Treaty on the Functioning of the European Union (TFEU). In accordance with Article 4(2) of the Treaty, shared competence between the EU and the Member States applies in the area of transport.
<b>1.2 Is the Union competence represented by this Treaty article exclusive, shared or supporting in nature?</b>
In the case of transport policy area, the Union's competence is shared.
<i>Subsidiarity does not apply for policy areas where the Union has <b>exclusive</b> competence as defined in Article 3 TFEU<sup>1</sup>. It is the specific legal basis which determines whether the proposal falls under the subsidiarity control mechanism. Article 4 TFEU<sup>2</sup> sets out the areas where competence is shared between the Union and the Member States. Article 6 TFEU<sup>3</sup> sets out the areas for which the Unions has competence only to support the actions of the Member States.</i>
<b>2. Subsidiarity Principle: Why should the EU act?</b>
<b>2.1 Does the proposal fulfil the procedural requirements of Protocol No. 2<sup>4</sup>:</b>
<ul style="list-style-type: none"> <li>- Has there been a wide consultation before proposing the act?</li> <li>- 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?</li> </ul>
<ul style="list-style-type: none"> <li>- The Commission actively engaged with stakeholders and conducted comprehensive consultations throughout the impact assessment process. Stakeholders' views started to be collected in response to the publication of the Call for Evidence (19 November to 17 December 2021). A total of 64 replies were received, which helped to refine the approach and better identify the barriers that hamper the harmonised accounting of GHG emissions of transport services. As part of preparing the proposal, other consultation activities included:             <ul style="list-style-type: none"> <li>o Open public consultation (OPC), organised by the Commission and running from 25 July to 20 October 2022. A total of 188 responses were received, covering a variety of stakeholder groups. The responses came from companies and businesses (63), business associations (59), EU citizens (26), public authorities (26), NGOs (8), academic and research institutions (4), consumer organisations (3), trade unions (2), environmental organisations (1) and other (10);</li> <li>o Exploratory interviews organised by the consultant responsible for the impact assessment support study in July 2022 and directed at a passenger transport association, a shippers' association, a non-profit environmentally oriented organisation and a green transport programme;</li> </ul> </li> </ul>

<sup>1</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E003&from=EN>

<sup>2</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E004&from=EN>

<sup>3</sup> <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E006:EN:HTML>

<sup>4</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E/PRO/02&from=EN>

- Targeted stakeholders' consultation organised by the consultant responsible for the impact assessment support study, including a survey and series of interviews. The survey ran from August to October 2022 and directed at individual companies (12), transport associations (9), public authorities (4), consumers and passengers association (2), academia and research (1) and other types of stakeholders (4). The interviews addressed representatives of individual stakeholders (38), including businesses (22), business associations (7), consumer organisations (1), public authorities (1) and other types of stakeholders (5); a stakeholder workshop, jointly organised by the Commission and the consultant responsible for the impact assessment support study on 27 October 2022, with 43 participants representing 33 stakeholders, out of which businesses, business organisations, public authorities and individual experts.
- The principle of subsidiarity is duly addressed in the legislative proposal (Explanatory memorandum, Section 2) and the Staff Working Document presenting the impact assessment report (Section 3.2).

**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 does provide an adequate justification regarding the conformity with the principle of subsidiarity. By establishing harmonised rules for GHG emissions accounting at the transport service level, this initiative is particularly relevant for cross-border operations between EU Member States. This level of harmonisation, mostly related to the methodological choices, input data and common rules for verification, cannot be effectively achieved by actions of individual Member States. So far only one Member State has established a dedicated harmonised methodological framework, including measures to incentivise its uptake. However, in case further Member States follow, this may lead to very diverse calculation and/or disclosure requirements for transport organisers and users, with additional costs and administrative burden for industries operating across borders. Actions at national level may also lower the general effectiveness of emissions accounting, as GHG emissions output data from transport services carried out in different countries would not be comparable, with a significant risk of creating confusion for users, thus providing different, or even negative incentives for entities offering transport services on the common European market.

**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 objectives of the proposed initiative cannot be effectively achieved by actions of individual Member States. The positive impact of the initiative highly depends on the availability of homogeneous rules allowing for the comparability, quality and adequate granularity of GHG emissions data shared on the market, and the level of uptake of emissions accounting by stakeholders. National approaches would be counterproductive for achieving these objectives, however, relevant actions that were already undertaken by some Member States are considered relatively useful for increasing the general capacity of companies to measure, calculate and share emissions data, thus facilitating the future deployment of CountEmissions EU.

