



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.6.2003
SEC (2003) 725 final

2002/0164 (COD)

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to the second subparagraph of Article 251 (2) of the EC Treaty

concerning the

**common position of the Council on the adoption of a Regulation of the European
Parliament and of the Council concerning monitoring of forests and environmental
interactions in the Community (Forest Focus)**

1. PROCEDURE

Transmission of the Proposal to the Council and the European Parliament (COM(2002) 404 final - 2002/0164 (COD)) in accordance with Article 175(1) of the Treaty - 16 July 2002

Opinion of the Committee of the Regions 12 February 2003

Opinion of the European Economic and Social Committee- 12 December 2002

Opinion of the European Parliament – first reading 13 February 2003

Following the opinion of the European Parliament and pursuant to Article 250(2) of the EC Treaty, the Council adopted its Common Position by unanimity on 13.6.2003.

2. OBJECTIVE OF THE COMMISSION PROPOSAL

The purpose of the present proposal for a European Parliament and Council regulation is the establishment of a new Community scheme on monitoring of forests and environmental interactions to protect the Community's forests. The scheme will be built on the achievements of two Council regulations for monitoring the impacts of atmospheric pollution¹ and of fires² on forest ecosystems. The present proposal provides a multi-annual framework covering initially a 6 year period from 2003 to 2008. It aims at adapting the scope of the above mentioned regulations to provide a flexible monitoring scheme to assess forest ecosystem conditions in a broader context. It also simplifies existing activities by regrouping elements of both regulations under a single framework regulation covering the protection and monitoring of forests.

3. COMMISSION COMMENTS ON THE COMMON POSITION

3.1. General comments

In general terms, the Common Position follows the structure of the original Commission's proposal. The essential elements of the Commission proposal are kept. Several modifications are introduced, of which the following are the most important from the Commission's point of view:

- The Standing Forestry Committee gets a central role in the implementation and development of the following the regulatory procedure.
- Awareness-raising campaigns and special training for agents involved in fire prevention interventions are incorporated and 0.5 million € per year in addition to finance these activities.

The Commission was not in a position to support the Common Position, which has been adopted by unanimity. Accordingly, the Commission has made a declaration to the minutes of the Environment Council (See Annex I).

¹ Council Regulation (EEC) N° 3528/86 of 17 November 1986 on the protection of Community's forests against air pollution, OJ L 326, 21.11.1986, p.2.

² Council Regulation (EEC) N° 2158/92 of 23 July 1992 on the protection of Community's forests against fire, OJ L 217, 31.07.1992, p.3.

European Parliament amendments at first reading

At the Plenary Session of 13 February 2003, the European Parliament adopted **45** amendments. In total, **30** of these amendments have been incorporated in the Common Position, fully, in part, or in principle (Amendments **5, 6, 12, 15, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 36, 37, 38, 39, 40, 42, 43, 46, 47, 48, 49**).

The remaining **15** Amendments (Amendments **1, 2, 3, 4, 7, 8, 9, 10, 11, 13, 14, 16, 21, 28, 35**) were not incorporated for reasons of – depending on the case - legal coherence and legislative technique, clarity in technical terminology, practical feasibility.

3.1.1. Parliamentary amendments accepted by the Commission in its amended proposal and incorporated in the common position

Amendment **5** makes reference to the Convention on “Biological Diversity and Framework Convention on Climate Change”. Incorporated in Recital **5**.

Amendment **6** stresses the need to reconcile measures of the scheme with existing national, European and international systems, with regard to the principle of subsidiarity. Incorporated in Recital **6**.

Amendment **12** emphasis that the future scheme has to be in line with commitments entered in numerous international conventions. Incorporated in principle in Recital **15**.

Amendment **15** foresees that funding beyond 2006 shall be subject to approval by the budgetary authority and take into account a mid-term review of the scheme. Incorporated in principle in **Article 6 (3) and 13 (1)**.

Amendment **17** completely restructures Article 1 of the proposal. It emphasises the need to respect the principle of subsidiarity. Furthermore, this amendment seeks for broadening the scope of forest fire related measures (prevention measures) and incorporates protective functions of forests. The amendment has partly being taken into account by **Article 1**.

Amendment **18 and 19** improve the editorial quality of the proposal. Incorporated in **Article 2, points (f) and (g)**.

Amendment **20** replaces the initially used definitions mainly by FAO definitions, which is acceptable. This amendment was taken into consideration by **Article 3**.

Amendment **22** deletes the words “ at their request”, which clarifies the meaning of the respective Article. Incorporated in **Article 5 (3)**.

