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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels,
COM(2008) 644/3

2008/xxxx (COD)

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**

{SEC(2008) 2615}
{SEC(2008) 2616}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- Grounds for and objectives of the proposal

The main objective of this proposal is to complement and underpin the EU's current policy framework and support the international fight against illegal logging and its related trade.

- General context

Illegal logging takes place when timber is harvested, processed or traded in violation of national laws applicable in the country of harvest. The reasons are many but they start with the high demand for timber and the weak rules to prevent trade in illegally harvested timber. Illegal logging is part of a larger problem that includes issues of forest governance, law enforcement and corruption.

Its clandestine nature makes its scale and value difficult to estimate but evidence suggests that it is a substantial and growing problem. In many countries, illegal logging is similar in size or even higher than legal logging activities. In Europe it is also present although not at significant rates.

Illegal logging is a major contributor to global deforestation which causes enormous environmental damage. Deforestation is responsible for approximately 20% of global emissions of greenhouse gasses (more than the total global emissions from the transport sector) and is a major cause for global losses of biodiversity.

In addition, illegal logging undercuts the competitiveness of legitimate forest industry operations in exporting and importing countries and costs governments' significant revenue losses. It undermines the rule of law and the principles of democratic governance, hinders sustainable development in many developing countries and can fund armed conflict. The social impact of illegal logging is less well recognised. However, serious human rights abuses have been documented.

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. The Commission also uses the opportunity of ongoing negotiations for Partnership and Co-operation Agreements as well as for Free Trade Agreements to raise the issue of the conservation and sustainable management of Forests, including illegal logging and associated trade.

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)¹ to address the problem of illegal logging and its related trade. This initiative closely reflected the commitment made by Commissioner Nielson in 2002 at the World Summit on Sustainable Development and the momentum built up in the regional processes organised by the World Bank, notably the high level meeting on Forest Law Enforcement and Governance (FLEG) held in Bali in 2001.

The EU FLEGT Action Plan 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.

A central element of the EU FLEGT Action Plan was the proposal for a FLEGT licensing scheme, under which exports of timber to the EU from participating countries would be covered by a (FLEGT) licence attesting that the timber has been harvested in conformity with relevant national legislation. The Council adopted the FLEGT Regulation² in 2005 establishing the legal framework for the imports into the EU of timber originating in partner countries and authorised the Commission to launch negotiations with producing countries and regional organisations which expressed an interest in entering in Voluntary Partnership Agreements (FLEGT VPAs) with the EU.

Up to October 2008, five countries – Malaysia, Indonesia, Cameroon, Congo (Brazzaville) and Ghana – have started negotiating such an agreement with the EU and there are informal consultations with a number of other producing countries which have expressed an interest. The first such agreement was initialled with Ghana in September. However, the timeframe as regards the implementation of any VPAs and the risk of circumvention and laundering risk make VPAs alone insufficient to address the problem of illegal logging.

In the FLEGT Action Plan the Commission also recognised that some important timber-producing countries may choose not to enter into FLEGT VPAs with the EU and therefore that, in the absence or slow pace of multilateral progress, the EU should adopt additional measures to fight illegal logging at the global level, including legislation to prevent imports of illegally harvested timber into the EU. The Commission took the commitment to review such options and the European Parliament and the Council have since recalled that commitment in formal resolutions³ and conclusions⁴.

In the intervening period, extensive work has been undertaken by Member States, the Commission, think-tanks and NGOs to identify the best way forward. Taking the results of this comprehensive work into account, at the end of 2006 the Commission launched an assessment of a number of additional measures. The findings of this process are summarised in a public report from the Commission.

Taking into account the results of the assessment performed 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

¹ COM 251, 21.5.2003.

² OJ L 347, 30.12.2005, p. 1.

³ Council document 7014/04.

⁴ Council conclusions 268/2003, p. 1.

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.

The proposed Regulation does not preclude Community action to combat deforestation and biodiversity loss through other measures, such as, for example, the establishment of sustainability criteria for biomass.

- Existing provisions in the area of the proposal

Existing provisions are fully explained in the previous section.

- Consistency with the other policies and objectives of the Union

Climate Change policy: There has been in recent years an increasing awareness of the vital role that forests plays in the global carbon cycle, storing roughly half the world's terrestrial carbon. In particular, there is now an ever-increasing consensus that unless the deforestation challenge is addressed, it will simply not be possible to limit global warming to 2°C above the pre-industrial temperature; nor will it be possible to reap the benefits of EU efforts to combat climate change.

Illegal logging is one of the most important direct drivers of deforestation and it also undermines forest governance and sustainable forest management which are essential for the effectiveness of measures in the forestry sector that should be set up under the post-2012 International Climate Agreement.

The low cost timber products that illegal logging generates also hurt European timber operators and the workers they employ. This proposal aims at combating this problem and level the playing field for industry and workers.

