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## **DOCUMENT DE SÉANCE**

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De: Secrétariat Général du Conseil  
A: Groupe de travail ad hoc sur le risque de déforestation et de dégradation des forêts associé aux produits mis sur le marché de l'UE (GTAH Déforestation)

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Sujet: Réunion du groupe ad hoc sur la déforestation du 15 juin: Note de cadrage révisée

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Les délégations trouveront en annexe une note de cadrage révisée, préparée par la Présidence en vue de la réunion du groupe ad hoc sur la déforestation du 15 juin 2022.

## PRÉSIDENTE FRANÇAISE DU CONSEIL DE L'UNION EUROPÉENNE

### Réunion du groupe de travail ad hoc sur la déforestation du 15 juin 2022

#### *Note de cadrage de la Présidence*

## INTRODUCTION

À la suite des discussions menées lors de précédentes réunions du groupe de travail ad hoc (GTAH) sur la déforestation (DF), et des discussions en COREPER le 8 juin 2022, la Présidence suggère de conduire la prochaine réunion du GTAH selon les modalités et les questions aux délégations décrites ci-après.

### **I. Discussion sur les chapitres 1 (dispositions générales), 8 (réexamen) et l'annexe I du projet de règlement**

Les délégations sont priées de prendre connaissance des propositions de reformulations, et des explications correspondantes, figurant à l'annexe de la présente note.

#### *Définition de « dégradation forestière »*

Le GTAH du 13 mai 2022 était dédié à l'analyse du premier projet de règlement révisé. Les délégations ont notamment été invitées à donner des orientations à la Présidence sur la définition de « dégradation forestière », à savoir si la notion de « récolte durable » constituait une bonne base, ou s'il était plus approprié de se baser sur la notion de « gestion forestière durable ». La notion de « gestion forestière durable » a été préférée, celle de « récolte durable » ayant fait l'objet de très peu de soutien, car ne renvoyant à aucune définition agréée.

Lors du GTAH du 25 mai 2022, sur cette même problématique de définition, les délégations ont dans l'ensemble soutenu ou n'ont pas objecté à la référence envisagée à la conversion des forêts primaires en forêts de plantation. Plusieurs délégations ont accueilli positivement l'approche consistant en une définition large avec processus ultérieur de clarification des aspects opérationnels, alors que certaines délégations ont rappelé leur préférence initiale de suppression de cette définition. Plusieurs délégations n'étaient pas favorables à l'élaboration de lignes directrices par la Commission sur l'application de la définition et plusieurs autres préféraient plutôt recourir à un acte d'exécution pour opérationnaliser la définition. Enfin, plusieurs délégations avaient indiqué leur souhait d'examiner la proposition de l'Allemagne.

Afin de donner des orientations à la Présidence pour la suite des travaux, le Coreper a été invité le 8 juin 2022 à réagir sur les deux options proposées par la Présidence :

- Option 1 : poursuivre les travaux sur une définition large de « dégradation des forêts », basée sur la notion de « gestion forestière durable », tout en renvoyant la déclinaison opérationnelle de cette définition large à un processus ultérieur à préciser. Ajouter néanmoins d'ores et déjà que cette définition inclut la conversion des forêts primaires en forêts de plantation (élément déjà opérationnel et mesurable).
- Option 2 : restreindre, à ce stade, et pour une durée limitée, la définition de « dégradation des forêts » à la conversion des forêts primaires en forêts de plantation, afin de disposer immédiatement d'une définition pleinement opérationnelle et mesurable ; prévoir, dans le cadre de la clause de réexamen (article 32) du règlement, une réflexion sur l'extension ultérieure de cette définition sur base d'une analyse approfondie.

L'option 2 a recueilli davantage de soutien que l'option 1 ; certaines délégations ayant soutenu l'option 1 se montraient par ailleurs flexibles en faveur de l'option 2.

L'Allemagne a par ailleurs indiqué sa proposition de rédaction alternative, diffusée la veille aux délégations. Cette proposition a été soutenue par une délégation, et examinée positivement par certaines autres délégations. Cette proposition a ensuite été transmise aux membres du GTAH sous une forme légèrement amendée : *“Forest degradation means irreversible damages or long-term structural changes to forest cover due to unsustainable timber harvesting or conversion of naturally regenerating forests into plantation forests or the FAO land categories of Other Wooded Land, Other Land or Other Land With Tree Cover.”*

En conclusion de ces discussions en Coreper, la Présidence a estimé qu'une solution s'appuyant sur l'option 2 et tenant compte de certains éléments de la proposition de l'Allemagne pouvait être explorée.

Concernant les différents éléments de la proposition allemande :

- *Forest degradation means irreversible damages or long-term structural changes to forest cover [...]*

La Présidence rappelle la nécessité de tenir compte de l'objectif rappelé de manière réitérée par la majorité des délégations lors des travaux au sein du Conseil de disposer d'une définition précise, contrôlable et pouvant être mise en œuvre sans ambiguïté. Dans ce cadre, elle estime que la notion de changement structurel du couvert forestier peut faire l'objet d'un suivi concret, qui se manifeste en pratique par la vérification de la conversion des forêts mentionnée dans la suite de la définition, que beaucoup de délégations ont identifiée comme vérifiable. La Présidence propose ainsi de retenir les termes de « structural change to forest cover » et de les intégrer à l'option 2 précitée.

Concernant les notions d'irréversibilité et de long terme, la Présidence note que celles-ci ne font pas l'objet de définition, ce qui pose la question de la possibilité de contrôler cet élément en pratique, et pour cette raison propose de ne pas les mentionner dans la définition. Dans ce cadre, il est à noter que l'Allemagne a proposé l'ajout d'un article 10(2)(ca) ainsi rédigé : (ca) *the irreversibility of damages or long-term character of structural changes to forest cover, interpreted as whether the perturbed state would not return to the initial, naturally regenerating state even if the drivers of the change are abated.*

- *[...] due to unsustainable timber harvesting or [...]*

Considérant les craintes exprimées et le soutien très limité apporté à la notion de « récolte durable » lors du GTAH du 13 mai, cette dernière n'ayant pas de définition reconnue, la Présidence propose de ne pas retenir ces éléments. Par ailleurs, suite aux échanges en Coreper le 8 juin, il apparaît nécessaire de se focaliser sur une définition restreinte, ne nécessitant pas de processus ultérieur d'opérationnalisation.

- *[...] conversion of naturally regenerating forests [...]*

D'après le dernier rapport FRA (Forest Resource Assessment) de la FAO de 2020, la couverture forestière mondiale est constituée de 93% de forêts en régénération naturelle (dont 34% de forêts primaires), et de 7% de forêts plantées (dont 3% de forêts de plantation).

Dans les discussions en GTAH, il est apparu que de nombreuses délégations pouvaient soutenir la prise en compte de la conversion des forêts primaires, qui semble donc constituer une bonne base pour la définition.

L'élargissement de la définition à la prise en compte des forêts en régénération naturelle (qui font l'objet d'une définition par la FAO) amènerait à couvrir une très grande partie des forêts du globe.

- [...] into plantation forests or the FAO land categories of Other Wooded Land, Other Land or Other Land With Tree Cover.

Les différentes notions mentionnées ici (forêt de plantation, autres terres boisées, autres terres et autres terres avec couverture forestière) font toutes l'objet d'une définition par la FAO.

Dans les discussions en GTAH, il est apparu que de nombreuses délégations pouvaient soutenir la prise en compte de la conversion vers les forêts de plantation, qui semble donc constituer une bonne base pour la définition.

La conversion en « autres terres » et « autres terres avec couverture forestière » revient à une action de déforestation et non pas de dégradation. En revanche, il apparaît intéressant d'ajouter les « autres terres boisées », qui constituent un couvert forestier de moins de 10%, contrairement aux forêts qui sont à plus de 10% : la transformation en « autres terres boisées » est donc bien une dégradation forestière, via un changement structurel du couvert forestier. Ainsi, la Présidence propose de retenir l'ajout de la conversion en « autres terres boisées » et dans ce cadre d'ajouter une définition (6b) liée.

Tenant compte de ces divers éléments, la Présidence propose la définition suivante :

- (6) 'forest degradation' means structural changes to forest cover, taking the form of the conversion of primary forests into plantation forests or into other wooded land;

Par ailleurs, la Présidence rappelle qu'elle intègre une modification à l'article 32, prévoyant que le rapport d'évaluation prévu dans le cadre du réexamen du Règlement aborde la question de l'extension de la définition de « dégradation forestière ».

*Question pour discussion (voir annexe) :*

1. *Pouvez-vous accepter l'approche et les reformulations proposées pour la définition (6) ?*

*En particulier :*

- a) *Pouvez-vous accepter que la notion de « changement structurel de la couverture forestière » soit visée dans la définition ? Le cas échéant, souhaiteriez-vous que soient ajoutées les notions d'irréversibilité et de long terme ?*
- b) *Pouvez-vous accepter la proposition de ciblage de la conversion sur les forêts primaires, ou souhaitez-vous une extension à l'ensemble des forêts en régénération naturelle ?*
- c) *Par ailleurs, pouvez-vous accepter la proposition de viser la conversion vers des forêts de plantation, ainsi que vers des « autres terres boisées » ?*

### *Nourriture du bétail*

Suite à la discussion lors des groupes du 13 mai et du 8 juin, la Présidence a pris note du soutien exprimé par un certain nombre de délégations au maintien de la prise en compte de la nourriture du bétail dans le règlement (et donc au maintien de références à « have been fed with » dans le texte). Elle a aussi pris note des préoccupations exprimées par plusieurs délégations à ce sujet, prenant en particulier la forme de questions de compréhension ou de demandes d'éclaircissements sur le dispositif envisagé, et de demandes de simplifications vis-à-vis des exigences envers les opérateurs, et en particulier envers les exploitants agricoles.

Dans ce cadre, la Présidence souhaite apporter les clarifications suivantes sur le dispositif envisagé. Elle propose de maintenir les références à la nourriture du bétail, mais tout en apportant certaines clarifications au texte proposé, de manière à expliciter un système suffisamment simple pour les exploitants agricoles.

En préalable, il est rappelé que le règlement prévoit déjà des dispositions spécifiques applicables pour le produit de base « bétail » :

- En particulier, l'article 9(1)(d), qui définit les informations à rassembler dans le cadre de la diligence raisonnée en matière de géolocalisation, précise que s'agissant des produits

associés au bétail, la géolocalisation doit couvrir l'ensemble des lieux où le bétail a été élevé. Ce point est nécessaire pour tenir compte des mouvements du bétail.

- A ce sujet, il est proposé d'apporter une simplification via la définition (29) de l'article 2, pour préciser que pour le produit de base « bétail », il n'est jamais nécessaire de fournir un « polygone » de points de géolocalisation. En effet, une telle exigence ne serait pas compatible avec les systèmes de traçabilité du bétail existant dans l'UE et en dehors de l'UE. La plupart des systèmes de traçabilité du bétail, notamment celui de l'UE basé sur la Législation sur la Santé Animale (Animal Health Law), ne permettent pas de connaître l'ensemble d'une parcelle, mais seulement les lieux où le bétail s'est rendu. Dans ce cadre, il apparaîtrait trop complexe de demander une information plus précise.

Concernant la nourriture du bétail, le texte proposé par la Commission propose que le champ du règlement (article 1(1)) inclue les produits pertinents qui ont été nourris avec les produits pertinents issus des autres produits de base. En pratique, cela fait référence aux produits pertinents issus du produit de base « bétail », qui ont été nourris avec d'autres produits pertinents issus par exemple du produit de base « soja ».

La formulation de l'article 1(1) fait référence aux produits de l'Annexe I, ce qui veut dire que tous les produits pertinents issus du bétail sont concernés (qu'il s'agisse de bétail vivant, ou de produits transformés à base de bétail, tant que ces produits sont listés à l'annexe I). De la même manière, les produits servant à nourrir ce bétail concernés peuvent être tous les produits de l'Annexe I. A l'inverse, le texte ne prévoit aucune exigence concernant le bétail nourri par des produits non listés à l'Annexe I (comme par exemple, de l'herbe, dans le cadre d'un pâturage – 'grazing').

Dans ce cadre, il est proposé d'amender le considérant (27a), qui explique l'application attendue de cette disposition, pour assurer plus de clarté sur le champ des produits concernés, et plus de solidité juridique.

Concernant les exigences de diligence raisonnée associées à ce cas, en application de l'article 3 et des dispositions du chapitre 2, l'opérateur mettant sur le marché ou exportant de tels produits devra, comme dans les autres cas, rassembler des informations suffisantes pour s'assurer que le produit est en conformité avec le règlement.

Concernant les exigences de géolocalisation, il est à noter que l'article 9(1)(d) prévoit uniquement que, pour de tels produits associés au bétail, la seule exigence est de fournir la géolocalisation de l'ensemble des lieux où le bétail a été élevé. Cela signifie qu'il n'est pas nécessaire de fournir la géolocalisation des parcelles où la nourriture du bétail a été produite. Il est proposé d'amender le considérant (27a) pour expliciter cette disposition.

Concernant la manière de prouver que la nourriture du bétail respecte les exigences du règlement, il est à noter que la très grande majorité des opérateurs basés dans l'UE se fourniront en nourriture sur le marché européen. Ce sera en particulier le cas pour les petits exploitants agricoles, qui se fourniront typiquement dans une coopérative. Dans ce cas, la nourriture achetée aura déjà été mise sur le marché, et aura donc déjà fait l'objet d'une procédure de diligence raisonnée visant à prouver que cette nourriture respecte les exigences du règlement. Dans ce cas, il est proposé que les opérateurs puissent produire les factures de l'achat de cette nourriture prouvant qu'une diligence raisonnée a déjà été effectuée, pour montrer que la nourriture respecte les exigences du règlement. Il est proposé d'amender le considérant (27a) pour expliciter ce point. Dans ce cadre, il est précisé que l'opérateur n'aura pas à vérifier le contenu de la déclaration de diligence raisonnée effectuée en amont par le metteur en marché de la nourriture.

Pour les importateurs dont le métier est d'importer les produits issus du bétail, pour lesquels le bétail a été nourri avec des produits pertinents entrant dans le champ du règlement, une diligence raisonnée sera nécessaire pour montrer que la nourriture de ce bétail provient d'une chaîne de valeur sans déforestation. Dans ce cas, il est proposé, comme dans le cas général

prévu par ce règlement, de laisser la liberté à de tels opérateurs pour rassembler des preuves de cette conformité. Là encore, des factures pourront jouer un rôle dans ce cadre.

Enfin, il est rappelé qu'il est proposé que les preuves concernant la nourriture du bétail doivent être gardées pendant au moins cinq ans. Ce point était déjà inclus au considérant (27a), mais il est proposé de légèrement clarifier sa formulation. Il est également précisé, suite à la demande d'une délégation, que cette exigence de conservation des preuves ne s'applique pas aux dates antérieures à l'entrée en application du règlement.

Il est enfin proposé d'indiquer que la Commission devrait développer des lignes directrices sur ce sujet.

### *Champ du règlement*

Suite aux discussions en GTAH le 25 mai puis le 8 juin, la Présidence a noté que de nombreuses délégations ont exprimé leur soutien à ses propositions de compromis concernant le champ du règlement (produits de base, produits dérivés listés à l'annexe I, écosystèmes). Il est donc proposé de maintenir ces propositions en l'état.

### *Autres reformulations dans les chapitres 1 et 8 et à l'annexe I*

Les délégations sont priées de prendre connaissance des propositions de reformulations, et des explications correspondantes, figurant à l'annexe de la présente note.

*Question pour discussion (voir annexe) :*

2. *Pouvez-vous accepter l'approche et les reformulations proposées pour la question de la nourriture du bétail, notamment en lien avec l'article 1 et le considérant (27a) ? Concernant le reste du chapitre 1 (articles 1, 2, 3, et annexe I) et le chapitre 8 (article 32), y-a-t-il des points du compromis de la Présidence qui suscitent encore des préoccupations importantes?*

## **II. Discussion sur le chapitre 2 (obligations des opérateurs et des commerçants) et l'annexe II du projet de règlement**

### *Simplifications pour les petits producteurs*

Lors des discussions lors des GTAH du 8 juin, la Présidence a noté le soutien de principe exprimé par un nombre important de délégations concernant les simplifications proposées pour les petits producteurs ('smallholders'). Elle a également noté que certaines délégations estimaient que ces simplifications n'allaient pas assez loin, tandis que certaines délégations trouvaient au contraire qu'elles allaient trop loin. La Présidence estime, de manière générale, que la proposition formulée apparaît constituer une bonne base pour trouver un compromis sur ce point.

La Présidence a également pris note des questions posées par les délégations sur ce sujet. Pour aider les délégations dans leur analyse de ce point, et de manière à formaliser les éclaircissements apportés par oral lors de la séance du groupe du 8 juin, la Présidence souhaite apporter les informations suivantes sur le dispositif envisagé.

La disposition introduite à l'article 5(3) vise à simplifier les exigences du règlement pour les petits producteurs ('smallholders'), qui sont identifiés comme des personnes physiques ou comme des microentreprises (moins de 10 employés); tout en maintenant un niveau d'intégrité environnementale élevé.

Cette disposition s'appuie sur la notion de mandataire ('authorised representative') déjà présente dans le règlement à l'article 5(1), et qui prévoit qu'un opérateur peut déléguer à un mandataire la tâche de mettre à disposition la déclaration de diligence raisonnée à sa place, dans certaines conditions. L'une des conditions est l'existence d'un accord écrit (contrat) entre l'opérateur et son mandataire.

L'article 5(3) prévoit que le petit producteur qui doit effectuer une diligence raisonnée car il met sur le marché un produit pertinent puisse demander à un « gros » acteur plus bas dans la chaîne de valeur d'agir en tant que mandataire, et que, dans ce cas, cet acteur plus bas dans la chaîne ne puisse pas refuser d'apporter ce service au petit producteur. Il s'agit donc d'un cas particulier de la procédure de recours à un mandataire. On peut noter :

- Que le « gros » acteur est défini comme « le premier opérateur ou commerçant plus en aval de la chaîne de valeur qui n'est ni une personne physique, ni une microentreprise » ;
- Que le petit producteur a la possibilité d'utiliser cette disposition, mais que ce n'est pas une obligation (en d'autres termes, le petit producteur peut toujours exercer la diligence raisonnée lui-même, s'il le souhaite) ;
- Que le « gros » acteur ne peut pas refuser d'apporter ce service, s'il souhaite pouvoir mettre sur le marché ou à mettre à disposition sur le marché les produits achetés au petit producteur. Evidemment, le « gros » acteur peut également choisir de ne pas faire affaire avec le petit producteur ; mais s'il souhaite acheter ses produits, il ne peut pas refuser de prendre en charge leur diligence raisonnée, si le petit producteur le demande. Il est à noter qu'il est très probable que le « gros » acteur ait déjà, par ailleurs, une obligation de réaliser une diligence raisonnée pour les produits qu'il met sur le marché ou qu'il met à disposition sur le marché, notamment s'il effectue une transformation de ces produits ; la complexité additionnelle pour ce « gros » acteur sera donc moindre ; et ce « gros » acteur sera par définition un professionnel disposant de plus de ressources et de plus d'expérience que le petit producteur pour effectuer cette démarche.

