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 (Text with EEA relevance)

REGULATION (EU) No 995/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee[(1)],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Forests provide a broad variety of environmental, economic and social benefits including timber and non-timber forest products and environmental services essential for humankind, such as maintaining biodiversity and ecosystem functions and protecting the climate system.

(2) Due to the growing demand for timber and timber products worldwide, in combination with the institutional and governance deficiencies that are present in the forest sector in a number of timber-producing countries, illegal logging and the associated trade have become matters of ever greater concern.

(3) 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 and forest degradation, which is responsible for about 20 % of global CO_2 emissions, threatens biodiversity, and undermines sustainable forest management and development including the commercial viability of operators acting in accordance with applicable legislation. It also contributes to desertification and soil erosion and can exacerbate extreme weather events and flooding. In addition, it has social, political and economic implications, often undermining progress towards good governance and threatening the livelihood of local forest-dependent communities, and it can be linked to armed conflicts. Combating the problem of illegal logging in the context of this Regulation is expected to contribute to the Union's climate change mitigation efforts in a

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cost-effective manner and should be seen as complementary to Union action and commitments in the context of the United Nations Framework Convention on Climate Change.

(4) Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme[(3)] identifies as a priority action the examination of the possibility of taking active measures to prevent and combat trade in illegally harvested wood and the continuation of the active participation of the Union and of Member States in the implementation of global and regional resolutions and agreements on forest-related issues.

(5) The Commission Communication of 21 May 2003 entitled 'Forest Law Enforcement, Governance and Trade (FLEGT): Proposal for an EU Action Plan' proposed a package of measures to support international efforts to tackle the problem of illegal logging and associated trade in the context of overall efforts of the Union to achieve sustainable forest management.

(6) The European Parliament and the Council welcomed that Communication and recognised the need for the Union to contribute to global efforts to address the problem of illegal logging.

(7) In accordance with the aim of that Communication, namely to ensure that only timber products which have been produced in accordance with the national legislation of the timber-producing country enter the Union, the Union has been negotiating Voluntary Partnership Agreements (FLEGT VPAs) with timber-producing countries (partner countries), which create a legally binding obligation for the parties to implement a licensing scheme and to regulate trade in timber and timber products identified in those FLEGT VPAs.

(8) Given the major scale and urgency of the problem, it is necessary to support the fight against illegal logging and related trade actively, to complement and strengthen the FLEGT VPA initiative and to improve synergies between policies aimed at the conservation of forests and the achievement of a high level of environmental protection, including combating climate change and biodiversity loss.

(9) The efforts made by countries which have concluded FLEGT VPAs with the Union and the principles incorporated in them, in particular with regard to the definition of legally produced timber, should be recognised and further encouragement for countries to conclude FLEGT VPAs should be given. It should be also taken into account that under the FLEGT licensing scheme only timber harvested in accordance with the relevant national legislation and timber products derived from such timber are exported into the Union. Therefore, timber embedded in timber products listed in Annexes II and III to Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community[(4)], originating in partner countries listed in Annex I to that Regulation, should be considered to have been legally harvested provided those timber products comply with that Regulation and any implementing provisions.

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(10) Account should also be taken of the fact that the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) places a requirement on parties to CITES only to grant a CITES permit for export when a CITES-listed species has been harvested, inter alia, in compliance with national legislation in the exporting country. Therefore timber of species listed in Annex A, B or C to Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein[(5)] should be considered to have been legally harvested provided it complies with that Regulation and any implementing provisions.

(11) Bearing in mind that the use of recycled timber and timber products should be encouraged, and that including such products in the scope of this Regulation would place a disproportionate burden on operators, used timber and timber products that have completed their lifecycle, and would otherwise be disposed of as waste, should be excluded from the scope of this Regulation.

(12) The placing on the internal market for the first time of illegally harvested timber or timber products derived from such timber should be prohibited as one of the measures of this Regulation. Taking into account the complexity of illegal logging, its underlying causes and its impacts, specific measures should be taken, such as those that target the behaviour of operators.

(13) In the context of the FLEGT Action Plan the Commission and, where appropriate, Member States may support and conduct studies and research on the levels and nature of illegal logging in different countries and make such information publicly available, as well as support the provision of practical guidance to operators on applicable legislation in timber-producing countries.