The aim of this proposal is in line with the Commission's strategic objectives and better regulation principles notably to provide effective and efficient measures, ensure a high level of legal certainty across the EU, enable operators to be more dynamic without increasing significantly the burden and thus help to strengthen the Community's credibility in the eyes of its citizens.

The proposal, in line with the FLEGT Action Plan, focuses only on the question of legality, and does not address sustainability. However, in many countries forest legislation is based on the premise of sustainable forest management and therefore legality is not totally distinct from sustainability. In addition, given that this proposal aims at encouraging better law enforcement and governance it would represent a major step along the road to sustainability particularly in countries affected by illegal logging. The objectives of this proposal have been considered within the context of the Sustainable Development strategy agreed by the European Council in June 2006 and the Strategic European Energy Review presented by the Commission to the European Council in January 2007. The proposal and any implementing measures should be consistent with these objectives.

2. CONSULTATION WITH INTERESTED PARTIES AND IMPACT ASSESSMENT

A broad consultation process was held between December 2006 and June 2008 which included a web-based public consultation and numerous meetings with stakeholders. In addition the Commission carried out an impact assessment of the proposed policy options which led to the publication of a report.

Initially four options were considered:

Option 1: Expanded coverage of the bilateral approach through FLEGT Voluntary Partnership Agreements.

Under this option, the Community would give priority to reinforce the implementation of the VPA approach. This approach however, would have a significant impact only if all major producing, transit and processing countries would enter into FLEGT VPAs or if this would

evolve into a multilateral initiative. The former is widely considered to be an impossible task while the latter appears highly unlikely.

Option 2: Voluntary measures by the private sector further developed

Under this option, the Community would encourage the strengthening of private sector measures such as codes of conduct and forest certification schemes by e.g. recognising them in the FLEGT VPAs, making membership in the federations mandatory and by supporting measures such as financial or regulatory incentives.

Codes of conduct have been introduced by timber trade federations and bodies who develop and advise their members on responsible purchasing policies. Private certification schemes have been set up to set forest management standards and accredit forests, products and or managers against those standards. Although these initiatives have merits including their flexibility, powerful motivation and good cost/efficiency balance, their voluntary nature, lack of policing over implementation and lack of sanctions for non-compliance challenged over the years their credibility and sustainability.

Option 3: Border measures to prevent the importation of illegally harvested timber

This option would consist in declaring illegal under Community law the importation of timber products stemming from illegal logging and making imports of timber into the Community conditional upon proving legality. The prohibition and the requirement would apply to all countries regardless of the level of risk on trading illegally harvested timber. The compliance check would take place at the EU border, on the basis of documentation ascertaining the legality of the timber.

Under this option, the Community would rely on the assumption that illegal logging occurs only outside the EU and therefore trade measures would have a predominant role to play in the combat against illegal logging. The option presents difficulties in terms of WTO-compatibility (discriminatory treatment of timber operators) and its proportionality.

Option 4: Prohibition on the placing on the EU market of illegally harvested timber

Under this option it would be illegal to place on the EU market illegally harvested timber or products derived from such timber. The option would apply both to imported forest products and to those produced in the EU.

Two alternative approaches could be followed:

Option 4A: Legislation which prohibits the trading and possession of timber and timber products harvested in breach of the laws of the country of origin.

This option would prohibit the placing of illegally harvested timber on the EU market. The responsibility to prove illegality would lie with the enforcement agencies and operators would be requested to demonstrate compliance only when challenged.

The focus of this option would effectively be on high-risk cases and it would thus provide operators with an incentive to source timber with adequate guarantees regarding its legality. However, it would have significant difficulties in its implementation because demonstrating the underlying illegality would be a difficult task as timber products have complicated supply chains, stretching through several countries and operators and would involve European courts adjudicating on infractions having taken place in third countries and in the context of the

legislation of those countries. In addition it would not provide the legal certainty necessary for the proper functioning of the market.

This option is similar to the provisions of the Illegal logging amendment to the US Lacey Act, approved on 2 June 2008 which extends protection to plants and trees illegally harvested outside of the US.

Option 4B: Legislation which requires that only legally harvested timber and timber products be placed on the market.

Under this option the marketing of timber and timber products in the Community would be made conditional upon the operator proving legality. For enforcement purposes, such proof would require presentation of written documentation covering every single shipment and as a consequence the option would risk creating a burdensome, expensive and trade-disruptive system.

To a certain extent this option would rely on an approach similar to the one described under option 3; operators would be required to provide documentary evidence of the legality of every shipment of timber and timber products they make available on the EU market, regardless of the origin. Such evidence would have to be provided either on request or systematically and for enforcement purposes it should take the form of documentation proving legality.

