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2024/0214 (NLE)

Proposal for a

COUNCIL DECISION

amending Decision 2008/971/EC as regards the forest reproductive material of the 'tested' category, its labelling and the names of the authorities responsible for the approval and control of the production

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

In accordance with Article 19(1) of Council Directive 1999/105/EC of 22 December 1999 on the marketing of forest reproductive material[1], the Council, acting by a qualified majority on a proposal from the Commission, is to determine whether forest reproductive material produced in a third country affords the same assurances as regards the approval of its basic material and the measures taken for its production with a view to marketing as does forest reproductive material produced within the Union and complying with the provisions of that Directive.

Council Decision 2008/971/EC[2] establishes provisions on the equivalence of forest reproductive material produced in third countries. It establishes, firstly, the equivalence of the systems for approval and registration of basic material and subsequent production of reproductive material from this basic material applied in the third countries listed in its Annex I, and, secondly, general rules for determining the equivalence of forest reproductive material produced in third countries. It also specifies the conditions under which forest reproductive material ('FRM') of the 'source identified', 'selected' and 'qualified' categories produced in a third country listed in Annex I to that Decision may be imported into the Union.

In July 2007, the OECD Council adopted a Scheme for the Certification of Forest Reproductive Material Moving in International Trade[3] ('OECD Forest Seed and Plant Scheme'). The third countries listed in Decision 2008/971/EC apply national rules for FRM certification based on that Scheme. In 2011, its rules covered forest reproductive material of the 'source-identified', 'selected', and 'qualified' categories. The OECD Forest Seed and Plant Scheme rules were amended in 2013 to include the 'tested' category.

An examination of the amended OECD rules has shown that the conditions for the approval of basic material in the 'tested category' therein correspond to the requirements laid down in Directive 1999/105/EC.]

The present proposal aims to extend the equivalence regime for the import of FRM established by Decision 2008/971/EC to the 'tested' category, in line with the amended OECD rules of 2013. It provides (i) conditions for determining whether FRM of the 'tested' category imported from a certain third country can be considered as equivalent to FRM produced within the Union and complying with Directive 1999/105/EC, as well as (ii) the additional conditions as regards seed and planting stocks set out in Decision 2008/971/EC.

This draft decision, once adopted, should replace the temporary authorisation granted by Commission Implementing Decision (EU) 2021/773[4] authorising each Member State, in accordance with Article 19(3) of Directive 1999/105/EC, to decide until 31 December 2024

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1 OJ L 11, 15.1.2000, p. 17. ELI http://data.europa.eu/eli/dir/1999/105/oj

2 Council Decision 2008/971/EC of 16 December 2008 on the equivalence of forest reproductive material produced in third countries (OJ L 345, 23.12.2008, p. 83, ELI: http://data.europa.eu/eli/dec/2008/971/2021-01-01).

3 Decision of the Council Establishing the OECD Scheme for the Certification of Forest Reproductive Material Moving in International Trade [OECD/LEGAL/0355].

4 Commission Implementing Decision (EU) 2021/773 of 10 May 2021 authorising Member States, in accordance with Council Directive 1999/105/EC, to temporarily decide on the equivalence of forest reproductive material of certain categories produced in certain third countries (OJ L 169, 12.5.2021, p. 1. ELI: http://data.europa.eu/eli/dec_impl/2021/773/oj)

whether FRM of the 'tested' category produced in a specific third country affords the same guarantees as FRM produced in the Union and complying with Directive 1999/105/EC.

- **Consistency with existing policy provisions in the policy area**

This is a technical implementation of existing requirements set out in Directive 1999/105/EC. It is thus consistent with the current rules on 'tested' category of FRM and the overall rules concerning imports of FRM into the Union and recognition that the requirements in the third countries concerned are equivalent to the Union requirements for FRM.

- **Consistency with other Union policies**

By aiming to safeguard the smooth continuation of trade in FRM and the maintenance of the continuous supply of high-quality FRM in the Union, this proposal contributes to the overall policies of the Common Agricultural Policy, the European Green Deal[5] and related legislation and strategies: the European Climate Law[6], the new EU Strategy on adaptation to climate change[7], the New EU forest strategy for 2030[8] and the EU Biodiversity strategy for 2030[9].

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Like Decision 2008/971/EC, the act to be amended by this proposal, the proposal is also based on Article 19 (2) of Directive 1999/105/EC.

- **Subsidiarity (for non-exclusive competence)**

The production and marketing of FRM belongs to the shared competence between the Union and its Member States, as the respective legal act (Directive 1999/105/EC) is based on Article 43 TFEU (former Article 37 of the Treaty establishing the European Community).

