

EN

EN

EN



EUROPEAN COMMISSION

Brussels, 9.3.2010
COM(2010)87 final

2008/0198 (COD)

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

**position of the Council on the adoption of 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**

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

**position of the Council on the adoption of 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**

1. BACKGROUND

Date of transmission of the proposal to the European Parliament and 17 October 2008
to the Council
(document COM(2008) 644 - 2008/0198 (COD)):

Date of the opinion of the European Economic and Social 1 October 2009
Committee:

Date of the opinion of the Committee of the Regions: No opinion

Date of the opinion of the European Parliament, first reading: 22 April 2009

Date of transmission of the amended proposal: [...].

Date of adoption of the position of the Council: 1 March 2010

2. OBJECTIVE OF THE COMMISSION PROPOSAL

The objective of the Regulation is to minimize the risk of placing illegally logged timber on the EU market. It is based on the principle that operators should exercise due diligence when placing timber and timber products on the EU market for the first time.

3. COMMENTS ON THE POSITION OF THE COUNCIL

3.1. General comments

The European Parliament adopted its position at first reading on 22 April 2009. The Commission accepted in full, in part or in principle 37 out of 75 amendments adopted by the European Parliament in its first reading, where it considered that these amendments clarified or improved the Commission proposal and were consistent with the general aim of the proposal.

On 1st March 2010 the Council adopted by qualified majority its position at first reading. Seventeen of the European Parliament amendments have been taken into account in the

position of the Council.

The Commission rejected those amendments which would alter the general approach and principles of the proposal and/or were burdensome and beyond what is necessary to achieve the objective of the Regulation. These included amendments such as those introducing a prohibition for placing on the market of illegally harvested timber and timber products, the extension of the scope of the regulation to cover all operators in the timber supply chain as well as related provisions on traceability and amendments introducing labelling requirements.

The Commission considers that the position of the Council does not alter the approach or aims of the proposal and can thus support it as it stands.

3.1.1. Detailed comments

3.1.1.1. Parliamentary amendments accepted by the Commission and incorporated in full, in part or in principle in the position of the Council

Amendments **22**, **29**, **47**, and **72** providing that particular attention should be paid to the impact of the Regulation on small and medium-sized enterprises have been accepted in principle and are incorporated in the text of the relevant articles, which now stipulate that the reviews of the Regulation should in particular take into account the administrative consequences for small and medium-sized enterprises. They further state that delegated acts should not create a disproportionate burden on operators. The Commission made a declaration (annexed) in which it undertook to endeavour to facilitate the ability of the operators to comply with the requirements of this Regulation, taking specifically into account the situation of small and medium sized enterprises/operators. Amendment **44**, proposing the addition of specific types of information has been partially accepted and the text of the article concerning the due diligence system has been amended accordingly. Amendment **51** concerning the insertion of a conflict of interest clause in the requirements for monitoring organizations has been accepted. Amendment **64** which specifies how the information containing the list of competent authorities responsible for the application of the regulation will be made available to public has been accepted.

3.1.1.2. Parliamentary amendments rejected by the Commission and incorporated in full, in part or in principle in the position of the Council

Amendments **21** and **32** concern the scope of the Regulation and stipulate that timber and timber products subject to mandatory sustainability criteria should not be excluded from its application. The Commission proposal included an exemption for such products and these amendments were not accepted by the Commission, as they were considered inconsistent with EU policy in the field of renewable energy. The Council has taken a similar position to the Parliament on this issue. The Commission can now accept this change in the light of the overall Council position, in particular concerning the elaboration of the risk criteria. Amendment **38**, concerning the definition of applicable legislation, was rejected by the Commission as it introduced a very broad scope of legislation to be taken into account. However, it was partially accepted by the Council which led to a broadening of the definition put forward in the Commission proposal. The Commission can agree to this more limited elaboration. Amendments **51-56** on Commission recognition of monitoring organisations have been accepted in part. The Commission rejected these amendments as being inconsistent with the principle of subsidiarity. The Commission can agree that where monitoring organisations intend to carry out their activities in more than one Member State it is appropriate that the

Commission should recognise such organizations. Amendment **61** has been accepted in part – information on checks shall be made available, whereas the Commission proposal envisaged that only a summary of the records should be made publicly available.

3.1.1.3. Parliamentary amendments accepted in full, in part or in principle by the Commission but not incorporated in the position of the Council

A number of amendments mainly concerning recitals were accepted in principle by the Commission. These referred to forest environment, biodiversity, forest ecosystems and sustainable forest management (amendments 1-8, 9-11, 14). They were not incorporated in the position of the Council as Council considered them to be redundant.

3.1.1.4. Parliamentary amendments rejected by the Commission and the Council and not incorporated in the position of the Council

Those Parliament amendments which significantly depart from the initial idea underlining the Commission proposal were not accepted by the Commission and did not find a place in the position of the Council. Those amendments concern in particular the following issues: the introduction of a prohibition on placing of illegally harvested timber and timber products on the market (amendments **42, 43**); 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 (amendments **15, 31, 33-35**) and the related notion of traceability (amendment **41**); the inclusion of a requirement for labelling of origin of the timber products (amendments **20, 50**); most of amendments **51-53** on requirements for monitoring organizations.

