Fern's analysis of the EU's LULUCF Regulation

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Following an intense legislative process, the EU has adopted a new Land Use, Land Use Change and Forestry (LULUCF) Regulation. This note is Fern's analysis of the new Regulation.

Background to the LULUCF regulation

Forests, wetlands and fields cover 90 per cent of the EU's surface area, meaning the LULUCF sector is fundamental, not just to the climate, but also to its natural environment, its wildlife and people.

The EU LULUCF Regulation accounts for the greenhouse gas (GHG) emissions and removals from the EU's land use and forestry sector. It contributes to the EU's target to reduce emissions by at least 40 per cent by 2030 compared to 1990 levels and is the third pillar of EU climate action, alongside the EU Emissions Trading System and the Effort Sharing Decision.

Across the EU, the LULUCF sector is a net sink removing about 300 megatons (MT) of carbon dioxide (CO_2) per year from the atmosphere. Managed forests contribute the most to the sink, though the EU foresees that this sink will decline by 110MT by 2030, due to, inter alia, increased sourcing for biomass for energy.

Highlights and lowlights of the new LULUCF regulation

Positive:

- Sets objective to maintain the amount of CO_2 being absorbed annually by land and forests across the EU.
- Is a separate 'pillar' in the EU climate architecture meaning offsetting is limited.
- Reference levels (against which changes in emissions and sequestration by forests are accounted) cannot include future changes in forest management practices or logging levels and thus avoid hot air.
- Member States must now account for emissions from managed wetlands.

Negative:

- Objective of 'maintaining' sinks is inadequate to meet Paris Agreement objective to keep warming well below 2 degrees.
- Countries are allowed to use a limited amount of credits (280 MT CO_2) generated in the LULUCF sector to offset emissions in the Effort Sharing Decision.
- Allows countries to increase logging by 10 per cent, but with a requirement to compensate in other sectors on EU level.
- Emissions from wood logged for bioenergy are not fully accounted for.

While the new Regulation is an improvement on the former EU LULUCF decision, it does not provide incentives to increase the climate ambition of EU forests.

To ensure EU climate policies are coherent, and to give forests a chance to increase (or at least maintain) their sink it is critical that the EU's Renewable Energy Directive is a mended to include strong sustainability criteria that ensure that only the most climate-friendly forms of bioenergy are counted towards the Renewable Energy target.

In addition, the EU must create real incentives to ensure the EU's forests and land play a more important role in tackling climate change in the future, something it should do as part of the Governance Regulation and the 2050 EU decarbonisation strategy.

The final verdict on the impacts of the Regulation on EU forests can be only given in 2019 once forest management reference levels of each Member State are set.

How can civil society engage in the process?

Each Member State will draft a forestry accounting plan during 2018. These plans will include reference levels for managed forests and should be done with a mandatory public consultation under the SEA directive. The plans will be reviewed by an expert group at the EU level in 2019. National NGOs can engage in the national process and provide input to the EU level review of the plans.

Useful Resources

For more information about Fern's work on forests and climate see: www.fern.org/lulucf

Read Fern's reaction to the final accounting rules.

For questions contact hanna@fern.org

Detailed analysis of provisions in the LULUCF Regulation

1. Objective of the Regulation

Member States should ensure the **conservation and enhancement** of sinks and reservoirs from forests with the view to **achieving the purpose of the Paris Agreement** and meeting the greenhouse gas emissions reduction targets of the Union by 2050. *(Recital 22)*

"No debit rule" outlines that accounted emissions of CO_2 from LULUCF cannot exceed accounted removals of CO_2 from LULUCF. Accounting happens against a baseline. *(Art 4)*

If EU net LULUCF sink is smaller in 2021-2025 or 2026-2030 than during historical reference period 2000-2009, the Commission shall make proposals to ensure the integrity of the Union's overall 2030 greenhouse gas emission reduction target. *(Art 12&15)*

2. Accounting for managed forests

Managed forests are the largest CO2 sequestering land category. The category accounts for the annual accumulation of carbon into above-ground biomass, below-ground biomass, litter, dead wood, soil organic carbon and for harvested wood products.

Removals from managed forest land are accounted against a forward-looking forest reference level. The projected future sink is based on **an extrapolation of forest management practices and intensity from a reference period of 2000-2009**. A decrease in sink relative to the reference level is accounted as emissions. Specific national circumstances and practices, such as lower harvest intensity than usual or aging forests during the reference period, should be taken into account. *(Recital 23, Art 8.4)*

➔ *Assumed changes in management practice and intensity cannot be included in the forest management reference level*

Forest management **intensity** is a reference to a scientific term that is in the core of setting forest management reference level as explained here by JRC.