En pratique, un cas classique serait que le producteur soit un petit propriétaire forestier, et le « gros » acteur la scierie qui achète son bois de temps en temps (ou encore un petit exploitant agricole qui vend son bétail à un abattoir). Dans ces cas, le petit propriétaire forestier a typiquement déjà un contrat avec la scierie, qui pourrait désormais inclure une clause au sujet de la diligence raisonnée, par laquelle la scierie s'engage à réaliser la diligence raisonnée pour le compte du petit producteur, et ce dernier s'engage à lui fournir les informations nécessaires pour ce faire (par exemple, les coordonnées de géolocalisation de sa parcelle, ou encore sa confirmation que la parcelle n'a pas fait l'objet de déforestation).

A noter que la disposition n'interdit pas au petit producteur et au « gros » acteur d'intégrer au prix de la vente du produit le coût induit pour la procédure de diligence raisonnée. Néanmoins, la mutualisation qui est permise par la disposition, et les économies d'échelle induites, feront que le coût pour le « gros » opérateur sera très inférieur à celui qu'aurait dû consentir le petit producteur s'il avait réalisé la diligence raisonnée lui-même. Cet élément sera d'ailleurs un élément parmi de très nombreux éléments dans la constitution du prix de vente.

En termes de responsabilité, l'article 5(3) prévoit que le petit producteur retient sa responsabilité par rapport à son mandataire (comme dans le cas général du mandataire prévu à l'article 5(1)). Cela signifie que le petit producteur n'est pas dégagé de toute responsabilité, ce qui apparaît utile dans la chaîne de responsabilité pour éviter la déforestation ; mais la responsabilité devra être appréciée par les autorités compétentes à l'aune de la répartition des tâches entre le petit producteur et le « gros » acteur : par exemple, il revient au petit producteur de fournir des informations correctes au « gros » acteur : ainsi, si le petit producteur fournissait des coordonnées de géolocalisation erronées, il pourrait être tenu responsable de ce défaut, qui n'est pas du fait du « gros » acteur. Comme dans toute situation de mandataire prévue à l'article 5, les autorités compétentes pourront apprécier les responsabilités respectives de l'opérateur et du mandataire, et, si besoin, prévoir des sanctions adaptées aux responsabilités de chacun.

En conclusion, cette disposition permettra de simplifier significativement la charge administrative pour l'ensemble de la chaîne : pour le petit producteur qui n'aura pas à assumer cette charge lui-même ; le « gros » acteur mutualisant la réflexion en une seule déclaration de diligence raisonnée, bénéficiant pour cela de ses ressources plus importantes et d'économies d'échelle.

En termes environnementaux, cette simplification devrait également apporter une valeur ajoutée : en effet, elle induit que les déclarations de diligence raisonnée seront réalisées par des acteurs professionnels qui auront davantage d'expérience et d'habitude que des particuliers qui y seraient confrontés très rarement, donc la procédure devrait être réalisée avec une meilleure qualité et fiabilité ; par ailleurs, cette disposition induit par construction un dialogue au sein de la chaîne de valeur, permettant une sensibilisation des petits producteurs et in fine une amélioration des pratiques.

A noter finalement que cette disposition n'apparaît pas discriminatoire vis-à-vis des petits producteurs basés en dehors de l'UE : en effet, ceux-ci n'agissent généralement pas comme des opérateurs : eux aussi se contentent de fournir des informations à un acteur plus bas dans la chaîne de valeur (par exemple l'importateur qui joue le rôle d'opérateur et effectue donc la procédure de diligence raisonnée). Dans ce cadre, la disposition proposée tend plutôt à corriger une exigence plus lourde pesant sur les petits producteurs européens.

#### *Autres reformulations dans ce chapitre*

Les délégations sont priées de prendre connaissance des propositions de reformulations, et des explications correspondantes, figurant à l'annexe de la présente note.

*Question pour discussion (voir annexe) :*

3. *Concernant le chapitre 2 et l'annexe II, y-a-t-il des points du compromis de la Présidence qui suscitent encore des préoccupations importantes?*

### **III. Discussion sur le chapitre 3 (obligations des Etats membres et de leurs autorités compétentes)**

#### *Effort de contrôle proportionné, crédible et suffisamment harmonisé*

Suite aux discussions lors des GTAH des 13 mai et 25 mai, la Présidence a pris note de la préférence d'un grand nombre de délégations pour le fait de ne pas définir d'objectif quantifié commun de contrôle à ce stade. Elle a également pris note des réserves exprimées par certaines délégation, qui insistent sur la nécessité d'objectifs quantifiés, et du fait qu'un certain nombre de délégations ont proposé, ou se sont montrées ouvertes, à la réintroduction d'un objectif chiffré dès maintenant, limité aux pays à risque élevé. Dans ce cadre, la Présidence a proposé, en vue de la réunion du 8 juin :

- de maintenir la suppression de l'article 14(9) (donc pas d'objectif chiffré concernant les pays à risque bas et standard, mais une approche purement basée sur une analyse de risque à ce stade), et la réflexion sur un tel objectif chiffré dans le cadre du réexamen prévu à l'article 32(1) ;
- d'amender le texte en y laissant un article 14(10) introduisant un objectif chiffré spécifique (15%) pour les pays à risque élevé.

Lors de la discussion en groupe le 8 juin, un certain nombre de délégations ont exprimé leur ouverture à cette proposition, à titre de compromis. Quelques délégations ont fortement insisté sur le fait que des objectifs quantifiés étaient nécessaires dès maintenant, non seulement pour les pays à risque élevé, mais aussi pour les pays à risque bas et standard. Quelques délégations ont, à l'inverse, indiqué qu'ils ne souhaitaient pas définir d'objectif de contrôle, même pour les pays à risque élevé.

Dans ce cadre, la Présidence estime que sa proposition du 8 juin pourrait constituer un point d'équilibre.

Néanmoins, le 8 juin, la Présidence a également entendu plusieurs questions ou réflexions nouvelles, qu'elle estime pertinentes sur le sujet des contrôles ; dans ce cadre, elle souhaite dans ce cadre également explorer une proposition alternative de compromis :

Tout d'abord,

- Certaines délégations ont souligné le lien important entre les simplifications apportées dans d'autres parties du texte, et l'activité de contrôles à réaliser par les autorités compétentes. En particulier, il a été noté par certaines délégations que les simplifications visées aux articles 4(9) et 6(5), et beaucoup plus encore les simplifications pour les petits producteurs proposées à l'article 5(3), vont permettre de réduire très significativement le nombre de déclarations de diligence raisonnée transmises aux autorités compétentes – s'agissant des petits producteurs, plusieurs délégations ont avancé des chiffres de plusieurs centaines de milliers de petits producteurs forestiers, par exemple, pour lesquelles les déclarations seront désormais beaucoup plus mutualisées par des « gros » acteurs plus bas dans la chaîne de valeur. Suite à ces simplifications, il y aura donc beaucoup moins de déclarations de diligence raisonnées à contrôler par les autorités compétentes.
- Une délégation a souligné que la qualité devait primer sur la quantité, et que l'on ne disposait pas à ce stade du recul suffisant pour définir un niveau approprié de contrôles, ce qui plaide pour une approche initialement purement basée sur le risque. Certaines délégations ont néanmoins insisté sur la nécessité, sur le principe, de définir un objectif quantifié minimal y compris pour les pays à risque faible et standard, en indiquant que le niveau de cet objectif pourrait être significativement inférieur aux 5% proposés par la Commission.
- S'agissant des contrôles des pays à risque élevé, certaines délégations ont noté que la cible de 15% apparaît très élevée, et ont suggéré que pour un même effort de contrôle, une partie des contrôles envisagés pour les pays à risque élevés pourraient être transférés vers les pays à risque bas ou standard. Il s'agirait bien sûr de tenir compte du fait que les pays à risque faible ou standard seront plus nombreux que les pays à risque élevé (qui doivent, comme indiqué à l'article 27, constituer un cas exceptionnel).

Plusieurs délégations ont posé des questions sur la manière de comptabiliser les contrôles réalisés et ont souhaité des clarifications à ce sujet, afin de mieux circonscrire le nombre de contrôles envisagés et ainsi d'améliorer l'appréciation de l'effort associé à la définition d'un objectif. A ce sujet :

- Il peut être précisé que l'intention du texte de la Présidence était bien de maintenir l'approche proposée par la Commission, c'est-à-dire que l'objectif quantifié s'apprécie au sein de chaque produit de base ('commodity') – il faut donc respecter l'objectif d'une part pour toute la famille des produits du bétail, d'autre part pour toute la famille des produits du café, etc. Il est proposé de préciser le texte de l'article 14 pour éviter toute ambiguïté sur ce point.
- Les simplifications mentionnées plus haut, notamment pour les petits producteurs, auront aussi pour conséquence qu'un nombre plus réduit de contrôles pourra permettre aux autorités compétentes d'avoir une vision beaucoup plus large de la conformité des déclarations de diligence raisonnée, portant sur un beaucoup plus grand volume de produits. Dans ce cadre, certaines délégations ont proposé de simplifier la comptabilisation des objectifs de contrôle : ceux-ci sont actuellement basés sur un double critère (i) de nombre d'opérateurs contrôlés et (ii) de volume de produits contrôlés ; étant donné que les déclarations de diligence raisonnée porteront désormais sur des volumes généralement plus grands, comme soulevé par plusieurs délégations, il pourrait être pertinent de supprimer le critère de volume et de ne garder que le critère du nombre d'opérateurs.

- Il est également proposé de clarifier qu'un contrôle d'un opérateur ciblant seulement une partie des déclarations de diligence raisonnée de cet opérateur (cf. la dernière phrase de l'article 14(3)(b) qui invite les autorités compétentes à sélectionner les déclarations pertinentes à contrôler) pourrait être pleinement comptabilisée comme un contrôle d'un opérateur, dès lors que le ciblage a une représentativité suffisante. Il est ainsi proposé de faire référence aux éléments à contrôler de l'article 15(1)(a) et (b).
- Il est proposé de clarifier que le calcul de l'atteinte de l'objectif se fait par rapport aux nombre d'opérateurs et de commerçants qui ne sont pas des PME de l'année antérieure.

Prenant ces points en compte, la Présidence souhaiterait recueillir l'avis des délégations sur trois options possibles de compromis sur cette question, dans le cadre d'un compromis plus général sur l'ensemble du texte :

- **Option A** : maintien de l'approche proposée le 8 juin : approche purement basée sur les risques sans objectif chiffré concernant les pays à risque bas et standard ; réflexion sur un objectif chiffré dans le cadre du réexamen prévu à l'article 32(1) ; pour les pays à risque élevé, objectif chiffré de 15% de contrôle.
- **Option B** : maintien d'un effort de contrôle comparable, mais en le rééquilibrant, avec une approche purement basée sur les risques pour les pays à risque bas ; un objectif chiffré de 1% de contrôle pour les pays à risque standard ; un objectif chiffré de 5% de contrôles pour les pays à risque élevé ; évaluation de ces objectifs chiffrés dans le cadre du réexamen prévu à l'article 32(1).
- **Option C** : comme proposé par une délégation, objectif chiffré de 2% de contrôles pour les pays à risque bas et pour les pays à risque standard ; objectif chiffré de 5% de contrôles pour les pays à risque élevé ; évaluation de ces objectifs chiffrés dans le cadre du réexamen prévu à l'article 32(1).

Dans les trois options, il est par ailleurs proposé d'ajouter un article 14(10a) permettant de mieux encadrer la manière de calculer le nombre de contrôles à réaliser : appréciation par 'commodity', prise en compte des contrôles ciblant seulement certaines déclarations de diligence raisonnée ; référence à l'année précédente ; et d'amender les articles 14(9) et (10) pour se focaliser uniquement sur le critère du nombre d'opérateurs et non sur le critère de volume.

#### *Autres reformulations dans ce chapitre*

Les délégations sont priées de prendre connaissance des propositions de reformulations, et des explications correspondantes, figurant à l'annexe de la présente note.

*Question pour discussion (voir annexe) :*

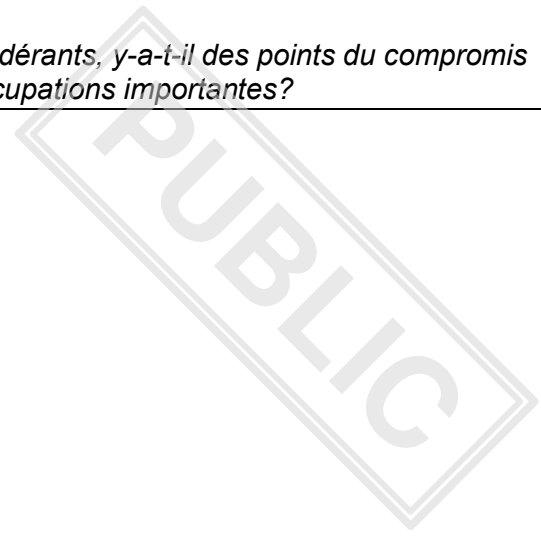
4. *Quelle est votre préférence entre les options A, B et C proposées s'agissant des efforts de contrôle ? Concernant le reste du chapitre 3, y-a-t-il des points du compromis de la Présidence qui suscitent encore des préoccupations importantes ?*

#### **IV. Discussion sur les chapitres 4, 5, 6, 7 et 9 du projet de règlement (procédures pour les produits de base et produits pertinents entrant ou sortant du marché de l'Union ; système de classification des pays et coopération avec les pays tiers ; préoccupations étayées ; système d'information ; dispositions finales) et sur les considérants**

Les délégations sont priées de prendre connaissance des propositions de reformulations, et des explications correspondantes, figurant à l'annexe de la présente note.

*Question pour discussion (voir annexe) :*

5. *Concernant les chapitres 4, 5, 6, 7, 9 et les considérants, y-a-t-il des points du compromis de la Présidence qui suscitent encore des préoccupations importantes?*



**Annexe :**

**Draft**

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
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 and  
repealing Regulation (EU) No 995/2010**

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Forests provide a broad variety of environmental, economic and social benefits, including timber and non-wood forest products and environmental services essential for humankind, as they harbour most of the Earth's terrestrial biodiversity. They maintain ecosystem functions, help protect the climate system, provide clean air and play a vital role for the purification of waters and soils as well as for water retention. In addition, forests provide subsistence and income to about one third of the world's population and their destruction has serious consequences for the livelihoods of the most vulnerable people, including indigenous peoples and local communities who heavily depend on forest ecosystems.<sup>3</sup> Furthermore, deforestation and forest degradation reduce essential carbon sinks and increase the likelihood of new diseases spreading from animals to humans.
- (2) Deforestation and forest degradation are taking place at an alarming rate. The Food and Agriculture Organization of the United Nations estimates that 420 million hectares of forest – about 10% of the world's remaining forests and an area larger than the European Union – have been lost worldwide between 1990 and 2020<sup>4</sup>. Deforestation and forest degradation are, in turn, important drivers of global warming and biodiversity loss — the two most important environmental challenges of our time. Yet every year the world continues to lose 10 million hectares of forest.

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1 OJ C, p.. [OP please insert the number of the opinion]

2 OJ C, p.. [OP please insert the number of the opinion]

3 Commission Communication of 27 July 2019 'Stepping up EU Action to Protect and Restore the World's Forests', COM(2019) 352 final.

4 FAO, Global Forest Resource Assessment 2020, p. XII, <https://www.fao.org/documents/card/en/c/ca9825en>.

- (3) Deforestation and forest degradation contribute to the global climate crisis in multiple ways. Most importantly, they increase greenhouse gas emissions through associated forest fires, permanently removing carbon sink capacities, decreasing climate change resilience of the affected area and substantially reducing its biodiversity. Deforestation alone accounts for 11 % of greenhouse gas emissions<sup>5</sup>.
- (4) Climate breakdown induces the loss of biodiversity globally and biodiversity loss aggravates climate change, they are inextricably linked, as recent studies have confirmed. Biodiversity helps mitigate climate change. Insects, birds and mammals act as pollinators, seed dispersers and can help store carbon more efficiently, directly or indirectly. Forests also ensure a continuous replenishment of water resources and prevention of droughts and their deleterious effects to local communities, including indigenous peoples. Drastically reducing deforestation and forest degradation and systemically restoring forests and other ecosystems is the single largest nature-based opportunity for climate mitigation.
- (5) Biodiversity is essential for the resilience of ecosystems and their services both on local and global level. Over half of the global gross domestic product depends on nature and the services it provides. Three major economic sectors – construction, agriculture, food and drink – all highly depend on nature. Biodiversity loss threatens sustainable water cycles and our food systems, putting our food security and nutrition at risk. More than 75% of global food crop types rely on animal pollination. Further, several industrial sectors rely on genetic diversity and ecosystem services as critical inputs for production, notably for medicines.
- (6) Climate change, biodiversity loss and deforestation are concerns of the highest global importance, affecting the survival of humanity and sustained living conditions on Earth. The acceleration of climate change, biodiversity loss and environmental degradation, paired with tangible examples of their devastating effects on nature, human living conditions and local economies, have led to the recognition of the green transition as the defining objective of our time and a matter of intergenerational equity.
- (7) Union consumption is a considerable driver of deforestation and forest degradation on a global scale. The initiative's Impact Assessment estimated that without an appropriate regulatory intervention EU consumption and production of the six commodities included in the scope (wood, cattle, soy, palm oil, cocoa and coffee) will rise to approximately 248,000 hectares of deforestation annually by 2030.
- (8) As regards the situation of forests within the EU, the State of Europe's Forests 2020 report<sup>6</sup> states that, between 1990 and 2020, the area of forests in Europe has increased by 9%, carbon stored in the biomass has grown by 50% and wood supply has risen by 40%. However, less than 5% of European forest areas are considered undisturbed, or natural, according to the European Environment Agency's State of the Environment 2020 report<sup>7</sup>.
- (9) In 2019, the Commission adopted several initiatives to address the global environmental crises, including specific actions on deforestation. In its Communication 'Stepping up EU Action to Protect and Restore the World's Forests'<sup>8</sup>, the Commission identified as

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5 IPCC, Climate Change and Land: an IPCC special report on climate change, desertification, land degradation, sustainable land management, food security, and greenhouse gas fluxes in terrestrial ecosystems, <https://www.ipcc.ch/srccl/>.

6 Forest Europe - Ministerial Conference on the Protection of Forests in Europe, State of Europe's Forests 2020, <https://foresteurope.org/state-europes-forests-2020/>.

