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Introduction

For two decades Just Forests has endeavored to highlight the urgent need for Irish society to source their timber needs from responsibly-managed forests worldwide. We have brought the matter of ‘*responsible timber sourcing*’ to numerous government departments, state agencies, local authorities and professional bodies. We have also provided development education (DE) and education for sustainable development (ESD) to the Irish public and schools system through our travelling exhibition –Wood of Life.

Ireland has a particular responsibility for deforestation and illegal logging. Economic development and consumption in this country is very much dependent upon natural resources from other parts of the world, in particular some of the poorest countries of Africa, Latin America and S.E. Asia. This is particularly true for timber. Most of the logging in tropical and boreal regions focuses on high-value trees that are exported for consumption in Europe and Asia. Ireland’s shameful lack of deciduous tree cover has compelled us to rely on other countries for our hardwood timber needs. We are by far the most import-reliant country in the EU (after Iceland) for quality hardwood timber. For centuries this country has imported hardwood timber from many regions of the world and continues to do so.

While China’s imports of tropical timber is skyrocketing, only half of it is actually consumed in China, the other half is re-exported to EU countries, like Ireland, and US markets in the form of wood products (plywood for hoarding, flooring, furniture, etc). As a global consumer, trade partner and investor, Ireland has an obligation to consider the impact of its policies and actions on sustainable development. It also has the responsibility to promote equity in the use of forest resources.

Consumer Protection

China –like Ireland, is a signatory to CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora). It is Just Forests strong belief that both China and Ireland are grossly violating the spirit of CITES. While maybe staying within the ‘legally established’ parameters of the Convention, common sense and moral judgement would say that both countries are acting irresponsibly by having no regard what-so-ever for **consumer protection and environmental protection**. Irish consumers of wood-based products have a right under EU law to guarantees that the furniture they buy is not contributing to species extinction. Milieudensief (Friends of the Earth, Netherlands) commissioned a report in 2007, which explores the potential of CITES as a tool, to combat trade in either wood products which derive from unsustainably managed forests or illegal timber. In this regard we have made a formal complaint to EU DG-Environment and DG-Consumer Protection imploring them to use CITES as a means to stop this practice of timber species decline and make it an offence for Ireland and all EU member states to import illegal Timber.

Submission Regarding the Consultation on a European Commission 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 market¹

1) Are you content that the costs and benefits reflected in this consultation impact assessment reflect the actual costs to your organisation? Please provide any evidence of further potential costs and benefits.

Just Forests considers that the impact assessment study carried out by the European Commission was comprehensive and sound enough to support this legislative proposal. However, we regret that the environmental costs of ecosystem loss resulting from illegal logging have been largely disregarded in this study.

To our knowledge there has been no consultation impact assessment carried out in Ireland. With regards to the UK consultation impact assessment, we support our UK associates findings. They did not find the assessment particularly helpful in terms of indicating actual costs. They also found that there was a huge range in estimated costs and wide variation in the assumptions that were taken to assess these costs. They concluded that it was difficult to assess what the actual costs would be.

2) Are you content that a prohibition on the placing of illegal timber on the Community market for the first time would strengthen the Regulation in a proportionate and appropriate way?

A key strength of the Regulation is that for the first time it requires the operation of a due diligence procedure in order to manage risk. As the regulation currently stands after the European Parliament vote, it is an offence to have knowingly, recklessly or negligently failed in operating a due diligence procedure. These offences apply not only to those first placing illegal timber and wood products on the Community market, but also to those making such products available in the market place. It is not currently an offence to be in possession of illegal timber and wood products in the first place.

Just Forests recently wrote to the EU Commissioner for Consumer Affairs requesting her to make it an offence to sell wood-based products that derive from illegally-logged timber. Irish/EU consumers of wood-based products have a right under EU law to guarantees that the furniture they buy is not the proceeds of illegal-logging operations and is not contributing to species extinction.

Just Forests also believes that focusing a prohibition only on the placing of illegal timber on the Community market, (if such a prohibition can be agreed upon), would not be appropriate for this legislation and that it would also have to cover those making such products available in the market place. It could be argued that if the importer has complied with the regulation, there will be no problem further up the supply chain. This may not necessarily be so. It may sometimes only be possible to detect illegal timber after the products have already been sold onto the EU market.

¹ This submission is based on the EC Regulation, not on the current version of the Regulation, as voted by the European Parliament.

If a retailer is tipped off that the products already purchased are in fact illegal timber, failure to cover the full supply chain means that this retailer would be under no obligation to address the matter. This undermines the aim of this regulation which is to, “detect and deter trade in illegal timber”. There does not seem to be a clear policy reason to exempt all subsequent traders from any due diligence obligation, or to limit the ability of enforcement authorities to deal with illegally harvested timber once it is sold on (unless they can rely on existing laws). This is very different to the CITES regime where any commercial dealing is caught to some extent, depending on the list of the species concerned.

