

**EXAMINING THE EUROPEAN COMMISSION'S LEGISLATIVE
PROPOSAL FOR A EUROPEAN UNION FRAMEWORK FOR
CERTIFICATION OF CARBON REMOVALS**

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A. INTRODUCTION

Carbon markets have assumed critical importance in enabling reductions of greenhouse gas (“GHG”) emissions and, increasingly, also in terms of providing business opportunities for financial market participants.

The instruments that are traded in carbon markets generally fall into one of two categories:

1. **Emission allowances:** these are permits to emit a certain amount of GHGs, usually one tonne of CO₂ equivalent emissions. The concept of a permit presupposes a compliance framework that imposes an obligation on in-scope entities not to emit GHGs in the absence of the relevant number/amount of permits. Where allowances are traded between market participants, such markets are referred to as ‘compliance markets’ (see further section B.II below).
2. **Carbon offsets (or ‘credits’):** these are transferable instruments, issued (i.e., certified) usually by an independent registry, in respect of projects that seek to lower the amount of GHGs in the atmosphere, either in form of avoiding/reducing GHG emissions (e.g., renewable energy projects) or in form of removing GHGs already in the atmosphere (e.g., reforestation projects). These credits can be retired (following which they cannot be traded anymore). The retirement of a certain amount of carbon credits allows the holder of the retired credits to claim that they have offset a corresponding amount of their GHG emissions. The trading of carbon offsets is usually referred to as ‘voluntary carbon markets’, although there have been examples of compliance frameworks that allow some of in-scope entities’ obligations under those frameworks to be met through carbon offsets.

While emissions allowances systems are fairly well established – the European Union’s Emissions Trading System (the “EU ETS”) being the most developed and well-known - carbon offsets have been subject to criticism and voluntary carbon markets have remained relatively underdeveloped. While there are several issues that have in the past prevented voluntary carbon markets from scaling to their full potential including insufficient regulation of the trading environment and issues regarding the overall communication around the use of carbon credits by buyers (i.e., greenwashing concerns), the key issues, and the main source of criticism, relate to integrity concerns in respect of the issuance of carbon credits. The International Organization of Securities Commissions (IOSCO) “Discussion Paper on Voluntary Carbon Markets” (the “IOSCO DP”)¹ sets out the main issues in this respect:

1. **Additionality/baseline scenarios:** carbon credits should reflect avoidance or removal of GHG emissions beyond “business as usual”. This requires, amongst other things, a baseline scenario (i.e., the level of emissions as a consequence of “business as usual”). Lack of standardised methodologies for establishing baseline

¹ CR/06/22, accessible [here](#).

scenarios may therefore result in doubt about the additionality and, therefore, the quality, of carbon credits.

2. **Risk of reversal:** the GHG emissions reduction in respect of which a credit was issued should remain intact for as long as the credit remains valid. However, this may not always be the case, e.g., where credits were issued in respect of reforestation projects, but the relevant forests are subsequently destroyed.
3. **Collateral effects:** another risk is that projects, whilst effecting a reduction in GHG emissions, lead to other environmentally harmful impacts, e.g., loss of biodiversity, which also casts doubt on the quality of credits issued as a result.
4. **Absence of centralised registries:** once carbon credits have been issued, they are recorded by a registry which will also record subsequent transactions in respect of such credits. Given the absence of centralised/interoperable registries, there is a risk that projects are recorded on more than one registry which results in a risk of double-counting.
5. **Lack of standardisation in the quantification of emissions reduction:** there is currently no standardised methodology for quantifying the GHG emissions reduction resulting from a project. This creates a risk that a project's emissions reductions are overstated, making it difficult (or at least expensive) for buyers to assess the validity of emissions reduction claims underlying an issued carbon credit.
6. **Lack of uniform verification and oversight:** the certification and verification of carbon credits has so far been performed primarily by non-governmental organisations. This lack of governmental or regulatory oversight also creates doubt as to the quality/reliability of carbon credits.
7. **Transparency and conflict of interest:** a the carbon-credit issuance process is also subject to a lack of transparency in respect of certification bodies, including transparency as to remuneration mechanisms of such bodies, regular reporting by such bodies, and the potential that such bodies may be operating under a conflict of interest.

On 30 November 2022, the European Commission (the “**Commission**”) adopted a proposal for a regulation establishing an EU certification framework for carbon removals (the “**EU Proposal**”),² which seeks to address the above concerns in respect of ‘carbon removals’ (i.e., a subset of carbon offsets).