7 European Environment Agency, State of the Environment 2020, <https://www.eea.europa.eu/soer/publications/soer-2020>.

8 COM(2019) 352 final.

a priority the reduction of the Union consumption footprint on land and encourage the consumption of products from deforestation-free supply chains in the Union. In its Communication of 11 December 2019 entitled ‘The European Green Deal’<sup>9</sup>, the Commission set out a new growth strategy that aims to transform the Union into a fair and prosperous society, with a modern, resource-efficient and competitive economy, where there are no net emissions of greenhouse gases in 2050, where economic growth is decoupled from resource use and no person or place are left behind. It aims to protect, conserve and enhance the Union's natural capital, and protect the health and well-being of citizens and future generations from environment-related risks and impacts. Furthermore, the European Green Deal aims to provide citizens and future generations with, among others, fresh air, clean water, healthy soil and biodiversity. To that end, the EU Biodiversity Strategy for 2030<sup>10</sup>, the Farm to Fork Strategy<sup>11</sup>, the EU Forest Strategy<sup>12</sup>, the EU Zero pollution action plan<sup>13</sup> and other relevant strategies<sup>14</sup> developed under the European Green Deal, further highlight the importance of action on forest protection and resilience. In particular, the EU Biodiversity Strategy aims to protect nature and reverse the degradation of ecosystems. Finally, the EU Bioeconomy Strategy<sup>15</sup> enhances the protection of the environment and ecosystems while addressing the growing demand for food, feed, energy, materials and products by seeking new ways to produce and consume.

- (10) Member States have repeatedly expressed their concern about persistent deforestation. They emphasised that since current policies and action at global level on conservation, restoration and sustainable management of forests do not suffice to halt deforestation and forest degradation, enhanced Union action is needed in order to contribute more effectively to the achievement of the Sustainable Development Goals (SDGs), under the 2030 Agenda for Sustainable Development, which was adopted by all United Nations Member States in 2015. The Council specifically supported the Commission announcement in the Communication ‘Stepping up EU Action to Protect and Restore the World’s

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9 Communication from the Commission to the European Parliament, The European Council, The Council, The European Economic and Social Committee and the Committee of the Regions, The European Green Deal, COM(2019) 640 final.

10 Communication from the Commission to the European Parliament, The European Council, The Council, The European Economic and Social Committee and the Committee of the Regions, EU Biodiversity Strategy for 2030 Bringing nature back into our lives, COM/2020/380 final.

11 Communication from the Commission to the European Parliament, the Council, the European Council, The European Economic and Social Committee and the Committee of the Regions, A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system, COM/2020/381 final.

12 Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions, A new EU Forest Strategy: for forests and the forest-based sector, COM(2013) 659 final.

13 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Pathway to a Healthy Planet for All EU Action Plan: ‘Towards Zero Pollution for Air, Water and Soil’, COM/2021/400 final.

14 e.g. Communication from the Commission to the European Parliament, the Council, the European Council, The European Economic and Social Committee and the Committee of the Regions, *A long-term Vision for the EU's Rural Areas - Towards stronger, connected, resilient and prosperous rural areas by 2040*, COM (2021) 345 final.

15 Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions, A sustainable bioeconomy for Europe, Strengthening the connection between economy, society and the environment: updated bioeconomy strategy, Updated Bioeconomy Strategy, COM(2018) 273 final.

Forests' that it would assess additional regulatory and non-regulatory measures and that it would present respective proposals.<sup>16</sup>

- (11) The European Parliament highlighted that ongoing destruction of the world's forests is linked, to a large extent, to the expansion of agricultural production — in particular by converting forests to agricultural land dedicated to producing a number of high-demand products and commodities. The Parliament adopted on 22 October 2020 a resolution<sup>17</sup> in accordance with Article 225 of the Treaty on the Functioning of the European Union (TFEU) requesting the Commission to submit, on the basis of Article 192(1) TFEU, a proposal for an “EU legal framework to halt and reverse EU-driven global deforestation”.
- (12) Combatting deforestation and forest degradation constitutes an important part of the package of measures needed to reduce greenhouse gas emissions and to comply with the Union's commitment under the European Green Deal as well as with the 2015 Paris Agreement on Climate Change<sup>18</sup>, and with the legally binding commitment under the EU Climate Law to reach climate neutrality by 2050 and reduce greenhouse gas emissions by at least 55 % below 1990 levels by 2030.
- (13) Agricultural expansion drives almost 90% of global deforestation, with more than half of forest loss due to conversion of forest into cropland, whereas livestock grazing is responsible for almost 40 percent of forest loss<sup>19</sup>.
- (14) The Union imported and consumed one third of the globally traded agricultural products associated with deforestation between 1990 and 2008. Over that period, Union consumption was responsible for 10% of worldwide deforestation associated with the production of goods or services. Even if the relative share of EU consumption is decreasing, EU consumption is a disproportionately large driver of deforestation. The Union should therefore take action to minimise global deforestation and forest degradation driven by its consumption of certain commodities and products and thereby seek to reduce its contribution to greenhouse gas emissions and global biodiversity loss as well as promote sustainable production and consumption patterns in the Union and globally. To have the greatest impact, Union policy should aim at influencing the global market, not only supply chains to the Union. Partnerships and efficient international cooperation with producer and consumer countries are fundamental in that respect.

**Considérant (14a)** : suite aux demandes de certaines délégations, il est proposé l'ajout d'une référence au cadre mondial de biodiversité post-2020 de la CBD, au plan stratégique onusien sur les forêts, et une adaptation rédactionnelle.

- (14a) The EU is committed to promote and implement ambitious environment and climate policies across the world, in accordance with the Charter of Fundamental Rights of the European Union, in particular its article 37 providing that a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development. As part of the external dimension of the European Green Deal, action

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16 Council conclusions on the Communication on Stepping Up EU Action to Protect and Restore the World's Forests (16 December 2019) 15151/19. Available at <https://www.consilium.europa.eu/media/41860/st15151-en19.pdf>.

17 European Parliament resolution of 22 October 2020 with recommendations to the Commission on an EU legal framework to halt and reverse EU-driven global deforestation (2020/2006(INL)) Available at [https://www.europarl.europa.eu/doceo/document/TA-9-2020-0285\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0285_EN.html).

18 Ratified by the EU on 5 October 2016, and entered into force on 4 November 2016.

19 FAO new [Global Remote Sensing Survey](#), 6 Nov. 2021 - [FAO Remote Sensing Survey reveals tropical rainforests under pressure as agricultural expansion drives global deforestation](#).

under this Regulation will take into account the importance of existing global agreements, commitments and frameworks contributing to the reduction of deforestation and forest degradation such as the UN Strategic Plan for Forests 2017-2030 and its Global Forest Goals, the UN Framework Convention on Climate Change (UNFCCC) and its Paris Agreement, the Convention on Biological diversity (CBD) and its Post-2020 Global Biodiversity Framework, the global Strategic Plan for Biodiversity 2011-2020 and its Aichi Biodiversity Targets, and the UN Convention to Combat Desertification; as well as the multilateral framework in support of tackling the root causes of deforestation and forest degradation, such as the UN Sustainable Development Goals and the UN Declaration on the Rights of Indigenous Peoples.

- (15) Halting deforestation and forest degradation is an essential part of the SDGs. This Regulation should contribute in particular to meeting the goals regarding life on land (SDG 15), climate action (SDG 13), responsible consumption and production (SDG 12), zero hunger (SDG 2) and good health and well-being (SDG 3). The relevant target 15.2 to halt deforestation by 2020 has not been met, underlining the urgency of ambitious and effective action.
- (16) This Regulation should also respond to the New York Declaration on Forests<sup>20</sup>, a non-legally binding political declaration that endorses a global timeline to cut natural forest loss in half by 2020, and strive to end it by 2030. The Declaration was endorsed by dozens of governments, many of the world's biggest companies, and influential civil society and indigenous organisations. It also called on the private sector to meet the goal of eliminating deforestation from the production of agricultural commodities such as palm oil, soy, paper and beef products by no later than 2020, a goal that was not achieved. The Regulation should in addition contribute to the United Nations Strategic Plan for Forests, 2017-2030<sup>21</sup>, whose Global Forest Goal 1 is to reverse the loss of forest cover worldwide through sustainable forest management, including protection, restoration, afforestation and reforestation, and increase efforts to prevent forest degradation and enhance the contribution of forests to climate change.
- (17) This Regulation should also respond to the 2021 Glasgow Leaders' Declaration on Forests and Land Use<sup>22</sup> that recognises that "to meet our land use, climate, biodiversity and Sustainable Development Goals, both globally and nationally, will require transformative further action in the interconnected areas of sustainable production and consumption; infrastructure development; trade, finance and investment; and support for smallholders, indigenous peoples, and local communities". The signatories also stressed in that Declaration that they will strengthen their shared efforts to facilitate trade and development policies, internationally and domestically, that promotes sustainable development and sustainable commodity production and consumption, that work to countries' mutual benefit, and that do not drive deforestation and land degradation.
- (18) As a member of World Trade Organisation (WTO), the Union is committed to promoting a universal, rule-based, open, transparent, predictable, inclusive, non-discriminatory and equitable multilateral trading system under the WTO, as well as an open, sustainable, and assertive trade policy. The scope of this Regulation will therefore include both commodities and products produced within the Union and commodities and products imported to the Union.

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20 <https://unfccc.int/news/new-york-declaration-on-forests>.

21 [https://www.un.org/esa/forests/wp-content/uploads/2016/12/UNSPF\\_AdvUnedited.pdf](https://www.un.org/esa/forests/wp-content/uploads/2016/12/UNSPF_AdvUnedited.pdf).

22 <https://ukcop26.org/glasgow-leaders-declaration-on-forests-and-land-use/>.

- (19) This Regulation also follows the Commission’s Communication on “An Open, Sustainable and Assertive Trade Policy”<sup>23</sup> which stated that with new internal and external challenges and more particularly a new, more sustainable growth model as defined by the European Green Deal and the European Digital Strategy, the EU needs a new trade policy strategy –one that will support achieving its domestic and external policy objectives and promote greater sustainability in line with its commitment of fully implementing the UN Sustainable Development Goals. Trade policy must play its full role in the recovery from the COVID-19 pandemic and in the green and digital transformations of the economy and towards building a more resilient Europe in the world.
- (20) This Regulation should be complementary to other measures proposed in the Commission Communication ‘Stepping up EU Action to Protect and Restore the World’s Forests’<sup>24</sup>, in particular: 1) working in partnership with producer countries, to support them in addressing root causes of deforestation, such as weak governance, ineffective law enforcement and corruption, and 2) strengthen international cooperation, with major consumer countries, to promote the adoption of similar measures to avoid products coming from supply chains associated with deforestation and forest degradation being placed on their markets.
- (21) The Commission should continue to work in partnership with producer countries, and more generally in cooperation with international organisations and bodies, and should be reinforcing its support and incentives with regard to protecting forests and transition to deforestation-free production, acknowledging the role of indigenous people, improving governance and land tenure, increasing law enforcement and promoting sustainable forest management, climate-resilient agriculture, sustainable intensification and diversification, agro-ecology and agroforestry. In doing so it should acknowledge the role of indigenous people in protecting forests. Building upon the experience and lessons learned in the context of the already existing initiatives, the Union and the Member States should work in partnership with producer countries, upon their request, to exploit the multi-functionalities of forest, support them in the transition to sustainable forest management, and address global challenges while meeting local needs and paying attention to the challenges faced by smallholders in line with the Communication to Stepping up Action to Protect and Restore the World’s Forests. The partnership approach should help producer countries in protecting, restoring and sustainably using forest, hence contributing to the objective of this Regulation to reduce deforestation and forest degradation.
- (22) Another important action announced in the Communication is the establishment of the EU Observatory on deforestation, forest degradation, changes in the world’s forest cover and associated drivers (“EU Observatory”) launched by the Commission in order to better monitor changes in the world’s forest cover and related drivers. Moreover, building on already existing monitoring tools, including Copernicus products, the EU Observatory will facilitate access to information on supply chains for public entities, consumers and business, providing easy-to-understand data and information linking deforestation, forest degradation, and changes in the world’s forest cover to EU demand/trade for commodities and products. The EU Observatory will thus directly support the implementation of this Regulation by providing scientific evidence in regard to global deforestation and forest degradation and related trade. The EU Observatory will cooperate closely with relevant international organisations, research institutes, and third countries.

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23 Communication from the Commission to the European Parliament, the Council, the European, Economic and Social Committee and the Committee of the Regions, Trade Policy Review - An Open, Sustainable and Assertive Trade Policy, COM(2021) 66 final, 18 February 2021.

24 COM(2019) 352 final.

- (23) The existing EU legislative framework focuses on tackling illegal logging and associated trade and does not address deforestation directly. It consists of Regulation (EU) No 995/2010 of the European Parliament and of the Council, laying down the obligations of operators who place timber and timber products on the market<sup>25</sup>, and Council Regulation (EC) No 2173/2005, on the establishment of a Forest Law Enforcement, Governance and Trade licensing scheme for imports of timber into the European Community<sup>26</sup>. Both Regulations were evaluated in a Fitness Check which determined that, while the legislation has had a positive impact on forest governance, the objectives of the two Regulations – namely to curb illegal logging and related trade, and to reduce the consumption of illegally harvested timber in the EU – have not been met<sup>27</sup> and it was concluded that focusing solely on legality of timber was not sufficient to meet the set objectives.
- (24) Available reports confirm that a sizable part of ongoing deforestation is legal according to the laws of the country of production. A recent report<sup>28</sup> estimates that between 2013 and 2019, around 30% of deforestation destined to commercial agriculture in tropical countries was legal. Available data tend to focus on countries with weak governance — the global share of deforestation that is illegal might be lower, but already provide clear data signalling that leaving out deforestation that is legal in the country of production undermines the effectiveness of policy measures.
- (25) The impact assessment of possible policy measures to address Union-driven deforestation and forest degradation, Council conclusions and the 2020 resolution of the European Parliament clearly identify the need to establish deforestation and forest degradation as the guiding criteria for future Union measures. Therefore, the new Union legal framework should address both legality and whether the production of relevant commodities and products is deforestation-free.
- (26) The definition of “deforestation-free” should be sufficiently broad to cover both deforestation and forest degradation, it should provide legal clarity, and it should be measurable based on quantitative, objective and internationally recognised data.

**Nouveau considérant (26a) :** suite aux demandes de plusieurs délégations, il est proposé d’ajouter un considérant permettant d’insister sur la définition d’usage agricole et la nécessité de lignes directrices sur ce sujet.

- (26a) For the purpose of this Regulation, agricultural use should be defined as the use of land for the purpose of agriculture. The Commission should develop guidelines in order to clarify the interpretation of this definition, in relation in particular to situations of conversion of forest to land the purpose of which is not agricultural use.
- (27) The Regulation should cover those commodities whose Union consumption is the most relevant in terms of driving global deforestation and forest degradation and for which a Union policy intervention could bring highest benefits per unit value of trade. An extensive review of scientific literature, namely of primary sources estimating the impact of EU consumption on global deforestation and linking that footprint to specific commodities, was carried out as a part of the study supporting the Impact Assessment and cross-checked via extensive consultation with stakeholders. That process delivered a first list of eight commodities. Wood was directly included in the scope as it was already

25 OJ L 295, 12.11.2010, p. 23.

26 OJ L 347, 30.12.2005, p. 1.

27 [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/11630-Illegal-logging-evaluation-of-EU-rules-fitness-check-\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/11630-Illegal-logging-evaluation-of-EU-rules-fitness-check-_en)

28 [https://www.forest-trends.org/wp-content/uploads/2021/05/Illicit-Harvest-Complicit-Goods\\_rev.pdf](https://www.forest-trends.org/wp-content/uploads/2021/05/Illicit-Harvest-Complicit-Goods_rev.pdf).

covered by the EUTR. The list of the commodities was then further reduced via an efficiency analysis in the Impact Assessment. This efficiency analysis compared the hectares of deforestation linked to EU consumption, as estimated in a recent research paper<sup>29</sup>, for each of those commodities with their average value of EU imports. According to the research paper used for the efficiency analysis, six commodities represent the largest share of EU-driven deforestation among the total of eight commodities analysed in that research paper: palm oil (33,95%), soy (32,83%), wood (8,62%), cocoa (7,54%), coffee (7,01%) and beef (5,01%).

**Considérant (27a) : Nourriture du bétail :** se reporter svp aux explications et clarifications dans le chapeau de la note de cadrage. Il est proposé de maintenir les références à la nourriture du bétail, tout en apportant certaines modifications au texte proposé, de manière à assurer un système suffisamment simple pour les exploitants agricoles. Cela passe en particulier par les amendements proposés au considérant (27a).

- (27a) To ensure that this proposal meets its objectives, it is important to ensure that feed used for livestock falling under the scope of this Regulation does not lead to deforestation. Therefore, operators placing on the Union market or exporting from the Union market relevant products that contain or have been made using cattle, which have been fed with relevant products that contain or have been made using other relevant commodities, should ensure, as part of their due diligence process, that the feed originates from deforestation-free supply chains. In that case, in accordance with Article 9(1)(d), geolocation requirements should be limited to referring to the geographical location of each of the premises or places where the cattle were raised, and no geolocation information should be sought for the feed itself. When the feed has already been subject to due diligence in a previous step of the supply chain, the evidence that the feed originates from deforestation-free supply chains could consist of keeping and being able to make available to competent authorities upon request the relevant invoices. The evidence should cover the lifetime of the animals, up to a maximum of five years. The Commission should develop guidelines on this point.
- (28) Bearing in mind that the use of recycled relevant commodities and products should be encouraged, and that including such commodities and products in the scope of this Regulation would place a disproportionate burden on operators, used commodities and products that have completed their lifecycle, and would otherwise be disposed of as waste, should be excluded from the scope of this Regulation.
- (29) Obligations concerning relevant commodities and products should be laid down by this Regulation in order to effectively combat deforestation, forest degradation, and to promote deforestation-free supply chains.
- (30) Many international organisations and bodies (e.g. Food and Agriculture Organization of the United Nations, the Intergovernmental Panel on Climate Change, United Nations Environment Programme, the Paris Agreement, International Union for the Conservation of Nature, Convention on Biological Diversity) have developed work in the field of deforestation and forest degradation and the definitions in this Regulation build on this work.

**Considérant (30a) :** suite à la discussion en COREPER le 8 juin, il est proposé de baser la définition de dégradation, à ce stade, sur des notions immédiatement opérationnelles, tout en prévoyant une

réflexion sur l'élargissement de cette définition dans le cadre du réexamen prévu à l'article 32. Dans ce cadre, le considérant (30a) envisagé n'a plus lieu d'être et peut être supprimé.

