



COUNCIL OF  
THE EUROPEAN UNION

Brussels, 29 June 2009

Interinstitutional File:  
2008/0198 (COD)

9080/2/09  
REV 2

LIMITE

AGRI 191  
ENV 334  
FORETS 52  
CODEC 627  
DEVGEN 111  
RELEX 374  
JUR 199  
UD 87

**NOTE**

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from:	Presidency
to:	Working Party on Forestry
No. Cion prop. :	14482/08 + ADD 1 + ADD 2 COM (2008) 644 final
Subject:	Proposal for 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

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Following the Working Party on Forestry on 8 June 2009 delegations will find attached a draft text. Changes are indicated as follows: deletions are marked [...] and new text appears in **bold and underlined**.

Proposal for 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

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Having regard to the opinion of the Committee of the Regions<sup>3</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>4</sup>,

Whereas<sup>5</sup>

- (1) Forests provide a broad variety of environmental, economic and social benefits including timber and non-timber forest products and environmental services.
- (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 becomes 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, which is responsible for about 20% of CO<sub>2</sub> emissions, threatens biodiversity, and undermines sustainable forest management and development. In addition, it also has social, political and economic implications.
- (4) The Communication of the Commission to the European Parliament and to the Council on an EU Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT) proposed a package of measures to support international efforts to tackle the problem of illegal logging and associated trade<sup>6</sup>.

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

<sup>3</sup> OJ C , , p. .

<sup>4</sup> OJ C , , p. .

<sup>5</sup> The recitals will be adapted once the enacting terms have been agreed.

<sup>6</sup> COM(2003)251, 21.5.2003.

- (5) The Council and the European Parliament recognising the need for the Community to contribute to global efforts to address the problem of illegal logging welcomed that Communication.
- (6) In accordance with the aim of that Communication, namely to ensure that only timber products that have been produced in accordance with the national legislation of the producing country enter the Community, the Community has been negotiating Voluntary Partnership Agreements (VPAs) with timber producing countries (partner countries), which put a legally binding obligation on the parties to implement a licensing scheme and to regulate trade in timber and timber products identified in the Agreements.
- (7) Given the major scale and urgency of the problem, it is necessary to actively support the fight against illegal logging and related trade, to complement and strengthen the VPA initiative and to improve synergies between policies aiming at the conservation of forests and the achievement of a high level of environmental protection, including combating climate change and biodiversity loss.
- (8) The efforts made by countries which have concluded FLEGT VPAs with the Community and the principles incorporated in them, in particular with regard to the definition of legally produced timber, should be recognised. It should be also taken into account that under the FLEGT licensing scheme only timber and timber products harvested in accordance with the relevant national legislation are exported into the Community. To that effect, 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<sup>7</sup>, originating in partner countries listed in Annex I to Council Regulation (EC) No 2173/2005 should be considered to have been legally harvested provided they comply with that Regulation and any implementing provisions.
- (9) Account should also be taken of the fact that the Convention on International Trade of Endangered Species of Fauna and Flora (CITES) places a requirement on parties to the Convention to only grant a CITES permit for export when a CITES-listed species has been harvested, *inter alia*, in compliance with domestic legislation in the exporting country. To that effect, timber products of species listed in Annexes A, B and 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<sup>8</sup> should be considered to have been legally harvested provided they comply with that Regulation and any implementing provisions.
- (10) Taking into account the complexity of illegal logging as regards the underlying factors and the impacts, the incentives for illegal behaviour should be reduced by targeting the behaviour of operators.
- (11) In the absence of an internationally agreed definition the legislation of the country where the timber was harvested should be the basis to define what constitutes illegal logging.

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<sup>7</sup> OJ L 347, 30.12.2005, p. 1

<sup>8</sup> OJ L 61, 3.3.1997, p. 1.

