

- **EU Institutions debate the Proposal for the EU's Anti-coercion Instrument: An important but controversial new tool for the EU's trade defence toolbox**
- **Indonesia's transition to renewable energy: Will *Presidential Regulation No. 112 of 2022* effectively lead to the phase-out of Indonesia's coal-fired power plants?**
- **EU Member States express concerns over the reduction of chemical pesticide use as proposed by the European Commission**
- **Recently adopted EU legislation**

### **EU Institutions debate the Proposal for the EU's Anti-coercion Instrument: An important but controversial new tool for the EU's trade defence toolbox**

On 10 October 2022, the European Parliament's Committee on International Trade (hereinafter, INTA) adopted its *Report on the Proposal for a Regulation of the European Parliament and of the Council on the protection of the Union and its Member States from economic coercion by third countries*, introducing a number of amendments to the European Commission's Proposal, notably intending to broaden the scope and to increase the European Parliament's involvement. The Council of the EU (hereinafter, Council) is set to discuss and eventually adopt its position on the Commission's Proposal in November 2022.

On 8 December 2021, the European Commission (hereinafter, Commission) had presented its *Proposal for a Regulation of the European Parliament and of the Council on the protection of the Union and its Member States from economic coercion by third countries* (hereinafter, Anti-coercion Instrument), which has the objective to strengthen the EU's procedure for addressing economic coercion by third countries. The proposed Anti-coercion Instrument would constitute one of the most significant pieces of legislation in the EU's improved trade defence toolbox. Such instrument would enable the Commission to take swift action aimed at dissuading third countries from engaging in or from maintaining their policies of economic coercion.

#### ***Strengthening the EU's trade defence toolbox***

On 2 February 2021, EU Institutions issued the *Joint Declaration of the Commission, the Council and the European Parliament on an instrument to deter and counteract coercive actions by third countries*, in which the Commission states that it "takes note of the concerns of the Parliament and Member States as to the practices of certain third countries to seek to coerce the Union and/or its Member States to take or withdraw particular policy measures" and notes that it "shares the view that such practices raise significant concerns". Therefore, the Commission confirmed its intention to examine "a possible instrument, which could be adopted in order to dissuade or offset coercive actions by third countries and which would allow the expeditious adoption of countermeasures triggered by such actions".

The proposed Anti-coercion Instrument states that the Regulation establishes the rules and procedures to protect the EU's interests and its Member States from measures taken by third countries *"where a third country seeks, through measures affecting trade or investment, to coerce the Union or a Member State into adopting or refraining from adopting a particular act"*. Additionally, the Commission's Proposal would provide *"a framework for the Union to respond in such situations with the objective to deter, or have the third country desist from such actions, whilst permitting the Union, in the last resort, to counteract such actions"*. The proposed Anti-coercion Instrument aims at addressing situations where a third country: 1) *"Interferes in the legitimate sovereign choices of the Union or a Member State by seeking to prevent or obtain the cessation, modification or adoption of a particular act by the Union or a Member State"*; or 2) *"By applying or threatening to apply measures affecting trade or investment"*. These two situations are considered by the Commission's Proposal as measures of economic coercion. This broad definition aims at covering both formal and informal measures of economic coercion in the form of trade or investment restrictions. The proposed Anti-coercion Instrument is not limited to any specific sector. An example of a coercive measure would be China's current trade restrictions imposed on Lithuania due to Lithuania's decision to allow the opening of a representative office by Taiwan in Vilnius, Lithuania's capital.

The proposed Anti-coercion Instrument would provide the Commission with an important margin of discretionary power when assessing and identifying what constitutes a coercive measure. However, the Proposal provides several criteria that must be taken into account when determining whether a measure can be considered as a measure of economic coercion, such as *"the intensity, severity, frequency, duration, breadth and magnitude of the third country's measure and the pressure arising from it"*; *"the extent to which the third-country measure encroaches upon an area of the Union's or Member States' sovereignty"*; and *"whether the third country is acting based on a legitimate concern that is internationally recognised"*.