The paper seeks to undertake a deep dive of the EU Proposal and to place its draft measures in the context of the key international and EU-regional initiatives that have preceded the EU Proposal. From their the authors consider the question of “where next?” and what the future EU regulation of voluntary carbon markets may look like.

² COM(2022) 672, accessible [here](#).

B. BACKGROUND/CONTEXT

I. *Early emissions reduction commitments*

The background to the EU Proposal lies in countries' commitments to reduce GHG emissions.

The first of these commitments date back as far as to 1992, when 154 states became signatories to the United Nations Framework Convention on Climate Change (“UNFCC”),³ in which it was acknowledged that “*change in the Earth’s climate and its adverse effects are a common concern of humankind*”.⁴ The objective of the UNFCC was, therefore, the “*stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system*”.⁵

In the Kyoto Protocol to the UNFCC (the “**Kyoto Protocol**”),⁶ which was adopted in 1997 and became effective in 2005, the state signatories committed to reducing their “*aggregate anthropogenic carbon dioxide equivalent emissions*” of certain specified GHGs.⁷ The Kyoto Protocol also introduced certain “flexibility mechanisms”, including, in particular:

1. an emissions trading framework, allowing countries that have emission units to spare to sell this excess capacity to countries that are over their targets (akin to compliance markets);⁸
2. the “Clean Development Mechanism”, i.e., a system whereby emissions-reduction projects in developing countries can earn ‘certified emission reduction’ credits which can be sold to industrialised countries and used by such countries to meet a part of their emission reduction targets under the Kyoto Protocol⁹ (a first form of a voluntary carbon market); and
3. a “Joint Implementation” mechanism, i.e., a system whereby projects which reduce GHG emissions and which are located in states with emissions reduction obligations under the Kyoto Protocol (“**Annex B States**”) may result in issuance of ‘emission reduction units’ which can be traded between Annex B States,¹⁰ thereby facilitating investments by one Annex B State in emissions reduction projects located in the territory of another Annex B State (in effect also a form of a voluntary carbon market).

³ The UNFCC is accessible [here](#).

⁴ UNFCC, Preamble.

⁵ UNFCC, Article 2.

⁶ The Kyoto Protocol is accessible [here](#).

⁷ Kyoto Protocol, Article 3.

⁸ Kyoto Protocol, Article 17.

⁹ Kyoto Protocol, Article 12.

¹⁰ Kyoto Protocol, Article 6.

II. Emergence of compliance markets – the EU ETS

In order to fulfil its commitments (and the commitments of EU Member States) under the Kyoto Protocol,¹¹ the EU, in 2003, enacted Directive 2003/87/EC,¹² which introduced the EU ETS.

The EU ETS is a compliance framework: by 30 April each year, in-scope entities are required to surrender a number of emissions allowances (“EUAs”) that is equal to that entity’s emissions during the preceding calendar year.¹³ Failure to comply is subject to strict penalties.¹⁴ EUAs may only be issued under the EU ETS (by Member States’ competent authorities). The total quantity of allowances issued each year is capped at a certain level, and that level decreases year by year.¹⁵ EUAs may be acquired in primary markets (either through free allocation¹⁶ or auctioning¹⁷ of allowances), and subsequently traded in secondary markets, either over-the-counter or on exchanges, such as the European Energy Exchange.¹⁸ The aim of this “cap-and-trade” approach is to effect reductions of greenhouse gas emissions in a cost-effective and economically efficient manner.¹⁹

The EU ETS integrated carbon offsets generated according to the flexibility mechanisms under the Kyoto Protocol in its compliance framework, but that ceased to be the case from 2020 onwards.

III. The Paris Agreement

In 2016, the Paris Agreement entered into force. The Paris Agreement, in enhancing the implementation of the UNFCCC, sought to strengthen the global response to the threat of climate change, including by keeping the increase in the global average temperature at less than 2 °C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 °C above pre-industrial levels, and by making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.²⁰ The EU and its Member States are parties to the Paris Agreement and the EU has expressed its commitment to implementing the Paris Agreement by reducing GHG emissions and increasing carbon removals.²¹

¹¹ EU ETS Directive, Recitals (4) and (5).

¹² The original version of the EU ETS Directive is accessible [here](#). The latest version, incorporating all amendments in force, is accessible [here](#).

¹³ EU ETS Directive, Article 12(3).

¹⁴ EU ETS Directive, Article 16.

¹⁵ EU ETS Directive, Article 9.

¹⁶ EU ETS Directive, Article 10a.

¹⁷ EU ETS Directive, Article 10.