- (31) A cut-off date should be set to provide a basis for the evaluation of whether concerned land has been subject to deforestation or forest degradation, meaning that no products in the scope of this Regulation would be allowed to enter the Union market or be exported if they were produced on land subject to deforestation or forest degradation after that date. It should allow for the appropriate verification and monitoring, correspond to existing international commitments, such as the SDGs and the New York Declaration on Forests, thus minimising sudden disruption to supply chains while removing any incentive to accelerate activities leading to deforestation and forest degradation in view of the entry into force of this Regulation.
- (32) To strengthen the Union's contribution to halting deforestation and forest degradation, and to ensure that relevant products from supply chains related to deforestation and forest degradation are not placed on the Union market, relevant products should not be placed or made available on the Union market, nor exported from the Union market unless they are deforestation-free and have been produced in accordance with the relevant legislation of the country of production. To confirm that this is the case, they should always be accompanied by a due diligence statement.
- (33) On the basis of a systemic approach, operators should take the appropriate steps in order to ascertain that the relevant products that they intend to place on the Union market comply with the deforestation-free and legality requirements of this Regulation. To that end, operators should establish and implement due diligence procedures. The due diligence procedure required by this Regulation should include three elements: information requirements, risk assessment and risk mitigation measures. The due diligence procedures should be designed to provide access to information about the sources and suppliers of the commodities and products being placed on the Union market, including information demonstrating that the absence of deforestation and forest degradation and legality requirements are fulfilled, inter alia by identifying the country and area of production, including geo-location coordinates of relevant plots of land. These geo-location coordinates that rely on timing, positioning and/or Earth observation could make use of space data and services delivered under the Union's Space programme (EGNOS/Galileo and Copernicus). On the basis of this information, operators should carry out a risk assessment. Where a risk is identified, operators should mitigate such risk to achieve no or negligible risk. Only after completing the required steps of the due diligence procedure and concluding that no or negligible risk exists that the relevant product is not compliant with this Regulation, should the operator be allowed to place the relevant product on the Union market or to export it.
- (34) Operators should formally assume responsibility for the compliance of the relevant products that they intend to place on the Union market or to export by making available due diligence statements. A template for such statements should be provided by this Regulation. This is expected to facilitate enforcement of this Regulation through competent authorities and courts as well as increase compliance by operators.
- (35) In order to recognise good practice, certification or other third party verified schemes could be used in the risk assessment procedure, however, they should not substitute the operator's responsibility as regards due diligence.

**Considérant (36) :** correction d'une coquille.

- (36) Traders should be responsible for collecting and keeping information ensuring the transparency of the supply chain of relevant products which they make available on the mar-

ket. Large traders that are not small and medium-sized enterprises (SMEs) have a significant influence on supply chains and play an important role in ensuring that they are deforestation-free and should therefore ensure, prior to making available on the market the relevant products, that the operators have exercised due diligence in a way that fulfils the relevant requirements, including that no or only negligible risk was found.

- (37) In order to foster transparency and facilitate enforcement, operators which do not fall under the categories of SMEs, microenterprises or natural persons should, on an annual basis, publicly report on their due diligence system, including on the steps taken to implement their obligations.
- (38) Other EU legislative instruments that set out due diligence requirements in the value chain with regard to adverse human rights or environmental impacts should apply in so far as there are no specific provisions with the same objective, nature and effect in this Regulation which may be adapted in the light of future legislative amendments. The existence of this Regulation should not exclude the application of other EU legislative instruments that lay down requirements regarding value chain due diligence and should be complementary to any other due diligence obligations in the Union's legislation on corporate sustainability due diligence. Where such other EU legislative instruments provide for more specific provisions or add requirements to the provisions laid down in this Regulation, such provisions should be applied in conjunction with those of this Regulation. Furthermore, where this Regulation contains more specific provisions, they should not be interpreted in a way that undermines the effective application of other EU legislative instruments on due diligence or the achievement of their general aim.
- (39) Operators falling within the scope of other EU legislative instruments that set out due diligence requirements in the value chain with regard to adverse human rights or environmental impacts should be in a position to fulfil the reporting obligations under this Regulation by including the required information when reporting under the other EU legislative instrument.
- (40) Responsibility for enforcing this Regulation should lie with the Member States, and their competent authorities should be required to ensure that this Regulation is fully complied with. A uniform enforcement of this Regulation as regards relevant products entering or leaving the Union market can only be achieved through systematic exchange of information and cooperation amongst competent authorities, customs authorities and the Commission.
- (41) The effective and efficient implementation and enforcement of this Regulation are essential to achieving its goals. To this end, the Commission should set up and manage an information system to support the operators and the competent authorities in presenting and accessing the necessary information on relevant products placed on the market. The operators should submit the due diligence statements to the information system. The information system should be accessible to competent authorities and customs authorities to facilitate fulfilling their obligations under this Regulation. The information system should also be accessible for a wider public, with the anonymised data provided in an open and machine-readable format in line with the Union's Open Data Policy.
- (42) For the relevant products entering or leaving the Union market, competent authorities are tasked with the verification of the compliance of relevant products with the obligations under this Regulation, whereas the role of customs is to ensure that the reference of a due diligence statement is made available in the customs declaration where applicable and, in addition as from the moment the electronic interface will be in place to exchange information between customs authorities and competent authorities, to check the status of the due diligence statement after an initial risk analysis carried out by competent authorities in the Information System and act accordingly (i.e. suspend or refuse

a commodity or product if requested to do so through the status in the Information System). This specific organisation of controls discards the application of Chapter VII of Regulation (EU) 2019/1020 in so far as the application and enforcement of this Regulation is concerned.

- (43) Member States should ensure that adequate financial resources are always available for the appropriate staffing and equipping of the competent authorities. Efficient checks are demanding in terms of resources, and stable resources should be provided at a level appropriate to the enforcement needs at any given moment. Member States should have the possibility to supplement public financing by reclaiming from the relevant economic operators the costs incurred when performing checks in relation to relevant commodities and products that were found to be non-compliant.
- (44) This Regulation is without prejudice to other Union legislation on goods and products entering or leaving the Union market, in particular the provisions of the Union Customs Code as regards the powers of customs authorities and customs controls. Importers should be reminded that Articles 220, 254, 256, 257 and 258 of Regulation (EU) No 952/2013 of the European Parliament and of the Council provide that products entering the Union market that require further processing shall be placed under the appropriate customs procedure allowing such processing. Generally, the release for free circulation or export should not be deemed to be proof of conformity with Union law, since such a release does not necessarily include a complete control of compliance.
- (45) In order to optimise and unburden the control process of relevant products entering or leaving the Union market, it is necessary to set up electronic interfaces that allow the automatic data transfer between customs systems and the Information System of competent authorities. The EU Single Window environment for customs is the natural candidate to support such data transfers. The interfaces should be highly automated and easy-to-use, and additional burden for customs authorities should be limited. Moreover, in view of the limited differences between the data to be declared respectively in the customs declaration and the due diligence statement, it is appropriate to propose also a 'business-to-government' approach whereby traders and economic operators make available the due diligence statement of a relevant product via national single window environment for customs and this statement is transmitted automatically to the Information System used by competent authorities. Customs authorities and competent authorities should contribute to determine the data to be transmitted and any other technical requirement.
- (46) The risk of non-compliant products being placed on the Union market varies depending on the commodity and product as well as on its country of origin and production. Operators sourcing commodities and products from countries or subnational jurisdictions thereof that present a low risk of growing, harvesting or producing relevant commodities in violation of this Regulation should be subject to fewer obligations, thereby reducing compliance costs and administrative burden. Commodities and products from high-risk countries or subnational jurisdictions thereof should be subject to enhanced scrutiny by the competent authorities.
- (47) For this reason, the Commission should assess the deforestation and forest degradation risk at a level of a country or subnational jurisdictions thereof based on a range of criteria that reflect both quantitative, objective and internationally recognised data, and indications that the countries are actively engaged in fighting deforestation and forest degradation. This benchmarking information should make it easier for operators in the Union to exercise due diligence and for competent authorities to monitor and enforce compliance, while also providing an incentive for producer countries to increase the sustainability of their agricultural production systems and reduce their deforestation impact.

This should help making supply chains more transparent and sustainable. This benchmarking system should be based on a three-tier classification of countries to be regarded as low, standard or high risk. In order to ensure appropriate transparency and clarity, the Commission should in particular make publicly available the data being used for benchmarking, the reasons for the proposed change of classification and the reply of the country concerned. For relevant products from low risk countries or subnational jurisdictions of countries identified as low-risk, operators should be allowed to apply a simplified due diligence, whilst competent authorities should be required to apply enhanced scrutiny on relevant products from high risk countries or subnational jurisdictions of countries identified as high-risk. The Commission should be empowered to adopt implementing measures to establish the countries or subnational jurisdictions thereof that present a low or high risk of producing relevant products that are not compliant with this Regulation.

**Considérant (48)** : amendements de cohérence avec les évolutions proposées à l'article 14 et à l'article 32. A noter que les dernières phrases seront à adapter si besoin pour prendre en compte l'approche retenue à l'article 14 sur les contrôles.

- (48) Competent authorities should carry out checks at regular intervals on operators and traders to verify that they effectively fulfil the obligations laid down in this Regulation. Moreover, competent authorities should carry out checks when in possession of and based on relevant information, including substantiated concerns submitted by third parties. For a comprehensive coverage of the relevant commodities and products, the respective operators and traders and the volumes of their share of commodities and products, a twofold approach should apply. [Competent authorities should thus be required to check on a certain percentage of operators and traders, for relevant products from high-risk countries or subnational jurisdictions thereof. For other types of relevant products, the first review of the Regulation should evaluate and identify quantified objectives for the annual checks to be carried out by competent authorities that are appropriate to ensure the enforcement of the Regulation and a harmonised approach across the Union.]
- (49) The checks of operators and traders by competent authorities should cover the due diligence systems and the compliance of the relevant products with the provisions of this Regulation. The checks should be based on a risk-based plan of checks. The plan should contain risk criteria that enable competent authorities to carry out a risk analysis of the due diligence statements submitted by operators and traders. The risk criteria should take into account the risk of deforestation associated to relevant commodities in the country of production, the history of non-compliance of operators and traders with the obligations of this Regulation and any other relevant information available to competent authorities. The risk analysis of due diligence statements should allow competent authorities the identification of operators, traders and relevant products to be checked, and should be carried out using electronic data processing techniques in the information system which collects the due diligence statements.
- (50) In case the risk analysis of the due diligence statements reveals a high risk of non-compliance of specific relevant products, the competent authorities should be able to take immediate interim measures to prevent their placing or making available on the Union market. In case such relevant products were entering or leaving the Union market, the competent authorities should request from customs authorities the suspension of the release for free circulation or the export to enable competent authorities to carry out the necessary checks. Such request should be communicated by means of the interface system between customs and competent authorities. Suspension of the placing or making available on the Union market, of the release for free circulation or of export should be limited to three working days except where the competent authorities require additional

time to assess the compliance of the relevant commodities and products with this Regulation. In that case, the competent authorities should take additional interim measures to extend the suspension period by additional periods of three working days or request such extension to customs authorities in case of relevant products entering or leaving the Union market.

- (51) The plan for checks should be regularly updated on the basis of the results of its implementation. Those operators showing a consistent track record of compliance should be subject to a reduced frequency of checks.
- (52) In order to ensure implementation and effective enforcement of this Regulation, Member States should have the power to withdraw and recall non-compliant relevant products and take appropriate corrective actions. They should also ensure that infringements of this Regulation by operators and traders are sanctioned by effective, proportionate and dissuasive penalties.

**Nouveau considérant (52a) :** suite aux demandes de plusieurs délégations, il est proposé d'insérer un nouveau considérant (52a) faisant référence à la nécessité d'un soutien pour les Etats membres en valorisant les instruments existants.

- (52a) It will be critical that sufficient resources and capacity be available in Member States, so that they can deliver on the requirements of this Regulation, with a view to ensuring its effective application. In this context, beyond national resources, Member States should use as much as possible opportunities and possibilities for support available at the Union level and through other means, including cohesion funds and capacity-building instruments notably in the context of the Technical Support Instrument.
- (53) Taking into account the international character of deforestation and forest degradation and related trade, competent authorities should cooperate with each other, with customs authorities of the Member States, with the Commission, as well as with the administrative authorities of third countries. Competent authorities should also cooperate with the competent authorities for the supervision and enforcement of other EU legislative instruments that set out due diligence requirements in the value chain with regard to adverse human rights or environmental impacts.

**Considérant (53a) :** suite aux questions d'une délégation, il est apporté les explications suivantes :

- il a été proposé de conserver le mot 'judicial' qui est la formulation du considérant correspondant de la Directive sur l'eau potable ;
- dans les considérants, il n'est pas possible d'utiliser le mot 'shall' : le mot 'should' est systématiquement utilisé ;
- il n'est pas nécessaire d'ajouter les mots 'in accordance with the relevant national system' à la quatrième phrase, car cette formulation serait redondante, les Etats membres ne pouvant établir que leur système national.

- (53a) According to settled case law of the Court of Justice, under the principle of sincere cooperation laid down in Article 4(3) of the Treaty on European Union (TEU), it is for the courts of the Member States to ensure judicial protection of a person's rights under Union law. Furthermore, Article 19(1) TEU requires Member States to provide remedies sufficient to ensure effective judicial protection in the fields covered by Union law. In this respect, Member States should ensure that the public, including natural or legal persons submitting substantiated concerns in accordance with Article 29, is ensured access to justice in line with the obligations Member States have undertaken as parties to the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters of 25 June 1998 (the 'Aarhus convention').

- (54) While this Regulation addresses deforestation and forest degradation, as envisaged in the 2019 Communication ‘Stepping up EU Action to Protect and Restore the World’s Forests’, protecting forests should not lead to the conversion or degradation of other natural ecosystems. Ecosystems such as wetlands, savannahs and peatlands are highly significant to global efforts to combat climate change, as well as other sustainable development goals and their conversion or degradation require particular urgent attention. To address this, the Commission should assess the need and feasibility of extending the scope to other ecosystems and to further commodities two years after the entry into force. At the same time, the Commission should also undertake a review of the relevant products as listed in Annex I of this Regulation.
- (55) (deleted)
- (56) Regulation (EU) No 995/2010 prohibits the placing of illegally harvested timber and timber products on the Union market. It lays down obligations for operators placing timber on the market for the first time to exercise due diligence and for traders to keep a traceable record of their suppliers and customers. This Regulation should retain the obligation to ensure the legality of relevant products, including wood and wood products, placed on the Union market and complements them with the requirement on sustainability. This Regulation and the related Commission Implementing Regulation (EU) No 607/2012 are therefore rendered redundant by this Regulation and should be repealed. Timber and timber products as defined in Article 2, point (a) of Regulation No (EU) 995/2010 are the equivalent of wood and wood products listed in Annex I that contain or have been made using wood under this Regulation.
- (57) Regulation (EC) No 2173/2005 lays down Union procedures for the implementation of a FLEGT licensing scheme through bilateral Voluntary Partnership Agreements (VPAs) with timber-producing countries. To respect bilateral commitments that the European Union has entered into and to preserve the progress achieved with partner countries that have an operating system in place (FLEGT licensing stage), this Regulation should include a provision declaring wood and wood-based products covered by a valid FLEGT license as fulfilling the legality requirement under this Regulation.
- (58) While this Regulation addresses deforestation and forest degradation, as envisaged in the 2019 Communication ‘Stepping up EU Action to Protect and Restore the World’s Forests’, protecting forests should not lead to the conversion or degradation of other natural ecosystems. Ecosystems such as wetlands, savannahs and peatlands are highly significant to global efforts to combat climate change, as well as other sustainable development goals and their conversion or degradation require particular urgent attention. An evaluation of the need and the feasibility of extending the scope of this Regulation to other ecosystems than forests should therefore be undertaken within 2 years of the entry into force of this Regulation.
- (59) Where, for the purposes of this Regulation, it is necessary to process personal data, these are to be handled in accordance with Union law on the protection of personal data. Any processing of personal data under this Regulation is subject to Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>30</sup> and Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>31</sup>, as applicable.
- (60) Since the objective of this Regulation, fighting against deforestation and forest degradation by reducing the contribution of consumption in the Union, cannot be achieved by

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30 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

31 Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

the Member States individually and can therefore, by reason of its scale, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

- (61) Operators, traders and competent authorities should be given a reasonable period in order to prepare themselves to meet the requirements of this Regulation,

HAVE ADOPTED THIS REGULATION:

# Chapter 1

## General Provisions

### *Article 1*

#### Subject matter and scope

##### **Article 1 :**

##### Nourriture du bétail :

Se reporter svp aux explications et clarifications dans le chapeau de la note de cadrage.

Il est proposé de maintenir les références à la nourriture du bétail (à l'article 1(1), mais également dans les autres articles concernés tout au long du texte), tout en apportant certaines modifications au texte proposé, de manière à assurer un système suffisamment simple pour les exploitants agricoles.

Cela passe également, en particulier, par les amendements suivants proposés au considérant (27a) :

(27a) To ensure that this proposal meets its objectives, it is important to ensure that feed used for livestock falling under the scope of this Regulation does not lead to deforestation. Therefore, operators placing on the Union market or exporting from the Union market relevant products that contain or have been made using cattle, which have been fed with relevant products that contain or have been made using other relevant commodities, should ensure, as part of their due diligence process, that the feed originates from deforestation-free supply chains. In that case, in accordance with Article 9(1)(d), geolocation requirements should be limited to referring to the geographical location of each of the premises or places where the cattle were raised, and no geolocation information should be sought for the feed itself. When the feed has already been subject to due diligence in a previous step of the supply chain, the evidence that the feed originates from deforestation-free supply chains could consist of keeping and being able to make available to competent authorities upon request the relevant invoices. The evidence should cover the lifetime of the animals, up to a maximum of five years. The Commission should develop guidelines on this point.

1. This Regulation lays down rules regarding the placing and making available on the Union market as well as the export from the Union market of products listed in Annex I that contain, have been fed with or have been made using cattle, cocoa, coffee, oil palm, soya and wood, with a view to:
  - (a) minimising the Union's contribution to deforestation and forest degradation worldwide;
  - (b) reducing the European Union's contribution to greenhouse gas emissions and global biodiversity loss.
2. Without prejudice to Article 35(3), the Regulation shall not apply to products listed in Annex I produced before the date established in Article 36(1).

### *Article 2*

#### Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (0) 'relevant commodities' means cattle, cocoa, coffee, oil palm, soya and wood;
- (0a) 'relevant products' means products listed in Annex I that contain, have been fed with or have been made using relevant commodities;
- (1) 'deforestation' means the conversion of forest to agricultural use, whether human-induced or not;
- (2) 'forest' means land spanning more than 0,5 hectares with trees higher than 5 metres and a canopy cover of more than 10%, or trees able to reach those thresholds in situ, excluding land that is predominantly under agricultural or urban land use;

**Définition (2a) :** suite à la proposition d'une délégation, il est proposé de préciser que la définition d'usage agricole couvre également bien les terres agricoles 'set-aside', en lien avec la question de la déprise agricole. A noter, par ailleurs, la proposition d'un nouveau considérant (26a) permettant d'insister sur la définition d'usage agricole et la nécessité de lignes directrices sur ce sujet.

