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

COUNCIL REGULATION (EC) No 2173/2005

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on the establishment of a FLEGT licensing scheme for imports of timber into the European Community

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The Council and the European Parliament welcomed the Communication from the Commission to the Council and the European Parliament on an EU Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT) as a first step towards tackling the urgent issue of illegal logging and associated trade.

(2) The Action Plan puts emphasis on governance reforms and capacity building, supported by actions aimed at developing multilateral cooperation and complementary demand-side measures designed to reduce the consumption of illegally harvested timber and contributing to the wider objective of sustainable forest management in timber-producing countries.

(3) The Action Plan identifies the setting up of a licensing scheme as a measure to ensure that only timber products that have been legally produced in accordance with the national legislation of the producing country may enter the Community, and emphasises that that licensing scheme should not impede legitimate trade.

(4) Implementation of the licensing scheme requires that imports of relevant timber products into the Community be made subject to a system of checks and controls seeking to guarantee the legality of such products.

(5) To this end the Community should conclude voluntary Partnership Agreements with countries and regional organisations, which are to place a legally binding obligation on a partner country or regional organisation to implement the licensing scheme within the schedule stipulated in each Partnership Agreement.

(6) Under the licensing scheme, certain timber products exported from a partner country and entering the Community at any customs point designated for release for free circulation should be covered by a licence issued by the partner country, stating that the timber products have been produced from domestic timber that was legally harvested or from timber that was legally imported into a partner country in accordance with national

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laws as set out in the respective Partnership Agreement. Compliance with those rules should be subject to third-party monitoring.

(7) The competent authorities of the Member States should verify that each shipment is covered by a valid licence prior to releasing the shipment covered by that licence for free circulation in the Community.

(8) Each Member State should determine the penalties applicable in the event of infringements of this Regulation.

(9) The licensing scheme should initially cover a limited range of timber products. When agreed, the range of products could be extended to other product categories.

(10) It is important to revise the Annexes specifying the countries and products covered by the licensing scheme promptly. Those revisions should take into account the progress in implementation of Partnership Agreements. A partner country may be added to Annex I after it has notified the Commission and the Commission has confirmed that this partner country has put in place all the controls needed to be able to issue licences for all the products listed in Annex II. A partner country may be removed from Annex I either when it has given one year's notice of its intention to terminate its Partnership Agreement or with immediate effect, in the case of suspension of its Partnership Agreement.

(11) Annex II may be amended after the Commission and all partner countries have agreed to such amendment. Annex III may be amended after the Commission and the partner country concerned have agreed to such amendment.

(12) The amendments to Annexes I, II and III would be implementing measures of technical nature and in order to simplify and expedite the procedure, their adoption should be entrusted to the Commission. Such amendments should comprise commodity codes, at four-digit heading level or six-digit subheading level of the current version of Annex I to the Harmonised Commodity Description and Coding System.

(13) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[(1)] with a distinction being made between those measures which are subject to the regulatory committee procedure and those which are subject to the management committee procedure, the management committee procedure being in certain cases, with a view to increased efficiency, the more appropriate,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1

1 This Regulation establishes a Community set of rules for the import of certain timber products for the purposes of implementing the FLEGT licensing scheme.

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2 The licensing scheme shall be implemented through Partnership Agreements with timber producing countries.

3 This Regulation shall apply to imports of timber products set out in Annexes II and III from partner countries listed in Annex I.

Article 2

For the purposes of this Regulation the following definitions shall apply:

1. 'Forest Law Enforcement, Governance and Trade licensing scheme' (hereinafter referred to as FLEGT licensing scheme) means the issuing of licences for timber products for export to the Community from partner countries and its implementation in the Community, in particular in Community provisions on border controls;

2. 'partner country' means any State or regional organisation that enters into a Partnership Agreement, as listed in Annex I;

3. 'Partnership Agreement' means an agreement between the Community and a partner country by which the Community and that partner country undertake to work together in support of the FLEGT Action Plan and to implement the FLEGT licensing scheme;

4. 'regional organisation' means an organisation consisting of sovereign states that have transferred competence to that organisation, granting it the capacity to enter into a Partnership Agreement on their behalf, in respect of matters governed by the FLEGT licensing scheme, as listed in Annex I;

5. 'FLEGT licence' means a shipment-based or market participant-based document of a standard format which is to be forgery-resistant, tamper-proof, and verifiable, and which refers to a shipment as being in compliance with the requirements of the FLEGT licensing scheme, duly issued and validated by a partner country's licensing authority. Systems for issuing, recording and communicating licences may be paper-based or based on electronic means, as appropriate;

6. 'market participant' means an actor, private or public, involved in forestry or transformation or trade of timber products;

7. 'licensing authority(ies)' means the authority(ies) designated by a partner country to issue and validate FLEGT licences;