The main purpose of the proposed Anti-coercion Instrument is to dissuade third countries from adopting coercive measures. However, if such dissuasion were to fail, the Commission's Proposal provides for a process allowing the Commission to take action. As summarised by the Commission, *"the anti-coercion instrument is designed to de-escalate and induce discontinuation of specific coercive measures through dialogue as a first step. Any countermeasures taken by the EU would be applied only as a last resort when there is no other way to address economic intimidation"*.

The process that would be established by the proposed Anti-coercion Instrument is divided into four steps: 1) *Assessment*, during which the Commission would examine whether a measure taken by a third country can be classified as a coercive measure; 2) *Engagement*, which means that the Commission must be *"open"* to engage with the concerned third country *"to explore options with a view to obtaining the cessation of the economic coercion"* either by amicable solution (*i.e.*, direct negotiations, mediation or conciliation) or by an adjudicated solution (*i.e.*, international adjudication); 3) *Adopting the EU's response measures*, in case an amicable or adjudicated solution is not found and action is deemed necessary vis-à-vis the EU's interest, whereby the Commission would be able to adopt an Implementing Act, detailing the countermeasures to be adopted. The Implementing Act must set the date of its application taking into account the time to notify the concerned third country and for it to cease the economic coercion, providing the trading partner a final opportunity to avoid the EU's response; and 4) *Applying the EU's response measures*, which would be the last resort in case the coercive measure taken by a third country is maintained. The Commission's Proposal introduces, in its Annex I, a non-exhaustive list of potential countermeasures that can be adopted by the Commission, such as tariff measures, import or export restrictions, restrictions on trade in goods, restrictions on the exportation of goods falling under the EU's export control regime, restrictions on trade in services, and restrictions on intellectual property rights.

The decision to adopt and apply a countermeasure would be adopted in the form of an Implementing Act, which means that it would follow the comitology procedure, referring to the examination procedure in which a committee in the Council of the EU, consisting of

representatives from all 27 EU Member States, would need to vote in favour of an Implementing Act by a qualified majority before it may be adopted by the Commission. However, the proposed Anti-coercion Instrument also states that *“on duly justified imperative grounds of urgency to avoid irreparable damage to the Union or its Member States by the measures of economic coercion the Commission shall adopt immediately applicable implementing acts imposing Union response measures”*. In such cases of urgency, the relevant committee would only be notified.

### ***Proposed amendments by the European Parliament’s Committee on International Trade***

While the European Parliament’s INTA Committee overall supports the Commission’s Proposal, it proposed a number of significant amendments. The INTA Committee’s Report proposes to amend the subject matter of the Proposal by stating that economic coercion might take *“any form of action, failure to act or threat thereof affecting trade or investment”*, while the Commission’s Proposal refers to *“measures affecting trade or investment”*. Additionally, the INTA Committee’s Report proposes to amend the objective of the proposed Anti-coercion Instrument. The Commission’s Proposal states that the Regulation has the objective *“to deter, or have the third country desist from”* coercive measures. The INTA Committee proposes to add to this objective the possibility to also repair the injury caused by the coercive measure, proposing to add that *“this Regulation provides a framework for the Union to respond in such situations with the objective of deterring, or obtaining the cessation of such actions and, where appropriate, repairing the injury caused, thereby permitting the Union to counteract such actions”*. Furthermore, the INTA Committee’s Report proposes to introduce various definitions, such as those of ‘coercion’, ‘third-country action or measure’, ‘failure to act’, and ‘threat of coercion’. It is important to note that the Commission’s Proposal does not provide definitions for any of these relevant concepts.

Another important proposed amendment concerns the expansion of the criteria to determine whether a measure taken by a third country constitutes an economic coercive measure. In this regard, the INTA Committee’s Report states that the Commission must take into account not only the third country’s measure, but also a third country’s *“failure to act or threat thereof”*. According to the definitions proposed by the INTA Committee, ‘failure to act’ would mean *“failure by a third country to comply with its obligations under legally binding instruments of international law”* and ‘threat of coercion’ would refer to *“a substantiated threat of a third country action or measure that is credible, significant, and could be quickly and easily deployed”*.