- (2a) 'agricultural use' means the use of land for the purpose of agriculture, including for agricultural plantations, and includes livestock and set-aside agricultural areas;
- (3) 'agricultural plantations' means tree stands in agricultural production systems, such as fruit tree plantations, oil palm plantations, olive orchards and agroforestry systems when crops are grown under tree cover. It includes all plantations of the relevant commodities other than wood. Agricultural plantations are excluded from the definition of 'forest';
- (4) 'plantation forest' means a planted forest that is intensively managed and meets, at planting and stand maturity, all the following criteria: one or two species, even age class, and regular spacing. It includes short rotation plantations for wood, fibre and energy, and excludes forests planted for protection or ecosystem restoration, as well as forests established through planting or seeding which at stand maturity resemble or will resemble naturally regenerating forests;
- (5) 'planted forest' means forest predominantly composed of trees established through planting and/or deliberate seeding provided that the planted or seeded trees are expected to constitute more than fifty percent of the growing stock at maturity; it includes coppice from trees that were originally planted or seeded;

**Définition (6) :** se reporter svp aux explications et aux questions figurant dans le chapeau de la note de cadrage.

- (6) 'forest degradation' means structural changes to forest cover, taking the form of the conversion of primary forests into plantation forests or into other wooded land;

**Définition (6a) :** certaines délégations ont indiqué que la définition des forêts primaires devrait faire référence aux « notes explicatives » de la FAO. A ce sujet, la Présidence souhaite confirmer que, sur le fond, les notes explicatives de la FAO apparaissent bien pertinentes dans ce cadre. Pour être cohérent avec l'approche suivie pour le reste des définitions, il est néanmoins proposé de ne pas reprendre explicitement ces notes dans le texte du règlement, pour ne pas alourdir le texte.

- (6a) 'primary forest' means naturally regenerated forest of native tree species, where there are no clearly visible indications of human activities and the ecological processes are not significantly disturbed;

**Définition (6b) :** il est proposé d'ajouter une définition de 'other wooded land', si cette notion est utilisée dans la définition de 'dégradation forestière'. Cette définition reprend la définition de la FAO.

- (6b) 'other wooded land' means land not classified as 'forest' spanning more than 0,5 hectares with trees higher than 5 metres and a canopy cover of 5 to 10%, or trees able to reach these thresholds in situ, or with a combined cover of shrubs, bushes and trees above 10 percent, excluding land that is predominantly under agricultural or urban land use;

- (7) (deleted)

**Définition (8) :** suite aux fortes préoccupations exprimées par plusieurs délégations, notamment pour certaines d'ordre juridique, il est proposé, dans le cadre d'un compromis, de repousser la date-charnière au 31 décembre 2021. Cela permet de mieux prendre en compte la situation des opérateurs qui auraient opéré de bonne foi des opérations de déforestation avant que la proposition de règlement soit publiée ; cela permet aussi de maintenir une date-charnière dans le passé, pour éviter une déforestation massive et précipitée si la date-charnière était fixée à la date d'entrée en vigueur du règlement.

- (8) 'deforestation-free' means:
- (a) that the relevant products contain, have been fed with or have been made using relevant commodities that were produced on land that has not been subject to deforestation after December 31, 2021, and
  - (b) in case of relevant products that contain or have been made using wood, that the wood has been harvested from the forest without inducing forest degradation after December 31, 2021;

**Définition (9) :** dans ce cas précis, contrairement aux autres mentions dans le texte, il est proposé de ne pas maintenir la mention 'fed from' car la notion de 'produced' s'applique à des produits de base ('commodities') produits sur des parcelles particulières. La mention 'fed from' s'applique, pour sa part, non pas aux 'commodities' mais aux produits pertinents listés à l'annexe I. Pour plus de solidité juridique, il est donc proposé de ne pas maintenir cette mention.

- (9) 'produced' means grown, harvested, raised, or obtained on relevant plot of land;

**Définition (10) :** certaines délégations ont demandé d'indiquer dans cette définition que « la fourniture sur le marché intérieur de produits dérivés déjà mis sur le marché intérieur ne constitue pas une 'mise sur le marché' ». Cette mention n'apparaît pas nécessaire, car les définitions (10) et (11) apportent déjà suffisamment de clarté : la définition (10) de mise sur le marché est associée à la définition (12) d'opérateur ; la définition (11) de mise à disposition sur le marché est associée, pour sa part, à la définition (13) de commerçant, laquelle précise explicitement que les commerçants ne peuvent pas aussi être des opérateurs. Dans ce cadre, il y a un cloisonnement clair entre les deux notions, et il n'est pas possible qu'un opérateur doive également s'acquitter des obligations d'un commerçant (ou vice-versa). Il est donc proposé de maintenir le texte en l'état.

- (10) 'placing on the market' means the first making available of a relevant product on the Union market;

- (11) ‘making available on the market’ means any supply of a relevant product for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge;
- (11a) ‘in the course of a commercial activity’ means for the purpose of processing, or for distribution to commercial or non-commercial consumers, or for use in the business of the operator or trader itself;
- (11b) ‘person’ means a natural person, a legal person and any association of persons which is not a legal person but which is recognised under Union or national law as having the capacity to perform legal acts;
- (12) ‘operator’ means any person who, in the course of a commercial activity, places relevant products on the Union market or exports them from the Union market;
- (13) ‘trader’ means any person in the supply chain other than the operator who, in the course of a commercial activity, makes available on the Union market relevant products;
- (14) ‘country of origin’ means a country or territory as defined in Article 60 of Regulation (EU) No 952/2013 of the European Parliament and of the Council<sup>32</sup>;
- (15) ‘country of production’ means the country or territory where the relevant commodity was produced;
- (16) ‘negligible risk’ means a full assessment of both the product-specific and the general information on compliance with Articles 3(a) and 3(b) by relevant products showing no cause for concern that the relevant products may not be compliant with those Articles;
- (16b) ‘person established in the Union’ means:
- (a) in the case of a natural person, any person who has his or her residence in the Union;
  - (b) in the case of a legal person or an association of persons, any person having its registered office, central headquarters or a permanent business establishment in the Union;
- (17) ‘authorised representative’ means any natural or legal person established in the Union who, in accordance with Article 5, has received a written mandate from an operator or from a trader to act on its behalf in relation to specified tasks with regard to the operator’s or the trader’s obligations under this Regulation;
- (18) ‘non-compliant products’ means relevant products that do not comply with the requirements of Article 3;
- (19) ‘plot of land’ is an extension of land within a single real-estate property, as recognised by the laws of the country of production, and which enjoys sufficiently homogeneous conditions as to allow to evaluate on the aggregate level the risk of deforestation and forest degradation associated with commodities produced on that extension of land;

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<sup>32</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269 10.10.2013, p. 1).

- (20) ‘SMEs’ mean micro, small and medium-sized enterprises as defined in Directive 2013/34/EU<sup>33</sup>;
- (21) ‘substantiated concern’ means well-founded claim based on objective and verifiable information regarding non-compliance with the present Regulation and which may require the intervention of competent authorities;
- (22) ‘competent authorities’ means the authorities designated under Article 13(1);
- (23) ‘customs authorities’ means customs authorities as defined in Article 5, point 1, of Regulation (EU) No 952/2013;
- (23a) ‘customs territory’ is the territory as defined in Article 4 of Regulation (EU) 952/2013;
- (23b) ‘third country’ means a country or territory outside the customs territory of the Union;
- (24) ‘release for free circulation’ means the procedure laid down in Article 201 of Regulation (EU) No 952/2013;
- (25) ‘export’ means the procedure laid down in Article 269 of Regulation (EU) No 952/2013;
- (26) ‘relevant products entering the Union market’ means relevant products from third countries placed under the customs procedure ‘release for free circulation’ that are intended to be placed on the Union market and not intended for private use or consumption within the customs territory of the Union;
- (27) ‘relevant products leaving the Union market’ means relevant products placed under the customs procedure ‘export’;
- (28) ‘relevant legislation of the country of production’ means the rules applicable in the country of production concerning the legal status of the area of production in terms of land use rights, environmental protection, sustainable forest management, third parties’ rights, labour rights and human rights protected under international law, and relevant tax, anti-corruption, trade and customs regulations under the legal framework applicable in the country of production;

**Définition 29 :**

Suite aux discussions du 8 juin, il apparaît que cette définition peut constituer un bon équilibre entre les demandes des délégations, aussi il est proposé de la maintenir.

A titre de précision, il est néanmoins proposé d’apporter une simplification via la définition (29) de l’article 2, pour préciser que pour le produit de base « bétail », il n’est jamais nécessaire de fournir un « polygone » de points de géolocalisation. En effet, une telle exigence ne serait pas compatible avec les systèmes de traçabilité du bétail existant dans l’UE et en dehors de l’UE. La plupart des systèmes

33 Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC Text with EEA relevance (OJ L 182, 29.6.2013, p. 19–76).

de traçabilité du bétail, notamment celui de l'UE basé sur la Législation sur la Santé Animale (Animal Health Law), ne permettent pas de connaître l'ensemble d'une parcelle, mais seulement les lieux où le bétail s'est rendu. Dans ce cadre, il apparaîtrait trop complexe de demander une information plus précise.

- (29) 'geolocation' means the geographical location of a plot of land described by means of latitude and longitude coordinates corresponding to at least one latitude and longitude point and using at least six decimal digits. For relevant commodities other than cattle, for plots of land of more than 10 hectares, the geographical location shall be provided using sufficient latitude and longitude points to describe the perimeter of the plot of land.

*Article 3*  
**Prohibition**

Relevant products shall not be placed or made available on the Union market, or exported from the Union market, unless all the following conditions are fulfilled:

- (a) they are deforestation-free;
- (b) the relevant commodities have been produced in accordance with the relevant legislation of the country of production; and
- (c) they are covered by a due diligence statement.

## Chapter 2

# Obligations of operators and traders

### Article 4

#### Obligations of operators

#### **Article 4 :**

Il est proposé à la demande d'une délégation d'introduire des éléments concernant l'évitement des pratiques de contournement ('circumvention') sous la forme d'un nouveau paragraphe 6a.

Au paragraphe 7, mise en cohérence de la formulation avec l'article 15.

En réponse à une délégation qui a demandé confirmation que les informations communiquées par les opérateurs aux autres acteurs en aval de la chaîne seraient bien disponibles pour les autorités compétentes, il est confirmé que ce sera le cas puisque tous les opérateurs doivent communiquer leurs informations aux autorités compétentes sur demande, comme prévu au paragraphe 7.

1. Operators shall exercise due diligence in accordance with Article 8 prior to placing relevant products on or prior to their export from the Union market in order to ensure their compliance with Article 3(a) and (b).
2. Operators shall not place relevant products on the Union market nor export them without prior submission of a due diligence statement. Operators that by exercising due diligence as referred to in Article 8 have come to the conclusion that the relevant products comply with the requirements of this Regulation shall make available to the competent authorities via the information system referred to in Article 31 a due diligence statement before placing on the Union market or exporting the relevant products. Such statement shall confirm that due diligence was carried out and no or only negligible risk was found and shall contain the information set out in Annex II for the relevant products.
3. By making available the due diligence statement to competent authorities, the operator assumes responsibility for the compliance of the relevant product with the requirements of this Regulation. Operators shall keep record of the due diligence statements for 5 years from the date the statement is made available via the information system referred to in Article 31.
4. (deleted)
5. The operator shall not place the relevant products on the market nor export them if one or more of the following cases apply:
  - (a) the relevant products are not compliant with Article 3(a) or (b);
  - (b) the exercise of due diligence has revealed a non-negligible risk that the relevant products are not compliant with Article 3(a) or (b);
  - (c) the operator was unable to complete the obligations referred to in paragraphs 1 and 2.
6. Operators that obtain or are made aware of relevant new information, including substantiated concerns, indicating that the relevant product that they have already placed on the market is not in conformity with the requirements of this Regulation, shall immediately inform the competent authorities of the Member States in which they placed

the relevant product on the market. In the case of exports from the Union market, the operators shall inform the competent authority of Member State which is the country of production.

- 6a. Operators shall not actively attempt to make use of ways to circumvent the obligations under this Regulation.
7. Operators shall offer all necessary assistance to the competent authorities to facilitate the performance of the checks under Article 15, including the access to premises and the presentation of documentation and records.
8. Operators shall communicate to operators and traders further down the supply chain of the relevant products they placed on or exported from the Union market, notably through the information system referred to in Article 31, all information necessary to confirm that due diligence was carried out and no or only negligible risk was found.
9. By derogation to paragraphs 1 to 5, in order to avoid duplication of due diligence requirements, the obligations of paragraphs 1 to 5 shall be considered to be met by the operator further down the supply chain when it makes available to the competent authority the reference number of the existing due diligence statements submitted by the operators who exercised the existing due diligence. Where such derogation is used and the relevant products contain a mix of relevant products, the operator further down the supply chain shall provide the reference numbers of each of the existing due diligence statements. Such operators shall also ensure, prior to placing on or exporting from the Union market such relevant products, that the already exercised due diligence fulfils the requirements of the present Chapter, including that no or only negligible risk was found. By making available the reference numbers of the existing due diligence statements, such operators retain their responsibility for the compliance of the relevant products with the requirements of this Regulation.

#### *Article 5* **Authorised representatives**

<p><b>Article 5</b> : cf. explications dans le chapeau de la note de cadrage sur le fonctionnement envisagé en pratique pour le paragraphe 3.</p>
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1. Operators or traders may mandate an authorised representative to make available the due diligence statement pursuant to Article 4(2) on their behalf. The operator or trader shall in that case retain the responsibility for the compliance of the relevant product with the requirements of this Regulation.
2. The authorised representative shall, upon request, provide a copy of the mandate in an official language of the European Union to the competent authorities.
3. An operator that is a natural person or a microenterprise may request the first operator or trader further down the supply chain that is not a natural person or a microenterprise to act as an authorised representative. Such first operator or trader further down the supply chain shall not place relevant products on or export relevant products from the Union market, or make relevant products available on the Union market, without making available the due diligence statement pursuant to Article 4(2) on behalf of that operator. The operator that is a natural person or a microenterprise shall in that case retain the responsibility for the compliance of the relevant product with the requirements of this

Regulation, and shall communicate to that first operator or trader further down the supply chain all information necessary to confirm that due diligence was carried out and no or only negligible risk was found.

*Article 6*  
**Obligations of traders**

**Article 6 :**

Au paragraphe 6, mise en cohérence de la formulation avec l'article 15.

En réponse à la demande d'une délégation qui souhaitait que les microentreprises et les personnes physiques soient exemptées des obligations de cet article, il est proposé de maintenir l'article en l'état, car les dispositions pour les commerçants non PME sont déjà simples et tiennent compte de leurs ressources, tout en permettant une traçabilité qui apparaît nécessaire, faute de quoi il y aurait des ruptures de traçabilité dans la chaîne de valeur.

1. Traders which are SMEs may only make available on the market relevant products if they are in possession of the information required under paragraph 2.
2. Traders which are SMEs shall collect and keep the following information relating to the relevant products they intend to make available on the market:
  - (a) the name, registered trade name or registered trade mark, the postal address, the email and, if available, a web address of the operators or the traders who have supplied the relevant products to them, as well as the reference numbers of the due diligence statements associated to those products;
  - (b) the name, registered trade name or registered trade mark, the postal address, the email and, if available, a web address of the traders to whom they have supplied the relevant products.
3. Traders which are SMEs shall keep the information referred to in this Article for at least 5 years from the date of the making available on the market and shall provide that information to the competent authorities upon request.
4. Traders which are SMEs that obtain or are made aware of relevant new information, including substantiated concerns, indicating that the relevant product that they have already made available on the market is not in conformity with the requirements of this Regulation shall immediately inform the competent authorities of the Member States in which they made available the relevant product on the market.
5. Traders which are not SMEs shall ensure, prior to making available on the market the relevant products, that the operators have exercised due diligence in a way that fulfils the requirements of the present Chapter, including that no or only negligible risk was found. They shall also make available to the competent authorities the reference numbers of the existing due diligence statements via the information system referred to in Article 31. Where the relevant products made available on the market contain a mix of relevant products, the trader which is not an SME shall provide the reference numbers of each of the existing due diligence statements. By making available the reference numbers of such existing due diligence statements, such traders retain their responsibility for the compliance of the relevant products with the requirements of this Regulation.

6. Traders shall offer all necessary assistance to the competent authorities to facilitate the performance of the checks under Articles 15 and 16, including as regards access to premises and the presentation of documentation and records.

#### *Article 7*

### **Placing on the market by operators established in third countries**

In case a natural or legal person established outside the Union places on the Union market relevant products, the first natural or legal person established in the Union who makes available on the Union market such relevant products shall be considered operator within the meaning of this Regulation.

#### *Article 8*

### **Due diligence**

1. Prior to placing relevant products on the market or before exporting them, operators shall exercise due diligence with regard to all relevant products supplied by each particular supplier.
2. For the purposes of this Regulation, the due diligence shall include:
  - (a) the collection of information and documents needed to fulfil the requirements set out in Article 9;
  - (b) risk assessment measures as referred to in Article 10;
  - (c) risk mitigation measures as referred to in Article 10a.

#### *Article 9*

### **Information requirements**

**Article 9:** ajustements de coherence sur les 'commodities'. Au paragraphe 1(c), il est également propose de supprimer "have been fed with" dans ce cas précis, car les seuls produits qui peuvent être nourris (ceux issus du bétail) font déjà l'objet de dispositions spécifiques concernant leur géolocalisation, à la fin de ce même paragraphe.

1. Operators shall collect information, documents and data demonstrating that the relevant products are compliant with Article 3. For this purpose, the operator shall collect, organise and keep for 5 years from the date of the placing on the market the following information, accompanied by evidence, relating to each relevant product:
  - (a) description, including the trade name and type of the relevant products as well as, in the case of relevant products that contain or have been made using wood, the common name of the species and their full scientific name;
  - (b) quantity (expressed in net mass or, when applicable, volume, or number of units)<sup>34</sup> of the relevant products;
  - (c) identification of the country, region and area of production;
  - (d) geolocation of all plots of land where the relevant commodities that the relevant product contains, or has been made using were produced, as well as date or time

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<sup>34</sup> The quantity must be expressed in kilograms of net mass or, when applicable, in the supplementary unit set out in Annex I to Council Regulation (EEC) No 2658/87 against the indicated Harmonised System code. A supplementary unit is applicable when it is defined consistently for all possible subheadings under the Harmonised System code mentioned in the due diligence statement.

range of production. Where a relevant product contains or has been made with relevant commodities produced in different plots of land, the geolocation of all different plots of land shall be included. For relevant products that contain or have been made using cattle, the geolocation shall refer to the geographical location of each of the premises or places where the cattle were raised;

- (e) name, email and address of any business or person from whom they have been supplied with the relevant products;
  - (f) name, email and address of any business or person to whom the relevant products have been supplied;
  - (g) adequately conclusive and verifiable information that the relevant products are deforestation-free;
  - (h) adequately conclusive and verifiable information that the production of relevant commodities has been conducted in accordance with the relevant legislation of the country of production, including any arrangement conferring the right to use the respective area for the purposes of the production of the relevant commodity.
2. The operator shall make available to the competent authorities upon request the information, documents and data collected under this Article.

