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NOTE

from: General Secretariat
to: Permanent Representatives Committee/Council

Subject: Proposal for 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
- Outcome of the European Parliament's first reading
(Strasbourg, 21 to 24 April 2009)

I. INTRODUCTION

The Rapporteur, Dr Caroline LUCAS (Greens/EFA - UK), presented a report on behalf of the Committee on Environment, Public Health and Food Safety, consisting of 75 amendments.

II. DEBATE

Commissioner DIMAS opened the debate, which took place on 21 April 2009, and stated that:

- the amendment banning trade in illegal timber was very important. It would in principle improve the Commission's proposal, but some practical considerations needed to be borne in mind. The Commission believed that the due diligence approach would be more balanced, more effective, easier to implement and more compliant with WTO rules;
- the amendment proposing a broader definition of legal wood merited further discussion. The Commission might well be able to give its support to this amendment;
- the Commission could accept the amendments concerning the recognition of monitoring organisations, though he also observed that the Member States would have their own very clear needs and wishes in this regard;
- the Commission could also accept the amendments relating to advisory groups; and
- some amendments raise subsidiarity and proportionality concerns.

The Rapporteur:

- stressed the urgent need to address the problem of illegal logging, regretted the lack of an agreement in first reading, and urged the Council to adopt its common position at the June 2009 Council;
- argued that the Commission's proposal was not strong enough to achieve the aim of ensuring that the European Union no longer provides a market for illegally logged timber; and
- deplored the fact that the Commission's proposal would not actually prohibit the import and sale of illegally logged timber, but would simply require the operators at one particular point in the supply chain to establish a due diligence system whilst at the same time refraining from placing such an obligation on any of the other parties involved. This was in stark contrast to the United States' revised Lacey Act of May 2008 which does include an explicit prohibition on the import and sale of illegally logged timber. There was absolutely no reason why the European Union should not emulate the American model in this regard. Her own report accepted the Commission suggestion that only operators who place timber and timber products on the European market for the first time should be required to establish a full due diligence system, but it also made clear that all operators would share responsibility for trading only legally sourced wood and that the failure to do so might constitute an offence. With regard to the WTO dimension, there was no reason why what is permissible for the United States should not be considered to be permissible for the European Union.

Speaking on behalf of the EPP/ED political group, Mr Péter OLAJOS (EPP/ED - HU):

- stressed the urgency and scale of the deforestation problem. The European Union should play a leading role in global efforts to address this issue; and
- welcomed those of the Rapporteur's amendments that were intended to boost monitoring and financial penalties.

Speaking on behalf of the PES political group, Mrs Riitta MYLLER (PES - FI) recalled that the Rapporteur's proposals had received a very large majority in the Committee on the Environment, Public Health and Food Safety. She expressed her ongoing support for the Rapporteur's efforts.

Speaking on behalf of the ALDE political group, Mr Magor Imre CSIBI (ALDE - RO):

- noted the unimpressive contrast between the great importance of the issue under discussion and the small amount of time that the Parliament had allocated to the debate;
- expressed his disappointment with the Commission's unambitious proposal. Furthermore, the Commission's proposals were not very clear as regards how the system should work in practice;
- rejected the line of argument that bona fide European operators should not be punished in order to solve an external problem;
- stated that some European regions, including his own, were also confronted with rampant deforestation;
- argued that the proposed Regulation is not intended to punish or hinder trade, but rather to control it better; and
- welcomed the amendments that would strengthen and clarify the Commission's proposal by extending the scope to cover all timber products and requiring all operators to carry out some form of due diligence by introducing a new baseline for financial penalties and providing clear criteria for a credible and independent monitoring system. The challenge is now to have this system adopted and implemented sooner rather than later. Consumers need a guarantee that they are not accidentally purchasing illegally felled timber products.

Commissioner DIMAS once more took the floor and:

- stated that the due diligence approach would involve more than just a certificate of legality. It would require demonstration on the basis of comprehensive measures that would enable legality to be reasonably assured;
- noted that in certain cases, a certificate of legality would only be a starting point. Where the risk assessment shows that the country of origin presents a higher risk of administrative corruption or where countries' enforcement of national laws is weak, additional guarantees will be required in order to support the certification of legality; and
- argued, with regard to the proposal to extend the scope of the Regulation to cover downstream operators, that requiring distributors and retailers to demand proof of the due diligence from the preceding market operators was excessive.

The Rapporteur once more took the floor and:

- stated that she had done her best to take due account of existing national systems which have already proven their worth. There is no need in such cases to reinvent the wheel or to establish wholly new structures;
- affirmed that she had striven not to burden overmuch the different players in the trading system. She wanted to ensure that all players are made responsible. Those who first place products on the market should not be made to bear the full burden;
- stated that industry had expressed its support for many elements of her report. It was ironic that industry seemed to be far more ambitious than the Commission. Industry particularly welcomed the greater clarity and the spreading of responsibility;
- argued that the Regulation would benefit responsible European operators, the vast majority of whom already comply with the stipulations that her report would introduce. The Regulation would protect them from being undercut by less responsible competitors;
- noted that her report also includes some special measures for smaller operators. She and her colleagues had taken very seriously the risk of being disproportionate;
- expressed her disappointment that the Commission's proposal was intended to prevent the sale of illegally logged timber, but that it did not actually make this an offence;
- argued that the Commission's due diligence approach is not sufficient on its own; and
- repeated her disappointment that it had not been possible to secure an agreement in first reading during the current parliamentary term. She stated that the Council had not acted with the same seriousness and speed as the Parliament.

III. VOTE

When it voted on 22 April 2009, the plenary adopted all 75 tabled amendments.

