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EN

⁽¹⁾ Text with EEA relevance

III

(Preparatory acts)

COUNCIL

POSITION (EU) No 2/2010 OF THE COUNCIL AT FIRST READING**with a view to the adoption of a Regulation of the European Parliament and of the Council concerning a European rail network for competitive freight****Adopted by the Council on 22 February 2010****(Text with EEA relevance)**

(2010/C 114 E/01)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

market, in particular with regard to freight transport, is an essential factor in making progress towards sustainable mobility.

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

(1) Within the framework of the Lisbon Strategy for growth and employment and the European Union Strategy for Sustainable Development, the creation of an internal rail

(2) Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways ⁽⁴⁾ and Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure ⁽⁵⁾ have been important steps in the creation of the internal rail market.

(3) In order to be competitive with other modes of transport, international and national rail freight services, which have been opened up to competition since 1 January 2007, must be able to benefit from a good quality and sufficiently financed railway infrastructure, that is, one which allows freight transport services to be provided under good conditions in terms of commercial speed and journey times and to be reliable, that is, that the service it provides actually corresponds to the contractual agreements entered into with the railway undertakings.

(4) The opening of the rail freight market has made it possible for new operators to enter the rail network. To optimise the use of the network and ensure its reliability it is useful to introduce additional procedures to strengthen cooperation on allocation of international train paths for freight trains between infrastructure managers.

⁽¹⁾ OJ C 317, 23.12.2009, p. 94.

⁽²⁾ OJ C 79, 27.3.2010, p. 45.

⁽³⁾ Opinion of the European Parliament of 23 April 2009 (not yet published in the Official Journal), position of the Council of ... (not yet published in the Official Journal) and position of the European Parliament of ... (not yet published in the Official Journal).

⁽⁴⁾ OJ L 237, 24.8.1991, p. 25.

⁽⁵⁾ OJ L 75, 15.3.2001, p. 29.

- (5) The Council, meeting on 7 and 8 April 2008, concluded that the efficient use of infrastructure must be promoted and that, if necessary, railway infrastructure capacities must be improved by means of measures taken at European and national levels, and in particular by means of legal acts.
- (6) In this context, the establishment of international rail corridors for a European rail network for competitive freight on which freight trains can run under good conditions and easily pass from one national network to another would allow improvements in the conditions of use of the infrastructure.
- (7) In order to establish international rail corridors for a European rail network for competitive freight, the initiatives already taken in terms of railway infrastructure show that the creation of international corridors, which meet specific needs in one or more clearly identified segments of the freight market, is the most appropriate method.
- (8) This Regulation should be without prejudice to the rights and obligations of infrastructure managers set out in Directive 91/440/EEC and Directive 2001/14/EC and, where relevant, allocation bodies as referred to in Article 14(2) of Directive 2001/14/EC. Those acts remain in force, including in respect of provisions which affect freight corridors, in particular in respect of the right of infrastructure managers to refuse or accept applications for capacity from legal entities other than railway undertakings.
- (9) The international rail corridors for a European rail network for competitive freight should be set up in a manner consistent with the Trans-European Transport Network ("TEN-T") and/or the European Railway Traffic Management System ("ERTMS") corridors. To that end, the coordinated development of the networks is necessary, and in particular as regards the integration of the international corridors for rail freight into the existing TEN-T and the ERTMS corridors. Furthermore, harmonising rules relating to those freight corridors should be established at the level of the Union. If necessary, the creation of those corridors should be supported financially within the framework of the TEN-T, research and Marco Polo programmes, and other policies and funds of the Union, such as the European Regional Development Fund or the Cohesion Fund.
- (10) Within the framework of a freight corridor, good coordination between the Member States and the infrastructure managers concerned should be ensured, sufficient priority should be given to rail freight traffic, effective and adequate links to other modes of transport should be set up and conditions should be created which are favourable to the development of competition between rail freight service providers.
- (11) Further to the freight corridors set up in accordance with Article 3, the establishment of additional freight corridors should be examined and approved at the level of the Union in accordance with clearly defined transparent procedures and criteria which allow Member States and infrastructure managers sufficient decision-making and management scope so that they can take into account existing initiatives for special corridors, e.g. ERTMS, Rail-NetEurope ("RNE") and TEN-T, and take measures adapted to their specific needs.
- (12) In order to stimulate coordination between the Member States and the infrastructure managers, an appropriate governance structure for each freight corridor should be established, taking account of the need to avoid duplication with already existing governance structures.
- (13) In order to meet market needs, the methods for establishing a freight corridor should be presented in an implementation plan, which should include identifying and setting a schedule for measures which would improve the performance of rail freight. Furthermore, to ensure that planned or implemented measures for the establishment of a freight corridor meet the needs or expectations of all of the users of the freight corridor, the applicants likely to use the freight corridor must be regularly consulted in accordance with procedures defined by the management board.
- (14) The development of intermodal freight terminals should also be considered necessary to support the establishment of rail freight corridors in the Union.
- (15) In order to guarantee the consistency and continuity of the infrastructure capacities available along the freight corridor, investment in the freight corridor should be coordinated between Member States and the infrastructure managers concerned, and planned in a way which meets the needs of the freight corridor. The schedule for carrying out the investment should be published to ensure that applicants who may operate in the corridor are well-informed. The investment should include projects relating to the development of interoperable systems and the increase in capacity of the trains.
- (16) For the same reasons, all the works on infrastructure and its equipment that would restrict available capacity on the freight corridor should also be coordinated at the level of the freight corridor and be the subject of updated publications.
- (17) In order to facilitate requests for infrastructure capacities for international rail freight services, it is appropriate to designate or establish a one-stop shop for each freight corridor. For this, existing initiatives should be built upon, in particular those undertaken by RNE, a body which acts as a coordination tool for the infrastructure managers and provides a number of services to international freight undertakings.

- (18) The management of freight corridors should also include procedures for the allocation of the infrastructure capacity for international freight trains running on such corridors. Those procedures should recognise the need for capacity of other types of transport, including passenger transport.
- (19) To ensure that the railway infrastructure is better used, the operation of that infrastructure and the terminals along the freight corridor needs to be coordinated.
- (20) Priority rules may also mean priority targets depending on the situation in the respective Member State.
- (21) Freight trains running on the freight corridor should be able to enjoy, as far as possible, sufficient punctuality in the event of disturbance with regard to the needs of all types of transport.
- (22) In order to evaluate objectively the benefits of the measures aimed at the establishment of the freight corridor, the performance of the rail freight services along the freight corridor should be monitored and quality reports should be published regularly. The evaluation of the performance should include the outcome of satisfaction surveys of the users of the freight corridor.
- (23) In order to ensure non-discriminatory access to international rail services, it is necessary to ensure efficient coordination between the regulatory bodies over the different networks covered by the freight corridor.
- (24) To facilitate access to information concerning the use of all the main infrastructure in the freight corridor and to guarantee non-discriminatory access to that corridor, the management board should draw up, regularly update and publish a document containing all of this information.
- (25) Since the objective of this Regulation, namely the establishment of a European rail network for competitive freight made up of freight corridors, cannot be sufficiently achieved by the Member States alone and can therefore by reason of its scale and effects be better achieved at the level of the Union, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (26) Fair rules based on cooperation between the infrastructure managers, who must provide a quality service to freight undertakings within the framework of an international rail corridor, should be introduced in respect of the coordination of investment and the management of capacities and traffic.
- (27) As international trains need to run itineraries combining several corridors, as defined in this Regulation, the infrastructure managers of several corridors may also coordinate their activities in order to ensure, on the corridors concerned, the availability of capacity, fluid movements and a coherent application of priority rules to the different types of traffic in the event of disturbance.
- (28) The measures necessary for the implementation of this Regulation should 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 ⁽¹⁾.
- (29) In addition, the Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union in respect of the adaptation of Annex II. It is of particular importance that the Commission consult experts during its preparatory work, in accordance with the commitments made in the Commission Communication of 9 December 2009 on the implementation of Article 290 of the Treaty on the Functioning of the European Union,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL

Article 1

Purpose and scope

1. This Regulation lays down rules for the establishment and organisation of international rail corridors for a European rail network for competitive freight. It sets out rules for the selection, organisation and management of freight corridors.
2. This Regulation shall apply to the management and use of railway infrastructure in freight corridors.

Article 2

Definitions

1. For the purposes of this Regulation, the definitions laid down in Article 2 of Directive 2001/14/EC shall apply.
2. In addition to the definitions referred to in paragraph 1:
 - (a) 'freight corridor' means all designated railway lines in Member States and, where necessary, European third countries, linking terminals along the principal route of the freight corridor, including the railway infrastructure and its equipment, marshalling yards and train formation facilities and, where necessary, diversionary routes;

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

- (b) 'implementation plan' means the document presenting the means and the strategy that the parties concerned intend to implement in order to develop over a specified period the measures which are necessary and sufficient to establish the freight corridor;
- (c) 'terminal' means the installation provided along the freight corridor which has been especially arranged to allow either the loading and/or the unloading of goods onto/from freight trains, and the integration of rail freight services with road, maritime, river and air services, and either the forming or modification of the composition of freight trains; and, where necessary, performing border procedures at borders with European third countries.

