



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 6 October 2005

**Interinstitutional File:
2004/0173 (ACC)**

12935/05

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REPORT

from : Working Party on Forestry

dated : 30 September 2005

to : Coreper

No. prev. doc. : 16101/04

No. Cion prop. : 11656/04

Subject : Proposal for a Council Regulation concerning the establishment of a FLEGT
licensing scheme for imports to the European Community

I. INTRODUCTION

1. At its meeting on 30 September 2005 the Working Party completed its work on the above-mentioned proposal for a Regulation as well as on the proposed mandate (see doc 12892/05). The text as amended by the Working Party appears in Annex. The remaining reservations are summarized below.

II. REMAINING RESERVATIONS¹

Legal basis

2. The BE, DK, DE and ES delegations have entered reservations of substance on the legal basis and consider that article 175 TEC is the appropriate basis instead of article 133 TEC.

The Council Legal Service **DELETED** ².

Circumvention

3. See results of the Working Party on the mandate: points 6-13 in doc 12892/05.

Article 4.2

4. The BE, DK and PT delegations maintained a reservation on this article, preferring the regulatory procedure instead of the management procedure.

Article 4.3

5. The BE and DE delegations prefer a review clause applying after two years instead of five years.

¹ Furthermore, the DK delegation has a parliamentary scrutiny reservation and the PT and SE delegations maintained scrutiny reservations on the whole text of the proposal

² Doc. 14767/04.

Article 5.5 and 5.6

6. The DE, FR, FI, SE and SI delegations maintained a scrutiny reservation on these articles and the DK delegation reserved its position on article 5.6.

New paragraph in Article 5

7. The DE delegation asks to insert the following paragraph:
" The Member States may collect fees and costs to cover the necessary expenses arising from official acts of the competent authorities made for control purposes under this article."

Article 10

8. The DK, FR, IE, FI, PT and SE delegations had reservations on this article. They would prefer to maintain a reference to the chapters of the customs code and not as proposed by the Presidency at six digit heading level.

Article 12

9. The PT delegation maintained a scrutiny reservation on the amended version of this article (**DELETED** the legal service **DELETED**).

III. CONCLUSION

10. The Working Party has decided to submit the present file to the Permanent Representatives Committee with a view to possible adoption by the Agriculture and Fisheries Council at a forthcoming session.

Presidency text 5 October 2005

Proposal for a

COUNCIL REGULATION

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

**PARLAMENTARY SCRUTINY RESERVATION ON THE WHOLE TEXT BY DK,
SCRUTINY RESERVATIONS BY PT AND SE.**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133³ 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^(4,5)
- (2) The Action Plan puts emphasis on governance reforms and capacity building, supported by actions aimed at developing multilateral co-operation 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 only timber products that have been legally produced subject to the national legislation of the producing country enter the EC, and that the licensing scheme should not impede legitimate trade.

³ Reservations by Belgium, Spain, Germany and Denmark – propose to change legal base to Article 175 (environment)

⁴ OJ C 268, 07/11/2003 P. 0001-0002.

⁵ Parliament document 7014/04.

- (4) Implementation of the licensing scheme requires that imports of relevant timber products into the territory of the EC be made subject to a system of checks and controls seeking to guarantee the legality of such products.
- (5) To this end the EC will conclude voluntary Partnership Agreements with countries and regional organisations, which 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 FLEGT licensing scheme, specified timber products exported from a partner country and arriving in the EC at any customs point designated for release for free circulation, must be covered by a FLEGT licence issued by the partner country, stating that the timber has been legally-produced or imported into a Partner Country in accordance with national laws as laid down in the respective Partnership Agreement. This will be subject to third party monitoring.⁶
- (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 license for free circulation within the Community.
- (8) Each Member State should determine the penalties applicable in the event of a breach of this Regulation.
- (9) The licensing scheme will initially cover a limited range of timber products. Where agreed the range of products could be extended to other product categories.
- (10) In order to modify the number of countries included in the FLEGT licensing scheme and the range of products covered by the FLEGT licensing scheme, it is important to revise the annexes promptly when necessary. Those revisions will be made taking into account the progress in implementation of the FLEGT Partnership Agreements. A partner country may be added to Annex 1 when it notifies the Commission, and the Commission confirms, that the partner country has established all the controls needed to issue FLEGT licenses for all the products currently listed in Annex II A. A Partner Country may be removed from Annex 1 either when it has given one year's notice of its intention to terminate the Partnership Agreement or with immediate effect, in the case of suspension of the Partnership Agreement.
- (11) Annex II A may be modified when the Commission and all Partner Countries agree such amendment. Annex II B may be modified when the Commission and the Partner Country concerned agree to such amendment. The above mentioned revisions would be implementing measures of a technical nature and their adoption should be entrusted to the Commission in order to simplify and expedite the procedure. Such amendments shall comprise commodity codes, at four digit heading level or 6 digit subheading level of the 2002 version of Annex I to the Harmonised System Commodity Description and Coding System as amended

