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Committee on the Environment, Public Health and Food Safety

2008/0198(COD)

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*****I**

DRAFT REPORT

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))

Committee on the Environment, Public Health and Food Safety

Rapporteur: Caroline Lucas

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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 (A6-0000/2008),
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 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.

Or. en

Amendment 2

Proposal for a regulation Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) The European Community and the Member States have legally and politically committed themselves to the conservation and sustainable use of the earth's resources, combating illegal logging and related trade, as well as sustainable forest management, poverty alleviation and the protection of the rights of indigenous peoples, and local and forest-dependent communities. This Regulation should contribute to the fulfilment of these obligations and commitments, including those contained in:

(a) the Convention on Biological Diversity of 1992 (CBD);

(b) the Convention on International Trade in Endangered Species of Wild Fauna and Flora of 1973 (CITES);

(c) the International Tropical Timber Agreements (ITTA) of 1983, 1994 and 2006;

(d) the United Nations Framework Convention on Climate Change of 2002 (UNFCCC);

(e) the United Nations Convention to Combat Desertification of 1994;

(f) the Rio Declaration on Environment and Development of 1992;

(g) the Johannesburg Declaration and Plan of Implementation as adopted by the World Summit on Sustainable Development on 4 September 2002;

(h) the proposals for action of the Intergovernmental Panel on Forests/International Forum on Forests;

(i) the 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;

(j) Agenda 21 as adopted by the United Nations Conference on Environment and Development in June 1992;

(k) the United Nations General Assembly Special Session (Ungass) resolution 'Programme for the further implementation of Agenda 21' of 1997;

(l) the Millennium Declaration of 2000;

(m) the World Charter for Nature of 1982;

(n) the Declaration of the United Nations Conference on the Human Environment of 1972;

(o) 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;

(p) the United Nations Forum on Forests, Resolution 4/2;

(q) the Stockholm Declaration of 1972;

(r) the Convention on European Wildlife and Habitats of 1979.

Or. en

Justification

The 2003 EU FLEGT Action Plan states that "the EU's wider objective is to encourage sustainable forest management", and commits the EU to address the problem of illegal logging in an integrated way. This Regulation must contribute to the broader goal of sustainable development as a means of addressing the underlying issues related to illegal logging, as well as tackling the problem from a direct market perspective. Using the Regulation to help implement the provisions of international and regional agreements to which European and other countries are party will help to achieve this.

Amendment 3

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.***

Or. en

Justification

This addition completes the original wording from the FLEGT Action Plan (COM(2003)251).

Amendment 4

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, ***within the framework of sustainable development, sustainable forest management and poverty reduction, as well as social equity and national sovereignty,*** welcomed that Communication.

Or. en

Justification

This addition refers back to the original wording from the conclusions of the Agriculture Council of October 2003.

Amendment 5

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 further involve consideration of international standards and 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 local and forest-dependent communities.***

Or. en

Justification

The 2003 EU FLEGT Action Plan states that "the EU's wider objective is to encourage sustainable forest management", and commits the EU to address the problem of illegal logging in an integrated way. This Regulation must contribute to the broader goal of sustainable development as a means of addressing the underlying issues related to illegal logging, as well as tackling the problem from a direct market perspective. Using the Regulation to help implement the provisions of international and regional agreements to which European and other countries are party will help to achieve this.

Amendment 6

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 exercise due diligence through a system of measures and procedures (due diligence system) to minimise the risk of placing illegally harvested timber and timber products on the market.**

Or. en

Justification

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. To aid traceability all operators must provide basic information about the products, their source and to whom they supply. However a special category is appropriate for operators who place products on the market for the first time, since they have the largest influence on what enters the EU and therefore carry the largest responsibility - so must implement a full due diligence system.

Amendment 7

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

Amendment

deleted

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.

Or. en

Justification

This Regulation should cover all products that could contain illegally sourced timber. Excluding products that are subject to "sustainability criteria" from the requirement to be legally sourced implies that legality and sustainability could be mutually exclusive, yet legality must be an underlying prerequisite for sustainability.

