





Basic information	
2008/0198(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Obligations of operators who place timber and timber products on the market Repealed by 2021/0366(COD) Amended by 2018/0205(COD) Subject 3.10.11 Forestry policy 3.70.01 Protection of natural resources: fauna, flora, nature, wildlife, countryside; biodiversity 6.20 Common commercial policy in general 6.30 Development cooperation	




Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	ENVI Environment, Public Health and Food Safety	HASSI Satu (Verts/ALE)	10/05/2010
	Former committee responsible	Former rapporteur	Appointed
	ENVI Environment, Public Health and Food Safety	LUCAS Caroline (Verts/ALE)	24/11/2008
	Former committee for opinion	Former rapporteur for opinion	Appointed
	DEVE Development	The committee decided not to give an opinion.	05/11/2008
	INTA International Trade	FORD Glyn (PSE)	04/12/2008
Council of the European Union	Council configuration	Meetings	Date
	Competitiveness (Internal Market, Industry, Research and Space)	2999	2010-03-01
	Competitiveness (Internal Market, Industry, Research and Space)	3035	2010-10-11
	Agriculture and Fisheries	2952	2009-06-22
	Agriculture and Fisheries	2918	2009-01-19
	Agriculture and Fisheries	2986	2009-12-14
	Agriculture and Fisheries	2900	2008-10-27
Environment	2898	2008-10-20	










	Environment	2953	2009-06-25
	Environment	2988	2009-12-22
European Commission	Commission DG	Commissioner	
	Environment	POTOČNIK Janez	

Key events			
Date	Event	Reference	Summary
17/10/2008	Legislative proposal published	COM(2008)0644 	Summary
20/10/2008	Debate in Council		Summary
27/10/2008	Debate in Council		
17/11/2008	Committee referral announced in Parliament, 1st reading		
19/01/2009	Debate in Council		
17/02/2009	Vote in committee, 1st reading		Summary
03/03/2009	Committee report tabled for plenary, 1st reading	A6-0115/2009	
21/04/2009	Debate in Parliament		
22/04/2009	Decision by Parliament, 1st reading	T6-0225/2009	Summary
22/04/2009	Results of vote in Parliament		
22/06/2009	Debate in Council		Summary
25/06/2009	Debate in Council		
22/12/2009	Debate in Council		Summary
01/03/2010	Council position published	05885/4/2010	Summary
11/03/2010	Committee referral announced in Parliament, 2nd reading		
04/05/2010	Vote in committee, 2nd reading		Summary
10/05/2010	Committee recommendation tabled for plenary, 2nd reading	A7-0149/2010	
06/07/2010	Debate in Parliament		
07/07/2010	Decision by Parliament, 2nd reading	T7-0268/2010	Summary
11/10/2010	Act approved by Council, 2nd reading		
20/10/2010	Final act signed		
20/10/2010	End of procedure in Parliament		
12/11/2010	Final act published in Official Journal		

Technical information	

Procedure reference	2008/0198(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Repealed by 2021/0366(COD) Amended by 2018/0205(COD)
Legal basis	Treaty on the Functioning of the European Union TFEU 192-p1
Stage reached in procedure	Procedure completed
Committee dossier	ENVI/7/02292

Documentation gateway				
European Parliament				
Document type	Committee	Reference	Date	Summary
Committee draft report		PE418.093	19/12/2008	
Committee opinion	INTA	PE416.656	26/01/2009	
Amendments tabled in committee		PE418.388	29/01/2009	
Committee report tabled for plenary, 1st reading/single reading		A6-0115/2009	03/03/2009	
Text adopted by Parliament, 1st reading/single reading		T6-0225/2009	22/04/2009	Summary
Committee draft report		PE439.878	15/03/2010	
Amendments tabled in committee		PE440.145	27/04/2010	
Committee recommendation tabled for plenary, 2nd reading		A7-0149/2010	10/05/2010	
Text adopted by Parliament, 2nd reading		T7-0268/2010	07/07/2010	Summary
Council of the EU				
Document type		Reference	Date	Summary
Council statement on its position		06527/2010	22/02/2010	
Council position		05885/4/2010	01/03/2010	Summary
Draft final act		00033/2010/LEX	20/10/2010	
European Commission				
Document type		Reference	Date	Summary
Legislative proposal		COM(2008)0644 	17/10/2008	Summary
Document attached to the procedure		SEC(2008)2615 	17/10/2008	
Document attached to the procedure		SEC(2008)2616 	17/10/2008	

Commission response to text adopted in plenary	SP(2009)3507	25/06/2009	
Commission communication on Council's position	COM(2010)0087 	09/03/2010	Summary
Commission opinion on Parliament's position at 2nd reading	COM(2010)0456 	30/08/2010	Summary
Follow-up document	COM(2016)0060 	18/02/2016	Summary
Follow-up document	COM(2016)0074 	18/02/2016	Summary
Follow-up document	SWD(2016)0033 	18/02/2016	
Follow-up document	SWD(2016)0034 	18/02/2016	
Follow-up document	COM(2019)0086 	18/02/2019	
Follow-up document	COM(2020)0629 	02/10/2020	
Follow-up document	COM(2021)0687 	10/11/2021	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES1462/2009	30/09/2009	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

Regulation 2010/0995 OJ L 295 12.11.2010, p. 0023	Summary
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Delegated acts

Reference	Subject
2013/2801(DEA)	Examination of delegated act

Obligations of operators who place timber and timber products on the market

2008/0198(COD) - 18/02/2016 - Follow-up document

This report reviews, on the basis of Member States' reports, the main results of the evaluation of Regulation EU/995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (the EU Timber Regulation).

