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COMMISSION STAFF WORKING DOCUMENT

Subsidiarity Grid

Accompanying the document

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on circularity requirements for vehicle design and on management of end-of-life vehicles, amending Regulations (EU) 2018/858 and 2019/1020, repealing Directives 2000/53/EC and 2005/64/EC

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Subsidiarity Grid

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?
<p>The legal basis for this proposal, which replaces Directive 2005/64/EC and Directive 2000/53/EC, is Article 114 of the Treaty of the Functioning of the European Union (TFEU). According to this Article, the European Parliament and the Council shall adopt measures which have as their object the establishment and functioning of the internal market. Article 114 TFEU is the legal basis of the overall regulatory framework on type-approval of motor vehicles, including of Directive 2005/64/EC.</p> <p>Article 192 TFEU is the legal basis for the Council and the European Parliament for taking action for preserving, protecting and improving the quality of the environment. Directive 2000/53/EC has this legal basis.</p> <p>Considering that the proposal merges two complementary and existing instruments into one and that the proposal is designed to set out requirements which both govern the placing on the EU market of motor vehicles and their management at end-of-life and that both those objectives are interlinked in an inextricable manner as the requirements at design and end-of-life mirror each other, the most appropriate legal basis, which enables the smooth functioning of the internal market and the maintaining a high level of environmental protection, is Article 114 TFEU.</p>
1.2 Is the Union competence represented by this Treaty article exclusive, shared or supporting in nature?
<p>In the case of internal market policy, the Union's competence is shared. Article 114(4) of the TFEU indicates that a Member State shall notify the Commission if it deems it necessary to maintain national provisions after the adoption of a European harmonisation measure on grounds of major needs¹ or relating to the to the protection of the environment or the working environment.</p> <p><i>Subsidiarity does not apply for policy areas where the Union has exclusive competence as defined in Article 3 TFEU². It is the specific legal basis which determines whether the proposal falls under the subsidiarity control mechanism. Article 4 TFEU³ sets out the areas where competence is shared between the Union and the Member States. Article 6 TFEU⁴ sets out the areas for which the Unions has competence only to support the actions of the Member States.</i></p>
2. Subsidiarity Principle: Why should the EU act?
2.1 Does the proposal fulfil the procedural requirements of Protocol No. 2⁵:
<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?
<p>In order to collect evidence and ensure transparency, the Commission sought feedback from relevant stakeholder groups – Member States and national authorities, recycling industry, automotive</p>

¹ [The Treaty on the Functioning of the European Union](#), 2012. Article 36.

² <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E003&from=EN>

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E004&from=EN>

⁴ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E006:EN:HTML>

⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E/PRO/02&from=EN>

industry (including vehicle manufacturers, component suppliers and other industry stakeholders), steel, aluminium and non-ferrous industries, plastic producing industry, civil society (including consumer organisations and environmental NGOs) and citizens – through multiple consultation activities.

Stakeholders were in particular consulted at several occasions throughout the evaluation and impact assessment processes, which served as a basis for the proposed Regulation, especially via open public consultations, targeted consultations, stakeholder workshops⁶ and bilateral meetings.

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 of the proposal and the impact assessment under chapter 3.3 contain sections on the principle of subsidiarity which set out in a detailed manner the reasons for which the action provided for in the proposal can best be achieved at Union level.

The impact assessment specifies that to avoid fragmentation of the EU market the proposal is justified to ensure a well-functioning internal market. Without harmonisation on EU level there is a significant risk to encounter illegal dismantling activities, environmentally unsound treatment causing an uneven playing field between economic operators and significant potential loss of valuable secondary raw materials from the ELVs is

Furthermore, without active EU level regulatory intervention, only small-scale and local incentives to design and produce vehicles in a way which limits the use of primary materials and increase the use of secondary materials are expected, as there are no legally binding provisions on the design for circularity of such vehicles today.

Also, for the development of a sound infrastructure for the treatment for all vehicles in the EU, it is necessary to regulate on EU level. Finally, only an EU set-up reporting and monitoring mechanism can result in transparency and data comparability across the sector, which is necessary to assess possible future amendments.

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 problems cannot be sufficiently addressed by the Member States alone. Vehicles are high-value goods that cross national borders within the EU and which are also exported to third countries. National initiatives would inevitably contribute to further fragmentation of the internal market. Similarly, the environmental concerns are widespread, with key underlying causes being common across all Member States and there being agreement that it would be an advantage to modernise the applicable rules of the sector.

