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'I/A' ITEM NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: Draft REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 **(first reading)**
- Adoption of the legislative act
= Statements

Statement by Estonia

Estonia remains committed to fighting deforestation and forest degradation, especially illegal deforestation, at a global level. Estonia therefore welcomes the compromise reached on the deforestation and forest degradation Regulation.

However, fighting against illegal deforestation and forest degradation must not come at the cost of nature restoration targets. Throughout the negotiations, Estonia has highlighted that exemptions and flexibilities are needed regarding deforestation, coupled with pastoral agriculture as an important tool for the restoration and maintenance of the ecosystems of semi-natural grasslands.

Even though this concern is addressed in the recitals (recital 36 in the final text), it does not provide the legal certainty for some restoration practices to be continued after the new legislation enters into force. In addition, the final compromise on the definition of forest degradation has raised uncertainties about its application, i.e. its control, monitoring and traceability.

Estonia insists that the Commission remain committed to their assurances that no discrepancies with existing restoration targets and current practices and the future benchmarking, or other measures of the deforestation Regulation will occur.

Estonia is looking forward to future guidelines allowing the continuation of restoring semi-natural grasslands by controlled deforestation, and the permanent ecosystems' maintenance permitting livestock grazing. Both are important tools for meeting biodiversity and nature restoration goals in Member States.

Statement by Latvia

Latvia supports and commits to contribute to the aim of regulation to fight against deforestation and forest degradation worldwide.

However, Latvia abstains on the compromise reached on deforestation and forest degradation regulation, for the following reasons.

Latvia regrets that Council's general approach was not maintained, and forest degradation definition is extended to naturally regenerating forests (the conversion of naturally regenerating forests into plantation forests or other wooded land). This was very important and sensitive issue for Latvia and many Member States. Latvia believes that the proposed definition could lead to difficulties of interpretation, implementability and verifiability. It creates legal uncertainty for operators, traders and competent authorities. Latvia also sees risks related to returning of overgrown agricultural land back to economic activity, as due to historical reasons in past few decades large areas of agricultural land has been set aside and overgrown.

Addition of a broad definition of establishments for cattle sector poses risks to implementability for the farmers and raises questions about the proportionality of provisions for Member States, where agricultural land overgrows quickly and forests cover considerable part of the country's territory.

Statement by Poland

Poland supports the European Union's efforts to combat deforestation and forest degradation where those processes are actually taking place. Poland regrets the fact that the Council's general approach has not been retained, and therefore it cannot support the draft Regulation and is abstaining from voting. Poland considers it unjustified to increase the thresholds for checks for operators and goods. The putting back of the cut-off date under the Regulation will cause problems for certain operators. Poland would also point out that extending the definition of forest degradation and naturally regenerating forest may lead to over-interpretation and increased questioning of the principles of sustainable forest management, the consequences of which were not assessed during the drafting of this Regulation. This also introduces the possibility of an increased flow of 'justified concerns' to customs authorities, which may in the future result in an increase in the administrative burden and a potential reduction in timber harvesting under sustainable forest management. Poland stresses the need to always take into account the specificities of forest management in individual countries, the solutions used in them and the need for action in circumstances such as natural disasters.

We invite the European Commission to take into account the abovementioned considerations and, in cooperation with the Member States, to define guidelines on how to apply the definition of forest degradation so that it does not limit the possibilities for sustainable forest management or sustainable agriculture.

In the current version of the Regulation, the burden on the competent authority is subject to the establishment by the European Commission of a list of countries categorised by risk (high, standard and low). However, as of the entry into force of the Regulation, this provision will create a significant administrative burden for the competent authorities of Member States, which will have to carry out on their territory annual checks of operators established in the Union and of their products placed on the market and exported outside the EU.

Extending the scope of the Regulation to rubber and products thereof will significantly increase the administrative burden for competent authorities. In Poland's view, no products additional to those listed in the Commission's proposal should be included before the evaluation has been carried out.