To recall, the EU Timber Regulation:

- prohibits the placing on the EU market of illegally harvested timber and products derived from such timber;
- requires operators who place timber products on the EU market for the first time to exercise 'due diligence';
- requires traders in timber and timber products after the first placement on the market to keep records of their suppliers and customers.

The Regulation covers a wide range of timber products listed in its Annex.

It outlines the due diligence obligation and requests that operators develop and apply a due diligence system or use the system of a monitoring organisation. Adopted in December 2010, the Regulation only entered into application on 3 March 2013.

The evaluation of the Regulation started in April 2015 and covers the period March 2013 to March 2015.

Implementation and application of the Regulation: the report states that this was **slow and uneven** during the first two years and still remains incomplete. Recently, significant progress has been made, even if at the time of the evaluation not all Member States have fulfilled all their obligations under the Regulation. The Commission started legal action against four non-compliant Member States in the course of 2015 (Hungary, Greece, Spain, Romania).

Whilst evidence shows that **operators are gradually taking up the due diligence obligation**, the uneven implementation and patchy enforcement during the first two years of application did not facilitate the establishment of a level playing field, which would protect operators from unfair competition of products made of illegally logged timber.

Furthermore, given that the evaluation of the EU Timber Regulation took place only two years after the Regulation entered into application, the evaluation could not quantify the impact of the Regulation on the trade in illegal timber and timber products on the internal market. This made it **challenging to determine whether the Regulation had met its objective** of preventing illegal timber and timber products from being placed on the market.

Main results of the evaluation: the Commission states that the Regulation is generally perceived as an **important legislative instrument** to combat and reduce illegal logging and trade in illegal timber and timber products. The Regulation has inspired other consumer countries to develop similar legislative acts.

In addition, the EU Timber Regulation:

- **has encouraged more responsible sourcing policies** and, therefore, demonstrated its potential to change operators' market behaviour and establish supply chains free of illegally harvested timber, thus contributing to the achievement of the overall objectives of the FLEGT action plan, the EU policy instrument to combat the illegal logging in the world's forests;
- **has raised awareness of the problem of illegal logging** and its impacts on the environment and climate amongst the industry and amongst consumers. It influenced amendments strengthening the EU Wildlife Trade Regulations;
- allows the Union and its Member States to take full advantage of their combined market leverage to **ensure demand for legally-harvested timber and avoid distortions of the EU market**, which would have occurred if varying rules had been put in place by individual Member States;
- introduces an **additional control layer** applicable to all operators across the EU: without the EU Timber Regulation, the progress achieved on other elements of the FLEGT action plan, such as the **Voluntary Partnership Agreements (VPAs)**, as well as the possibility for the EU to make commitments to combat illegal logging in recent bilateral trade agreements, would be seriously undermined.

Specific points in review:

- **Administrative consequences for SMEs:** the due diligence obligation of the Regulation applies to all companies, whatever their size. SMEs may seem to be in a disadvantaged position due to their low economies of scale as the costs of the due diligence system need to be covered by a lower turnover. However, **there are no clear indications that being a smaller business is a barrier to apply an effective due diligence system**. Evidence shows that the compliance costs for SMEs might be reduced if companies apply cost-effective practices
- **Product coverage:** some stakeholders consider it incomplete and suggest expanding it to musical instruments, coffins, chairs, and/or printed paper, while others consider that the product scope should not be expanded until the Regulation is applied uniformly across the EU. The Commission may consider **expanding the product scope**, subject to an impact assessment of options.
- **Effectiveness of the prohibition on placing on the market:** Member States have not reported any closed investigation cases for violation of the prohibition obligation. Due to the limited time and given the insufficient experience with the enforcement of the prohibition, **no conclusion could be drawn with regard to its effectiveness** due to the absence of experience with its enforcement.
- **Implementation of the due diligence system:** although difficult to understand and apply, this obligation appears to have some **impact on the practices of operators**, who are demanding more information and assurances of compliance from their suppliers.

Recommendations and next steps: in order to address the shortcomings identified, the Commission recommends that Member States:

- significantly step up their implementation and enforcement efforts;
- strengthen the current level of technical capacity and resources (both human and financial) allocated to the competent authorities with the aim of increasing the number and quality of compliance checks;
- make additional efforts to inform operators, especially SMEs, about the requirements of the EU Timber Regulation, and promote cost-effective practices to implement due diligence.

The Commission will continue to:

- **provide guidance** to Member States and operators by supplementing the Timber Regulation guidance document, where necessary, with a view to achieving a uniform application of the Regulation across the EU;
- **facilitate communication and harmonisation** of enforcement approaches between competent authorities at expert group meetings.

The Commission does not consider it necessary to propose amendments of the substantive provisions of the Regulation. However, it may consider expanding the product scope, set out in the Annex of the EU Timber Regulation, through a **delegated act** subject to an impact assessment of options.

Obligations of operators who place timber and timber products on the market

2008/0198(COD) - 18/02/2016 - Follow-up document

The Commission presents a report on the exercise of the delegation conferred on the Commission pursuant to Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (the EU Timber Regulation).

