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

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The Committee on the Environment, Public Health and Food Safety adopted the recommendation for second reading contained in the report by Caroline LUCAS (Greens/ALE, UK) 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.

The committee reinstates a number of amendments adopted at first reading. It recommends that the European Parliament adopts its position at second reading under the ordinary legislative procedure (formerly known as the codecision procedure) which amends the Council?s first reading position as follows:

Prohibition: it should be clear that no operator in the supply chain should make illegally harvested timber or timber products available on the market. Therefore, it is stated that the placing or the making available on the market of illegally harvested timber or timber products shall be prohibited. Operators shall not place or make available on the market illegally harvested timber or timber products. More detailed due diligence requirements are appropriate for operators who place products on the market for the first time, since they have the biggest influence on what enters the EU and therefore carry most responsibility Operators who place timber and timber products on the market shall exercise due diligence. To that end, they shall use a framework of procedures and measures, hereinafter referred to as a "due diligence system". That due diligence system shall be established either by the operator or by a monitoring organisation.

The term "due diligence" means the obligation to employ all necessary means to ascertain that illegally harvested timber and timber products are not placed or made available 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 that result from recycling, as defined in Article 3(17) of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste.

Obligations of operators: operators who make timber and timber products available on the market shall, throughout the supply chain, be able to identify both the operator who has supplied the timber and timber products, and the operator to whom the timber and timber products have been supplied.

Due diligence system: the system should comprise measures to ascertain, inter alia: name and address of the operator to whom the timber and timber products have been supplied; country of harvest, and where applicable sub-national region where the timber was harvested and concession of harvest, the value; the natural or legal person responsible for harvesting.

Systematic 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. Such procedures shall take into account the following information: (i) the level of stakeholder consultation; (ii) 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, of documented failures of forest governance and of high levels of corruption; (iii) existing bans by the UN Security Council or the Council of the European Union on timber imports and exports.

The Commission shall make available a register of countries and/or sub-national regions which have a high prevalence of illegal harvesting, of tree species which are subject to a high prevalence of illegal harvesting and of operators who have been found to be in breach of this Regulation. The Commission shall provide for an appeal procedure for impacted countries and operators that wish to challenge an inclusion in the register.

More stringent national measures: individual Member States shall not be prevented, with regard to access to the market for timber and timber products, from setting more stringent requirements for the harvesting and origin of timber than laid down in this Regulation, including requirements providing for the sustainable management of forests, protection of the environment, conservation of biodiversity and ecosystems, protection of local communities and their habitats, protection of forest-dependent communities, and respect for the rights of indigenous peoples and human rights.

Competent authorities: these authorities shall be given sufficient powers to enforce this Regulation by monitoring its application, investigating alleged infringements in cooperation with the customs authorities, and reporting offences to the prosecuting authority in a timely manner.

Monitoring organisations and their accreditation: in order to have harmonised standards across the EU for the organisations which monitor due diligence systems, Members propose that the decision over whether to recognise a monitoring organisation should be made at EU rather than national level. The decision to grant recognition to a monitoring organisation shall be taken within three months of the submission of an application. The decision to grant recognition to a monitoring organisation shall be communicated by the Commission to the competent authorities of the Member States which have jurisdiction over that organisation.

Controls on operators: Members 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.

Where shortcomings have been detected, such as the use of an incomplete or ineffective due diligence system to minimise the risk of illegally harvested timber and timber products being placed on the market, the competent authorities may issue a notice of remedial actions to be taken by the operator. Depending on the gravity of the shortcomings detected, the competent authorities may take immediate measures, including inter alia: (a) confiscation of timber and timber products; and (b) temporary prohibition of marketing of timber and timber products.

Advisory Group: Members proposes that an Advisory Group be established, consisting of representatives of interested stakeholders, including, inter alia, forest-based industry representatives, forest owners, the timber trade, nongovernmental organisations (NGOs) and consumer groups.

Technical assistance, advice and exchange of information: the report suggests that in order to facilitate the ability of operators who place or make available 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 should provide operators with technical and other assistance and facilitate the exchange of information, especially with regard to the implementation of those operators? obligation to exercise due diligence.

Penalties: the administrative penalties provided for must be effective, proportionate and dissuasive and may include, inter alia: (a) fines proportional 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 will be gradually increased; (b) seizure of the timber and timber products concerned; (c) immediate suspension of authorisation to trade.

Delegated acts: the Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) concerning the procedures for the recognition and withdrawal of recognition of monitoring organisations, concerning general principles and criteria for further specification of the definition of applicable legislation, concerning the due diligence system requirements and concerning the list of timber and timber products to which this Regulation applies, as well as concerning the checks on monitoring organisations and the controls on operators.

Review: the Commission shall by 30 April 2012 submit a report to the European Parliament and to the Council regarding the introduction of a Union standard for all timber and timber products aimed at achieving the highest sustainability requirements, accompanied, where appropriate, by legislative proposals.

By four years after the entry into force 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 in preventing illegally harvested timber or timber products being placed or made available on the internal market. It shall in particular consider the administrative consequences for small and medium-sized enterprises and product coverage.