#### *Article 10*

#### **Risk assessment**

1. Operators shall verify and analyse information collected in accordance with Article 9 and any other relevant documentation, and on this basis carry out a risk assessment to establish whether there is a risk that the relevant products intended to be placed on or exported from the Union market are non-compliant with the requirements of this Regulation. Unless this risk assessment reveals no or only negligible risk that the relevant products are not compliant with Article 3(a) or (b), operators shall not place the relevant product on the Union market nor export it.
2. The risk assessment shall take special account of the following risk assessment criteria:
  - (a) the assignment of risk to the relevant country of production or subnational jurisdictions thereof in accordance with Article 27;
  - (b) the presence of forests in the country, region and area of production of the relevant commodity;
  - (c) prevalence of deforestation or forest degradation in the country, region and area of production of the relevant commodity;
  - (d) the source, reliability, validity and links to other available documentation of the information referred to in Article 9(1);
  - (e) concerns in relation to the country, region and area of production and origin, such as level of corruption, prevalence of document and data falsification, lack of law enforcement, violations of international human rights, armed conflict or presence of sanctions imposed by the United Nations Security Council or the Council of the European Union;
  - (f) the complexity of the relevant supply chain and the stage of processing of the relevant products, in particular difficulties in connecting relevant products to the plot of land where the relevant commodities were produced and/or the risk of circumvention or mixing with relevant products of unknown origin or produced in areas where deforestation or forest degradation has occurred or is occurring;

- (g) the conclusions of the meetings of the Commission expert groups supporting the implementation of this Regulation, as published in the Commission's expert group register, notably in relation to point (e);
  - (h) any relevant information that would point to a risk that the relevant products may not meet the requirements of this Regulation, including relevant substantiated concerns submitted under Article 29, and information on the history of non-compliance of operators or traders along the relevant supply chain with this Regulation;
  - (i) complementary information on compliance with this Regulation, which may include information supplied by certification or other third-party-verified schemes, including voluntary schemes recognised by the Commission under Article 30(5) of Directive (EU) 2018/2001, provided that the information meets the requirements set out in Article 9;
3. Wood products which are in scope of Council Regulation (EC) No 2173/2005 that are covered by a valid FLEGT license from an operational licensing scheme shall be deemed to be in compliance with Article 3(b) of this Regulation.
  4. The risk assessments shall be documented, reviewed at least on an annual basis and made available to the competent authorities upon request. Operators shall be able to demonstrate how the information gathered was checked against the risk assessment criteria set out in paragraph 2 and how the operator determined the degree of risk.

*Article 10a*  
**Risk mitigation**

1. Except where the risk assessment undertaken in accordance with Article 10 has revealed that there is no or negligible risk that the relevant products are not compliant with Article 3(a) or (b), the operator shall adopt prior to placing the relevant products on the Union market or to their export risk mitigation procedures and measures that are adequate to reach no or negligible risk. This may include requiring additional information, data or documents, undertaking independent surveys or audits or other measures pertaining to information requirements set out in Article 9. This may also include supporting the compliance with this Regulation of their suppliers, in particular smallholders, through capacity building and investments.
2. Operators shall have in place adequate and proportionate policies, controls and procedures to mitigate and manage effectively the risks of non-compliance of relevant products identified. These shall include:
  - (a) model risk management practices, reporting, record-keeping, internal control and compliance management, including for operators that are not SMEs, the appointment of a compliance officer at management level;
  - (b) an independent audit function to check the internal policies, controls and procedures referred to in point (a) for operators that are not SMEs.
3. The decisions on risk mitigation measures shall be documented, reviewed at least on an annual basis and made available to the competent authorities upon request. Operators shall be able to demonstrate how a decision on risk mitigation measures was taken.

## *Article 11*

### **Due diligence systems, reporting and record keeping**

**Article 11** : suite à la question d'une délégation, qui s'interrogeait sur le fait de savoir si les personnes utilisant les simplifications proposées aux articles 4(9) et 6(5) devaient mettre en place un « système de diligence raisonnée » tel que prévu aux paragraphes 1 et 1a, la Présidence note que le paragraphe 1 commence précisément par indiquer que ces paragraphes s'appliquent aux opérateurs qui effectuent la diligence raisonnée : 'In order to exercise due diligence in accordance with Article 8, operators...'. Dans ce cadre, les dispositions des articles 1 et 1a ne leur sont pas applicables.

1. In order to exercise due diligence in accordance with Article 8, operators shall establish and keep up to date a framework of procedures and measures to ensure that the relevant products they place on or export from the EU market comply with the requirements set out in Article 3(a) and (b) ('due diligence system').
  - 1a. The due diligence system shall be reviewed at least once a year and if necessary adapted to and accounting for new developments which may influence the exercise of due diligence. Operators shall keep record of updates in the due diligence system(s) for 5 years.
2. Unless otherwise provided by other EU legislative instruments that lay down requirements regarding sustainability value chain due diligence, operators which do not fall under the categories of SMEs, microenterprises or natural persons shall, on an annual basis, publicly report as widely as possible, including on the internet, on their due diligence system including on the steps taken by them to implement their obligations as set out in Article 8. Operators falling also within the scope of other EU legislative instruments that lay down requirements regarding value chain due diligence may fulfil their reporting obligations under this paragraph by including the required information when reporting in the context of other EU legislative instruments.
3. Operators shall keep for at least 5 years all documentation related to due diligence, such as all relevant records, measures and procedures pursuant to Article 8. They shall make them available to the competent authorities upon request.

## *Article 12*

### **Simplified due diligence**

**Article 12** : ajout d'une référence aux contournements, en cohérence avec l'ajout à l'article 4.

1. When placing relevant products on the Union market or exporting them from it, operators are not required to fulfil the obligations under Article 10 and 10a where they can ascertain that all relevant commodities have been produced in countries or subnational jurisdictions thereof that were identified as low risk in accordance with Article 27.
2. However, if the operator obtains or is made aware, before placing relevant products on the Union market or exporting them from it, of any relevant information that would point to a risk that the relevant products may not fulfil the requirements of this Regulation or stem from circumvention, all obligations of Article 10 and 10a have to be fulfilled.

## Chapter 3

### Obligations of Member States and their competent authorities

#### *Article 13* Competent authorities

**Article 13 :**

A noter que suite aux demandes de plusieurs délégations exprimées dans le contexte de cet article, il est proposé d'insérer un nouveau considérant (52a) faisant référence à la nécessité d'un soutien pour les Etats membres en valorisant les instruments existants.

A la demande d'une délégation, il est proposé de préciser au paragraphe 5 que le soutien mentionné est aussi pertinent pour les microentreprises.

1. Member States shall designate one or more competent authorities responsible for carrying out the obligations arising from this Regulation.
2. By six months after the date of entry into force of this Regulation at the latest, Member States shall inform the Commission of the names, addresses and contact details of the competent authorities referred to in paragraph 1. Member States shall inform the Commission without undue delay of any changes to this information.
3. The Commission shall make the list of the competent authorities publicly available on its website. The Commission shall regularly update the list, based on relevant updates received from Member States.
4. Member States shall ensure that the competent authorities have adequate powers and resources to perform the obligations set out in Chapter 3 of this Regulation.
5. Without prejudice to the operators' obligation to exercise due diligence as set out in Article 8, Member States may provide technical and other assistance and guidance to operators, taking into account the situation of SMEs, microenterprises and natural persons, in order to facilitate compliance with the requirements of this Regulation, including as regards the conversion of data from relevant systems to identify geolocation into the information system established under Article 31.
6. Member States shall facilitate the exchange and dissemination of relevant information, in particular with a view to assisting operators in assessing risk as set out in Article 10, and on best practices regarding the implementation of this Regulation.
7. Assistance shall be provided in a manner which does not compromise the independence, legal obligations and responsibilities of competent authorities in enforcing this Regulation.
8. The Commission shall facilitate the implementation of the Regulation, by issuing relevant guidelines and by promoting an adequate exchange of information, coordination and cooperation between competent authorities, between competent authorities and customs authorities, and between competent authorities and the Commission.

#### *Article 14*

## Obligation to perform checks

### **Article 14 :**

#### Effort de contrôle :

Cf. le chapeau de la note de cadrage concernant les options A, B et C ci-dessous pour les paragraphes 9 et 10 et les explications concernant le nouveau paragraphe 10a proposé.

1. The competent authorities shall carry out checks to establish whether operators and traders established in their Member State comply with their obligations under this Regulation and whether the relevant products placed or made available on the Union market or exported from it are compliant with the requirements of this Regulation.
2. The checks referred to in paragraph 1 shall be conducted in accordance with Article 15 and 16.
  - 2a. The identification of checks to be carried out shall be based on a risk-based approach. Risk criteria shall be identified based on an analysis of risks of non-compliance with this Regulation, taking into account in particular the relevant commodities, the complexity and the length of supply chains, including whether it involves mixing relevant products, and the stage of processing of the relevant product, the assignment of risk to countries or subnational jurisdictions thereof in accordance with Article 27, including special attention to the situation of countries or subnational jurisdictions thereof identified as high risk, the history of non-compliance of operators or traders with this Regulation, risks of circumvention, and any other relevant information. This analysis of risks shall build on the information contained in the register referred to in Article 31, and be supported by other relevant sources such as monitoring data, risk profiles from international organisations, substantiated concerns submitted under Article 29, or conclusions of EU expert meetings.
  - 2b. The Commission shall set out and regularly review and update indicative risk criteria at the Union level, in accordance with paragraph 2a, and communicate them to competent authorities.
3. To carry out the checks referred to in paragraph 1, the competent authorities shall establish annual plans of checks containing at least:
  - (a) national risk criteria to inform the identification of checks to be carried out. Those national criteria shall be set out in accordance with paragraph 2a and may build on the indicative risk criteria at the Union level set out by the Commission in accordance with paragraph 2b. They shall systematically include risk criteria in relation to countries or subnational jurisdictions thereof identified as high risk;
  - (b) an identification of the operators and traders to be checked. Those operators and traders shall be selected based on the national risk criteria referred to in point (a), using inter alia information contained in the register referred to in Article 31 and electronic data-processing techniques. For each operator or trader to be checked, competent authorities may identify specific due diligence statements to be checked.
- 3a. The annual review of the plans by the competent authorities shall systematically build on the results of the checks and the experience on implementation of the plans referred to in paragraph 3 in order to improve their effectiveness.

4. (deleted)
  5. (deleted)
  6. (deleted)
  7. (deleted)
  8. Competent authorities shall communicate their established plans of checks, as well as updates thereof, to other competent authorities and the Commission. Competent authorities shall exchange information on and coordinate the development and application of the risk criteria referred to in paragraph 3 with competent authorities of other Member States and with the Commission, in order to improve the effectiveness of the enforcement of this Regulation.
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OPTION A:

9. (deleted)
10. Each Member State shall ensure that the annual checks carried out by their competent authorities cover, at national level, at least 15% of the operators, and traders that are not SMEs, established in that Member State placing, making available on or exporting from the Union market relevant products, that contain or have been made using relevant commodities produced in a country or subnational jurisdiction thereof listed as high risk in accordance with Article 27.

OPTION B:

9. Each Member State shall ensure that the annual checks carried out by their competent authorities cover, at national level, at least 1% of the operators, and traders that are not SMEs, established in that Member State placing, making available on or exporting from the Union market relevant products that contain or have been made using relevant commodities produced in a country or subnational jurisdiction thereof listed as standard risk in accordance with Article 27.
10. Each Member State shall ensure that the annual checks carried out by their competent authorities cover, at national level, at least 5% of the operators, and traders that are not SMEs, established in that Member State placing, making available on or exporting from the Union market relevant products that contain or have been made using relevant commodities produced in a country or subnational jurisdiction thereof listed as high risk in accordance with Article 27.

OPTION C:

9. Each Member State shall ensure that the annual checks carried out by their competent authorities cover, at national level, at least 2% of the operators, and traders that are not SMEs, established in that Member State placing, making available on or exporting from the Union market relevant products that contain or have been made using relevant commodities produced in a country or subnational jurisdiction thereof listed as low or standard risk in accordance with Article 27.

10. Each Member State shall ensure that the annual checks carried out by their competent authorities cover, at national level, at least 5% of the operators, and traders that are not SMEs, established in that Member State placing, making available on or exporting from the Union market relevant products that contain or have been made using relevant commodities produced in a country or subnational jurisdiction thereof listed as high risk in accordance with Article 27.

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10a. The quantified objective of checks to be carried out by competent authorities mentioned in paragraphs [9 and (*note: reference to paragraph 9 to be deleted in case option A above is selected*)] 10 shall be met separately for each of the relevant commodities. They shall be calculated by reference to the total number of operators, and traders that are not SMEs, who placed, made available on or exported from the Union market relevant products in the previous year. Operators, and traders that are not SMEs, shall be considered as having been checked where the competent authority has checked the relevant elements mentioned in Article 15(1)(a) and (b).

11. Without prejudice to checks planned in advance pursuant to paragraph 3, competent authorities shall conduct checks referred to in paragraph 1 when they obtain or are made aware of relevant information, including based on substantiated concerns provided by third parties under Article 29, concerning a potential non-compliance with this Regulation.

12. Checks referred to in paragraph 1 should be carried out without prior warning of the operator or trader.

13. The competent authorities shall keep records of the checks indicating in particular their nature and results, as well as on the measures taken in case of non-compliance. Records of all checks shall be kept for at least 5 years.

#### *Article 14a*

#### **Checks on relevant products calling for immediate action**

1. Based on the risk-based approach set out in paragraph 3 of Article 14, competent authorities shall also identify situations where relevant products call for immediate action, because they present such high risk of non-compliance with the provisions of this Regulation that they require to be checked by competent authorities before they are placed or made available on the Union market or exported. Competent authorities shall register such identified situations in the information system established under Article 31.

2. When a due diligence statement relating to such relevant products is made available by an operator, the information system shall identify the high risk of non-compliance with the provisions of this Regulation and inform competent authorities, which shall:

- (a) take immediate interim measures under Article 21 to suspend the placing or making available on the Union market of those relevant products or,
- (b) in the case of relevant products entering or leaving the Union market and once the electronic interface referred to in Article 26(1) is in place, shall require customs authorities for suspension under Article 24(6) of their release for free circulation or export.

3. The suspensions referred to in paragraph 2 shall end within 3 working days, starting from the date when the high risk of non-compliance is identified in the information system. Where the competent authorities, based on the result of the checks conducted within that period, conclude that they require additional time to establish whether the relevant products comply with the requirements of this Regulation, they shall extend the period of suspension, by additional periods of 3 working days, by means of additional interim measures taken under Article 21 or, in the case of relevant products entering or leaving the Union market, by notifying the customs authorities of the need to maintain the suspension under Article 24(6).

#### *Article 15*

#### **Checks on operators, and on traders that are not SMEs**

1. The checks on operators shall include:
  - (a) examination of the due diligence system, including risk assessment and risk mitigation procedures, and of documentation and records that demonstrate the proper functioning of the due diligence system;
  - (b) examination of documentation and records that demonstrate the compliance of a specific relevant product that the operator has placed, intends to place on or export from the Union market with the requirements of this Regulation, including, when applicable, through risk mitigation measures, as well as examination of the relevant due diligence statements;
2. The checks on operators may also include, where appropriate, notably where examinations mentioned in paragraph 1 have raised questions:
  - (a) on the ground examination of relevant commodities or of the relevant products with a view to ascertaining their conformity to the documentation used for exercising due diligence;
  - (b) any technical and scientific means adequate to determine the exact place where the relevant commodity was produced, including by requesting more specific geolocation information from the operators, as well as the species concerned;
  - (c) any technical and scientific means adequate to determine whether the relevant products are deforestation-free, including Earth observation data such as from Copernicus programme and tools, and
  - (d) spot checks, including field audits, including where appropriate in third countries, provided that such third countries agree, through cooperation with the administrative authorities of those third countries.
3. Checks on operators further down the supply chain, and traders that are not SMEs, that make available to competent authorities the reference numbers of existing due diligence statements in accordance with respectively Articles 4(9) and 6(5) shall consist in checking that the existing due diligence statements fulfilled the requirements of Chapter 2, including that no or only negligible risk was found.

#### *Article 16*

#### **Checks on traders that are SMEs**

1. The checks on traders that are SMEs shall include the examination of documentation and records that demonstrate the compliance with Article 6(2), (3) and (4).

2. The checks on traders that are SMEs may also include, where appropriate, notably where examinations mentioned in paragraph 1 have raised questions, spot checks, including field audits.

#### *Article 17*

### **Recovery of costs by competent authorities**

1. Member States may authorise their competent authorities to reclaim from the operators or traders the totality of the costs of their activities with respect to instances of non-compliance.
2. The costs referred to in paragraph 1 may include the costs of carrying out testing, the costs of storage and the costs of activities relating to products that are found to be non-compliant and are subject to corrective action prior to their release for free circulation, their placing on or exporting from the Union market.

#### *Article 18*

### **Cooperation and exchange of information**

1. Competent authorities shall cooperate with each other and with customs authorities from their Member State, with competent authorities and customs authorities from other Member States, with the Commission, and if necessary, with administrative authorities of third countries in order to ensure compliance with this Regulation.
2. Competent authorities shall establish administrative arrangements with the Commission concerning the transmission of information on investigations and the conduct of investigations.
3. Competent authorities shall exchange information necessary for the enforcement of this Regulation, including through the register established pursuant to Article 31. This shall include giving access to and exchange of data on operators and traders including due diligence statements with other Member States' competent authorities to facilitate the enforcement of this Regulation.
4. Competent authorities shall immediately alert competent authorities of other Member States and the Commission when they detect infringement of this Regulation and serious shortcomings that may affect more than one Member State. Competent authorities shall, in particular, inform competent authorities of other Member States when they detect a relevant product on the market that is not compliant with this Regulation, to enable the withdrawal or recall of such product from sales in all Member States.
5. At the request of a competent authority, Member States shall provide to it the information necessary to ensure compliance with this Regulation.

#### *Article 19*

### **Reporting**

1. Member States shall make available to the Commission, at the latest by 30 April of each year, information on the application of this Regulation during the previous calendar year.

This information shall include their plans of checks, the number and the results of the checks carried out on operators and traders, including the contents of these checks, the quantity (expressed in net mass or, when applicable, volume, or number of units)<sup>35</sup> of relevant products checked in relation to the total quantity of relevant products placed on the market or exported, the countries of production of relevant commodities as well as information on the types of non-compliance identified, the measures taken in case of non-compliance and the costs of controls recovered.