The EU Timber Regulation:

- prohibits the placing on the EU market of illegally harvested timber and products derived from such timber;
- requires operators, defined as market participants who place timber products on the EU market for the first time, to exercise "due diligence" in order to ensure the legality of harvesting of the wood imbedded in their products;
- requires traders throughout the supply chain to keep records of their supplier and their customer, to facilitate the traceability of timber products placed on the market.

The Regulation covers a wide range of timber products listed in its Annex using the EU Combined nomenclature codes. It provides for recognition of "monitoring organisations" by the Commission, whose role is to assist operators in meeting their obligations.

Exercise of the delegation: according to the Regulation, the Commission may adopt delegated acts concerning:

- further relevant risk assessment criteria that may be necessary to supplement those already provided for in the Regulation;
- the procedure for the recognition and withdrawal of recognition of monitoring organisations and, if experience so requires, to amend them;
- the list of timber and timber products to which the EU Timber Regulation applies.

The delegation is conferred on the Commission for a **period of 7 years from 2 December 2010** and the Commission is required to make a report in respect of the delegated powers not later than 3 months before the end of a three-year period after the date of application of the Regulation, which is December 2015 as the Regulation became applicable on 3 March 2013.

Delegated act: the Commission adopted one delegated act, the [Commission Delegated Regulation No 363/2012](#) of 23 February 2012 on the **procedural rules for the recognition and withdrawal of recognition of monitoring organisations**. The exercise of this empowerment responds to the need to supplement the requirements and the procedural rules regarding the recognition and withdrawal of recognition of monitoring organisations.

Neither the European Parliament nor the Council issued any objection to the delegated act within the period of 2 months as provided for in the EU Timber Regulation. On the expiry of the 2 months period, **the delegated act was published in the Official Journal of the EU and entered into force on 17 May 2012**.

The Commission has not yet adopted delegated acts concerning further relevant risk assessment criteria that may be necessary to supplement those already provided for in the Regulation, and concerning the list of timber and timber products to which the EU Timber Regulation applies as more experience with the application of the Regulation is needed in order to assess the necessity of such amendments.

Conclusion: the Commission considers that it has properly exercised its delegated powers. It still considers **the delegated powers necessary**, in particular for the purposes of amending and/or supplementing the list of timber and timber products set out in the Annex.

Obligations of operators who place timber and timber products on the market

2008/0198(COD) - 20/10/2010 - Final act

PURPOSE: to fight against illegal logging and related trade

LEGISLATIVE ACT: Regulation (EU) No 995/2010 of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market.

CONTENT: the Council adopted a regulation laying down the obligations of operators who place timber and timber products on the market. The Swedish delegation voted against the regulation, and the Czech and Portuguese delegations abstained.

The adoption of the Regulation follows an agreement with the European Parliament at second reading.

Prohibition, traceability: the new Regulation prohibits the placing on the internal market of illegally harvested timber or timber products derived from such timber. Traders shall, throughout the supply chain, be able to identify: (a) the operators or the traders who have supplied the timber and timber products; and (b) where applicable, the traders to whom they have supplied timber and timber products. Traders shall keep the information for at least five years and shall provide that information to competent authorities if they so request.

Due diligence systems: the new regulation stipulates that operators who place timber or timber products on the internal market for the first time must exercise due diligence through a system comprising three elements inherent to risk management:

- **access to information:** (i) description, including the trade name and type of product as well as the common name of tree species and, where applicable, its full scientific name; (ii) country of harvest, and where applicable: (a) sub-national region where the timber was harvested; and (b) concession of harvest; (iii) quantity (expressed in volume, weight or number of units); (iv) name and address of the supplier to the operator; (v) name and address of the trader to whom the timber and timber products have been supplied; (vi) documents or other information indicating compliance of those timber and timber products with the applicable legislation;
- **risk assessment:** such procedures shall take into account the relevant risk assessment criteria, including: (i) assurance of compliance with applicable legislation, which may include certification or other third-party-verified schemes which cover compliance with applicable legislation; (ii) prevalence of illegal harvesting of specific tree species; (iii) prevalence of illegal harvesting or practices in the country of harvest and/or sub-national region where the timber was harvested, including consideration of the prevalence of armed conflict; (iv) sanctions imposed by the UN Security Council or the Council of the European Union on timber imports or exports; (v) complexity of the supply chain of timber and timber products;
- **mitigation of the risk identified:** this concerns a set of measures and procedures that are adequate and proportionate to minimise effectively that risk and which may include requiring additional information or documents and/or requiring third party verification.

Checks on operators: the competent authorities shall carry out checks to verify if operators comply with the requirements set out in the Regulation. The checks shall be conducted in accordance with a periodically reviewed plan following a risk-based approach. In addition, checks may be conducted when a competent authority is in possession of relevant information, including on the basis of substantiated concerns provided by third parties, concerning compliance by an operator with this Regulation. Where, following the checks, shortcomings have been detected, the competent authorities may issue a notice of remedial actions to be taken by the operator.

Penalties: the Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. They must be effective, proportionate and dissuasive and may include, inter alia: (a) fines proportionate to the environmental damage, the value of the timber or timber products concerned and the tax losses and economic detriment resulting from the infringement; (b) seizure of the timber and timber products concerned; (c) immediate suspension of authorisation to trade.

Reporting: Member States shall submit to the Commission, by 30 April of every second year following 3 March 2013, a report on the application of this Regulation during the previous two years.