As the FRM sector has been largely regulated at Union level, legislation in this field is predominantly a role for the Union institutions, as set out in Article 2(2) TFEU. The main objectives of that sector, namely import of high quality of FRM and functioning of the internal market, cannot be sufficiently achieved at Member States level, due to the complexity of the respective rules and the cross-border challenges of climate crisis, biodiversity protection and sustainable development.

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5 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).

6 Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') (OJ L 243, 9.7.2021, p. 1; ELI: http://data.europa.eu/eli/reg/2021/1119/oj).

7 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Forging a climate-resilient Europe - the new EU Strategy on Adaptation to Climate Change (COM(2021) 82 final).

8 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, New EU Forest Strategy for 2030 (COM(2021) 572 final).

9 Communication from the Commission to the European Parliament, 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).

The Union may therefore adopt in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union, a common approach with regard to the import of FRM in the Union.

- **Proportionality**

This is the only possible form of Union action, and those requirements are the most appropriate ones, to achieve the pursued objectives, namely :

(i) import of high quality FRM for all users in the Union;

(ii) good functioning of the internal market;

(iii) a level playing field for the professional operators concerned; and

(iv) facilitation of trade in view of adaptation to, and mitigation of climate change.

- **Choice of the instrument**

The Commission proposes a Decision of the Council, the same type of legal instrument as the act to be amended by this proposal (Decision 2008/971/EC).

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable.

- **Stakeholder consultations**

There have been no public consultations as this is a technical initiative of limited interest for the general public. Furthermore, stakeholders have not been consulted on equivalence with EU requirements for other categories of FRM.

- **Collection and use of expertise**

The Union and Member States are closely involved in the development of the OECD Seed Schemes and the OECD Forest Seed and Plant Scheme. The Commission has examined the OECD rules, as well as the respective national rules of the respective third countries that implement that Scheme, as regards the 'tested' category. That examination has shown that the conditions for approval of basic material satisfy the requirements laid down in Directive 1999/105/EC for that category. For this reason, no further collection and use of expertise has been considered necessary, as the Union and the third countries concerned apply the commonly accepted OECD rules in this respect.

- **Impact assessment**

This Decision implements existing rules. The granting of equivalence of FRM produced in third countries for imports is based on the OECD Schemes and the methods of the International Seed Testing Association (ISTA). As the application of Decision (EU) 2021/536 has shown, no adverse economic, social or environmental impacts are expected from the import of FRM of the tested category., because no such effects have been reported by the competent authorities, third countries or professional operators. Therefore, an impact assessment is not considered necessary.

- **Regulatory fitness and simplification**

This proposal is not linked to REFIT. The proposal has no impact on compliance costs for operators. The 'Digital Check' is not applicable to this proposal.

- **Fundamental rights**

The proposed Decision respects all provisions of the Charter of Fundamental Rights of the European Union.

4. BUDGETARY IMPLICATIONS

This proposal does not have budgetary implications.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

No implementation plans or monitoring, evaluation and reporting arrangements are required.

- **Explanatory documents (for directives)**

Not applicable.

- **Detailed explanation of the specific provisions of the proposal**

The single substantive provision in the proposal grants equivalence to the applicable Union law to FRM of the 'tested' category produced in certain third countries for their import into the Union, by including this category in the scope of Decision 2008/971/EC.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Council Directive 1999/105/EC of 22 December 1999 on the marketing of forest reproductive material[1], and in particular Article 19(1) and (2) thereof,

Having regard to the proposal from the European Commission[2],

Whereas:

(1) Directive 1999/105/EC applies to the marketing of forest reproductive material ('FRM') within the Union. That Directive concerns reproductive material of tree species and artificial hybrids thereof which are important for forestry purposes in all or part of the Union.

(2) Council Decision 2008/971/EC[3] determines the conditions under which FRM of the 'source identified', 'selected' and 'qualified' categories, produced in third countries listed in Annex I to that Decision, as regards the approval and registration of basic material and the subsequent production of FRM from that basic material, is to be imported into the Union. The third countries concerned implement the OECD Scheme for the certification of forest reproductive material moving in international trade[4] ('OECD Forest Seed and Plant Scheme').

(3) The OECD Forest Seed and Plant Scheme was amended in 2013 to include FRM of the 'tested' category in addition to the 'source-identified', 'selected' and 'qualified' categories of the FRM, which have been in the Scheme since 2011.