One of the points most criticised by EU Member States concerns the discretionary power that the proposed Anti-coercion Instrument would grant to the Commission regarding the determination of whether a third country measure constitutes an economic coercive measure or not. The INTA Committee does not propose any amendments to change this power but proposes amendments to ensure transparency in each step of the implementation of the Regulation and to increase the involvement of the European Parliament and the Council in the assessment and implementation process. With respect to each step of the process, the INTA Committee’s Report proposes to add that *“the Commission shall inform, including in the form of an exchange of views, the European Parliament and the Council”*.

### ***A controversial measure***

While broadly welcomed by EU Member States and business associations, the proposed Anti-coercion Instrument has led to concerns on whether it goes beyond the Commission’s competences and whether it is compatible with the EU’s commitments under the Agreements of the World Trade Organization (WTO). Regarding the Commission’s competences, the Commission argues that the proposed Regulation falls under the EU’s common commercial policy, which is an EU competence. However, certain EU Member States have argued that some possible countermeasures could relate to investment, which partially falls within EU Member States’ competences. Additionally, some EU Member States, such as Sweden and the Czech Republic, have expressed concerns that the proposed Anti-coercion Instrument could lead to EU protectionism. With regard to its compatibility under WTO law, the

Commission's Proposal would, as a last resort, allow the EU to suspend certain international obligations. The legislative proposal has raised some concerns among trade experts as the proposed Regulation would not oblige the EU to attempt to address the coercive measures through the WTO's dispute settlement mechanism, before adopting and applying unilateral countermeasures. Trade lawyers have pointed out that the list of potential countermeasures provided in Annex I to the proposed Anti-coercion Instrument might violate the EU's WTO commitments. While Article 1(2) of the proposed Anti-coercion Instrument requires that "*any action taken under this Regulation shall be consistent with the Union's obligations under international law and conducted in the context of the principles and objectives of the Union's external action*", the Commission reportedly considers its countermeasures justified under "*customary rules on countermeasures*".

### **Road ahead**

On 19 October 2022, the European Parliament adopted the INTA Committee's Report at its plenary session, which is now its official position for the forthcoming '*trilogue*' negotiations with the Council and the Commission. The Council is expected to adopt its position in November. Therefore, interinstitutional '*trilogue*' negotiations may still start before the end of the year. Once the three EU Institutions have agreed on a common text, the Council and the European Parliament would need to officially adopt the final text before the Regulation can enter into force. According to the Commission's Proposal, the Regulation would enter into force twenty days after its publication in the EU's Official Journal. All relevant stakeholders should monitor the development of this legislative initiative as its implementation could soon lead to the introduction of important trade restrictions if a third country's policy or measure were to be determined to constitute an economic coercive measure.

### **Indonesia's transition to renewable energy: Will Presidential Regulation No. 112 of 2022 effectively lead to the phase-out of Indonesia's coal-fired power plants?**

In an effort to reduce greenhouse gas (hereinafter, GHG) emissions by 2030 and to attract '*green*' investments, on 13 September 2022 the Government of Indonesia issued the [Presidential Regulation No. 112 of 2022 concerning the Acceleration of Renewable Energy Development for Electricity Supply](#). According to Indonesia's Ministry of Energy and Mineral Resources, the issuance of *PR 112 of 2022* is intended to "*mark the start of the construction era of low-emission and environmentally friendly power plants in Indonesia*". *PR 112 of 2022* follows the pledge made by Indonesia's *President Joko Widodo* at the 26<sup>th</sup> United Nations Climate Change Conference (hereinafter, COP26) to commence the energy transition from fossil fuels to renewable energy and to achieve net zero carbon emissions by 2060 or sooner. While *PR 112 of 2022* introduces novel mechanisms to achieve these objectives, notably the prohibition on the construction of new coal-fired power plants, a number of exemptions might result in Indonesia not being able to meet the targets set out in the *Paris Agreement* and its pledge to shift away from fossil fuels.

