

EUROPEAN TIMBER TRADE ASSOCIATION - FEBO
STATEMENT ON THE PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT
LAYING DOWN OBLIGATIONS OF OPERATORS WHO PLACE TIMBER AND TIMBER PRODUCTS ON THE EUROPEAN MARKET

I - Applicable legislation – [Amendment 6 (Doc. 420): (Article 2 point (f))]		FEBO comments
EU Commission - original text	Environmental Committee's proposed amendment	
<p>(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;</p>	<p>(f) 'applicable legislation' means legislation whether national, regional or international, in particular that concerning the conservation of biological diversity, forest management, resources 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;</p>	<p>► The requested amendments in PE418 (16) and PE420 (6) define applicable legislation as basis for the legality of timber as follows: national, regional or international legislation, in particular that concerning the conservation of biological diversity, forest management, resources use rights and the minimisation of adverse environmental impact;. 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 of timber.</p> <p>► Taking regional legislation into account is not possible in practice in a large number of cases. The necessary transparent and comprehensible arrangements do not exist. This amendment also moves the proposal away from due diligence to prescriptive legislation.</p> <p>► <u>FEBO proposal</u>: to keep the original text proposed by the Commission</p>

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II - Due Diligence System – [Amendment 24 (Doc. 418) (Article 4 – paragraph 1)]		FEBO comments
EU Commission - original text	Environmental Committee's proposed amendment	
<p><u>Article 4 Due diligence systems</u> 1. The due diligence system referred to in Article 3(1) shall:</p> <p>(a) provide access to the following information on timber and timber products placed on the market by the operator:</p> <ul style="list-style-type: none"> 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; <p>(b) include a risk management procedure and</p> <p>(c) provide for audits to ensure effective application of the due diligence system.</p>	<p>(a) Comprise measures to ascertain:</p> <ul style="list-style-type: none"> (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; 	<p>► PE 418 (24, Art. 4) also requires information on the value of the timber as well as the names of the natural or legal person responsible for the harvesting.</p> <p>► This information on the value of the goods is completely superfluous to assessing risk. It will in any case vary considerably depending on its location in the supply chain as well as the current market price. As the information could also be used anti-competitively we suggest it is removed.</p> <p>► FEBO proposal: to keep the original text proposed by the Commission</p>

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III - Obligations of operators – [Amendment 8 (Doc. 420): (Article 3 – paragraph 2)]		FEBO comments
EU Commission - original text	Environmental Committee's proposed amendment	
<p><u>Article 3 Obligations of operators</u> 1. ... 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).</p>	<p>2a (new). Operators who make timber and timber products available on the market shall, throughout the supply chain, be able to:</p> <p>(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;</p> <p>(ii) provide upon request information on the name of the species, the country/countries of harvest and where feasible the concession of origin;</p> <p>(iii) check, where necessary, that the operator who has placed the timber and timber products on the market has fulfilled the obligations of this Regulation.</p>	<p>► PE418 (24, Art.4) and PE420 (8, Art. 3) require as well as information on the country of origin, information on the forest of origin and on the concession for felling.</p> <p>► Whilst readily obtainable for some countries and products, it would be extremely difficult and in some cases impossible to procure such information for others and would involve a large amount of costly bureaucracy. Again, a good flexible due diligence process will capture this information where possible and, where it cannot, make an appropriate judgement of risk.</p> <p>► FEBO proposal: Paragraph 2a) proposed by the Environmental Committee should be omitted</p>