The conclusion from the assessment of the four different options set out above was that there were significant drawbacks to each of them that could limit their effectiveness. The specific nature of illegal logging requires a new approach that takes into account the structure of the entire timber sector, which aims at a systematic change of behaviour in operators and customers and which focuses on promoting sector-specific systems that can prevent illegal timber and timber products entering the Community market. With these objectives in mind, a new option emerged.

Option 5: Legislation which requires due diligence by all operators who place timber and timber products on the Community market

This option requires operators to exercise due diligence to ascertain to their best ability that the timber and timber products they place on the Community market were legally harvested. It relies on the principle that an efficient strategy should support the development of robust systems designed to eliminate illegally harvested timber from the Community market.

A major benefit of that option is that it will tend to favour sourcing from countries with reliable forest management practices, in particular, those countries having concluded FLEGT VPAs with the EU, since the FLEGT licence ensures a high degree of certainty in terms of the legality of the timber products concerned. Costs are proportionate to the need for the Community to improve the efficiency of its policy against illegal logging and the related trade. Over time operators will also benefit from the elimination of illegal timber products from the market.

This option would imply that operators covered by it apply systems and procedures to ascertain to their best ability that they only place on the EU market timber and timber products that have been legally harvested.

- Public Consultation

The Commission held a web-based public consultation in early 2007. The consultation sought views on the need for, appropriateness and feasibility of EU policy measures to address the problem of illegal timber and timber products being introduced to the European market. Opinions were only expressed on the initial four options because option 5 was developed in response to the initial assessment. Although the substantive response was not large in terms of numbers (93 contributions) in terms of content and variety of perspectives provided it met the Commission's expectations. The Commission also received 7.161 emails through a 'Ban illegal timber' campaign launched by Greenpeace.

Most of the respondents felt that the coverage of the bilateral FLEGT approach was insufficient to address the problem of illegal logging. They also felt that further private sector voluntary schemes could be used to complement a robust binding framework. Some respondents felt that a combination of these approaches might allow those areas with the highest risk of illegal logging to be targeted. A significant proportion of the respondents expressed the firm wish for the EU to put an end to 'business as usual' and in particular address possible loopholes in a system under FLEGT VPAs. In general these responses favoured a legislative approach although without clearly favouring any particular option. The report summarising the results of the consultation can be found in http://www.cc.cec/dgintranet/env/i/e2/doc/pdf_docs/forests/AddlOptionsSynthFinal.pdf

- National Studies

In its conclusions the Council called on the Member States to provide the Commission with "relevant information" about the extent to which it is possible to use existing national legislation to stop the trade in illegally produced and traded wood. Several MS carried out that analysis in response to that request. The analysis suggests that there is some potential to address illegal logging through existing legislation such as the laws on theft and trafficking of stolen goods, money-laundering, corruption or smuggling.

- Consultations with third countries

Consultations were held with several international partners. High level meetings were held with other major timber importers e.g. China, Japan and USA. Meetings were organised with countries currently negotiating FLEGT Voluntary partnership Agreements with the Community (e.g. Malaysia, Indonesia, Ghana, and Cameroon) as well as certain other timber exporting countries (Russia, Brazil) and countries that have shown interest in discussing VPAs with the EU.

- Impact Assessment Report

The Commission has produced a report looking into the environmental, economic and social impacts of the different policy options within and outside the EU. This report is accessible on the web site of DG Environment within the European Commission. The Commission contracted a consultancy firm to carry out a study as an input for its report.

- Ad hoc Consultations

In the context of the impact assessment stakeholders were consulted in workshops or through interviews. Stakeholders were invited to rank the additional options from best to worst. As

option 5 had not been yet developed at that time views were sought on the four then available options.

When option 5 was developed, the Commission services held a number of meetings with stakeholders to discuss the advantages and disadvantages of this approach. Option 5 received generally a positive feedback. One point of divergence amongst stakeholders was whether domestically produced timber should be covered as there are few incidents of illegal logging within the EU. The technical practicality of applying legislative requirements to composite products was another issue raised although the majority of stakeholders supported a uniform approach that would level the playing field for all players in the timber market.

There were also concerns about the fact that option 5 does in fact not prohibit the placing on the market of illegally harvested timber and derived products but instead requires timber operators to show sufficient care in ensuring that they do not place illegally harvested timber on the market. However it was recognised that the proposed measures, by relying on the responsible operators have the potential to induce permanent and implementable changes in the EU timber market and are therefore able to deliver better solutions to the challenging problem of illegal logging and related trade.

3. ELEMENTS OF THE PROPOSAL

- Summary of the proposed action

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 behavior. 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 organizations. 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: the need to avoid putting any unnecessary burden on the operators; the balance of costs and benefits to operators covered by this Regulation; the need to respect the necessary flexibility in the application of the implementing measures; the need to facilitate the adaptation of small operators to the requirements laid down in this Regulation. Recognizing that the effective implementation of the proposed measures relies on the adoption of complementary measures, its application will begin only when these measures have been adopted.