### **Commitments to accelerate the transition towards renewable energy**

With a total potential of 648.3 gigawatts, Indonesia disposes of significant resources for new and renewable energy, notably geothermal energy (*i.e.*, energy from heat that is generated within the earth) and hydro energy (*i.e.*, energy from the natural flow of moving water). Nonetheless, only 2% of this potential is currently utilised. In 2021, investments in new and renewable energy and energy conservation only amounted to USD 1.51 billion, well below the target of USD 2.04 billion. The Canada-based *International Institute for Sustainable Development* underlined that these investments constitute a mere 20% of what Indonesia would actually need to invest each year from 2021 to 2025 in order to ensure that the proportion of new and renewable energy in the energy mix amount to 23% by 2025 and to 31% by 2050, respectively.



In its enhanced Nationally Determined Contribution (NDC), submitted to the United Nations Framework Convention on Climate Change on 23 September 2022, Indonesia committed to decreasing GHG emissions by 31.89% with its own efforts, or by 43.20% with international support, by 2030. Indonesia also pledged to achieve net zero emissions by 2060. However, coal, which is the largest contributor to global warming, still powers approximately 70% of Indonesia's energy needs. To ensure a successful energy transition, the Government of Indonesia has launched several initiatives, such as the [2021-2030 National Electricity Supply Business Plan](#) (i.e., a plan for the procurement of electricity, including the generation, transmission, distribution, and sales of electricity to consumers), which obliges Indonesia's State-owned electricity company *PT Perusahaan Listrik Negara* to prioritise the construction of power plants sourced from new and renewable energy.

In an effort to achieve its Nationally Determined Contribution (NDC) targets and to control GHG emissions, on 29 October 2021, the Government of Indonesia had also issued the [Presidential Regulation No. 98 of 2021 on the Implementation of Carbon Economic Value for Achieving Nationally Determined Contribution Targets and Control of Greenhouse Gas Emissions in National Development](#), which introduced a mechanism of carbon trading and taxes on carbon emissions (see [Trade Perspectives, Issue No. 16 of 5 September 2022](#)). *PR 98 of 2021* provides, *inter alia*, a carbon trading mechanism through a cap-and-trade system, establishing a system of emissions trading between entities, in which entities that exceed the emissions limit may purchase carbon certificates from other entities whose emissions are below the required limit.

### ***The changes by PR 112 of 2022 concerning the Acceleration of Renewable Energy Development for Electricity Supply***

Indonesia's House of Representative is currently in the process of deliberating the [New Energy and Renewable Energy Bill](#), which will, *inter alia*, clarify the concepts of 'new energy' and 'renewable energy' and aims at supporting the development of new and renewable energy projects in Indonesia (see [Trade Perspectives, Issue No. 13 of 4 July 2022](#)). Pending the enactment of the *New and Renewable Energy Bill*, *PR 112 of 2022* temporarily serves as the umbrella framework governing Indonesia's transition to renewable energy. To attract investments and increase the proportion of renewable energy in Indonesia's energy mix, *PR 112 of 2022* introduces important novelties, such as the prohibition of the construction of new coal-fired power plants, fiscal and non-fiscal incentives for the development of renewable energy, and dedicated incentives to develop Indonesia's geothermal energy.

### ***Phase-out of coal power plants by 2050***

*PR 112 of 2022* mandates the establishment of a roadmap by Indonesia's Ministry of Energy and Mineral Resources, in coordination with the Ministry of Finance and the Ministry of State-Owned Enterprises, to accelerate the phase-out of coal-fired power plants and to support the development of renewable energy. More specifically, Article 3(4) of *PR 112 of 2022* introduces a prohibition on the construction of new coal-fired power plants in Indonesia. However, in order to "ensure a sustainable transition and avoid disturbing the operation of existing power plants", *PR 112 of 2022* provides for several exemptions under which coal-fired power plants may still be constructed and operated until 2050. This exemption applies to: 1) Existing coal-fired power plants that have been specified in Indonesia's *2021-2030 National Electricity Supply Business Plan* prior to the entry into force of *PR 112 of 2022*; 2) Coal-fired power plants that meet certain criteria, namely coal-fired power plants associated with industries that add value to Indonesia's natural resources or those included in the *National Project Strategy*; and 3) Coal-fired power plants that have committed to reducing GHG emissions by at least 35% following 10 years of operation and vis-à-vis the emission levels of 2021. Under Indonesia's *2021-2030 National Electricity Supply Business Plan*, the Government of Indonesia plans to construct coal-fired power plants with a total capacity of around 13-gigawatt by 2030.

