



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL REGULATION

**concerning the establishment of a voluntary FLEGT licensing scheme
for imports of timber into the European Community**

(presented by the Commission)

{SEC(2004) 977}

EXPLANATORY MEMORANDUM

1. INTRODUCTION

In May 2003 the European Commission adopted an EU Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT) ⁽¹⁾. Council Conclusions on the Action Plan were adopted in mid-October ⁽²⁾.

The Action Plan sets out a new and innovative approach to tackling illegal logging, which seeks to support developing countries' efforts to strengthen governance with the incentives for good practice which can be provided by the EU internal market. The core components of the Action Plan are support for improved governance in wood-producing countries, and a licensing scheme to ensure only legal timber enters the EU.

The licensing scheme for timber imports will be implemented on a voluntary basis through a partnership agreements with wood-producing countries and regions that agree to co-operate with the EU on this matter.

In accordance with the request made by Council in its Conclusions, the Commission has undertaken the following steps with a view to meeting the mid-2004 reporting deadline:

1. Prepare a draft Regulation for the FLEGT timber import licencing scheme;
2. Along with Member States, enter into discussions with wood-producing countries to seek their views on partnership agreements;
3. Arrange analysis of further legislative options which could be used to support the objectives of the action plan.

This proposal sets out the legislative framework to introduce such a licensing scheme. A rolling programme of consultations involving the Commission, interested Member States and potential partner countries is ongoing. These are reported in detail in annex to the Recommendation for negotiating directives submitted along with this document. On the basis of these initial discussions, and other political contacts, a recommendation for a mandate to negotiate FLEGT voluntary partnership agreements is presented to Council along with this proposal.

The Commission has initiated a scoping exercise to assess additional legislative options which could be used to support the objectives of the FLEGT Action Plan, and will report back to Council on this work later in 2004.

2. EXTENDED IMPACT ASSESSMENT

An extended impact assessment analysis has highlighted the economic, social and environmental impacts of the proposed voluntary licensing scheme. In general terms, the strongest impact from the scheme would be felt in Africa, where the legal supply is

¹ COM(2003) 251.

² Council document 13439/03.

constrained in relation to demand from the EU. In Asia and Latin America, the EU market has more limited significance.

Partner countries stand to capture substantial additional revenues. Expected environmental benefits include reduced pressure on forest resources and protected areas. The proposal has more nuanced social impacts, with the loss of local jobs dependent on illegal logging offset by the improved practice that generally accompanies legal enterprises. There is a clear risk of illegal trade being directed to other markets, with legal production exported to the EU. Measures should be taken to mitigate this risk during implementation.

Within the EU, impact of the proposal would be transmitted through potential changes to the price and supply of imported timber. The internal impact is expected to be modest. Timber prices could rise as illegal timber is eliminated from supplies to the EU, but the impact on markets would depend on the price elasticity of timber products, and the extent to which substitute products become attractive.

The magnitude of impact depends on overall coverage achieved under the licensing scheme. Impact would be minimal if only some of the EU's major exporters participate, but would rise if all major exporters take part.

Impacts arising through implementing the scheme in tropical countries would be focused most strongly in six Member States which together account for 83% of imports of tropical timber products to the EU. Concerning timber from temperate countries, particularly Russia, impacts would be focused in the Nordic countries. Imports to the EU from Russia greatly exceed the volume of imports from tropical countries, and this would need to be accounted for in the design of any voluntary licensing scheme in partnership with the latter.

Provisions for monitoring the scheme will be built into the implementing partnerships with wood-producing countries, and are written into the draft Regulation.

On this basis, the Commission proposes a timber import licensing scheme, to be implemented on a voluntary basis through partnerships with wood-producing countries. A detailed proposal in this regard is hereby presented.

