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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Position of the Council at first reading with a view to the adoption of a
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL laying down the obligations of operators who place timber
and timber products on the market
- Adopted by the Council on 1 March 2010

REGULATION (EU) No .../2010
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

laying down the obligations of operators
who place timber and timber products on the market

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure³,

¹ OJ C 318, 23.12.2009, p. 88.

² OJ C , p.

³ Position of the European Parliament of 22 April 2009 (not yet published in the Official Journal) and Council Position of ... (not yet published in the Official Journal).

Whereas

- (1) Forests provide a broad variety of environmental, economic and social benefits including timber and non-timber forest products and environmental services.
- (2) Due to the growing demand for timber and timber products worldwide, in combination with the institutional and governance deficiencies that are present in the forest sector in a number of timber-producing countries, illegal logging and the associated trade have become matters of ever greater concern.
- (3) Illegal logging is a pervasive problem of major international concern. It poses a significant threat to forests as it contributes to the process of deforestation, which is responsible for about 20 % of CO₂ emissions, threatens biodiversity, and undermines sustainable forest management and development including the commercial viability of operators acting in accordance with applicable legislation. In addition, it also has social, political and economic implications.
- (4) The Communication of the Commission to the European Parliament and to the Council of 21 May 2003 entitled "Forest Law Enforcement, Governance and Trade (FLEGT): Proposal for an EU Action Plan" proposed a package of measures to support international efforts to tackle the problem of illegal logging and associated trade.

- (5) The European Parliament and the Council welcomed that Communication and recognised the need for the Union to contribute to global efforts to address the problem of illegal logging.
- (6) In accordance with the aim of that Communication, namely to ensure that only timber products which have been produced in accordance with the national legislation of the producing country enter the Union, the Union has been negotiating Voluntary Partnership Agreements (VPAs) with timber producing countries (partner countries), which create a legally binding obligation for the parties to implement a licensing scheme and to regulate trade in timber and timber products identified in those VPAs.
- (7) Given the major scale and urgency of the problem, it is necessary to actively support the fight against illegal logging and related trade, to complement and strengthen the VPA initiative and to improve synergies between policies aimed at the conservation of forests and the achievement of a high level of environmental protection, including combating climate change and biodiversity loss.

- (8) The efforts made by countries which have concluded FLEGT VPAs with the Union and the principles incorporated in them, in particular with regard to the definition of legally produced timber, should be recognised. It should be also taken into account that under the FLEGT licensing scheme only timber harvested in accordance with the relevant national legislation and timber products derived from such timber are exported into the Union. Therefore, timber embedded in timber products listed in Annexes II and III to Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community¹, originating in partner countries listed in Annex I to Council Regulation (EC) No 2173/2005, should be considered to have been legally harvested provided those timber products comply with that Regulation and any implementing provisions.
- (9) Account should also be taken of the fact that the Convention on International Trade of Endangered Species of Fauna and Flora (CITES) places a requirement on parties to the Convention only to grant a CITES permit for export when a CITES-listed species has been harvested, inter alia, in compliance with national legislation in the exporting country. Therefore timber of species listed in Annexes A, B or C to Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein² should be considered to have been legally harvested provided it complies with that Regulation and any implementing provisions.

¹ OJ L 347, 30.12.2005, p. 1.

² OJ L 61, 3.3.1997, p. 1.

- (10) Taking into account the complexity of illegal logging as regards the underlying factors and the impacts, the incentives for illegal behaviour should be reduced by targeting the behaviour of operators.
- (11) In the absence of an internationally agreed definition, the legislation of the country where the timber was harvested should be the basis for defining what constitutes illegal logging.
- (12) Many timber products undergo numerous processes before and after they are placed on the market for the first time. In order to avoid imposing any unnecessary administrative burden, only those operators that place timber and timber products on the internal market for the first time, rather than all operators involved in the distribution chain, should be subject to the requirements laid down in this Regulation.
- (13) Bearing in mind that it would place a disproportionate burden on operators if they were required to provide information on the origin of timber in products made of recycled timber, such products should be excluded from the scope of this Regulation.