By 3 December 2015 and every six years thereafter, the Commission shall, on the basis of reporting on and experience with the application of this Regulation, review the functioning and effectiveness of this Regulation, including in preventing illegally harvested timber or timber products derived from such timber being placed on the market. It shall in particular consider the administrative consequences for small and medium-sized enterprises and product coverage. The reports may be accompanied, if necessary, by appropriate legislative proposals.

ENTRY INTO FORCE: 02/12/2010.

APPLICATION: from 03/03/2013. However, certain provisions shall apply from 02/12/2010.

Obligations of operators who place timber and timber products on the market

2008/0198(COD) - 22/12/2009

The United Kingdom briefed the Council on its views concerning the draft regulation laying down the obligations of operators placing timber and timber products on the market, designed to minimise the risk of illegal timber being placed on the Community market.

It notes that the Swedish Presidency held a discussion on a proposal for the timber due diligence Regulation at the December 2009 Agriculture and Fisheries Council. The legislation requires all operators placing timber on the EU market for the first time to minimise the risk that it is illegal by undertaking due diligence on their supply chains.

The UK welcomes EU legislation to reduce the trade in illegal timber but we regret that this proposed legislation does not include a prohibition on the first placing of illegal timber on the market. Illegal logging is a major environmental issue and threatens to undermine our climate objectives. A

prohibition would complement the due diligence approach and enable Member States to take action against operators that place illegal timber on the market. It would incentivise proper application of the risk-based system.

Concerns over the impacts of a prohibition on domestic producers are unwarranted. There will be minimal administrative burden or financial cost to operators in addition to those already required in developing and running their due diligence systems. Operators who are complying with the law will benefit economically from increased confidence in their products and by removing illegal timber which distorts and undercuts the market for legal timber.

The EU must show leadership on this issue and produce strong legislation that will be effective in the fight against illegal logging. The Council will need to reach agreement with European Parliament, and we know that they have supported a prohibition. We urge all Member States to take a flexible approach and work with the European Parliament to achieve an ambitious Regulation which ensures that illegal timber cannot be placed on our market.

Obligations of operators who place timber and timber products on the market

2008/0198(COD) - 22/06/2009

The Council took note of a Presidency **progress report on the state of play** on this file as well as of the comments from some delegations and the Commission.

Obligations of operators who place timber and timber products on the market

2008/0198(COD) - 07/07/2010 - Text adopted by Parliament, 2nd reading

The European Parliament adopted by 644 votes to 25, with 16 abstentions, a legislative resolution on the Council position at first reading for adopting 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.

It adopted its position at second reading of the ordinary legislative procedure (formerly known as the codecision procedure). The amendments adopted at plenary are the result of a compromise negotiated between the European Parliament and the Council. They amend the Council position at first reading as follows:

Scope: this Regulation lays down the obligations of operators who place timber and timber products on the internal market for the first time, as well as the obligations of internal traders.

"Internal trader" shall mean any natural or legal person who, in the course of a commercial activity, sells or buys on the internal market timber or timber products already placed on the market;

"Timber and timber products" shall mean the timber and timber products set out in the Annex, with the exception of timber products or components of such products manufactured from timber or timber products that have completed their life cycle and would otherwise be disposed of as waste, as defined in Article 3(1) of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste.

Prohibition: the amended text stipulates that **the placing on the market of illegally harvested timber or timber products shall be prohibited**. Operators shall exercise due diligence when placing timber or timber products on the market. Existing national legislative supervision and any voluntary chain of custody mechanism which fulfil the requirements of this Regulation may be used as a basis for the due diligence system.

Obligation of traceability: internal traders shall, throughout the supply chain, be able to identify: (a) the operators or the internal traders who have supplied the timber and timber products; and (b) where applicable, the internal traders to whom they have supplied timber and timber products.

Internal traders shall keep the information referred to in the first paragraph for at least five years and shall provide that information to competent authorities if they so request.

Due diligence systems: systems shall contain measures and procedures providing access, inter alia, to information concerning: (i) the description, including the trade name and type of product as well as the common name of tree species and, where applicable, its full scientific name; (ii) country of harvest, and where applicable, the concession of harvest; (iii) the name and address of the internal trader to whom the timber and timber products have been supplied.

The systems must also include **risk assessment procedures** enabling the operator to analyse and evaluate the risk of illegally harvested timber or timber products derived from such timber being placed on the market. These procedures should take account of the following criteria: (i) the prevalence of illegal harvesting or practices in the country of harvest and/or sub-national region where the timber was harvested, including consideration of the prevalence of armed conflict; (ii) sanctions imposed by the UN Security Council or the Council of the European Union on timber imports or exports.

Monitoring organisations: an organisation may apply for recognition as a monitoring organisation if it has: legal personality and is legally established within the Union; appropriate expertise; and that it ensures the absence of any conflict of interest in carrying out its functions.

The Commission, after consulting the Member State(s) concerned, shall recognise as a monitoring organisation an applicant that fulfils the requirements of the Regulation.

The decision to grant recognition to a monitoring organisation shall be communicated by the Commission to the competent authorities of all the Member States.

Checks may also be carried out when the competent authority of the Member State is in possession of relevant information, including substantiated concerns from third parties or when it has detected shortcomings in the implementation by operators of the due diligence system established by a monitoring organisation.

The Commission may adopt delegated acts in accordance with Article 290 TFEU, while ensuring that the recognition and withdrawal are performed in a fair and transparent manner **Controls on operators**: checks shall be conducted in accordance with a **periodically reviewed plan** following a risk-based approach. In addition, checks may be conducted when the competent authority of the Member State is in possession of relevant information, including on the basis of substantiated concerns provided by third parties, concerning compliance by the operator with this Regulation.

