Comments of Bent Leonhard to the Proposal for a new Regulation on FRM.

It is amending the Regulation (EU) 2016/2031 and Regulation 2017/625

**First part of the document is an Explanatory memorandum. P 1-15.**

Here GD SANTE gives the background for the need for an update, and they argue for the chosen solutions.

**Second part is the proposal with 9 chapters, and these contain in all 33 articles’ 16-52.**

**The Annexes contain the attached 8 annexes with specific definitions.**

The Explanatory memorandum contains 5 elements:

1 Context of the proposal:

Reasons for and objectives of the proposal

Consistency with existing policy provision in the policy area

Consistency with other EU policies

2 Legal basis, subsidiarity and proportionality

3 Results of ex-post evaluations, stakeholder consultations and impact assessments

4 Budget implications

5 Other elements

**Bents comments to the Explanatory memorandum:**

The reasons for making an update on the rules on certification and marketing of FRM is the developments since the adoption of Directive 1999/105/EC.

First is The European Green Deal which consist of: European Climate Law, EU Strategy on Adaptation to Climate Change, New EU Forest Strategy for 2030, the EU Biodiversity Strategy for 2030.

Second is the developments in the OECD Forest Seed and Plant Scheme, as EU certification and marketing aims to be coherent to the OECD Scheme, and developments are made in cooperation.

Third is the experience gained during the years of implementation of Directive 1999/105/EC.

There is a wish to have the use of FRM defined on more specific purposes: Afforestation, reforestation and other types of tree planting.

The other types of tree planting purposes are listed. i) wood and biomaterials production, (ii) biodiversity conservation, (iii) restoration of forest ecosystems, (iv) climate adaptation, (v) climate mitigation and (vi) conservation and sustainable use of forest genetic resources.

The introduction of Agroforestry as a purpose is not included, as some Member States (MS) was against this.

The need for a separate Regulations is the acknowledgement of long productions cycles and it must be harvested from Basic Material to secure high-quality FRM. It is then essential to ensure traceability to the parent trees, but now also information on the climatic and ecological conditions under which those parent trees were grown.

The approval system for Basic Material is still based on selection on superior characteristics. The National Competent Authorities will approve Basic Material and register this in a National Register in a form that will be able to transferred to the EU Register FOREMATIS. It is foreseen some countries have timber and pulp industry as the most important economic activity, and hence wood quality as the most important selection criteria. In other Member States FRM will be produced to serve several other purposes and create multifunctional ecosystems. This gives is a need for sustainability of FRM for current and future climatic conditions where genetic diversity is important.

It is ensured that Member States can produce FRM for the purposes that are relevant in their territory.

These reasons are listed in 3 general objectives: Fair competition in all Europe (= level playing field for operators), Support innovation and competitiveness of the FRM industry in EU and Contribute to the problems on climate change, biodiversity and sustainability.

There are 6 specific objectives they also want to address:

1. To increase clarity and coherence of the legal framework through simplified, clarified and harmonized basic rules on fundamental principles presented in a modern legal form.
2. To enable the uptake of new scientific and technical developments (in particular, innovative production processes, bio-molecular techniques and digital solutions).
3. To ensure availability of FRM suitable for future challenges.
4. To support the conservation and sustainable use of forest genetic resources.
5. To harmonize the framework for official controls on FRM.
6. To improve coherence of FRM legislation with the Plant health legislation.

In (a) they see a need for harmonizing implementation of rules.

In (b) they see a need for introducing bio-molecular techniques for approval of BM and digital solutions in administration and labelling.

To make sure the availability of FRM for future challenges they introduce National Contingency plans for securing FRG (Forest genetic resources). This will also support the conservation and the sustainable use of FRG.

In (e) they see a need for harmonizing the official controls on FRM, also in the light of a level playing ground.

In (f) they realize Plant Health (supervision and use of more resistant material) is crucial for sustainable forests and this way they want to improve coherence to the Plant Health Legislation.

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

This will open for the Risk managed controls and the combination of the labels of certification and the Plant Passport. The Suppliers documents will now be called Official Label.

**Consistency with other EU policies:**

**Legal basis**

Article 43(2) of the Treaty on the Functioning of the European Union (TFEU)

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

A more harmonized approach regarding the production and marketing of FRM, cannot be sufficiently achieved at Member State level, because of the complexity, and the international character. The response to the cross-border challenges in relation to climate change, biodiversity and sustainability would be better achieved at EU level. The EU may therefore adopt measures regarding the production and marketing of high-quality FRM that is suitable for climatic and ecological conditions, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union.

This will give platform for assisted migration (and translocate FRM over borders).

**Proportionality**

The measures proposed are limited to actions that need to be taken at EU level to be effective and efficient. To achieve these needs, Directive 1999/105/EC will be replaced by a Regulation on FRM. This type of instrument is considered most suitable, considering that a key element of the proposal is to establish more harmonized measures for Member States.

**Choice of instrument**

A Regulation is chosen also to ensure free movement of FRM.

**STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

They here report on the background for the draft proposal, and on the stakeholder consultations taken into consideration in this final proposal. EFNA did give our comments in a letter, by attended the working group meetings and by interviews of Bent Leonhard. EFNA did find among the 3 policy options the Option 2 ***Balancing flexibility and harmonization*** as the preferred option.