The text of the legislative resolution is annexed to this note.

The obligations of operators who place timber and timber products on the market *I**

European Parliament legislative resolution of 22 April 2009 on the proposal for 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 (COM(2008)0644 – C6-0373/2008 – 2008/0198(COD))

(Codecision procedure – first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0644),
 - having regard to Article 251(2) and Article 175(1) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0373/2008),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on the Environment, Public Health and Food Safety and the opinions of the Committee on Development and the Committee on International Trade (A6-0115/2008),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Amendment 1

Proposal for a regulation

Recital 1

Text proposed by the Commission

(1) Forests provide a broad variety of environmental, economic and social benefits including timber and non-timber forest products and environmental services.

Amendment

(1) Forests provide a broad variety of environmental, economic and social benefits including timber and non-timber forest products, environmental services ***and habitats for local communities.***

Amendment 2

Proposal for a regulation

Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) The forest environment is a precious heritage that must be protected, preserved and, where practicable, restored with the ultimate aim of maintaining biodiversity and ecosystem functions, protecting the climate, and safeguarding the rights of indigenous peoples and local and forest-dependent communities.

Amendment 3

Proposal for a regulation

Recital 1 b (new)

Text proposed by the Commission

Amendment

(1b) Forests are an economic resource, the cultivation of which produces prosperity and employment. The cultivation of forests also has positive effects on the climate since forest products can replace more energy-consuming products.

Amendment 4

Proposal for a regulation

Recital 1 c (new)

Text proposed by the Commission

Amendment

(1c) It is of great importance, particularly from a climate point of view, that subcontractors operating on the internal market only market legally harvested timber since such timber ensures that the important function of forests as carbon dioxide sinks is not disrupted. In addition, the use of legally harvested timber as building material, in wooden houses, for example, helps to lock in carbon dioxide on a long-term basis.

Amendment 5

Proposal for a regulation

Recital 1 d (new)

Text proposed by the Commission

Amendment

(1d) Forestry accounts for a very large part of social and economic development in developing countries and constitutes the primary source of income in such countries for many people. It is therefore important not to curb this development and source of income but to focus on how to promote a more sustainable development of forestry in these regions.

Amendment 6

Proposal for a regulation

Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) It is evident that pressure on natural forest resources and the demand for timber and timber products are often too high and that the Community needs to reduce its impact on forest ecosystems regardless of where their effects occur.

Amendment 7

Proposal for a regulation

Recital 3

Text proposed by the Commission

Amendment

(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. In addition, it also has social, political and economic implications.

(3) Illegal logging, ***in combination with institutional and governance deficiencies in the forest sector of a significant number of timber-producing countries,*** is a pervasive problem of major international concern. ***Illegal logging*** poses a significant threat to forests as it contributes to the process of deforestation ***and forest degradation,*** which is responsible for about 20% of CO₂ emissions, ***influences the desertification and steppe-formation process, increasing soil erosion and***

exacerbating extreme weather events and the flooding which may ensue, threatens biodiversity, damages indigenous peoples' habitats and undermines sustainable forest management and development. In addition, it also has social, political and economic implications, often undermining progress towards good governance goals, and threatens local forest-dependent communities and the rights of indigenous peoples.

Amendment 8

Proposal for a regulation Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) The aim of this Regulation is to halt the trade in illegally harvested timber and products made from such timber in the EU and to contribute to stopping deforestation and forest degradation and related carbon emissions and biodiversity loss globally while promoting sustainable economic growth, sustainable human development and respect for indigenous and local peoples. This Regulation should contribute to the fulfilment of obligations and commitments contained in, inter alia: the Convention on Biological Diversity of 1992 (CBD); the Convention on International Trade in Endangered Species of Wild Fauna and Flora of 1973 (CITES); the International Tropical Timber Agreements (ITTAs) of 1983, 1994 and 2006; the United Nations Framework Convention on Climate Change of 2002 (UNFCCC); the United Nations Convention to Combat Desertification of 1994; the Rio Declaration on Environment and Development of 1992; the Johannesburg Declaration and Plan of Implementation as adopted by the World Summit on Sustainable Development on 4 September 2002; the proposals for action of the Intergovernmental Panel on Forests/International Forum on Forests;

the United Nations Conference on Environment and Development (UNCED) non-legally binding authoritative statement of principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests of 1992; Agenda 21 as adopted by UNCED in June 1992; the United Nations General Assembly Special Session (Ungass) resolution 'Programme for the further implementation of Agenda 21' of 1997; the Millennium Declaration of 2000; the World Charter for Nature of 1982; the Declaration of the United Nations Conference on the Human Environment of 1972; the 1972 Action Plan for Human Environment, the proposals of the Intergovernmental Panel on Forests endorsed by the United Nations General Assembly in its 1997 Special Session; the United Nations Forum on Forests, Resolution 4/2; the Convention on European Wildlife and Habitats of 1979; the UN Convention against Corruption of 2003(UNCAC).

Amendment 9

Proposal for a regulation Recital 3 b (new)

Text proposed by the Commission

Amendment

(3b) Decision No 1600/2002/EC of the European Parliament and the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme¹ has identified as a priority activity the examination of the possibility of taking active measures to prevent and combat trade in illegally harvested wood and the continuation of the active participation of the Community and of Member States in the implementation of global and regional resolutions and agreements on forest-related issues.

¹ *OJL 242, 10.9.2002, p. 1*

Amendment 10

Proposal for a regulation

Recital 4

Text proposed by the Commission

(4) The Communication of the Commission to the European Parliament and to the Council on an EU Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT) proposed a package of measures to support international efforts to tackle the problem of illegal logging and associated trade.