Taking into consideration Indonesia's commitments regarding the reduction of GHG emissions at COP26, the plan for phasing out coal-fired power plants is indeed crucial. In this context,

with the support of the *Asian Development Bank*, Indonesia's *Energy Transition Mechanism* (hereinafter, ETM), which is a collaborative investment initiative between public and private entities, aims at supporting the phase-out of coal-fired power plants and to boost renewable energies. With the support of such financing mechanism, it is expected that Indonesia would be able to achieve its Nationally Determined Contribution (NDC) target with the enhanced ambition of emission reductions mainly in the energy sector. The ETM will reportedly “*consider ‘just transition’ aspects, pursuing the ‘greening’ of the economy in a way that is as fair and inclusive to everyone, particularly for the people that will be most impacted by the phase-out of coal-fired power plants*”.

### ***Special incentives to support the development of renewables***

Indonesia's Ministry of Energy and Mineral Resources notes that the use of new and renewable energy still faces a number of challenges, particularly the lack of interest from financial institutions due to the high risks and investment costs. In an effort to support the development of renewable energies, the Government of Indonesia provides fiscal and non-fiscal incentives for investors. On the basis of Article 22 of *PR 112 of 2022*, the fiscal incentives may take the form of, *inter alia*, income tax facilities and import duty exemptions. Non-fiscal incentives would be provided by the central or regional governments and may take the form of, *inter alia*, the facilitation in obtaining permits from the regional governments for land and infrastructure that is intended to be used in the development of new and renewable energy projects.

Indonesia has 40% of the world's geothermal resources, of which around 29,544 megawatts are still undeveloped. In recognising this potential, Article 27 of *PR 112 of 2022* provides dedicated support and incentives for the development of geothermal power plants in the form of, *inter alia*: 1) The appointment of a public service agency or State-owned enterprise to acquire geothermal data; 2) The appointment of a developer to conduct a preliminary survey and exploration of geothermal energy; and 3) Financing facilities. Details regarding these activities will be provided in forthcoming ministerial regulations to be issued by the Ministry of Energy and Mineral Resources and the Ministry of Finance.

### ***The effectiveness of PR 112 of 2022 and the importance of private sector involvement***

Despite the significance of the phase-out of coal-fired power plants, the issuance of *PR 112 of 2022* led to mixed reactions from the public. Indonesia's *Center for Economics and Law Studies*, for instance, considers that there are several “*problematic*” provisions in *PR 112 of 2022*, such as the exemptions from the prohibition to construct coal-fired power plants. The exemption raises the question of whether the Government of Indonesia is indeed committed to fully phase-out coal-fired power plants, as such waiver appears to contradict the Government of Indonesia's current efforts to spur the growth of environmentally friendly industries.

*PR 112 of 2022* is an important addition to Indonesia's regulatory framework concerning the energy transition. Indeed, imposing a deadline for the construction and operation of new coal-fired power plants is an important first step in achieving the Government of Indonesia's renewable energy targets, but it must also be accompanied by a clear and comprehensive roadmap. As the phase-out of coal-fired power plants might have widespread impact on employment, social and environmental issues, as well as the business sector and private investments, the Government of Indonesia should consider involving the private sector in formulating the roadmap, so as to ensure that the transition towards renewable energy will be effective, enjoy the necessary support of all stakeholders in fostering clean energy development and, at the same time, not jeopardise Indonesia's energy needs. The roadmap should be streamlined across relevant ministries in order to align future policies. It should also be monitored whether *PR 112 of 2022* and the forthcoming roadmap will be effective in reducing Indonesia's GHG emissions and in supporting Indonesia's transition towards renewable energy.