- (12) Many timber products undergo numerous processes before and after they are placed on the market for the first time. In order to avoid imposing any unnecessary administrative burden only those operators that place timber and timber products on the market for the first time, rather than all operators involved in the distribution chain, should be subject to the requirements laid down in this Regulation.
- (13) The overall objective of achieving sustainability through the promotion of sustainability criteria remains a priority for the Community. In light of this objective and in order to reduce the burden on operators who place on the market timber and timber products which are subject to mandatory sustainability criteria established by Directive (EC) No XX/XX of the European Parliament and of the Council on the promotion of the use of energy from renewable sources, this Regulation should not apply to such products<sup>9</sup>.
- (14) Operators placing timber and timber products for the first time on the Community market should exercise due diligence through a system of measures and procedures (due diligence system) to minimise the risk of placing illegally harvested timber and timber products.
- (15) The due diligence system should provide access to the sources and suppliers of the timber and timber products being placed on the Community market and to information as regards compliance with the applicable legislation.
- (16) The timber sector is of major importance for the economy of the Community. Organisations of operators are important elements of the sector as they represent the interests of the latter at a large scale and interact with a diverse range of stakeholders. Organisations also have the expertise and capacity to analyse relevant legislation and facilitate the compliance of members, provided they do not use this competence with a view to dominate on 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 requirements for the realisation of the due diligence systems. A list of such recognised organisations will be made public and will enable the recognition of the monitoring organisations included therein by all Member States competent authorities.
- (17) Competent authorities should monitor that the operators fulfil the obligations laid down in this Regulation. For that purpose the competent authorities should carry out official checks and require operators to take corrective measures where necessary.
- (18) Competent authorities should keep records of the checks and make a summary publicly available in accordance with Directive 2003/4/EC of the European Parliament and of the Council of 23 January 2003 on public access to environmental information<sup>10</sup>.
- (19) Taking into account the international character of illegal logging and related trade competent authorities should cooperate between themselves and with the administrative authorities of third countries and/or the Commission.
- (20) Member States should ensure that infringements of this Regulation are punished by effective, proportionate and dissuasive penalties.

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<sup>9</sup> \*note to OJ: reference to be included when the act is adopted.

<sup>10</sup> OJ L 41, 14.2.2003, p. 26.

- (21) 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<sup>11</sup>.
- (22) In particular the Commission should be empowered to adopt detailed rules for the application of the due diligence system and in particular criteria for assessing the risk of placing illegally harvested timber and timber products on the market, to establish criteria for the recognition of due diligence systems developed by monitoring organisations and to adapt the list of timber and timber products to which this Regulation applies where technical characteristics, end uses or production processes of timber or timber products necessitate such adaptations. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.
- (23) In order to enable operators and competent authorities to prepare themselves in order to meet the requirements of this Regulation, this Regulation shall apply two years after its entry into force.
- (24) Since the objective of this Regulation, namely to complement and underpin the existing policy framework and support the fight against illegal logging and related trade, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out on Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS REGULATION:

*Article 1*  
[...]**Subject matter**

[...]

This Regulation lays down the obligations of operators who place timber and timber products on the Community market for the first time, to minimise the risk of placing illegally harvested timber or timber products **derived from such timber** on the market.<sup>12</sup>

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<sup>11</sup> OJ L 184, 17.7.1999, p. 23.

<sup>12</sup> **DE+DK scrutiny reservation on deleting the first paragraph and the word “purpose” from the heading**