- (14) Operators placing timber and timber products for the first time on the internal market should exercise due diligence through a system of measures and procedures (due diligence system) to minimise the risk of placing illegally harvested timber and timber products derived from such timber on the internal market.
- (15) The due diligence system includes three elements inherent to risk management: access to information, risk assessment and mitigation of the risk identified. The due diligence system should provide access to information about the sources and suppliers of the timber and timber products being placed on the internal market for the first time, including relevant information such as compliance with the applicable legislation. On the basis of this information, operators should carry out a risk assessment. Where a risk is identified, operators should mitigate such risk in a manner proportionate to the risk identified, with a view to preventing illegally harvested timber and timber products derived from such timber from being placed on the market.
- (16) In order to avoid any undue administrative burden, operators already using systems or procedures which comply with the requirements of this Regulation should not be required to set up new systems.
- (17) In order to recognise good practice in the forestry sector, certification or other third party verified schemes that include verification of compliance with applicable legislation may be used in the risk assessment procedure.

- (18) The timber sector is of major importance for the economy of the Union. Organisations of operators are important actors in the sector as they represent the interests of the latter on a large scale and interact with a diverse range of stakeholders. Those organisations also have the expertise and capacity to analyse relevant legislation and facilitate the compliance of their members, but should not use this competence to dominate the market. In order to facilitate the implementation of this Regulation and to contribute to the development of good practices it is appropriate to recognise organisations which have developed due diligence systems meeting the requirements of this Regulation. A list of such recognised organisations should be made public in order to enable operators' use of such recognised monitoring organisations.
- (19) Competent authorities should monitor that operators effectively fulfil the obligations laid down in this Regulation. For that purpose the competent authorities should carry out official checks, as appropriate, which may include checks on the premises of the operator, and should be able to require operators to take remedial actions where necessary.
- (20) Competent authorities should keep records of the checks and the relevant information should be made available to any applicant in accordance with Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information¹.

¹ OJ L 41, 14.2.2003, p. 26.

- (21) Taking into account the international character of illegal logging and related trade, competent authorities should cooperate with each other and with the administrative authorities of third countries and the Commission.
- (22) Member States should ensure that infringements of this Regulation are sanctioned by effective, proportionate and dissuasive penalties.
- (23) The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) concerning the procedures for the recognition and withdrawal of recognition of monitoring organisations, concerning further relevant risk assessment criteria that may be necessary to supplement those already provided for in this Regulation and concerning the list of timber and timber products to which this Regulation applies. It is of particular importance that the Commission consult experts in the preparatory phase in accordance with the commitment of the Commission undertaken in the Communication of 9 December 2009 on the implementation of Article 290 of the TFEU.
- (24) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission¹.

¹ OJ L 184, 17.7.1999, p. 23.

- (25) Operators and competent authorities should be given a reasonable period in order to prepare themselves to meet the requirements of this Regulation.
- (26) Since the objective of this Regulation, namely the fight against illegal logging and related trade, cannot be achieved by the Member States individually and can therefore, by reason of its scale, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out on Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

Article 1
Subject matter

This Regulation lays down the obligations of operators who place timber and timber products on the internal market for the first time, to minimise the risk of placing illegally harvested timber or timber products derived from such timber on the market.

Article 2
Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (a) "timber and timber products" means the timber and timber products set out in the Annex, with the exception of timber products derived from timber or from timber products which have already been placed on the market as well as timber products or components of such products manufactured from timber or timber products that have completed their life cycle and would otherwise be disposed of as waste;

- (b) "placing on the market" means the supply by any means, irrespective of the selling technique used, of timber or timber products, for the first time on the internal market for distribution or use in the course of a commercial activity, whether in return for payment or free of charge. It also includes the supply by means of distance communication as defined in Directive 97/7/ EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts¹;
- (c) "operator" means any natural or legal person that places timber or timber products on the market;
- (d) "country of harvest" means the country or territory where the timber or the timber embedded in the timber products was harvested;
- (e) "legally harvested" means harvested in accordance with the applicable legislation in the country of harvest;
- (f) "illegally harvested" means harvested in contravention of the applicable legislation in the country of harvest;

¹ OJ L144, 4.6.1997, p. 19.

(g) "applicable legislation" means the legislation in force in the country of harvest covering the following matters:

- rights to harvest timber within gazetted boundaries;
- payments for harvest rights and timber including duties related to timber harvesting;
- timber harvesting, including directly related environmental and forest legislation;
- third parties' legal rights concerning use and tenure that is affected by timber harvesting; and
- trade and customs legislation, in so far as the forest sector is concerned.