Statement by Portugal

Portugal welcomes the agreement reached on this Regulation. We believe it will provide a valuable tool to address two key environmental challenges of our time: global warming and biodiversity loss, which are inextricably linked to increased deforestation and forest degradation.

Given the extreme importance of this Regulation and in view of its successful implementation, we would like to highlight a remaining concern on the definition of 'forest degradation', regarding the inclusion of naturally regenerating forests and their conversion into plantation forests or into other wooded land.

Naturally regenerating forests do not always represent ecosystems of high ecological value that need to be protected; on the contrary, in certain situations natural regeneration may be carried out by invasive, opportunistic species (for example, after a fire or even by the aggressive widespread of such species) with negative impacts on native species and on the balance of the ecosystem.

It may therefore be necessary to intervene in the natural regeneration process, through forest management actions using afforestation techniques to recover and even to improve ecosystem value, and such actions should not be penalised by this Regulation.

We encourage the Commission to take these situations into account and to provide clarification by defining, in cooperation with Member States, guidance for the applicability and evaluation of forest degradation.

Statement by Slovakia

Slovakia is fully committed to the fight against global deforestation and forest degradation and considers this an urgent and high-priority challenge. Slovakia thus supports the aim of the proposed Regulation.

However, we consider that certain aspects of the final text are unclear, in particular on monitoring and traceability in relation to the proposed definition of ‘forest degradation’.

The proposed definition of forest degradation will reduce legal certainty for operators, traders and competent authorities and the applicability of the proposed Regulation. In some cases this definition will also limit the rights of forest owners at national level.

In relation to the proposed definition of forest degradation, we have identified a number of practical examples at national level that may lead to uncertainty, lack of clarity and unpredictable consequences in the future. These examples are in many cases linked to sustainable forest management on the territory of our country. In this context, we would like to highlight one specific case, concerning protective forests, which are a specific category of forests intended for soil protection under our national legislation (these forests do not fall within the category of protected forests; ‘protective’ and ‘protected’ forests must be distinguished). In many of these protective forests, no forest management activities have been carried out in the past, in some cases for over 100 years. Their characteristics and structure can therefore resemble or replicate those of natural forests. Nevertheless, for example in the event of a natural incident, these protective forests can be significantly damaged and then need to be restored urgently in order to keep up their protective function and increase their adaptability to climate change. In such cases, artificial renewal may be used (to varying extents). However, the use of artificial renewal measures in such cases does not constitute forest degradation.

Statement by Sweden

Sweden is committed to combating deforestation and forest degradation. Throughout the negotiations, Sweden has prioritised clarity, inter alia by insisting that the legal definitions should be easy to understand, comply with and monitor, not least because the Regulation has a global application. In those respects, the proposal has been made clearer, but the agreed text of the Regulation gives rise to considerable uncertainties which, taken as a whole, mean that Sweden abstains from supporting the Regulation. The high administrative burden means that smallholders risk losing access to the market, especially in producer countries where the availability of digital tools is more limited. The measure requires smallholders to build up their administrative and digital capacity, something which is difficult to implement before the Regulation enters into force. Furthermore, there is a considerable lack of clarity surrounding the practical implementation of control, monitoring and traceability. Some of the effects of the proposed rules are unpredictable, which poses risks in terms of legal certainty for natural and legal persons. The retroactive nature of the measure, with a cut-off year of 2020, also brings about uncertainty as regards the conditions of production for farmers who have recently converted forests to pasture or stables for cattle. Furthermore, the Regulation risks reducing the number of opportunities to restore pastures in order to support biodiversity in Sweden. Although Sweden fully supports the aim of the Regulation, it does not support the measure in its current form. Sweden believes that a narrower and more functional Regulation would contribute more to sustainable global development. The Regulation could have been expanded in future revisions on the basis of robust impact assessments. However, given that the Regulation has been adopted, Sweden will contribute constructively to ensuring that it is implemented in such a way as to minimise undue barriers to trade, and to bringing about improvements in upcoming revisions.
