



**Tithe an
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**Houses of the
Oireachtas**

An Comhchoiste um Chomhshaol agus Gníomhú ar son na hAeráide

Tuarascáil faoi Bhuan-Ordú 133 de chuid na Dála agus faoi Bhuan-Ordú 116 de chuid an tSeanaid maidir le COM (2021) 551, 554, 555, 557, 558 agus 568 – Tograí reachtaíochta de chuid phacáiste “Oiriúnach do 55”

Joint Committee on Environment and Climate Action

Report under Dáil Standing Order 133 and Seanad Standing Order 116 on COM (2021) 551, 554, 555, 557, 558 and 568 – Legislative proposals of the EU “Fit for 55” package

September 2021

33/JCECA/03

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1. Introduction

1. The principle of subsidiarity is defined in Article 5(3) of the Treaty on European Union (TEU) as follows:

“Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level”.

Article 5(3) also gives specific responsibility to national parliaments to ensure that EU institutions apply the principle in accordance with Protocol 2 on the application of the principles of subsidiarity and proportionality.

2. The test established by Article 5(3) TEU is, in effect, a “comparative efficiency” exercise, involving a “*necessity*” test and a “*greater benefits*” test:
 - i. *Necessity* - Is action by the EU necessary to achieve the objective of the proposal? Can the objective of the proposal only be achieved, or achieved to a sufficient extent, by EU action?
 - ii. *Greater Benefits* - Would the objective be better achieved at EU level – i.e. would EU action provide greater benefits than action at Member States level?
3. To assist national parliaments in their evaluation of subsidiarity compliance, Article 5 of Protocol 2 provides explicitly that

“Any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. This statement should contain some assessment of the proposal's financial impact and, in the case of a directive, of its implications for the rules to be put in place by Member States...”

4. Therefore, any new draft legislative act:
 - i. must be supported by a sufficiently ‘detailed statement’ to allow a judgment to be made by national parliaments on its compliance with the principle of subsidiarity;
 - ii. must clearly satisfy both the *necessity* and *greater benefit* tests; and
 - iii. must, under the principle of conferral set down in Article 5(2) of the TEU, show that the Union is acting ‘*only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein.*’

2. Scrutiny of the Joint Committee on Environment and Climate Action

5. The Joint Committee on Environment and Climate Action (hereafter referred to as the “Committee”) scrutinised the following proposals at two meetings, on 14 September 2021 and 21 September 2021:
 - COM(2021) 551 - Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union, Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and Regulation (EU) 2015/757.
 - COM(2021) 554 - Proposal for a regulation of the European Parliament and of the council amending Regulations (EU) 2018/841 as regards the scope, simplifying the compliance rules, setting out the targets of the Member States for 2030 and committing to the collective achievement of climate neutrality by 2035 in the land use, forestry and agriculture sector, and (EU) 2018/1999 as regards improvement in monitoring, reporting, tracking of progress and review.

- COM(2021) 555 - Proposal for a regulation of the European Parliament and of the council amending Regulation (EU) 2018/842 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement.
 - COM(2021) 557 - Proposal for a Directive of the European Parliament and of the Council 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.
 - COM(2021) 558 – Directive of the European Parliament and of the Council on energy efficiency (recast).
 - COM(2021) 568 - Proposal for a regulation of the European Parliament and of the Council establishing a Social Climate Fund.
6. At its meeting on 14 September, the Committee agreed that COM(2021) 551, COM(2021) 554, COM(2021) 555, COM(2021) 557, COM(2021) 558 and COM(2021) 568 warranted further scrutiny. It was subsequently agreed to invite officials from the Department of the Environment, Climate and Communications to a meeting of the Committee on 21 September to further discuss and to be briefed on the technical aspects of the proposals and their implications for Ireland.
7. Following the Committee’s consideration of these matters, it agreed a reasoned opinion on the package of proposals as listed above at its meeting on the 28 September 2021.