*Article 2*  
*Definitions*<sup>13</sup>

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

- (a) 'timber and timber products' means the timber and timber products set out in the Annex<sup>14</sup>. Timber products derived from timber or from timber products which have already been placed on the market shall not be subject to this Regulation.
- (b) 'placing on the market' means supply by any means, irrespective of the selling technique used, of timber or timber products, for the first time on the Community market for distribution or use in the course of a commercial activity, [whether in return for payment or free of charge]<sup>15</sup>. It shall also include supply by means of distance communication as defined in 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<sup>16</sup>;
- (c) 'operator' means any natural or legal person that places timber or timber products on the market;<sup>17</sup>
- (d) 'legally harvested' means harvested in accordance with the applicable legislation in the country of harvest;
- (e) 'applicable legislation'<sup>18</sup> means the legislation **in force in** [of] the country of harvest [regulating forest conservation and management, and the harvesting of timber as well as legislation on trade in timber or timber products until placing on the Community market for the first time] **and covers the following areas:**
- **rights to harvest timber within gazetted boundaries;**
  - **payments for harvest rights and timber including duties related to timber harvesting;**
  - **timber harvesting, including directly related environmental and forest legislation;**
  - **respect for third parties' legal rights concerning use and tenure that might be affected by timber harvesting; and**
  - **trade and customs legislation.**

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<sup>13</sup> IE reiterated the need for a definition of "for the first time".

<sup>14</sup> Cion entered scrutiny reservation to deletion of "with the exception of timber and timber products which are subject to mandatory sustainability criteria established by Directive (EC) No XX/XX".

<sup>15</sup> FI and ES suggest deletion as it is unclear what kind of cases it would cover. Cion's opinion is that it covers such cases as exhibitions and samples.

<sup>16</sup> OJ L144, 04.06.1997, p.0019-0027

<sup>17</sup> Definition still open. AT, DE, EE, FR, RO entered scrutiny reservations on the definition of operator. FI and SE suggested that the operator could be the first buyer. FI, FR, SI considered it important to avoid extra burden on small operators.

<sup>18</sup> FI proposes following wording: `means the legislation of the country of harvest regulating forest conservation and management and the harvesting of timber as well as legislation on trade in timber or timber products until placing on the Community market for the first time`. FR supports keeping labour legislation.

- (f) 'risk' means a likelihood of illegally harvested timber or timber products derived from such timber being placed on the Community market;

[...]

- (g) 'country of harvest' means the country where the timber or the timber embedded in the timber products was harvested;

[...]

[...]

*Article 3*  
*Obligations of operators*

1. Operators shall exercise due diligence to minimise the risk of placing illegally harvested timber or timber products derived from such timber on the market. To that effect, they shall use a framework of procedures and measures, hereinafter referred to as a 'due diligence system' as further defined in Article 4.
2. Each operator shall establish, **maintain and regularly evaluate** its own<sup>19</sup> due diligence system or make use of a due diligence system established by a [recognised] monitoring organisation referred to in Article 5.
3. **This Regulation shall not apply to forest owners holding forest of up to [50] hectares and placing timber from own production on the market.**<sup>20</sup>

*Article 4*  
*Due diligence systems*

1. The due diligence system referred to in Article 3(1) shall contain the following elements:
  - (a) Measures and procedures providing access to the following data and information concerning timber or timber products placed on the market by the operator:<sup>21</sup>
    - (i) description, including the **full** scientific name, [and] **or** common name **of tree species**, trade name or type of product;

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<sup>19</sup> NL suggested to delete the reference to "own system" in order to reduce the burden. Cion, AT, DE, FI, FR, IE, SE, UK expressed serious concerns for this suggestion.

<sup>20</sup> Insertion of exemption for small scale forest owners repeatedly noted large support across the Member States, but not unanimous.

<sup>21</sup> PT proposes new sub paragraph to Art.4(1): 'If the operator has been responsible himself for the harvesting operation and is placing the respective timber in the market for the first time, will only need to comply with (a) above.'. This proposal might be examined in relation to Art.3(3)