(a) Are there significant/appreciable transnational/cross-border aspects to the problems being

⁶ A public consultation was held during the evaluation of the Directive (https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/1912-End-of-life-vehicles-evaluating-the-EU-rules_en); An inception impact assessment was published on 15 October 2020 for public feedback and then during the impact assessment, a 14-week open public consultation was held between 20 July 2021 and 26 October 2021 (https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12633-End-of-life-vehicles-revision-of-EU-rules/public-consultation_en).

tackled? Have these been quantified?
Vehicles are high-value goods that are traded across the national borders in the EU. There is a significant number of end-of-life vehicles that are, instead of being treated, exported as used cars. Furthermore, the final treatment of end-of-life vehicles cannot be verified for 1/3 of all end-of-life vehicles, as the whereabouts of those vehicles are unknown.
(b) Would national action or the absence of the EU level action conflict with core objectives of the Treaty ⁷ or significantly damage the interests of other Member States?
National action or absence of EU level action is, in a time period where the automotive sector is in full transformation due to the electromobility development, likely to lead to different regulatory setups and an uneven playing field for the operators active in the automotive sector, whether it is in the design and construction phase of a vehicle or whether it is in the end-of-life phase of a vehicle. Differences in treatment, follow-up and reporting among Member States could easily lead to a patchwork of different national measures that could result in internal market fragmentation, with a risk of tailoring national legislation to suit local industry and increased compliance costs (passed on to consumers) for both component suppliers and vehicle manufacturers. Such differences would contradict the core objectives of Article 114 of the TFEU of ensuring a smooth functioning of the internal market.
(c) To what extent do Member States have the ability or possibility to enact appropriate measures?
National measures would not be uniform and would thus not be appropriate to address neither the uniformisation of type-approval requirements for placing vehicles on the market nor the treatment of end-of-life vehicles in the organisation of treatment facilities on their territory. National measures on type-approval could entail uneven requirements for approving vehicle types. National measures applicable on end-of-life treatment could encourage waste management operators to lesser environmental standards to attract customers, driving down environmental protection and fragmenting the market. The Regulation will lay down the minimum rules and the Member States will thus retain the possibility in those circumstances to adopt or maintain national rules in place, provided they comply with the minimum rules, such as the setting up of competent authorities or the requirements for the register for extended producer responsibility.
(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 production of vehicles is one of the most resource intensive industries and represents a significant impact in terms of use of raw materials. The dependency on primary materials which originate from outside the EU leave the automotive sector significantly vulnerable due to various types of supply shortages. A significant share of the materials used in the construction of vehicles ends up, once the vehicle reaches its end-of-life, being landfilled or incinerated, leaving the circular potential of vehicles underdeveloped. Furthermore, the final whereabouts of around one third of the end-of-life vehicles remains unknown in the EU. The problem linked to vehicle construction will vary depending whether a manufacturer of vehicles or of vehicle parts and components are established and have production facilities in the region concerned. The problem linked to the end-of-life phase of a vehicle does not significantly vary between regions. However, it is common for used vehicles to be

⁷ https://europa.eu/european-union/about-eu/eu-in-brief_en

<p>traded between EU Member States, so that they become end-of-life vehicles in a Member State different from the one where they were registered for the first time and where EPR fees were paid by the manufacturers. To address this situation, the proposed regulation contains specific measures on “cross-border” EPR mechanisms, designed to ensure that waste management operators in the Member States where ELV are treated are not placed at disadvantage.</p>
<p>(e) Is the problem widespread across the EU or limited to a few Member States?</p>
<p>While the magnitude of the problem differs between Member States, due to the establishment of production facilities for instance, the principal problems related to the supply of primary materials and to the collection and treatment of end-of-life vehicles, is widespread across the EU. This is why measures on EU level are necessary.</p>
<p>(f) Are Member States overstretched in achieving the objectives of the planned measure?</p>
<p>Replacing the existing Directives Directive 2005/64/EC and Directive 2000/53/EC by a Regulation means that many obligations under EU law, which are currently directed at Member States, will be imposed directly on economic operators. The proposed regulation would not therefore lead to major new burden or obligations on the Member States side. In addition, the proposed regulation foresees in multiple instances that digital tools should be put in place to alleviate burden and improve cooperation and information sharing between relevant competent authorities in a Member State, as well as between Member States.</p> <p>For additional data on the administrative burden and costs linked to the proposed regulation, see response to point 3(2)(d) below and the impact assessment report.</p>
<p>(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?</p>
<p>The policy instrument of setting new rules on recycling of vehicles is recognized by national, regional and local authorities as a key tool for improving the recycling of end-of-life vehicles. This is even more the case for vehicle manufacturing as vehicles are placed on the market, transported and disposed of across the Union. There is significant support from the markets that harmonised and coherent regulations concerning the type-approval of vehicles are of utter importance for the effective protection of the environment and the functioning of the internal market.</p>
<p>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)?</p>
<p>There is clear added value in setting common requirements at EU level, as this will ensure a harmonised and well-functioning internal market across all Member States and, therefore, a level playing field both for vehicle manufacturer and the operators involved in the management of end-of-life vehicles. With requirements and targets set at EU level, the move towards vehicle design becoming more in line with the requirements of a circular economy will take place in a coherent way in all Member States, creating a larger and more efficient market. By EU intervention will enable achieving the desired result of further improving the recycling rates of important resources, improving the security of supply and the quality of recycled materials, as rapidly as possible. Economies of scale will be achieved through consistent approaches to the inclusion of recycled content in new vehicle design and to the recovery and availability of recycled critical raw materials. Harmonised criteria for the modulation of fees for the extended producer responsibility, which will provide an additional economic incentive for compliance and increased circularity. Member State action alone could not achieve such harmonisation and thus economies of scale. The proposed measures will not go beyond what is necessary to provide regulatory certainty while ensuring a high</p>

