



NGO briefing paper on combating illegal logging and related trade

Proposed Regulation concerning the placing of timber and timber products on the EU market

Illegal logging poses a significant threat to forests as it contributes to the process of deforestation and forest degradation, which is responsible for about 20% of CO₂ emissions, threatens a large and increasing number of forest ecosystems and species, and undermines sustainable forest management and development.

Illegal logging has been documented to be financially linked to organised crime, money laundering and civil wars (e.g. in Liberia, Myanmar/Burma, and Democratic Republic of Congo)¹. The World Bank has estimated that illegal activities could account for a loss to forest-rich countries of at least US\$ 15 billion per year² - a tenth of the value of the timber trade worldwide. The direct cost in Cameroun alone is estimated at \$100 million a year³. The economic cost of continuing forest loss is even higher when compared with the benefits provided by vital environmental services such as carbon storage or gene content in forest plants and animals⁴.

As a major consumer of timber, accounting for an estimated 16-19% of global illegal timber imports⁵, the EU has a duty to reduce its impact on forest ecosystems regardless of where their effects occur. The EU has to act now to address the problem of illegal logging that has major ecological, economic and social consequences: strong legislation at EU level is needed to guarantee that only timber and timber based products from legal sources are placed on the EU market. This legislation should make Member State governments and corporate actors accountable, reduce their environmental and social footprint on the world's forests and help set an example for reform of the international forestry sector.

Civil society groups welcome the legislative proposal, after six years of debate. However, the draft law proposed by the Commission is too weak to achieve these goals. NGOs therefore urge the Council and the European Parliament to make vital amendments to transform this law into an effective and therefore credible tool to fight illegal forest destruction.

1 UN Security Council, Liberia conflict timber sanctions, 6 May 2003, <http://www.un.org/News/Press/docs/2004/sc8275.doc.htm>, Council of the EU conclusions on Burma/Myanmar, October 2007, <http://www.illegal-logging.info/uploads/CommonPos0734-CouncilConclFINAL.pdf>, EU Parliament Resolution on the EU response to the deteriorating situation in the east of the Democratic Republic of Congo, November 2008, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+MOTION+P6-RC-2008-0590+0+DOC+XML+V0//EN>

2 A Revised Forest Strategy for the World Bank Group, October 2002

3 Reuters, "Cameroon suspends 27 timber firms in clampdown", February 2008

4 UN Millennium Ecosystem Assessment, 2005.

5 Illegal wood for the European market: http://www.panda.org/about_wwf/where_we_work/europe/what_we_do/wwf_europe_environment/initiatives/forests/forests_publications/index.cfm?uNewsID=143421

NGO priority recommendations for amendments:

The overarching goal of the NGO authors is to protect climate and biodiversity, benefit forest dependent communities and achieve sustainability and good governance globally. The EU has signed up to many multilateral environmental agreements and international conventions in this field. As a contribution to this, the regulation should eliminate the EU market for illegal timber and level the playing field for sustainable and responsible timber businesses. In addition, it should provide first steps by creating strong incentives to deter the illegal harvesting of timber and to ensure effective protection and sustainable use of forest resources.

Specific amendments are vital to redress the following major shortcomings and loopholes.

1. Define illegal actions and create clear offences.
2. Ensure benefits for climate, biodiversity, and forest dependent communities and support sustainability and good governance in the country of origin.

Due diligence requirements:

3. Extend due diligence obligation to all operators placing timber and timber products on the EU market,
4. Tighten up and clarify due diligence systems requirements.
5. Establish the rules for a reliable EU risk assessment procedure,

Monitoring, enforcement, sanctions:

6. Establish a mechanism for controlling and ensuring credible and independent monitoring,
7. Provide competent national authorities with powers to investigate crime and alleged infringements, take immediate measures towards enforcement and prosecute offenders.
8. Set a strong EU framework of minimum sanctions and penalty levels throughout the Community

Loopholes:

9. Close loophole which exempts certain wood products,
10. Ensure the immediate application of this Regulation.

1. Define illegal actions and create clear offences – Art 1, Art 3

The regulation requires operators to have due diligence systems in place to assess and manage the risk of illegally harvested timber entering their supply chain but does not define illegal actions nor make clear what constitutes an offence. This is a serious impediment to the enforcement of the law.

The proposal should be amended to explicitly regard as infringements the failure by an operator to establish and/or operate a due diligence system which meets the requirements of the regulation, and the placing on the market of any timber and timber products that have been illegally harvested, taken, sold, traded or possessed, if attempted or committed with intent, recklessly or by serious negligence.

2. Provide benefits for the climate, biodiversity, forest dependent communities and enhance sustainability and good governance in country of origin - Art 2

EU consumers must be guaranteed that the wood or wood products they buy have been legally sourced and do not contribute to further environmental damage. The Regulation should be amended to provide real benefits for the climate, biodiversity, forest dependent communities and enhance sustainability and good governance in country of origin. The scope of applicable legislation as defined in article 2 should be broadened to encompass all relevant laws related to environmental, social and economic sustainability of forests, as well as human rights and labour laws, property, fiscal and commercial laws. It should not be restricted only to laws directly related to forest management and conservation.