There is an emphasis to take into account the role of age related dynamics in setting the forest management reference level and the forest management intensity as core element of sustainable forest management practice. *(Art 8.4)*

Forest reference levels should take account of any unbalanced age structure of forest and should not unduly constrain the future forest management intensity, with the aim of maintaining or strengthening long-term carbon sinks. *(Recital 15)*

Criteria for setting the forest management reference level (FMRL) are outlined in Section A of Annex IV, which includes consistence with biodiversity objectives and the assumption of a constant ratio between solid and energy use of forest biomass as documented in the period from 2000 to 2009. *(Art 8)*

Forest management reference levels are a part of the national forestry accounting plans, which shall in addition include information on the **forest management intensity** and information on how harvesting rates are expected to develop under different policy scenarios. They shall describe how forest data has been used to construct the forest management reference levels including area under forest management, **rotation length**, other information on forest management activities under 'business as usual' and **historical and future harvesting rates** disaggregated between energy and non-energy uses. (*Annex IV B*)

Utilisation of the credits from forest management category to compensate debits in other land use categories is capped to 3,5 % of Member States emission in the base year or period of Annex III. (*Art 8*)

Accounting for wetlands mandatory from 2026

Member States may include accounting for managed wetlands for the period 2021-2025. If necessary in light of experience gained with the use of the IPCC Refinement to the 2006 Guidelines, the Commission may make proposals to postpone the mandatory accounting for managed wetland for an additional period of five years. (*Art 2.2*)

Reporting of emissions and removals is mandatory also during 2021-2025.

Accounting is based on a historic reference period of 2005-2009. (*Art 7*)

Accounting for managed cropland and managed grassland

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Only CO2 emissions of agricultural land are included in the LULUCF sector and non-CO2 emissions are included in the Effort Sharing sector.

Accounting for biomass emissions

Emissions from the combustion of biomass can be accounted as zero in the energy sector with the condition that these emissions are accounted for in the LULUCF sector. (*Recital 18*)

Increased harvesting for biomass from forests leads to a reduction in the sink, thus the framework aspires to ensure that increases in bioenergy emissions after 2009, the adoption of the Renewable Energy Directive, should be accounted for. However, uncertainties remain around the setting of the forest management reference level.

The reference level assumes that the share of energy use and use as products should remain the same.

Accounting only applies to biomass produced in EU and not to accounting of emissions of imports.

Harvested wood products

Accounting of harvested wood products is included in the category of managed forests. Harvested wood products are divided into paper, wood panels and sawn wood, and each of these categories has a different decay factor. All other wood products are counted as instant emissions after harvest.

Flexibility between land categories

There is a possibility to balance emissions from one land category with removals from another land category. For the managed forests a 3,5 % cap is applied.

General flexibilities

Flexibilities offer an option for Member States to comply with the no-debit rule. General flexibilities are (Art 11):

- Trading among Member States
- Member States can bank credits between accounting periods
- Member States can use annual emissions allocations established pursuant to Regulation [ESD] for compliance under LULUCF Regulation (full flexibility).

From ESD to LULUCF there is full flexibility so that if a country does not meet its LULULCF no-debit rule ESD credits can be used for compliance. This can be used as an allowance for ecosystem destruction if the country's ESD target is very low. (*Recital 21*)

The flexibility with Effort Sharing Decision (ESD) as defined under the Effort Sharing Regulation

Under the ESD Regulation it is defined that a limited amount of LULUCF credits up to 280 Mt CO2 can be used to comply with the ESD Regulation (limited flexibility).

The commission can reflect whether after setting of the forest management reference levels the category can contribute to the flexibility towards the ESD target or not. Also, voluntary emission deletions under ESD can contribute to meeting the LULUCF target. (*Recital 12*)

➔ *This provision allows for offsetting of fossil fuel emissions with forestry credits. It is also problematic as enhanced ESD efforts would allow for increased harvesting of forests.*

Flexibility inside managed forest category

Member States are granted some flexibility to temporarily increase their harvesting intensity. (*Recital 24*)

If a Member State does not comply with the no-debit rule it can use a forest management flexibility (*Art 11a*), but only if:

1) ongoing or envisaged concrete measures to ensure the conservation or enhancement, as appropriate, of sinks and reservoirs from forests
2) EU as a whole complies with the no-debit rule for all land categories
3) The forest management category in the Member State still constitutes a reported sink.

The Member State can receive credits for free up to a limit of from other Member States.