(14) In the absence of an internationally agreed definition, the legislation of the country where the timber was harvested, including regulations as well as the implementation in that country of relevant international conventions to which that country is party, should be the basis for defining what constitutes illegal logging.

(15) Many timber products undergo numerous processes before and after they are placed on the internal market for the first time. In order to avoid imposing any unnecessary administrative burden, only operators that place timber and timber products on the internal market for the first time should be subject to the due diligence system, while a trader in the supply chain should be required to provide basic information on its supplier and its buyer to enable the traceability of timber and timber products.

(16) On the basis of a systemic approach, operators placing timber and timber products for the first time on the internal market should take the appropriate steps in order to ascertain that illegally harvested timber and timber products derived from such timber are not placed on the internal market. To that end, operators should exercise due diligence through a system of measures and procedures to minimise the risk of placing illegally harvested timber and timber products derived from such timber on the internal market.

(17) The due diligence system includes three elements inherent to risk management: access to information, risk assessment and mitigation of the risk identified. The due diligence system should provide access to information about the sources and suppliers of the

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timber and timber products being placed on the internal market for the first time, including relevant information such as compliance with the applicable legislation, the country of harvest, species, quantity, and where applicable sub-national region and concession of harvest. On the basis of this information, operators should carry out a risk assessment. Where a risk is identified, operators should mitigate such risk in a manner proportionate to the risk identified, with a view to preventing illegally harvested timber and timber products derived from such timber from being placed on the internal market.

(18) In order to avoid any unnecessary administrative burden, operators already using systems or procedures which comply with the requirements of this Regulation should not be required to set up new systems.

(19) In order to recognise good practice in the forestry sector, certification or other third party verified schemes that include verification of compliance with applicable ĺegislation may be used in the risk assessment procedure.

(20) The timber sector is of major importance for the economy of the Union. Organisations of operators are important actors in the sector as they represent the interests of the latter on a large scale and interact with a diverse range of stakeholders. Those organisations also have the expertise and capacity to analyse relevant legislation and facilitate the compliance of their members, but should not use this competence to dominate the market. In order to facilitate the implementation of this Regulation and to contribute to the development of good practices it is appropriate to recognise organisations which have developed due diligence systems meeting the requirements of this Regulation. Recognition and withdrawal of recognition of monitoring organisations should be performed in a fair and transparent manner. A list of such recognised organisations should be made public in order to enable operators to use them.

(21) Competent authorities should carry out checks at regular intervals on monitoring organisations to verify that they effectively fulfil the obligations laid down in this Regulation. Moreover, competent authorities should endeavour to carry out checks when in possession of relevant information, including substantiated concerns from third parties.

(22) Competent authorities should monitor that operators effectively fulfil the obligations laid down in this Regulation. For that purpose the competent authorities should carry out official checks, in accordance with a plan as appropriate, which may include checks on the premises of operators and field audits, and should be able to require operators to take remedial actions where necessary. Moreover, competent authorities should endeavour to carry out checks when in possession of relevant information, including substantiated concerns from third parties.

(23) Competent authorities should keep records of the checks and the relevant information should be made available 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[(6)].

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(24) Taking into account the international character of illegal logging and related trade, competent authorities should cooperate with each other and with the administrative authorities of third countries and the Commission.

(25) In order to facilitate the ability of operators who place timber or timber products on the internal 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 and facilitate the exchange of information. Such assistance should not release operators from their obligation to exercise due diligence.

(26) Traders and monitoring organisations should refrain from measures which could jeopardise the attainment of the objective of this Regulation.

(27) Member States should ensure that infringements of this Regulation, including by operators, traders and monitoring organisations, are sanctioned by effective, proportionate and dissuasive penalties. National rules may provide that, after effective, proportionate and dissuasive penalties are applied for infringements of the prohibition of placing on the internal market of illegally harvested timber or timber products derived from such timber, such timber and timber products should not necessarily be destroyed but may instead be used or disposed of for public interest purposes.

(28) 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 further relevant risk assessment criteria that may be necessary to supplement those already provided for in this Regulation and concerning the list of timber and timber products to which this Regulation applies. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.

(29) 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 of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[(7)] continues to apply, with the exception of the regulatory procedure with scrutiny, which is not applicable.

(30) Operators and competent authorities should be given a reasonable period in order to prepare themselves to meet the requirements of this Regulation.

(31) Since the objective of this Regulation, namely the fight against illegal logging and related trade, cannot be achieved by the Member States individually and can therefore,