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European Forest Owners' and Managers' considerations on the EC Proposal for a Deforestation and Forest Degradation Regulation

The proposal for a Deforestation and Forest Degradation Regulation, published by the European Commission on 17 November 2021, risks missing its aim due to inadequate definitions and unfeasible provisions for monitoring and implementation.

While forest managers and owners support the general objective of the EU initiative to curb global deforestation caused by EU consumption of certain products and commodities, we remain convinced that this should be achieved by strengthening existing governance frameworks for active and sustainable forest management. In the context of EU forests, this requires a coherent political framework with proportionate provisions regarding environmental objectives and climate change, but also economic aspects, trade, the bioeconomy, and the viability of rural areas. Extensive experience in setting provisions regarding sustainable and multifunctional forestry lies with EU Member States and is in effect implemented by forest owners and managers. Unfortunately, the approach proposed by the Commission essentially overlooks this experience and thereby hinders finding an appropriate way forward. Therefore, as forest owners and managers, we would like to bring the following considerations to the attention of EU co-legislators with the hope of developing a legislative framework that will bring added value.

Key take-aways:

1. Definitions should be workable and consistent with international forest reporting, thus adapted to the diversity of forests throughout the world
2. Monitoring of forest degradation needs to build on reliable methods
3. Country benchmarking should follow a transparent and comparable process
4. Obligations related to country risk categories should be differentiable and adjusted to the actual risk of deforestation
5. Requirements for operators need to be proportionate and implementable
6. Access to justice and entitlement to submit substantiated concerns need to be better balanced

1. Definitions should be workable and consistent with international forest reporting, thus adapted to the diversity of forests throughout the world

The proposal suggests a very detailed set of sustainability criteria for wood products under the term “sustainable harvesting operations” (Art. 2(7)). The proposed criteria are overly prescriptive and, at the same time, too vague and open to varying interpretations. Moreover, they do not take into account any specificities whatsoever (such as diverse forest types, structures, habitats or local conditions). This risks placing a bigger burden on those operators who already manage their land sustainably but will now have to go through a complicated and unclear process to prove it. Therefore, the definition of “sustainable harvesting operations” should be deleted.

The definition of “forest degradation” (Art. 2 (6)) also needs to be improved. Although harvesting can have an impact on a forest’s biological composition in the short term and in a small scale, this should not be considered as degradation since, in the long term, the natural dynamic of the forest ecosystem and its biodiversity features will be restored, as long as harvesting is done according to the principles of sustainable forest management. The proposed definition also overlooks countries’ specificities when it comes to understanding and reporting on forest degradation and its causes. The EU definition should not only cover the above-mentioned aspects but should also be consistent with the FAO’s recommendations in its report on the State of the World’s Forests in 2020¹. National legislations and locally appropriate thresholds should be applied to create legal certainty for operators and ensure a high level of prevention of forest degradation. The countries concerned have adapted their own laws to best protect their forests.

2. Monitoring of forest degradation needs to build on reliable methods

The proposal focuses on satellite monitoring to evaluate forest degradation (Recital (33)). While satellite monitoring could be suitable for identifying large-scale deforested areas, it is currently still prone to misinterpretation when used as the only tool to assess forest degradation at landscape or forest stand level. As a recent article in Nature² has shown, the use of satellite-based remote sensing on its own is neither sufficient nor reliable enough to conclusively assess the situation in forests. Specific remote measurements, including the quantification of harvested wood, must always be confirmed by adequate field data and information. EU legislation should promote *in situ* forest inventories and monitoring as part of an overall forest governance.

3. Country benchmarking should follow a transparent and comparable process

The process and criteria for assessing a country’s risk category (Art. 27) do not make it possible to anticipate a country’s risk level. To allow operators to better prepare for any new obligations, the benchmarking should be based on a transparent checklist – showing to which extent each criterion contributes to the assessment – and on predefined, measurable, and comparable indicators. To

¹ FAO, 2018, [Global Forest Resources Assessment – Terms and Definitions – FRA 2020](#), p 20: “Countries should document definition or description of degraded forest and provide information on how this data is being collected.”

