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NOTE

From: Presidency

To: Permanent Representatives Committee

Subject: Regulation on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation

Policy debate

Delegations will find in Annex a Presidency background note for the policy debate on the above-mentioned subject at the meeting of the Agriculture and Fisheries Council on 21 February 2022.

Presidency background note for the Agriculture and Fisheries Council on 21 February

Proposal for a Regulation on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation

On 17 November 2021, the Commission forwarded its proposal for a Regulation on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation. The objective is that products purchased, used and consumed by citizens on the EU market do not contribute to deforestation and forest degradation worldwide.

To achieve this objective, the Commission is proposing the establishment of a **mandatory due diligence system** for all operators and traders who place the products in question on the EU market or export them from the EU market, combined with **benchmarking of the countries** of origin or production of the products. This Regulation responds in particular to a strong societal demand (as demonstrated by the very high level of participation in the online consultation initiated by the Commission), linked in particular to concerns about the changes in the world's forests (between 1990 and 2020 the world lost 420 million hectares of forest, an area larger than the European Union).

This Regulation will help to ensure that the same environmental standards apply to all products placed on the EU market, and should help to combat climate change and biodiversity loss, while respecting the rules of the multilateral trading system. Strengthening cooperation between EU countries and third countries will be essential in this respect. These provisions will help to further strengthen sustainable legume and protein crop chains vis-à-vis the products covered by the Regulation, which are often the result of deforestation.

Negotiations are being conducted in the environment sector, with a debate scheduled for the Environment Council meeting on 17 March. The text has been under discussion in an ad hoc working party¹ bringing together experts from the various sectors concerned (environment, agriculture, forestry, trade, etc.) since 24 January. At the first meeting of the working party the delegations welcomed the text and its general principles and made a number of preliminary remarks.

This document presented to the Agriculture Council is intended to feed into a policy debate, taking into account the experience gained through the implementation of the EU Timber Regulation (EUTR) since 2013 and the effects of the proposal on the agricultural and forestry sectors.

The experience gained by the EUTR management authorities will be valuable for this debate, in particular to shed light on what is needed to ensure the proper functioning of the due diligence system and proper coordination of the Regulation with the objectives of the transition to a green economy and the challenges of national forestry policies.

In the light of these considerations, we propose structuring the debate around the following points:

Defining a perimeter consistent with the objective of combating deforestation and forest degradation

The overall objectives of the draft Regulation are to minimise the risk of products from supply chains associated with deforestation and forest degradation entering the EU market, and to increase EU demand for and trade in products and commodities that do not drive deforestation.

¹ Ad hoc Working Party on the risk of deforestation and forest degradation associated with products placed on the EU market (AHWP DF)

The Regulation applies to six commodities (coffee, cocoa, palm oil, soya, cattle and wood) and their derivatives, with a review clause providing for the possibility to change the scope two years after the implementation date. According to the impact assessment, these six commodities account for the largest share of EU-driven deforestation among the eight products analysed: palm oil (33.95 %), soy (32.83 %), wood (8.62 %), cocoa (7.54 %), coffee (7.01 %) and beef (5.01 %).

At the informal meeting of environment ministers in Amiens, several delegations highlighted the importance of extending the scope to other commodities and ecosystems. This question will certainly be the subject of further technical discussions. An assessment by agriculture ministers could help shed light on this subject.

Key concepts linked to the guidelines in the Council conclusions of 15 November 2021 on the EU Forest Strategy for 2030 (ST 13984)

Forests must be protected in view of the major role they play in, inter alia, climate change mitigation and biodiversity preservation, while maintaining economic functions essential for local development and the transition to a greener economy.

The aim of the Regulation is to reverse the trend of global forest cover loss and avoid degradation of existing forests. The Regulation will apply to both non-EU and EU countries. For the latter, it covers all national production for the six commodities selected, in particular wood (for third countries, only commodities exported to the EU are covered). It thus covers a wide range of forestry situations, which the provisions of the text should make it possible to take into account.

Discussions within the Council should make it possible to clarify the content and implications of the text, particularly the definitions, so that the Regulation can achieve its objectives: halt the decline in forest cover worldwide, conserve forest ecosystems in good condition and achieve the ambitious objectives of the transition to a greener economy and carbon neutrality.

Ensuring the effectiveness of the due diligence system

The proposed Regulation is based on an ambitious due diligence system, to define a common framework for traceability for all operators and traders.

Under this system, operators who place on the market in or export from the EU, for the first time, products listed in Annex I to the Regulation are obliged to complete a due diligence procedure which involves collecting information on these products and their supply chains, carrying out a risk analysis and, where appropriate, implementing measures to mitigate the risks identified.

A system of checks and penalties must be put in place by the competent authorities to ensure the effectiveness of the system.

In this context, the discussions in the Council should make it possible to fully understand the implications of the due diligence system and the procedures for its implementation and for checks, so that its application is fully efficient.

Issues for debate

In the light of the above, ministers are invited to give their views on the following questions:

1. Which ecosystems and commodities should be prioritised in order to make European action against deforestation as relevant as possible?
 2. Based on your national experiences and the principles outlined in the Council conclusions of 15 November 2021 on the EU Forest Strategy, what are the main challenges and issues? To what extent do the key concepts of the text allow the objective of combating deforestation and forest degradation to be achieved, taking into account the diversity of forest situations?
 3. In the light of your experience with the implementation of the EUTR, what are the important factors for ensuring efficient implementation of the Regulation?
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