CHAPTER II

DESIGNATION AND GOVERNANCE OF THE INTERNATIONAL RAIL CORRIDORS FOR COMPETITIVE FREIGHT

Article 3

Designation of initial freight corridors

1. The Member States referred to in Annex I shall establish by ... (*) the freight corridors along the principal routes set out in that Annex. The Member States concerned shall inform the Commission about the establishment of the freight corridors.
2. By derogation from paragraph 1 the freight corridors along the principal routes set out in points 3, 5 and 8 of Annex I shall be established by ... (**).

Article 4

Selection of further freight corridors

1. Each Member State with a rail border with another Member State shall participate in the establishment of at least one freight corridor, unless this obligation has already been met under Article 3.
2. Notwithstanding paragraph 1, Member States shall, upon request from a Member State, participate in the establishment of the freight corridor as referred to in that paragraph or the prolongation of an existing corridor, in order to allow a neighbouring Member State to fulfil its obligation under that paragraph.
3. Without prejudice to the obligations of Member States under Article 7 of Directive 91/440/EEC, where a Member State considers that the establishment of a freight corridor would not be in the interest of the applicants likely to use the freight corridor or would not bring significant socio-economic benefits or would cause a disproportionate burden, the Member State concerned shall not be obliged to participate as referred to in paragraphs 1 and 2 of this Article, subject to a

decision of the Commission acting in accordance with the advisory procedure referred to in Article 19(2).

4. A Member State shall not be obliged to participate as referred to in paragraphs 1 and 2 if it has a rail network which has a track gauge which is different from that of the main rail network within the Union.

5. In order to meet the obligation under paragraphs 1 and 2, the Member States concerned shall jointly propose to the Commission the establishment of freight corridors after consulting the infrastructure managers and applicants concerned by ... (**), taking into account the criteria set out in Annex II.

6. The Commission shall examine the proposals for the establishment of freight corridor(s) referred to in paragraph 5 and, in accordance with the regulatory procedure referred to in Article 19(3), adopt a decision on the compliance of such a proposal with this Article at the latest nine months after submission of the proposal.

7. The Member States concerned shall establish the freight corridor at the latest three years after the decision of the Commission referred to in paragraph 6.

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union as regards adaptations to Annex II. When preparing the delegated acts referred to in this paragraph, the Commission shall respect the provisions set out in Directive 2001/14/EC and Directive 2008/57/EC of the European Parliament and of the Council of 17 June 2008 on the interoperability of the rail system within the Community (recast) ⁽¹⁾ and shall take into account, in particular, the deployment plan relating to the interoperable systems, the evolution of the railway system and the TEN-T and in particular the implementation of the ERTMS, as well as freight market developments, including interaction with other transport modes.

For the delegated acts referred to in this paragraph, the procedure set out in Articles 20, 21 and 22 shall apply.

Article 5

Modification of the freight corridors

1. The freight corridors referred to in Articles 3 and 4 may be modified on the basis of a joint proposal by the Member States concerned to the Commission after consulting the infrastructure managers and applicants concerned.
2. The Commission shall, in accordance with the regulatory procedure referred to in Article 19(3), adopt a decision on the proposal taking into account the criteria set out in Annex II.

(*) Three years after entry into force of this Regulation.

(**) Five years after entry into force of this Regulation.

(***) Two years after entry into force of this Regulation.

⁽¹⁾ OJ L 191, 18.7.2008, p. 1.

*Article 6***Reconciliation**

When two or more Member States concerned do not agree on the establishment or modification of a freight corridor, and with regard to the railway infrastructure located on their territory, the Commission, at the request of one of the Member States concerned, shall consult the Committee referred to in Article 19 on this matter. The opinion of the Commission shall be sent to the Member States concerned. The Member States concerned shall take this opinion into account in order to find a solution and shall take a decision on the basis of mutual consent.

*Article 7***Governance of freight corridors**

1. For each freight corridor, Member States concerned shall establish an executive board responsible for defining the general objectives of the freight corridor, supervising and taking the measures as expressly provided for in Articles 8, 10 and 23. The executive board shall be composed of representatives of the authorities of the Member States concerned.

2. For each freight corridor, the infrastructure managers concerned and, where relevant, the allocation bodies as referred to in Article 14(2) of Directive 2001/14/EC, shall establish a management board responsible for taking the measures as expressly provided for in paragraph 6 of this Article and in Articles 8, 10, 12(1), 13(2), (5) and (6), 15(1), 16 and 17(2) and (3) of this Regulation. The management board shall be composed of the representatives of the infrastructure managers.

3. The executive board shall take its decisions on the basis of mutual consent of the representatives of the authorities of the Member States concerned.

4. The management board shall take its decisions, including decisions regarding its legal status, resources and staffing, on the basis of mutual consent of the infrastructure managers concerned.

5. The responsibilities of the executive and management boards shall be without prejudice to the independence of infrastructure managers as provided for in Article 4(2) of Directive 91/440/EEC.

6. The management board shall set up an advisory group made up of managers and owners of the terminals of the freight corridor. This advisory group may issue an opinion on any proposal by the management board which has direct consequences for investment and the management of terminals. The advisory group may also issue own-initiative opinions. The management board shall take any of these opinions into account.

*Article 8***Measures for implementing the freight corridor plan**

1. The management board shall draw up an implementation plan and shall submit it for approval to the executive board. This plan shall include:

- (a) a description of the characteristics of the freight corridor, including bottlenecks, and the programme of measures necessary for creating the freight corridor;
- (b) the essential elements of the transport and traffic study referred to in paragraph 3;
- (c) the objectives for the freight corridors, in particular in terms of performance of the freight corridor expressed as the quality of the service and the capacity of the freight corridor in accordance with the provisions of Article 17;
- (d) the investment plan referred to in Article 10; and
- (e) the measures to implement the provisions of Articles 11 to 17.

2. The management board shall periodically review the implementation plan taking into account progress made in its implementation, the rail freight market on the freight corridor and performance measured in accordance with the objectives referred to in point (c) of paragraph 1.

3. The management board shall periodically carry out a transport and traffic study relating to the observed and expected changes in the traffic in the freight corridor, covering the different types of traffic, both regarding the transport of freight and the transport of passengers.

4. The implementation plan shall take into account the development of terminals to meet the needs of rail freight running on the freight corridor.

*Article 9***Consulting applicants**

The management board shall introduce consultation mechanisms with a view to the proper participation of the applicants likely to use the freight corridor. In particular, it shall ensure that applicants are consulted before the implementation plan referred to in Article 8 is submitted to the executive board.

CHAPTER III

INVESTMENT IN THE FREIGHT CORRIDOR*Article 10***Investment planning**

1. The management board shall draw up and periodically review an investment plan and shall submit it for approval to the executive board. This plan shall include:

- (a) the list of the projects foreseen for the extension, renewal or redeployment of railway infrastructure and its equipment along the freight corridor and the relevant financial requirements and sources of finance;

- (b) a deployment plan relating to the interoperable systems along the freight corridor which satisfies the essential requirements and the technical specifications for interoperability which apply to the network as defined in Directive 2008/57/EC. This deployment plan shall be based on a cost-benefit analysis of the use of interoperable systems;
- (c) a plan for the management of the capacity of freight trains which may run in the freight corridor. This plan may be based on increasing the length, loading gauge or axle load authorised for the trains running in the freight corridor; and
- (d) where applicable, reference to the contribution of the Union envisaged under financial programmes of the Union.
2. The application of this Article shall be without prejudice to the competence of the Member States regarding planning of and funding to rail infrastructure.

Article 11

Coordination of works

The infrastructure managers concerned shall coordinate and publish, according to an appropriate manner and timeframe, their schedule for carrying out all the works on infrastructure and its equipment that would restrict available capacity on the freight corridor.

CHAPTER IV

MANAGEMENT OF THE FREIGHT CORRIDOR

Article 12

One-stop shop for application for infrastructure capacity

1. The management board for a freight corridor shall designate or establish a joint body and/or an information system through collaboration between infrastructure managers offering applicants the opportunity to request, in a single place and a single operation, infrastructure capacity for freight trains crossing at least one border along the freight corridor (the 'one-stop shop').
2. The one-stop shop shall also provide basic information concerning the allocation of the infrastructure capacity, including the information referred in Article 16.
3. The one-stop shop shall forward any application for infrastructure capacity without any delay to the competent infrastructure managers and, where relevant, the allocation bodies as referred to in Article 14(2) of Directive 2001/14/EC, who shall take a decision on that application in accordance with Article 13 and Chapter III of that Directive.
4. The activities of the one-stop shop shall be carried out under transparent and non-discriminatory conditions. These

activities shall be subject to control of the regulatory bodies in accordance with Article 18.