Amendments **23, 24 and 25** but also **33 and 36** intend strengthening the role of Member States and foresee a joint approach between the Commission and Member States concerning in particular studies. Incorporated in **Article 6 and 7 as well as Article 11 (1) and 15 (1)**.

Amendment **26** extends the period for transmission of national programmes to 60 days. Incorporated in **Article 8 (2)**.

Amendment **27** intends to make clear that any implementation of new monitoring activities has to be carefully planned and reviewed. Incorporated in principle in **Article 6 (3)**.

Amendment **29** was accepted in principle: Incorporation with a more general reference to national, European and international monitoring mechanism in **Article 1 (1)**.

Amendment **30** envisages strengthening the role of Member States. Incorporation in principle in **Article 9**. Any modifications concerning the role of the Scientific Co-ordination Body and the European Environmental Agency were not accepted.

Amendment **32** was partly accepted. The role of the European Environmental Agency is presented in a single paragraph (**Article 9 (5)**).

Amendment **37 and 38** inserts a reference to the Aarhus Convention and Community provisions on access to environmental information. Incorporated in **Article 15 (2) and (3)**.

Amendment **39** provides for clarity concerning the reporting obligations. Incorporated in **Article 16 (3)**.

Amendment **43** inserts a new point (c) “other European countries, optionally, at their own expenses.” Incorporated in **Article 20**.

Amendment **47** was taken on board in a Commission statement (see **Annex I**).

3.1.2. Parliamentary amendments accepted by the Commission in its amended proposal and not incorporated in the common position

Amendments **2, 4 and in part 7**: Insert general statements in the recitals concerning the economic and social role of forests in the Community and concerning the importance of the protection of forests against fires, which can be accepted by the Commission, even if it seems to be dispensable here.

Amendment **13**: This new amendment can be accepted, but duplicates recitals 4 and 5 of the proposal.

Amendment **16**: The Commission could have accepted in part this amendment and to use the slogan “Forest Focus” for all activities related to the scheme.

Amendment **28** foresees an external ex-ante evaluation, which could be accepted by the Commission, but which is not necessary as internal ex-ante evaluation is suitable enough.

3.1.3. Principal divergences between the amended proposal and the Council’s Common Position

The Commission also cannot accept any incorporation of forest fire related measures, which are covered by other legislation (**amendments 1, 3, 8, 9, 10, in parts 17, 21**). After the expiration of Council Regulation (EEC) 2158/92 all forest fire prevention measures are covered by the Council Regulation N° 1257/1999 on Rural Development. The proposal for the Forest Focus regulation, which provides for

forest fire monitoring, and the Rural Development regulation complement each other concerning the forest fire related activities. It can not accept that two different legal acts will allow the support of the same activities, which would be the case by incorporation of forest fire prevention measures into the Forest Focus scheme. The Council has not followed the Commission position completely and has allowed for awareness-raising campaigns and special training for agents involved in fire prevention interventions in Article 5 of the Common position. Furthermore, Article 13 (1) foresees 0.5 million € per year in addition to finance these activities.

The characteristics of the scheme proposed closely fit with the criteria for Management Committees set out in the Council decision on comitology. A change in the comitology procedure is not justified (**amendments 31, 40, 46**). A recent decision by the Court concerning the Life regulations supports this position of the Commission. The Council has not followed the Commission position.

New provisions introduced by the Council and the Commission's position

In addition to the above-mentioned changes, the Council has also introduced several other modifications. Many of them are fairly minor. The Commission can agree in principle with the modifications listed below, otherwise stated.

The term “**forest ecosystems**” was in the whole text replaced by “**forests**”.

Recitals of the Common Position

Recital **4** includes a new reference to the decision No 1600/2002/EC of the European Parliament and of the Council laying down the Sixth Community Environment Action Programme.

In Recital **5** the word “sustainable management” is replaced by “protection” and introduces the “Expanded Work Programme of the Convention on Biological Diversity”.

Recital **10** is reworded in order to emphasize the link between conditions and harmful influences and to create a link to ongoing measures to promote conservation and protection of forests for the benefit of sustainable development, with particular emphasis on actions taken to reduce impacts negatively affecting forests.

Recital **11**: Insertion of “protective functions”.

Recital **13** foresees co-operation between the Member States and the Commission in co-ordinating the scheme and reporting to the Standing Forestry Committee.

A new recital **15** stresses the need that measures carried out under the scheme should be in line relevant protocols and conventions, in line with Amendment **12** of the European Parliament.

A new Recital **16** replaces recital 14 of the proposal and inserts Member States responsibility in the co-operation with other bodies in addition to the Commission, in line with Amendment **33** of the European Parliament.