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IV - Situation with high risk assessment – [Amendment 14 (Doc. 420): (Article 4 – paragraph 2)]		FEBO comments
EU Commission - original text	Environmental Committee's proposed amendment	
<p><u>Article 4 Due diligence systems</u> 1. ... 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.</p>	<p>(continuation of the original text)</p> <p>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:</p> <ul style="list-style-type: none"> - requiring additional documents, data or information; - requiring third party audits. <p>Timber and timber products from</p> <ul style="list-style-type: none"> - 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, low level of forest law enforcement or high level of corruption, - countries where official FAO statistics show a decrease in forest area, - supplies 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, <p>shall be considered as 'high risk' by operators under this Regulation.</p> <p>The Commission shall make available a register of high risk sources of timber and timber products or suppliers.</p>	<p>► In PE418 (27/Art.4) measures are proposed for situations with high risk assessment. PE420 (14/Art. 4) describes the criteria on which “high risk” is based: product type, source or complexity of the supply chain, certain categories of timber and timber products. For these risk factors additional documents, data or information is required from the operator. Further the measures require third party audits.</p> <p>► A good due diligence system will build in the necessary flexibility for operators to be able to make objective judgements on risk. Where risk is high, clearly extra evidence will be required to satisfy the operator that the particular product he is buying is legal. The legislation should not be used to determine what this evidence comprises as it will vary from country to country.</p> <p>► Also we are concerned about the definition of third party. Existing due diligence systems run by members of the European timber trade already require the due diligence process to be audited by independent organisations such as those that conduct audits for certification schemes. If it is the intention to limit the organisations that can undertake this role then this needs to be made clear.</p> <p>► FEBO proposal: to keep the original text proposed by the Commission</p>

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V - Labelling – [Amendment 10 (Doc. 420): (Article 4a - new)]		FEBO comments
EU Commission - original text	Environmental Committee's proposed amendment	
No text proposed	<p>Article 4 a (new) Labelling</p> <p>Member States shall ensure that within two years of 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 requirements specified in Art 3 paragraph 2a.</p>	<p>► PE420 (10, Art. 4) demands labelling of timber and timber products within two years at the latest following the entry into force of the regulation:</p> <p>► We firmly reject labelling or product marking. It is virtually impossible to implement, highly costly, open to fraud and unnecessary when robust due diligence has already taken place.</p> <p>► FEBO proposal: Paragraph 4a) proposed by the Environmental Committee should be omitted</p>

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VI - Monitoring organisation – [Amendment 7 (Doc. 420): (Article 2 – point h) – and Amendment 28 (Doc. 418): (Article 5 – paragraph 1)]		FEBO comments
EU Commission - original text	Environmental Committee's proposed amendment	
<p><u>Article 2 Definitions</u></p> <p>(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.</p>	<p>(h) 'monitoring organisation' means a legal entity or a membership-based association that has the legal capacity <i>and appropriate expertise</i> 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.</p>	<p><i>(continued on page 6)</i></p>