Amendment 8

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***

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 requirements for the realisation of the due diligence systems. A list of such recognised organisations will be made public.

recognition of the monitoring organisations included therein by all Member States competent authorities.

Or. en

Justification

Simplification (first part). Taking the decision by comitology procedure rather than by the different Member States will ensure common standards for recognising monitoring organisations across the EU.

Amendment 9

Proposal for a regulation Article 1 – title

Text proposed by the Commission

Amendment

Subject matter

Subject matter ***and objectives***

Or. en

Amendment 10

Proposal for a regulation Article 1

Text proposed by the Commission

Amendment

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

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.

Or. en

Justification

Consultation concluded that additional legislation is needed to close the loopholes in the 2003 FLEGT Action Plan and ensure that trade in illegal timber and timber products in the EU is halted. The requirement to exercise due diligence will encourage good practice, but making all actors in the supply chain subject to the requirement to make only legal timber available on the market should be explicit. This will motivate vigilance, and distribute the burden of responsibility more equitably among operators and reduce the risk that responsible operators will be undermined.

Amendment 11

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 XXXX;***

Amendment

(a) 'timber and timber products' means the timber and timber products set out in the Annex;

Or. en

Justification

This Regulation should cover all products that could contain illegally sourced timber. Excluding products that are subject to "sustainability criteria" from the requirement to be legally sourced implies that legality and sustainability could be mutually exclusive, yet legality must be an underlying prerequisite for sustainability.

Amendment 12

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;

Or. en

Justification

To distinguish between operators who must implement a full due diligence system and all others in the supply chain, separate definitions are needed for "placing on the market" and "making available on the market". The two concepts are separately defined in the Common framework for the marketing of products (Decision 768/2008/EC of the European Parliament and of the Council of 9 July 2008) so for consistency the same wording is used here.

Amendment 13

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;**

Or. en

Justification

To distinguish between operators who must implement a full due diligence system and all others in the supply chain, separate definitions are needed for "placing on the market" and "making available on the market". The two concepts are separately defined in the Common framework for the marketing of products (Decision 768/2008/EC of the European Parliament and of the Council of 9 July 2008) so for consistency the same wording is used here.

Amendment 14

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

Amendment

(c) 'operator' means any natural or legal person that places **or makes available on**

products *on the market*;

the market timber or timber products;

Or. en

Amendment 15

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 traded and the severity of that event;

Or. en

Amendment 16

Proposal for a regulation Article 2 – point f

Text proposed by the Commission

Amendment

(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*;

(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*;

Or. en

Justification

The 2003 EU FLEGT Action Plan states that "the EU's wider objective is to encourage sustainable forest management", and commits the EU to address the problem of illegal logging in an integrated way. This Regulation must contribute to the broader goal of sustainable development as a means of addressing the underlying issues related to illegal logging, as well as tackling the problem from a direct market perspective. Using the Regulation to help implement the provisions of international and regional agreements to which European and other countries are party will help to achieve this.

Amendment 17

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;

Or. en

Justification

Definition from Regulation (EC) No 2494/2000, Article 2(3).

Amendment 18

Proposal for a regulation Article 2 – point h

Text proposed by the Commission

Amendment

(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

(h) 'monitoring organisation' means a legal entity or a membership-based association that has the legal capacity, ***independence and demonstrated expertise*** to monitor and ensure the application of due diligence

certified as making use of such systems.

systems by the operators certified as making use of such systems.

Or. en

Amendment 19

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;

Or. en

Amendment 20

Proposal for a regulation Article 3 – paragraph 1

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'.

1. Operators ***who place timber and timber products on the market*** shall exercise due diligence to ***ensure that they place only legally*** harvested timber and timber products on the market. To that effect, they shall use a ***system*** of procedures and measures, hereinafter referred to as a 'due diligence system'.

Or. en

Justification

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. To aid traceability all operators must provide basic information about the products, their source and to whom they supply. However a special

category is appropriate for operators who place products on the market for the first time, since they have the largest influence on what enters the EU and therefore carry the largest responsibility - so must implement a full due diligence system.