¹⁸ For a detailed account of the functioning of primary and secondary markets, *see* European Securities and Markets Authority, Final Report on Emissions allowances and associated derivatives (accessible [here](#)), paragraphs 7 to 21.

¹⁹ EU ETS Directive, Article 1.

²⁰ Paris Agreement, Article 2(1).

²¹ EU Proposal, Recital (1).

IV. The European Climate Law

In 2021, the EU enacted Regulation (EU) 2021/1119 (the “**European Climate Law**”).²² The European Climate Law sets the EU-wide target that GHG emissions and removals regulated in EU law shall be balanced within the Union at the latest by 2050, thus reducing emissions to net zero by that date, and that the EU should aim to achieve negative emissions thereafter (the “**climate-neutrality objective**”).²³ The EU Member States, as well as relevant EU institutions, are required to take the measures necessary to enable the collective achievement of the climate-neutrality objective.²⁴ The EU Proposal has been enacted in order to support the achievement of the climate-neutrality objective.²⁵

C. THE EU PROPOSAL

I. Aim

Limiting global warming to 1.5 °C above pre-industrial levels is becoming increasingly unlikely without large-scale activities for capturing CO₂ from the atmosphere. The EU is currently not on track to deliver the required carbon removals. The aim of the EU Proposal is, therefore, to “*incentivise the uptake of high-quality carbon removals, in full respect of the biodiversity and the zero-pollution objectives*”.²⁶

This is to be achieved by introducing a voluntary EU certification framework for carbon removals. ‘Carbon removal’, for the purposes of the EU Proposal, means either (a) the storage of atmospheric or biogenic carbon within geological carbon pools, biogenic carbon pools (e.g., biomass, dead wood or soil organic carbon), long-lasting products and materials, and the marine environment, or (b) the reduction of carbon release from a biogenic carbon pool to the atmosphere.²⁷ This framework is expected to support the development of such carbon removal activities.²⁸

In particular, the EU Proposal aims to overcome the issue of concerns as to the quality of carbon removal credits by putting in place a framework that applies quality criteria in a way that is standardised (and, as such, comparable) at a high level, while being tailored to the specific carbon removal activity in its detail. Moreover, the requirement of independent verification, as well as rules as to certification procedures, the management of certification schemes, and public disclosure of relevant information, are intended to further improve transparency and build trust. The Commission also considers that the standardised nature of the proposed framework would obviate the need of project developers to ascertain the characteristics of different certification schemes and select, or switch to, the one that is most suitable to their needs, thereby removing some of the current barriers to accessing finance needed by project developers.

²² The European Climate Law is accessible [here](#).

²³ European Climate Law, Article 2(1).

²⁴ European Climate Law, Article 2(2).

²⁵ EU Proposal, Recital (3).

²⁶ EU Proposal, Recital (3).

²⁷ EU Proposal, Article 2(1)(a).

²⁸ EU Proposal, Recital (4).

II. Framework

1. Requirements applicable to carbon removals

In order to be certified under the EU Proposal, carbon removals would need to comply with four criteria (the “**Quality Criteria**”) and undergo the certification process detailed further below (including, importantly, independent verification).

The four Quality Criteria are as follows.

a) Quantification (“QU”)

A carbon removal activity must provide a net carbon removal benefit, so that it delivers a positive climate impact.²⁹ Net carbon removal benefit is to be computed in the following way:

- 1) **Ascertaining the baseline scenario.** Operators would need to ascertain the carbon removals under a baseline scenario. As a starting point, operators should use a standardised baseline reflecting the standard carbon removal performance of comparable activities in similar social, economic, environmental and technological circumstances and geographical locations.³⁰ For example, a standardised baseline should reflect the statutory and market conditions in which the carbon removal activity takes place, so that if a carbon removal activity is imposed upon operators by the applicable law, or it does not need any incentives to take place, its performance will be reflected in the baseline.³¹ Such standardised baseline is preferable because it ensures objectivity, minimises compliance and other administrative costs, makes demonstration of additionality easier, and positively recognises the action of first movers who have already engaged in carbon removal activities.³² However, where justified, a project-specific baseline based on the operator’s individual performance may be used.³³ In order to reflect the social, economic, environmental and technological developments and to encourage ambition over time in line with the Paris Agreement, baselines should be periodically updated.³⁴
- 2) **Computing the total carbon removals of the removal activity, which would then allow operators to quantify the amount of additional carbon removals that a carbon removal activity has generated in comparison to a baseline.** Carbon removals would need to be quantified in a relevant, accurate, complete, consistent, comparable and transparent manner.³⁵ The quantification of the carbon removals would also need to account for uncertainties in accordance with recognised statistical approaches,³⁶ and such uncertainties should be duly

²⁹ EU Proposal, Article 4(1) and Recital (7).