⁶ Reservation Germany and Belgium – relates to circumvention

- (12) 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 ⁽⁷⁾ 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 and with a view to increased efficiency, the most appropriate.

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 FLEGT licensing scheme ⁽⁸⁾.
2. The licensing scheme shall be implemented through voluntary partnership agreements with timber producing countries.
3. This Regulation applies to imports of timber products set out in Annex II A and B from Partner Countries listed in Annex I.

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 issuing of licenses for timber products for export to the EC from partner countries and its implementation in the EC, in particular its provisions on border controls;
- (b) 'partner country' means any state or regional organisation that enters into a FLEGT Partnership Agreement as listed in Annex I;
- (c) 'partnership agreement' means the agreement between the EC and a partner country through which the EC and partner countries commit themselves to work together in support of the FLEGT Action Plan and to implement the FLEGT licensing scheme;

⁷ OJ L 184, 17.7.1999, p.23.

⁸ COM(2003) 251

- (d) ‘regional organisation’ means an organisation comprised 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;
- (e) ‘FLEGT licence’ means a shipment based or market participant based document of a standard format which is to be forgery-resistant and tamper proof, 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.
- (f) ‘market participant’ means an actor, private or public, involved in forestry or transformation or trade of timber products.
- (g) ‘licensing authority(ies)’ means the authority(ies) designated by a partner country to issue and validate FLEGT licences;
- (h) ‘competent authority (ies)’ means the authority(ies) designated by the EU Member States to verify FLEGT licences;
- (i) ‘timber products’ means the products set out in Annex II, to which the FLEGT licensing scheme applies, and which are imported to the EC for commercial purposes as set out in Chapter 1, Article 1, Paragraph 6 of Regulation (2454/93).
- (j) ‘legally produced timber’ means timber products produced in, or imported into a partner country in accordance with national laws determined by a partner country and laid down in the Partnership Agreement⁹
- (k) ‘imports’ means the release for free circulation of timber products within the meaning of Article 79 of Council Regulation (EEC) No. 2913/1992;
- (l) ‘shipment’ means a shipment of timber products
- (m) ‘export’ means the physical leaving or taking out of timber products from any part of the geographical territory of a partner country to the EC.
- (n) ‘third party monitoring’ means a system through which an organisation independent of a partner country government authorities and its forest and timber sector monitors and reports on the operation of the FLEGT licensing scheme.

⁹ Reservation by Belgium – relates to circumvention

CHAPTER II

LICENSING SCHEME

Article 3

1. This FLEGT Licensing Scheme shall apply only to imports from partner countries.
2. An agreed schedule for implementing the commitments thereby entered into shall be specified in each Partnership Agreement.

Article 3a Deleted¹⁰

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.¹¹
2. Where systems exist that guarantee the legality and the reliable tracking of timber products exported from partner countries, such schemes may form the basis of the FLEGT licence. This would be on condition that those schemes have been assessed and approved in accordance with the procedure laid down in Article 11(2)¹², so as to provide the necessary assurance as to the legality 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 the requirements set out in Articles 4.1. The Commission shall review this exemption, in accordance with the procedure laid down in Article 11(3), five¹³ years after the entry into force of this Regulation.

¹⁰ Reservation by Germany and Belgium against deletion –relates to circumvention.

¹¹ Reservation by Germany, Slovenia, Spain and Belgium– relates to circumvention.