## EU Member States express concerns over the reduction of chemical pesticide use as proposed by the European Commission

On 22 June 2022, the European Commission (hereinafter, Commission) adopted a *Proposal on the sustainable use of plant protection products and amending Regulation (EU) 2021/2115*, which aims at reducing the use of chemical pesticides and ensuring more sustainable food systems by 2030. The Proposal sets out legally binding targets at the EU level and national EU Member States' levels to reduce by overall 50% the use and the risk of chemical pesticides and the use of hazardous pesticides by 2030. EU Member States have recently called for a new impact assessment for the Proposal, citing concerns over food security. The article reviews the Proposal, the reduction targets, and what to expect for the agricultural sector.

### **The current Sustainable Use Directive (SUD)**

The EU's current *Directive 2009/128/EC of the European Parliament and of the Council establishing a framework for Community action to achieve the sustainable use of pesticides* (hereinafter, the Sustainable Use Directive, or SUD) defines the term 'pesticide' in Article 3(10)(a) as "a plant protection product as defined in Regulation (EC) No 1107/2009". *Regulation (EC) No 1107/2009 of the European Parliament and of the Council* concerns the placing of plant protection products on the market and essentially provides that 'plant protection products' contain active substances (*i.e.*, chemical elements and their compounds, as they occur naturally or by manufacture) and have a wide variety of uses. On products' labels, the term is usually replaced by a more precise description of the product-type, such as fungicide, insecticide, or herbicide.

'Sustainable use of pesticides' is not defined in the SUD, but Article 1 thereof provides that the Directive aims at achieving the sustainable use of pesticides "by reducing the risks and impacts of pesticide use on human health and the environment and promoting the use of integrated pest management and of alternative approaches or techniques such as non-chemical alternatives to pesticides". The objective is, therefore, to minimise the impact of pesticides on human health and on the environment through reduced dependency, and through the increased use of low risk and non-chemical pesticides. 'Non-chemical methods' are defined in Article 3 No. 8 of the SUD as "alternative methods to chemical pesticides for plant protection and pest management, based on agronomic techniques such as those referred to in point 1 of Annex III [e.g., crop rotation, use of resistant/tolerant cultivars, and preventing the spreading of harmful organisms by hygiene measures], or physical, mechanical or biological pest control methods".

### **Weaknesses in the implementation, application, and enforcement of the SUD**

The *Report from the Commission to the European Parliament and the Council on the experience gained by Member States on the implementation of national targets established in their National Action Plans and on progress in the implementation of the SUD*, the *European Parliament Resolution of 12 February 2019 on the implementation of Directive 2009/128/EC on the sustainable use of pesticide*, and a report of the European Court of Auditors on *Sustainable use of plant protection products: limited progress in measuring and reducing risks*, point to weaknesses in the implementation, application, and enforcement of the SUD across EU Member States, as well as to a failure to sufficiently achieve the overall objectives of the SUD. In particular, the application and enforcement of integrated pest management (hereinafter, IPM) and the prioritisation of the use of non-chemical methods has been weak. National Action Plans adopted and implemented by EU Member States under the SUD reportedly often lack adequate content and commitment to implement the SUD's requirements. The Commission has, therefore, *evaluated* the SUD and assessed the impacts of possible future measures intended to significantly reduce the use and risk of chemical pesticides.

## ***The Proposal aimed at reducing the use of chemical pesticides by 50%***

The Commission's *Proposal*, published on 22 June 2022, was adopted with a delay of three months in view of the war in Ukraine and its possible implications on food security (see *Trade Perspectives, Issue No. 7 of 11 April 2022*). The Proposal aims at reducing the use of chemical pesticides by 50% by 2030. Since the numerical value of the pesticide reduction target was already included in the EU's 2020 *Farm to Fork Strategy*, an outstanding issue is whether the target should be made legally binding or not.

According to Article 4 of the Proposal, *"Each Member State shall contribute, through the adoption and achievement of national targets in accordance with Article 5 to achieving by 2030 a 50% Union-wide reduction of both the use and risk of chemical plant protection products ('Union 2030 reduction target 1') and the use of more hazardous plant protection products ('Union 2030 reduction target 2'), compared to the average of the years 2015, 2016 and 2017 (collectively referred to as 'the Union 2030 reduction targets')"*. Therefore, the Commission proposes the targets to be legally binding at the EU level, with EU Member States setting their own reduction targets, being allowed to deviate from the 50% level within the parameters of a binding formula under Article 5 to ensure that the EU wide target is achieved collectively by the EU Member States individual contributions. Recital 13 of the Proposal explains that the formula *"permits Member States to take account of historical progress and intensity of pesticide use in setting national targets"*. Annex I to the Proposal details the formula and the parameters for the reduction targets.