Article 3

*Status of timber and timber products
covered by FLEGT and CITES*

Timber embedded in timber products listed in Annexes II and III to Regulation (EC) No 2173/2005 which originate in partner countries listed in Annex I of Regulation (EC) No 2173/2005 and which comply with that Regulation and its implementing provisions shall be considered to have been legally harvested for the purposes of this Regulation.

Timber of species listed in Annexes A, B or C to Regulation (EC) No 338/97 and which complies with that Regulation and its implementing provisions shall be considered to have been legally harvested for the purposes of this Regulation.

Article 4

Obligations of operators

1. Operators shall exercise due diligence to minimise the risk of placing illegally harvested timber or timber products derived from such timber on the market. To that end, they shall use a framework of procedures and measures, hereinafter referred to as a "due diligence system", as set out in Article 5.
2. Each operator shall maintain and regularly evaluate the due diligence system which it uses, except where the operator makes use of a due diligence system established by a monitoring organisation referred to in Article 7.

Article 5

Due diligence systems

1. The due diligence system referred to in Article 4(1) shall contain the following elements:

- (a) measures and procedures providing access to the following information concerning the operator's supply of timber or timber products placed on the market:
- description, including the full scientific name or common name of tree species, trade name and type of product;
 - country of harvest, and where applicable sub-national region where the timber was harvested;
 - quantity (expressed in volume, weight or number of units);
 - name and address of the supplier to the operator;
 - documents or other information indicating compliance of those timber and timber products with the applicable legislation;
- (b) risk assessment procedures enabling the operator to analyse and evaluate the risk of illegally harvested timber or timber products derived from such timber being placed on the market.

Such procedures shall take into account the information set out in point (a) as well as relevant risk assessment criteria, including:

- assurance of compliance with applicable legislation, which may include certification or other third-party-verified schemes which cover compliance with applicable legislation;
 - prevalence of illegal harvesting of specific tree species;
 - prevalence of illegal harvesting or practices in the country of harvest and/or sub-national region where the timber was harvested;
 - complexity of the supply chain of timber products;
- (c) Except where the risk identified in course of the risk assessment procedures referred to in point (b) is negligible, risk mitigation procedures which consist of a set of measures and procedures that are adequate and proportionate to minimise effectively that risk and which may include requiring additional information or documents and/or requiring third party verification.

2. Detailed rules necessary to ensure the uniform implementation of paragraph 1, except as regards further relevant risk assessment criteria referred to in the second paragraph of point (b) of paragraph 1 of this Article, shall be adopted in accordance with the regulatory procedure referred to in Article 16(2). Those rules shall be adopted by ...^{*}.
3. In order to take into account market developments and the experience gained in the implementation of this Regulation, in particular as identified through the reporting referred to in Article 18(3), the Commission may adopt delegated acts in accordance with Article 290 of the TFEU as regards further relevant risk assessment criteria that may be necessary to supplement those referred to in the second paragraph of point (b) of paragraph 1 of this Article. When adopting such delegated acts, the Commission shall act in accordance with the relevant provisions of this Regulation.

For the delegated acts referred to in this paragraph the procedures set out in Articles 13, 14 and 15 shall apply.

^{*} OJ: please insert date: 18 months after the date of entry into force of this Regulation.

Article 6
Competent authorities

1. Each Member State shall designate one or more competent authorities responsible for the application of this Regulation.

Member States shall inform the Commission of the names and addresses of the competent authorities by ...*. Member States shall inform the Commission of any changes to the names or addresses of the competent authorities.

2. The Commission shall make publicly available, including on the Internet, a list of the competent authorities. The list shall be regularly updated.

Article 7
Monitoring organisations

1. A monitoring organisation shall exercise the following functions:
 - (a) maintain and regularly evaluate a due diligence system in accordance with Article 5 and grant operators the right to use it;
 - (b) verify the proper use of its due diligence system by such operators;

* OJ: please insert date: six months after the entry into force of this Regulation.

- (c) take appropriate action in the event of failure by an operator to properly use its due diligence system, including notification of competent authorities in the event of serious or repeated failure by the operator.
2. An organisation may apply for recognition as a monitoring organisation, if it complies with the following requirements:
- (a) it has legal personality and is legally established within the Union;
 - (b) it has the capacity to exercise the functions referred to in paragraph 1; and
 - (c) it carries out its functions in a manner that avoids conflicts of interest.
3. An applicant that fulfils the requirements set out in paragraph 2 shall be recognised as a monitoring organisation, in one of the following ways:
- (a) the competent authority of a Member State shall recognise a monitoring organisation which intends to carry out its activities exclusively in that Member State, and thereafter without delay inform the Commission;
 - (b) the Commission shall, after informing Member States, recognise a monitoring organisation which intends to carry out its activities in more than one Member State, or throughout the Union.