- (ii) origin [of timber]<sup>22</sup>: country and region of harvest<sup>23</sup> and, in case of timber, where available, name of harvested site or location;
  - (iii) quantity (expressed in volume, weight<sup>24</sup> or number of units); a permitted margin of tolerance **of 10%** in the volume or weight of the timber products concerned shall apply;
  - (iv) [...] name and address of the supplier to the operator;
  - (v) in case of timber, **where possible**, the [date] **period** of harvest or date of placing on the market;
  - (vi) **document or other** information indicating compliance of such timber and timber products with the applicable legislation;
- (b) <sup>25</sup>Risk assessment procedures [consisting of] **that enable the operator to** analyse[ing] and evaluate[ing] the risk **of** illegally harvested timber or timber products derived from such timber **being** placed on the market, taking into account **the** <sup>26</sup>information set out in subparagraph (a) <sup>27</sup> as well as [any other] relevant criteria [to be laid down by the Committee, in accordance with the regulatory procedure with scrutiny referred to in Article 11(2)] including:
- a) the complexity of the supply chain of timber products, including the components of such products;** [the value of the timber and timber products concerned]
  - b) [country of origin and country of harvest] information concerning the prevalence of illegal logging or practices in the region where the timber was harvested**
  - c) [information on the supplier] information on the procurement policy of the supplier to an operator and on its' implementation**
  - d) use by the operator, or supplier to the operator, of a due diligence system established by a monitoring organisation (from Art 7.2)**
  - e) information on "chain of custody", enabling the tracing of timber and timber products back to the location of harvest,**
  - f) evidence of compliance with applicable legislation.**
- (c) Risk mitigation procedures consisting of a set of measures and procedures that are adequate **and proportionate**<sup>28</sup> to effectively minimise the risk identified in the course of the risk assessment procedures as referred to in sub paragraph [under] (b) and which may include requiring additional information or documents and/or requiring third party verification.

<sup>22</sup> CY suggested to delete "origin of timber"

<sup>23</sup> IE suggested to put full stop after "harvest"

<sup>24</sup> CY considered it unnecessary to indicate - "weight".

<sup>25</sup> RO entered a scrutiny reservation.

<sup>26</sup> SI suggested to add "data and" before "information".

<sup>27</sup> FI suggested to put full stop after "subparagraph a".

<sup>28</sup> SI suggested to add after "procedures" "are proportionate to the assessed risk and are ...", IE supported this. Cion considered it acceptable.

2. For the purpose of the risk assessment procedures as referred to in paragraph 1(b):<sup>29</sup>
- a. timber and timber products listed in Annexes II and III to Regulation (EC) No 2173/2005 [originating in] **from** partner countries listed in Annex I of Regulation (EC) No 2173/2005 and which comply with that Regulation and its implementing provisions; and
  - b. timber of species listed in Annexes A, B and C to Regulation (EC) No 338/97 and which comply with that Regulation and its implementing provisions;<sup>30</sup>
- shall be considered to have been legally harvested.
3. [Each operator shall, on a regular basis, evaluate its due diligence system in order to ensure continuous compliance of such system with this Regulation, in particular in terms of its effectiveness to minimise the risk of illegally harvested timber or timber products derived from such timber being placed on the market.]<sup>31</sup>
4. Measures shall be adopted for the implementation of this Article, **including, in particular, measures** [by means of further specification of the elements of the due diligence system set out in paragraph 1, including by means of] establishing [further] criteria for assessing the risk of illegally harvested timber or timber products derived from such timber being placed on the market and [defining adequate] **proportionate** measures to be adopted in the framework of the risk [management] **mitigation** procedures.

Those measures designed to amend non-essential elements of this Regulation by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(2).

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<sup>29</sup> NL considered that this paragraph should not be placed in Article 4 since is part of the risk analysis. CITES and the FLEGT Regulation are not part of the risk assessment.

<sup>30</sup> FI suggested to insert new sub-para: "c. timber harvested according to felling permit or similar system recognised by the competent authority". Support from RO. UK added in the end to the FI suggestion "or a legality assurance system recognised by the Cion". Support from AT, DE, DK, IT, SI. BG, PT support FI suggestion but not UK suggestion.

<sup>31</sup> Presid. suggested deleting this paragraph and add "and maintain" in Article 3(2) after "establish". Support from AT, FI, FR, HU, RO, SI, SK, UK. IE suggested adding "and when required update" after the Presid suggestion. Support from EL. CY, PT, SE supported the deletion. DK and ES want to retain paragraph 4(3) and introduce an obligation of independent evaluation.