While allowing EU Member States to take into account their national situation when targets are set, Article 5(8) of the Proposal provides that the national targets may not be lower than 35% to ensure all EU Member States considerably reduce the use of chemical pesticides. Article 6 of the Proposal provides, in relevant part, that, after reviewing the individual EU Member State targets, the Commission may recommend EU Member States to establish *"more ambitious targets"*. In a second step, *"If the average of national 2030 reduction targets of all Member States is lower than 50%, the Commission shall recommend that one or more Member States increase the level of their national 2030 reduction targets in order to achieve the Union 2030 reduction targets"*.

The use of less hazardous and non-chemical alternatives is a clear objective of the Proposal. Articles 11 to 15 of the Proposal concern environmentally friendly pest control through the use of IPM, defined in Article 3(15) as *"careful consideration of all available means that discourage the development of populations of harmful organisms, while keeping the use of chemical plant protection products to levels that are economically and ecologically justified and minimise risks to human health and the environment"*. Under the Proposal, the availability of monitoring data is to be improved, including on the application, use of, and risk from pesticides. A prohibition of all pesticides in sensitive areas, such as urban green areas is proposed in Article 18. Derogations may be granted by competent authorities for a limited period of time, never exceeding 60 days. Furthermore, Article 20 of the Proposal prohibits aerial spraying, except under certain derogations to be adopted by EU Member States, for example where there is no viable alternative method to the aerial application, or under Article 21 concerning the *"use of plant protection products in aerial application by certain categories of unmanned aircraft"*.

### ***New impact assessment needed?***

In August 2022, the Commission reportedly sent the outcome of an exercise on the expected national contributions to the EU's legally binding reduction target to the EU Member States. The exercise applied the parameters included in Annex I of the Proposal and appears to have alarmed some EU Member States, with some EU Member States supposed to reduce chemical pesticide use by more than 60% in view of their national situation and in order to reach the overall EU target. According to an unofficial list of the Commission's targets for 25 EU Member States, to reach the overall 50% EU target, Italy would have to reduce the use of chemical pesticides by 62%, Germany by 55%, France by 54%, Poland by 45%, and Romania by 35%.



While the Commission already carried out an impact assessment of the Proposal prior to Russia's attack on Ukraine, EU Member States are now arguing that this early impact assessment had become obsolete in light of the war, which affects global supply chains, including for agricultural products and plant protection products. On 26 September 2022, at the meeting of the EU's Agriculture and Fisheries Council, Poland's Secretary of State for Agriculture and Rural Development, *Ryszard Bartosik*, reportedly asked the Commission "*for the sake of the quality of legislation, (...) to carry out a new reliable impact assessment, taking into account the effects of war in Ukraine, and to re-examine the proposed legal solutions*" and added that the emphasis should be on "*ensuring food security of EU citizens and preserving food sovereignty*". A number of other EU Member States reportedly supported Poland's call, including Austria, Hungary, Romania, and Spain. Romania's Minister of Agriculture and Rural Development, *Petre Daea*, reportedly pointed out that the EU could not afford to reduce productivity in the current context and warned, referring to the contested formula, that "*a simple mathematical solution cannot solve all the problems we now have in farming*".

Germany's Federal Minister of Food and Agriculture, *Cem Özdemir*, however, expressed his support for the Commission's plans and rejected the idea of a new impact assessment and voiced his support for "*binding reduction goals*". The European Commissioner for Health and Food Safety, *Stella Kyriakides*, said in her [speech](#) at the Council meeting on 26 September 2022, in relation to the national pesticide reduction targets, that "*we need Member States to contribute targets and maintain this ambition*", arguing that the Proposal factors in flexibility based on "*both historical progress and agricultural intensity of use*" and that "*this is an equitable approach that allows to take into account different starting points*". The Commissioner also emphasised that "*ambition to reduce chemicals in food is what our citizens want*", acknowledging that the Commission is ready to work with the EU Member States "*to find workable compromises*", referring to factors such as climate change, biodiversity loss, and fewer pollinators, alongside the Ukraine war, as "*equally urgent*" threats to food security.

