



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 27 February 2012**

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**PROPOSAL**

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from: Commission  
dated: 27 February 2012

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Subject: Commission delegated regulation (EU) No .../.. of 23.2.2012 on the procedural rules for the recognition and withdrawal of recognition of monitoring organisations as provided for in Regulation (EU) No 995/2010 of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market

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Delegations will find attached a proposal from the Commission, submitted under a covering letter to Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union.

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Encl.: C(2012)1145 final



EUROPEAN COMMISSION

Brussels, 23.2.2012  
C(2012) 1145 final

**COMMISSION DELEGATED REGULATION (EU) No .../..**

**of 23.2.2012**

**on the procedural rules for the recognition and withdrawal of recognition of monitoring organisations as provided for in Regulation (EU) No 995/2010 of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market**

(Text with EEA relevance)

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE DELEGATED ACT

- Grounds for and objectives of the proposal

Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (the EU Timber Regulation; EUTR) provides that the Commission may adopt delegated acts in order to supplement the procedural rules with regard to the recognition and withdrawal of recognition of monitoring organisations.

The main objective of this delegated Regulation is to implement the EU Timber Regulation by supplementing the procedural rules with regard to the recognition and withdrawal of recognition of monitoring organisations.

- General context

The EU Timber Regulation entered into force on 2nd December 2010. It aims at closing the EU market to illegally harvested timber and products derived from such timber by imposing a prohibition to this effect and by laying down a set of rules governing the placing on the market of timber and timber products. It provides a comprehensive approach towards tackling the problem with illegal logging and associated trade, thus complementing and strengthening the existing framework.

The application of the EU Timber Regulation has been delayed until 3rd March 2013 during which time the Commission must adopt non-legislative acts to implement it.

The EU Timber Regulation provides that legal entities named "monitoring organisation" may elaborate a due diligence system and grant operators who first place timber and timber products on the internal market the right to use it with a view to facilitating their compliance with the requirements of the EUTR. The EU Timber Regulation lays down the general requirements, which a legal entity shall meet in order to be recognised as a monitoring organisation. The Regulation also provides basic procedural rules for the recognition and withdrawal of recognition of the monitoring organisations by the Commission.

- Existing provisions in the area of the proposal

The European Union policy regarding the illegal logging and related trade was set out in the Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan adopted in 2003. The Action Plan sets out a package of measures, the initial centre piece of which was the FLEGT Voluntary Partnership Agreements (FLEGT VPAs).

The legal framework for the implementation of the FLEGT VPAs was set out in the FLEGT Regulation<sup>1</sup> adopted by the Council in 2005 and in the Implementing Regulation adopted by the Commission in 2008<sup>2</sup>.

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<sup>1</sup> OJ L 347, 30.12.2005, p. 1

<sup>2</sup> OJ L 227, 18.10.2008, p. 23.

- Consistency with other policies and objectives of the Union

The aim of the proposal is in line with the Commission's strategic objectives and better regulation principles as it will ensure a high level of legal certainty across the EU, will guarantee a level playing field in the sector by establishing uniform, fair and transparent rules and procedures. Further, it will enable operators to be more dynamic without increasing the administrative burden and will thus help strengthen the Union's credibility in the eyes of the citizens.

The proposal is also in line with the Union's overall policy objective in the forest sector, which is to achieve legal and sustainable forest management and to reduce greenhouse gas emissions from deforestation by tackling its drivers, including illegal logging and degradation in tropical forests.

## **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

- Collection and use of expertises

In December 2010 The Commission commissioned an external Support study for development of the non-legislative acts provided for in Regulation (EU) No 995/2010. The objectives of the study were to provide an in-depth analysis of existing relevant best practices relating to the issues to be regulated in the secondary legislation and to propose most efficient ways to fulfil the requirements of the EU Timber Regulation.

In order to achieve the objectives to this project the Contractor carried out several tasks. Relevant to the proposed draft delegated Regulation was the task to find out how best applicants for monitoring organisations could demonstrate they fulfil the requirements of the EU Timber Regulation, which would allow the Commission to recognise them as such.