Option 2 would bring the official controls on FRM under the scope of the Official Controls Regulation, but with simplified import controls at appropriate places within the EU, to ensure a more targeted and efficient enforcement of the existing rules. Basic principles would be included in the legislation for the use of innovative production processes, bio-molecular techniques and digital solutions. The FRM legislation would cover production for ‘forestry’ and ‘nonforestry’ purposes, to increase FRM availability and quality beyond afforestation/reforestation uses. Sustainability requirements would be extended to the lower FRM categories. General legal requirements would be introduced for contingency planning for major FRM shortages in the event of extreme weather and disasters.

The preferred option will bring efficiency gains for operators and competent authorities through (i) the possibility for operators to print the official label under official supervision, (ii) harmonization with the plant health legislation, (iii) the introduction of risk-based official controls and the possibility to use bio-molecular techniques and (iv) digital solutions in the registration and certification systems. FRM with improved sustainability characteristics will contribute to the adaptation and mitigation of the already visible impact of climate change on forests, therefore delivering important environmental benefits. National contingency plans will ensure a sufficient supply of FRM to reforest areas affected by extreme weather events, wildfires, disease and pest outbreaks, or other disasters. The risk of planting low-quality FRM will thus be reduced. Finally, benefits are expected for the conservation and sustainable use of forest genetic resources through a specific derogation.

**BUDGETARY IMPLICATIONS**

There are no budgetary implications according to information from The National Competent Authorities to DG SANTE. But introduction of digital solutions, National Contingency Plans, a harmonized control, demand of extended information on purposes for use and development of FOREMATIS to an operational tool will all demand financial resources. When measures are demanded by a Regulation access to EU Granting systems be possible though.

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

These demands to the Member States will be required to review the effectiveness of the rules to fulfill the policies. This will be another expense.

**Basic material and categories**

The following 6 types of basic material, from which FRM could be harvested, are kept as they appear in Directive 1999/105/EC: seed source, stand, seed orchard, parents of family(ies), clone and clonal mixture.

The competent authorities will assess the sustainability characteristics of basic material during the procedure for approving that basic material. The characteristics concern the adaptation of the basic material to the local climatic and ecological conditions and the freedom of trees from pests and their symptoms.

**Professional operators**

Professional operators (forest nurseries and tree seed suppliers) may be authorized by the competent authority to print, under official supervision, the official label for certain species and categories of FRM. Also were the Official Label and the Plant Passport is combined.

Before purchasing FRM, professional operators will make available to the potential buyers of their FRM all necessary information concerning its suitability for climatic and ecological conditions. This is new, and establishing valid information based on principles will be needed.

**Derogations and conservation purposes**

During periods in which there are temporary difficulties in obtaining supplies of certain species of FRM, basic material satisfying less stringent requirements will be temporarily approved to produce FRM belonging to the species concerned.

The requirements for basic material intended for the purpose of conservation and sustainable use of forest genetic resources will be different from those for basic material intended for producing FRM in the categories ‘sourceidentified’, ‘selected’, ‘qualified’ and ‘tested’. These requirements for this new material must be defined.

**The second part is the actual proposal**:

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on the production and marketing of forest reproductive material, amending Regulations**

# (EU) 2016/2031 and 2017/625 of the European Parliament and of the Council and repealing Council Directive 1999/105/EC (Regulation on forest reproductive material)

The start does consist of background description in 63 items (p16-26)

On page 26 the actual Adopted Regulation is described in 9 Chapters:

CHAPTER I: GENERAL PROVISIONS with 3 articles: 1 Subject matter, 2 Scope and 3 Definitions

# CHAPTER II: BASIC MATERIAL AND FRM DERIVING FROM IT with 6 articles

CHAPTER III: REGISTRATION OF PROFESSIONAL OPERATORS AND BASIC MATERIAL, AND DEMARCATION OF REGIONS OF PROVENANCE with 4 articles

# CHAPTER IV: MASTER CERTIFICATE, LABELLING AND PACKAGING with 4 articles

# CHAPTER V : DEROGATIONS FROM ARTICLE 4 with 6 articles

# CHAPTER VI: IMPORTS OF FRM with 2 articles

# CHAPTER VII: PROCEDURAL PROVISIONS with 2 articles

# CHAPTER VIII: Reporting, penalties and amendments of Regulations (EU) 2016/2031 and 2017/625 with 4 articles

# CHAPTER IX : FINAL PROVISIONS with 2 articles

**Finaly you have the additional Annexes :**

ANNEX I

LIST OF TREE SPECIES AND ARTIFICIAL HYBRIDS

ANNEX II

REQUIREMENTS FOR THE APPROVAL OF BASIC MATERIAL INTENDED FOR

THE PRODUCTION OF FRM OF THE ‘SOURCE-IDENTIFIED’ CATEGORY

ANNEX III

REQUIREMENTS FOR THE APPROVAL OF BASIC MATERIAL INTENDED FOR

THE PRODUCTION OF FRM OF THE ‘SELECTED’ CATEGORY

ANNEX IV

REQUIREMENTS FOR THE APPROVAL OF BASIC MATERIAL INTENDED FOR

THE PRODUCTION OF FRM OF THE ‘QUALIFIED’ CATEGORY

ANNEX V

REQUIREMENTS FOR THE APPROVAL OF BASIC MATERIAL INTENDED FOR

THE PRODUCTION OF FRM OF THE ‘TESTED’ CATEGORY

ANNEX VI

CATEGORIES UNDER WHICH FRM FROM THE DIFFERENT

TYPES OF BASIC MATERIAL MAY BE MARKETED

ANNEX VII

Amendment of Annex VII to Regulation (EU) 2016/2031

ANNEX VIII

Correlation table

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