8. 'competent authority(ies)' means the authority(ies) designated by Member States to verify FLEGT licences;

9. 'timber products' means the products set out in Annexes II and III, to which the FLEGT licensing scheme applies, and which, when imported into the Community, cannot be qualified as 'goods of a non-commercial nature' as defined in point 6 of Article 1 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code[(2)];

10. 'legally produced timber' means timber products produced from domestic timber that was legally harvested or timber that was legally imported into a partner country in accordance with national laws determined by that partner country as set out in the Partnership Agreement;

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11. 'imports' means the release for free circulation of timber products within the meaning of Article 79 of Council Regulation (EEC) No 2913/1992 of 12 October 1992 establishing the Community Customs Code[(3)]

12. 'shipment' means a shipment of timber products;

13. 'export' means the physical leaving or taking out of timber products from any part of the geographical territory of a partner country to bring them into the Community;

14. 'third-party monitoring' means a system through which an organisation that is independent of a partner country's government authorities and its forest and timber sector monitors and reports on the operation of the FLEGT licensing scheme.

CHAPTER II

FLEGT LICENSING SCHEME

Article 3

1 The FLEGT licensing scheme shall apply only to imports from partner countries.

2 Each Partnership Agreement shall specify an agreed schedule for implementing the commitments entered into by that Agreement.

Article 4

1 Imports into the Community of timber products exported from partner countries shall be prohibited unless the shipment is covered by a FLEGT licence.

[[F1]2 In order to provide the necessary assurance as to the legality of the timber products concerned, the Commission shall assess existing schemes that guarantee the legality and reliable tracking of timber products exported from partner countries, and adopt implementing acts to approve them. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 11(3).

The schemes approved by the Commission may form the basis of a FLEGT licence.

3 Timber products of species listed in Annexes A, B and C to Council Regulation (EC) No 338/97[(4)] shall be exempt from the requirement laid down in paragraph 1 of this Article.

The Commission shall review that exemption, taking into account market developments and the experience gained in the implementation of this Regulation, shall report on its findings to the European Parliament and to the Council and, if necessary, shall come forward with appropriate legislative proposals.**]**

Textual Amendments

F1 Substituted by Regulation (EU) No 657/2014 of the European Parliament and of the Council of 15 May 2014 amending Council Regulation (EC) No 2173/2005 as regards the delegated and implementing powers to be conferred on the Commission.

Article 5

1 A FLEGT licence covering each shipment shall be available to the competent authority at the same time as the customs declaration for that shipment is presented for release for free circulation in the Community. The competent authorities shall keep a record — in electronic

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or paper format — of the original FLEGT licence together with the corresponding customs declaration.

Import of timber products under a FLEGT licence issued to a market participant shall be accepted as long as the market participant's licence remains valid.

2 The competent authorities shall provide the Commission, or persons or bodies designated by the Commission, with access to the relevant documents and data, should problems arise which impair the effective operation of the FLEGT licensing scheme.

3 The competent authorities shall grant to the persons or bodies designated by partner countries as being responsible for the third party monitoring of the FLEGT licensing scheme access to the relevant documents and data, but the competent authorities shall not be required to provide any information which they are not permitted to communicate pursuant to their national law.

4 The competent authorities shall decide on the need for further verification of shipments using a risk-based approach.

5 In case of doubt as to the validity of the licence, the competent authorities may ask the licensing authorities for additional verification and seek further clarification, as set out in the Partnership Agreement with the exporting partner country.

6 Member States may collect fees to cover the necessary expenses arising from official acts by competent authorities required for control purposes under this Article.

7 Customs authorities may suspend the release of or detain timber products where they have reason to believe that the licence may not be valid. Costs incurred while the verification is completed shall be at the expense of the importer, except where the Member State concerned determines otherwise.

8 Each Member State shall determine the penalties to be imposed where the provisions of this Regulation are infringed. Such penalties shall be effective, proportionate and dissuasive.

[[F1]9 In order to ensure uniform conditions for the implementation of this Article, the Commission shall, by means of implementing acts, adopt the procedural modalities and the documents of a standard format, including their possible means. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 11(3).**]**

Textual Amendments

F1 Substituted by Regulation (EU) No 657/2014 of the European Parliament and of the Council of 15 May 2014 amending Council Regulation (EC) No 2173/2005 as regards the delegated and implementing powers to be conferred on the Commission.

Article 6

1 If competent authorities establish that the requirement laid down in Article 4(1) is not fulfilled, they shall act in accordance with national legislation in force.

2 Member States shall notify the Commission of any information suggesting that the provisions of this Regulation are being, or have been, circumvented.

Article 7

1 Member States shall designate the competent authorities responsible for implementing this Regulation and for communicating with the Commission.