The final report came to a conclusion that the EU Timber Regulation adopted a unique approach in dividing the responsibility for recognising monitoring organisations and subsequently controlling them between different authorities: the Commission and the Member States' competent authorities. It recommended that the delegated Regulation provides a clear definition of (a) the recognition requirements and (b) the recognition procedure in order to ensure a coordinated and harmonised approach.

With regard to the recognition requirements the final study report concluded that the first two requirements laid down in the basic Regulation, namely that the applicants must be legally established within the Union and must demonstrate appropriate expertise and capacity to exercise the required functions, were sufficiently clear. As regards the third requirement, the absence of conflict of interest in carrying out its functions, the report recommended that this requirement is elaborated in more detail in the delegated Regulation.

Regarding the recognition procedure for which the EU Timber Regulation provided little detail, the report suggested a complex procedure with several stages and proposed active involvement of the Member States' competent authorities in it.

The final report of the study was made publicly available on the webpage of the Directorate-General for the Environment.

- Consultation of interested parties

Stakeholders were consulted from the very beginning of the preparatory study as well as through a public consultation meeting on the monitoring organisations held on 21<sup>st</sup> March 2011, gathering representatives of Member States, non-governmental organisations (NGOs), European professional federations and business organisations, certification bodies and economic operators.

During the public consultation Commission presented a working document, which was disseminated well in advance, outlining issues for discussion. The consultancy presented the study and the draft final report on the monitoring organisations.

Responses received from stakeholders were divergent. Thus the NGOs demanded stringent uniform rules and transparent procedure for recognition and withdrawal of recognition with a possibility for involvement of civil society. The professional federations and associations, viewed as potential candidates for monitoring organisations, preferred more flexible rules and less administrative burden. Experts from Member States wanted uniform rules and strictly centralised procedure. They rejected the idea for formal involvement of Member States' competent authorities in the process but requested that they are consulted in all stages of the procedure. They demanded also simplification of the procedure proposed in the study report.

The results from the stakeholder consultation meeting were reflected in the report.

Stakeholders were also consulted ad hoc through interviews. The Commission provided a special mailbox where interested parties sent their opinions and questions.

### **3. LEGAL ELEMENTS OF THE DELEGATED ACT**

- Summary of the proposed action

The proposed act lays down requirements for recognition of monitoring organisations, procedural rules for recognition by the Commission and procedural rules for withdrawal of recognition monitoring organisations by the Commission.

- Legal basis

The draft delegated Regulation implements Regulation (EU) No 995/2010, and in particular Article 8 (7) thereof. The basic act is based on Article 192(1) TFEU.

- Objective of the measure

The objective of the proposed act is to supplement the procedural rules with regard to the recognition and withdrawal of recognition of monitoring organisations.

- Choice of instrument

Proposed instrument: delegated Regulation

Other measures would not be adequate for the following reasons: The proposed act is a delegated Regulation supplementing non-essential elements laid down in Article 8 of Regulation (EU) No 995/2010. The objective of the act will be achieved most efficiently by fully harmonised requirements and procedures throughout the EU, including timely entry into force.

- Subsidiary principle

The draft delegated Regulation implements Article 8 of Regulation (EU) No 995/2010.

- Proportionality principle

In accordance with the principle of proportionality the measure does not go beyond what is necessary to achieve its objective.

#### **4. BUDGETARY IMPLICATION**

The proposal has no implications for the EU budget.

#### **5. ADDITIONAL INFORMATION**

- European Economic Area

The proposed act concerns European Economic Area matters and should therefore extend to the EEA.

**COMMISSION DELEGATED REGULATION (EU) No .../..**

**of 23.2.2012**

**on the procedural rules for the recognition and withdrawal of recognition of monitoring organisations as provided for in Regulation (EU) No 995/2010 of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market<sup>3</sup>, and in particular Article 8 (7) thereof,

Whereas:

