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LIMITE

CLIMA 31  
ENV 73  
ENER 37  
TRANS 69  
IND 33  
COMPET 88  
MI 78  
ECOFIN 122  
DELACTION 29

#### NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. Cion doc.:	12920/20 + ADD 1
Subject:	Commission Delegated Regulation (EU) .../... of 6.11.2020 amending Delegated Regulation (EU) 2019/1122 as regards the functioning of the Union Registry under Regulation (EU) 2018/841 of the European Parliament and of the Council - Consideration of a possible objection to a delegated act

1. The Commission notified the above-mentioned delegated Regulation<sup>1</sup> to amend the Commission's Registry Regulation as regards the functioning of the Union Registry under the LULUCF Regulation<sup>2</sup> on 6 November 2020 to the Council in accordance with the procedure set out in Article 290 TFEU. In accordance with Article 16 of the LULUCF Regulation, the period within which the Council and the European Parliament could express an objection originally ran until 6 January 2021.

<sup>1</sup> 12920/20 + ADD 1.

<sup>2</sup> Regulation (EU) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU (OJ L 151, 19.6.2018, p. 1).

2. Article 15 of the LULUCF Regulation sets out the delegation of powers to the Commission as follows: *"The Commission shall adopt delegated acts in accordance with Article 16 of this Regulation to supplement this Regulation in order to lay down the rules for the recording of the quantity of emissions and removals for each land accounting category in each Member State and to ensure that the accounting carried out in relation to the exercise of the flexibilities pursuant to Articles 12 and 13 of this Regulation through the Union Registry established pursuant to Article 10 of Regulation (EU) No 525/2013 is accurate."*
3. Following a consultation launched by the General Secretariat of the Council, one delegation announced that it intended to object to the delegated Regulation and that delegation, together with another delegation, requested an extension of the period of objection.
4. Subsequently, at the Working Party on Environment on 7 December 2020, the delegation intending to object to the delegated Regulation presented its position followed by a brief initial exchange of views. According to that delegation, the Commission had not implemented the specific flexibility set out in Article 13(4) of the LULUCF Regulation in accordance with what had been politically agreed at the time as concerns the understanding of that provision. In its views, the use of that flexibility should not be limited in the same way as the general managed forest land flexibility set out in Article 13(2). Conversely, the Commission maintained its interpretation that the flexibility in Article 13(4) should be subject to the same limitations as the general managed forest land flexibility. The assessment of the Council's Legal Service (CLS) was requested.
5. On 17 December 2020, the Council decided to extend the period of objection with two months, so that the Council now has until (and including) 6 March 2021 to raise an objection.
6. On 25 January 2021, the CLS orally presented its assessment on the issue in the Working Party followed by a brief exchange where a number of delegations spoke out in support of an objection or expressed scrutiny reservations while being positively inclined towards the concerns of the delegation raising the objection. Most delegations, however, did not state any position. The CLS was requested to issue a written opinion. The Presidency concluded that the issue should be submitted to the Permanent Representatives Committee for decision.

7. On 5 February 2021, the CLS issued its written opinion (document 5942/21).
8. The ENVI Committee of the European Parliament held an exchange on the delegated Regulation on 26 January 2021 and decided not to recommend to the plenary to object to the delegated Regulation.
9. The Permanent Representatives Committee is invited to:
  - determine whether there is the required qualified majority of delegations intending to object to the delegated Regulation;
  - invite the Council either to decide to object to the delegated Regulation, as set out in document 12920/20 + ADD 1, or to confirm its intention not to object to the delegated Regulation;
  - in accordance with the first subparagraph of Article 12(1) of the Council's Rules of Procedure and Article 1 of Council Decision 2020/430 and given the urgency of the matter, decide that, if no formal Council meetings take place before 6 March 2021, the Council use the written procedure for the above mentioned decision.

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