³⁰ EU Proposal, Article 4(5).

³¹ EU Proposal, Recital (12).

³² EU Proposal, Recital (7).

³³ EU Proposal, Article 4(6) and Recital (7).

³⁴ EU Proposal, Article 4(7).

³⁵ EU Proposal, Article 4(4).

³⁶ EU Proposal, Article 4(8).

reported and accounted, in order to limit the risk of overestimating the quantity of carbon dioxide removed from the atmosphere.³⁷

- 3) **Subtracting any increase in GHG emissions due to the implementation of the carbon removal activity.** Relevant GHG emissions that should be taken into consideration include direct emissions, such as those resulting from the use of more fertilisers, fuel or energy, or indirect emissions, such as those resulting from land use change, with consequent risks for food security due to displacement of agricultural production. On the other hand, a *reduction* in GHG emissions resulting from the implementation of the carbon removal activity should not be taken into account to quantify the net carbon removal benefit, but should be considered as a collateral benefit towards the sustainability objective of climate change mitigation. However, as a result of being reported on the certificates, a reduction can increase the value of the certified carbon removals.³⁸
- 4) **A carbon removal activity delivers a net carbon removal benefit when the carbon removals above the baseline outweigh any increase in GHG emissions due to the implementation of the carbon removal activity.**³⁹

b) Additionality (“A”)

In order to ensure that the EU certification framework channels incentives toward carbon removals that go beyond the standard practice, carbon removal activities should be additional.⁴⁰ Therefore, these activities should both:

- (i) go beyond statutory requirements (i.e., operators should carry out activities that are not already imposed upon them by the applicable law); and
- (ii) take place due to the incentive effect of the certification (e.g., where the incentive created by the potential revenues, resulting from the certification, changes the behaviour of operators in such a way that they engage in the additional carbon removal activity to achieve additional carbon removals).⁴¹

Where quantification of net carbon removal benefit is based on a standardised baseline, a carbon removal activity that generates carbon removals in excess of such a baseline would be presumed to be additional.⁴² By contrast, where a project-specific baseline is used, additionality would need to be demonstrated through specific tests.⁴³

³⁷ EU Proposal, Recital (10).

³⁸ EU Proposal, Recital (8).

³⁹ EU Proposal, Recital (9). For example, in the case of activities that deliver permanent carbon storage by injecting carbon underground, the amount of permanently stored carbon should outweigh the energy-related greenhouse gas emissions from the industrial process. In the case of carbon farming, the carbon captured by an afforestation activity or the carbon kept in the ground by a peatland re-wetting activity should outweigh the emissions from the machinery used to carry out the carbon removal activity or the indirect land use change emissions that can be caused by carbon leakage.

⁴⁰ EU Proposal, Article 5(1) and Recital (11).

⁴¹ EU Proposal, Article 5(1) and Recital (11).

⁴² EU Proposal, Article 5(2) and Recital (12).

⁴³ EU Proposal, Article 5(2).

c) Long-term storage (“L”)

Operators are required to demonstrate that a carbon removal activity aims at ensuring the long-term storage of carbon.⁴⁴ In connection with this, operators will be subject to the following requirements:

- 1) **Risk of release:** given that atmospheric and biogenic carbon that is captured and stored through a carbon removal activity risks being released back into the atmosphere (e.g., reversal) due to natural or anthropogenic causes, operators are required to take all relevant preventive measures to monitor and mitigate any risk of release of the stored carbon occurring during the monitoring period.⁴⁵ Moreover, the validity of the certified carbon removals will depend on the expected duration of the storage and the different risks of reversal associated with the given carbon removal activity. For example, carbon farming⁴⁶ or carbon storage in products⁴⁷ are more exposed to the risk of voluntary or involuntary release of carbon into the atmosphere. To account for this risk, the validity of the certified carbon removals generated by carbon farming and carbon storage in products would need to be subject to an expiry date matching with the end of the relevant monitoring period, after which the carbon should be assumed to be released into the atmosphere (unless the economic operator proves the maintenance of the carbon storage through uninterrupted monitoring activities).⁴⁸ By contrast, activities that store carbon in geological formations provide enough certainties on the very long-term duration of several centuries for the stored carbon and can be considered as providing permanent storage of carbon.⁴⁹
- 2) **Liability mechanisms:** in addition to measures taken to minimise the risk of carbon release into the atmosphere during the monitoring period, operators should be subject to appropriate liability mechanisms in order to address any release of the stored carbon occurring during the monitoring period.⁵⁰ Such mechanisms could include e.g., discounting of carbon removal units, collective buffers or accounts of carbon removal units, and up-front insurance mechanisms.⁵¹

⁴⁴ EU Proposal, Article 6(1).