The most comprehensive approach can not function effectively without the commitment and full collaboration of all stakeholders involved in the implementation. 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.

- Legal basis

The provisions of this Regulation relate to the protection of the environment. Article 175 (1) of the Treaty thus provide the appropriate legal basis.

- Choice of instrument

The proposed instrument is a regulation because a regulation is necessary in order to ensure the highest level of harmonization and avoid the coexistence of different standards between Member States.

- The principles of subsidiarity and proportionality

The Subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Community.

Strong evidence suggests that illegal logging is a substantial occurrence, which causes significant environmental damage and contributes to loss of biodiversity, undermines the competitiveness of legitimate forest industry operations while being closely associated with corruption, organised crime and violent conflict. The proposal aims at minimizing the risk of illegally timber and timber products entering the Community market through a set of obligations of operators who place timber and timber products on the Community market. Despite the limited occurrence of illegal logging incidents within the EU and in the absence of

Community requirements concerning the marketing of timber and timber products produced within the EU, the proposed regulation also applies to operators who place domestically produced timber and timber products on the Community market. The guiding principle has been non-discrimination to ensure a comprehensive and integrated approach and avoid conflict with international trade rules. At the core of the proposed Community action lies the establishment of common obligations of operators who place timber and timber products on the Community market. The risk based approach allows for reducing the administrative burden on operators and also for a better targeting of controls to cases which present a higher risk. The proposed harmonised approach would simplify the requirements for the operators and therefore stimulate competitiveness, while consumers would be better informed on the applicable standards. The system would also provide the necessary legal certainty and clarity for the proper functioning of the market.

Estimates for the costs involved in the various options were made as part of the impact assessment. Costs to EU importers and producers under the proposed regulation are low when compared to other options investigated in the impact assessment. Important to note is that this proposal takes account of the current private sector practises on legality assurance and respects existing mechanisms. Therefore part of the costs have already been covered in the context of existing systems

It has been argued that measures affecting imports of timber and timber products would only shift trade to non-discriminatory markets. However, the EU is a major player in the international arena and with such an initiative it would set the example and send a clear signal on its commitment in the combat against illegal logging, loss of biodiversity and climate change, encouraging similar initiatives from other major consuming countries

In light of these elements, EU action is justified and proportionate to the problem.

4. BUDGETARY IMPLICATION

The present proposal entails limited financial implications for the Community budget for administrative purposes.

5. REVIEW/REVISION/SUNSET CLAUSE

The proposal does not include a review clause.

6. SIMPLIFICATION

The proposal does not have a simplification element as it does not touch upon existing legislation.

7. REPEAL

The proposal does not repeal existing legislation.

8. RECASTING

The proposal does not involve recasting.

9. CORRELATION TABLE

N/A as correlation tables are only required with respect to directives.

10. EUROPEAN ECONOMIC AREA (EEA)

The proposal concerns an EEA matter and should therefore extend to the European Economic Area.

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission⁵,

Having regard to the opinion of the European Economic and Social Committee⁶,

Having regard to the opinion of the Committee of the Regions⁷,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁸,

Whereas

- (1) Forests provide a broad variety of environmental, economic and social benefits including timber and non-timber forest products and environmental services.
- (2) Due to the growing demand for timber and timber products worldwide in combination with the institutional and governance deficiencies that are present in the forest sector in a number of timber-producing countries illegal logging and the associated trade becomes of ever greater concern.
- (3) Illegal logging is a pervasive problem of major international concern. It poses a significant threat to forests as it contributes to the process of deforestation, which is responsible for about 20% of CO₂ emissions, threatens biodiversity, and undermines sustainable forest management and development. In addition, it also has social, political and economic implications.
- (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

⁵ OJ C , , p. .

⁶ OJ C , , p. .

⁷ OJ C , , p. .

⁸ OJ C , , p. .

(FLEGT) proposed a package of measures to support international efforts to tackle the problem of illegal logging and associated trade⁹.