level of protection of human health and of the environment. EU action is therefore justified and necessary.
(a) Are there clear benefits from EU level action?
Yes, the impact assessment has shown clear benefits of EU action both concerning environmental impacts as well as economic impacts, by improving circularity, reducing green house gas emissions as well as securing the supply for the automotive sector.
(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?
Yes, especially the increased demand for recycled content will enable recyclers to produce recyclates with increased purity and quality which can be used as secondary raw materials. Furthermore, the availability of recycled critical raw materials, sourced from vehicles which reach their end-of-life in the EU, will improve with an enlarged system for recycling.
(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?
For the type approval elements of the proposal, it is essential to apply the same requirements in all EU Member States as type approvals are valid throughout the EU and that the type-approval requirements apply uniformly. For recycling, the proposal will create a level playing field in the recycling sector, which will allow competition on equal conditions among the waste management operators in the Member States.
(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 proposal builds on existing legislation and complements the rules applicable to modernise the regulatory framework and to make them more ambitious in their aim to respond to the concern to have a more circular economy. Furthermore, the rules of the proposal aims to align the rules on vehicles with other existing legislation, such as the Waste Framework Directive 2008/98/EC and other proposals which are currently under negotiation, including the Regulation on Eco-Design of Sustainable Products and the Regulation on Critical Raw Materials.
(e) Will there be improved legal clarity for those having to implement the legislation?
The proposal will as a Regulation be directly applicable with clear rights and obligations for clearly defined actors in the various phases of the supply chain and at the end-of-life phase.
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 proposed measures are intended to provide the regulatory certainty needed for both vehicle manufacturers and operators active in the waste management sector, such as to encourage the investment into circular design and recycling techniques and facilities necessary to respond to the requirements of a circular economy focused on resilience of the supply chains. As such the proposal also ensures the smooth functioning of the internal market and a high level of protection of human

health and the environment. The objective of this initiative is to modernise and strengthen the existing legislative framework to allow for economies of scale through common approaches, while giving industry and Member States the necessary flexibility, where this is necessary.

The principle of proportionality has been taken into account in the design of all measures contained in the proposed Regulation, as exemplified by the progressive extension of the scope of the existing legislation to new vehicles, or the transition periods foreseen for all new requirements, so as to allow industry and all relevant stakeholders to adapt. More information is found in Annex 8 to the impact assessment report.

Overall, the proposed measures represent a step change from the existing regulatory framework and do not go beyond what is necessary to ensure a regulatory compliance while guaranteeing the protection of human health and the environment.

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 evaluations preceding the current have revealed that a **harmonisation is necessary** in the form of a Regulation, rather than revising the current Directives 2000/53/EC and 2005/64/EC.

To further promote the move to a low-carbon and circular economy and remove existing barriers to the smooth functioning of the internal market, a new comprehensive set of regulatory solutions is needed, including requirements which apply directly to businesses. The move to a Regulation provides the required assurance for direct and harmonised application and enforcement throughout the EU of automotive manufacturers' and recyclers' obligations.

A Regulation will ensure obligations are implemented at the same time and in the same way in all 27 Member States. The same requirements for all market players will provide the necessary legal certainty and reduce distortion of competition, and send clear signals to non-EU market actors, when placing vehicles on the EU market. Furthermore, the Commission will have a mandate to develop implementing measures to flesh out the Regulation further, where necessary, allowing for common rules to be set swiftly. In some instances, the Regulation will lay down the minimum rules and the Member States will thus retain the possibility in those circumstances to adopt or maintain national rules in place, provided they comply with the minimum rules.