Amendment 21

Proposal for a regulation Article 3 – paragraph 2

Text proposed by the Commission

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).

Amendment

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(1) or make use of a due diligence system of a recognised monitoring organisation referred to in Article 5(1).

Or. en

Amendment 22

Proposal for a regulation Article 3 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

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

(i) label timber and timber products to provide information on the name of the species, the country of origin and the forest of origin;

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

Or. en

Justification

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. To aid traceability all operators must provide basic information about the products, their source and to whom they supply.

Amendment 23

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 by means of a traceability system and third party verification,

Or. en

Amendment 24

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;

(i) country of origin, forest of origin and, where feasible, concession of harvest;

(ii) country of harvest;

(ii) name of the species, including scientific name;

(iii) volume and/or weight;

(iii) value;

(iv) where applicable, name and address of the operator who has supplied timber or timber products;

(iv) volume and/or weight;

(v) information on compliance with the requirements of the applicable legislation;

(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;

Or. en

Amendment 25

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.

Or. en

Amendment 26

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).

Or. en

Amendment 27

Proposal for a regulation

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

Text proposed by the Commission

Amendment

Operators shall, on the basis of a risk assessment, take supplementary measures in situations which present a higher risk.

Such measures may, inter alia, include:

- requiring additional documents, data or information;

- requiring third-party audits;

Or. en

Amendment 28

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;

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:

(a) it has legal personality;

(aa) it has appropriate expertise;

- (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.

(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:

- (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.***

Or. en

Justification

Taking the decision by comitology procedure rather than by the different Member States will ensure common standards for recognising monitoring organisations across the EU.

Amendment 29

Proposal for a regulation

Article 5 – paragraph 2

Text proposed by the Commission

2. The monitoring organisation shall

Amendment

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.

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.

Or. en

Justification

Taking the decision by comitology procedure rather than by the different Member States will ensure common standards for recognising monitoring organisations across the EU.

Amendment 30

Proposal for a regulation

Article 5 – paragraph 3 – subparagraph 1

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. A decision on whether to grant recognition to a monitoring organisation **shall be taken** within three months of the submission of an application by the monitoring organisation.

Or. en

Justification

Taking the decision by comitology procedure rather than by the different Member States will ensure common standards for recognising monitoring organisations across the EU.

Amendment 31

Proposal for a regulation

Article 5 – paragraph 3 – subparagraph 2

Text proposed by the Commission

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

Amendment

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.

Or. en

Amendment 32

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 are no longer fulfilled.

Or. en

Justification

Taking the decision by comitology procedure rather than by the different Member States will ensure common standards for recognising monitoring organisations across the EU.

Amendment 33

Proposal for a regulation Article 5 – paragraph 5

Text proposed by the Commission

Amendment

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

Or. en

Justification

Taking the decision by comitology procedure rather than by the different Member States will ensure common standards for recognising monitoring organisations across the EU.

Amendment 34

Proposal for a regulation Article 6

Text proposed by the Commission

Amendment

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.

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.

Or. en

Justification

Taking the decision by comitology procedure rather than by the different Member States will ensure common standards for recognising monitoring organisations across the EU.

Amendment 35

Proposal for a regulation Article 7 – title

Text proposed by the Commission

Monitoring measures

Amendment

Monitoring **and control** measures

Or. en

Amendment 36

Proposal for a regulation Article 7 – paragraph 1

Text proposed by the Commission

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

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).

Or. en

Justification

Clarification: Competent authorities shall both check monitoring organisations and carry out official controls of the supply chain.

Amendment 37

Proposal for a regulation Article 7 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Controls should be conducted according to a yearly plan or on the basis of substantiated concerns provided by third parties.

Or. en

Amendment 38

Proposal for a regulation Article 7 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

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.

Or. en

Amendment 39

Proposal for a regulation Article 7 – paragraph 2

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 40

Proposal for a regulation Article 7 – paragraph 3

Text proposed by the Commission

Amendment

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

3. Following the ***controls*** referred to in paragraph 1 the competent authorities may take ***immediate*** corrective measures.

measures.