Amendment

(4) The Communication of the Commission to the European Parliament and to the Council on an EU Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT) proposed a package of measures to support international efforts to tackle the problem of illegal logging and associated trade ***and to contribute to the wider objective of sustainable forest management.***

Amendment 11

Proposal for a regulation

Recital 5

Text proposed by the Commission

(5) The Council and the European Parliament recognising the need for the Community to contribute to global efforts to address the problem of illegal logging welcomed that Communication.

Amendment

(5) The Council and the European Parliament, recognising the need for the Community to contribute to global efforts to address the problem of illegal logging ***and to support sustainable legal logging within the framework of sustainable development, sustainable forest management and poverty reduction, as well as social equity and national sovereignty,*** welcomed that Communication.

Amendment 12

Proposal for a regulation

Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) The Community should also push, in bilateral talks with major timber-consuming countries such as the US, China, Russia, and Japan, for discussions in relation to the problem of illegal logging, for convergence towards

harmonised appropriate obligations on operators on their own timber market, and for the creation of an independent, global alert system and register of illegal logging consisting for example of Interpol and an appropriate UN body, benefiting from the latest satellite detection technologies.

Amendment 13

Proposal for a regulation Recital 6 b (new)

Text proposed by the Commission

Amendment

(6b) Operators from countries with forests of international ecological importance should have a particular responsibility for the sustainable exploitation of timber.

Amendment 14

Proposal for a regulation Recital 7

Text proposed by the Commission

Amendment

(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 aiming at the conservation of forests and the achievement of a high level of environmental protection, including combating climate change and biodiversity loss.

(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 reduce the Community's impact on forest ecosystems**, to complement and strengthen the VPA initiative and to improve synergies between policies aiming at **poverty reduction**, the conservation of forests and the achievement of a high level of environmental protection, including combating climate change and biodiversity loss.

Amendment 15

Proposal for a regulation
Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) Based on the principle of preventive action, all supply chain actors should share responsibility for eliminating the risk of illegally harvested timber and timber products being made available on the market;

Amendment 16

Proposal for a regulation
Recital 8

Text proposed by the Commission

Amendment

(8) The efforts made by countries which have concluded FLEGT VPAs with the Community 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 and timber products harvested in accordance with the relevant national legislation are exported into the Community. To that effect, 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 Community, originating in partner countries listed in Annex I to *Council Regulation (EC) No 2173/2005* should be considered to have been legally harvested provided they comply with that Regulation and any implementing provisions.

(8) The efforts made by countries which have concluded FLEGT VPAs with the Community 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 and timber products harvested in accordance with the relevant national legislation are exported into the Community. To that effect, 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 Community, originating in partner countries listed in Annex I to *that Regulation* should be considered to have been legally harvested provided they comply with that Regulation and any implementing provisions. ***The principles set out in the VPAs, particularly with regard to the definition of ‘legally produced timber’ must include and guarantee sustainable forest management, the maintenance of biodiversity, the protection of local forest-dependent communities and of the indigenous peoples, and the safeguarding of the rights of those communities and peoples.***

Amendment 17

Proposal for a regulation

Recital 10

Text proposed by the Commission

(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.

Amendment

(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.
Strengthening requirements and obligations and enhancing the legal means to prosecute for possession and sales by operators placing illegal timber and timber products on the EU market are among the most effective solutions to deter operators from trading with illegal suppliers.

Amendment 18

Proposal for a regulation

Recital 11

Text proposed by the Commission

(11) In the absence of an internationally agreed definition the legislation of the country where the timber was harvested should be the basis to define what constitutes illegal logging.

Amendment

(11) In the absence of an internationally agreed definition the legislation of the country where the timber was harvested should be the ***primary*** basis to define what constitutes illegal logging. ***The application of legality standards should involve further consideration of international standards including, inter alia, those of the African Timber Organisation; the International Tropical Timber Organisation; the Montreal Process on Criteria and Indicators for the Conservation and Sustainable Management of Temperate and Boreal Forests; and the Pan-European Forest Process on Criteria and Indicators for Sustainable Forest Management. It should contribute to the implementation of international commitments, principles and recommendations including those concerning mitigation of climate change,***

reduction of biodiversity loss, alleviation of poverty, reduction of desertification and the protection and promotion of the rights of indigenous peoples and of local and forest-dependent communities. The timber-harvesting country should provide an inventory of total legal logging including details of tree species and maximum timber production.

Amendment 19

Proposal for a regulation

Recital 12

Text proposed by the Commission

(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 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*.

Amendment

(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 market for the first time, rather than all operators involved in the distribution chain, should be subject to the *requirement to put in place a full system of measures and procedures (due diligence system) to minimise the risk of placing illegally harvested timber and timber products on the market. However all operators in the supply chain should be bound by the overriding prohibition against making illegally sourced timber or timber products available on the market, and must exercise due care to this effect.*

Amendment 20

Proposal for a regulation

Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) All operators (traders and producers) in the timber and timber product supply chains on the Community market should clearly indicate on the products on offer the source or supplier from which the timber originates.

Amendment 21

Proposal for a regulation Recital 13

Text proposed by the Commission

(13) The overall objective of achieving sustainability through the promotion of sustainability criteria remains a priority for the Community. In light of this objective and in order to reduce the burden on operators who place on the market timber and timber products which are subject to mandatory sustainability criteria established by Directive (EC) No XX/XX of the European Parliament and of the Council on the promotion of the use of energy from renewable sources, this Regulation should not apply to such products.