Obviously the intention of extending the accountability throughout the supply chain is focused on ensuring that deliberate, large scale fraud is no longer possible.

3) Are you content with the scope of the current proposal, which covers only those operators who first place timber on the EU market?

No. This regulation should apply not only to those who first place timber on the EU markets but also to all those who make timber and wood products available in the market place. The obligation to exercise due diligence should 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.

In addition, we believe 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, at least at the point of entry.
- provide on the spot documentation (where deemed necessary) 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), concession, 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. As the timber/timber product progresses through the supply chain, it would be the responsibility of those at each step to keep a record of who has supplied the timber/timber product and who it is sold on to. This means that a product can always be traced back to its point of entry into the EU and is our preferred approach.

Refined methods of timber identification can now ensure that if fraudulent or inaccurate paper work is suspected, spot checks can be done on species or even potentially country of origin and concession (e.g. through isotope tracking – such methods are currently being used to check on the veracity of organic farming claims).

4) Are the definitions of ‘operator’, ‘placing on the market’, and ‘risk management’ clear in their coverage?

No. We suggest the following changes:

Operator:

The definition should be changed to mean any natural or legal person that places or *makes available* timber on the market place.

Placing on the market:

The definition should include the first making available of timber and timber products on the Community market; subsequent processing and distribution of timber does not constitute 'placing on the market'.

Risk management:

The definition should be changed to include *the systematic identification of risks and the implementation of* a set of measures and procedures carried out by operators in order to minimise the risk of placing illegally harvested timber and timber products on the market. It should also include activities such as collecting data and information, analyzing and assessing risk, prescribing and taking action, and regular monitoring and review of the process and its outcomes, based on international, Community or national sources or strategies. Therefore it should define what a risk management procedure consists of;

- how this is to be implemented;
- how the Commission and Member States will help determine the level of risk;
- and what operators should do when faced with products running a high risk of being illegal

5. Is the range of legislation captured in 'applicable legislation' clear in its scope, and what is the feasibility of collecting or having access to the information required within this legislation?

No, it should be amended to include legislation whether national, regional or international; in particular that concerning the conservation of biological diversity, forest management, resources use rights and the minimization of adverse environmental impacts. It should also take into account property tenure, rights of indigenous peoples, labour and community welfare legislation, taxes, import and export duties, royalties or fees related to harvesting, transportation, marketing and consumer rights/protection.

Given the concerns expressed by small forest owners and small and medium based enterprises at the administrative burden this could potentially place upon them, there needs to be a balance here between the level of risk that these fundamental requirements have not been fulfilled and the requirements of the due diligence procedure. This does not mean however that small and medium based enterprises should be excluded from this regulation. To do so would be to create what could be a highly damaging loophole in the legislation. It would also be inconsistent with the approach of other, similar legislation. The CITES and Basel regimes contain no such exception for example.

6. Are you content with the exemption for biomass and related products?

No. 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. This is critical because increasingly the wood products proposed for exemption are being harvested and produced in high risk parts of the world, and therefore subject to the same legality (and environmental sustainability) concerns as other timber products.

7. Are you content with the exemptions for 338/97 (CITES) and 2173/2005 (FLEGT)?

Yes, if the implementation of the Voluntary Partnership Agreements is monitored and the effectiveness of the implementation of a VPA is reviewed at a certain point to guarantee that the VPA is working.

8. Are the information requirements of the due diligence system sufficient for ensuring legality? Do you have any concerns with either obtaining, or making available this information?

No. Existing national legislative supervision and any voluntary chain of custody mechanism which fulfill the requirements under this Regulation should be used as a basis for the due diligence system.

Operators who make timber and timber products available on the market should, throughout the supply chain, be able to:

- (i) identify the operator who has supplied the timber and timber products, and the operator to whom the timber and timber products have been supplied;
- (ii) provide upon request information on the name of the species, the country/countries of harvest and where feasible the concession of origin, either by retaining this information from the point of entry, or by ensuring that their product can be tracked back through the supply chain.
- (iii) check, where necessary, that the operator who has placed the timber and timber products on the market has fulfilled the obligations of this Regulation.

9. Should the Risk Management criteria and procedures be further clarified, or are these sufficient for now, ahead of further elaboration in an Implementing Regulation?

No they should be clarified and clear rules established. Based on legal advice, Just Forests considers that ‘risk’ means the likelihood of an event that may occur with regard to timber or timber products imported into or exported from the territory of the Community, which prevents the correct application of this Regulation. “Risk management means the systematic identification of risk and the implementation of all measure necessary for limiting exposure to risk. This should include activities such as collecting data and information, analysing and assessing risk, prescribing and taking action, and regular monitoring and review of the process and its outcomes, based on international, Community or national sources or strategies

10 Are you content that the responsibility for the development of criteria to assess the risk of illegally harvested timber rests with the European Commission, and do you have views on how to best develop useful and relevant criteria?