Checks may include, inter alia: (a) examination of the due diligence system, including risk assessment and risk mitigation procedures; (b) examination of documentation and records that demonstrate the proper functioning of the system and procedures; (c) spot checks, including field audits.

Additionally, depending on the nature of the shortcomings detected, Member States may take **immediate interim measures**, including inter alia: (a) seizure of timber and timber products; (b) prohibition of marketing of timber and timber products.

Technical assistance, advice and exchange of information: in order to facilitate the ability of operators who place timber or timber products on the market to comply with the requirements of this Regulation, taking into account the situation of small and medium-sized enterprises, Member States, assisted by the Commission where appropriate, may provide operators with technical and other assistance. Such assistance should not release operators from their obligation to exercise due diligence. Member States, assisted by the Commission where appropriate, may also facilitate the exchange and dissemination of relevant information on illegal logging.

Penalties: 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 and may include, inter alia: (a) fines proportionate to the environmental damage, the value of the timber or timber products concerned and the tax losses and economic detriment resulting from the infringement; the level of the penalties shall be calculated in such way as to make sure that they effectively deprive those responsible of the economic benefits derived from their serious infringements, without prejudice to the legitimate right to exercise a profession; the fines for repeated serious infringements shall be gradually increased; (b) seizure of the timber and timber products concerned; (c) immediate suspension of authorisation to trade.

Comitology: in order to ensure uniform conditions for implementation, implementing powers should be conferred on the Commission to adopt detailed rules with regard to the frequency and the nature of the checks by competent authorities on monitoring organisations and to the due diligence systems except as regards further relevant risk assessment criteria.

In accordance with Article 291 TFEU, rules and general principles concerning mechanisms for the control by Member States of the Commission's exercise of implementing powers are to be laid down in advance by a regulation adopted in accordance with the ordinary legislative procedure. Pending the adoption of that new regulation Council Decision 1999/468/EC laying down the procedures for the exercise of implementing powers conferred on the Commission(7) continues to apply, with the exception of the regulatory procedure with scrutiny, which is not applicable .

Review: Member States shall submit to the Commission, by 30 April of every second year following the date of application of this Regulation, a report on the application of this Regulation during the previous two years. On the basis of those reports the Commission shall draw up a report to be submitted to the European Parliament and to the Council every two years. In preparing the report, the Commission shall have regard to the progress made in respect of the conclusion and operation of the FLEGT (Forest Law Enforcement, Governance and Trade) VPAs (Voluntary Partnership Agreements) adopted pursuant to Regulation (EC) No 2173/2005 and their contribution to minimising the presence of illegally harvested timber and timber products on the internal market.

By five years and every six years thereafter, the Commission shall, on the basis of reporting on and experience with the application of this Regulation, review the functioning and effectiveness of this Regulation, including in preventing illegally harvested timber or timber products being placed on the market. It shall in particular consider the administrative consequences for small and medium-sized enterprises and product coverage. The reports may be accompanied, if necessary, by appropriate legislative proposals.

Obligations of operators who place timber and timber products on the market

2008/0198(COD) - 14/12/2009

The Council reached a **partial political agreement** on the text of a draft Regulation laying down the obligations of operators who place timber and timber products on the market.

The political agreement on the entire text could be reached during one of the Council forthcoming meeting - possibly on 22 December, without discussion.

The European Parliament adopted its opinion on 22 April 2009.

The Council adopted the FLEGT (Forest Law Enforcement, Governance and Trade) Regulation in December 2005 and gave the Commission mandate to open negotiations with third countries willing to enter voluntary partnership agreements (VPA).

Obligations of operators who place timber and timber products on the market

2008/0198(COD) - 01/03/2010 - Council position

The Council adopted its position, with the Netherlands delegation voting against and the United Kingdom delegation abstaining. The proposal is based on the principle of due diligence and focuses on the first time that timber and timber products are placed on the internal market. The Council has maintained the spirit of the Commission's systemic approach. It has therefore focused on elaborating the legal requirements for proactive behaviour on the part of the operator.

In its first reading, the European Parliament adopted 75 amendments. The Council's position at first reading incorporates a number of Parliament's amendments, in part or in spirit. Notable among them are the following:

- particular attention should be made to the impact of the Regulation on small and medium-sized enterprises (SMEs);
- the scope of the Regulation should not exclude timber and timber products which are subject to mandatory sustainability criteria;
- the Commission should recognise monitoring organisations which intend to carry out its activities in more than one Member State.

However, other amendments were not reflected in the Council's position because the Council considered that they were rendered unnecessary in the light of the way in which the text had evolved. It introduced a number of changes resulting from the entry into force of the Lisbon Treaty on 1 December 2009, in particular the legal framework that will be constructed to replace the comitology system. The Council's position at first reading also includes a number of changes other than those envisaged in the European Parliament's position at first reading. The main ones are as follows:

Definitions: the following changes were made to the original proposal:

- the definition of "timber and timber products" was modified to indicate that recycled timber products - that is timber products or components of such products manufactured from timber and timber products that have completed their lifecycle and would otherwise be disposed of as waste- will not be covered by that definition as it was considered that it would be disproportionate to require operators to ascertain information concerning the original source of timber present in recycled products;
- the proposed exception for timber and timber products which are subject to mandatory sustainability criteria was deleted;
- it was clarified that the timber products derived from timber or from timber products which have already been placed on the market should not be covered by the definition of "timber and timber products";
- the Council clarified the meaning of "the placing on the market" by adding that it included all selling techniques. Supply by means of distance communication is also covered;
- the notion of sub-national region of harvest was added to cover cases in which there are regional differences within a country;
- the definition of "country of harvest" was extended to include not only countries but also territories;
- the definitions of "risk management" and "monitoring organisation" were deleted because it was considered that these concepts were more comprehensively described in the operative clauses.