Recital **21** makes reference to the Aarhus Convention and the Community provisions on access to environmental information, in line with Amendment **37 and 38** of the European Parliament.

In Recital **26** it is stated that the scheme shall be open to participation of other European countries, in line with Amendment **43** of the European Parliament.

Articles of the Common Position

Article 9

- In paragraph 3 the Scientific Advisory Group, which shall assist the Standing Forestry Committee in preparing its work is introduced.

Article 11

- Paragraph 1 was reworded, but the basic statement is unchanged (co-operation with other bodies to make use of synergies).

Article 12

- Paragraph 2 was modified as follows: Activities to be realised under Article 6 (2) will be co-financed up to 75% instead of 50% and also activities to be realised under Article 7(2) can be co-financed up to 50%. These changes refer to the amendments made in Articles 6 and 7 in order to strengthen the role of Member States and to allow carrying out studies within the framework of the national programmes.
- Paragraph 3 was adjusted to the changes made in paragraph 2.

Article 13

- Paragraph 1 was completely reworded. In addition to the 52 million € mentioned in the proposal, 0.5 million € per year are added in order to finance forest fire related activities. An increase of the financial recourses for the period 2007-2008 is not mentioned anymore.

Article 14

- In order to take the problems of Member States, which have a federal structure into consideration, paragraph 2 was modified. Without prejudice of the existing competent authorities, Member States shall designate the authorities or agencies empowered to carry out the measures under the scheme.
- The comitology procedure was introduced in paragraph 5.

4. CONCLUSION

The Commission can accept most of the changes made by the Council and it is well noted that these changes clarify in particular the future collaboration between Member States and the Commission as well as with other bodies. However, due to the fact that forest fire prevention measures were incorporated and due to the fact that a change in the comitology procedure was made, which is not justified for the

above mentioned reasons, the Commission therefore cannot support the Common Position adopted on the 13.6.2003.

5. COMMISSION STATEMENTS

See Annex I.

Statements by the Commission

Proposal for a Regulation of the European Parliament and of the Council concerning monitoring of forests and environmental interactions in the Community (Forest Focus)

Forest fire prevention measures

"The Commission notes that the Council provides in Article 5.2 for the financing, until 31 December 2005, of awareness-raising campaigns and special training for agents involved in fire prevention activities, unless these measures are included by Member States in their rural development programmes. The Commission also notes that the Council lays down that additional financing of €0.5 million shall be made available to finance these activities.

The Commission recalls that investment measures which were covered by Council Regulation (EEC) N° 2158/92 of 23 July 1992 on the protection of Community's forests against fire, in particular prevention and surveillance, information, awareness-raising campaigns and special training for agents involved in forestry activities and intervening in fire prevention, are eligible under Regulation (EC) No 1257/99 and may be introduced by program modifications from 1 January 2003 onwards.

Moreover, it stresses the fact that the budget authority has fixed the budgetary allocation for 2003 at €13 million in commitment appropriations (and €7.5 million in payments). Any further action, not covered by this allocation, would require additional financial resources: the latter would need to be transferred from other budget lines, thereby reducing the allocations for other Community interventions.

For these reasons, the Commission cannot support the additional activities or the additional budget foreseen by the Council. "

Comitology

"The Commission takes note that the Council provides for a regulatory procedure regarding the implementation measures detailed in proposal, as opposed to the management procedure proposed by the Commission.

In the light of the judgement of the Court of Justice of 21st January 2003 in respect of Regulation (EC) 1655/2000 concerning the financial instrument for the Environment (LIFE), the Commission insists on the importance of applying the criteria of Article 2 of Council Decision 1999/468/EC of 28th June 1999, laying down the procedures for the exercise of implementing powers conferred on the Commission.

The Commission believes that as the measures detailed in the proposal relate to the implementation of programmes with substantial budgetary implications they should be adopted by use of the management procedure. The measures are quite specific to the programme, therefore they are not general in scope, nor are they designed to apply, adapt or update the provisions of the instrument. For these reasons, the Commission does not consider the Regulatory procedure to be appropriate.

In accordance with the Judgement of the Court of Justice mentioned above, any choice of procedure which does not comply with the criteria for guidance contained in Article 2 of the Council Decision on the exercise of implementing powers conferred on the Commission must be clearly explained.

The Commission considers that in this case the text of the recital specifying the use of the comitology procedure does not sufficiently justify departing from the criteria contained in the Council Decision.

The Commission therefore reserves its right to make use of the legal means at its disposal."

Ad article 12

"The Commission declares that when allocating the financial resources it shall pay particular attention to a balanced breakdown between the actions referred to in Article 12, paragraph 2 (a), (b) and (c), so as to ensure the continuity and efficiency of the scheme."