- (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.
- (6) In accordance with the aim of that Communication, namely to ensure that only timber products that have been produced in accordance with the national legislation of the producing country enter the Community, the Community has been negotiating Voluntary Partnership Agreements (VPAs) with timber producing countries (partner countries), which put a legally binding obligation on the parties to implement a licensing scheme and to regulate trade in timber and timber products identified in the Agreements.
- (7) Given the major scale and urgency of the problem, it is necessary to actively support the fight against illegal logging and related trade, to complement and strengthen the VPA initiative and to improve synergies between policies aiming at the conservation of forests and the achievement of a high level of environmental protection, including combating climate change and biodiversity loss.
- (8) The efforts made by countries which have concluded FLEGT VPAs with the Community and the principles incorporated in them, in particular with regard to the definition of legally produced timber, should be recognised. It should be also taken into account that under the FLEGT licensing scheme only timber and timber products harvested in accordance with the relevant national legislation are exported into the Community. To that effect, timber products listed in Annexes II and III to Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community¹⁰, originating in partner countries listed in Annex I to Council Regulation (EC) No 2173/2005 should be considered to have been legally harvested provided they comply with that Regulation and any implementing provisions.
- (9) Account should also be taken of the fact that the Convention on International Trade of Endangered Species of Fauna and Flora (CITES) places a requirement on parties to the Convention to only grant a CITES permit for export when a CITES-listed species has been harvested, *inter alia*, in compliance with domestic legislation in the exporting country. To that effect, timber products of species listed in Annexes A, B and C to Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein¹¹ should be considered to have been legally harvested provided they comply with that Regulation and any implementing provisions.
- (10) Taking into account the complexity of illegal logging as regards the underlying factors and the impacts, the incentives for illegal behaviour should be reduced by targeting the behaviour of operators.

⁹ COM(2003)251, 21.5.2003.

¹⁰ OJ L 347, 30.12.2005, p. 1

¹¹ OJ L 61, 3.3.1997, p. 1.

- (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.
- (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.
- (13) The overall objective of achieving sustainability through the promotion of sustainability criteria remains a priority for the Community. In light of this objective and in order to reduce the burden on operators who place on the market timber and timber products which are subject to mandatory sustainability criteria established by Directive (EC) No XX/XX of the European Parliament and of the Council on the promotion of the use of energy from renewable sources, this Regulation should not apply to such products¹².
- (14) Operators placing timber and timber products for the first time on the Community market should 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.
- (15) The due diligence system should provide access to the sources and suppliers of the timber and timber products being placed on the Community market and to information as regards compliance with the applicable legislation.
- (16) The timber sector is of major importance for the economy of the Community. Organisations of operators are important elements of the sector as they represent the interests of the latter at a large scale and interact with a diverse range of stakeholders. Organisations also have the expertise and capacity to analyse relevant legislation and facilitate the compliance of members, provided they do not use this competence with a view to dominate on the market. In order to facilitate the implementation of this Regulation and to contribute to the development of good practices it is appropriate to recognise organisations which have developed requirements for the realisation of the due diligence systems. A list of such recognised organisations will be made public and will enable the recognition of the monitoring organisations included therein by all Member States competent authorities.
- (17) Competent authorities should monitor that the operators fulfill the obligations laid down in this Regulation. For that purpose the competent authorities should carry out official checks and require operators to take corrective measures where necessary.
- (18) Competent authorities should keep records of the checks and make a summary publicly available in accordance with Directive 2003/4/EC of the European Parliament and of the Council of 23 January 2003 on public access to environmental information¹³.

¹² *note to OJ: reference to be included when the act is adopted.

¹³ OJ L 41, 14.2.2003, p. 26.

- (19) Taking into account the international character of illegal logging and related trade competent authorities should cooperate between themselves and with the administrative authorities of third countries and/or the Commission.
- (20) Member States should ensure that infringements of this Regulation are punished by effective, proportionate and dissuasive penalties.
- (21) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission¹⁴.
- (22) In particular the Commission should be empowered to adopt detailed rules for the application of the due diligence system and in particular criteria for assessing the risk of placing illegally harvested timber and timber products on the market, to establish criteria for the recognition of due diligence systems developed by monitoring organisations and to adapt the list of timber and timber products to which this Regulation applies where technical characteristics, end uses or production processes of timber or timber products necessitate such adaptations. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (23) In order to enable operators and competent authorities to prepare themselves in order to meet the requirements of this Regulation, this Regulation shall apply two years after its entry into force.
- (24) Since the objective of this Regulation, namely to complement and underpin the existing policy framework and support the fight against illegal logging and related trade, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out on Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS REGULATION:

Article 1
Subject matter

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

¹⁴ OJ L 184, 17.7.1999, p. 23.

Article 2
Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (a) 'timber and timber products' means the timber and timber products set out in the Annex with the exception of timber and timber products which are subject to mandatory sustainability criteria established by Directive (EC) No XX/XX;
- (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;
- (c) 'operator' means any natural or legal person that places timber or timber products on the market;
- (d) 'legally harvested' means harvested in accordance with the applicable legislation in the country of harvest;
- (e) 'risk management' means a set of measures and procedures carried out by operators in order to minimise the risk of placing illegally harvested timber and timber products on the market;
- (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;
- (g) 'country of harvest' means the country where the timber or the timber embedded in the timber products was harvested;
- (h) 'monitoring organisation' means a legal entity or a membership-based association or a federation that has the legal capacity to monitor and ensure the application of due diligence systems by the operators certified as making use of such systems.

