

# 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<sup>(7)</sup> 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.