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#### NOTE

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From: The Presidency  
To: Permanent Representatives Committee/Council

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Subject: Proposal for a 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  
- Policy debate

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1. In order to guide the discussion on the abovementioned legislative proposal at the forthcoming meeting of the Council (Environment) on 17 March 2022, the Presidency has prepared a background paper and two questions, as set out in the Annex to this note.
2. The Permanent Representatives Committee is invited to take note of the Presidency's background paper and questions and to forward them to the Council for the abovementioned policy debate.

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

**- Presidency note -**

Protecting forests is a crucial issue for our societies and future generations. Forests play a central role in combating climate change and biodiversity loss. They also contribute to the supply of materials, regulate certain natural processes, and account for the livelihoods of many of the poorest communities in the world.

**Urgent need to take action towards an ambitious and shared goal**

Forests are becoming an increasingly prominent topic in the discussions of European and international bodies. At the COP26 of the United Nations Framework Convention on Climate Change (UNFCCC) in November 2021, the role of forests and the land sector in accelerating climate change mitigation received widespread recognition. On that occasion, 141 leaders of states representing more than 90 % of the world's forests committed to working collectively to halt and reverse forest loss and land degradation by 2030 through the '**Leaders' Declaration on Forests and Land Use**', in which they recognised the need to join forces in a sustainable land use transition, a key objective for achieving the goals of the Paris Agreement.

A few days later, on 17 November 2021, the Commission forwarded its proposal for a Regulation on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation. This text, announced in the 2019 Commission communication ‘*Stepping up EU Action to Protect and Restore the World’s Forests*’, is part of a comprehensive European Union strategy, shared by the Member States, which was confirmed in the **European Green Deal**, the **EU Biodiversity Strategy for 2030** and the **European Farm to Fork Strategy**. The Regulation aims to respond to a strong societal demand, as demonstrated by the historically high level of participation in the online consultation initiated by the Commission, linked in particular to concerns about the changes in the world’s forests (between 1990 and 2020 the world lost 420 million hectares of forest, an area larger than the European Union).

The European Union has a particular responsibility in these global phenomena. It consumes significant quantities of raw and semi-processed products from national and international sources. The resulting business operations and supply-chain activities thus have many negative impacts on the environment, in particular on deforestation and forest degradation. Back in 2013, a Commission study showed that European countries were responsible for more than one third of deforestation linked to international trade in agricultural products<sup>1</sup>.

### **A proposal centred on an essential due diligence system**

The proposal for a Regulation aims to ensure that coffee, cocoa, palm oil, soya, beef and wood, as well as derivatives such as leather, chocolate and furniture, which are imported into and marketed in the EU or exported from the EU, have not caused deforestation or forest degradation during their production. The aim of the text is thus to take account of the impact of agricultural production on both deforestation and forest degradation.

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<sup>1</sup> European Commission, 2013. The impact of EU consumption on deforestation: Comprehensive analysis of the impact of EU consumption on deforestation. Study funded by the European Commission, DG ENV, and undertaken by VITO, IIASA, HIVA and IUCN NL <https://ec.europa.eu/environment/forests/pdf/1.%20Report%20analysis%20of%20impact.pdf>

To achieve this objective, the Regulation is based on a **due diligence system** to ensure the **transparency and traceability of value chains** for all operators and traders within a common and harmonised framework. This due diligence system is based on a forward-looking approach derived from risk assessment. Operators which import for the first time or export the products listed in Annex I to the Regulation to the EU, and traders which are not SMEs, are thus required to carry out a due diligence procedure evidenced by a mandatory statement before placing products on the market.

This includes a traceability requirement involving the collection of information making it possible to trace the source of production of the product and its route along the entire processing and supply chain, with a risk analysis and, where appropriate, the implementation of mitigation measures for the risk identified. The provisions of the Regulation thus make it possible to ensure that products are free of deforestation, whether **legal or illegal**. The effectiveness of the provisions must be guaranteed by a system of checks and penalties put in place by the competent authorities.

#### **A clear and common framework for effective enforcement**

Effective and harmonised implementation of the text requires a **common understanding of its provisions**. To this end, common definitions of all the key concepts will enable the measures proposed by the Commission to be applied in practice.

There is currently no international consensus on the concept of forest degradation. A number of coexisting definitions are used at national level. It has been the subject of numerous comments from delegations in the context of the ad hoc Working Party on the risk of deforestation and forest degradation associated with products placed on the EU market<sup>2</sup>, as has the related definition of sustainable harvesting operations.

Certain delegations have also pointed out that the definition of deforestation may be too narrow, as it is limited to the conversion of forest to agricultural use, whereas the conversion of forest to non-agricultural use could also be included in the scope of the definition.

The informal meeting of environment ministers in Amiens on 20 January and the meeting of agriculture and fisheries ministers on 21 February made it clear that there was support from all Member States for the objectives of the text. The meetings also gave the Member States an opportunity to express their vigilance as regards the operability of the text, the administrative burden on operators and the competent authorities, the extent of the checks involved, the issue of the scope of the basic products and ecosystems to be taken into account, and the definitions of the concepts (including the definition of forest degradation). Lastly, ministers also shared their national experience with environmental policy and the application of the EU Timber Regulation.

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<sup>2</sup> Ad hoc Working Party on the risk of deforestation and forest degradation associated with products placed on the EU market (AHWP DF).

The text was the subject of technical discussions in an ad hoc working party of experts from the various sectors concerned. The discussions organised by the Presidency enabled an initial examination of the text to take place and the Member States to express their views on all the articles. A number of important challenges emerged from these technical exchanges: the definitions, compatibility with WTO rules, cooperation with third countries, the proportionality of the proposed provisions, and the administrative burden associated with the implementation of the draft Regulation.

In order to take the negotiations forward, ministers are invited to exchange views on the following questions:

1. *Efficient and enforceable implementation of the due diligence system is essential to achieving the traceability needed to ensure that products have not involved deforestation and forest degradation. What are your proposals for ensuring an efficient and effective due diligence system?*
2. *Operational implementation of the Regulation will undoubtedly be based on a common application of the Regulation's key definitions. While definitions do exist for certain concepts, their use at European and international level is not harmonised. In order to facilitate the implementation of the Regulation, what are your suggestions for common definitions of terms such as deforestation and forest degradation, and for the related definition of sustainable harvesting operations, on the basis of the best available scientific knowledge?*

Speaking time: 3 minutes per Member State