Such measures may include, inter alia:

(a) the immediate cessation of commercial activities;

(b) the seizure of timber and timber products.

Or. en

Amendment 41

Proposal for a regulation

Article 8 – title

Text proposed by the Commission

Amendment

Records of *checks*

Records of *controls*

Or. en

Amendment 42

Proposal for a regulation

Article 8 – paragraph 1

Text proposed by the Commission

Amendment

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.

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.

Or. en

Amendment 43

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 in accordance with Directive 2003/4/EC.

Or. en

Amendment 44

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.

Or. en

Amendment 45

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.

Or. en

Amendment 46

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. 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

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, ***which may include, inter alia:***

(i) financial penalties reflecting the degree of environmental damage;

(ii) seizure of timber and timber products;

(iii) temporary prohibition from marketing timber and timber products.

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.

Or. en

Justification

Determination of penalties at Member State level could result in inconsistencies across the EU in pursuing prosecutions under the Regulation. This could give rise to distortions of competition or concentration of the timber market in countries with the lowest penalty levels.

EXPLANATORY STATEMENT

Deforestation is occurring at a rate of c.13 million hectares per year, is responsible for nearly 20% of global carbon emissions and is a key contributor to biodiversity loss. It also causes serious human rights problems, since forests are of great cultural and social significance in many countries, to dependent and indigenous peoples.

Illegal logging is a major driver of deforestation, with the volume of industrial wood from illegal sources estimated at 350 to 650 million m³ per year, representing 20%-40% of global industrial wood production¹. It depresses timber prices, strips natural resources and tax revenues, and increases poverty of forest-dependent people.

As a major consumer of timber and timber products, the EU has an obligation to take effective action against deforestation and illegal logging, which must clearly include ceasing to provide a market for illegal timber/timber products. It has successfully managed to cease being a market for other illegal products, most recently having put in place a Regulation on Illegal, Unregulated and Unreported Fishing. It is now time for similar legislation against illegal timber/timber products, to signal:-

- to consumers, that products they buy have not been illegally sourced
- to responsible companies, that they will not be undercut by those carrying out destructive practices
- to irresponsible companies, that they will no longer find a market here
- to the international community, that we are taking seriously our responsibilities on climate change, biodiversity and human rights.

The Voluntary Partnership Agreement (VPA) approach which the EU has in place under the 2003 Action Plan on Forest Law Enforcement, Governance and Trade (FLEGT) is insufficient to address illegal logging. While VPAs have the potential to drive very positive change, to date only one has been signed, and their voluntary nature means the risks of circumvention and laundering are high. As the Commission's consultation on measures to complement the VPA approach concluded, firm legislation is needed to ensure that illegally harvested timber/timber products are removed from the EU market.

The Rapporteur therefore welcomes the proposed Regulation, whilst regretting that it comes nearly five years after endorsement of the FLEGT Action Plan. She also considers that it needs to be strengthened and elaborated upon in several respects.

Prohibition

Most fundamentally, the proposed Regulation does not actually prohibit the import and sale of illegally logged timber - thereby failing to address "*the weak rules to prevent trade in illegally harvested timber*"² cited by the proposal itself as the starting point for why illegal logging is so entrenched. The revised US Lacey Act, adopted in May 2008, does enact such a prohibition, so a precedent is in place. There is no good reason why the EU cannot emulate

¹ UNECE/FAO 2007: Forest Products Annual Market review, 2006-7

² Proposal for a Regulation laying down the obligations of operators who place timber and timber products on the market (COM(2008) 644/3) p.2

this and indeed go further.

The Rapporteur thus proposes an explicit statement of the requirement that operators make available on the market only legally harvested timber/timber products, to apply to all operators on the supply chain.

Scope of due diligence and legality requirements

The Rapporteur makes a new distinction between operators who "*place on the market*" timber/timber products (meaning to make available on the market for the first time), and those who "*make available on the market*" (meaning all operators in the supply chain).