(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 initiative is limited to the objective of improving circularity of vehicles that cannot be sufficiently achieved by the Member States acting alone without putting at risk the proper functioning of the internal market.

(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 use of a Regulation is considered to be appropriate in that it provides the required assurance for direct and harmonised application and enforcement throughout the EU of automotive manufacturers and recyclers obligations while not requiring transposition into Member States' legislation.

<p>This proposal replaces in one Regulation two existing Directives which makes the desired amendments and alignments to later legislation, codifies those amendments with the unchanged provisions of the earlier acts, and repeals those acts.</p>
<p>(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?)</p>
<p>Yes, the concrete application of the rules and the setting up of the recycling infrastructure will allow member States sufficiently to take the necessary decisions. The proposal lays down minimum rules on a number of issues where it is potentially not necessary to have complete harmonisation.</p>
<p>(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?</p>
<p>As indicated in the impact assessment report, the costs and revenues for the different stakeholders affected by proposed regulation, calculated per vehicle and for all stages of the process (type-approval, design, production, collection, waste treatment, export), are estimated as follows:</p> <ul style="list-style-type: none"> • For vehicle manufacturers, the net costs linked to production and design, primarily related to plastic recycled content, would represent roughly 26 EUR per vehicle (N1,M1, 392 million EUR adjustment costs, 38 million EUR administrative burden for the manufacturer and 23 million EUR administrative burden for authorities). In addition, the costs linked to collection and treatment (150 million EUR not covered by revenues, including administrative burden for treatment of 42 million EUR) which could potentially be covered by the manufacturers under the EPR schemes would amount to 12 EUR per new vehicle. The total costs (580 million EUR) for manufacturers (production + EPR fees) of 39 EUR per new vehicle are expected to be ultimately covered by the consumer when buying a new vehicle. These are short to medium-term costs for the EU automotive industry. The preferred option would also reduce its energy and strategic raw material dependencies and provide for important savings. While these revenues cannot all be quantified, they are expected to be significant and spill over to the whole automotive supply chain (see section 8.3 of the impact assessment report for more elements on this point); • For the waste treatment sector, the costs (530 million EUR) for ATFs of 44 EUR per vehicle, mainly from dismantling efforts, slightly outweigh anticipated revenue increases (490 million EUR) of 40 EUR per vehicle. Similarly, for shredders, the 101 EUR of extra cost per vehicle (1,230 million EUR in total) mainly from new investments in better sorting technologies compares against a 92 EUR of revenue potential (1,120 million EUR). In these two cases, the differential between costs and revenues is expected to be covered by fees from manufacturers under EPR schemes. It is important to stress that the situation will considerably differ between Member States and economic operators, depending on the current treatment technologies used (esp. availability of PST) and labour costs. For recyclers, due to increased materials availability (incl. CRMs removed) and improved prior separation in previous stages, the revenue potential of 49 EUR per vehicle (440 million EUR) clearly outweighs a 29 EUR per vehicle cost increase (770 million EUR). The combined administrative burden for treatment operators is 3.50 EUR per new vehicle. The preferred option would also reinforce and boost the recycling sector, encouraging its modernisation and expansion. The preferred option would favour innovation in new processes and technologies, for sorting and high-quality recycling, building on current research¹⁵⁶. • For specialised car and heavy-duty vehicle exporters, the revenue loss is expected to reach

around 47 EUR per new vehicle sold (570 million EUR);

- For consumers, in addition to a likely increase in prices of new vehicles of around 39 EUR per vehicle (aforementioned 580 million EUR), they might also expect a decrease in prices when selling second-hand cars due to reduced export there of 12 EUR per vehicle (150 million EUR), but should also be able to benefit from cheaper prices for used spare parts due to all measures designed to support their recovery and sales;
- The administrative costs for public authorities (23 million EUR) dealing with type approval, vehicle registration, customs control and ECHA) are 1.40 EUR per vehicle.
- The total one-off administrative costs are 2.45 million EUR for manufacturers and 1.55 million EUR for authorities.

Overall, the total annual revenues generated by the proposed Regulation is 5.2 billion EUR in 2035, including 2.8 billion EUR of CO2 credits, against a cost of 3.3 billion EUR, leading to a 1.8 billion net revenue.

More information on these costs and revenues can be found in the impact assessment report.

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

As stated above, the problem linked to the needs of the vehicle manufacturing and construction differs between Member States, due to the establishment of production facilities for instance, the principal problems related to the supply of primary materials and to the collection and treatment of end-of-life vehicles, is widespread across the EU. From this point of view the no specific circumstances what would apply in individual MS which need to be considered in the proposal.