3.1.1.5. Changes made by the Council to the Proposal

The Council proposed the following main changes to the Commission proposal:

Definition of "timber and timber products": The Council has amended the definition in order to clarify that timber products derived from timber and timber products that have already been placed on the market are not covered. The Commission supports these amendments, which are in the spirit of the Commission proposal. The Commission can also support the exemption for recycled timber products; it is willing to consider alternative formulations for a definition of recycled timber products.

Definition of "placing on the market": This has been amended to cover supply by means of distance communication through a reference to *Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts*.

Definition of "applicable legislation": This has been broadened to be more in line with the definition used in FLEGT VPAs and includes forestry-related environmental legislation; trade and customs legislation, as far as the forest sector is concerned, and thirds parties' legal rights concerning use and tenure. The Commission does not object to this amendment as it considers it to be an elaboration of its proposal and does not contain certain problematic elements that were present in the Parliaments amendments, such as the inclusion of relevant international law and of social legislation, e.g. labour law.

Due diligence system: The initial Commission proposal has been redrafted but nevertheless the Commission supports this amendment as it clarifies the three main elements of the due diligence system comprising access to certain information, risk assessment and risk mitigation. The Council has listed four risk assessment criteria that can be supplemented through delegated acts. It has also introduced the concept of negligible risk.

Monitoring Organizations: The Council distinguished between monitoring organisations which intend to carry out activities in one Member State or in several Member States. It considered that the Commission should recognize those organisations carrying out their activities in several Member States, while a Member State's competent authority should recognise monitoring organisations carrying out their activities only in that Member State. The Commission can accept the Council amendments as they do not contradict the principle of subsidiarity and agrees that where monitoring organisations intend to carry out their activities in more than one Member State it is appropriate that the Commission should recognise such organizations. Another change in the Commission proposal concerns the introduction of an obligation for the monitoring organizations, in executing their functions to notify the competent authorities in the event of serious or repeated failure by the operators. The Commission would prefer not to include this provision and has already expressed concerns in its Communication on the Parliament's amendments that such provisions may lead to violation of professional secrecy, especially in the case of private sector organizations, and eventually to a less effective relationship between the operators and the monitoring organizations. However, in view of the fact that the Council limits cases for notification to serious or repeated failure, the Commission does not object to this amendment.

Checks: The Council reduced the period for keeping records of checks from 10 to 5 years. The Council has provided for information on checks to be made available to any applicant in accordance with *Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information* while the Commission proposal envisaged that a summary of the records should be made public. The Commission can accept the amendments.

Secondary legislation: The comitology provisions in the Commission proposal have been revised in the light of the entering into force of the Lisbon treaty. Commission can agree to the choice made by the Council of provisions which should be amended or supplemented through delegated acts and those for which implementing acts should be adopted in order to ensure uniform implementation. The Commission has serious concerns on the drafting of certain provisions, in particular the recital which stipulates that the Commission "consult experts in the preparatory phase in accordance with the commitment ... undertaken in the Communication of 9 December 2009 on the implementation of Article 290 of the TFEU", on which the Commission made a declaration in the Council minutes (as set out in the Annex).

Products` scope: The Council has made several amendments, notably including timber and timber products, which are subject to mandatory sustainability criteria, as well as products of CN code 4409. It has excluded the following from the scope: packing material used exclusively as packing material to support, protect or carry another product as well as timber products made of recycled timber. The Commission accepts these amendments. The Commission may propose minor technical adjustments to the annex during the second reading in particular in order to ensure its consistency with the latest revision of the Combined Nomenclature (Annex I to Council Regulation (EEC) No. 2658/87). The Commission will consider the inclusion of products under Chapter 49 of the Combined Nomenclature (Annex I

to Council Regulation (EEC) No. 2658/87) in future, as indicated in its' declaration, set out in the Annex.

Application: The Commission proposal envisaged that the Regulation should apply 24 months after its entry into force. The Council has extended this period by 6 months. This amendment is acceptable for the Commission as it will enable the Commission to fully consult stakeholders in drawing up delegated and implementing acts.

4. CONCLUSION

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.

ANNEX

Declarations by the Commission

- 1) In connection with articles 12 and 18 the Commission undertakes to submit an evaluation on the current EU economic and trade situation of the products under Chapter 49 of the EU Customs Code, in order to consider their possible inclusion in the list of products annexed to the present Regulation.

The Commission shall also endeavour to facilitate the ability of the operators to comply with the requirements of this Regulation, taking specifically into account the situation of small and medium sized enterprises/operators.

- 2) The Commission welcomes the agreement reached in the Council on the Regulation on the placing on the market of timber and timber products.

In this context the Commission takes note of the new recital 24 on the consultation of experts in the preparatory phase of delegated acts. The Commission considers that expert groups cannot have a formal institutional role. Therefore provisions as regards the involvement of experts in the preparation of delegated acts cannot be included in the basic acts. In this regard the Commission refers to its Communication of 9 December 2009.

In order to allow the legislative process to move forward with a view to the timely adoption of this Regulation, the Commission will not oppose the common position of the Council given that the substance of the compromise reached, taken as a whole, meets the objectives of the proposal. The Commission reserves its right to come back to the above mentioned recital in second reading also taking into account the position of the European Parliament on this matter.