Amendment

deleted

Amendment 22

Proposal for a regulation Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) In implementing this Regulation, the Commission and the Member States should take special account of the particular vulnerability and limited resources of small and medium-sized enterprises (SMEs). It is extremely important that SMEs are not burdened by complicated rules which impede their development. The Commission should, therefore, as far as possible and on the basis of the mechanisms and principles set out in the forthcoming Small Business Act, devise simplified systems in respect of SMEs' obligations under this Regulation, without jeopardising its object and purpose, and offer SMEs valid alternatives to enable them to operate in line with Community legislation.

Amendment 23

Proposal for a regulation
Recital 16

Text proposed by the Commission

(16) The timber sector is of major importance for the economy of the Community. Organisations of operators are important elements of the sector as they represent the interests of the latter at a large scale and interact with a diverse range of stakeholders. Organisations also have the expertise and capacity to analyse relevant legislation and facilitate the compliance of members, provided they do not use this competence with a view to dominate on 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 requirements for the realisation of the due diligence systems. A list of such recognised organisations will be made public ***and will enable the recognition of the monitoring organisations included therein by all Member States competent authorities.***

Amendment

(16) 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 ***suitable and effective*** requirements for the realisation of the due diligence systems. A list of such recognised organisations will be made public.

Amendment 24

Proposal for a regulation
Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) In order to facilitate the implementation of this Regulation and to contribute to the development of good practice, the European Union should encourage the above-mentioned organisations to cooperate with environmental organisations and human rights organisations to support due diligence systems and the monitoring thereof.

Amendment 25

Proposal for a regulation

Recital 17

Text proposed by the Commission

(17) Competent authorities should monitor that the operators fulfil the obligations laid down in this Regulation. For that purpose the competent authorities should carry out official checks and require operators to take corrective measures where necessary.

Amendment

(17) Competent authorities should monitor that the operators fulfil the obligations laid down in this Regulation. For that purpose the competent authorities should carry out official checks, ***including customs checks,*** and require operators to take corrective measures where necessary.

Amendment 26

Proposal for a regulation

Recital 19

Text proposed by the Commission

(19) Taking into account the international character of illegal logging and related trade competent authorities should cooperate between themselves and with the administrative authorities of third countries and/or the Commission.

Amendment

(19) Taking into account the international character of illegal logging and related trade, competent authorities should cooperate between themselves and with ***environmental organisations, human rights organisations and*** the administrative authorities of third countries and/or the Commission.

Amendment 27

Proposal for a regulation

Recital 23

Text proposed by the Commission

(23) In order to enable operators and competent authorities to prepare themselves in order to meet the requirements of this Regulation, this Regulation shall apply two years after its entry into force.

Amendment

deleted

Amendment 28

Proposal for a regulation
Recital 23 a (new)

Text proposed by the Commission

Amendment

(23a) Development in sustainable forestry is an ongoing process and this Regulation should, therefore, be evaluated, updated and amended on a regular basis in line with the results of new research. The Commission should therefore regularly analyse the latest available research and development and present the conclusions of its analysis and proposed amendments in a report to the European Parliament.

Amendment 29

Proposal for a regulation
Recital 23 b (new)

Text proposed by the Commission

Amendment

(23b) In order to ensure a smoothly operating internal market in forest products, the Commission should analyse the impact of this Regulation on an ongoing basis. Particular account should be taken of the implications of the Regulation for SMEs operating on the internal market. The Commission should, therefore, accordingly and on a regular basis, carry out a study and impact analysis of the effects of the Regulation on the internal market, with particular reference to SMEs, in addition to its impacts on sustainable forest management. The Commission should subsequently present a report of its analysis, its conclusions and proposals for measures to the European Parliament.

Amendment 30

Proposal for a regulation
Article 1 – title

Text proposed by the Commission

Amendment

Subject matter

Subject matter *and objective*

Amendment 31

Proposal for a regulation

Article 1

Text proposed by the Commission

This Regulation lays down the obligations of operators who place timber and timber products on the market.

Amendment

This Regulation lays down the obligations of operators who place ***or make available*** timber and timber products on the market.

Operators shall ensure that only legally harvested timber and timber products are made available on the market.

Operators who place timber and timber products on the market shall use a due diligence system.

Amendment 32

Proposal for a regulation

Article 2 – point a

Text proposed by the Commission

a) ‘timber and timber products’ means the timber and timber products set out in the Annex ***with the exception of timber and timber products which are subject to mandatory sustainability criteria established by Directive (EC) No XX/XX;***

Amendment

a) ‘timber and timber products’ means the timber and timber products set out in the Annex ***without exception;***

Amendment 33

Proposal for a regulation

Article 2 – point a a (new)

Text proposed by the Commission

Amendment

(aa) 'making available on the market' means any supply of timber and timber products on the Community market for distribution or use in the course of a commercial activity whether in return for payment or free of charge;

Amendment 34

Proposal for a regulation

Article 2 – point b

Text proposed by the Commission

(b) 'placing on the market' means **any supply of timber and timber products for the first time on the Community market for distribution or use in the course of a commercial activity whether in return for payment or free of charge;**

Amendment

(b) 'placing on the market' means **the first making available of timber and timber products on the Community market; subsequent processing and distribution of timber does not constitute 'placing on the market';**

Amendment 35

Proposal for a regulation

Article 2 – point c

Text proposed by the Commission

(c) 'operator' means any natural or legal person that places timber or timber products **on the market;**

Amendment

(c) 'operator' means any natural or legal person that places **or makes available on the market** timber or timber products;

Amendment 36

Proposal for a regulation

Article 2 – point d a (new)

Text proposed by the Commission

Amendment

(da) 'risk' means a function of the probability of timber or timber products from an illegal source being imported into, exported from or traded in the territory of the Community and the severity of that event;

Amendment 37

Proposal for a regulation

Article 2 – point e

Text proposed by the Commission

(e) 'risk management' means a set of measures and procedures **carried out by operators** in order to minimise the risk of

