Commission Delegated Regulation (EU) No 363/2012 of 23 February 2012 on the procedural rules for the recognition and withdrawal of recognition of monitoring organisations as provided for in Regulation (EU) No 995/2010 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)

COMMISSION DELEGATED REGULATION (EU) No 363/2012

of 23 February 2012

on the procedural rules for the recognition and withdrawal of recognition of monitoring organisations as provided for in Regulation (EU) No 995/2010 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 COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market[(1)], and in particular Article 8(7) thereof,

Whereas:

(1) Regulation (EU) No 995/2010 aims, in particular, at minimising the risk of placing illegal timber and products derived from such timber on the internal market. Monitoring organisations should assist operators in meeting the requirements of that Regulation. To that end, they should develop a due diligence system, grant the operators the right to use it, and verify its proper use.

(2) The procedure under which the Commission recognises monitoring organisations should be fair, transparent and independent. Therefore, applicants should be assessed after consulting the competent authorities of the Member States and after collecting sufficient information about an applicant. Where necessary, the collection of information should include visits to an applicant's premises.

(3) It is necessary to specify the appropriate expertise and capacity that monitoring organisations should have in order to determine the compliance of wood with relevant legislation in its country of harvest and to propose measures to assess the risk of placing illegal timber and products derived from such timber on the market. Where the risk identified is not negligible, monitoring organisation should also be able to propose adequate measures to effectively minimising it.

(4) It should be ensured that monitoring organisations exercise their functions in a transparent and independent manner, avoiding any conflict of interest arising out of their functions and providing their services to operators in a non-discriminatory manner.

Changes to legislation: *There are outstanding changes not yet made to Commission Delegated Regulation (EU) No 363/2012. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(5) The Commission should decide upon a withdrawal of recognition following a procedure, which is fair, transparent and independent. Before taking a decision the Commission should consult the Member States' competent authorities concerned and should collect sufficient information, including on-the-spot visits where necessary. The monitoring organisation concerned should be given the opportunity to submit comments before a decision is taken.

(6) In accordance with the principle of proportionality, the Commission should be able to withdraw recognition either in a temporary and/or conditional basis, or permanently, as it may deem required by the level of shortcomings detected, where a monitoring organisation no longer fulfils the functions or meets the requirements laid down in Article 8 of Regulation (EU) No 995/2010.

(7) It is necessary to ensure that the level of protection of individuals with regard to the processing of their personal data within the scope of this Regulation, in particular as regards the processing of personal data in the applications for recognition as a monitoring organisation complies with the requirements laid down in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individual with regard to the processing of personal data and on the free movement of such data[(2)] and with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data[(3)],

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

For the purpose of this Regulation, in addition to the definitions laid down in Article 2 of Regulation (EU) No 995/2010, the following definitions shall apply:

(1) 'competent authorities concerned' means competent authorities of the Member States in which a monitoring organisation or an applicant for recognition as monitoring organisation is legally established or in which provides services or intends to provide services within the meaning of Directive 2006/123/EC of the European Parliament and of the Council[(4)];

(2) 'evidence of formal qualifications' means diplomas, certificates and other evidence issued by an authority in a State, designated pursuant to legislative or administrative provisions of that State and certifying successful completion of professional training;

(3) 'professional experience' means the actual and lawful pursuit of the profession concerned.

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Article 2

Application for recognition

1 Any entity, public or private, being a company, corporation, firm, enterprise, institution or authority, legally established in the Union, may submit to the Commission an application to be recognised as a monitoring organisation.

The entity shall submit the application in any of the official languages of the Union together with the documents listed in the Annex.

2 To be recognised as a monitoring organisation, an applicant shall demonstrate that it fulfils all requirements provided in Article 8(2) of Regulation (EU) No 995/2010 and in Articles 5 to 8 of this Regulation.

3 The Commission shall acknowledge the receipt of an application and provide the applicant with a reference number within 10 working days from the date of receipt.

It shall also provide the applicant with an indicative time limit within which it will decide on the application. The Commission shall inform the applicant anytime it revises the indicative time limit due to the necessity to obtain additional information or documents for the assessment of the application.

4 Where three months have lapsed since the receipt of an application or the Commission's last written communication to an applicant, whichever is later, and the Commission has not adopted a recognition decision or rejected the application, the Commission shall inform the applicant in writing of the progress in assessment of the application.