Applicable legislation: the definition of applicable legislation is one of the core issues of the draft regulation since the operator would be obliged to have access to information about the compliance of timber and timber products with the applicable legislation. The Council has endeavoured to strike the right balance between an extended list of areas of legislation and a list that enumerated the relevant areas of legislation in general terms. It has broadened the definition put forward in the Commission proposal to include forest-related legislation, including environmental legislation as well as trade and customs legislation, as far as the forest sector is concerned. The Council has added "third parties' legal rights concerning use and tenure" which can be seen as approaching the line taken by Parliament when it mentions "property tenure and rights of indigenous people". However, the Council considered Parliament's amendments concerning the inclusion of labour and community welfare legislation to be problematic from a legal and practical point of view.

Due diligence systems: the Council considered it important that the main elements in the draft Regulation were clarified. Therefore it has elaborated three elements of the due diligence system: access to certain information, the risk assessment procedure and the risk mitigation procedure. Parliament also saw the need to set out clearly the two elements of risk identification and risk minimisation.

For the risk assessment procedures the Council set out four risk assessment criteria. It has endeavoured to distinguish between the risk assessment and risk mitigation procedures, according to different factors such as the complexity of the product and its origin, without explicitly indicating situations which require special attention, in the form of either stricter or lighter requirements. Unlike Parliament, the Council did not extend the obligation of due diligence to operators other than those who place timber and timber products on the internal market for the first time. Such an extension was considered to be unduly burdensome.

The Council introduced the possibility for the operator to choose between three different due diligence systems, their own, a due diligence system provided by a monitoring organisation or a system provided by a third party.

Scope: like Parliament, the Council also deleted the proposed exemption for timber subject to mandatory sustainability criteria in the Commission proposal.

Annex: the timber products in the Annex are re-numbered according to the numbering of the CN codes. Some product categories are added. It is considered that at this stage the burden on operators would be too heavy if other categories are added.

Monitoring organisations: the Council shared Parliament's view that it was important to have harmonised standards across the EU and suggested that the Commission should also recognise monitoring organisations. It distinguished between monitoring organisations which intend to carry out activities in one Member State and in several Member States. It agreed that the Commission should recognise those organisations carrying out their activities in several Member States. However it was considered more practical for a Member State's competent authority to be responsible for recognising monitoring organisations carrying out their activities only in that Member State. Like Parliament, the Council considered it important that the monitoring organisation should carry out its functions in a manner that avoids any conflict of interest. It was not deemed necessary to distinguish between the private or public monitoring organisations.

Penalties: the Council considered adding a list of penalties but after extensive discussion, it decided to retain the language of the Commission's proposal which is agreed language for EU legislation. Many Member States were of the opinion that the level and content of penalties were within the sphere of Member States' competence. Furthermore the setting out of a list of penalties raised some practical issues such as the exhaustiveness of the list and difficulties in identifying at this stage all possible infractions.

Prohibition: the Council has kept the spirit of the Commission proposal for a systemic approach. Operators should use a due diligence system to minimise the risk of placing illegally harvested timber or timber products on the market. The Council does not concur with Parliament's view that a prohibition should be introduced. Such an extension of the scope was not considered to be in line with the spirit of the proposal and is therefore unacceptable.

Application: since it was felt to be unrealistic to make the Regulation applicable only one year after its entry into force, it is provided that the Regulation will apply 30 months after entry into force, to give operators time to adjust to the new situation and for the implementing measures to be adopted.

Situation of SMEs: like Parliament, the Council has taken into account the special situation of SME's and introduced the notion of negligible risk. The Regulation also provides that the delegated acts which will amend and supplement the list of timber and timber products set out in the Annex should not create a disproportionate burden on operators. In the article on reporting, the Council added that the review should in particular take into account the administrative consequences for SMEs.

Recitals and references to environmental issues (sustainable forest management): Parliament in its first reading added a considerable number of recitals to take account of the forest environment, biodiversity, forest ecosystems and sustainable forest management. The Council considers that, since the due diligence system and the behaviour of operators is at the heart of the Regulation, such references are superfluous, however desirable the objectives. In addition, recitals serve to justify the provisions of the Regulation, while here there are no operative provisions to which such recitals could be linked.

Other changes made by the Council

Status of timber products covered by FLEGT and CITES: the provision on timber and timber products covered by FLEGT and CITES was set out in a separate Article because the Regulation considers FLEGT licenses and CITES certificates to be sufficient evidence of legal harvesting.

Cooperation between competent authorities: the Council was of the opinion that only serious shortcomings needed to be subject to an exchange of information. It also specified that the types of penalties imposed should be covered by the exchange of information.

Subject matter: the Council has added that the aim of the legislation is to minimise the risk of placing illegally harvested timber or timber products derived from such timber on the market.

Lisbon Treaty changes: since the Council considers that powers should be delegated to the Commission pursuant to Article 290 of the Treaty on the Functioning of the European Union, it added three new Articles necessary for such delegated acts and has adapted the provisions for the adoption of implementing measures pursuant to Article 291 TFEU.