The requirement to exercise due diligence will encourage good practice, and ideally all operators in the supply chain would implement a full due diligence system. However the Rapporteur acknowledges this may be unrealistic for small-scale operators and so confines the full requirement, as per the proposal, to operators who "place" products on the market - who are clearly those with the biggest influence on what enters the EU, and thus bear greatest responsibility.

At the same time, all operators in the supply chain should be bound by the overriding prohibition against making illegally sourced timber/timber products available on the market, and should exercise due care to this effect. In the same way that the due diligence requirement will oblige operators who place timber/timber products on the market "*to show prudence, judgement and positive action in ascertaining the legality of the timber and timber products that enter the supply chain*"¹ and "*tend to favour sourcing from countries with reliable forest management practices*"², the possibility of prosecution for trading illegal timber as applied to all operators in the supply chain will encourage them to favour sourcing from reliable, reputable placers on the market - i.e. those who are exercising their due diligence obligations most effectively. It will also distribute the burden of responsibility more equitably among operators.

To aid traceability the Rapporteur also considers that all operators should note and provide basic information about products, their source and to whom they supply.

Applicable legislation

The FLEGT Action Plan states that "*the EU's wider objective is to encourage sustainable forest management*"³, and commits the EU to address the problem of illegal logging in an integrated way. In addition to tackling illegal logging from a direct market perspective, this Regulation must contribute to the broader goal of sustainable development as a means of addressing the underlying causes.

Broadening the scope of the applicable legislation against which "legality" is defined would help achieve this. As parties to multiple international and regional agreements the EU and Member States have already legally and politically committed themselves to the conservation and sustainable use of natural resources, poverty alleviation and protection of the rights of

¹ idem, p. 9

² idem, p. 7

³ EU FLEGT Action Plan (COM(2003)251)

indigenous and forest-dependent communities. The Regulation can be a vehicle for helping to implement their provisions.

Due diligence system

The proposal contains little detail on what a due diligence system, or the risk management system within it, should comprise - risking great variation among Member States and operators, with implications for both administrative complexity (for operators working in several countries), and the ultimate effectiveness of the concept. The Rapporteur therefore elaborates on crucial elements. In particular, it is important to make clear that the required information on timber/timber products should be supported by documentation; and that the risk management system should serve as a means of assessing those cases, on which it is necessary to focus particular attention - possibly applying supplementary measures in order to be duly diligent and minimise the risk of placing illegal timber on the market.

Monitoring organisations and their accreditation

In order to have harmonised standards across the EU for the organisations which monitor due diligence systems, the Rapporteur proposes that the decision over whether to recognise a monitoring organisation be made at EU rather than national level. She expands on the criteria organisations should fulfil, as well as the information they must submit in application for recognition. Centralised accreditation and clear criteria in the Regulation would help avoid weak links in the oversight system, and reduce administrative complexity for organisations operating in more than one Member State.

Checks and controls by competent authorities

Although the Rapporteur proposes that monitoring organisations be accredited at EU level, Member State-designated competent authorities have an important role in policing the system. This means both checking that monitoring organisations fulfil the requirements of the Regulation, and carrying out controls of the supply chain. The Rapporteur believes it should be possible to activate either level on the basis of substantiated third party concerns, as well as on a pre-planned basis. She elaborates what the checks and controls may consist of, including in both cases field audits.

Because illegal logging causes serious environmental damage, competent authorities should be empowered to apply immediate corrective measures including the seizure of illegal timber/timber products, and ceasing of commercial activity - if deemed necessary in order to halt damage caused by illegal harvesting of the products in question as quickly as possible (rather than waiting for a full prosecution process). Tracing the source of the timber should be aided by the fact that all operators in the supply chain are bound to know from whom they obtained all timber and timber products, and to whom they have supplied them.

Biomass exemption

The Rapporteur considers that the exemption for "energy wood" and biomass, on the grounds that these will be subject to future mandatory EU sustainability criteria, should be deleted. This Regulation should cover all products that could contain illegally sourced timber. Excluding products that are subject to "sustainability criteria" from the requirement to be legally sourced implies that legality and sustainability could be mutually exclusive - yet legality must be an underlying prerequisite for sustainability.