### ***The way forward***

The European Parliament and the Council must now agree with the Commission on a common text. Member of the European Parliament, *Herbert Dorfmann*, the European People's Party group's spokesman in the European Parliament's Committee on Agriculture and Rural Development (AGRI), stated that, in his opinion, the Proposal "*has no majority either in Parliament or in the Council*". There appears to be a risk that EU Member States in the Council and Members of the European Parliament may not agree on the Proposal. In case the Commission's Proposal is rejected, the procedure would need to start anew, which would be a set-back for the ambitious target regarding the reduction of chemical pesticide use envisaged by the *Farm to Fork* Strategy.

## **Recently adopted EU legislation**

### **Trade Law**

- [Commission Implementing Regulation \(EU\) 2022/2061 of 24 October 2022 amending Annexes V and XIV to Implementing Regulation \(EU\) 2021/404 as regards the entries for the United Kingdom and the United States in the lists of third countries authorised for the entry into the Union of consignments of poultry, germinal products of poultry and fresh meat of poultry and game birds \(Text with EEA relevance\)](#)

### **Trade Remedies**

- [Commission Implementing Regulation \(EU\) 2022/2068 of 26 October 2022 imposing a definitive anti-dumping duty on imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation following an](#)

*expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council*

- *Commission Implementing Decision (EU) 2022/2070 of 26 October 2022 to not suspend the definitive anti-dumping duties on imports of mixture of urea and ammonium nitrate originating in Russia, Trinidad and Tobago and the United States of America imposed by Implementing Regulation (EU) 2019/1688*

## **Customs Law**

- *Decision No 1/2022 of the EU-UK Trade Specialised Committee on Customs Cooperation and Rules of Origin of 17 October 2022 concerning the consultation procedure in case of denial of preferential tariff treatment under the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part [2022/2064]*
- *Council Regulation (EU) 2022/2057 of 13 October 2022 amending Regulation (EU) 2020/1706 opening and providing for the management of autonomous Union tariff quotas for certain fishery products for the 2021-2023 period (Text with EEA relevance)*

## **Food Law**

- *Commission Implementing Regulation (EU) 2022/2076 of 25 October 2022 concerning the classification of certain goods in the Combined Nomenclature*

*Ignacio Carreño, Joanna Christy, Tobias Dolle, Michelle Limenta, Alya Mahira, Lourdes Medina Perez, Paolo R. Vergano and Lisa Wijayani contributed to this issue.*

*Follow us on twitter @FratiniVergano*

To subscribe to *Trade Perspectives*<sup>®</sup>, please click [here](#). To unsubscribe, please click [here](#).

FRATINIVERGANO specialises in European and international law, notably WTO and EU trade law, EU agricultural and food law, EU competition and internal market law, EU regulation and public affairs. For more information, please contact us at:

FRATINIVERGANO – EUROPEAN LAWYERS

Boulevard Brand Whitlock 144, 1200 Brussels, Belgium. Telephone: +32 2 648 21 61, Fax: +32 2 646 02 70. [www.fratinivergano.eu](http://www.fratinivergano.eu)

*Trade Perspectives*<sup>®</sup> is issued with the purpose of informing on new developments in international trade and stimulating reflections on the legal and commercial issues involved. *Trade Perspectives*<sup>®</sup> does not constitute legal advice and is not, therefore, intended to be relied on or create any client/lawyer relationship.

To stop receiving *Trade Perspectives*<sup>®</sup> or for new recipients to be added to our mailing list, please contact us at [TradePerspectives@fratinivergano.eu](mailto:TradePerspectives@fratinivergano.eu)

Our privacy policy and data protection notice is available at <http://www.fratinivergano.eu/en/data-protection/>