Article 13

Capacity allocated to freight trains

1. Member States shall cooperate on defining the framework for the allocation of the infrastructure capacity in the freight corridor in accordance with their competences as set out in Article 14(1) of Directive 2001/14/EC.
2. The management board shall evaluate the need for capacity to be allocated to freight trains running on the freight corridor taking into account the transport and traffic study referred to in Article 8(3) of this Regulation, the requests for infrastructure capacity relating to the past and present working timetables and the framework agreements.
3. On the basis of the evaluation specified in paragraph 2 of this Article, infrastructure managers of the freight corridor shall jointly define and organise international pre-arranged train paths for freight trains following the procedure referred to in Article 15 of Directive 2001/14/EC recognising the need for capacity of other types of transport, including passenger transport. These pre-arranged paths shall be published no later than three months before the final date for receipt of requests for capacity referred to in Annex III to Directive 2001/14/EC. The infrastructure managers of several freight corridors may, if necessary, coordinate international pre-arranged train paths offering capacity on the freight corridors concerned.
4. Infrastructure managers of the freight corridor shall allocate these pre-arranged paths first to freight trains which cross at least one border.
5. Infrastructure managers shall, if justified by market need and the evaluation referred to in paragraph 2 of this Article, jointly define the reserve capacity for international freight trains running on the freight corridors recognising the need for capacity of other types of transport, including passenger transport and keep this reserve available within their final working timetables to allow them to respond quickly and appropriately to *ad hoc* requests for capacity as referred to in Article 23 of Directive 2001/14/EC. This capacity shall be reserved until the time-limit before its scheduled time as decided by the management board. This time-limit shall not exceed 90 days.

The reserve capacity shall be determined on the basis of the evaluation specified in paragraph 2. Such reserve capacity shall be only made available provided that there is real market need.

6. The management board shall promote coordination of priority rules relating to capacity allocation on the freight corridor.

7. Save in the case of force majeure, a train path allocated to a freight operation under this Article may not be cancelled less than one month before its scheduled time in the working timetable except if the applicant concerned gives its approval for such cancellation. In such a case the infrastructure manager concerned shall make an effort to propose to the applicant a train path of an equivalent quality and reliability which the applicant has the right to accept or refuse. This provision shall be without prejudice to any rights the applicant may have under an agreement as referred to in Article 19(1) of Directive 2001/14/EC.

8. The infrastructure managers of the freight corridor and the advisory group referred to in Article 7(6) shall put in place procedures to ensure optimal coordination of the allocation of capacity between infrastructure managers, both for requests as referred to in Article 12(1) and for requests received by the infrastructure managers concerned. This shall also take account of access to terminals.

9. In paragraphs 4 and 8 of this Article, references to infrastructure managers shall include, where relevant, allocation bodies as referred to in Article 14(2) of Directive 2001/14/EC.

Article 14

Traffic management

1. Infrastructure managers of the freight corridor shall put in place procedures for coordinating traffic management along the freight corridor and may put in place procedures for coordinating traffic management along several freight corridors.

2. The infrastructure managers of the freight corridor and the advisory group referred to in Article 7(6) shall put in place procedures to ensure optimal coordination between the operation of the railway infrastructure and the terminals.

Article 15

Traffic management in the event of disturbance

1. The management board shall adopt common targets for punctuality and/or guidelines for traffic management in the event of disturbance to train movements on the freight corridor.

2. Each infrastructure manager concerned shall draw up priority rules for the management between the different types of traffic in the part of the freight corridors within the responsibility of that infrastructure manager in accordance with the common targets and/or guidelines referred to in paragraph 1 of this Article. Those priority rules shall be published in the network statement referred to in Article 3 of Directive 2001/14/EC.

3. The principles for establishing the priority rules shall at least provide that the train path referred to in Article 13(3) and

(5) allocated to freight trains which comply with their scheduled time in the working timetable shall not be modified, as far as possible. The principles for establishing the priority rules shall aim at minimising the overall network recovery time with regard to the need of all types of transport. For this purpose, infrastructure managers may coordinate the management between the different types of traffic along several freight corridors.

Article 16

Information on the conditions of use of the freight corridor

The management board shall draw up, regularly update and publish a document containing:

- (a) all the information contained in the network statement for national networks regarding the freight corridor, drawn up in accordance with the procedure set out in Article 3 of Directive 2001/14/EC;
- (b) the list and characteristics of terminals, in particular information concerning the conditions and methods of accessing the terminals;
- (c) the information concerning the procedures referred to in Articles 13(8) and 14(2); and
- (d) the implementation plan.

Article 17

Quality of service in the freight corridor

1. Infrastructure managers of the freight corridor shall promote compatibility between the performance schemes referred to in Article 11 of Directive 2001/14/EC.

2. The management board shall monitor the performance of rail freight services in the freight corridor and publish the results of this monitoring once a year.

3. The management board shall organise a satisfaction survey of the users of the freight corridor and shall publish the results of it once a year.

Article 18

Regulatory bodies

1. The regulatory bodies referred to in Article 30 of Directive 2001/14/EC shall cooperate in monitoring the competition in the rail freight corridor. In particular, they shall ensure non-discriminatory access to the corridor and shall be the appeal bodies provided under Article 30(2) of that Directive. They shall exchange the necessary information obtained from infrastructure managers and other relevant parties.

2. In the event of a complaint to a regulatory body from an applicant regarding international rail freight services, or within the framework of an own-initiative investigation by a regulatory body, this regulatory body shall consult the regulatory bodies of all other Member States through which the international train path for freight train concerned runs and request all necessary information from them before taking its decision.

3. The regulatory bodies consulted under paragraph 2 shall provide all the information that they themselves have the right to request under their national legislation to the regulatory body concerned. This information may only be used for the purpose of the handling of the complaint or the investigation referred to in paragraph 2.

4. The regulatory body receiving the complaint or having initiated the own-initiative investigation shall transfer relevant information to the regulatory body responsible in order for that body to take measures regarding the parties concerned.

5. Any associated representatives of infrastructure managers as referred to in Article 15(1) of Directive 2001/14/EC shall ensure provision, without delay, of all the information necessary for the purpose of the handling of the complaint or the investigation referred to in paragraph 2 of this Article and requested by the regulatory body of the Member State in which the associated representative is located. This regulatory body shall be entitled to transfer such information regarding the international train path concerned to the regulatory bodies mentioned in paragraph 2 of this Article.

CHAPTER V

FINAL PROVISIONS

Article 19

Committee procedure

1. The Commission shall be assisted by the Committee referred to in Article 11a of Directive 91/440/EEC.

2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

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

Article 20

Exercise of the delegation

1. The power to adopt the delegated acts referred to in Article 4(8) shall be conferred on the Commission for a

period of five years following the entry into force of this Regulation. The Commission shall make a report in respect of the delegated powers at the latest six months before the end of the five year period. The delegation of power shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 21.

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

3. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 21 and 22.

Article 21

Revocation of the delegation

1. The delegation of power referred to in Article 20 may be revoked by the European Parliament or by the Council.

2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall inform the other institution and the Commission at the latest one month before the final decision is taken, stating the delegated powers which could be subject to revocation and the reasons for a revocation.

3. The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the *Official Journal of the European Union*.

Article 22

Objections to delegated acts

1. The European Parliament or the Council may object to the delegated act within a period of three months from the date of notification.

2. If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act, or if, before that date, the European Parliament and the Council have both informed the Commission that they have decided not to raise objections, the delegated act shall enter into force at the date stated therein.

3. If the European Parliament or the Council objects to the delegated act, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act.

*Article 23***Monitoring implementation**

Every two years from the time of the establishment of a freight corridor, the executive board referred to in Article 7(1) shall present to the Commission the results of the implementation plan for that corridor. The Commission shall analyse those results and notify the Committee referred to in Article 19 of its analysis.

*Article 24***Report**

The Commission shall periodically examine the application of this Regulation. It shall submit a report to the European Parliament and the Council, for the first time by ... (*), and every three years thereafter.

*Article 25***Transitional measures**

This Regulation shall not apply to the Republic of Cyprus and Malta for as long as no railway system is established within their territory.

*Article 26***Entry into force**

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

*Article 27***Publication**

This Regulation shall be published 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 ...

For the European Parliament
The President

...

For the Council
The President

...

(*) Five years after entry into force of this Regulation.