The Council believes that its position at first reading is in line with the fundamental objectives of the Commission's proposal, representing a balanced package of measures that would contribute to the pursuit of the objectives of combating illegal logging.

Obligations of operators who place timber and timber products on the market

2008/0198(COD) - 30/08/2010 - Commission opinion on Parliament's position at 2nd reading

At its Plenary Session of 7 July 2010, the European Parliament adopted a compromise package which had been agreed with the Council in view of reaching a second reading agreement.

These amendments concern essentially:

- the imposition of a prohibition on placing on the EU market of illegally harvested timber and timber products,
- the imposition of an obligation on internal traders to keep records of from whom and to whom they sell timber and timber products on a commercial basis,
- recognition and withdrawal of recognition of monitoring organizations to be done centrally by the Commission,
- extension of the date of application of the Regulation to 27 months,
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- amendment of the scope of applicable legislation through insertion of a reference to forest management and biodiversity conservation legislation directly related to timber harvesting,
- expansion of the risk assessment criteria by adding UN Security Council or Council of the European Union sanctions on timber imports or exports and prevalence of armed conflict,
- authorisation of the competent authorities to carry out check on operators and monitoring organizations when in a possession of relevant information, including substantiated concerns from third parties.

The Commission amends its proposal as set out above.

Obligations of operators who place timber and timber products on the market

2008/0198(COD) - 22/04/2009 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 465 votes to 22, with 187 abstentions, a legislative resolution modifying, under the first reading of the codecision procedure, 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.

The resolution stresses that 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, and damages indigenous peoples' habitats.

The main amendments are as follows:

Prohibition: the Parliament proposes an explicit statement of the requirement that operators make available on the market only legally harvested timber /timber products. Operators who place timber/timber products on the market shall use a due diligence system.

Obligations of operators: 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.

Labelling: Member States shall ensure that by 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 aforementioned information.

Due diligence system: Member States approve the due diligence system provided for in the proposal. This should 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. The system should comprise measures to ascertain, inter alia: country of origin, forest of origin; name of the species; value; name and address of the operator who has supplied the timber and timber products. MEPs also specify what the risk management procedure should comprise.

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

SMEs: the Commission, in adopting measures for the implementation of the Regulation, 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.

Extra due diligence obligations: the resolution stresses that, 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. Timber and timber products from conflict areas, or countries / regions covered by a UN Security Council ban on timber exports and 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 shall be considered as 'high risk'. Extra due diligence obligations may, inter alia, include: requiring additional documents, data or information; requiring third party audits.

Individual Member States shall not be prevented 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.

Recognition of monitoring organisations: in order to have harmonised standards across the EU for the organisations which monitor due diligence systems, the Parliament proposes that the decision over whether to recognise a monitoring organisation be made at EU rather than national level. It expands on the criteria organisations should fulfil, as well as the information they must submit in application for recognition.

Checks and controls by competent authorities: MEPs stress that the means of national authorities to control and monitor trade of timber must be enhanced. 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 the Regulation. Controls may include spot checks, including field audits.

Traceability system: the competent authorities shall be equipped with a reliable traceability system to track internationally-traded timber products and with public monitoring systems to help operators identify suppliers of high-risk timber and timber-derived products.

Immediate measures: if, following the controls, the operator is presumed to have infringed the requirements set out in the Regulation, the competent authorities may start a full investigation of the infringement and take immediate measures, which may, inter alia, include the immediate cessation of commercial activities and the seizure of timber and timber products.

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.

Advisory Group: MEPs propose the establishment of an Advisory Group which can be consulted by the Timber Committee, in order to allow an efficient implementation of the Regulation and to secure good communication between all stakeholders.

Penalties: the penalties may be criminal or administrative, must be effective, proportionate and dissuasive, and shall include, where appropriate, inter alia: (i) financial penalties representing at least five times the value of the timber products obtained by committing a serious 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.

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.

Exemption: MEPs consider 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. The Regulation should cover all products that could contain illegally sourced timber.

Review: three years after the entry into force of the Regulation, and every five years thereafter, the Commission shall carry out a review of the operation of the 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: (i) a detailed and thorough analysis of research and development in the field of sustainable forestry; (ii) the impact of this Regulation on the internal market; (iii) the situation of SMEs on the market and how this Regulation has affected their activities.

Obligations of operators who place timber and timber products on the market

2008/0198(COD) - 20/10/2008

The Commission provided information on the communication and the legislative proposal for preventing the marketing of unlawfully harvested timber and timber products.

Obligations of operators who place timber and timber products on the market

2008/0198(COD) - 17/10/2008 - Legislative proposal

PURPOSE: to complement and underpin the existing policy framework and support the international fight against illegal logging and related trade.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: 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. It is part of a larger problem that includes issues of forest governance and law enforcement, and also has economic and social consequences. Illegal logging takes place when timber is harvested, processed or traded in violation of national laws applicable in the country of harvest.

The European Union continues to initiate and support initiatives at the national, regional and international level to raise commitment and strengthen work to address illegal logging and associated trade. The European Commission and many Member States are actively involved in many such initiatives, such as the regional FLEG processes. It also engages in bilateral and multilateral discussions with third countries both in multilateral fora such as the UN Forum on Forests and the International Tropical Timber Organisation and in bilateral talks with major timber-consuming countries such as the US, China, Russia and Japan, to discuss the problem.