Amendment

(e) 'risk management' means **the systematic identification of risks and the implementation of** a set of measures and

placing illegally harvested timber and *timber* products on the market;

procedures in order to minimise the risk of placing illegally harvested timber and timber products on the market;

Amendment 38

Proposal for a regulation

Article 2 – point f

Text proposed by the Commission

(f) 'applicable legislation' means *the* legislation *of the country of harvest regulating forest conservation and management and the harvesting of timber as well as legislation on trade in timber or timber products related to forest conservation and management and to the harvesting of timber*;

Amendment

(f) 'applicable legislation' means legislation, *whether national, regional or international, in particular that concerning the conservation of biological diversity, forest management, resource use rights and the minimisation of adverse environmental impacts; it should also take into account property tenure, rights of indigenous people, labour and community welfare legislation, taxes, import and export duties, royalties or fees related to harvesting, transportation and marketing*;

Amendment 39

Proposal for a regulation

Article 2 – point f a (new)

Text proposed by the Commission

Amendment

(fa) 'Sustainable forest management' means the management and use of forests and wooded lands in a way, and at a rate, that maintains their biological diversity, productivity, regeneration capacity, vitality and their potential to fulfil, now and in the future, relevant ecological, economic and social functions, at local, national, and global levels, without causing any damage to other ecosystems;

Amendment 40

Proposal for a regulation

Article 2 – point h

Text proposed by the Commission

(h) 'monitoring organisation' means a legal entity or a membership-based association **or a federation** that has the legal capacity to monitor and ensure the application of due diligence systems by the operators certified as making use of such systems.

Amendment

(h) 'monitoring organisation' means a legal entity or a membership-based association that has the legal capacity **and appropriate expertise** to monitor and ensure the application of due diligence systems by the operators certified as making use of such systems, **and which is legally independent from the operators it certifies**.

Amendment 41

Proposal for a regulation

Article 2 – point h a (new)

Text proposed by the Commission

Amendment

(ha) 'traceability' means the ability to trace and follow timber or timber products through all stages of production, processing and distribution;

Amendment 42

Proposal for a regulation

Article 3 – paragraphs 1 and 2

Text proposed by the Commission

Amendment

1. Operators shall **exercise due diligence to minimise the risk of placing illegally harvested timber and timber products on the market. To that effect, they shall use a framework of procedures and measures, hereinafter referred to as a 'due diligence system'**.

2. Operators shall establish a due diligence system containing the elements referred to in Article 4(1) or make use of a due diligence system of a recognised monitoring organisation referred to in Article 5(1).

1. Operators shall **ensure that they place or make available on the market only legally harvested timber and timber products**.

2. Operators **who place timber and timber products on the market** shall establish a due diligence system containing the elements referred to in Article 4 or make use of a due diligence system of a recognised monitoring organisation referred to in Article 5(1).

Existing national legislative supervision and any voluntary chain of custody mechanism which fulfil the requirements under this Regulation may be used as a basis for the due diligence system.

2a. Operators who make timber and timber products available on the market shall, throughout the supply chain, be able to:

(i) identify the operator who has supplied the timber and timber products, and the operator to whom the timber and timber products have been supplied;

(ii) provide upon request information on the name of the species, the country/countries of harvest and where feasible the concession of origin;

(iii) check, where necessary, that the operator who has placed the timber and timber products on the market has fulfilled his obligations under this Regulation.

Amendment 43

Proposal for a regulation

Article 4 – paragraph 1 – point -a (new)

Text proposed by the Commission

Amendment

(-a) ensure that only legally harvested timber and timber products are placed on the market, employing a traceability system and third party verification by the monitoring organisation;

Amendment 44

Proposal for a regulation

Article 4 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) provide access to the following information on timber and timber products placed on the market by the operator:

(a) comprise measures to ascertain:

- (i) description;*
- (ii) country of harvest;*
- (iii) volume and/or weight;*
- (iv) where applicable, name and address of the operator who has supplied timber or timber products;*
- (v) information on compliance with the requirements of the applicable legislation;*

- (i) country of origin, forest of origin and, where feasible, concession of harvest;*
- (ii) name of the species, including scientific name;*
- (iii) value;*
- (iv) volume and/or weight;*
- (v) that the timber or the timber embedded in the timber products has been legally harvested;*
- (vi) the name and address of the operator who has supplied the timber and timber products;*
- (vii) the natural or legal person responsible for harvesting;*
- (viii) the operator to whom the timber and timber products have been supplied;*

Amendment 45

Proposal for a regulation

Article 4 – paragraph 1 – point a – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

These measures shall be supported by appropriate documentation maintained in a database by the operator or by the monitoring organisation.

Amendment 46

Proposal for a regulation

Article 4 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) include a risk management procedure and

(b) include a risk management procedure which shall consist of the following:

(i) systematic identification of risks, inter alia through collecting data and information and making use of international, Community or national sources;

(ii) implementation of all measures necessary for limiting exposure to risks;

(iii) establishing procedures which shall be carried out regularly to verify that the measures set out in points (i) and (ii) are working effectively and to review them where necessary;

(iv) establishing records to demonstrate the effective application of the measures set out in points (i) to (iii).

Amendment 47

Proposal for a regulation

Article 4 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. The Commission shall adopt measures for the implementation of this Article. The Commission shall, in particular, establish criteria for assessing whether there is a risk of illegally harvested timber and timber products being placed on the market.