Article 3
Obligations of operators

1. Operators shall exercise due diligence to minimise the risk of placing illegally harvested timber and timber products on the market. To that effect, they shall use a framework of procedures and measures, hereinafter referred to as a 'due diligence system'.
2. Operators shall establish a due diligence system containing the elements referred to in Article 4(1) or make use of a due diligence system of a recognised monitoring organisation referred to in Article 5(1).
3. Timber products listed in Annexes II and III to Regulation (EC) No2173/2005 originating in partner countries listed in Annex I of Regulation (EC) No2173/2005

and which comply with that Regulation and its implementing provisions shall be considered to have been legally harvested for the purposes of this Regulation.

4. Timber products of species listed in Annexes A, B and C to Regulation (EC) No 338/97 and which comply with that Regulation and its implementing provisions shall be considered to have been legally harvested for the purposes of this Regulation.

Article 4
Due diligence systems

1. The due diligence system referred to in Article 3(1) shall:
 - (a) provide access to the following information on timber and timber products placed on the market by the operator:
 - (i) description;
 - (ii) country of harvest;
 - (iii) volume and/or weight;
 - (iv) where applicable, name and address of the operator who has supplied timber or timber products;
 - (v) information on compliance with the requirements of the applicable legislation;
 - (b) include a risk management procedure and
 - (c) provide for audits to ensure effective application of the due diligence system.
2. The Commission shall adopt measures for the implementation of this Article. The Commission shall, in particular, establish criteria for assessing whether there is a risk of illegally harvested timber and timber products being placed on the market.

Those measures designed to amend non-essential elements of this Regulation by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(2).

Article 5
Recognition of monitoring organisations

1. Competent authorities shall recognise monitoring organisations which apply for such recognition, if the monitoring organisation complies with the following requirements:
 - (a) it has legal personality;
 - (b) it has established a due diligence system which contains the elements set out in Article 4(1);

- (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.
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.
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.
- They shall carry out checks at regular intervals to ascertain that monitoring organisations comply with the requirements laid down in paragraph 1.
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.
5. Competent authorities shall notify the Commission within two months of any decision to grant, refuse or withdraw recognition to a monitoring organisation.
6. The Commission shall adopt measures for the implementation of this Article.

Those measures designed to amend non-essential elements of this Regulation by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(2).

Article 6 *List of monitoring organisations*

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.

Article 7 *Monitoring measures*

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

2. Operators shall offer all assistance necessary to facilitate the performance of the checks referred to in paragraph 1.
3. Following the checks referred to in paragraph 1 the competent authorities may request the operator to take corrective measures.

Article 8
Records of checks

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.
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.

Article 9
Cooperation

1. Competent authorities shall cooperate with each other and with administrative authorities of third countries and with the Commission in order to ensure compliance with this Regulation.
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.

Article 10
Competent authorities

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

Member States shall inform the Commission of the names and addresses of the competent authorities by 31 December 20XX at the latest. Member States shall inform the Commission of any changes to the names or addresses of the competent authorities.

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

Article 11
Committee

1. The Commission shall be assisted by the Committee on Timber Trade, hereinafter referred to as the 'Committee'
2. Where reference is made to this paragraph, Article 5a (1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 12
Amendments

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

Those measures designed to amend non-essential elements of this Regulation by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(2).

Article 13
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. 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.

Article 14
Reporting

1. 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.
2. 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.

Article 15
Entry into force

This Regulation shall enter into force on the seventh day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [...] ¹⁵.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

¹⁵ Note to OJ: two years after the date of entry into force of this Regulation.

ANNEX -Timber and timber products as classified in the Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87¹⁶, to which this Regulation applies

1. The products set out in Annexes II and III of Council Regulation (EC) 2173/2005, to which the FLEGT licensing scheme applies;
2. Pulp and paper of Chapters 47 and 48 of the Combined Nomenclature, with the exception of bamboo-based and recovered (waste and scrap) products;
3. Wooden furniture of CN code 9403 30, 9403 40, 9403 50 00, 9403 60 and 9403 90 30;
4. Prefabricated buildings of CN code 9406 00 20;
5. Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms of CN code 4401;
6. Builders' joinery and carpentry of wood, including cellular wood panels, assembled flooring panels, shingles and shakes, wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, V-jointed, beaded, moulded, rounded or the like) along any of its edges, ends or faces, whether or not planed, sanded or end-jointed of CN code 4418;
7. Particle board, oriented strand board (OSB) and similar board of wood whether or not agglomerated with resins or other organic binding substances of CN code 4410;
8. Fibreboard of wood or other ligneous materials, whether or not bonded with resins or other organic substances of CN code 4411;
9. Densified wood, in blocks, plates, strips or profile shapes of CN code 4413 00 00;
10. Wooden frames for paintings, photographs, mirrors or similar objects of CN code 4414 00;
11. Packing cases, boxes, crates, drums and similar packings, of wood; cable-drums of wood; pallets, box pallets and other load boards, of wood; pallet collars of wood; coffins of CN code 4415;
12. Casks, barrels, vats, tubs and other coopers' products and parts thereof, of wood, including staves of CN code 4416 00 00.