*Article 5*  
*Monitoring organisation*<sup>32</sup>

1. A monitoring organisation shall exercise the following functions:
  - a) establish a due diligence system in accordance with Article 4 and grant operators the right to use it;
  - a bis) assist the operator in the proper use of its due diligence system;**
  - b) verify [...]the proper use of its due diligence system by such operators;
  - c) take appropriate actions in the event of failure by an operator to properly use its due diligence system, including notification of competent authorities in the event of [serious]<sup>33</sup> [...]failure by the operator.
  
2. An applicant may apply for recognition as a monitoring organisation, if it complies with the following requirements<sup>34</sup>:
  - (a) it has legal personality<sup>35</sup> and is **legally** established within the Community;
  - (aa) it has the capacity to exercise the functions referred to in paragraph 1;
  - ~~[(b) it has established a due diligence system which complies with the requirements set out in Articles 3 and 4;]~~
  - [(c) it has in place an effective monitoring mechanism to verify the proper use of the due diligence system by the operator;]**
  - ~~[(d) it is entitled to take appropriate measures in the event of failure by the operator to properly use the due diligence system; such measures include the right to request, in the event of a serious or repeated failure or in the event of refusal by the operator to provide assistance necessary for an effective monitoring, that the operator ceases to use the due diligence system;]~~
  - ~~[(e) it is independent of any competent authority].~~<sup>36</sup>

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<sup>32</sup>The changes in Art. 5 proposed by the Presidency elaborate on the option 2 for Article 5(4).

<sup>33</sup> FI, PT, AT, NL and ES entered the scrutiny reservation on deletion “serious“

<sup>34</sup> BE entered a scrutiny reservation on this paragraph.

<sup>35</sup> NL propose to change the wording for ‘established under public or private law‘

<sup>36</sup> FI suggest to delete 5.2.e.

3. The application for recognition as a monitoring organisation shall be submitted to a competent authority of **the Member State [in which an applicant is established]** (hereinafter the "responsible competent authority")<sup>37</sup> including the following:
- (a) the statute of the applicant;
  - (b) the names of persons authorised to act on behalf of the applicant;
  - (c) documentation to demonstrate its ability to exercise the functions referred to in paragraph 1 **and fulfil the requirements referred to in paragraph 2**
  - (d) a detailed description of the due diligence system established by the applicant].
4. Within [...] <sup>38</sup> months of the date of receipt of the complete application, the responsible competent authority shall prepare a draft recommendation on whether to grant recognition as a monitoring organisation to the applicant [...], **taking** into account any relevant information available to it[, including information provided by other competent authorities under Article 7. Where the competent authority decides not to grant the application, it shall inform the applicant of the reasons for its decision]. It shall without delay inform the applicant of the draft recommendation and shall make the complete application, the draft recommendation and any relevant supplementary information available to the Commission. The Commission shall without delay forward such documentation and information to the other Member States.
- 4a. The other Member States may raise a reasoned objection to the draft recommendation within [one month] of the date of its receipt. After expiry of such deadline, the Commission shall without delay inform the responsible competent authority that no reasoned objection has been raised, or shall forward to it and to the other Member States the reasoned objections raised.
- 4b. In the event that no reasoned objection has been raised, the responsible competent authority shall adopt a decision in accordance with the draft recommendation. Where the competent authority decides not to grant the recognition, it shall inform the applicant of the reasons for its decision.
- 4c. In the event that a reasoned objection has been raised, an opinion shall be adopted in accordance with the procedure referred to in Article 11(3) within [three months] after the expiry of the deadline for submitting a reasoned objection. The opinion shall be notified without delay to the responsible competent authority. Where the opinion is not in accordance with the draft recommendation, it shall provide the reasons for such difference. The responsible competent authority shall take the decision on the application within [two] months of the date of its receipt [taking into account] [in accordance with] the opinion of the Commission. Where the responsible competent authority decides not to grant recognition, it shall inform the applicant of the reasons for such decision.