The first subparagraph may apply more than once to the handling of one application.

5 The Commission shall transmit a copy of the application and supporting documents to the competent authorities concerned, which may provide comments on the application within one month of the date of transmission.

Article 3

Additional documents and access to premises

1 Upon request by the Commission, an applicant or the competent authorities concerned shall submit any additional information or documents required by the Commission within a specified time limit.

2 The applicant shall grant the Commission access to its premises to verify that all requirements provided in Article 8 of Regulation (EU) No 995/2010 and in Articles 5 to 8 are fulfilled. The Commission shall inform the applicant of a visit in advance. The competent authorities concerned may participate in the visit.

The applicant shall offer all assistance necessary to facilitate such visits.

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Article 4

Recognition decision

Where the Commission has adopted a recognition decision pursuant to Article 8(3) of Regulation (EU) No 995/2010, it shall notify the applicant concerned within 10 working days of the date of adoption of that decision.

The Commission shall also provide the applicant with a certificate of recognition without delay and shall communicate its decision to the competent authorities of all Member States in accordance with the second subparagraph of Article 8(3) of Regulation (EU) No 995/2010 within the time limit referred to in the first paragraph.

Article 5

Legal personality and legal establishment within the Union

1 Where an applicant is legally established in more than one Member State, it shall provide information about its registered office, central administration or principal place of business within the Union as well as about all its agencies, branches or subsidiaries set up in the territory of any Member State. The applicant shall also declare in which Member States it intends to provide services.

2 An applicant which is, or forms part of an authority of a Member State shall not be required to prove its legal personality and legal establishment within the Union.

Article 6

Appropriate expertise

1 For the purpose of ensuring proper exercise of the functions of a monitoring organisation as required by Article 8(2)(b) of Regulation (EU) No 995/2010, the technically competent personnel of an applicant shall meet the following minimum criteria, attested by evidence of formal qualifications and professional experience:

a formal professional training in a discipline relevant to the functions of a monitoring organisation;

b for senior technical positions, at least five years of professional experience in function related to the functions of a monitoring organisation.

For the purposes of point (a) of the first subparagraph, disciplines related to forestry, environment, law, business management, risk management, trade, auditing, financial control or supply chain management shall be considered relevant disciplines.

2 An applicant shall maintain records documenting the duties and responsibilities of its personnel. The applicant shall have in place procedures for monitoring the performance and technical competence of its personnel.

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Article 7

Capacity to exercise functions as a monitoring organisation

1 An applicant shall demonstrate that it has in place all of the following:

a an organisational structure that ensures a proper exercise of the functions of a monitoring organisation;

b a due diligence system to be made available to and used by operators;

c policies and procedures that allow for the evaluation and improvement of the due diligence system;

d procedures and processes to verify the proper use of its due diligence system by operators;

e procedures for corrective actions to be taken in a case of a failure by an operator to properly use its due diligence system.

2 In addition to requirements of paragraph 1, an applicant shall demonstrate that it has financial and technical capacity to exercise the functions of a monitoring organisation.

Article 8

Absence of conflict of interest

1 An applicant shall be organised so as to safeguard the objectivity and impartiality of its activities.

2 An applicant shall identify, analyse and maintain records documenting risks of conflict of interest arising as a result of it exercising functions as a monitoring organisation, including any conflicts arising from its relationships with related bodies or subcontractors.

3 Where a risk of a conflict of interest has been identified the applicant shall have in place written policies and procedures to avoid conflicts of interest at organisational and individual level. The written policies and procedures shall be maintained and implemented. Those policies and procedures may include third party audits.

Article 9

Information on subsequent changes

1 A monitoring organisation shall inform the Commission without delay of any of the following situations occurring after its recognition:

a a change that may affect the ability of that monitoring organisation to comply with the requirements in Articles 5 to 8, which have occurred after its recognition;

b the monitoring organisation sets up agencies, branches or subsidiaries within the Union, other than those declared in its application;

c the monitoring organisation decides to provide services in a Member States other than as declared in its application or in a Member State where it declared to have ceased to provide its services in accordance with point (d);

d the monitoring organisation ceases to provide services in any Member State.