¹⁶ Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1)..

LEGISLATIVE FINANCIAL STATEMENT

1. NAME OF THE PROPOSAL:

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.

2. ABM / ABB FRAMEWORK

Policy Area(s) concerned and associated Activity/Activities:

0703 – Implementation of Environmental Policy

3. BUDGET LINES

3.1. Budget lines (operational lines and related technical and administrative assistance lines (ex- B..A lines)) including headings:

N/A

3.2. Duration of the action and of the financial impact:

N/A

3.3. Budgetary characteristics (add rows if necessary):

Budget line	Type of expenditure	New	EFTA contribution	Contributions from applicant countries	Heading in financial perspective

4. SUMMARY OF RESOURCES

4.1. Financial Resources

4.1.1. Summary of commitment appropriations (CA) and payment appropriations (PA)

EUR million (to 3 decimal places)

Expenditure type	Section no.		Year 2010	Year 2011	Year 2012	Year 2013	Year 2014	Year 2015	Total
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Operational expenditure¹⁷

Commitment Appropriations (CA)	8.1.	a							
Payment Appropriations (PA)		b							

Administrative expenditure within reference amount¹⁸

Technical & administrative assistance (NDA)	8.2.4.	c							
---	--------	---	--	--	--	--	--	--	--

TOTAL REFERENCE AMOUNT

Commitment Appropriations		a+c							
Payment Appropriations		b+c							

Administrative expenditure not included in reference amount¹⁹

Human resources and associated expenditure (NDA)	8.2.5.	d	0.334	0.334	0.334	0.334	0.334	0.334	2.004
Administrative costs, other than human resources and associated costs, not included in reference amount (NDA)	8.2.6.	e	0.122	0.122	0.122	0.122	0.122	0.122	0.732

Total indicative financial cost of intervention

TOTAL CA including cost of Human Resources		a+c +d+ e	0.456	0.456	0.456	0.456	0.456	0.456	2.736
TOTAL PA including cost of Human Resources		b+c +d+ e	0.456	0.456	0.456	0.456	0.456	0.456	2.736

¹⁷ Expenditure that does not fall under Chapter xx 01 of the Title xx concerned.

¹⁸ Expenditure within article xx 01 04 of Title xx.

¹⁹ Expenditure within chapter xx 01 other than articles xx 01 04 or xx 01 05.

Co-financing details

If the proposal involves co-financing by Member States, or other bodies (please specify which), an estimate of the level of this co-financing should be indicated in the table below (additional lines may be added if different bodies are foreseen for the provision of the co-financing):

EUR million (to 3 decimal places)

Co-financing body		Year n	n + 1	n + 2	n + 3	n + 4	n + 5 and later	Total
.....	f							
TOTAL CA including co-financing	a+c +d+ e+f							

4.1.2. Compatibility with Financial Programming

- Proposal is compatible with existing financial programming.
- Proposal will entail reprogramming of the relevant heading in the financial perspective.
- Proposal may require application of the provisions of the Interinstitutional Agreement²⁰ (i.e. flexibility instrument or revision of the financial perspective).

4.1.3. Financial impact on Revenue

- Proposal has no financial implications on revenue
- Proposal has financial impact – the effect on revenue is as follows:

EUR million (to one decimal place)

		Prior to action [Year n-1]	Situation following action					
Budget line	Revenue		[Year n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5] 21
	a) Revenue in absolute terms							
	b) Change in revenue	Δ						

²⁰ See points 19 and 24 of the Interinstitutional agreement.

²¹ Additional columns should be added if necessary i.e. if the duration of the action exceeds 6 years

4.2. Human Resources FTE (including officials, temporary and external staff) – see detail under point 8.2.1.

Annual requirements	Year n	n + 1	n + 2	n + 3	n + 4	n + 5 and later
Total number of human resources						

5. CHARACTERISTICS AND OBJECTIVES

5.1. Need to be met in the short or long term

...

5.2. Value-added of Community involvement and coherence of the proposal with other financial instruments and possible synergy

...

5.3. Objectives, expected results and related indicators of the proposal in the context of the ABM framework

...

5.4. Method of Implementation (indicative)

Centralised Management

directly by the Commission

indirectly by delegation to:

executive Agencies

bodies set up by the Communities as referred to in art. 185 of the Financial Regulation

national public-sector bodies/bodies with public-service mission

Shared or decentralised management

with Member states

with Third countries

Joint management with international organisations (please specify)

Relevant comments:

6. MONITORING AND EVALUATION

6.1. Monitoring system

...

6.2. Evaluation

6.2.1. Ex-ante evaluation

...

6.2.2. Measures taken following an intermediate/ex-post evaluation (lessons learned from similar experiences in the past)

...

6.2.3. Terms and frequency of future evaluation

...