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

CountEmissions EU will establish uniform principles for GHG emissions accounting of transport services across the Union, thus enabling stakeholders to calculate and disclose comparable emissions data both at the Union and national level.

While this initiative is expected to further stimulate the uptake of emissions accounting on national transport markets, it will be especially important for calculating emissions generated by cross border transport services, and specifically for stakeholders that operate in several Member States or/and at international scale (e.g. large transport intermediaries).

It should be noted however, that since CountEmissions EU is conceived rather as an enabler for more specific policy measures to be introduced through separate means, direct quantification of these cross-border aspects was not possible.

(b) Would national action or the absence of the EU level action conflict with core objectives of the Treaty<sup>5</sup> or significantly damage the interests of other Member States?

No

(c) To what extent do Member States have the ability or possibility to enact appropriate measures?

Member States are not prevented from taking appropriate measures in this policy area. However, so far only France has established a national harmonised methodological framework for accounting emissions of transport services, including measures to incentivise its uptake. Article L. 1431-3 of the French Transport Code<sup>6</sup> requires that all entities offering transport services on the market (freight and passenger, including all modes) calculate GHG emissions for each service departing from and/or ending in France, based on a specific methodology. The French Transport Code also provides that the information on emissions should be reported to relevant parties, which is the only mandatory requirement of this type in the EU. In some other Member States there exist voluntary schemes and programmes entailing calculation and reporting of emissions of transport operations, such as Topsector Logistics<sup>7</sup> collaboration program between the Dutch government and businesses.

(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 capability of companies to calculate and report GHG emissions does not spread equally across the EU. According to a 2021 analysis undertaken for road freight carriers<sup>8</sup>, this capability is significantly higher in countries implementing specific green freight programs, such as the Netherlands, France and Austria. France, applying Article L. 1431-3 of the French Transport Code, is a particularly good example showing that a targeted legislation may lead to considerable results at the national level.

Therefore, the problems and their respective causes may vary between particular Member States, depending on their involvement in this particular policy area.

(e) Is the problem widespread across the EU or limited to a few Member States?

<sup>5</sup> [https://europa.eu/european-union/about-eu/eu-in-brief\\_en](https://europa.eu/european-union/about-eu/eu-in-brief_en)

<sup>6</sup> [https://www.legifrance.gouv.fr/codes/article\\_lc/LEGIARTI000031066016](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000031066016)

<sup>7</sup> <https://topsectorlogistiek.nl/>

<sup>8</sup> Tölke, M. and McKinnon, A. (2021), Decarbonizing the operations of small and medium-sized road carriers in Europe. An analysis of their perspectives, motives, and challenges, Smart Freight Centre, Kühne Logistics University.

<p>The problem is widespread, as no national approach would be able to result in a harmonised framework of accounting emissions for transport organisers and service providers operating internationally.</p>
<p>(f) Are Member States overstretched in achieving the objectives of the planned measure?</p>
<p>No</p>
<p>(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?</p>
<p>In the stakeholders' consultation, the participating authorities broadly confirmed the idea of a harmonised framework for emissions accounting to be established at an EU level. Inputs from public authorities, including Member states, regional and infrastructure public authorities, were also collected through the general consultation tools. One Member State in particular, clearly indicated that CountEmissions EU should provide rules addressing the exchange of information on GHG emissions with an appropriate level of security and privacy. These inputs were duly considered and integrated in the elaboration of the proposal.</p>
<p><b>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)?</b></p>
<p>The EU transport sector has a strong cross-border dimension, playing an important role for the free flow of people and goods on the EU internal market. Efficient transport services are key to meet the demand of transport users, support the growth of the EU economy and preserve lifestyle of the citizens. At the same time, attention should be drawn to challenges related to environmental impacts from transport, still growing mostly due to the increase of freight and passenger traffic on the European network. This initiative is therefore conceived as an enabler for the transport community to facilitate its green transition. By providing for better transparency on the performance of transport services, it will lead to creating incentives for more sustainable solutions and innovation, giving customers more information for their own choices. As shown above, any national approaches would be highly counterproductive for achieving these objectives, bearing significant risk of conflicting requirements and inconsistent methodologies and data.</p>
<p>(a) Are there clear benefits from EU level action?</p>
<p>The initiative will entail the reduction of greenhouse gas emissions and other related external costs, stemming from the provision of transport services on the EU market. This reduction will be mainly driven by the behavioural effects incentivising higher use of more sustainable transport options and optimised trips. The improvements in the comparability of GHG emissions data are also projected to result in increased transparency, credibility, positive effects on reputation and public image of transport service organisers and providers, and higher levels of trust between transport chain partners.</p>
<p>(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?</p>
<p>The related savings in external costs have been estimated at EUR 0.7 billion for GHG emissions, EUR 0.2 billion for air pollution and EUR 0.6 billion for accidents, relative to the baseline (business as usual) scenario and expressed as net present value for 2025-2050 period in 2022 prices. These savings have been accounted in particular by assuming shifts of activity between modes for both</p>