In its 2003 Communication to the European Parliament and the Council, the European Commission proposed an EU Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT) in which it set out a package of measures including, inter alia, support for timber-producing countries, efforts to develop multilateral collaboration to combat the trade in illegally harvested timber, private sector initiatives as well as measures to avoid investment in activities which encourage illegal logging and conflict timber. 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.

Given the major scale and urgency of the problem, the Commission believes that the EU policy to fight illegal logging and its associated trade needs to be reinforced.

In the absence of a harmonised approach, several Member States have indicated that they would take national measures. However, experience has shown that action at national level could create a barrier to the free circulation of goods and a distortion of competition in the internal market. The Commission thus believes that Community action is necessary. It is proposed that this should be done through a Regulation determining the obligations of operators who place timber and timber products on the Community market.

CONTENT: the proposal focuses on the first time that timber and timber products are made available on the Community market, regardless of their origin, by determining the obligations of those operators who place timber and timber products on the Community market. The proposal is based on the **due diligence principle** requiring the operators covered by it to apply a system (due diligence system) to minimize the risk of placing illegally harvested timber and timber products on the Community market. The due diligence system includes measures and procedures which will enable operators to track the timber and timber products, to have access to information concerning compliance with the applicable legislation and to manage the risk of placing illegally harvested timber and timber products on the Community market.

The proposed measures aim at deterring operators from placing on the Community market timber and timber products without having a reasonable assurance as regards their legality contributing therefore to the global efforts to fight illegal logging. They also provide consumers with the certainty that by buying timber and timber products they do not contribute to the problem of illegal logging and associated trade

It is important to note that due diligence is not just a moral duty to care but a **legal requirement for a proactive behaviour**. It obliges operators to show prudence, judgment and positive action in ascertaining the legality of the timber and timber products that enter their supply chain in order to minimize the risk of placing illegally harvested timber and timber products on the Community market.

Legality is defined on the basis of the legislation of the country of harvest, applicable to forest management, timber harvesting and timber trade.

Timber and timber products covered by a **FLEGT license or a CITES permit** are considered to have been legally harvested. Operators who should apply a due diligence system can either develop a system on their own or rely on a recognised due diligence system as the proposal provides for the recognition of due diligence systems developed by monitoring organisations. This means that, while setting clearly the principles to be taken into account when applying a due diligence system, the proposal gives operators the flexibility to choose the mechanisms to deliver the required result.

The **guiding principles** of the proposed Regulation are effectiveness and clarity in terms of the legal obligations. Operators have the responsibility to minimize the risk of placing illegally harvested timber and timber products on the market through the use of a system of measures and procedures. The main elements of this system are set out in the proposal. Further details will be laid down by way of implementing measures in order to facilitate implementation, notably with respect to the identification of the criteria for determining the presence of a high or low risk that illegally harvested timber and timber products are placed on the Community market.

In laying down those **implementing measures** the following principles should be respected: i) the need to avoid putting any unnecessary burden on the operators; ii) the balance of costs and benefits to operators covered by this Regulation; iii) the need to respect the necessary flexibility in the application of the implementing measures; iv) the need to facilitate the adaptation of small operators to the requirements laid down in this Regulation. The Regulation will apply only when these measures have been adopted.

In all aspects related to this proposal it is essential that stakeholders, in particular the industry and the civil society, will be consulted so as to determine the best possible ways of implementation through a structured framework of discussions and information sharing.

Obligations of operators who place timber and timber products on the market

2008/0198(COD) - 09/03/2010 - Commission communication on Council's position

The Commission considers that the Council's position neither changes the approach nor the objectives of its proposal and therefore supports the position as it stands. The Commission accepted in full, in part or in principle 37 out of 75 amendments adopted by the European Parliament in its first reading. 17 of the European Parliament amendments have been taken into account in the position of the Council adopted in first reading by qualified majority.

Parliamentary amendments accepted by the Commission and incorporated in full, in part or in principle in the position of the Council relate to:

- paying particular attention to the impact of the Regulation on SMEs;
- adding several specific types of information (due diligence system);
- inserting a clause regarding conflict of interest in the requirements that monitoring organisations must satisfy;
- specifying how information containing the list of competent authorities responsible for the application of the regulation shall be made available to the public.

Parliamentary amendments rejected by the Commission and incorporated in full, in part or in principle in the position of the Council relate to:

- the scope of the Regulation: the amendments stipulate that timber and timber products subject to mandatory sustainability criteria should not be excluded from its application;
- a broadening of the definition of the legislation applicable;
- the recognition of monitoring organisations by the Commission;
- information on checks shall be made available.

Parliamentary amendments accepted in full, in part or in principle by the Commission but not incorporated in the position of the Council mainly concern the recitals. These referred to forest environment, biodiversity, forest ecosystems and sustainable forest management.

Parliamentary amendments rejected by the Commission and the Council and not incorporated in the position of the Council concern:

- the introduction of a prohibition on placing of illegally harvested timber and timber products on the market;
- the extension of the scope of the proposal to cover all operators in the supply chain and not only those placing timber and timber products on the market for the first time and the related notion of traceability;
- the inclusion of a requirement for labelling of origin of the timber products;
- most of amendments on requirements for monitoring organisations.

The changes introduced by the Council are consistent with the objective of minimizing the risk of placing illegally harvested timber and timber products on the market and build upon the Commission's proposal. Therefore the Commission can accept the position of the Council.