ANNEX I

List of principal routes of freight corridors

	Member States	Principal routes ⁽¹⁾
1.	BE, NL, DE, IT	Zeebrugge-Antwerp/Rotterdam-Duisburg-[Basel]-Milan-Genova
2.	NL, BE, LU, FR	Rotterdam-Antwerpen-Luxemburg-Metz-Dijon-Lyon/[Basel]
3.	SE, DK, DE, AT, IT	Stockholm-Malmö-Copenhagen-Hamburg-Innsbruck-Verona-Palermo
4.	PT, ES, FR	Sines-Lisboa/Leixões -Madrid-San Sebastian-Bordeaux-Paris-Metz Sines-Elvas/Algeciras
5.	PL, CZ, SK, AT, IT, SI	Gdynia-Katowice-Ostrava/Zilina-Vienna-Trieste/Koper
6.	ES, FR, IT, SI, HU	Almería-Valencia/Madrid-Zaragoza/Barcelona-Marseille-Lyon-Turin-Udine-Trieste/ Koper-Ljubljana-Budapest-Zahony (Hungary-Ukraine border)
7.	CZ, AT, SK, HU, RO, BG, EL	Prague-Vienna/Bratislava-Budapest -Bucharest-Constanta -Vidin-Sofia-Thessaloniki-Athens
8.	DE, NL, BE, PL, LT	Bremerhaven/Rotterdam/Antwerp-Aachen/Berlin-Warsaw-Terespol (Poland-Belarus border)/Kaunas
9.	CZ, SK	Prague-Horni Lideč-Žilina-Košice-Čierna nad Tisou- (Slovakia-Ukraine border)

(1) '/' means alternative routes.

ANNEX II

The criteria to take into account as set out in Articles 4 and 5

- (a) The consistency of the freight corridor with the TEN-T, the ERTMS corridors and/or the corridors defined by RNE;
- (b) The integration of TEN-T priority projects ⁽¹⁾ into the freight corridor;
- (c) The crossing by the freight corridor of the territory of at least three Member States, or of two Member States if the distance between the railway terminals served by the freight corridor is greater than 500 km;
- (d) The interest of the applicants in the freight corridor;
- (e) The balance between the socio-economic costs and benefits stemming from the establishment of the freight corridor;
- (f) The consistency of all of the freight corridors proposed by the Member States in order to set up a European rail network for competitive freight;
- (g) The existence of good interconnections with other modes of transport, in particular due to an adequate network of terminals, including in the maritime and inland ports;
- (h) If appropriate, better interconnections between Member States and neighbouring third countries

⁽¹⁾ See Annex III to Decision No 1692/96/EC of the European Parliament and of the Council of 23 July 1996 on Community guidelines for the development of the trans-European transport network (OJ L 228, 9.9.1996, p. 1).

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

On 15 December 2008, the Commission presented its proposal for a Regulation of the European Parliament and of the Council concerning a European rail network for competitive freight.

On 23 April 2009, the European Parliament voted its opinion at 1st reading.

On 11 June 2009, the Council reached a political agreement on the proposed Regulation.

On 22 February 2010, the Council adopted its position at first reading in accordance with the ordinary legislative procedure laid down in Article 294 of the Treaty on the Functioning of the European Union.

In carrying out its work, the Council took account of the opinion of the European Economic and Social Committee ⁽¹⁾ and the Committee of Regions ⁽²⁾.

II. ANALYSIS OF THE COUNCIL POSITION AT FIRST READING

1. General

On 15 December 2008, the Commission submitted the proposal for a Regulation concerning a European rail network for competitive freight. The objective of the proposed Regulation is to create a European rail network for competitive freight consisting of international corridors providing operators with an efficient and high-quality freight transport infrastructure. As a result, rail operators should be able to offer an efficient, high-quality service and be more competitive on the goods transport market. To this end, the proposal sets out the rules for the creation and the modification of freight corridors, their organisation and governance, and measures for implementing freight corridors, investment planning as well as capacity and traffic management.

The Council position at first reading establishes a coherent framework for the establishment of a European rail network for competent freight. It foresees a simpler procedure, on the basis of a list of principal routes of corridors, for the establishment of initial freight corridors. This initial list should be completed by the Member States not mentioned in Annex I of the Regulation which will establish freight corridors at a later stage. The Council approach furthermore foresees the possibility of derogations. It also includes a better structured system of governance of freight corridors. The Council also agreed to establish a more flexible system for requests of train paths for freight trains based on increased cooperation between infrastructure managers.

2. Main issues

i) Selection of freight corridors

The Commission proposed a procedure according to which each Member State would have to create at least one corridor with other Member State(s) concerned. Furthermore, some Member States would be obliged to create at least two or three corridors on the basis of the annual performance expressed in tonne-kilometres of rail freight in those Member States.

The Council adopted another solution which consists in the establishment, within certain time-limits specified, of initial freight corridors according to the list of principal routes of corridors set out in Annex I to the Regulation and the obligation for the Member States not mentioned in that list to participate in the establishment of at least one freight corridor. Member States shall also participate in the establishment of the corridor or in the prolongation of an existing corridor, in order to guarantee a neighbouring Member State to fulfil the obligation to establish at least one freight corridor.

The above solution includes two possible derogations from the obligation to participate in the establishment of a freight corridor. The first derogation would be justified under certain conditions such as the lack of interest of applicants likely to use the corridor, no socio-economic benefits or a disproportionate burden to establish the corridor. This derogation is subject to a decision by the Commission according to the comitology procedure. The second derogation might apply to a Member State with a rail network which has a track gauge different from that of the main rail network within the Union.

⁽¹⁾ Opinion of 15 July 2009 (not yet published in the Official Journal).

⁽²⁾ (not yet published in the Official Journal).

The European Parliament introduced the following amendments to the Commission proposal:

- the freight corridor should link at least two Member States and be compatible with the TEN-T or the ERTMS corridors. If necessary, certain sections not included in the TEN-T, with high or potentially high volumes of freight traffic, might also form part of the freight corridor;
- the creation or modification of a freight corridor shall be decided by the Member States concerned, after they have notified the Commission of their intentions, accompanied by a proposal drawn up with the infrastructure managers concerned and taking into account the initiatives and opinions of railway undertakings that use the corridor or are interested in doing so. Interested railway undertakings may participate in the process, whenever substantial investments concern them;
- the criteria for the creation of freight corridors should be defined in a way adapted to the specific needs of the Member States and of the infrastructure managers allowing them sufficient decision-making and management scope;
- at the latest three years after the entry into force of the Regulation, the territory of each Member State must allow at least one freight corridor;
- the Commission shall note the proposals for the creation of the freight corridor and shall examine their consistency with the assessment criteria set out in the Annex to the Regulation.

ii) *Governance of freight corridors*

The Commission proposed that for each freight corridor the infrastructure managers concerned should create a governance body responsible for defining and steering the performance and updating of the implementation plan for the freight corridor. Furthermore, a working group made up of managers and owners of the strategic terminals of the freight corridor should be established. The working group might issue an opinion on any proposal by the governance body which had direct consequences for investment and the management of strategic terminals. The governance body might not take any decision contrary to that opinion.

The Council modified the Commission proposal and decided that, for each freight corridor, Member States concerned shall establish an executive board responsible for defining the general objectives of the freight corridor, supervising and taking specified measures with regard to implementation and investment planning. The executive board shall be composed of representatives of the authorities of the Member States concerned.

Moreover, for each freight corridor, the infrastructure managers concerned shall establish a management board responsible for taking specified measures with regard to implementation, investment planning, infrastructure capacity and quality of service. The management board shall be composed of the representatives of the infrastructure managers.

The management board shall also set up an advisory group made up of managers and owners of the terminals of the freight corridor. This advisory group may issue an opinion on any proposal by the management board which has direct consequences for investment and the management of terminals. It may also issue own-initiative opinions. The management board shall take any of these opinions into account.

The European Parliament followed largely the Commission proposal. However, concerning the provision on the establishment of a governance body for each freight corridor, it suggested that interested railway undertakings or groupings of railway undertakings using the freight corridor should regularly participate in this body on a consultative basis.

The European Parliament also suggested that the Member States concerned might set up an executive board responsible for authorising the corridor implementation plan by the governance body and supervising its execution.

Finally, when setting up a working group made up of managers and owners of the strategic terminals of the freight corridor, as proposed by the Commission, it should also include representatives from sea and inland waterway ports.

iii) *Strategic terminals and priority freight*

The Commission proposed that the governance body should draw up a strategy for the development of strategic terminals to enable them to meet the needs of rail freight running on the freight corridor.

Furthermore, the Commission proposed that the governance body should define the standard categories of freight traffic, which should be valid in the whole of the freight corridor. At least one of these categories, referred to as 'priority freight', should include goods whose transportation is very time-sensitive and which therefore require an efficient transport time and guaranteed punctuality.

The Council in its position at first reading deleted the articles proposed by the Commission on the above issues. Concerning strategic terminals, it was considered that it should be up to the market to decide on this issue. On priority freight, it was agreed that it might discriminate, in particular, towards the passenger trains.

The European Parliament followed largely the Commission proposal. However, concerning strategic terminals it suggested to add a reference to an integrated strategy including intermodal hubs along the freight corridors. This strategy should include co-operation with regional, local and national authorities, the sourcing of land to develop rail freight terminals and to facilitate access to funds in order to encourage such developments. Furthermore, the governance body should ensure that sufficient terminals are created in strategic locations, based on the expected volume of traffic.

