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.