3. Opinion of the Joint Committee

8. The Committee has had specific regard to the Treaty provisions and is of the opinion that these proposals do not comply with the principle of subsidiarity. The reasons are set out in the following paragraphs: -
9. The Committee is of the opinion that the EU Commission has not adequately met the procedural requirements (in Protocol 2, Article 5) to provide a *detailed statement* with sufficient quantitative and qualitative indicators, to allow national parliaments to fully assess all the implications of EU-wide proposals of this nature.
10. Ireland recently enacted the [Climate Action and Low Carbon Development \(Amendment\) Bill 2021](#) which provides for similarly ambitious targets for climate neutrality by 2050. While the Committee is cognisant that climate action is required at an EU level, the Committee is of the opinion that the *necessity* and *greater benefits* of these proposals in contrast to measures at Member State level have not been adequately established and are therefore not proportionate nor compliant with the principle of subsidiarity.
11. The Committee has specific concerns in relation to the proposal for a new separate Emissions Trading System (ETS) for the road transport and buildings sector and the allocation of revenue through the Social Climate Fund. The Committee is of the view that the proposal for an ETS for the road transport and buildings sector has not been adequately justified by the Commission and is therefore not proportionate. The Committee is also of the opinion that emissions in the road transport and buildings sector would better benefit from action at Member State level where measures are already in place.
12. The Committee notes and is concerned that only 25% of revenue from the ETS is proposed to be allocated to the Social Climate Fund which diminishes the greater benefit of these proposals. By contrast, Ireland’s national carbon taxes ringfence 100% of revenue to climate mitigation measures.

13. In addition, the Committee questions the Commission's methodology for calculating financial allocations for Member States from the Social Climate Fund as it takes into account variables for which there is a lack of national data. The Committee is of the opinion that a greater evidential basis to justify action at a European level ahead of action at Member State level be provided by the Commission.
14. Ireland's Programme for Government sets out emission reductions through a clear pathway of climate measures to be implemented through the reallocation of revenue from carbon tax. The carbon tax covers areas that do not fall under the current ETS, including the road transport and buildings sector. The Committee is of the opinion that the establishment of an ETS for this sector would significantly impact upon the future scope of Ireland's carbon tax. Government policy is not to levy a carbon tax in sectors included in the ETS as this would result in a form of double taxation.
15. The Committee is also of the opinion that the proposed ETS and Social Climate Fund allocation to Ireland will likely not provide a comparable level of revenue as the national carbon tax and would therefore impact upon Ireland's ability to implement climate measures to reduce greenhouse gas emissions and meet its national target of climate neutrality. The Committee is therefore of the opinion that greater benefits would be provided for this objective at Member State level and on this basis, the Committee believes that the proposals are not compliant with the principles of subsidiarity.
16. As a consequence of the proposals being deemed in breach of the principles of proportionality and subsidiarity, a legitimate question arises as to whether action at EU level is appropriate. It is the conclusion of the Committee that the European Commission has not adequately demonstrated why action at Union level is required.
17. The Committee is satisfied that the above points, taken together, clearly demonstrate that the proposals do not comply with the principles of subsidiarity and proportionality.

Recommendations of the Joint Committee

18. The Committee agreed this Report under Dáil Standing Order 133 and Seanad Standing Order 116 on 28 September 2021.

19. The Committee, pursuant to Standing Orders, recommends the reasoned opinion contained in section 3 above for agreement by Dáil and Seanad Éireann.



Brian Leddin, T.D.
Cathaoirleach
28 September 2021

APPENDIX 1 - Membership

Membership of the Joint Committee on Environment and Climate Action



Richard Bruton TD
Fine Gael



Réada Cronin
Sinn Féin



Cormac Devlin TD
Fianna Fáil



Alan Farrell TD
Fine Gael



Brian Leddin TD (Cathaoirleach)
Green Party



Darren O'Rourke TD
Sinn Féin



Christopher O'Sullivan TD



Bríd Smith TD



Jennifer Whitmore TD

Fianna Fáil

Solidarity-People Before Profit

Social Democrats



Senator Lynn Boylan
Sinn Féin



Senator Timmy Dooley
Fianna Fáil



Senator Alice-Mary Higgins
Independent



Senator John McGahon
Fine Gael



Senator Pauline O'Reilly
Green Party

APPENDIX 2 – Terms of Reference of the Committee

Functions of the Committee – derived from Standing Orders [DSO 95; SSO 71]