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<p><u>Article 5 Recognition of monitoring organisations</u></p> <p>1. Competent authorities shall recognise monitoring organisations which apply for such recognition, if the monitoring organisation complies with the following requirements:</p> <ul style="list-style-type: none"> (a) it has legal personality; (b) it has established a due diligence system which contains the elements set out in Article 4(1); (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. 	<p>1. The Commission shall, in accordance with the regulatory procedure referred to in Article 11(2a), recognise monitoring organisations which apply for such recognition, if the monitoring organisation complies with the following requirements:</p> <ul style="list-style-type: none"> (a) it has legal personality; (aa) it has appropriate expertise; (ab) it is financially independent from the operators it certifies; (b) it has established a due diligence system which contains the elements set out in Article 4(1); (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; disciplinary measures may include reporting the matter to the relevant national competent authority. (ea) it has rules providing for the following: <ul style="list-style-type: none"> (i) its members or operators certified by the monitoring organisation to be bound to use its due diligence systems; (ii) scrutiny of the monitoring organisation by its members or operators using its system. <p><u>Justification</u> Taking the decision by comitology procedure rather than by the different Member States will ensure common standards for recognising monitoring organisations across the EU.</p>	<ul style="list-style-type: none"> ► PE418 (28, Art.5) and PE420 (7, Art.2) define the conditions for the recognition of <u>monitoring organisations</u>: they must be legally and financially independent of market operators. ► We are extremely concerned that this amendment would exclude operators' trade associations from running due diligence schemes. A number of European trade associations already have excellent due diligence schemes which require independent auditing of their members. The European trade associations have worked hard in recent years to share with others, including NGO's and the Commission, the competences and expertise gained from actually running robust due diligence systems. This is also expressed in PE 418 and 420: The Commission's draft text (COM(2008) 644 /16) dated 17.10.2008) on the importance of the operators' organisations is removed from the process. ► <u>FEBO proposal: Paragraph 4a) proposed by the Environmental Committee should be omitted</u>
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VII - Recognition of monitoring organisations - [Amendment 31 (Doc. 418): (Article 5 – paragraph 3 – subparagraph 2)]		FEBO comments
EU Commission - original text	Environmental Committee's proposed amendment	
<p>Article 5 Recognition of monitoring organisations</p> <p>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.</p> <p>They shall carry out checks at regular intervals to ascertain that monitoring organisations comply with the requirements laid down in paragraph 1.</p>	<p>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.</p>	<p>► Member State competent authorities shall carry out audits, at regular intervals, or on the basis of substantiated <u>concerns from third parties</u>, to ascertain that monitoring organisations comply with the requirements laid down in paragraph 1.</p> <p>► Member State competent authorities shall carry out checks, including field-based audits, at regular intervals or on the basis of substantiated <u>concerns from third parties</u>, to ascertain that monitoring organisations comply with the requirements.</p> <p>► <u>Question from FEBO:</u> The proposal is not clear as to the identity of third parties. It is axiomatic that any competent authority will act where it comes into possession of information that a due diligence scheme or one of its members is not working. The Schemes themselves, under threat of losing accreditation by competent authorities, will have to have in place corrective procedures. The amendment is therefore unnecessary. Furthermore, member states need the flexibility to ascertain the level and nature of any investigations into allegations. Field-based visits would be highly costly for Member States.</p>

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VIII – Monitoring and control measures – [Amendment 22 (Doc. 420): (Article 7)]		FEBO comments
EU Commission - original text	Environmental Com. proposed amendment	
<p><u>Article 7 Monitoring measures</u></p> <p>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).</p> <p>2. Operators shall offer all assistance necessary to facilitate the performance of the checks referred to in paragraph 1.</p> <p>3. Following the checks referred to in paragraph 1 the competent authorities may request the operator to take corrective measures.</p>	<p><u>Monitoring and control measures</u></p> <p>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).</p> <p>1a. Controls shall be conducted according to 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.:</p> <p>1b. Controls may include, inter alia:</p> <p>(a) examination of the technical and managerial systems and procedures of due diligence and risk assessment that the operators use.</p> <p>(b) examination of documentation and records that demonstrate the proper functioning of the systems and procedures.</p> <p>(c) spot checks, including field audits.</p> <p>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.</p> <p style="text-align: right;"><i>continued on page 9</i></p>	<p>► PE420 (22, Art. 3) concerns corrective measures: If the operator has infringed the requirements, the following sanctions can be carried out:</p> <ul style="list-style-type: none"> - the immediate cessation of his commercial activities and - the seizure of timber and timber products. <p>These measures can be carried out by competent authorities as „precautions“.</p> <p>► Such a proposal would mean that operators could be judged guilty before trial, thereby breaching a fundamental principle of law. Moreover, the application of such a sanction could have the effect of seizing legal timber. Also should the action prove subsequently wrong, the potential liability for damages on the Competent Authority would be enormous as these powers, if exercised, would effectively close down a business.</p> <p>► <u>FEBO proposal</u>: to keep the original text proposed by the Commission</p>

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	<p>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 the national law and depending on the gravity of the infringement, take immediate measures which may inter alia include:</p> <ul style="list-style-type: none">a) the immediate cessation of commercial activities andb) the seizure of timber and timber products. <p>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.</p> <p>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.</p>	
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