Proposal for a

COUNCIL REGULATION

concerning the establishment of a voluntary 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 Parliament welcomed the Communication on an EU Action Plan on for Forest Law Enforcement, Governance and Trade (FLEGT) as a first step to tackle the urgent issue of illegal logging and associated trade ^(3,4)
- (2) The Communication on an EU Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT)⁽⁵⁾ states the need for a voluntary FLEGT licensing scheme as a measure to ensure only legal timber enters the EU.
- (3) Implementation of the FLEGT licensing scheme requires that imports of relevant timber products into the territory of the Community be made subject to a system of checks and controls seeking to guarantee the legality of harvesting and export procedures.
- (4) The FLEGT licensing scheme will be entered into through voluntary Partnership Agreement between the EU and third countries and regions. Under such partnership agreements, exports of timber from partner countries and regions to the EU will be accompanied by a unique export licence, to be granted if the timber has been harvested in conformity with relevant national legislation. Timber originating from a partner country or region and arriving in the EU at a point designated for release for free circulation without such a licence will not be released.
- (5) The validity of licences for the relevant imported timber products should be properly verified by the competent authorities of the Community, and be subject to periodic independent audit and third-party monitoring to be agreed with partner countries.

³ OJ C 268, 07/11/2003 P. 0001-0002.

⁴ Parliament document 7014/04.

⁵ COM(2003) 251.

- (6) Each Member State should determine the sanctions applicable in the event of a breach of this Regulation.
- (7) The measures necessary for the implementation of this Regulation are to 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 ⁽⁶⁾.

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1

- 1. This Regulation establishes a Community system of rules for the import of certain timber products for the purposes of implementing the voluntary FLEGT licensing scheme, as set out in the Communication on an EU Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT) ⁽⁷⁾.
- 2. The voluntary licensing scheme shall be implemented through partnership agreements with wood producing countries.
- 3. Entering into a partnership agreement will imply a specific and binding political commitment on the part of partner countries and regions to join the FLEGT licensing scheme within an agreed schedule stipulated in the said partnership agreement.
- 4. Partnership agreements should include elements of institutional support, capacity building and technical assistance to facilitate implementation of the licensing scheme described herein, and additional actions to combat illegal logging and improve forest sector governance. Such elements will be designed to meet circumstances and needs in partner countries and regions and will thus be described within the specific partnership agreements.
- 5. This Regulation does not prejudice or substitute any provisions in force relating to customs formalities and controls.

Article 2

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

- (a) 'Forest Law Enforcement, Governance and Trade licensing scheme' (hereinafter 'FLEGT licensing scheme') means the licensing scheme for trade in timber negotiated with partner countries and regions;

⁶ OJ L 184, 17.7.1999, p.23.

⁷ COM(2003) 251

- (b) ‘partner country or region’ means any state or regional organisation for which the FLEGT Licensing Scheme is effective;
- (c) ‘partnership agreement’ means the agreement through which partner countries or regions become committed to implementing the FLEGT licensing scheme;
- (d) ‘regional organisation’ means an organisation comprised of sovereign states that have transferred competence to that organisation in respect of matters governed by the FLEGT licensing scheme;
- (e) ‘FLEGT licence’ means a document of a standard format which is to be forgery-resistant and tamper proof, verifiable, and which refers to a shipment of timber products as being in compliance with the requirements of the FLEGT licensing scheme, duly issued and validated by a partner country or region’s competent authority;
- (f) ‘third-party monitoring’ means a system of independent monitoring or auditing which provides assurance that FLEGT licences are issued only for legally harvested timber products;
- (g) ‘competent authority(ies)’ means the authority(ies) designated by a partner country or region to issue, validate or verify licences;
- (h) ‘timber products’ means the products set out in Annex II, to which the FLEGT licensing scheme applies, and which are imported to the EU for commercial purposes;
- (i) ‘illegally harvested timber’ means timber products harvested in violation of relevant national laws in partner countries or regions;
- (j) ‘imports’ means the release for free circulation of products within the meaning of Article 79 of Council Regulation (EEC) No. 2913/1992;
- (k) ‘export’ means the physical leaving or taking out from any part of the geographical territory of a partner country or region;
- (l) ‘country of origin’ means the country where the product originates, according to the Community provisions concerning non-preferential origin;
- (m) ‘shipment’ means a specifically identifiable consignment of timber products, as set out in Annex II;

CHAPTER II

IMPORT REGIME

Article 3

1. This FLEGT import regime shall apply only to exports from partner countries or regions which agree to take part in it.