Concerning the article on priority freight, the European Parliament decided to change the title to 'Standard categories of train paths in the freight corridors', and its text should be adapted accordingly and refer to periodical updates of the standard categories of freight train paths, which should be valid in the whole of the freight corridor. At least one of these categories (referred to as 'facilitated freight') should include a train path with an efficient transport time and guaranteed punctuality. Moreover, the criteria defining the standard categories of freight traffic should be adopted by the governance body after consultation of the applicants likely to use the freight corridor.

iv) *One-stop shop for requests for international train paths*

The Commission proposed that the governance body should put in place a one-stop shop for requests for train paths for freight trains crossing at least one border along the freight corridor and that all requests for these train paths should be made to this one-stop shop.

The Council did not agree on the mandatory procedure proposed by the Commission and decided instead that the management board for a freight corridor shall designate or establish a joint body and/or an information system through collaboration between infrastructure managers which should offer the applicants the opportunity to request in a single place and a single operation infrastructure capacity for freight trains crossing at least one border along the freight corridor.

The European Parliament followed largely the Commission proposal. However, it decided to suggest that individual infrastructure managers of a freight corridor might be assigned to function as the front office of the one-stop shop for the applicants requesting train paths.

v) *Authorised applicants*

The Commission proposal foresees the right of applicants other than railway undertakings and the international groupings that they make up to have the possibility to request train paths for freight transport where the latter concern one or more sections of the freight corridor.

The Council deleted the article concerning authorised applicants as proposed by the Commission. Instead, the Council only accepts the possibility for applicants other than railway undertakings and their international groupings to request infrastructure for certain sections of trains paths, in the case these paths are located in Member States where national law accepts those requests.

The European Parliament followed the Commission proposal with a slight modification of the text.

vi) *Traffic management in the event of disturbance*

The Commission proposed that the infrastructure managers of the freight corridor should draw up and publish the rules of priority between the different types of traffic in the event of traffic disruption in the freight corridor. These rules of priority should at least provide that the train path allocated to a priority freight train complying with the initial provisions for its train path might neither be reallocated to another train nor modified, except where the initial holder of the train path agreed to reallocation to another train or modification of the train path.

The Council revised the Commission proposal and decided that the management board shall adopt common targets for punctuality and/or guidelines for traffic management in the event of disturbance to train movements on the freight corridor. Based on these targets and/or guidelines, each infrastructure manager concerned shall thereafter draw up priority rules for the management between the different types of traffic in the freight corridor. The principles for establishing the priority rules shall aim at minimising the overall network recovery time with regard to the need of all types of transport.

The European Parliament followed broadly the Commission proposal but accepted that the infrastructure managers of the freight corridor should draw up and publish the rules of priority between the different types of train paths, in particular on the train paths allocated to delayed trains, in the event of traffic disruption for each part of the freight corridor in the network. This shall follow a proposal of the governance body of the freight corridor while respecting the principles and plans referred to in the Article.

vii) *Derogation*

The Commission proposed that a Member State might derogate, where applicable, from the provisions of the Regulation by sending a substantial request for derogation to the Commission. The Commission should adopt a decision on that request, in compliance with a defined consultation procedure, taking into consideration the geographical situation and the development of rail freight transport services in the Member State which has requested derogation.

The Council deleted the above provision proposed by the Commission. Instead, it agreed on an article concerning 'transitional measures' which lays down that the obligation to implement this Regulation shall not apply to the Republic of Cyprus and the Republic of Malta for as long as no railway system is established within their territory.

The European Parliament followed the Commission proposal.

3. Other amendments adopted by the European Parliament

Further amendments not included in the Council position at first reading concern in particular:

- a reference to optimisation and reliability of rail freight traffic;
- research and Marco Polo programmes, and other Union policies and funds, such as the Cohesion Fund;
- the setting up of effective and adequate links to other modes of transport in order to develop an efficient and integrated freight transport network;
- the procedure for the definition of performance indicators;
- modifications to the definitions set out in Article 2;
- the adjustment of the implementation plan;
- the inclusion of a reference to potential bottlenecks;
- a programme for improvement of the freight corridor;
- a market study to be periodically updated;

- programmes for creating and improving performance in the freight corridor;
- applicants who intend to use the freight corridor;
- the strategy for investment plans;
- investment plans;
- a reserve of capacity;
- a fee for paths that are allocated but not used;
- the rules of priority;
- consistency between different performance schemes;
- the information to be provided by the infrastructure managers and other third parties involved in international capacity allocation to the regulatory bodies.

III. CONCLUSION

In establishing its position at first reading, the Council has taken full account of the proposal of the Commission and of the European Parliament's opinion at first reading. With respect to the amendments proposed by the European Parliament, the Council observes that a number of amendments have - in spirit, partially or fully - already been included in its position at first reading.

POSITION (EU) No 3/2010 OF THE COUNCIL AT FIRST READING

with a view to the adoption of a Regulation of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market

Adopted by the Council on 1 March 2010

(Text with EEA relevance)

(2010/C 114 E/02)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

measures to support international efforts to tackle the problem of illegal logging and associated trade.

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

(5) The European Parliament and the Council welcomed that Communication and recognised the need for the Union to contribute to global efforts to address the problem of illegal logging.

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

(6) In accordance with the aim of that Communication, namely to ensure that only timber products which have been produced in accordance with the national legislation of the producing country enter the Union, the Union has been negotiating Voluntary Partnership Agreements (VPAs) with timber producing countries (partner countries), which create a legally binding obligation for the parties to implement a licensing scheme and to regulate trade in timber and timber products identified in those VPAs.

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas

(1) Forests provide a broad variety of environmental, economic and social benefits including timber and non-timber forest products and environmental services.

(7) Given the major scale and urgency of the problem, it is necessary to actively support the fight against illegal logging and related trade, to complement and strengthen the VPA initiative and to improve synergies between policies aimed at the conservation of forests and the achievement of a high level of environmental protection, including combating climate change and biodiversity loss.

(2) Due to the growing demand for timber and timber products worldwide, in combination with the institutional and governance deficiencies that are present in the forest sector in a number of timber-producing countries, illegal logging and the associated trade have become matters of ever greater concern.

(3) Illegal logging is a pervasive problem of major international concern. It poses a significant threat to forests as it contributes to the process of deforestation, which is responsible for about 20 % of CO₂ emissions, threatens biodiversity, and undermines sustainable forest management and development including the commercial viability of operators acting in accordance with applicable legislation. In addition, it also has social, political and economic implications.

(8) The efforts made by countries which have concluded FLEGT VPAs with the Union and the principles incorporated in them, in particular with regard to the definition of legally produced timber, should be recognised. It should be also taken into account that under the FLEGT licensing scheme only timber harvested in accordance with the relevant national legislation and timber products derived from such timber are exported into the Union. Therefore, timber embedded in timber products listed in Annexes II and III to Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community ⁽⁴⁾, originating in partner countries listed in Annex I to Council Regulation (EC) No 2173/2005, should be considered to have been legally harvested provided those timber products comply with that Regulation and any implementing provisions.

(4) The Communication of the Commission to the European Parliament and to the Council of 21 May 2003 entitled 'Forest Law Enforcement, Governance and Trade (FLEGT): Proposal for an EU Action Plan' proposed a package of

⁽¹⁾ OJ C 318, 23.12.2009, p. 88.

⁽²⁾ OJ C , p.

⁽³⁾ Position of the European Parliament of 22 April 2009 (not yet published in the Official Journal) and Council Position of ... (not yet published in the Official Journal).

⁽⁴⁾ OJ L 347, 30.12.2005, p. 1.