Yes, provided that it takes place under a transparent comitology procedure which includes all stakeholders. Criteria should be based on factors related to the product type, source or complexity of

the supply chain with certain categories of timber and timber products, or suppliers considered 'high risk' and requiring extra due diligence obligations from the operators. These may include:

- requiring additional documents, data or information
- requiring third party audits
- giving prior notification to the control authorities of the date and details of purchasing

Timber and timber products from:

- conflict areas, or suspected to come from country (ies) / region (s) covered by a UN Security Council ban on timber exports, by an EU Council ban on timber imports, or from country / region who have unilaterally adopted exports ban,
- countries where there is consistent and reliable information regarding significant failures of forest governance, low level of forest law enforcement or high level of corruption,
- countries where official FAO statistics show a decrease in forest area,
- supplies where information on potential irregularities supported by reliable evidence, that has not been disproved by investigation, has been made available from customers or external parties

11. Are you content with the principle that, where possible or relevant, the existing due diligence systems developed by Monitoring Organisations can be used?

In our view, there is need for very robust guidelines and rules to be set out with clear minimum requirements for what constitutes an acceptable Monitoring Organisation. Not every organisation adopting a due diligence system has carte blanche to assume a monitoring role. Monitoring organisations must be sufficiently independent of operators to avoid any conflict of interest, or appearance of conflict of interest. Independent auditing of companies and the monitoring organisation itself, would be considered a vital back up to the monitoring of companies by a timber trade federation for example, were it to seek a monitoring role.

12. Is the Regulation sufficiently clear on the duties, responsibilities and requirements of Monitoring Organisations?

No. 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.

13. Do you agree that Monitoring Organisations should be approved and checked by Irish authorities (rather than EU level checks and approval)?

The guidelines, rules and minimum requirements and approval of a list of suitable monitoring organisations need to be agreed at an EU level, but then it is sufficient for checks to be done by Irish authorities. One of the risks of establishing accreditation procedures at a national level is that this

could lead to differing standards and market distortion. It would also be very difficult to take a unilateral stance against a monitoring organisation that no longer fulfilled the requirements of the regulation, but had the approval of another Member State.

14. Is the Regulation sufficiently clear on the level and nature of checks by the Competent Authority? How could this be improved?

No. The Regulation needs to 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. 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 (i.e. immobilising transport vehicle, seizing and confiscating timber and/or timber products).

It is difficult to prescribe in advance the desirable frequency of regular checks (sometimes these will be prompted by complaints or intelligence for example) but a minimum should be stated, perhaps on an annual basis. In addition, checks should be carried out in any case, where:

- (a) the competent authority of the Member State has grounds to question the compliance with the requirements of this Regulation of the placing on the market of timber or timber products by an operator; or
- (b) the competent authority of the Member State is in possession of information that questions the compliance by the operator with the requirements for due diligence systems set out in this Regulation.

Member States may also decide to carry out random checks.

15. Are you content with this record keeping requirement?

Yes

16. Are you content with the principle of cooperation between Member States? Would you like to see this cooperation extended to other areas of the Regulation?

Yes if the EC keeps the coordination of this task. The cooperation between Member States should not mean that the implementation of this regulation is weakened.

17. Are you content with the requirements and duties assigned to the Competent Authority (including those in other Articles of the Regulation)?

Yes, provided that the rules are clearly set out as to how the checks are conducted and the Member States are given more rights/duties to conduct checks of monitoring organisations and operators. However, the accreditation of monitoring organisations should take place at EU level or at least the determination of organisations considered suitable.

18. Are you content with the establishment of the Committee for exchanging information between Member States on the checks carried out, and are its roles and responsibilities sufficiently clear?

This is not clear. Is this Committee part of the commitology process or not? If yes, then Just Forests considers that NGOs and other key stakeholders should have a direct role in the Committee. The exchange of views on how to implement the regulation (obstacles, techniques) is welcomed but it should not lead to an ineffective, or highly delayed implementation regulation.

19. Are you content with the timing for the Regulation to enter into force?

No. The Regulation should enter into force immediately

20. Are you concerned about particular products which fall into, or out of scope of the Regulation?

Yes. 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. This is in our view critical if this Regulation is serious in its aim of detecting and deterring the trade in illegal timber and wood products.

21. Are you content with the principle that this list can be amended by the Commission (Article 12)?

Yes, but this should not be used as an excuse to exclude certain wood products, on the basis that they can be included at a later date. The list should be amended to add product categories but not to remove them!

Questions for SMEs not applicable

Additionally, it is expected that the due diligence regulation will be accompanied by an implementing regulation. It is the opinion of Just Forests that key stakeholder and public interest in the illegal logging issue is such that the only acceptable means of conducting this process will be through a Regulatory Procedure with Scrutiny in order to ensure greater transparency.