3. Extend due diligence obligation to all operators placing timber and timber products on the EU market - Art 2, Art 4, Recital 12 (delete), Recital 14

This regulation should apply to ALL operators supplying timber and timber products to the end consumer on the EU market (not only to the operator that first places the timber or timber product on the EU market). The obligation to exercise due diligence shall be extended to all operators to ensure full traceability from forest to retailers. Unless all operators are included, the risk of illegal timber or timber products being sold to consumers would seriously increase.

4. Tighten up and clarify due diligence systems requirements recital 15, - Arts 1 and 4

The Council and the European Parliament should strengthen and clarify the criteria and principles which define an effective due diligence system and require operators (traders, commercial entities, etc) to introduce a sufficient 'due diligence' system within a specified time frame. Operators need legal clarity and certainty on how to comply with the law. Strengthened criteria would include, for example, requirements for operators to:

- ensure the legality of timber products throughout the supply chain by means of a traceability system and third party verification,
- provide on the spot the documentation to prove the legality of their timber or timber products, with information on the country of origin [meaning where the timber was harvested and not where it was last processed], species (scientific name), volume, value and weight, the supplier operators who have been involved in supplying the timber or timber products, and those who will be supplied with these products;

5. Establish the rules for a reliable EU risk assessment procedure - Arts 4, (5+7)

Member States shall ensure that risk management procedures are implemented in an independent, objective and transparent manner. The regulation should set out clear criteria at EU level for operators for using risk management tools to decide which are the risk products or suppliers for monitoring and control efforts. This will avoid weaknesses and differing standards of risk management and reduce legal uncertainties. Amendments should therefore be inserted to describe:

- a) what a risk management procedure consists of,
- b) how this is to be implemented,
- c) how the Commission and Member States will help determine the level of risk, and what operators should do when faced with a risk of illegal logging and trade situation.

6. Establish a mechanism for controlling and ensuring credible and independent monitoring organisations (Arts 5+7)

The proposed legislation relies on private-based systems of legality verification and risk management (referred to as 'monitoring organisations' in the proposed Regulation). Environment groups have concerns that some of the existing schemes are not robust enough and therefore may not provide reliable proof of legality. Further concerns are that the establishment of accreditation procedure at national level could lead to differing standards and market distortion.

With a view to maintaining a level playing field within the EU, we recommend:

- Accreditation of monitoring organisations should be centralised at EU level,
- on the basis of the information submitted by the EU Member States, the European Commission should undertake responsibility for assessing applications and deciding whether to grant recognition,
- checks shall be carried out at regular intervals, or on the basis of substantiated concerns from third party, to ascertain that monitoring organisations comply with the requirements.
- the recognition of a monitoring organisation shall be suspended or withdrawn if it has been established that it no longer fulfils the requirements set out in the regulation.

The list of requirements provided with this regulation is insufficient and should be amended to ensure the credibility and independence of monitoring organisations. These should demonstrate appropriate expertise of the forest sector, and be legally and financially independent from the operators that they certify.

7. Provide competent national authorities with powers to control the trade in timber products, investigate crime and alleged infringements, take immediate measures towards enforcement and prosecute offenders - Art 7,

Competent authorities in the Member States should have a mandate to perform various controls on both monitoring systems and on individual operators where necessary. These controls should include regular checks, field audits, investigations, unannounced controls, raids and sting operations. Where serious infringements are suspected of having taken place, competent national authorities should be provided with powers to start full investigation and apply immediate enforcement measures (ie : immobilising transport vehicle, seizing and confiscating timber or timber products, etc) .

8. Set a strong EU framework of minimum sanctions and penalty levels throughout the Community - Art 12a (new), Art 13

Sanctions and penalties should be strong enough to dissuade operators from becoming involved in illegal timber transactions. The failure by an operator to establish and/or operate a due diligence system which meets all the requirements should also be sanctioned in an appropriate manner.

Using models of existing EU legislation in related fields (e.g.: EU regulation establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing), the proposed Regulation should recommend the use of criminal, financial or administrative sanctions and include penalties of the following type of sanctions:

- Fines should be proportionate to the tax losses and environmental damage occasioned by the infringements, and should be at least 'X' times the value of the timber or timber products obtained by the infringement of the regulation.
- Member States [may/shall] provide competent national authorities with the power to confiscate timber or timber products which have been placed on the market in contravention of the requirements of the regulation.
- Without prejudice to other provisions laid down in community law, pertaining to public funds, Member States shall not grant any public aid under national aid regimes or under community funds to operators convicted in an infringement of the regulation.

9. Close loophole which exempts certain wood products - Recital 13, Art 2, Art 12

ALL wood products which could contain illegally-sourced timber should fall under the scope of this Regulation. The Council and the European Parliament should close the loophole providing exemptions for certain wood products and ensure that wood products used for energy production (and other wood products which may be subject to mandatory sustainability criteria in the future) are covered by the law.

10. Ensure the immediate application of this Regulation

The Regulation should be applicable immediately after its entry into force. Deforestation and forest degradation are urgent matters. It is important to ensure a clear and detailed regulation at EU level to minimise the operationalising in the EU Member States. Application should not be delayed by an additional two years after entry into force. *Recital 23 should be deleted accordingly.*

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