4. The competent authorities shall carry out checks at regular intervals to verify that the monitoring organisations operating within the competent authorities' jurisdiction continue to fulfil the functions laid down in paragraph 1 and comply with the requirements laid down in paragraph 2.
5. If a competent authority determines that a monitoring organisation that has been recognised by the Commission either no longer fulfils the functions laid down in paragraph 1 or no longer complies with the requirements laid down in paragraph 2, it shall without delay inform the Commission.
6. The competent authorities or the Commission may withdraw a recognition when the competent authority or the Commission has determined that a monitoring organisation no longer fulfils the functions laid down in paragraph 1 or the requirements laid down in paragraph 2. The competent authority or the Commission may only withdraw a recognition that it has itself issued. Before withdrawal of a recognition, the Commission shall inform the Member States concerned. Member States shall inform the Commission of the withdrawal of a recognition.

7. In order to supplement the procedural rules with regard to the recognition and withdrawal of recognition of monitoring organisations and, if experience so requires, to amend them, the Commission may adopt delegated acts in accordance with Article 290 of the TFEU. When adopting such delegated acts, the Commission shall act in accordance with the relevant provisions of this Regulation.

For the delegated acts referred to in this paragraph the procedures set out in Articles 13, 14 and 15 shall apply. Those acts shall be adopted by...*

8. Detailed rules concerning the frequency and the nature of the checks referred to in paragraph 4, necessary to ensure the uniform implementation of that paragraph, shall be adopted in accordance with the regulatory procedure referred to in Article 16(2). Those rules shall be adopted by ...*.

Article 8

List of monitoring organisations

The Commission shall publish the list of the monitoring organisations in the *Official Journal of the European Union*, C series, and shall make it available on its website. The list shall be regularly updated.

* OJ: please insert date: 18 months after the date of entry into force of this Regulation.

Article 9

Checks on operators

1. The competent authorities shall carry out checks to verify if operators comply with the requirements set out in Articles 4 and 5.
2. Operators shall offer all assistance necessary to facilitate the performance of the checks referred to in paragraph 1.
3. Where, following the checks referred to in paragraph 1, shortcomings have been detected, the competent authorities may issue a notice of remedial actions to be taken by the operator. Any failure by the operator to take such remedial action may give rise to penalties in accordance with Article 17.

Article 10

Records of checks

1. The competent authorities shall keep records of the checks referred to in Article 9(1), indicating in particular their nature and results, as well as of any notice of remedial actions issued under Article 9(3). Records of all checks shall be kept for at least 5 years.
2. The information referred to in paragraph 1 shall be made available to any applicant in accordance with Directive 2003/4/EC.

Article 11
Cooperation

1. Competent authorities shall cooperate with each other, with the administrative authorities of third countries and with the Commission in order to ensure compliance with this Regulation.
2. The competent authorities shall exchange information on serious shortcomings detected through the checks referred to in Articles 7(4) and 9(1) and on the types of penalties imposed in accordance with Article 17 with the competent authorities of other Member States and with the Commission.

Article 12
Amendments of the Annex

In order to take into account the experience gained in implementation of this Regulation, in particular as identified through the reporting referred to in Article 18(3), and developments with regard to technical characteristics, end-users and production processes of timber and timber products, the Commission may adopt delegated acts in accordance with Article 290 of the TFEU by amending and supplementing the list of timber and timber products set out in the Annex. Such acts shall not create a disproportionate burden on operators. When adopting such delegated acts, the Commission shall act in accordance with the relevant provisions of this Regulation.

For the delegated acts referred to in this Article the procedures set out in Articles 13, 14 and 15 shall apply.

Article 13

Exercise of the delegation

1. The powers to adopt the delegated acts referred to in Articles 5(3), 7(7) and 12 shall be conferred on the Commission for a period of seven years following the entry into force of this Regulation. The Commission shall make a report in respect of the delegated powers at the latest three months before the end of a three-year period after the date of application of this Regulation. The delegation of power shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 14.
2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
3. The powers to adopt delegated acts are conferred on the Commission subject to the conditions laid down in Articles 14 and 15.