2. Partner countries and regions shall join the FLEGT licensing scheme by entering into partnership agreement with the Community. An agreed schedule for implementing the commitments thereby entered into shall be specified in the partnership agreement.
3. Partnership agreements shall reflect the needs and circumstances of partner countries, but must include provisions for third-party monitoring to ensure transparency and credibility of the FLEGT licensing scheme.
4. The Commission will present recommendations for a negotiating mandate for such partnership agreements, on behalf of the Community, under the provisions set out in Article 300 of the EC Treaty.

Article 3a

The import of timber products from third countries shall be subject to the presentation of a valid certificate of origin following the provisions of Articles 47 of Commission regulation no. 2454/1993 as last amended.

Article 4

1. The release for free circulation into the Community of timber products originating in partner countries and regions shall be prohibited unless the consignment of timber products is accompanied by a valid FLEGT licence issued by the competent authority of a partner country or region.
2. Where schemes already exist to verify the legality of timber products originating from partner countries or regions, such schemes may form the basis of the FLEGT licence. This would be on condition that those schemes have been assessed and approved to agreed requirements in accordance with the procedure laid down in Article 12(2), so as to provide the necessary assurance as to the legal origin of the timber products concerned.
3. Timber products of species listed under Annexes A, B and C of Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein shall be exempt from this requirement. The Commission shall review this exemption, in accordance with the procedure laid down in Article 12(2), five years after the entry into force of this Regulation.

Article 5

1. The FLEGT licence shall be presented with the customs declaration for release for free circulation in the Community. The customs authority shall keep the original FLEGT licence together with the customs declaration.
2. The customs authority shall provide the Commission, or persons or bodies designated by the Commission, with access to the original licences, in the event that problems arise which impair the effective operation of the FLEGT licensing scheme.

3. The customs authority shall grant access to the original licences to persons or bodies designated by partner countries or regions as responsible for the independent monitoring of the FLEGT licensing scheme.
4. The customs authority shall decide on the need for further verification of shipments using a risk-based approach, and including physical inspection of shipments. The Commission may seek to confirm that adequate verification and inspection is taking place, to support effective monitoring of the FLEGT licensing scheme.
5. In case of doubt as to the validity of the licence, the customs authority will undertake additional verification and seek further clarification, as laid down in the Partnership Agreement with the exporting country or region.

Article 6

1. If a customs authority establishes that the conditions in Article 4 are not fulfilled, it shall detain and impound the shipment, and proceed in accordance with national legislation in force.
2. If a customs authority finds that the failure to present a FLEGT licence is not done knowingly or intentionally, it may proceed with release of the shipment if there is sufficient evidence that a valid FLEGT licence exists. The valid FLEGT licence has to be presented to the competent customs authority within the delays laid down in Article 256 of Commission Regulation No. 2454/1993.

Article 7

The Commission shall provide all customs authorities of the Member States with the names and other relevant details of the competent authorities designated by partner countries and regions, authenticated specimens of stamps and signatures attesting that a licence has been legally issued, and any other relevant information received in respect of licences.

Article 8

1. Member States shall be required to submit a yearly report by April of each year which includes the following details:
 - (a) volumes of timber products entering the Community under the FLEGT licensing scheme, as per HS Headings specified in Annex II and per each partner country or region.
 - (b) the number of FLEGT licences submitted from each partner country or region, and the volumes and types of timber covered.

The Commission may determine the format of this report in order to facilitate monitoring of the working of the FLEGT licensing scheme.

2. The Member States shall submit to the Commission by April of each year a report on seizures and the follow-up measures, including the following information:
 - (a) the number of seizures and the volume and value of timber products seized.
 - (b) progress with legal proceedings instigated to enforce this Regulation.

CHAPTER III

GENERAL PROVISIONS

Article 9

The Commission and the partner countries and regions, following initial experiences gained from the implementation of this regulation, may review and modify the specifications of the licence with a view to improving its security, processing and functionality for the purposes of the FLEGT licensing scheme.

Article 10

1. The Commission, with the agreement of the Council, may add to and amend the list of partner countries and regions, and the competent authorities designated by partner countries and regions to issue and validate their licences, as set out in Annex I. To include additional partner countries and regions under Annex I, the Commission will submit to the Council recommendations for a negotiating mandate under the provisions set out in Article 300 of the EC Treaty.
2. The Commission, with the agreement of the Council and partner countries and regions, may add to and amend the list of products to which the FLEGT licensing scheme applies, as set out in Annex II.