Amendment

2. The Commission shall adopt measures for the implementation of this Article *with a view to ensuring uniformity of interpretation of the rules and effective compliance by operators.* The Commission shall, in particular, establish criteria for assessing whether there is a risk of illegally harvested timber and timber products being placed on the market. *In doing so, the Commission shall take particular account of the special position and capacity of SMEs and, as far as possible, offer those enterprises adapted and simplified alternatives to reporting and control systems so that those systems do not become too burdensome.*

Based on factors related to the product type, source or complexity of the supply chain, certain categories of timber and timber products or suppliers shall be considered 'high risk', requiring extra due diligence obligations from the operators.

Extra due diligence obligations may, inter alia, include:

- requiring additional documents, data or information;*
- requiring third party audits.*

Timber and timber products from

- conflict areas, or countries /*

regions covered by a UN Security Council ban on timber exports,

- *countries where there is consistent and reliable information regarding significant failures of forest governance, a low level of forest law enforcement or a high level of corruption,*
- *countries where official Food and Agriculture Organisation (FAO) statistics show a decrease in forest area,*
- *suppliers where information on potential irregularities supported by reliable evidence, that has not been disproved by investigation, has been made available from customers or external parties,*

shall be considered as ‘high risk’ by operators under this Regulation.

The Commission shall make available a register of high-risk sources of timber and timber products or suppliers.

Amendment 48

Proposal for a regulation

Article 4 – paragraph 2 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

Relevant stakeholders shall be consulted prior to the adoption of additional implementing measures.

Amendment 49

Proposal for a regulation

Article 4 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Individual Member States shall not be prevented, with regard to access to the market for timber and timber products, from setting more stringent requirements for the harvesting and origin of timber than laid down in this Regulation, in

respect of sustainability, the protection of the environment, the conservation of biodiversity and the ecosystem, the protection of local communities' habitats, the protection of forest-dependent communities, the protection and rights of indigenous peoples and human rights.

Amendment 50

Proposal for a regulation Article 4 a (new)

Text proposed by the Commission

Amendment

Article 4a

Labelling

Member States shall ensure that by two years after the entry into force of this Regulation all timber and timber products placed and made available on the market are labelled, as appropriate, with the information specified in Art 3(2a).

Amendment 51

Proposal for a regulation Article 5 – paragraph 1

Text proposed by the Commission

Amendment

1. Competent authorities shall recognise monitoring organisations which apply for such recognition, if the monitoring organisation complies with the following requirements:

(a) it has legal personality;

(b) it has established a due diligence system which contains the elements set out in Article 4(1);

1. The Commission shall, in accordance with the regulatory procedure referred to in Article 11(2a), recognise as a monitoring organisation a private or public entity which has established a due diligence system which contains the elements set out in Article 4(1).

1a. A public entity applying for the recognition provided for in paragraph 1 shall comply with the following requirements:

(a) it has legal personality;

(aa) it is governed by public law;

(b) it has been established to carry out particular functions regarding the forest sector;

(c) it obliges operators it certifies to use its due diligence *systems*;

(d) it has in place a monitoring mechanism to ensure the use of the due diligence *systems* by the operators which it has certified as making use of its due diligence system;

(e) it takes appropriate disciplinary measures against any certified operator who fails to comply with *the* due diligence system *of the monitoring organisation*.

(ba) it is financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law;

(c) it obliges operators it certifies to use its due diligence *system*;

(d) it has in place a monitoring mechanism to ensure the use of the due diligence *system* by the operators which it has certified as making use of its due diligence system;

(e) it takes appropriate disciplinary measures against any certified operator who fails to comply with *its* due diligence system; *disciplinary measures shall include reporting the matter to the relevant national competent authority;*

(ea) it has no conflict of interest with the competent authorities.

Amendment 52

Proposal for a regulation Article 5 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. A private entity applying for the recognition provided for in paragraph 1 shall comply with the following requirements:

(a) it has legal personality;

(b) it is governed by private law;

(c) it has appropriate expertise;

(d) it is legally independent from the operators it certifies;

(e) the operators it certifies are bound by the entity's articles of association to use its due diligence systems;

(f) it has in place a monitoring mechanism to ensure the use of the due diligence systems by the operators which it has certified as making use of its due diligence system;

(g) it takes appropriate disciplinary measures against any certified operator who fails to comply with its due diligence

system; disciplinary measures shall include reporting the matter to the relevant national competent authority.

Amendment 53

Proposal for a regulation Article 5 – paragraph 2

Text proposed by the Commission

2. The monitoring organisation shall submit to **a competent authority** the following information together with its application for recognition:
- (a) its statute;
 - (b) the names of persons authorised to act on its behalf;

 - (c) a detailed description of its due diligence system.

Amendment

2. The monitoring organisation shall submit to **the Commission** the following information together with its application for recognition:
- (a) its statute;
 - (b) the names of persons authorised to act on its behalf;
 - (ba) documentation to demonstrate its appropriate expertise;**
 - (c) a detailed description of its due diligence system.

Amendment 54

Proposal for a regulation Article 5 – paragraph 3

Text proposed by the Commission

3. **Competent authorities** shall decide whether to grant recognition to a monitoring organisation within three months of the submission of an application by the monitoring organisation.

Amendment

3. **In accordance with the regulatory procedure referred to in Article 11(2a), the Commission** shall decide whether to grant recognition to a monitoring organisation within three months of the submission of an application by the monitoring organisation **or a recommendation from the competent authority of a Member State that it is recommending the organisation for recognition.**

The decision to grant recognition to a monitoring organisation shall be communicated by the Commission to the competent authority of the Member State with jurisdiction over that organisation, together with a copy of the application,

They shall carry out checks at regular intervals to ascertain that monitoring organisations comply with the requirements laid down in paragraph 1.

within 15 days of the date of the decision.