⁴⁵ EU Proposal, Article 6(2)(a) and Recital (13). ‘Monitoring period’ means a period, the duration of which is determined in accordance to the type of carbon removal activity, over which the storage of carbon is monitored by the operator (EU Proposal, Article 2(1)(f)).

⁴⁶ ‘Carbon farming’ means a carbon removal activity related to land management that results in the increase of carbon storage in living biomass, dead organic matter and soils by enhancing carbon capture and/or reducing the release of carbon to the atmosphere (EU Proposal, Article 2(1)(h)).

⁴⁷ ‘Carbon storage in products’ means a carbon removal activity that stores atmospheric and biogenic carbon in long-lasting products or materials (EU Proposal, Article 2(1)(i)).

⁴⁸ EU Proposal, Article 6(3) and Recital (13).

⁴⁹ EU Proposal, Recital (13).

⁵⁰ EU Proposal, Article 6(2)(b).

⁵¹ EU Proposal, Recital (14). Since liability mechanisms in respect of geological storage and CO₂ leakage, and relevant corrective measures have already been laid down by Directive 2003/87/EC and Directive 2009/31/EC of the European Parliament and of the Council, those liability mechanisms and corrective measures should apply to avoid double regulation.

d) Sustainability (“ITY”)

Despite the strong potential of carbon removal activities to deliver win-win solutions for sustainability, trade-offs cannot be excluded (e.g., forest monocultures may produce harmful effects for biodiversity). Operators would therefore be required to demonstrate that a carbon removal activity has a neutral impact on, or generates co-benefits for, all of the following sustainability objectives: (a) climate change mitigation (beyond the net carbon removal benefit); (b) climate change adaptation; (c) sustainable use and protection of water and marine resources; (d) transition to a circular economy; (e) pollution prevention and control; and (f) protection and restoration of biodiversity and ecosystems.⁵²

Those sustainability requirements should, as appropriate, and taking into consideration local conditions, build on existing relevant criteria in other legislation.⁵³ Moreover, a carbon removal activity would need to comply with minimum sustainability requirements laid down in certification methodologies established by the Commission⁵⁴ (see below).

Where carbon removal activities generate co-benefits that contribute to the sustainability objectives beyond the minimum sustainability requirements, operators may report such co-benefits, which will give more economic value to the certified carbon removals and will result in higher revenues for the operators.⁵⁵ Such reporting should comply with the certification methodologies tailored to the different carbon removal activities, developed by the Commission.⁵⁶ The certification methodologies shall incentivise as much as possible the generation of co-benefits going beyond the minimum sustainability requirements, in particular in respect of the sixth objective (protection and restoration of biodiversity and ecosystems).⁵⁷

2. Methodologies

Compliance with the requirements set out in the previous section will be assessed by applying a relevant ‘certification methodology’.⁵⁸ The certification methodologies are to be developed by the Commission in close consultation with the Expert Group on Carbon Removals and all other interested actors, and need to be based on the best available scientific evidence.⁵⁹ Formally, they will be established in the form of delegated acts to be adopted by the Commission.

The aim underpinning these methodologies is to enable operators to apply the quality criteria set out in the EU Proposal in a standardised, verifiable, comparable and cost-

⁵² EU Proposal, Article 7(1) and Recital (15).

⁵³ E.g., on the technical screening criteria for ‘Do No Significant Harm’ concerning forestry activities and underground permanent geological storage of CO₂, set out in Commission Delegated Regulation (EU) 2021/2139, and on the sustainability criteria for forest and agriculture biomass raw material laid down in Article 29 of Directive (EU) 2018/2001 of the European Parliament and of the Council.

⁵⁴ EU Proposal, Article 7(2).

⁵⁵ EU Proposal, Recital (17).

⁵⁶ EU Proposal, Article 7(3).

⁵⁷ EU Proposal, Article 7(3) and Recital (17). Recital (17) notes that the Commission should prioritise the development of tailored certification methodologies on carbon farming activities that provide significant co-benefits for biodiversity.

⁵⁸ EU Proposal, Article 8(1).