7. ANTI-FRAUD MEASURES

...

8. DETAILS OF RESOURCES

8.1. Objectives of the proposal in terms of their financial cost

Commitment appropriations in EUR million (to 3 decimal places)

(Headings of Objectives, actions and outputs should be provided)	Type of output	Av. cost	Year n		Year n+1		Year n+2		Year n+3		Year n+4		Year n+5 and later		TOTAL	
			No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost	No. outputs	Total cost
OPERATIONAL OBJECTIVE No.1 ²²																
Action 1																
- Output 1																
- Output 2																
Action 2																
- Output 1																
Sub-total Objective 1																
OPERATIONAL OBJECTIVE No.2 ¹																
Action																

²²

As described under Section 5.3

1.....																
- Output 1																
Sub-total Objective 2																
OPERATIONAL OBJECTIVE No.n 1																
Sub-total Objective n																
TOTAL COST																

8.2. Administrative Expenditure

8.2.1. Number and type of human resources

Types of post		Staff to be assigned to management of the action using existing and/or additional resources (number of posts/FTEs)					
		Year 2010	Year 2011	Year 2012	Year 2013	Year 2014	Year 2015
Officials or temporary staff ²³ (XX 01 01)	A*/AD	1	1	1	1	1	1
	B*, C*/AST	0.5	0.5	0.5	0.5	0.5	0.5
Staff financed ²⁴ by art. XX 01 02							
Other staff ²⁵ financed by art. XX 01 04/05							
TOTAL		1.5	1.5	1.5	1.5	1.5	1.5

8.2.2. Description of tasks deriving from the action

Tasks include drafting of implementing provisions and managing meetings.

8.2.3. Sources of human resources (statutory)

- Posts currently allocated to the management of the programme to be replaced or extended
- Posts pre-allocated within the APS/PDB exercise for year n
- Posts to be requested in the next APS/PDB procedure
- Posts to be redeployed using existing resources within the managing service (internal redeployment)
- Posts required for year n although not foreseen in the APS/PDB exercise of the year in question

²³ Cost of which is NOT covered by the reference amount

²⁴ Cost of which is NOT covered by the reference amount

²⁵ Cost of which is included within the reference amount

8.2.4. *Other Administrative expenditure included in reference amount (XX 01 04/05 – Expenditure on administrative management)*

EUR million (to 3 decimal places)

Budget line (number and heading)	Year n	Year n+1	Year n+2	Year n+3	Year n+4	Year n+5 and later	TOTAL
1 Technical and administrative assistance (including related staff costs)							
Executive agencies ²⁶							
Other technical and administrative assistance							
- <i>intra muros</i>							
- <i>extra muros</i>							
Total Technical and administrative assistance							

8.2.5. *Financial cost of human resources and associated costs not included in the reference amount*

EUR million (to 3 decimal places)

Type of human resources	Year 2010	Year 2011	Year 2012	Year 2013	Year 2014	Year 2015
Officials and temporary staff (XX 01 01)	0.234	0.234	0.234	0.234	0.234	0.234
Staff financed by Art XX 01 02 (auxiliary, END, contract staff, etc.) (specify budget line)						
Total cost of Human Resources and associated costs (NOT in reference amount)	0.234	0.234	0.234	0.234	0.234	0.234

Calculation– *Officials and Temporary agents*

²⁶ Reference should be made to the specific legislative financial statement for the Executive Agency(ies) concerned.

The standard salary for 1 official or temporary staff as foreseen in Point 8.2.1 is 0,117M€

Calculation– *Staff financed under art. XX 01 02*

N/A

8.2.6. *Other administrative expenditure not included in reference amount*

EUR million (to 3 decimal places)

	Year 2010	Year 2011	Year 2012	Year 2013	Year 2014	Year 2015	TOTAL
XX 01 02 11 01 – Missions	0.002	0.002	0.002	0.002	0.002	0.002	0.012
XX 01 02 11 02 – Meetings & Conferences							
XX 01 02 11 03 – Committees ²⁷	0.120	0.120	0.120	0.120	0.120	0.120	0.72
XX 01 02 11 04 – Studies & consultations							
XX 01 02 11 05 - Information systems							
2 Total Other Management Expenditure (XX 01 02 11)	0.122	0.122	0.122	0.122	0.122	0.122	0.732
3 Other expenditure of an administrative nature (specify including reference to budget line)							
Total Administrative expenditure, other than human resources and associated costs (NOT included in reference amount)	0.122	0.122	0.122	0.122	0.122	0.122	0.732

Calculation - *Other administrative expenditure not included in reference amount*

From 2010 2 missions per year at cost of EUR 1.000 per mission.

Meetings of the Regulatory Committee established under the Regulation (unit cost:30.000 € per meeting) 4 times a year.

²⁷ Specify the type of committee and the group to which it belongs.