Article 14

Revocation of the delegation

1. The delegation of power referred to in Articles 5(3), 7(7) and 12 may be revoked by the European Parliament or by the Council.
2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall inform the other legislator and the Commission at the latest one month before the final decision is taken, stating the delegated powers which could be subject to revocation and the reasons for the revocation.
3. The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the *Official Journal of the European Union*.

Article 15
Objections to delegated acts

1. The European Parliament and the Council may object to the delegated act within a period of three months from the date of notification.
2. If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act, or if, before that date, the European Parliament and the Council have both informed the Commission that they have decided not to raise objections, the delegated act shall enter into force at the date stated in its provisions.
3. If the European Parliament or the Council objects to the adopted delegated act, the act shall not enter into force. The institution which objects shall state its reasons for objecting to the delegated act.

Article 16
Committee

1. The Commission shall be assisted by the Forest Law Enforcement Governance and Trade (FLEGT) Committee established under Article 11 of Regulation (EC) No 2173/2005.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 17

Penalties

The Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission and shall notify it without delay of any subsequent amendments affecting them.

Article 18

Reporting

1. Member States shall submit to the Commission, by 30 April of every second year following the date of application of this Regulation, a report on the application of this Regulation during the previous two years.
2. On the basis of those reports the Commission shall draw up a report to be submitted to the European Parliament and to the Council every two years.
3. By ... * and every six years thereafter, the Commission shall, on the basis of reporting on and experience with the application of this Regulation, review the functioning and effectiveness of this Regulation, in particular with respect to administrative consequences for small and medium-sized enterprises and product coverage. The reports may be accompanied, if necessary, by appropriate legislative proposals.

* OJ: please insert date: 36+30 months after the date of entry into force of this Regulation.

Article 19

Entry into force and application

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

It shall apply as from ...*. However, Articles 5(2), 6(1), 7(7) and 7(8) shall apply as from the date of entry into force of this Regulation.

Article 20

Publication

This Regulation shall be published in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at,

For the European Parliament

The President

For the Council

The President

* OJ: please insert date: 30 months after the date of entry into force of this Regulation.

ANNEX

Timber and timber products as classified in the Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87¹, to which this Regulation applies

- 4401 Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms;
- 4403 Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared;
- 4406 Railway or tramway sleepers (cross-ties) of wood;
- 4407 Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end-jointed, of a thickness exceeding 6 mm;
- 4408 Sheets for veneering (including those obtained by slicing laminated wood), for plywood or for other similar laminated wood and other wood, sawn lengthwise, sliced or peeled, whether or not planed, sanded, spliced or end-jointed, of a thickness not exceeding 6 mm;
- 4409 Wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, V-jointed, beaded, moulded, rounded or the like) along any of its edges, ends or faces, whether or not planed, sanded or end-jointed;

¹ Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

- 4410 Particle board, oriented strand board (OSB) and similar board of wood whether or not agglomerated with resins or other organic binding substances;
- 4411 Fibreboard of wood or other ligneous materials, whether or not bonded with resins or other organic substances;
- 4412 Plywood, veneered panels and similar laminated wood;
- 4413 00 00 Densified wood, in blocks, plates, strips or profile shapes;
- 4414 00 Wooden frames for paintings, photographs, mirrors or similar objects;
- 4415 Packing cases, boxes, crates, drums and similar packings, of wood; cable-drums of wood; pallets, box pallets and other load boards, of wood; pallet collars of wood; coffins;

(Not packing material used exclusively as packing material to support, protect or carry another product placed on the market.)
- 4416 00 00 Casks, barrels, vats, tubs and other cooperers' products and parts thereof, of wood, including staves;

- 4418 Builders' joinery and carpentry of wood, including cellular wood panels, assembled flooring panels, shingles and shakes, wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, V-jointed, beaded, moulded, rounded or the like) along any of its edges, ends or faces, whether or not planed, sanded or end-jointed;
 - Pulp and paper of Chapters 47 and 48 of the Combined Nomenclature, with the exception of bamboo-based and recovered (waste and scrap) products;
 - 9403 30, 9403 40, 9403 50 00, 9403 60 and 9403 90 30 Wooden furniture;
 - 9406 00 20 Prefabricated buildings.
-