⁵⁹ EU Proposal, Recital (18).

effective way, while taking into account the specific characteristics of different carbon removal activities.⁶⁰ In particular, those methodologies should ensure the robust and transparent certification of the net carbon removal benefit generated by the carbon removal activity, while avoiding disproportionate administrative burden for operators or groups of operators, in particular for small farmers and forest holders.⁶¹

When preparing those certification methodologies, the Commission is required to take into account: (a) the objectives of ensuring the robustness of carbon removals and recognising the protection and restoration of ecosystems; (b) the objective of minimising administrative burden for operators, particularly for small-scale carbon farming operators; (c) relevant EU and national law; and (d) relevant Union and international certification methodologies and standards.⁶²

In terms of content, certification methodologies are required to include at least the following elements:⁶³ (a) a description of the carbon removal activity covered (e.g., permanent carbon storage, carbon farming and carbon storage in products), including its monitoring period; (b) rules for identifying all carbon removal sinks and GHG emission sources relevant to quantifying the net carbon removal benefit; (c) rules for calculating the carbon removals under the baseline; (d) rules for calculating the total carbon removals; (e) rules for calculating the increase in direct and indirect greenhouse gas emissions; (f) rules to address uncertainties in the quantification of carbon removals; (g) rules to carry out specific additionality tests where required; (h) rules on monitoring and mitigation of any risk of release of the stored carbon; (i) rules on appropriate liability mechanisms; (j) rules on the minimum sustainability requirements; and (k) rules on the monitoring and reporting of co-benefits.

3. Certification

The EU Proposal would introduce rules for the verification and certification of carbon removals.⁶⁴ Such certification would be done within the framework of a ‘certification scheme’, and the EU Proposal would also introduce rules to regulate the recognition (by the Commission) and functioning of such ‘certification schemes’.⁶⁵ The audit and verification of applications (i.e., verification of whether applicants actually satisfy the requirements applicable to carbon removals under the EU Proposal) would be conducted by independent ‘certification bodies’ which would be appointed by ‘certification schemes’.

a) Certification process

The ultimate purpose of certification under the EU Proposal is to ensure accuracy, reliability, integrity and non-repudiation of origin, and protection against fraud of

⁶⁰ EU Proposal, Recital (28).

⁶¹ EU Proposal, Recital (18).

⁶² EU Proposal, Article 8(3).

⁶³ EU Proposal, Annex 1.

⁶⁴ EU Proposal, Article 1(1)(b).

⁶⁵ EU Proposal, Article 1(1)(c).

information and of data submitted by operators.⁶⁶ To that end, the EU Proposal envisages a multi-step certification process:

- 1) As a first step, an operator or a group of operators would submit an application for certification of compliance with the EU Proposal to a certification scheme.⁶⁷
- 2) Upon acceptance of that application, the operator or a group of operators would then be required to submit to a certification body a comprehensive description of the carbon removal activity (including the certification methodology applied to assess compliance with the requirements for carbon removals), the expected total carbon removals and net carbon removal benefit.⁶⁸
- 3) In order to ensure a credible and reliable certification process,⁶⁹ the certification body would then conduct a certification audit to verify the information submitted as part of the application and to confirm compliance of the carbon removal activity with the requirements for carbon removals. As a result of that certification audit, the certification body shall issue a certification audit report that includes a summary and a certificate.⁷⁰
- 4) The certification scheme would be required to control the certification audit report and the certificate, make the summary of the certification audit report and the certificate publicly available in a registry (see below)⁷¹ and would need to verify if the information and data submitted by the operator or a group of operators were subject to independent auditing and if the certification of compliance was carried out in an accurate, reliable and cost-effective manner.⁷²
- 5) The certification body would be required to carry out periodic re-certification audits to reconfirm compliance of the carbon removal activity and verify the generated carbon benefit. Following that re-certification audit, the certification body would be required to issue a re-certification audit report that includes a summary and an updated certificate.⁷³
- 6) The certification scheme would be required to control the re-certification audit report and the updated certificate, and make the summary of the re-certification

⁶⁶ EU Proposal, Recital (23).

⁶⁷ EU Proposal, Article 9(1).

⁶⁸ EU Proposal, Article 9(1).

⁶⁹ EU Proposal, Recital (19).