¹² Reservation on Article 11(2) by Finland, Portugal and Belgium relates to comitology

¹³ Reservation by Belgium and Germany – preference for two year period for review

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 authority shall keep a record – in electronic or paper format – of the original FLEGT licence together with the applicable customs declaration. Import of timber products under a FLEGT market participant license will be allowed as long as the market participant's license 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, in the event that problems arise which impair the effective operation of the FLEGT licensing scheme.
3. The competent authorities shall grant access to the relevant documents and data to persons or bodies designated by partner countries responsible for the third party monitoring of the FLEGT licensing scheme save that competent authorities shall not be required to provide any information which they are not permitted to communicate pursuant to 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 undertake additional verification and seek further clarification, as laid down in the Partnership Agreement with the exporting country.¹⁴
6. It shall be sufficient reason for the customs authorities to suspend release of or detain timber products if there is information available to indicate that the license is not valid. Costs incurred while the verification is completed shall be at the expense of the importer, save where the member state determines otherwise.¹⁵
7. 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.
8. The Commission shall develop the detailed requirements in respect of this article, in accordance with the procedure laid down in Article 11(3).¹⁶

¹⁴ Reservation by Germany, France, Sweden, Finland and Slovenia.

¹⁵ Reservation by Germany, France, Denmark, Sweden, Finland and Slovenia.

¹⁶ Reservation by Portugal – relates to comitology proposals at Article 11

Article 6

1. If the competent authorities establish that the conditions in Article 4.1 are not fulfilled, it shall proceed in accordance with national legislation in force.
2. The 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 for this Regulation and for communication with the Commission.
2. The Commission shall provide all competent authorities of the Member States with the names and other relevant details of the licensing authorities designated by partner countries, 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 for the preceding year January to December by the end of April of each year which shall include the following details:
 - (a) quantities of timber products imported into the Member State under the FLEGT licensing scheme, as per HS Headings specified in Annex II and per each partner country.
 - (b) the number of FLEGT licences received, as per HS Headings specified in Annex II and per each partner country.
 - (c) ¹⁷
 - (d) the number of cases and quantities of timber products involved where Article 6.1 has been applied.
2. The Commission shall determine the format of this report in order to facilitate monitoring of the working of the FLEGT licensing scheme.

¹⁷ Reservations against the deletion by Belgium and Germany – relates to circumvention

3. The Commission shall prepare a yearly synthesis report by June of each year, based on the information submitted by the Member States for the previous calendar year and disseminated according to Regulation 1049/2001.

CHAPTER III

GENERAL PROVISIONS

Article 9

The Commission shall present to the Council two years after the entering into force of the first Partnership Agreement a report on the implementation of this Regulation, in particular based on the synthesis reports mentioned in Article 8.3 and the reviews of Partnership Agreements. This report shall be accompanied, where appropriate, by proposals for improvement.

*Article 10*¹⁸

1. The Commission may amend the list of partner countries, and their appointed licensing authorities as set out in Annex I in accordance with the procedure laid down in Article 11(3).
2. The Commission may amend in accordance with the procedure laid down in Article 11(3) the list of timber products in Annex IIA to which the FLEGT licensing scheme applies. Those revisions will be made by the Commission taking into account the implementation of the FLEGT Partnership Agreements. Such amendments shall comprise commodity codes, at four digit heading level or 6 digit subheading level of the 2002 version of Annex I to the Harmonised System Commodity Description and Coding System as amended.

*3. The Commission may amend in accordance with the procedure laid down in Article 11(3) the list of timber products in Annex IIB to which the FLEGT licensing scheme applies. Those revisions will be made by the Commission taking into account the implementation of the FLEGT Partnership Agreement. Such amendments shall comprise commodity codes, at four digit heading level or 6 digit subheading level of the 2002 version of Annex I to the Harmonised System Commodity Description and Coding System as amended and shall only apply to that partner country as set out in Annex IIB.*¹⁹ Article 11

1. The Commission shall be assisted by a Committee (hereinafter referred to as ‘the Forest Law Enforcement Governance and Trade (FLEGT) Committee’).

¹⁸ Reservation on the whole article by Denmark, Finland, France, Ireland, Portugal and Sweden. Reservations by Portugal against all Comitology references.

¹⁹ Reservation by Finland, Sweden and Denmark – relates to Customs scope of timber product coverage

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 1999/468/EC shall be set at three months.

3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months

4. The Committee shall establish its rules of procedure.

Article 12

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

²⁰

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

Done at Brussels, [...].

For the Council
The President
[...]

²⁰ Reservation by Portugal

Annex I

List of partner countries and their duly appointed licensing authorities

Annex IIA

Products which apply to all Partner Countries in Annex I

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.

ANNEX IIB

Products which apply only to listed Partner Countries

Partner Country	HS – Heading	Description