- 1a. Member States shall make available to the public, at the latest by 30 April of each year, information on the application of this Regulation during the previous calendar year, including aggregate information on the checks carried out, notably the percentage of operators and traders that are not SMEs established in the Member State that were checked during the previous calendar year, and the percentage of the quantity of relevant products checked that contain, have been fed with or have been made using each of the relevant commodities that were made available on or exported from the Union market by operators and traders that are not SMEs established in that Member State that were checked during the previous calendar year.
2. The Commission services shall make publicly available, at the latest by 30 October of each year, a Union-wide overview of the application of this Regulation based on the data submitted by the Member States under paragraph 1.

#### *Article 20*

#### **Enhanced scrutiny**

(deleted)

#### *Article 21*

#### **Interim measures**

Where, including following the checks referred to in Article 15 and 16, possible serious shortcomings have been detected, or risks have been identified pursuant to Article 14a(2), the competent authorities may take immediate interim measures, including seizure or suspension of the placing or making available on and exporting from the Union market of the relevant products.

#### *Article 22*

#### **Corrective action in case of non-compliance**

1. Without prejudice to Article 23, where competent authorities establish that an operator or trader has not complied with its obligations under this Regulation or that a relevant product placed or made available on the Union market or exported from it is not compliant with this Regulation, they shall without delay require the relevant operator or trader to take appropriate and proportionate corrective action to bring the non-compliance to an end.

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35 The quantity must be expressed in kilograms of net mass or, when applicable, in the supplementary unit set out in Annex I to Council Regulation (EEC) No 2658/87 against the indicated Harmonised System code. A supplementary unit is applicable when it is defined consistently for all possible subheadings under the Harmonised System code mentioned in the due diligence statement.

2. For the purposes of paragraph 1, the corrective action required to be taken by the operator or trader shall include, as applicable:
  - (a) rectifying any formal non-compliance, in particular with the requirements of Chapter 2 of this Regulation;
  - (b) preventing the relevant product from being placed, made available on or exported from the Union the market;
  - (c) withdrawing or recalling the relevant product immediately;
  - (d) donating the relevant product to charitable or public interest purposes or, if this is not possible, disposing of it.
3. If the operator or trader fails to take corrective action referred to in paragraph 2 or where the non-compliance referred to in paragraph 1 persists, competent authorities shall secure application of the prescribed corrective action referred to in paragraph 2 by all means available to them under the law of the Member State concerned.

### *Article 23* **Penalties**

**Article 23 :** la Présidence note les réticences exprimées par un petit nombre de délégations concernant la flexibilité nécessaire pour la mise en place de sanctions en lien avec leur cadre national. Suite aux échanges avec l'ensemble des délégations, elle estime que cet article constitue un bon équilibre entre flexibilité laissée aux Etats membres et cadrage sur les éléments essentiels permettant de disposer d'un cadre suffisamment harmonisé.

1. Member States shall lay down rules on penalties applicable to infringements of the provisions of this Regulation by operators and traders and shall take all measures necessary to ensure that they are implemented. Member States shall notify the Commission of those provisions and without delay of any subsequent amendments affecting them.
2. The penalties provided for in paragraph 1 shall be effective, proportionate and dissuasive, and shall include:
  - (a) fines proportionate to the environmental damage and the value of the relevant commodities or products concerned, calculating the level of such fines in such way as to make sure that they effectively deprive those responsible of the economic benefits derived from their infringements, and gradually increasing the level of such fines for repeated infringements; the top of the range of the possible amounts for such fines shall be set at least at 4 % of the operator or trader's annual turnover in the Member State or Member States concerned, where the operator or trader is a legal person;
  - (b) if applicable, confiscation of the relevant products concerned from the operator and/or trader;
  - (c) confiscation of revenues gained by the operator and/or trader from a transaction with the relevant commodities and products concerned;
  - (d) temporary exclusion for a maximum period of 12 months from public procurement processes.

## Chapter 4

### Procedures for relevant products entering or leaving the Union market

#### *Article 24* Controls

**Article 24 :**

Certains Etats membres se sont interrogés sur la manière d’interagir entre les autorités douanières et les autorités compétentes d’un autre Etat membre. A ce sujet, il peut être noté que dans bien des cas, il est d’usage pour les autorités douanières d’un pays d’être en contact avec les autorités douanières des autres pays, qui peuvent servir de relais. Ces contacts se font notamment via le CRMS (Customs Risk Management System) et son RIF (Risk Information Form). Ces outils permettent d’assurer le contact lorsque c’est utile ; ils n’empêchent évidemment pas des contacts plus directs dès lors que ceux-ci sont établis. Il est par ailleurs rappelé qu’une fois l’interface électronique en place, ces contacts seront rendus très fluides.

Une délégation a rappelé ses commentaires sur le paragraphe 4, demandant la suppression de l’exception notée à la fin de ce paragraphe. A ce sujet, la Présidence souhaite indiquer que ce dernier membre de phrase permet de clarifier que lorsque l’interface « B to G » sera en place, celle-ci permettra que la personne saisissant sa déclaration de diligence raisonnées sur cette interface puisse directement transmettre via cette interface le numéro de référence de sa déclaration, sans avoir besoin de noter ce numéro dans une déclaration en douane. Il est utile de préciser ce point pour l’efficacité du système et la sécurité juridique de ses usagers. C’est pourquoi il est proposé de maintenir ce membre de phrase.

A la demande de certaines délégations, il est précisé explicitement au paragraphe 4a(a) que les paragraphes 5 à 8 ne s’appliquent pas avant la mise en place de l’interface prévue à l’article 31.

Une délégation s’est interrogée sur l’opportunité de préciser les modalités de fonctionnement de la période transitoire soient précisées. Suite aux discussions avec l’ensemble des délégations, la Présidence propose de maintenir le niveau de détail actuel, pour tenir compte de la nécessité que les Etats membres puissent avoir suffisamment de marge de manœuvre pour avoir recours à leurs systèmes nationaux, de manière à tenir compte de leurs spécificités nationales.

1. Relevant products placed under the customs procedure ‘release for free circulation’ or ‘export’ shall be subject to the controls and measures laid down in this Chapter. The application of this Chapter is without prejudice to any other provisions of this Regulation as well as to other Union legislation governing the release for free circulation or export of goods, in particular the Union Customs Code and its Articles 46, 47, 134 and 267. Chapter VII of Regulation (EU) No. 2019/1020 of the European Parliament and of the Council<sup>36</sup> shall however not apply to controls on relevant products entering the Union market in so far as the application and enforcement of this Regulation is concerned.
2. Competent authorities shall be responsible for the overall enforcement of this Regulation with regard to a relevant product entering or leaving the Union market. In particular, competent authorities shall be responsible, in accordance with Article 14, of identifying

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36 Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011.

checks to be carried out based on a risk-based approach and of establishing, through the checks referred to in Article 14, whether any such relevant product complies with the requirements of this Regulation. The competent authorities shall carry out these duties in accordance with the relevant provisions of Chapter 3 of this Regulation.

3. Without prejudice to paragraph 2, customs authorities shall carry out controls on the customs declarations lodged in relation to relevant products entering or leaving the Union market in accordance with Articles 46 and 48 of Regulation (EU) No 952/2013. Such controls shall primarily be based on risk analysis, as established in Article 46(2) of Regulation (EU) No 952/2013.
4. The reference number of the due diligence statement shall be made available to customs authorities before the release for free circulation or export of a relevant product entering or leaving the Union. For that purpose, the reference number of the due diligence statement assigned by the information system referred to in Article 31 in relation to a such relevant product shall be made available to customs authorities by the person lodging the customs declaration for release for free circulation or export of that relevant product by including the reference number of the due diligence statement in the customs declaration when lodging such customs declaration, except where the due diligence statement is made available through the electronic interface mentioned in Article 26(2).
- 4a. For the purpose of taking into account compliance with the provisions of this Regulation in allowing a relevant product to be released for free circulation or exported:
  - (a) Until the electronic interface referred to in Article 26(1) is in place, paragraphs 5 to 8 shall not apply, and customs authorities shall exchange information and cooperate with competent authorities in accordance with Article 25, and, where necessary, take into account such exchange of information and cooperation in allowing relevant products to be released for free circulation or exported;
  - (b) Once the electronic interface referred to in Article 26(1) is in place, paragraphs 5 to 8 shall apply, and notifications and requests under paragraphs 5 to 8 shall take place by means of that electronic interface.
5. When carrying out controls on customs declaration for release for free circulation or export of a relevant product entering or leaving the Union market, customs authorities shall examine, using the electronic interface referred to in Article 26(1), the status assigned to the corresponding due diligence statement by competent authorities in the register referred to in Article 31.
6. Where the status referred to in paragraph 5 indicates that the relevant product entering or leaving the Union market has been identified, pursuant to Article 14a(2), as requiring to be checked before it is placed or made available on the Union market or exported, customs authorities shall suspend the release for free circulation or export of that relevant product.
7. Where all other requirements and formalities under Union or national law relating to the release for free circulation or export have been fulfilled, customs authorities shall allow a relevant product entering or leaving the Union market to be released for free circulation or exported in any of the following circumstances:
  - (a) Where the status referred to in paragraph 5 does not indicate that such relevant product has been identified, pursuant to Article 14a(2), as requiring to be checked before it is placed or made available on the Union market or exported;
  - (b) Where the release for free circulation or export has been suspended in accordance with paragraph 6, and the competent authorities have not requested to maintain the

- suspension before the end of the suspension period set out, and, if applicable, extended, pursuant to Article 14a(3);
- (c) Where the release for free circulation or export has been suspended in accordance with paragraph 6, and the competent authorities have notified customs authorities that the suspension of the release for free circulation or export of the relevant products can be lifted.
8. Where the competent authorities conclude that a relevant product entering or leaving the Union market is not compliant with this Regulation, they shall notify the customs authorities accordingly and customs authorities shall not allow the release for free circulation or export of that relevant product.
9. (deleted)
- 9a. The release for free circulation or export shall not be deemed proof of compliance with Union law and, in particular, with this Regulation.

#### *Article 25*

#### **Exchange of information and cooperation among authorities**

1. To enable the risk-based approach referred to in Article 14(3) for relevant products entering or leaving the Union market and to ensure that checks are effective and performed in accordance with the requirements of this Regulation, the Commission, competent authorities and customs authorities shall cooperate closely and exchange information.
2. Customs authorities and competent authorities shall cooperate in accordance with Article 47(2) of Regulation (EU) No 952/2013 and exchange information necessary for the fulfilment of their functions under this Regulation, including via electronic means.
- 2a. The customs authorities may communicate, in accordance with Article 12(1) of Regulation (EU) No 952/2013, confidential information acquired by the customs authorities in the course of performing their duties, or provided to the customs authorities on a confidential basis, to the competent authority of the Member State where the operator or trader is established.
- 2b. Where the competent authorities have received information in accordance with the preceding paragraphs, those competent authorities may communicate the information to competent authorities from other Member States pursuant to Article 18(3).
3. Risk-related information shall be exchanged:
- (a) Between customs authorities in accordance with Article 46(5) of Regulation (EU) No 952/2013; and
- (b) Between customs authorities and the Commission in accordance with Article 47(2) of Regulation (EU) No 952/2013;
- (c) Between customs authorities and competent authorities, including competent authorities from other Member States, in accordance with Article 47(2) of Regulation (EU) No 952/2013.

#### *Article 26*

## Electronic interfaces

1. The Commission shall develop an electronic interface based on the EU Single Window Environment for Customs\* *[when the Regulation is adopted, reference can be made to it directly]* to enable the transmission of data, in particular the notifications and requests referred to in Article 24, paragraphs 5 to 9, between national customs systems and the information system referred to in Article 31. This electronic interface shall be in place at the latest four years from the date of adoption of the relevant implementing act referred to in paragraph 3.
2. The Commission may develop an electronic interface based on the EU Single Window Environment for Customs\* *[when the Regulation is adopted, reference can be made to it directly]* to enable:
  - (a) Traders and operators to make available the due diligence statement of a relevant commodity or product via national single window environment for customs referred to in Article 8 of Regulation *[PO to check the reference number and article number after the proposal is adopted]* and receive feedback thereon from competent authorities; and
  - (b) The transmission of that due diligence statement to the information system referred to in Article 31 of this Regulation.
3. The Commission shall adopt implementing acts specifying the details of implementation arrangements for paragraphs 1 and 2 and, in particular, defining the data, including its format, to be transmitted in accordance with paragraphs 1 and 2. The implementing act shall also clarify how any changes in the status assigned by competent authorities to due diligence statements in the register referred to in Article 31 shall be notified immediately and automatically to the relevant customs authorities through the electronic interface mentioned in paragraph 1. The implementing acts may also determine that certain specific data available in the due diligence statement and necessary for activities of customs authorities, including surveillance and fight against fraud, is transmitted and registered in EU and national customs systems. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 34(2).

## **Chapter 5**

# **Country benchmarking system and cooperation with third countries**

### *Article 27*

#### **Assessment of countries**

1. This Regulation establishes a three-tier system for the assessment of countries, or subnational jurisdictions thereof. This system shall apply to both EU Member States and third countries. Under this system, countries, or subnational jurisdictions thereof, shall be classified in one of the following risk categories:
  - (a) ‘high risk’, which means countries, or subnational jurisdictions thereof, for which the assessment mentioned in paragraph 2 results in the identification of an exceptionally high risk of producing in such countries, or in subnational jurisdictions thereof, relevant commodities for which the relevant products are not compliant with Article 3, point (a);
  - (b) ‘low risk’, which means countries, or subnational jurisdictions thereof, for which the assessment mentioned in paragraph 2 concludes that there is a sufficient assurance that instances of producing in such countries, or in subnational jurisdictions thereof, relevant commodities for which the relevant products are not compliant with Article 3, point (a), are exceptional;
  - (c) ‘standard risk’, which mean countries, or subnational jurisdictions thereof, which do not fall in the category of ‘high risk’ nor the category of ‘low risk’.
- 1a. Upon the entry into force of this Regulation, all countries shall be assigned a standard level of risk. Unless identified in accordance with this Article as presenting a low or high risk, countries shall remain in the category of countries presenting a standard risk. The Commission shall identify countries, or subnational jurisdictions thereof, that present a low or high risk in accordance with paragraph 1. The list of the countries, or subnational jurisdictions thereof, that present a low or high risk shall be published by means of implementing acts to be adopted in accordance with the examination procedure referred to in Article 34(2), no later than 18 months from the entry into force of this Regulation. That list shall be reviewed, and updated if appropriate, as often as necessary, and at least every two years, in light of new evidence-based information provided by Member States or third countries, international organisations and bodies, research institutes, or other relevant stakeholders.
2. The identification of low and high risk countries, or subnational jurisdictions thereof, pursuant to paragraph 1 shall be based on an assessment by the Commission taking into account all relevant sources of information, including information provided by the country concerned, and based on internationally recognised sources and on the latest scientific evidence. The identification shall be objective and transparent, and be based on the following assessment criteria:
  - (a) rate of deforestation and forest degradation,
  - (b) rate of conversion of forest to agricultural use to produce relevant commodities,
  - (c) production trends of relevant commodities and of relevant products.
- 2a. The assessment mentioned in paragraph 2 shall also take into consideration the following elements:

- (a) whether the nationally determined contribution (NDC) to the United Nations Framework Convention on Climate Change covers emissions and removals from agriculture, forestry and land use which ensures that emissions from deforestation and forest degradation are accounted towards the country's commitment to reduce or limit greenhouse gas emissions as specified in the NDC;
  - (b) agreements and other instruments concluded between the country concerned and the Union and/or its Member States that address deforestation or forest degradation and facilitates compliance of relevant products with the requirements of this Regulation and their effective implementation;
  - (c) whether the country concerned has national or subnational laws in place, including in accordance with Article 5 of the Paris Agreement, and takes effective enforcement measures to tackle the root causes leading to deforestation and forest degradation, and to avoid and sanction activities leading to deforestation and forest degradation, and in particular whether sanctions of sufficient severity to deprive of the benefits accruing from deforestation or forest degradation are applied.
- 2b. The Commission shall engage in a specific dialogue with all countries that are classified as high risk, to help them reduce their level of risk. Where, based on the assessment mentioned in paragraph 2, the Commission is considering a change of risk category to the high risk category for a country, it shall also engage in a specific dialogue with that country, in order to contribute to preventing such a change if possible.
3. Without prejudice to the previous paragraph, the Commission shall formally notify the countries concerned of its intent to assign a change to the existing risk category and invite them to provide any information deemed useful in this regard. The Commission shall also inform the competent authorities of such intent. The Commission shall allow the countries adequate time to provide a response, which may include information on measures taken by the country to remedy the situation in case its status or the status of subnational jurisdictions thereof might be changed to a higher risk category. It shall include in the notification the following information:
  - (a) the reason or reasons for the intention to change the risk identification of the country or subnational jurisdictions thereof;
  - (b) the invitation to respond to the Commission in writing with regard to the intention to changing the risk status of the country or subnational jurisdictions thereof;
  - (c) the consequences of its identification as a high or low risk country.
4. The Commission shall, without delay, notify the third country concerned and the competent authorities of inclusion or removal of a country, or subnational jurisdictions thereof, from the list referred to in paragraph 1.

#### *Article 28*

#### **Cooperation with third countries**

**Article 28:** au paragraphe 1, suite aux commentaires de certaines délégations, il est proposé de maintenir l'approche envisagée, en parlant de 'strategic framework' pour trouver un bon équilibre entre la nécessité d'établir une approche stratégique, sans exiger de formalisation précise, et en laissant aux Etats membres une marge de manœuvre suffisante vis-à-vis de l'approche de la Commission.

1. The Commission, and interested Member States, shall engage with producer countries concerned by this Regulation to develop partnerships and cooperation to jointly address

deforestation and forest degradation and the root causes leading to them. The Commission shall develop a comprehensive EU strategic framework for such engagement, including the mobilisation of all relevant EU instruments. Such partnerships and cooperation mechanisms will focus on the conservation, restoration and sustainable use of forests, deforestation, forest degradation and the transition to sustainable commodity production, consumption processing, access to certification and trade methods. Partnerships and cooperation mechanisms may include structured dialogues, support programmes and actions, administrative arrangements and provisions in existing agreements or agreements that enable producer countries to make the transition to an agricultural production that facilitates the compliance of relevant products with the requirements of this regulation. Such agreements and their effective implementation will be taken into account as part of the benchmarking under Article 27 of this Regulation.