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<sup>37</sup> **ES entered a scrutiny reservation in paragraph 3**

<sup>38</sup> **A large variety from one to three months has been suggested by some Member States.**

5. The responsible competent authority[...] shall carry out checks at regular intervals to verify that the monitoring organisation complies with the requirements laid down in this Article.
6. The responsible competent authority[...] shall, on its own initiative or on the basis of any relevant information available to it, prepare a draft recommendation to withdraw a recognition if it has been established that the monitoring organisation no longer fulfils the requirements **and functions** set out in this Article. The procedure set out in paragraphs [4 to 4c] shall apply *mutatis mutandis*. [The competent authority shall take into account any relevant information available to it, including information provided by other competent authorities under Article 7.]
7. Once it has taken effect, any decision to grant, refuse or withdraw recognition as a monitoring organisation shall be effective for the entire territory of the Community. The competent authority shall notify the Commission of any such decision within [ one] months. The Commission shall inform [all] the other Member States of any such decision within one month of its receipt. [Any competent authority may notify the Commission within 2 months of such notification of any information it considers relevant in such respect. The Commission shall communicate this information to all competent authorities.]
8. The measures necessary [The Commission shall adopt measures] for the implementation of this Article, in particular measures concerning the preparation and presentation of a complete application [...], shall be adopted in accordance with the regulatory procedure referred to in Article 11(3).

*Article 6*  
*List of monitoring organisations*

The Commission shall publish the list of the monitoring organisations in the *Official Journal of the European Union*, C series, and shall make it available on its website. The list shall be updated [...].

**Article 6a**  
*Competent authorities*

- 1.** Each Member State shall designate one or more competent authorities responsible for the application of this Regulation. **Such competent authorities shall have the powers necessary to effectively enforce compliance with this Regulation.**

Member States shall inform the Commission of the names and addresses of the competent authorities by 31 December 20XX at the latest. Member States shall inform the Commission of any changes to the names or addresses of the competent authorities.

- 2.** The Commission shall make publicly available, **including on the Internet,** [the] **a** list of the competent authorities. **The list shall be regularly updated.**

*Article 7*  
*Compliance control*

1. **The c[C]**ompetent authorities shall carry out checks to verify if operators comply with the requirements set out in Articles **3 and 4.**
- 1a.** **The checks referred to in paragraph (1) may include, inter alia:**
- (a) **examination of the technical and managerial due diligence measures and procedures[of the due diligence] as well as the risk assessments implemented by the operators.**
  - (b) **examination of documentation and records that demonstrate the proper functioning of the due diligence system.**
  - (c) **spot checks, including field audits.**
- 2.** **Member States shall ensure that the checks referred to in paragraph (1) are carried out based on a risk analysis, and with appropriate frequency, so as ensure due compliance with the requirements laid down in this Regulation.**
- Use by an operator of a due diligence system established by a monitoring organisation [shall/may] be considered as a factor reducing the risk of non-compliance for the purpose of this Regulation.**
- 3.** Operators shall offer all assistance necessary to facilitate the performance of the checks referred to in paragraph 1, **in particular as regards access to premises and the presentation of documentation or records.**
- 4.** Where, following the checks referred to in paragraph 1, **shortcomings have been detected,** the competent authorities **shall impose** corrective measures.

*Article 8*  
*Records of checks*

1. **The c[C]**ompetent authorities shall keep records of the checks referred to in Article 7(1) , indicating in particular their nature and results, including any corrective measures **imposed.** Records of all checks shall be kept for at least 10 years.
2. A summary of the records referred to in paragraph 1 shall be made available to the public in accordance with Directive 2003/4/EC.

*Article 9*  
*Cooperation*

1. **The c[C]ompetent authorities shall cooperate with each other, and with administrative authorities of third countries and with the Commission, [in order] to ensure compliance with this Regulation.**
2. The competent authorities shall exchange information, **in particular** on the results of the checks referred to in Article 7(1) **and on penalties imposed as referred to in Article 13**, with the competent authorities of other Member State(s) and with the Commission.