Member State competent authorities shall carry out checks, *including field-based audits*, at regular intervals, *or on the basis of substantiated concerns from third parties*, to ascertain that monitoring organisations comply with the requirements laid down in paragraph 1. *The check reports shall be made available to the public.*

If, following those checks, competent authorities ascertain that monitoring organisations do not comply with the requirements laid down in paragraph 1, they shall forthwith inform the Commission and communicate to it any relevant evidence in that regard.

Amendment 55

Proposal for a regulation

Article 5 – paragraph 4

Text proposed by the Commission

4. *A competent authority* shall withdraw the recognition of a monitoring organisation if it has been established that the requirements set out in *paragraph 1* are no longer fulfilled.

Amendment

4. *In accordance with the regulatory procedure referred to in Article 11(2a), the Commission* shall withdraw the recognition of a monitoring organisation if it has been established that the requirements set out in *paragraph 1 and 1a or paragraph 1 and 1b* are no longer fulfilled.

Amendment 56

Proposal for a regulation

Article 5 – paragraph 5

Text proposed by the Commission

5. Competent authorities shall notify the Commission within two months of any decision to *grant, refuse or withdraw recognition to a monitoring organisation.*

Amendment

5. Competent authorities shall notify the Commission within two months of any decision to *recommend the granting, refusal or withdrawal of recognition of any monitoring organisation.*

Amendment 57

Proposal for a regulation

Article 6

Text proposed by the Commission

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

Amendment

The Commission shall publish the list of the ***recognised*** 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.

Amendment 58

Proposal for a regulation

Article 7

Text proposed by the Commission

Monitoring measures

1. Competent authorities shall carry out ***checks*** to verify if operators comply with the requirements set out in Article 3(1) ***and*** (2) and Article 4(1).

Amendment

Monitoring ***and control*** measures

1. Competent authorities shall carry out ***controls*** to verify if operators comply with the requirements set out in Article 3(1), (2) ***and (2a)*** and Article 4(1).

1a. Controls shall be conducted in accordance with a yearly plan and/or on the basis of substantiated concerns provided by third parties; or in any case where the competent authority of the Member State is in possession of information that questions compliance by the operator with the requirements for due diligence systems set out in this Regulation.

1b. Controls may include, inter alia:

(a) examination of the technical and managerial systems and procedures of due diligence and risk assessment that the operators use.

(b) examination of documentation and records that demonstrate the proper functioning of the systems and procedures.

(c) spot checks, including field audits.

1c. Competent authorities shall be equipped with a reliable traceability

system to track internationally traded timber products and with public monitoring systems to assess the performance of operators in complying with their obligations and to help operators identify suppliers of high-risk timber and timber-derived products.

2. Operators shall offer all assistance necessary to facilitate the performance of the **checks** referred to in paragraph 1.

3. **Following** the **checks** referred to in paragraph 1 the competent authorities may **request the operator to take corrective measures.**

2. Operators shall offer all assistance necessary to facilitate the performance of the **controls** referred to in paragraph 1, **notably as regards access to premises and the presentation of documentation or records.**

3. **If, following** the **controls** referred to in paragraph 1, **the operator is presumed to have infringed the requirements set out in Article 3**, the competent authorities may **in accordance with their national legislation start a full investigation of the infringement and, in conformity with national law and depending on the gravity of the infringement, take immediate measures which may inter alia include:**

a) the immediate cessation of commercial activities; and

b) the seizure of timber and timber products.

3a. Any immediate measures taken by the competent authorities shall be of such nature as to prevent the continuation of the infringement concerned and to allow the competent authorities to complete their investigation.

3b. Where the competent authorities find that the technical and managerial systems and procedures of due diligence and risk assessment are not sufficient, they shall require the operator to take corrective measures.

Amendment 59

Proposal for a regulation Article 8 – title

Text proposed by the Commission

Records of **checks**

Amendment

Records of **controls**

Amendment 60

Proposal for a regulation

Article 8 – paragraph 1

Text proposed by the Commission

1. Competent authorities shall keep records of the **checks** referred to in Article 7(1), indicating in particular their nature and results, including any corrective measures requested to be taken. Records of all **checks** shall be kept for at least 10 years.

Amendment

1. Competent authorities shall keep records of the **controls** referred to in Article 7(1), indicating in particular their nature and results, including any corrective measures requested to be taken. Records of all **controls** shall be kept for at least 10 years.

Amendment 61

Proposal for a regulation

Article 8 – paragraph 2

Text proposed by the Commission

2. **A summary of** the records referred to in paragraph 1 shall be made available to the public in accordance with Directive 2003/4/EC.

Amendment

2. **The** records referred to in paragraph 1 shall be made available to the public **on the Internet** in accordance with Directive 2003/4/EC.

Amendment 62

Proposal for a regulation

Article 9 – paragraph 2

Text proposed by the Commission

2. The competent authorities shall exchange information on the results of the **checks** referred to in Article 7(1) with the competent authorities of other Member State(s) and with the Commission.

Amendment

2. The competent authorities shall exchange information on the results of the **controls** referred to in Article 7(1) with the competent authorities of other Member State(s) and with the Commission.

Amendment 63

Proposal for a regulation

Article 10 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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

Amendment

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

These authorities shall be given sufficient powers to enforce this Regulation by monitoring its application, investigating alleged infringements in cooperation with the customs authorities, and reporting offences to the prosecuting authority in a timely manner.

Amendment 64

Proposal for a regulation

Article 10 – paragraph 2

Text proposed by the Commission

2. The Commission shall make publicly available the list of the competent authorities.

Amendment

2. The Commission shall make publicly available ***on the Internet*** the list of the competent authorities. ***This list shall be kept up-to-date.***

Amendment 65

Proposal for a regulation

Article 11 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. 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.