- (1) Regulation (EU) No 995/2010 aims, in particular, at minimising the risk of placing illegal timber and products derived from such timber on the internal market. Monitoring organisations should assist operators in meeting the requirements of that Regulation. To that end, they should develop a due diligence system, grant the operators the right to use it, and verify its proper use.
- (2) The procedure under which the Commission recognises monitoring organisations should be fair, transparent and independent. Therefore, applicants should be assessed after consulting the competent authorities of the Member States and after collecting sufficient information about an applicant. Where necessary, the collection of information should include visits to an applicant's premises.
- (3) It is necessary to specify the appropriate expertise and capacity that monitoring organisations should have in order to determine the compliance of wood with relevant legislation in its country of harvest and to propose measures to assess the risk of placing illegal timber and products derived from such timber on the market. Where the risk identified is not negligible, monitoring organisation should also be able to propose adequate measures to effectively minimising it.
- (4) It should be ensured that monitoring organisations exercise their functions in a transparent and independent manner, avoiding any conflict of interest arising out of

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<sup>3</sup> OJ L 295, 12.11.2010, p. 23.

their functions and providing their services to operators in a non-discriminatory manner.

- (5) The Commission should decide upon a withdrawal of recognition following a procedure, which is fair, transparent and independent. Before taking a decision the Commission should consult the Member States' competent authorities concerned and should collect sufficient information, including on-the-spot visits where necessary. The monitoring organisation concerned should be given the opportunity to submit comments before a decision is taken.
- (6) In accordance with the principle of proportionality, the Commission should be able to withdraw recognition either in a temporary and or/conditional basis, or permanently, as it may deem required by the level of shortcomings detected, where a monitoring organisation no longer fulfils the functions or meets the requirements laid down in Article 8 of Regulation (EU) No 995/2010.
- (7) It is necessary to ensure that the level of protection of individuals with regard to the processing of their personal data within the scope of this Regulation, in particular as regards the processing of personal data in the applications for recognition as a monitoring organisation complies with the requirements laid down in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individual with regard to the processing of personal data and on the free movement of such data<sup>4</sup> and with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>5</sup>,

HAS ADOPTED THIS REGULATION:

### *Article 1* **Definitions**

For the purpose of this Regulation, in addition to the definitions laid down in Article 2 of Regulation (EU) No 995/2010, the following definitions shall apply:

- (1) "competent authorities concerned" means competent authorities of the Member States in which a monitoring organisation or an applicant for recognition as monitoring organisation is legally established or in which provides services or intends to provide services within the meaning of Directive 2006/123/EC of the European Parliament and of the Council<sup>6</sup>;
- (2) "evidence of formal qualifications" means diplomas, certificates and other evidence issued by an authority in a State, designated pursuant to legislative or administrative provisions of that State and certifying successful completion of professional training;

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<sup>4</sup> OJ L 281, 23.11.1995, p. 31.

<sup>5</sup> OJ L 8, 12.1.2001, p. 1

<sup>6</sup> OJ L 376, 27.12.2006, p. 36.



- (3) "professional experience" means the actual and lawful pursuit of the profession concerned.

#### *Article 2*

#### **Application for recognition**

1. Any entity, public or private, being a company, corporation, firm, enterprise, institution or authority, legally established in the Union, may submit to the Commission an application to be recognised as a monitoring organisation.

The entity shall submit the application in any of the official languages of the Union together with the documents listed in the Annex.

2. To be recognised as a monitoring organisation, an applicant shall demonstrate that it fulfils all requirements provided in Article 8 (2) of Regulation (EU) No 995/2010 and in Articles 5 to 8 of this Regulation.
3. The Commission shall acknowledge the receipt of an application and provide the applicant with a reference number within 10 working days from the date of receipt.

It shall also provide the applicant with an indicative time-limit within which it will decide on the application. The Commission shall inform the applicant anytime it revises the indicative time-limit due to the necessity to obtain additional information or documents for the assessment of the application.

4. Where three months have lapsed since the receipt of an application or the Commission's last written communication to an applicant, whichever is later, and the Commission has not adopted a recognition decision or rejected the application, the Commission shall inform the applicant in writing of the progress in assessment of the application.

The first sub-paragraph may apply more than once to the handling of one application.

5. The Commission shall transmit a copy of the application and supporting documents to the competent authorities concerned, which may provide comments on the application within one month of the date of transmission.