- (1) The Select Committee shall consider and, unless otherwise provided for in these Standing Orders or by order, to report to the Dáil on any matter relating to—
 - (a) legislation, policy, governance, expenditure and administration of—
 - (i) a Government Department, and
 - (ii) State bodies within the responsibility of such Department, and
 - (b) the performance of a non-State body in relation to an agreement for the provision of services that it has entered into with any such Government Department or State body.
- (2) The Select Committee appointed pursuant to this Standing Order shall also consider such other matters which—
 - (a) stand referred to the Committee by virtue of these Standing Orders or statute law, or
 - (b) shall be referred to the Committee by order of the Dáil.
- (3) The principal purpose of Committee consideration of matters of policy, governance, expenditure and administration under paragraph (1) shall be—
 - (a) for the accountability of the relevant Minister or Minister of State, and
 - (b) to assess the performance of the relevant Government Department or of a State body within the responsibility of the relevant Department, in delivering public services while achieving intended outcomes, including value for money.
- (4) The Select Committee appointed pursuant to this Standing Order shall not consider any matter relating to accounts audited by, or reports of, the Comptroller and Auditor General unless the Committee of Public Accounts—
 - (a) consents to such consideration, or
 - (b) has reported on such accounts or reports.
- (5) The Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann to be and act as a Joint Committee for the purposes of paragraph (1) and such other purposes as may be specified in these Standing Orders or by order of the Dáil: provided that the Joint Committee shall not consider—
 - (a) the Committee Stage of a Bill,
 - (b) Estimates for Public Services, or

- (c) a proposal contained in a motion for the approval of an international agreement involving a charge upon public funds referred to the Committee by order of the Dáil.
- (6) Any report that the Joint Committee proposes to make shall, on adoption by the Joint Committee, be made to both Houses of the Oireachtas.
- (7) The Chairman of the Select Committee appointed pursuant to this Standing Order shall also be Chairman of the Joint Committee.
- (8) Where the Select Committee proposes to consider—
 - (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 133, including the compliance of such acts with the principle of subsidiarity,
 - (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
 - (c) non-legislative documents published by any EU institution in relation to EU policy matters, or
 - (d) matters listed for consideration on the agenda for meetings of the relevant Council (of Ministers) of the European Union and the outcome of such meetings,

the following may be notified accordingly and shall have the right to attend and take part in such consideration without having a right to move motions or amendments or the right to vote:

- (i) members of the European Parliament elected from constituencies in Ireland,
 - (ii) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
 - (iii) at the invitation of the Committee, other members of the European Parliament.
- (9) The Select Committee appointed pursuant to this Standing Order may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department consider—
 - (a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and
 - (b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select: Provided that the provisions of Standing Order 130 apply where the Select Committee has not considered the Ombudsman

report, or a portion or portions thereof, within two months (excluding Christmas, Easter or summer recess periods) of the report being laid before either or both Houses of the Oireachtas.

b. Scope and Context of Activities of Committees (as derived from Standing Orders) [DSO 94; SSO 70]

- (1) It shall be an instruction to each Select Committee that—
- (a) it may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;
 - (b) such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil;
 - (c) it shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Order 125(1)1; and
 - (d) it shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
 - (i) a member of the Government or a Minister of State, or
 - (ii) the principal office-holder of a State body within the responsibility of a Government Department or
 - (iii) the principal office-holder of a non-State body which is partly funded by the State,

Provided that the Committee may appeal any such request made to the Ceann Comhairle, whose decision shall be final.

- (2) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice to the Business Committee by a Chairman of one of the Select Committees concerned, waives this instruction.