passengers and freight transport induced by better knowledge on the performance of transport services and data availability. Savings for the avoided fuel use of EUR 2.4 billion are expected to be realised by operators and passengers due to the reduced activity of fuel/energy intensive transport modes.

(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?

In general, the proposed Regulation does not replace any national policy, but rather provides complementary and harmonised tools and enablers for more specific policies to be undertaken at EU, national and regional level. The interactions may be however observed with the French Transport Code (above mentioned) and other voluntary schemes existing in certain EU countries, especially in terms of the choice of the emissions calculation methodology. However, this choice is necessary to ensure the achievement of the objectives of the initiative.

(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)?

There will be no loss of competence of the Member States.

(e) Will there be improved legal clarity for those having to implement the legislation?

The proposal is highly technical in nature, and there is a likelihood that it will have to be regularly amended to reflect technical and legal developments, particularly concerning the common reference calculation method and the rules on input data, certification and verification. Therefore, a number of delegated and implementing measures are also planned. These will focus particularly on the technical specifications to implement the functional requirements. However, the Commission plans to establish a horizontal implementation guidelines that are expected to facilitate the implementation of the initiative on the market.

### 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?**

Choices concerning the relevant policy measures and policy option forming the structure of this initiative were made in due consideration of the proportionality principle, thus resulting in the most balanced approach possible. First, CountEmissions EU envisages the use of the existing and widely recognised standard EN ISO 14083:2023, as a reference methodology for calculating GHG emissions of transport services. This measure received significant support from the stakeholders participating in various consultation activities, and therefore it is expected to result in a very good acceptability and applicability on the transport market. Secondly, the initiative provides for decentralised implementation of certain components, especially by allowing, under certain conditions, the use of external databases and datasets of default values and emission factors, as well as emissions' calculation tools operated by third parties. Thirdly, it sets rational requirements for the verification of GHG emissions data and calculation processes, exempting SMEs, unless they wish to undergo the verification on a voluntary basis. Finally, by including the binding opt-in application of the harmonised framework, this proposal limits the requirements only to those entities that decide to

calculate and share GHG emissions data. This aspect is important for stakeholders, in particular SMEs, which very often lack capacity to effectively start accounting emissions at the level of transport services in the short term, and therefore expect a more gradual approach addressing their specific situation and allowing them to take up the common framework over time.

**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?**

Choices concerning the relevant policy measures and policy option forming the structure of this initiative were made in due consideration of the proportionality principle, thus resulting in the most balanced approach possible.

(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. The uptake of a harmonised approach should follow homogeneous rules to allow for comparability and sufficient quality and granularity of data produced. It is vital to avoid attempts to solve the current patchwork of differing solutions by actions at national or sectoral level.

(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 impact assessment evidenced that regulatory measures are necessary to achieve the objectives of the initiative. A regulation is the most appropriate instrument to ensure common implementation of the measures envisaged, while reducing the risk of distortion within the single market, which could result from differences into how EU Member States transpose the requirements into national law.

(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?)

Not applicable

(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?

Main costs resulting from the proposed intervention are borne by businesses. They include adjustments costs related to the use (adaptation or starting) of a new GHG methodological framework and the relevant verification activities (EUR 1.5 billion), as well as administrative costs stemming from the certification of calculation tools and quality check of external databases of default values for GHG emission intensity (EUR 0.5 million). Administrative costs have also been identified for national accreditation bodies that would be responsible for the accreditation of conformity assessment bodies performing the verification and certification activities (EUR 0.1 million). Furthermore, additional adjustment costs have been accounted for national statistical offices, especially for switching to unique format of GHG emission output values (EUR 0.1 million), and for the European Environmental Agency, related to the set-up and maintenance of EU databases

for input data, as well as the quality check of external databases to be allowed under the initiative (EUR 3.9 million).

However, it should be noted that the initiative provides net benefits amounting to EUR 2.4 billion over the period 2025-2050, expressed at present value.

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

Not applicable