- (9) Account should also be taken of the fact that the Convention on International Trade of Endangered Species of Fauna and Flora (CITES) places a requirement on parties to the Convention only to grant a CITES permit for export when a CITES-listed species has been harvested, inter alia, in compliance with national legislation in the exporting country. Therefore timber of species listed in Annexes A, B or 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 therein⁽¹⁾ should be considered to have been legally harvested provided it complies with that Regulation and any implementing provisions.
- (10) Taking into account the complexity of illegal logging as regards the underlying factors and the impacts, the incentives for illegal behaviour should be reduced by targeting the behaviour of operators.
- (11) In the absence of an internationally agreed definition, the legislation of the country where the timber was harvested should be the basis for defining what constitutes illegal logging.
- (12) Many timber products undergo numerous processes before and after they are placed on the market for the first time. In order to avoid imposing any unnecessary administrative burden, only those operators that place timber and timber products on the internal market for the first time, rather than all operators involved in the distribution chain, should be subject to the requirements laid down in this Regulation.
- (13) Bearing in mind that it would place a disproportionate burden on operators if they were required to provide information on the origin of timber in products made of recycled timber, such products should be excluded from the scope of this Regulation.
- (14) Operators placing timber and timber products for the first time on the internal market should exercise due diligence through a system of measures and procedures (due diligence system) to minimise the risk of placing illegally harvested timber and timber products derived from such timber on the internal market.
- (15) The due diligence system includes three elements inherent to risk management: access to information, risk assessment and mitigation of the risk identified. The due diligence system should provide access to information about the sources and suppliers of the timber and timber products being placed on the internal market for the first time, including relevant information such as compliance with the applicable legislation. On the basis of this information, operators should carry out a risk assessment. Where a risk is identified, operators should mitigate such risk in a manner proportionate to the risk identified, with a view to preventing illegally harvested timber and timber products derived from such timber from being placed on the market.
- (16) In order to avoid any undue administrative burden, operators already using systems or procedures which comply with the requirements of this Regulation should not be required to set up new systems.
- (17) In order to recognise good practice in the forestry sector, certification or other third party verified schemes that include verification of compliance with applicable legislation may be used in the risk assessment procedure.
- (18) The timber sector is of major importance for the economy of the Union. Organisations of operators are important actors in the sector as they represent the interests of the latter on a large scale and interact with a diverse range of stakeholders. Those organisations also have the expertise and capacity to analyse relevant legislation and facilitate the compliance of their members, but should not use this competence to dominate the market. In order to facilitate the implementation of this Regulation and to contribute to the development of good practices it is appropriate to recognise organisations which have developed due diligence systems meeting the requirements of this Regulation. A list of such recognised organisations should be made public in order to enable operators' use of such recognised monitoring organisations.
- (19) Competent authorities should monitor that operators effectively fulfil the obligations laid down in this Regulation. For that purpose the competent authorities should carry out official checks, as appropriate, which may include checks on the premises of the operator, and should be able to require operators to take remedial actions where necessary.
- (20) Competent authorities should keep records of the checks and the relevant information should be made available to any applicant in accordance with Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information⁽²⁾.
- (21) Taking into account the international character of illegal logging and related trade, competent authorities should cooperate with each other and with the administrative authorities of third countries and the Commission.
- (22) Member States should ensure that infringements of this Regulation are sanctioned by effective, proportionate and dissuasive penalties.

⁽¹⁾ OJ L 61, 3.3.1997, p. 1.

⁽²⁾ OJ L 41, 14.2.2003, p. 26.

(23) The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) concerning the procedures for the recognition and withdrawal of recognition of monitoring organisations, concerning further relevant risk assessment criteria that may be necessary to supplement those already provided for in this Regulation and concerning the list of timber and timber products to which this Regulation applies. It is of particular importance that the Commission consult experts in the preparatory phase in accordance with the commitment of the Commission undertaken in the Communication of 9 December 2009 on the implementation of Article 290 of the TFEU.

(24) The measures necessary for the implementation of this Regulation should 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 ⁽¹⁾.

(25) Operators and competent authorities should be given a reasonable period in order to prepare themselves to meet the requirements of this Regulation.

(26) Since the objective of this Regulation, namely the fight against illegal logging and related trade, cannot be achieved by the Member States individually and can therefore, by reason of its scale, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down the obligations of operators who place timber and timber products on the internal market for the first time, to minimise the risk of placing illegally harvested timber or timber products derived from such timber on the market.

Article 2

Definitions

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

(a) 'timber and timber products' means the timber and timber products set out in the Annex, with the exception of timber

products derived from timber or from timber products which have already been placed on the market as well as timber products or components of such products manufactured from timber or timber products that have completed their life cycle and would otherwise be disposed of as waste;

(b) 'placing on the market' means the supply by any means, irrespective of the selling technique used, of timber or timber products, for the first time on the internal market for distribution or use in the course of a commercial activity, whether in return for payment or free of charge. It also includes the supply by means of distance communication as defined in Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts ⁽²⁾;

(c) 'operator' means any natural or legal person that places timber or timber products on the market;

(d) 'country of harvest' means the country or territory where the timber or the timber embedded in the timber products was harvested;

(e) 'legally harvested' means harvested in accordance with the applicable legislation in the country of harvest;

(f) 'illegally harvested' means harvested in contravention of the applicable legislation in the country of harvest;

(g) 'applicable legislation' means the legislation in force in the country of harvest covering the following matters:

— rights to harvest timber within gazetted boundaries;

— payments for harvest rights and timber including duties related to timber harvesting;

— timber harvesting, including directly related environmental and forest legislation;

— third parties' legal rights concerning use and tenure that is affected by timber harvesting; and

— trade and customs legislation, in so far as the forest sector is concerned.

Article 3

Status of timber and timber products covered by FLEGT and CITES

Timber embedded in timber products listed in Annexes II and III to Regulation (EC) No 2173/2005 which originate in partner countries listed in Annex I of Regulation (EC) No 2173/2005 and which comply with that Regulation and its implementing provisions shall be considered to have been legally harvested for the purposes of this Regulation.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

⁽²⁾ OJ L 144, 4.6.1997, p. 19.

Timber of species listed in Annexes A, B or C to Regulation (EC) No 338/97 and which complies with that Regulation and its implementing provisions shall be considered to have been legally harvested for the purposes of this Regulation.

Article 4

Obligations of operators

1. Operators shall exercise due diligence to minimise the risk of placing illegally harvested timber or timber products derived from such timber on the market. To that end, they shall use a framework of procedures and measures, hereinafter referred to as a 'due diligence system', as set out in Article 5.

2. Each operator shall maintain and regularly evaluate the due diligence system which it uses, except where the operator makes use of a due diligence system established by a monitoring organisation referred to in Article 7.

Article 5

Due diligence systems

1. The due diligence system referred to in Article 4(1) shall contain the following elements:

(a) measures and procedures providing access to the following information concerning the operator's supply of timber or timber products placed on the market:

- description, including the full scientific name or common name of tree species, trade name and type of product;
- country of harvest, and where applicable sub-national region where the timber was harvested;
- quantity (expressed in volume, weight or number of units);
- name and address of the supplier to the operator;
- documents or other information indicating compliance of those timber and timber products with the applicable legislation;

(b) risk assessment procedures enabling the operator to analyse and evaluate the risk of illegally harvested timber or timber products derived from such timber being placed on the market.

Such procedures shall take into account the information set out in point (a) as well as relevant risk assessment criteria, including:

- assurance of compliance with applicable legislation, which may include certification or other third-party-

verified schemes which cover compliance with applicable legislation;

- prevalence of illegal harvesting of specific tree species;
- prevalence of illegal harvesting or practices in the country of harvest and/or sub-national region where the timber was harvested;
- complexity of the supply chain of timber products;

(c) Except where the risk identified in course of the risk assessment procedures referred to in point (b) is negligible, risk mitigation procedures which consist of a set of measures and procedures that are adequate and proportionate to minimise effectively that risk and which may include requiring additional information or documents and/or requiring third party verification.

2. Detailed rules necessary to ensure the uniform implementation of paragraph 1, except as regards further relevant risk assessment criteria referred to in the second paragraph of point (b) of paragraph 1 of this Article, shall be adopted in accordance with the regulatory procedure referred to in Article 16(2). Those rules shall be adopted by ... (*).

3. In order to take into account market developments and the experience gained in the implementation of this Regulation, in particular as identified through the reporting referred to in Article 18(3), the Commission may adopt delegated acts in accordance with Article 290 of the TFEU as regards further relevant risk assessment criteria that may be necessary to supplement those referred to in the second paragraph of point (b) of paragraph 1 of this Article. When adopting such delegated acts, the Commission shall act in accordance with the relevant provisions of this Regulation.

For the delegated acts referred to in this paragraph the procedures set out in Articles 13, 14 and 15 shall apply.

Article 6

Competent authorities

1. Each Member State shall designate one or more competent authorities responsible for the application of this Regulation.

Member States shall inform the Commission of the names and addresses of the competent authorities by ... (**). Member States shall inform the Commission of any changes to the names or addresses of the competent authorities.

2. The Commission shall make publicly available, including on the Internet, a list of the competent authorities. The list shall be regularly updated.

(*) 18 months after the date of entry into force of this Regulation.

(**) Six months after the entry into force of this Regulation.

*Article 7***Monitoring organisations**

1. A monitoring organisation shall exercise the following functions:

- (a) maintain and regularly evaluate a due diligence system in accordance with Article 5 and grant operators the right to use it;
- (b) verify the proper use of its due diligence system by such operators;
- (c) take appropriate action in the event of failure by an operator to properly use its due diligence system, including notification of competent authorities in the event of serious or repeated failure by the operator.

2. An organisation may apply for recognition as a monitoring organisation, if it complies with the following requirements:

- (a) it has legal personality and is legally established within the Union;
- (b) it has the capacity to exercise the functions referred to in paragraph 1; and
- (c) it carries out its functions in a manner that avoids conflicts of interest.

