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2013/0010 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Council Regulation (EC) No 2173/2005 on the establishment of a FLEGT
licensing scheme for imports of timber into the European Community**

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The Treaty on the Functioning of the European Union (TFEU) makes a distinction between the powers delegated to the Commission to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act as laid down in Article 290(1) of the TFEU (delegated acts), and the powers conferred upon the Commission to adopt uniform conditions for implementing legally binding Union acts as laid down in Article 291(2) of the TFEU (implementing acts).

In the context of the alignment of Regulation (EC) No 2173/2005¹ to the new rules of the TFEU, powers currently conferred to the Commission by that Regulation have been re-classified into measures of delegated nature and measures of implementing nature.

Following this exercise, a draft proposal for amendment of Regulation (EC) No.2173/2005 has been prepared.

Pursuant to Article 290 of the Treaty, the Legislator gives the Commission the task to complete or modify certain non-essential elements of that Regulation.

The Commission may therefore adopt delegated acts to review the exemption of 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 therein². The Commission is further empowered to adopt detailed requirements for application of Article 5. By means of delegated acts the Commission may also amend the list of partner countries and their designated licensing authorities as set out in Annex I; the list of timber products set out in Annex II to which the FLEGT licensing scheme applies irrespective of the partner country as well as the list of timber products set out in Annex III to which the FLEGT licensing scheme applies only in relation of the corresponding partner country.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

There was no need for consultation of interested parties or for impact assessment.

3. LEGAL ELEMENTS OF THE PROPOSAL

• Summary of the proposed action

Identify the delegated powers of the Commission in Council Regulation (EC) No 2173/2005 and establish the corresponding procedure for adoption of these acts.

• Legal basis

Article 207(2) of the Treaty on the Functioning of the European Union.

¹ OJ L 347, 30.12.2005, p. 1.

² OJ L 61, 3.3.1997, p. 1.

- **Subsidiarity principle**

The proposal falls under exclusive competence of the European Union.

- **Proportionality principle**

The proposal is amending measures which already exist in Council Regulation (EC) No 2173/2005, therefore no concern on the principle of proportionality arises.

- **Choice of instrument**

Proposed instrument: Regulation of the European Parliament and of the Council.

Other means would not be adequate for the following reason: a Regulation must be amended by a Regulation.

4. BUDGETARY IMPLICATION

This measure does not involve any additional Union expenditure.

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Regulation (EC) No 2173/2005³ confers powers upon the Commission in order to implement some of the provisions of that Regulation.
- (2) As a consequence of the entry into force of the Treaty on the Functioning of the European Union (TFEU), the powers conferred upon the Commission under Regulation (EC) No 2173/2005 need to be aligned to Article 290 and Article 291 TFEU.
- (3) In order to apply some of the provisions of Regulation (EC) No 2173/2005, the power to adopt acts in accordance with Article 290 TFEU (Treaty on the Functioning of the European Union) should be delegated to the Commission in respect of the revision of the exemption of 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 flora⁴; the adoption of detailed rules for application of Article 5 of Regulation (EC) No 2173/2005, and the amendments to Annexes I, II and III to that Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely

³ OJ L 347, 30.12.2005, p. 1.

⁴ OJ L 61, 3.3.1997, p. 1.

and appropriate transmission of relevant documents to the European Parliament and to the Council.

- (4) In order to ensure uniform conditions for implementation of this Regulation, implementing powers should be conferred on the Commission to assess and approve existing schemes that guarantee the legality and reliable tracking of timber products exported from partner countries with a view to becoming the basis of a FLEGT licence. Those powers should be exercised in accordance with Article 5 of Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers⁵.
- (5) Regulation (EC) No 2173/2005 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 2173/2005 is amended as follows:

- (1) In Article 4, paragraphs 2 and 3 are replaced by the following:

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

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

3. Timber products of species listed in Annexes A, B and C to Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade⁶ therein shall be exempt from the requirement laid down in paragraph 1 of this Article.

The Commission shall be empowered to adopt delegated acts in accordance with Article 11a to review that exemption."

- (2) In Article 5, paragraph 9 is replaced by the following:

"9. The Commission shall be empowered to adopt delegated acts in accordance with Article 11a to adopt detailed requirements for application of this Article."

- (3) Article 10 is replaced by the following:

⁵ OJ L 55, 28.2.2011, p. 13.

⁶ OJ L 61, 3.3.1997, p. 1.

"Article 10

1. The Commission shall be empowered to adopt delegated acts in accordance with Article 11a to amend the list of partner countries and their designated licensing authorities as set out in Annex I.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 11a to amend the list of timber products as set out in Annex II to which the FLEGT licensing scheme applies. Those amendments shall be adopted 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 six-digit subheading level of the current version of Annex I to the Harmonised Commodity Description and Coding System.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 11a to amend the list of timber products as set out in Annex III to which the FLEGT licensing scheme applies.. Those amendments shall be adopted 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 six-digit subheading level of the current version of Annex I to the Harmonised Commodity Description and Coding System and shall only apply in relation to the corresponding partner countries as set out in Annex III."

(4) Article 11 is amended as follows:

(a) Paragraph 1 is replaced by the following:

"1. The Commission shall be assisted by the Forest Law Enforcement Governance and Trade (FLEGT) Committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011."

(b) paragraph 2 is deleted.

(c) paragraph 3 is replaced by the following:

"3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply."

(d) paragraph 4 is deleted.

(5) The following Article 11a is inserted:

"Article 11a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of powers referred to in Articles 4(3) and 5(9) and in paragraphs 1, 2 and 3 of Article 10 shall be conferred for an indeterminate period of time from the date of the entry into force of this Regulation.

3. The delegation of powers referred to in Articles 4(3) and 5(9) and in paragraphs 1, 2 and 3 of Article 10 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Articles 4(3) and 5(9) and paragraphs 1, 2 and 3 of Article 10 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or of the Council."

Article 2

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

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