2. Partnerships and cooperation should allow the full participation of all stakeholders, including civil society, indigenous peoples, local communities, and the private sector including, SMEs and smallholders.
3. Partnerships and cooperation shall promote the development of integrated land use planning processes, relevant legislations, fiscal incentives and other pertinent tools to improve forest and biodiversity conservation, sustainable management and restoration of forests, tackle the conversion of forests and vulnerable ecosystems to other land uses, optimise gains for the landscape, tenure security, agriculture productivity and competitiveness, transparent supply chains, strengthen the rights of forest dependent communities including smallholders, local communities, and indigenous peoples, whose rights are set out in the United Nations Declaration on the Rights of Indigenous Peoples, and ensure public access to forest management documents and other relevant information.
4. The Commission shall engage in international bilateral and multilateral discussion on policies and actions to halt deforestation and forest degradation, including in multilateral fora such as Convention on Biological Diversity, Food and Agriculture Organization of the United Nations, United Nations Convention to Combat Desertification, United Nations Environment Assembly, United Nations Forum on Forests, United Nations Framework Convention on Climate Change, World Trade Organisation, G7 and G20. Such engagement shall include the promotion of the transition to sustainable agricultural production and sustainable forest management as well as the development of transparent and sustainable supply chains as well as continue efforts towards identifying and agreeing robust standards and definitions that ensure a high level of protection of forest ecosystems.
5. The Commission, and interested Member States, shall engage in dialogue and cooperation with other major consuming countries, in coherence with the strategic framework referred to in paragraph 1, to promote the adoption of ambitious requirements to minimise such countries' contribution to deforestation and forest degradation, and a global level playing field.

## **Chapter 6**

### **Substantiated concerns**

#### *Article 29*

#### **Natural or legal persons' substantiated concerns**

1. Natural or legal persons shall be entitled to submit substantiated concerns to competent authorities when they deem, that one or more operators or traders are failing to comply with the provisions of this Regulation.
2. Competent authorities shall diligently and impartially assess the substantiated concerns, including whether the claims are well-founded, and take the necessary steps, including checks and hearings of operators and traders, with a view to detecting potential breaches of the provisions of this Regulation and, where appropriate, interim measures under Article 21 to prevent the placing, making available on and export from the Union market of relevant products under investigation.
3. The competent authority shall, as soon as possible and in accordance with the relevant provisions of national law, inform the persons referred to in paragraph 1, which submitted the substantiated concerns, of the follow-up given to the submission and shall provide the reasons for it.

#### *Article 30*

#### **Access to justice**

(deleted)

## Chapter 7 Information System

### Article 31

#### “Register” Information System

##### **Article 31 :**

Sur proposition d'une délégation, précision au paragraphe 2(ba) sur le fait que le registre doit également permettre la mise à disposition du numéro de référence des déclarations de diligence raisonnée existantes, pour les opérateurs et commerçants utilisant les procédures simplifiées prévues en application des articles 4(9) et 6(5).

En réponse à la question d'une délégation, il est précisé que le système d'information sera bien disponible dans différentes langues (« localisation »). Les détails de la mise en œuvre de cet élément pourront être mis en place via l'acte d'exécution mentionné au paragraphe 3. Comme c'est le cas classiquement dans ce type de système d'information, les parties fixes de l'interface seront traduites dans toutes les langues. Pour les parties à remplir par les utilisateurs, la manière de procéder habituelle est d'avoir recours autant que possible à des questions fermées permettant des réponses en cochant des cases (dans ce cas, pas besoin de traduction des données saisies par les utilisateurs) ; lorsqu'il est indispensable d'avoir des textes libres, il est généralement fourni un lien direct dans l'interface vers des logiciels de traduction automatique. Ce modèle pourra également servir de base dans ce cas.

1. The Commission shall establish and maintain, by the date established in Article 36(2), an information system (“Register”) which shall contain the due diligence statements made available pursuant to Article 4(2).
2. The information system shall provide at least for the following functionalities:
  - (a) registration of operators and traders and their authorised representatives in the EU; for operators placing relevant products under the customs procedure ‘release for free circulation’ or ‘export’, the Economic Operators Registration and Identification (EORI) number established pursuant to Article 9 of Regulation (EU) No 952/2013 shall be included in their registration profile;
  - (b) registration of due diligence statements including the delivery to the operator or trader concerned of a reference number for each due diligence statement;
  - (ba) making available of the reference number of existing due diligence statements in application of Articles 4(9) and 6(5);
  - (bb) allow the conversion of data from relevant systems to identify geolocation, to ensure that competent authorities have access to the identification of the geographical location of relevant plots of land with the required level of precision;
  - (c) registration of the outcome of checks carried out on due diligence statements in accordance with Chapter 3;
  - (d) interconnection with customs via the EU Single Window Environment for Customs\* [*when the Regulation is adopted, reference can be made to it directly*], in accordance with Article 26, including to allow the notifications and requests referred to in Article 24(5) to (9);
  - (e) allow the risk profiling needed to establish the plan of checks referred to in Article 14(3), including the risk profiling of operators, traders and relevant commodities and products for the purpose of identifying, based on electronic data-processing techniques, operators and traders to be checked as referred to in Article 14(3), and relevant products that require to be checked by competent authorities before they

are placed or made available on the Union market or exported as referred to in Article 14a(1);

- (f) allow administrative assistance and cooperation between competent authorities, and between competent authorities and the Commission, to exchange information and data;
  - (g) allow communication between competent authorities and operators and traders for the purposes of implementation of this Regulation, including, where appropriate, through the use of digital supply management tools, such as blockchain technology, notably in relation to communication between operators and traders in accordance with Article 4(8).
3. The Commission shall, by means of implementing acts, establish rules for the functioning of the information system, including rules for the protection of personal data and exchange of data with other IT systems. The implementing acts shall also clarify how competent authorities shall assign a status to due diligence statements in the register, in particular to indicate that the corresponding relevant products have been identified as requiring to be checked before they are placed or made available on the Union market or exported in accordance with Article 14a(1). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 34(2) of this Regulation.
  4. The Commission shall provide access to that information system to customs authorities, competent authorities, operators and traders and, if applicable, their authorised representatives, in accordance with their respective obligations under this Regulation.
  5. In line with the EU's Open Data Policy, the Commission shall provide access to the wider public to the complete anonymised datasets of the information system in an open format that can be machine-readable and that ensures interoperability, re-use and accessibility.

## Chapter 8 Review

### Article 32 Review

#### **Article 32 :**

Concernant le calendrier du réexamen, il est proposé de maintenir l'approche déjà proposée, qui apparaît constituer un bon équilibre entre les demandes des délégations d'avoir un réexamen dans un calendrier accéléré, ou au contraire de repousser ce réexamen. Il est également proposé de ne pas introduire de disposition imposant à la Commission un calendrier pour les travaux préparatoires, afin de respecter son droit d'initiative.

Certaines délégations ont demandé à revoir la formulation concernant le caoutchouc au paragraphe 1. Dans ce cadre, il est proposé une formulation alternative permettant d'indiquer que le caoutchouc sera un des produits de base ('commodities') à évaluer, mais sans exclure les travaux nécessaires également sur d'autres produits de base potentiels.

Pour tenir compte des évolutions à l'article 14, ajout des mots 'evaluate and'.

Enfin, dans le cadre de l'approche « restreinte » identifiée pour la définition de « dégradation forestière », il est proposé d'ajouter une phrase à la fin du paragraphe 1 pour demander un travail complémentaire sur ce sujet.

1. No later than two years after the entry into force, the Commission shall carry out a first review of this Regulation, and shall present a report to the European Parliament and the Council accompanied, if appropriate, by a legislative proposal. The report shall focus in particular on an evaluation of the need and the feasibility of extending the scope of this Regulation to other ecosystems, including land with high carbon stocks and land with a high biodiversity value such as grasslands, peatlands and wetlands and further commodities, including rubber. The report shall also include an evaluation of the need for and feasibility of additional trade facilitation tools to support the achievement of the objectives of the Regulation including through recognition of certification schemes. The report shall take into account the impact of the Regulation on farmers, in particular smallholders, indigenous peoples, and local communities. The report shall also evaluate and identify quantified objectives for the annual checks to be carried out by competent authorities that are appropriate to ensure the enforcement of the Regulation and a harmonised approach across the Union. The report shall also address the further extension of the definition of 'forest degradation', on the basis of an in-depth analysis, and taking into account progress made in international discussions on the matter.
2. No later than five years after the entry into force and at least every five years thereafter, the Commission shall carry out a general review of this Regulation, and shall present a report to the European Parliament and the Council accompanied, if appropriate, by a legislative proposal. The reports shall include an evaluation of the impact of the Regulation with regard to the objective of avoiding deforestation and forest degradation. The first of the reports shall include in particular, based on specific studies, an evaluation of the impact of the Regulation on farmers, in particular smallholders, indigenous peoples, and local communities and the possible need for additional support for the transition to sustainable supply chains.

3. Without prejudice to the review under paragraph 2, a first review of the list of relevant products in Annex I shall be carried out by the Commission no later than two years after the entry into force of this Regulation, and thereafter at regular intervals and at least every five years, in order to assess whether it is appropriate to amend such list. The reviews shall be based on an assessment of the effect of the relevant products on deforestation and forest degradation, and take into account changes in consumption, as indicated by scientific evidence.
4. Following a review under paragraph 3, the Commission shall, where appropriate, make legislative proposals to amend the list of relevant products in Annex I.

## **Chapter 9**

### **Final provisions**

#### *Article 33*

#### **Exercise of the delegation**

(deleted)

#### *Article 34*

#### **Committee procedure**

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011<sup>37</sup>.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply, having regard to the provisions of Article 11 thereof.

#### *Article 35*

#### **Repeals**

1. Regulation (EU) No 995/2010 is repealed with effect from the date of application of this Regulation set out in Article 36(2).
2. However, Regulation (EU) No 995/2010 shall continue to apply during 3 years from the date set out in Article 36(2) to timber and timber products as defined in Article 2, point (a), of Regulation (EU) No 995/2010 that were produced before the date set out in Article 36(1) and placed on the Union market on or after the date set out in Article 36(2).
3. By derogation from Article 1, second paragraph, the timber and timber products as defined in Article 2, point (a), of Regulation (EU) No 995/2010 that were produced before the date set out in Article 36(1) and placed on the Union market more than three years after the date set out in Article 36(2) shall comply with the requirements of this Regulation.

#### *Article 36*

#### **Entry into force and date of application**

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
2. Articles 3 to 12, 14 to 22, 24, 29 and 30 shall apply 18 months from the entry into force of this Regulation.

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37 <sup>37</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

3. Articles referred to paragraph 2 shall apply 24 months from the entry into force of this Regulation for operators that are microenterprises<sup>38</sup> established by December 31, 2020, except for products covered in the Annex to Regulation (EU) No 995/2010.



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38      38<sup>38</sup> As defined in Article 3(1) of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC.

## ANNEX I

### Annexe I :

Suite à la préoccupation exprimée par certaines délégations, la Présidence a corrigé le code 4414, car le code 4414 00 n'existe pas. A noter que de ce fait, tous les codes commençant par 4414 sont couverts.

A la demande d'une délégation, précision de 'ex' devant le code 4419 pour exclure les produits en bambou ; il est à noter que le 'ex' devant le code 9401 suffit pour exclure les produits n'étant pas en bois.

The table below lists goods as classified in the Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87<sup>37</sup>, that are referred to in Article 1 of the present Regulation.

The present Regulation shall not apply to goods if they are produced entirely from material that has completed its lifecycle and would otherwise have been discarded as waste, as defined in Article 3(1) of Directive 2008/98/EC<sup>38</sup>. This exemption does not apply to by-products of a manufacturing process, where that process involved material that was not waste as defined in Article 3(1) of that Directive.

<b>Relevant commodity</b>	<b>Relevant products</b>
Cattle	ex 0102 Live cattle ex 0201 Meat of cattle, fresh or chilled ex 0202 Meat of cattle, frozen ex 0206 10 Edible offal of cattle, fresh or chilled ex 0206 22 Edible cattle livers, frozen ex 0206 29 Edible cattle offal (excluding tongues and livers), frozen 160250 Other prepared or preserved meat, meat offal, blood of bovine animals ex 4101 Raw hides and skins of cattle (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not dehaired or split ex 4104 Tanned or crust hides and skins of cattle, without hair on, whether or not split, but not further prepared ex 4107 Leather of cattle, further prepared after tanning or crusting, including parchment-dressed leather, without hair on, whether or not split
Cocoa	1801 00 00 Cocoa beans, whole or broken, raw or roasted

37 The nomenclature codes are taken from the Combined Nomenclature as defined in Article 1(2) of Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff and as set out in Annex I thereto, which are valid at the time of publication of this Regulation and mutatis mutandis as amended by subsequent legislation.

38 Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, OJ L 312, 22.11.2008, p. 3–30.

	<p>1802 00 00 Cocoa shells, husks, skins and other cocoa waste</p> <p>1803 Cocoa paste, whether or not defatted</p> <p>1804 00 00 Cocoa butter, fat and oil</p> <p>1805 00 00 Cocoa powder, not containing added sugar or other sweetening matter</p> <p>1806 Chocolate and other food preparations containing cocoa</p>
Coffee	0901 Coffee, whether or not roasted or decaffeinated; coffee husks and skins; coffee substitutes containing coffee in any proportion
Oil palm	<p>1511 Palm oil and its fractions, whether or not refined, but not chemically modified</p> <p>1207 10 Palm nuts and kernels</p> <p>1513 21 Crude palm kernel and babassu oil and fractions thereof</p> <p>1513 29 Palm kernel and babassu oil and their fractions, whether or not refined, but not chemically modified (excluding Crude oil)</p> <p>2306 60 Oilcake and other solid residues of palm nuts or kernels, whether or not ground or in the form of pellets, resulting from the extraction of palm nuts oils or kernels oils</p> <p>ex 3823 19 30 Palm fatty acid distillate, whether or not hydrogenated, with free fatty acid content 80 % or more for use in the manufacture of</p>
Soya	<p>1201 Soya beans, whether or not broken</p> <p>1208 10 Soya bean flour and meal</p> <p>1507 Soya-bean oil and its fractions, whether or not refined, but not chemically modified</p> <p>2304 Oilcake and other solid residues, whether or not ground or in the form of pellets, resulting from the extraction of soya-bean oil</p>
Wood	<p>4401 Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms</p> <p>4402 Wood charcoal (including shell or nut charcoal), whether or not agglomerated</p> <p>4403 Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared</p> <p>4404 Hoopwood; split poles; piles, pickets and stakes of wood, pointed but not sawn lengthwise; wooden sticks, roughly trimmed but not turned, bent or otherwise worked, suitable for the manufacture of walking sticks, umbrellas, tool handles or the like; chipwood and the like</p> <p>4405 Wood wool; wood flour</p>

4406 Railway or tramway sleepers (cross-ties) of wood

4407 Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end-jointed, of a thickness exceeding 6 mm

4408 Sheets for veneering (including those obtained by slicing laminated wood), for plywood or for other similar laminated wood and other wood, sawn lengthwise, sliced or peeled, whether or not planed, sanded, spliced or end-jointed, of a thickness not exceeding 6 mm

4409 Wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, V-jointed, beaded, moulded, rounded or the like) along any of its edges, ends or faces, whether or not planed, sanded or end-jointed

4410 Particle board, oriented strand board (OSB) and similar board (for example, waferboard) of wood or other ligneous materials, whether or not agglomerated with resins or other organic binding substances

4411 Fibreboard of wood or other ligneous materials, whether or not bonded with resins or other organic substances

4412 Plywood, veneered panels and similar laminated wood

4413 00 00 Densified wood, in blocks, plates, strips or profile shapes

4414 Wooden frames for paintings, photographs, mirrors or similar objects

4415 Packing cases, boxes, crates, drums and similar packings, of wood; cable-drums of wood; pallets, box pallets and other load boards, of wood; pallet collars of wood

(Not including packing material used exclusively as packing material to support, protect or carry another product placed on the market.)

4416 00 00 Casks, barrels, vats, tubs and other coopers' products and parts thereof, of wood, including staves

4417 Tools, tool bodies, tool handles, broom or brush bodies and handles, of wood; boot or shoe lasts and trees, of wood

4418 Builders' joinery and carpentry of wood, including cellular wood panels, assembled flooring panels, shingles and shakes

ex 4419 Tableware and kitchenware, of wood

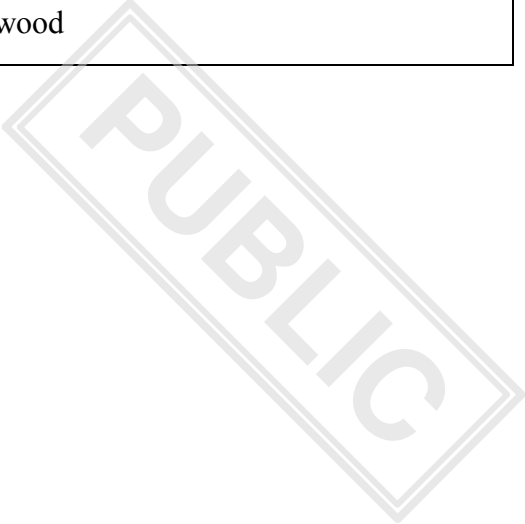
4420 Wood marquetry and inlaid wood; caskets and cases for jewellery or cutlery, and similar articles, of wood; statuettes and other ornaments, of wood; wooden articles of furniture not falling in Chapter 94

4421 Other articles of wood, including 4421 20 Coffins

Pulp and paper of Chapters 47 and 48 of the Combined Nomenclature, with the exception of bamboo-based and recovered (waste and scrap) products

ex 9401 Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof

	9403 30, 9403 40, 9403 50 00, 9403 60 and 9403 90 30 Wooden furniture 9406 10 00 Prefabricated buildings of wood
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ANNEX II  
*Due diligence statement*

**Annexe II :** à la demande d'une délégation, amendement de cohérence pour tenir compte du fait que l'article 9(1)(d) prévoit des dispositions particulières pour la géolocalisation en lien avec la nourriture du bétail.

Information to be contained in the due diligence statement in accordance with Article 4(2) of this Regulation:

1. Operator's name, address and, in case of relevant commodities and products entering or leaving the Union market, the Economic Operators Registration and Identification (EORI) number in accordance with Article 9 of Regulation (EU) No 952/2013;
2. Harmonised System code, free-text description, and quantity (expressed in net mass or, when applicable, volume, or number of units)<sup>39</sup> of the relevant product that is intended to be placed on the Union market by the operator;
3. Country of production and geolocation of all plots of land where the relevant commodities were produced. Where the relevant product contains or has been made using commodities produced in different plots of land, the geolocation of all different plots of land shall be included;
4. The text: "By submitting this due diligence statement the operator confirms that due diligence according to the provisions of Regulation XXXX/XX was carried out and no or only negligible risk was found that the relevant products are not compliant with Article 3(a) or (b)."

5. Signature in the following format:

Signed for and on behalf of:

Place and date of issue:

Name, function:

Signature:

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<sup>39</sup> The quantity must be expressed in kilograms of net mass or, when applicable, in the supplementary unit set out in Annex I to Council Regulation (EEC) No 2658/87 against the indicated Harmonised System code. A supplementary unit is applicable when it is defined consistently for all possible subheadings under the Harmonised System code mentioned in the due diligence statement.