#### *Article 3*

#### **Additional documents and access to premises**

1. Upon request by the Commission, an applicant or the competent authorities concerned shall submit any additional information or documents required by the Commission within a specified time limit.
2. The applicant shall grant the Commission access to its premises to verify that all requirements provided in Article 8 of Regulation (EU) No 995/2010 and in Articles 5 to 8 are fulfilled. The Commission shall inform the applicant of a visit in advance. The competent authorities concerned may participate in the visit.

The applicant shall offer all assistance necessary to facilitate such visits.

*Article 4*  
**Recognition decision**

Where the Commission has adopted a recognition decision pursuant to Article 8 (3) of Regulation (EU) No 995/2010, it shall notify the applicant concerned within 10 working days of the date of adoption of that decision.

The Commission shall also provide the applicant with a certificate of recognition without delay and shall communicate its decision to the competent authorities of all Member States in accordance with the second subparagraph of Article 8 (3) of Regulation (EU) No 995/2010 within the time limit referred to in the first paragraph.

*Article 5*  
**Legal personality and legal establishment within the Union**

1. Where an applicant is legally established in more than one Member State, it shall provide information about its registered office, central administration or principal place of business within the Union as well as about all its agencies, branches or subsidiaries set up in the territory of any Member State. The applicant shall also declare in which Member States it intends to provide services.
2. An applicant which is, or forms part of an authority of a Member State shall not be required to prove its legal personality and legal establishment within the Union.

*Article 6*  
**Appropriate expertise**

1. For the purpose of ensuring proper exercise of the functions of a monitoring organisation as required by Article 8(2)(b) of Regulation (EU) No 995/2010, the technically competent personnel of an applicant shall meet the following minimum criteria, attested by evidence of formal qualifications and professional experience:
  - (a) formal professional training in a discipline relevant to the functions of a monitoring organisation;
  - (b) for senior technical positions, at least five years of professional experience in function related to the functions of a monitoring organisation.

For the purposes of point (a) of the first subparagraph, disciplines related to forestry, environment, law, business management, risk management, trade, auditing, financial control or supply chain management shall be considered relevant disciplines.

2. An applicant shall maintain records documenting the duties and responsibilities of its personnel. The applicant shall have in place procedures for monitoring the performance and technical competence of its personnel.

*Article 7*

**Capacity to exercise functions as a monitoring organisation**

1. An applicant shall demonstrate that it has in place all of the following:
  - (a) an organisational structure that ensures a proper exercise of the functions of a monitoring organisation;
  - (b) a due diligence system to be made available to and used by operators;
  - (c) policies and procedures that allow for the evaluation and improvement of the due diligence system;
  - (d) procedures and processes to verify the proper use of its due diligence system by operators;
  - (e) procedures for corrective actions to be taken in a case of a failure by an operator to properly use its due diligence system.
2. In addition to requirements of paragraph 1, an applicant shall demonstrate that it has financial and technical capacity to exercise the functions of a monitoring organisation.

*Article 8*

**Absence of conflict of interest**

1. An applicant shall be organised so as to safeguard the objectivity and impartiality of its activities.
2. An applicant shall identify, analyse and maintain records documenting risks of conflict of interest arising as a result of it exercising functions as a monitoring organisation, including any conflicts arising from its relationships with related bodies or subcontractors.
3. Where a risk of a conflict of interest has been identified the applicant shall have in place written policies and procedures to avoid conflicts of interest at organisational and individual level. The written policies and procedures shall be maintained and implemented. Those policies and procedures may include third party audits.

*Article 9*

**Information on subsequent changes**

1. A monitoring organisation shall inform the Commission without delay of any of the following situations occurring after its recognition:
  - (a) a change that may affect the ability of that monitoring organisation to comply with the requirements in Articles 5 to 8, which have occurred after its recognition;

- (b) the monitoring organisation sets up agencies, branches or subsidiaries within the Union, other than those declared in its application;
  - (c) the monitoring organisation decides to provide services in a Member States other than as declared in its application or in a Member State where it declared to have ceased to provide its services in accordance with point (d);
  - (d) the monitoring organisation ceases to provide services in any Member State.
2. The Commission shall communicate all information obtained pursuant to paragraph 1 to the competent authorities concerned.