Amendment 66

Proposal for a regulation
Article 11 a (new)

Text proposed by the Commission

Amendment

Article 11a

Development of sustainability requirements

Within one year after the entry into force of this Regulation, the Commission shall present a legislative proposal to the European Parliament and the Council on a Community standard for all timber and timber products sourced from natural forests aimed at achieving the highest sustainability requirements.

Amendment 67

Proposal for a regulation
Article 11 b (new)

Text proposed by the Commission

Amendment

Article 11b

Advisory Group

- 1. An Advisory Group shall be established, consisting of representatives of interested stakeholders including, inter alia, forest-based industry representatives, forest owners, non-governmental organisations (NGOs) and consumer groups and chaired by a representative of the Commission.***
- 2. Representatives of Member States may participate in the meetings either on their own initiative or upon invitation by the Advisory Group.***
- 3. The Advisory Group shall set its rules of procedure which shall be made public on the Commission's website.***
- 4. The Commission shall provide the technical and logistic support necessary for the Advisory Group and provide the Secretariat for its meetings.***
- 5. The Advisory Group shall examine and issue opinions on matters relating to the***

application of this Regulation raised by the chairman, either on his own initiative or at the request of the members of the Advisory Group or the Committee.

6. The Commission shall convey the opinions of the Advisory Group to the Committee.

Amendment 68

Proposal for a regulation Article 12 – paragraph 1

Text proposed by the Commission

The Commission may **amend** the list of timber and timber products set out in the Annex taking into account technical characteristics, end-uses and production processes.

Amendment

The Commission may **add to** the list of timber and timber products set out in the Annex taking into account technical characteristics, end-uses and production processes.

Amendment 69

Proposal for a regulation Article 13

Text proposed by the Commission

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.

Amendment

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 **may be criminal or administrative**, must be effective, proportionate and dissuasive, **and shall include, where appropriate, inter alia:**

(i) financial penalties reflecting

- **the degree of environmental damage;**
- **the value of the timber products concerned by the infringement;**
- **the tax losses and economic damage occasioned by the infringement;**

(ii) seizure of timber and timber products;

(iii) temporary prohibition from marketing timber and timber products. Where legal proceedings are pending, operators shall suspend sourcing timber and timber products from the areas in question.

Financial penalties shall represent at least five times the value of the timber products obtained by committing a serious infringement. In the case of a repeated serious infringement within a five-year period, the financial penalties shall gradually increase up to at least eight times the value of the timber products obtained by committing a serious infringement.

Without prejudice to other provisions laid down in Community law, pertaining to public funds, Member States shall not grant any public aid under national aid regimes or under Community funds to operators convicted of a serious infringement of this Regulation, until corrective measures have been taken and effective, proportionate and dissuasive penalties have been applied.

The Member States shall notify those provisions to the Commission by 31 December 20XX and shall notify it without delay of any subsequent amendment affecting them.

The Member States shall notify those provisions to the Commission by 31 December 20XX and shall notify it without delay of any subsequent amendment affecting them.

Amendment 70

Proposal for a regulation

Article 14 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. In preparing the report referred to in paragraph 2, the Commission shall have regard to the progress made in respect of the conclusion and operation of the FLEGT VPAs adopted pursuant to Regulation (EC) No 2173/2005. The Commission shall consider whether any revisions of this Regulation are required in the light of experience of the operation of the FLEGT VPAs and their

effectiveness in addressing the problem of illegal timber.

Amendment 71

Proposal for a regulation Article 14 a (new)

Text proposed by the Commission

Amendment

Article 14a

Amendment to Directive 2008/99/EC

Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law¹ shall be amended, with effect from the date of application of this Regulation, as follows:

(1) The following point shall be added to Article 3:

'(ia) the making available on the market of illegally harvested timber or timber products.'

(2) The following indent shall be added to Annex A:

- 'Regulation of the European Parliament and of the Council of [...] laying down the obligations of operators who place timber and timber products on the market'.

¹ OJ L 328, 6.12.2008, p. 28.

Amendment 72

Proposal for a regulation Article 14 b (new)

Text proposed by the Commission

Amendment

Article 14b

Review

Three years after the entry into force of this Regulation, and every five years thereafter, the Commission shall carry out a review of the operation of this Regulation in regard to its object and

purpose and report its conclusions and, on the basis thereof, its proposals for amendments, to the European Parliament.

The review shall focus on the following:

- a detailed and thorough analysis of research and development in the field of sustainable forestry;

- the impact of this Regulation on the internal market, with particular reference to the competitive situation and the ability of new players to establish themselves on the market;

- the situation of SMEs on the market and how this Regulation has affected their activities.

Amendment 73

Proposal for a regulation

Article 15 – subparagraph 2

Text proposed by the Commission

It shall apply from [...] ¹

¹ Note to OJ: **two years** after the date of entry into force of this Regulation

Amendment

It shall apply from [...] ¹

¹ Note to OJ: **one year** after the date of entry into force of this Regulation

Amendment 74

Proposal for a regulation

Annex – point 2

Text proposed by the Commission

2. Pulp and paper of Chapters **47 and 48** of the Combined Nomenclature, with the exception of bamboo-based and recovered (waste and scrap) products;

Amendment

2. Pulp and paper of Chapters **47, 48 and 49** of the Combined Nomenclature, with the exception of bamboo-based and recovered (waste and scrap) products;

Amendment 75

Proposal for a regulation
Annex – point 12 a (new)

Text proposed by the Commission

Amendment

***12a. Other timber products included in
CN categories 94 and 95, including
wooden toys and sports accessories.***