3. An applicant that fulfils the requirements set out in paragraph 2 shall be recognised as a monitoring organisation, in one of the following ways:

- (a) the competent authority of a Member State shall recognise a monitoring organisation which intends to carry out its activities exclusively in that Member State, and thereafter without delay inform the Commission;
- (b) the Commission shall, after informing Member States, recognise a monitoring organisation which intends to carry out its activities in more than one Member State, or throughout the Union.

4. The competent authorities shall carry out checks at regular intervals to verify that the monitoring organisations operating within the competent authorities' jurisdiction continue to fulfil the functions laid down in paragraph 1 and comply with the requirements laid down in paragraph 2.

5. If a competent authority determines that a monitoring organisation that has been recognised by the Commission either no longer fulfils the functions laid down in paragraph 1 or no longer complies with the requirements laid down in paragraph 2, it shall without delay inform the Commission.

6. The competent authorities or the Commission may withdraw a recognition when the competent authority or the Commission has determined that a monitoring organisation no longer fulfils the functions laid down in paragraph 1 or the requirements laid down in paragraph 2. The competent authority or the Commission may only withdraw a recognition that it has itself issued. Before withdrawal of a recognition, the Commission shall inform the Member States concerned. Member States shall inform the Commission of the withdrawal of a recognition.

7. In order to supplement the procedural rules with regard to the recognition and withdrawal of recognition of monitoring organisations and, if experience so requires, to amend them, the Commission may adopt delegated acts in accordance with Article 290 of the TFEU. When adopting such delegated acts, the Commission shall act in accordance with the relevant provisions of this Regulation.

For the delegated acts referred to in this paragraph the procedures set out in Articles 13, 14 and 15 shall apply. Those acts shall be adopted by ... (*).

8. Detailed rules concerning the frequency and the nature of the checks referred to in paragraph 4, necessary to ensure the uniform implementation of that paragraph, shall be adopted in accordance with the regulatory procedure referred to in Article 16(2). Those rules shall be adopted by ... (*).

*Article 8***List of monitoring organisations**

The Commission shall publish the list of the monitoring organisations in the *Official Journal of the European Union*, C series, and shall make it available on its website. The list shall be regularly updated.

*Article 9***Checks on operators**

1. The competent authorities shall carry out checks to verify if operators comply with the requirements set out in Articles 4 and 5.

2. Operators shall offer all assistance necessary to facilitate the performance of the checks referred to in paragraph 1.

3. Where, following the checks referred to in paragraph 1, shortcomings have been detected, the competent authorities may issue a notice of remedial actions to be taken by the operator. Any failure by the operator to take such remedial action may give rise to penalties in accordance with Article 17.

(*) 18 months after the date of entry into force of this Regulation.

Article 10

Records of checks

1. The competent authorities shall keep records of the checks referred to in Article 9(1), indicating in particular their nature and results, as well as of any notice of remedial actions issued under Article 9(3). Records of all checks shall be kept for at least 5 years.

2. The information referred to in paragraph 1 shall be made available to any applicant in accordance with Directive 2003/4/EC.

Article 11

Cooperation

1. Competent authorities shall cooperate with each other, with the administrative authorities of third countries and with the Commission in order to ensure compliance with this Regulation.

2. The competent authorities shall exchange information on serious shortcomings detected through the checks referred to in Articles 7(4) and 9(1) and on the types of penalties imposed in accordance with Article 17 with the competent authorities of other Member States and with the Commission.

Article 12

Amendments of the Annex

In order to take into account the experience gained in implementation of this Regulation, in particular as identified through the reporting referred to in Article 18(3), and developments with regard to technical characteristics, end-users and production processes of timber and timber products, the Commission may adopt delegated acts in accordance with Article 290 of the TFEU by amending and supplementing the list of timber and timber products set out in the Annex. Such acts shall not create a disproportionate burden on operators. When adopting such delegated acts, the Commission shall act in accordance with the relevant provisions of this Regulation.

For the delegated acts referred to in this Article the procedures set out in Articles 13, 14 and 15 shall apply.

Article 13

Exercise of the delegation

1. The powers to adopt the delegated acts referred to in Articles 5(3), 7(7) and 12 shall be conferred on the Commission for a period of seven years following the entry into force of this Regulation. The Commission shall make a report in respect of the delegated powers at the latest three months before the end of a three-year period after the date of application of this Regulation. The delegation of power shall be automatically extended for periods of an identical duration, unless the

European Parliament or the Council revokes it in accordance with Article 14.

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

3. The powers to adopt delegated acts are conferred on the Commission subject to the conditions laid down in Articles 14 and 15.

Article 14

Revocation of the delegation

1. The delegation of power referred to in Articles 5(3), 7(7) and 12 may be revoked by the European Parliament or by the Council.

2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall inform the other legislator and the Commission at the latest one month before the final decision is taken, stating the delegated powers which could be subject to revocation and the reasons for the revocation.

3. The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the *Official Journal of the European Union*.

Article 15

Objections to delegated acts

1. The European Parliament and the Council may object to the delegated act within a period of three months from the date of notification.

2. If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act, or if, before that date, the European Parliament and the Council have both informed the Commission that they have decided not to raise objections, the delegated act shall enter into force at the date stated in its provisions.

3. If the European Parliament or the Council objects to the adopted delegated act, the act shall not enter into force. The institution which objects shall state its reasons for objecting to the delegated act.

Article 16

Committee

1. The Commission shall be assisted by the Forest Law Enforcement Governance and Trade (FLEGT) Committee established under Article 11 of Regulation (EC) No 2173/2005.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 17

Penalties

The Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission and shall notify it without delay of any subsequent amendments affecting them.

Article 18

Reporting

1. Member States shall submit to the Commission, by 30 April of every second year following the date of application of this Regulation, a report on the application of this Regulation during the previous two years.

2. On the basis of those reports the Commission shall draw up a report to be submitted to the European Parliament and to the Council every two years.

3. By ... (*) and every six years thereafter, the Commission shall, on the basis of reporting on and experience with the application of this Regulation, review the functioning and effectiveness of this Regulation, in particular with respect to administrative consequences for small and medium-sized enterprises and product coverage. The reports may be accompanied, if necessary, by appropriate legislative proposals.

Article 19

Entry into force and application

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

It shall apply as from ... (**). However, Articles 5(2), 6(1), 7(7) and 7(8) shall apply as from the date of entry into force of this Regulation.

Article 20

Publication

This Regulation shall be published 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, ...

For the European Parliament
The President

...

For the Council
The President

...

(*) 36+30 months after the date of entry into force of this Regulation.
(**) 30 months after the date of entry into force of this Regulation.

ANNEX

Timber and timber products as classified in the Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87⁽¹⁾, to which this Regulation applies

- 4401 Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms;
- 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;
- 4409 Wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, V-jointed, beaded, moulded, rounded or the like) along any of its edges, ends or faces, whether or not planed, sanded or end-jointed;
- 4410 Particle board, oriented strand board (OSB) and similar board of wood whether or not agglomerated with resins or other organic binding substances;
- 4411 Fibreboard of wood or other ligneous materials, whether or not bonded with resins or other organic substances;
- 4412 Plywood, veneered panels and similar laminated wood;
- 4413 00 00 Densified wood, in blocks, plates, strips or profile shapes;
- 4414 00 Wooden frames for paintings, photographs, mirrors or similar objects;
- 4415 Packing cases, boxes, crates, drums and similar packings, of wood; cable-drums of wood; pallets, box pallets and other load boards, of wood; pallet collars of wood; coffins;

(Not packing material used exclusively as packing material to support, protect or carry another product placed on the market).
- 4416 00 00 Casks, barrels, vats, tubs and other coopers' products and parts thereof, of wood, including staves;
- 4418 Builders' joinery and carpentry of wood, including cellular wood panels, assembled flooring panels, shingles and shakes, wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, V-jointed, beaded, moulded, rounded or the like) along any of its edges, ends or faces, whether or not planed, sanded or end-jointed;
- Pulp and paper of Chapters 47 and 48 of the Combined Nomenclature, with the exception of bamboo-based and recovered (waste and scrap) products;
- 9403 30, 9403 40, 9403 50 00, 9403 60 and 9403 90 30 Wooden furniture;
- 9406 00 20 Prefabricated buildings.

⁽¹⁾ Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 17 October 2008, the Commission submitted a 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 market. The proposal is based on Article 192 (1) of the Treaty on the Functioning of the European Union (TFEU).
2. The European Parliament adopted its position at first reading on 22 April 2009 ⁽¹⁾. The Economic and Social Committee delivered its opinion on 1 October 2009 and the Committee of the Regions indicated that it did not intend to deliver an opinion.
3. On 1 March 2010, the Council adopted its position at first reading in accordance with Article 294 TFEU.

II. OBJECTIVES

The purpose of the Regulation is to minimize the risk of placing illegally logged timber on the internal market. It is based on the principle of due diligence and focuses on the first time that timber and timber products are placed on the internal market. The Council has maintained the spirit of the Commission's systemic approach. It has therefore focused on elaborating the legal requirements for a proactive behaviour on the part of the operator.