⁷⁰ EU Proposal, Article 9(2). The certificate should contain, at least, the following information: (a) name and type of the carbon removal activity, including the name and contact details of the operator or group of operators; (b) the location of the carbon removal activity, including geographically explicit location of the activity boundaries, respecting 1:5000 mapping scale requirements for the Member State; (c) start date and end date of the carbon removal activity; (d) name of the certification scheme; (e) name and address of the certification body and logo; (f) (unique) certificate number or code; (g) place and date of issuance of the certificate; (h) reference to the applicable certification methodology; (i) net carbon removal benefit; (j) carbon removals under the baseline; (k) total carbon removals; (l) increase in direct and indirect greenhouse gas emissions; (m) breakdown by gases, sources, carbon sinks and stocks with regard to the information referred to in points (j), (k) and (l) above; (n) duration of the monitoring period of the carbon removal activity; (o) any sustainability co-benefits; and (p) reference to any other carbon removal certification.

⁷¹ EU Proposal, Article 9(2).

⁷² EU Proposal, Article 11(3).

⁷³ EU Proposal, Article 9(3).

audit report, the updated certificate and the certified carbon removal units publicly available in a registry (see below).⁷⁴

The Commission would be required to develop and adopt implementing acts setting out the detailed requirements applicable to the certification process (including structure, format, technical details and process), adequate standards of accounting and of independent auditing to be applied by certification schemes (so as to ensure the necessary legal certainty as regards the rules applicable to operators and to certification schemes), and the minimum information to be contained in the description of the carbon removal activity and in the certification and re-certification audit reports.⁷⁵ To ensure a cost-effective certification process, those technical harmonised rules on certification should also have the objective of reducing unnecessary administrative burden for operators, or groups of operators, in particular for Small and Medium Enterprises (SMEs), including small farmers and foresters.⁷⁶

b) Certification schemes

‘Certification schemes’ are schemes managed by a private or public organisation that oversee the certification of compliance of operators or groups of operators with the EU Proposal.⁷⁷

Certification schemes are critical to the Commission’s objective of incentivising the uptake of high-quality carbon removal activities. The Commission considers one of the main obstacles facing the carbon removal markets to be that “*many stakeholders do not trust carbon removal certificates because certificates may be generated through non-transparent and unreliable certification processes which certify activities that are not delivering true climate and sustainability benefits*”.⁷⁸

Accordingly, the EU Proposal would require certification schemes to operate on the basis of reliable and transparent rules and procedures, in particular with regard to internal management and monitoring, handling of complaints and appeals, stakeholder consultation, transparency and publication of information, appointment and training of certification bodies, addressing non-conformity issues, and the development and management of registries.⁷⁹ The Commission would be required to develop and adopt implementing acts, including to create adequate standards of reliability and transparency of certification schemes.⁸⁰

Recognition: In order to ensure a reliable and harmonised control of certification and to ensure that certification schemes meet the requirements (including with respect to technical competence, reliability, transparency and independent auditing), only a certification scheme recognised by the Commission by means of a decision may be used to demonstrate compliance with the EU Proposal.⁸¹ Such recognition would be

⁷⁴ EU Proposal, Article 9(3).

⁷⁵ EU Proposal, Article 11(5) and Recitals (19) and (23).

⁷⁶ EU Proposal, Recital (23).

⁷⁷ EU Proposal, Article 2(1)(k).

⁷⁸ Explanatory Memorandum in respect of the EU Proposal (the “**Explanatory Memorandum**”), page 7.

⁷⁹ EU Proposal, Article 11(2).

⁸⁰ EU Proposal, Article 11(5) and Recital (23).

⁸¹ EU Proposal, Article 13(1) and Recital (24).

valid for no longer than five years.⁸² The EU Proposal contains some rules regarding the process of recognition of certification schemes and further provides that the Commission may adopt implementing acts setting out the structure, format, and technical details of the notification and recognition processes.⁸³

Registries: In order to ensure transparency and full traceability of carbon removal certificates and to avoid the risk of fraud and double counting,⁸⁴ certification schemes would be required to establish and duly maintain interoperable public registries.⁸⁵ Those registries would be required to store the documents resulting from the certification process of carbon removals, including summaries of certification audits and re-certification audit reports, the certificates and updated certificates, and make them publicly available in electronic form.⁸⁶ The registries should also record the certified carbon removal units that meet the Union quality criteria and make publicly available the quantity of carbon removal units certified. To that end, registries would be required to use automated systems, including electronic templates, and to be interoperable. The Commission is empowered to adopt implementing acts setting out the structure, format and technical details of the public registries, and of the recording, holding or use of carbon removal units.⁸⁷

Reporting: Because of the important role that certification schemes play in providing evidence of compliance with the quality criteria for carbon removals, the schemes are required to report regularly on their activity, including by submitting annually (by 30 April, covering the preceding calendar year) a report to the Commission about their operations, including a description of any cases of fraud and related remediation measures.⁸⁸ Such reporting would also provide the necessary information for the Commission to report on the operation of the certification schemes with a view to identifying best practices and submitting, if appropriate, a proposal to further promote such best practices.⁸⁹ In order to increase transparency and to improve supervision by the Commission, the Commission would be required to make those reports publicly available, in full or, where necessary to preserve the confidentiality of commercially sensitive information, in an aggregated form.⁹⁰ Again, the Commission would be empowered to adopt implementing acts setting out the structure, format and technical details of such reports drawn up by the certification schemes.⁹¹

⁸² EU Proposal, Article 13(1).