² Palahí, M., Valbuena, R., Senf, C. et al., 2021, [Concerns about reported harvests in European forests](#). Nature 592, E15–E17

ensure that this checklist is implementable and adapted to local conditions, it should be developed jointly by the EU institutions and EU Member States.

Furthermore, one of the proposed criteria for the benchmarking system is a country's rate of forest degradation. As mentioned above, forest degradation is currently not part of international reporting. Therefore, the lack of confirmed, unbiased data on forest degradation makes the use of this indicator currently impossible.

4. Obligations related to country risk categories should be differentiable and adjusted to the actual risk of deforestation

As proposed by the Commission, the benchmarking system automatically puts operators into a standard risk category (Art. 27 (1), Art. 12 (1)), meaning they must fulfil the same obligations as operators in high-risk countries (only the enhanced scrutiny (Art. 20) is not applied). In fact, the rules for "standard" and "high-risk" countries are so similar that this distinction makes almost no practical difference from an operator's point of view. The standard risk category should contain at least some simplifications for operators compared to the high-risk category.

Moreover, operators should not already be asked to fulfil burdensome requirements when the Commission has not yet determined the necessity to do so. In this context, we are concerned that operators will be included in the standard risk category due to potential bottlenecks in the assessment process. To avoid this, we propose that the system of the EU Timber Regulation should apply for wood products except for cases where the Commission has already actively assessed and documented a country as belonging to a specific risk category.

5. Requirements for operators need to be proportionate and implementable

In a further comparison to the EU Timber Regulation, the proposal would oblige even those operators that do not fall under the high-risk category to fulfil additional, burdensome requirements³. These include the obligation to submit a due diligence statement (Art. 3 lit. c), new information requirements (Art. 9 (1) lit. g and h) and the requirement to geo-localise products (Art. 9 (1) lit. d). As regards geo-localisation, it may be challenging to manage data collection in practice, particularly for small-scale owners. Providing a precise link between the wood product and the plot of land where the raw material was grown may not be easily, if at all, possible.

Several risk assessment obligations for operators seem unrealistic due to their lack of clarity and/or because the data requested goes well beyond the scope of the operators' playing field. These points include Art 10 (2) lit. c, d, g, h, and i. These should be better explained with clear instructions on what data is to be delivered so operators are not subject to a high risk of providing either incorrect or incomplete information.

³ The Commission did a very rough estimation of administrative burden/costs in the [staff working document accompanying the proposal](#): One-off costs of 5 000 to 90 000 EUR per operator for establishing the Due Diligence System and recurrent costs of 175 to 2,616 million EUR for operators per year.

6. Access to justice and entitlement to submit substantiated concerns need to be better balanced

The rights granted to natural and legal persons to submit their substantiated concern (Art. 29) or to access justice (Art. 30) are described in such a broad manner that they could lead to a risk of abuse. Consequently, forest owners and managers who manage their forest according to the binding legislation in their own countries could be subject to confrontation with unjustified prohibitions, checks and controls, whereas authentically substantiated concerns could risk losing their credibility. Moreover, the proposal foresees the obligation for national authorities to carry out inspections of operators. Planned or random verifications carried out by the inspection authorities should be sufficient to ensure compliance.

To prevent misuse of the rights provided for under Art. 29 and 30, the proposal could refer to the provisions of the Aarhus Regulation in which certain limits are included to ensure that concerns submitted by natural persons are actually genuine⁴.

Signatories:

CEPF – Confederation of European Forest Owners

Copa-Cogeca – European Farmers and Agri-Cooperatives

ELO – European Landowners' Organization

EUSTAFOR – European State Forest Association

FECOF - European Federation of Forest-Owning Communities

UEF – Union of European Foresters

USSE – Union of Foresters of Southern Europe

⁴ [REGULATION \(EU\) 2021/1767](#) of 06 Oct 2021, see amendments to Article 11 (“A request (...) may also be made by other members of the public, subject to the following conditions: they shall demonstrate sufficient public interest and that the request is supported by at least 4.000 members of the public residing or established in at least five Member States, with at least 250 members of the public coming from each of those Member States.”)