**Article 10a**

**Implementing measures**

- 1. The Commission shall adopt the measures necessary for the implementation of this Regulation, in particular the measures referred to in Articles 4(4), 5(9) and 12.**
- 2. These measures shall be adopted no later than [two] year[s] after the entry into force of this Regulation.**

*Article 11*  
*Committee*

1. The Commission shall be assisted by the **Forest Law Enforcement Governance and Trade (FLEGT) Committee**<sup>39</sup> [on] **established under Article 11 of Regulation 2173/2005**], hereinafter referred to as the ‘Committee’].
2. Where reference is made to this paragraph, Articles 5a (1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
- 3. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.**

*Article 12*  
*Amendments*

**The measures amending** the list of timber and timber products set out in the Annex may **be adopted** taking into account technical characteristics, end-uses and production processes **of timber and timber products concerned**.

Those measures designed to amend non-essential elements of this Regulation, *inter alia* by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 11(2).

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<sup>39</sup> DE entered scrutiny reservation to suggested reference to FLEGT Committee.

*Article 13*  
*Penalties*

The Member States shall lay down the rules on penalties applicable to **infringements of the provisions of this Regulation, including in particular of** the following infringements [of the provisions of this Regulation]:

- (a) **failure to use** [Not using] a due diligence system;
- (b) **u**[U]sing a due diligence system which does not include all the elements set out in Article 4[(1), (2) a (3)];
- [(c) Using an ineffective due diligence system in terms of minimising the risk of placing illegally harvested timber and timber products on the market;]
- (d) **failure to take** [Not taking] the corrective measures requested by the competent authorities **with**in the time limit specified by the latter;
- [(e) Not remedying the shortcomings in the due diligence, although the corrective measures requested by the competent authorities have been taken.]

The Member States shall take all measures necessary to ensure that **those rules** [they] are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by 31 December 20XX and shall notify it without delay of any subsequent amendments affecting them.

*Article 14*  
*Reporting*

1. 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.
2. 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.
3. **By XXXX 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.**

*Article 15*  
*Entry into force*

This Regulation shall enter into force on the seventh day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [...] <sup>40</sup>

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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<sup>40</sup> Note to OJ: thirty months or three years [two years] after the date of entry into force of this Regulation.

ANNEX -Timber and timber products as classified in the Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87<sup>41</sup>, to which this Regulation applies

1. The products set out in Annexes II and III of Council Regulation (EC) 2173/2005 [to which the FLEGT licensing scheme applies];
2. Pulp and paper of Chapters 47 and 48 of the Combined Nomenclature, with the exception of bamboo-based and recovered (waste and scrap) products;
3. Wooden furniture of CN code 9403 30, 9403 40, 9403 50 00, 9403 60 and 9403 90 30;
4. Prefabricated buildings of CN code 9406 00 20;
5. Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms of CN code 4401;
6. Builders' joinery and carpentry of wood, including cellular wood panels, assembled flooring panels, shingles and shakes, wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, V-jointed, beaded, moulded, rounded or the like) along any of its edges, ends or faces, whether or not planed, sanded or end-jointed of CN code 4418;
7. Particle board, oriented strand board (OSB) and similar board of wood whether or not agglomerated with resins or other organic binding substances of CN code 4410;
8. Fibreboard of wood or other ligneous materials, whether or not bonded with resins or other organic substances of CN code 4411;
9. Densified wood, in blocks, plates, strips or profile shapes of CN code 4413 00 00;
10. Wooden frames for paintings, photographs, mirrors or similar objects of CN code 4414 00;
11. Packing cases, boxes, crates, drums and similar packings, of wood; cable-drums of wood; pallets, box pallets and other load boards, of wood; pallet collars of wood; coffins of CN code 4415;
12. Casks, barrels, vats, tubs and other coopers' products and parts thereof, of wood, including staves of CN code 4416 00 00.

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<sup>41</sup> Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1)..