(4) The national rules for the certification of FRM in Canada, Switzerland, the United Kingdom, Norway, Serbia, Türkiye, and the United States ('the specified third countries') provide for an official field inspection to be carried out during the collection and processing of seed and the production of planting stock.

(5) According to those national rules, the systems for the approval and registration of basic material and the subsequent production of FRM from that basic material are to follow the OECD Forest Seed and Plant Scheme. In addition, those national rules

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1 OJ L 11, 15.1.2000, p. 17, ELI http://data.europa.eu/eli/dec/2008/971/2021-01-01.

2 OJ C […], […], p. […].

3 Council Decision 2008/971/EC of 16 December 2008 on the equivalence of forest reproductive material produced in third countries (OJ L 345, 23.12.2008, p. 83, ELI: http://data.europa.eu/eli/dec/2008/971/2021-01-01).

4 Decisions of the Council of the Organisation for Economic Cooperation and Development, Decision of the Council establishing the OECD Scheme for the Certification of Forest Reproductive Material Moving in International Trade [OECD/LEGAL/0355]. https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0355.

require seed and planting stock of the 'source identified', 'selected', 'qualified' and 'tested' categories to be officially certified and the seed packages to be officially closed in accordance with the OECD Forest Seed and Plant Scheme.

(6) In the absence of a Decision at Union level in relation to the equivalence of forest reproductive material of the 'tested' category, Commission Implementing Decision (EU) 2021/773[5] temporarily, until 31 December 2024, authorised Member States to decide on the equivalence of FRM from the tested category produced in the third countries listed in Annex I to Decision 2008/971/EC, which include the specified third countries. That authorisation was necessary to avoid any risk of disruption of imports of that FRM into Member States.

(7) An examination of the national rules of the specified third countries, as regards the 'tested' category shows that the conditions for approval of basic material, are considered to be equivalent to those set out in Directive 1999/105/EC, provided that the conditions set out in Annex II to Decision 2008/971/EC are satisfied as regards seed and planting stocks.

(8) The names and addresses of some authorities responsible for the approval and control of the production, as listed in Annex I to Decision 2008/971/EC, have changed and therefore need to be updated.

(9) It is also possible to use genetic modification for the production of seed or planting stock of the 'tested' category. Therefore, and in order to ensure informed choices for the users of FRM, the OECD label and the supplier's label or document should state whether that type of modification has been used in the production of the basic material for this category, as it occurs currently with the 'qualified' category.

(10) In view of the addition of the 'tested' category in Annex II to Decision 2008/971/EC, a new Annex should be added to that Decision with a table indicating the categories under which forest reproductive material from the different types of basic material is allowed to be imported into the Union to ensure clarity and correct application of that Decision. This is necessary to ensure legal clarity, consistency with Directive 1999/105/EC, as well as correct application of those rules and informed choices by the operators applying that Decision.

(11) Decision 2008/971/EC should therefore be amended accordingly.

(12) As Implementing Decision (EU) 2021/773 expires on 31 December 2024, this Decision should apply from 1 January 2025 in order to ensure legal clarity and continuity of the respective rules.

HAS ADOPTED THIS DECISION:

Article 1

Amendments to Decision 2008/971/EC

Decision 2008/971/EC is amended as follows:

(1) in Article 1, the first paragraph is replaced by the following:

[5] Commission Implementing Decision (EU) 2021/773 of 10 May 2021 authorising Member States, in accordance with Council Directive 1999/105/EC, to temporarily decide on the equivalence of forest reproductive material of certain categories produced in certain third countries (OJ L 169, 12.5.2021, p.1, ELI: http://data.europa.eu/eli/dec_impl/2021/773/oj).

‘This Decision determines the conditions under which forest reproductive material of the ‘source identified’, ‘selected’, ‘qualified’ and ‘tested’ categories produced in a third country listed in Annex I shall be imported into the Union.’;

(2) in Article 3, paragraph 2 is replaced by the following:

‘2. Seed and planting stock of the ‘source identified’, ‘selected’, ‘qualified’ and ‘tested’ categories of species listed in Annex I to Directive 1999/105/EC, produced in the third countries listed in Annex I to this Decision and officially certified by the third country authorities listed in that Annex, shall be considered equivalent to seed and planting stock complying with Directive 1999/105/EC, provided that the conditions laid down in Annex II to this Decision are met.’;

(3) Annexes are amended in accordance with the Annex to this Decision.

Article 2

Entry into force and application

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2025.

Done at Brussels,

For the Council
The President