



**Ministry of Economic Affairs
and Employment of Finland**

Ms. Ditte JUUL JØRGENSEN
Director-General
European Commission, DG Energy
B-1049 Brussels

1/3

6 May 2021

Dear Ms. JUUL JØRGENSEN,

Please find enclosed Finland's opinion regarding the European Commission draft implementing regulation pursuant to directive (EU) 2018/2001 on establishing operational guidance on the evidence for demonstrating compliance with the sustainability criteria for forest biomass.

Yours sincerely,

Energy Department
Ministry of Economic Affairs and Employment

FINLAND'S OPINION REGARDING THE EUROPEAN COMMISSION DRAFT IMPLEMENTING REGULATION PURSUANT TO DIRECTIVE (EU) 2018/2001 ON ESTABLISHING OPERATIONAL GUIDANCE ON THE EVIDENCE FOR DEMONSTRATING COMPLIANCE WITH THE SUSTAINABILITY CRITERIA FOR FOREST BIOMASS

Background

The Commission has published on 31 of March 2021 its draft on implementing regulation on establishing operational guidance on the evidence for demonstrating compliance with the sustainability criteria for forest biomass laid down in Article 29 of Directive (EU) 2018/2001 (hereinafter "RED II-directive" or "Directive") of the European Parliament and of the Council.

According to Article 29 (8) of the RED II –directive the Commission shall adopt implementing acts establishing the operational guidance on the evidence for demonstrating compliance with the criteria laid down in paragraphs 6 and 7 of this Article by 31 January 2021.

The above-mentioned implementing acts are adopted in accordance with the examination procedure as referred to in Article 34 (3) of the Directive.

General opinion

Finland takes a critical stance regarding the proposed implementing regulation and requests substantial amendments to the draft.

The Commission's mandate to introduce implementing regulation is limited to establishing guidance for demonstrating compliance with the sustainability criteria. In other words, the purpose of the mandate was for the Commission to give harmonized and uniform methods for economic operators to demonstrate that the sustainability criteria are met. It does not mandate the Commission to introduce new criteria or to tighten the set criteria for country level and sourcing area level. In accordance to Finland's assessment, the guidance draft partly expands or tightens the sustainability criteria set in the Directive especially in, but not limited to, Article 3. Finland notes that essential elements of legislation cannot be regulated through implementing acts. The draft adopts fundamental provisions that have far-reaching consequences and implications for natural and legal persons, and therefore should only be adopted by the legislative branch.

Finland views that the detailed requirements set in Article 3 of draft to applicable national or sub-national laws are not in line with Commission's executive power.

As an example of the abovementioned exceeding of executive power, paragraphs 6 and 7 of Article 29 of the Directive establish the sustainability criteria for forest biomass for both country level and sourcing area level. Article 29 (6) subparagraph a point ii of the Directive requires that forest regeneration of harvesting areas is ensured through national or sub-national laws. According to Article 2 (31) of the Directive forest regeneration means the re-establishment of a forest stand by natural or artificial means following the removal of the previous stand by felling or as a result of natural causes, including fire or storm. The guidance draft sets a mandatory five-year time limit for the re-establishment of new forest and additionally requires that there is no biodiversity degradation in the regenerated forest area, including that primary forests and natural or semi-natural forests are not degraded to or replaced with plantation forests. The

definition of forest regeneration set in the Directive does not include biodiversity aspects. The aforementioned requirements set in the draft are therefore legislative choices that exceed the executive power given to the Commission and also partly expands and tightens the criteria set in the directive.

Finland requires the Commission to follow the given mandate and to amend its draft accordingly. Finland suggests a thorough review of the guidance draft. The exhaustive requirements set for national or sub-national laws should be altered to an exemplary list of provisions or regulations of national laws or sub-national laws that that could be used to demonstrate compliance. Alternatively, the Commission should delete all detailed regulatory requirements that exceed Commission's executive power.

Finland also wants to highlight that the draft creates uncertainty for demonstrating compliance with the forest biomass criteria. It is very unlikely that the proposed criteria are fulfilled in Member States, let alone in third countries. As a conclusion, the draft on implementing regulation does not achieve its purpose of establishing an operational guidance on the evidence for demonstrating compliance with the sustainability criteria for forest biomass.

Finland welcomes a dialogue with the Commission to further discuss the content of the proposed implementing act.