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

1. General observations

In its first reading on 22 April 2009, the European Parliament (EP) adopted 75 amendments.

The Council's position at first reading incorporates a number of the European Parliament's amendments, in part or in spirit. Notable among them is that particular attention should be made to the impact of the Regulation on small and medium-sized enterprises (AM 22, 29, 47, 72), that the scope of the Regulation should not exclude timber and timber products which are subject to mandatory sustainability criteria (AM 21, 32) and that the Commission should recognise monitoring organisations which intend to carry out its activities in more than one Member State (AM 51-56).

However, other amendments were not reflected in the Council's position at first reading because the Council considered that they were rendered unnecessary in the light of the way in which the text had evolved. The Council introduced a number of changes resulting from the entry into force of the Lisbon Treaty on 1 December 2009, in particular the legal framework that will be constructed to replace the comitology system. As the EP position at first reading was delivered approximately seven months before the entry into force of the Lisbon Treaty the amendments related to comitology were not taken into account as they were no longer relevant.

The Council's position at first reading also includes a number of changes other than those envisaged in the European Parliament's position at first reading. The following sections describe the substantive changes. In addition, there are drafting changes to clarify the text or to ensure that the Regulation is generally consistent.

2. Specific comments

Definitions

The following changes were made to the original proposal:

- the definition of "timber and timber products" was modified to indicate that recycled timber products - that is timber products or components of such products manufactured from timber and timber products that have completed their lifecycle and would otherwise be disposed of as waste- will not be covered by that definition as it was considered that it would be disproportionate to require operators to ascertain information concerning the original source of timber present in recycled products;

⁽¹⁾ 8881/09

- the proposed exception for timber and timber products which are subject to mandatory sustainability criteria was deleted (AM 21, 32);
- it was clarified that the timber products derived from timber or from timber products which have already been placed on the market should not be covered by the definition of ‘timber and timber products’ (AM 34);
- the Council specified the meaning of ‘the placing on the market’ by adding that it included all selling techniques, it also added that supply by means of distance communication was covered;
- the notion of sub-national region of harvest was added to cover cases in which there are regional differences within a country;
- the definition of ‘country of harvest’ was extended to include not only countries but also territories;
- the definitions of ‘risk management’ and ‘monitoring organisation’ were deleted because it was considered that these concepts were more comprehensively described in the respective Article.

Applicable legislation

The definition of applicable legislation is one of the core issues of the draft Regulation since the operator would be obliged to have access to information about the compliance of timber and timber products with the applicable legislation. The Council has endeavoured to strike the right balance between an extended list of areas of legislation and a list that enumerated the relevant areas of legislation in general terms. The Council has broadened the definition put forward in the Commission proposal to include forest-related legislation, including directly environmental legislation as well as trade and customs legislation, as far as the forest sector is concerned. The Council has added ‘third parties’ legal rights concerning use and tenure ...’ which can be seen as approaching the line taken by the EP when it mentions ‘property tenure and rights of indigenous people’ (AM 38). However, the Council considered the EP’s amendments concerning the inclusion of labour and community welfare legislation to be problematic from a legal and practical point of view.

Due diligence systems

The Council considered it important that the main elements in the draft Regulation were clarified. Therefore it has elaborated three elements of the due diligence system: access to certain information, the risk assessment procedure and the risk mitigation procedure. In its AM 37 the EP also saw the need to clearly set out the two elements of risk identification and the risk minimisation.

For the risk assessment procedures the Council set out four risk assessment criteria that can be supplemented pursuant to Article 290 of the TFEU.

In its Article 5 (1) (b) and (c) the Council endeavoured to distinguish between the risk assessment and the risk mitigation procedures, according to different factors such as the complexity of the product and its origin, without explicitly indicating situations which require special attention, in the form of either stricter or lighter requirements (AM 47).

Unlike the EP, the Council did not extend the obligation of due diligence to operators other than those who place timber and timber products on the internal market for the first time (AM 15, 17, 19, 20, 31, 33, 35, 41, 42, 43, 50). Such an extension was considered to be unduly burdensome.

The Council introduced the possibility for the operator to choose between three different due diligence systems, their own, a due diligence system provided by a monitoring organisation or a system provided by a third party.

Scope

Like the EP, the Council also deleted the proposed exemption for timber subject to mandatory sustainability criteria in the Commission proposal (AM 21, 32).

Annex

The Council rearranged the timber products in the Annex according to the numbering of the CN codes and added some product categories. It considered that at this stage the burden on operators would be too heavy if other categories are added (AM 74, 75).

Monitoring organisations

The Council shared the view of the EP that it was important to have harmonised standards across the EU and suggested that the Commission should also recognise monitoring organisations. The Council distinguished between monitoring organisations which intend to carry out activities in one Member State or in several Member States. It agreed that the Commission should recognise those organisations carrying out their activities in several Member States (AM 51, 53, 54, 55, 56) cf. (Article 7(3)). However it was considered more practical for a Member State's competent authority to be responsible for recognising monitoring organisations carrying out their activities only in that Member State. Like the EP, the Council considered it important that the monitoring organisation should carry out its functions in a manner to avoid any conflict of interest (AM 51) (cf. Article 7(2)(c)). It was not deemed necessary to distinguish between the monitoring organisation being a public or a private entity (AM 51, 52).

Penalties

The Council considered adding a list of penalties (AM 69) but after extensive discussion decided to retain the language of the Commission's proposal which is agreed language for EU legislation. Many Member States were of the opinion that the level and content of penalties were within the sphere of Member States' competence. Furthermore the setting out of a list of penalties raised some practical issues such as the exhaustiveness of the list and difficulties in identifying at this stage all possible infractions.

Prohibition

The Council has kept the spirit of the Commission proposal for a systemic approach. Operators should use a due diligence system to minimise the risk of placing illegally harvested timber or timber products on the market. The Council does not concur with the view of the EP that a prohibition should be introduced to ensure legality (AM 17, 19, 31, 42 (as regards Article 3(1)), 43, 50, 71). Such an extension of the scope was not considered to be in line with the spirit of the proposal and is therefore unacceptable.

Application

The Council considered that it would be unrealistic, to make the Regulation applicable only a year after its entry into force, no matter how desirable (AM 73). Therefore, and in order to give the operators time to adjust to the new situation and for the implementing measures to be adopted it was suggested that the Regulation should begin to apply 30 months after its entry into force.

Situation of small and medium-sized enterprises/operators

Like the EP, the Council has taken into account the special situation of small and medium-sized enterprises and operators (AM 22, 29, 47, 72). It has for example introduced the notion of *negligible risk* in Article 5(1)(c). It is set out in Article 12 that the delegated acts which will amend and supplement the list of timber and timber products set out in the Annex should not create a disproportionate burden on operators. In Article 18 on reporting, the Council added that the review should in particular take into account the administrative consequences for small and medium-sized enterprises.

Recitals and references to environmental issues (sustainable forest management)

The EP has added a considerable number of recitals to take account of the forest environment, biodiversity, forest ecosystems and sustainable forest management (AM 2-8, 10, 11, 14). The Council considers that since the due diligence system and the behaviour of the operators to minimise the risk of placing illegally logged timber and timber products on the market is at the heart of the Regulation, such references are superfluous, however desirable the objectives. In addition, recitals serve to justify the provisions of the Regulation while here there are no operational provisions to which such recitals could be linked.

Review

The Council concurred with the EP that it is necessary that the Commission carries out a review of the Regulation and that this review should in particular address the administrative consequences for small and medium-sized enterprises (AM 72).

3. Other changes made by the Council**Status of timber products covered by FLEGT and CITES**

The provision on timber and timber products covered by FLEGT and CITES was set out in a separate Article because the Regulation considers FLEGT licenses and CITES certificates to be sufficient evidence of legal harvesting.

Cooperation between competent authorities

The Council was of the opinion that only serious shortcomings needed to be subject to an exchange of information in Article 11. The Council also specified that the types of penalties imposed should be covered by the exchange of information.

Subject matter

In order to clarify the purpose of the obligations laid down in the Regulation the Council has added that the aim is to minimise the risk of placing illegally timber or timber products derived from such timber on the market.

Lisbon Treaty changes

Since the Council considers that powers should be delegated to the Commission pursuant to Article 290 of the Treaty on the Functioning of the European Union, it added three new Articles necessary for such delegated acts in Articles 5(3) and 7(7) and 12 as well as a new recital. Similarly, the Council adapted the provisions for the adoption of implementing measures pursuant to Article 291 TFEU.

IV. CONCLUSION

The Council believes that its position at first reading is in line with the fundamental objectives of the Commission's proposal. It represents a balanced package of measures that would contribute to the pursuit of the objectives of combating illegal logging.

The Council looks forward to constructive discussion with the European Parliament with a view to achieving a workable agreement on this Regulation.

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