Article 11

The Commission shall aim to ensure optimal implementation of the FLEGT licensing scheme, in particular through co-operation with partner countries and regions. To this end, the Commission shall, in particular, exchange information with partner countries and regions on trade in timber products and, where appropriate, and co-operate in monitoring activities.

Article 12

1. In the performance of its duties, the Commission shall be assisted by a Committee (hereinafter referred to as ‘the Committee’). A suitable Committee for this purpose shall be identified within the established comitology.

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 4(3) of Decision 1999/486/EC shall be set at ten working days.

3. The Committee shall establish its rules of procedure.

Article 13

The Committee referred to in Article 12 may examine any question concerning the application of this Regulation. Such questions may be raised either by the Chairman or by a representative of a Member State.

Article 14

1. Any natural or legal person providing services directly or indirectly related to the activities covered by Article 4 shall exercise due diligence for establishing that the activities for which it provides services comply with the provisions of this Regulation.
2. The participation, knowingly and intentionally, in activities, the object or effect of which is, directly or indirectly, to circumvent the provisions of this Regulation shall be prohibited.
3. The Commission shall be notified of any information suggesting that the provisions of this Regulation are being, or have been, circumvented.

Article 15

1. Information supplied in accordance with this Regulation shall be used only for the purposes for which it was provided.
2. Documents held by the Commission containing information regarding the FLEGT licensing scheme shall in general be accessible to the public. However certain documents, such as those containing information of a commercial nature or concerning the privacy and integrity of individuals, may be exempt from this requirement, or where relevant require the prior agreement of the third party source of information before being disclosed, in accordance with Article 4 of Regulation 1049/2001/EC Regarding Public Access to European Parliament, Council and Commission Documents and with Article 287 of the treaty establishing the European Community.
3. Communication of such information shall however be permitted where the Commission is obliged or authorised to do so, in particular in connection with legal proceedings. Such communication must take into account and make due arrangements for the legitimate interests of the person concerned that his or her confidentiality not be abused and in particular that information such as their identity and business secrets should not be divulged.

4. This Article shall not preclude the disclosure of general information by the Commission. Such disclosure shall not be permitted if this is incompatible with the original purpose of such information.
5. In the event of a breach of confidentiality, the originator of the information shall be entitled to ensure that it be deleted, disregarded or rectified, as the case may be.

Article 16

Compliance with this Regulation does not discharge any natural or legal person from compliance, fully or partially, with any other obligation under Community or national legislation.

Article 17

1. Each Member State shall determine the sanctions to be imposed where the provisions of this Regulation are infringed. Such sanctions shall be effective, proportionate and dissuasive and shall be capable of preventing those responsible for the infringement from obtaining any economic benefit from their action. Member States shall also determine how to deal with timber products seized when the provisions of this Regulation are infringed.
2. Pending the adoption, where necessary, of any legislation to this end, the sanctions to be imposed where the provisions of this Regulation are infringed shall, where relevant, be those determined by the Member States in order to give effect to Article 5 of Regulation (EC) No 303/2002.

Article 18

This Regulation shall apply:

- (a) within the Community territory.
- (b) to any national of a Member State, and to any legal person, entity, or body which is incorporated or constituted under Community law or under the law of a Member State.

Article 19

1. This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.
2. This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [...].

For the Council
The President
[...]

ANNEX I

List of partner countries and regions in the FLEGT licensing scheme and their duly appointed competent authorities, as referred to in articles 2, 4, 7 and 10

ANNEX II

Products to which the FLEGT licensing scheme applies

HS – Heading	Description
4403	Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared.
4406	Railway or tramway sleepers (cross-ties) of wood.
4407	Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end-jointed, of a thickness exceeding 6 mm.
4408	Sheets for veneering (including those obtained by slicing laminated wood), for plywood or for other similar laminated wood and other wood, sawn lengthwise, sliced or peeled, whether or not planed, sanded, spliced or end-jointed, of a thickness not exceeding 6 mm.
4412	Plywood, veneered panels and similar laminated wood.