The basic amount is calculated on the basis of a compensation factor expressed as a percentage of their reported sink in the years from 2000 to 2009 to compensate for its accounted emissions from managed forest land. The percentage should be increased on the basis of forest coverage and land area so that Member States with a very small land area and very high forest coverage compared to the Union average would be granted the highest percentage of their sink for the reference period. (*Recital 24*)

On EU level the maximum flexibility is in total 370 Mt CO2 that corresponds to 10% of the forest management sink. Depending on the Member State in question the flexibility varies between 4-32 % of the Member States forest management sink. (*Annex VII*)

➔ *The flexibility weakens the economic incentive to maintain the LULUCF sink as a whole, but especially allows the forest industry to increase their emissions while other sectors need to compensate for this.*
➔ *Note that here emissions and removals refer to accounted emissions and removals.*

Specific flexibility for Finland

Finland has been granted limited additional flexibility under the forest management flexibility for its "particular" conditions. (*Recital 26*)

Finland has an additional flexibility up to 10 million tons of CO2 equivalent emissions provided. (*Art 11.3a*)

Specific flexibility for Croatia

In the case of Croatia the forest reference level may also take into account the occupation of its territory, war time and post war circumstances impacting forest management during the reference period. (*Art 8*)

Role of Biodiversity

Coherence with the Union's **biodiversity strategy objectives** is an important objective of policies affecting land use sector. (*Recital 7a*)

Reference levels should be consistent with the objective of contributing to the conservation of biodiversity and the sustainable use of natural resources, as set out in the EU Forest Strategy, Member States' national forest policies, and the EU Biodiversity Strategy. (*Annex VI A*)

Role of adaptation

Actions should be taken to implement and support activities in this sector relating to both mitigation and adaptation. (*Recital 7 a*)

Land use change

Land that is converted to another land use category should be considered in transition to that category for the default value of 20 years in the IPCC Guidelines. Member States should derogate from that default value only for afforested land and only in limited circumstances justified under the IPCC Guidelines. For afforestation also 30 years can be applied. (*Art 5.3, 6 and recital 8*)

Accounting for natural disturbances

Member States have a limited possibility to exclude emissions resulting from disturbances that are beyond their control from their LULUCF accounts. However, the Regulation should ensure that human-induced reversals of removals are always accurately reflected in LULUCF accounts and no undue under-accounting occurs. Emissions resulting from natural disturbances exceeding the average emissions caused by natural disturbances in the period 2001-2020 (excluding statistical outliers) can be excluded from the accounts. (*Art 10*)

Process

Member States submit a national forestry accounting plan by **end of 2018** for the first accounting period (2021-2025) and end of 2023 for the second period (2026-2030). The national forestry accounting plan shall contain all the elements listed in Section B of Annex IV and **is public**. After the review process final reference levels shall be submitted by the end of 2019 and 30 June 2024. The Commission will gather all the reference levels to a delegated act by 30 October 2020 and 30 April 2025. (*Art 8*)

Participation

The Commission should ensure that **experts from the Member States** are involved in the technical assessment of whether the proposed forest reference levels have been determined in accordance with the criteria and requirements set out in this Regulation. The results of the technical assessment should be forwarded to the **Standing Committee** established by Council Decision 89/367/EEC for information. The Commission should also consult **stakeholders and civil society**. The national forestry accounting plans **should be made public**. The Commission can issue technical recommendations to revise the plans and these recommendations are also public. (*Recital 17*)

- ➔ *Setting of the reference levels relies on peer and public pressure.*
- ➔ *Note that national forestry accounting plan refers to plan that requires a consultation process nationally under the SEA Directive.*
- ➔ *National NGOs can participate the national process and also to the consultation by the Commission*
- ➔ *Commission can use independent experts for the review.*

Compliance and reporting

Member States submit compliance reports, including intentions to use flexibilities, by 15 March 2027 and by 15 March 2032. (*Art 12*)

Compliance with the targets is done together with the ESD sector. If the Member State does not comply with LULUCF no-debit rule, a corresponding emission allocation will be added to the ESD target.

Any other additional reporting will be done under the Governance regulation.

Review of the Regulation

The Regulation should be reviewed in **2024 and every 5 years thereafter**. Review should be informed of the Facilitative Dialogue and Global Stocktake. Framework after 2030 should be in line with long term objectives under Paris Agreement. (*Recital 34*)

Commission shall report to the Council and Parliament on the role of the sector and has the mandate to make proposals to increase the ambition level to contribute to the Paris Agreement targets. (*Art 15*)