⁸³ EU Proposal, Article 13(2) to (4).

⁸⁴ As explained in Recital (26) of the EU Proposal, fraud may occur if more than one certificate is issued for the same carbon removal activity because the activity has been registered under two different certification schemes or has been registered twice under the same scheme. Fraud may also occur when the same certificate is used several times to make the same claim based on a carbon removal activity or a carbon removal unit.

⁸⁵ EU Proposal, Article 12(1) and Recital (26).

⁸⁶ EU Proposal, Article 12(1) and Recital (26).

⁸⁷ EU Proposal, Article 12(2).

⁸⁸ EU Proposal, Article 14(1) and Recital (27).

⁸⁹ EU Proposal, Recital (27).

⁹⁰ EU Proposal, Article 14(2).

⁹¹ EU Proposal, Article 14(3).

c) Certification bodies

The audit and verification of information submitted by applicants for the purpose of certification of carbon removals would be conducted by ‘certification bodies’.⁹² ‘Certification bodies’ are independent, accredited or recognised conformity assessment bodies that have concluded an agreement with a certification scheme to carry out certification audits and issue certificates.⁹³

To ensure an accurate, robust and transparent verification, certification bodies should have the required competences and skills to carry out certification and re-certification audits and should be accredited by national accreditation authorities pursuant to Regulation (EC) No 765/2008 of the European Parliament and of the Council.⁹⁴

To avoid possible conflicts of interest, the certification bodies should also be completely independent from the operator carrying out the carbon removal activity that is subject to the certification (meaning that they should not themselves be an operator or a group of operators, the owner of an operator or of a group of operators, or be owned by them, nor have relations with operators or with a group of operators that could affect their independence and impartiality), and they should carry out their activities in the public interest.⁹⁵

In addition, Member States should contribute towards ensuring the correct implementation of the certification process by supervising the operation of certification bodies accredited by national accreditation authorities. Certification bodies would be required to submit, upon request by the national competent authorities, all relevant information necessary to supervise their operations, including date, time and location of any audits they perform. Where Member States find issues of non-conformity, they would be required to inform the certification body and the relevant certification scheme without delay.⁹⁶

Certification schemes would be required to publish, at least annually, a list of the appointed certification bodies, stating for each certification body by which entity or national public authority it was recognised and which entity or national public authority is monitoring it.⁹⁷

D. WHERE NEXT FOR THE REGULATION OF VOLUNTARY CARBON MARKETS IN THE EU?

As the importance of the voluntary carbon markets to EU decarbonisation goals grows, so too will regulatory interest in this area.

The EU Proposal should go a long way in addressing carbon credit integrity concerns at the stage of issuance.

⁹² EU Proposal, Article 10(2).

⁹³ EU Proposal, Article 2(1)(j).

⁹⁴ EU Proposal, Article 10(1) and (2)(a) and Recital (22).

⁹⁵ EU Proposal, Articles 10(2)(b) and (3), and Recital (22).

⁹⁶ EU Proposal, Article 10(3).

⁹⁷ EU Proposal, Article 11(4).

Yet important regulatory considerations remain to be addressed to support liquidity in the secondary markets. This includes, notably, the characterisation of carbon credits from a commercial law and regulatory standpoint. In relation to the latter, EUAs are ‘financial instruments’ under the EU’s securities laws, including the Markets in Financial Instruments Directive. Carbon credits are at present not so regulated (although derivatives referencing carbon credits would likely be caught). The regulatory qualification of carbon credits will determine whether the financial market regulators will be competent for regulating and supervising the spot market of such credits. Ultimately, the goal of regulation in this space should be to ensure that voluntary carbon markets are fair and functional, and provide appropriate consumer protections, economic soundness as to pricing and information flow, and structural resilience. Harmonizing the definition or scope across EU jurisdictions will be an important enabler for scaling voluntary carbon markets at EU global level.

Along with regulatory developments, it will also be crucial that carbon credits are recognised as property under private law and that the legal techniques through which they can be transferred and held are made clear.