#### *Article 10*

#### **Review of the recognition decision**

1. The Commission may review a decision recognising a monitoring organisation at any time.

The Commission shall carry out such a review in any of the following situations:

- (a) a competent authority concerned informs the Commission that it has determined that a monitoring organisation no longer fulfils the functions laid down in Article 8(1) of the Regulation (EU) No 995/2010 or no longer complies with the requirements laid down in Article 8(2) of Regulation (EU) No 995/2010 as specified in Articles 5 to 8 of this Regulation;
  - (b) the Commission is in possession of relevant information, including substantiated concerns from third parties, that a monitoring organisation no longer complies with the requirements laid down in Article 8(1) and (2) of Regulation (EU) No 995/2010 and in Articles 5 to 8 of this Regulation;
  - (c) a monitoring organisation has informed the Commission of changes referred to in Article 9(1)(a) of this Regulation.
2. Where a review is initiated the Commission shall be assisted by a review team to conduct the review and perform checks.
3. An applicant shall grant the review team access to its premises to verify that all requirements provided in Article 8 of Regulation (EU) No 995/2010 and in Articles 5 to 8 in this Regulation are fulfilled. The competent authorities concerned may participate in the visit.

The applicant shall offer all assistance necessary to facilitate such visits.

4. The review team shall draft a report stating its findings. Supporting evidence shall be annexed to the review report.

The review report shall include a recommendation as to whether the recognition of a monitoring organisation should be withdrawn.

The review team shall send the review report to the competent authorities concerned. Those authorities may provide comments within three weeks of the date of transmission of the report.

The review team shall provide the monitoring organisation concerned with a summary of the findings and conclusions of the report. The organisation may provide comments to the review team within three weeks of the date of transmission of the summary.

5. The review team shall recommend in its review report withdrawal of recognition on a temporary and/or conditional basis, or permanently, as it may deem required by the level of shortcomings detected, where it determines that a monitoring organisation no longer fulfils the functions or meets the requirements laid down in Article 8 of Regulation (EU) No 995/2010.

The review team may instead recommend that the Commission issue a notice of remedial actions or an official warning, or that the Commission take no further action.

#### *Article 11*

#### **Decision to withdraw recognition**

1. The Commission shall decide whether to withdraw recognition of a monitoring organisation on a temporary and/or conditional basis, or permanently, taking into account the review report referred to in Article 10.
2. The Commission may issue a notice of remedial actions or an official warning where the level of detected shortcomings does not lead to a determination, in accordance with Article 8(6) of Regulation (EU) No 995/2010 that the monitoring organisation no longer fulfils the functions or the requirements laid down in Article 8(2) of that Regulation.
3. A decision to withdraw recognition of a monitoring organisation as well as a notice or a warning pursuant to paragraph 2 shall be notified to the monitoring organisation concerned and communicated to the competent authorities of all the Member States in accordance with Article 8(6) of Regulation (EU) No 995/2010 within 10 working days of its adoption.

#### *Article 12*

#### **Data protection**

This Regulation shall be without prejudice to the rules concerning the processing of personal data laid down in Directive 95/46/EC and Regulation (EC) No 45/2001.

#### *Article 13*

#### **Final Provisions**

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

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

Done at Brussels, 23.2.2012

*For the Commission*  
*The President*  
*José Manuel BARROSO*

## **ANNEX**

### **List of supporting documents**

#### ***Legal personality; legal establishment; provision of services:***

- certified copies of evidence as provided for in the relevant national legislation;
- list of Member States in which the applicant intends to provide services.

#### ***Appropriate expertise:***

- description of the organisation and structure of the entity;
- list of technically competent personnel with copies of CVs;
- description of duties and responsibilities and their division;
- detailed describing of procedures for monitoring the performance and competences of the technically competent personnel.

#### ***Capacity to exercise functions as a monitoring organisation:***

- A detailed description of the following:
  - a due diligence system;
  - policies and procedures for evaluation and improvement of the due diligence system;
  - policies and procedures for dealing with complaints from operators or third parties;
  - procedures and processes to verify the proper use of the due diligence system by operators;
  - procedures for corrective actions to be taken in the case of a failure by an operator to properly use the due diligence system;
  - a record keeping system.

#### ***Financial capacity:***

- copies of financial statements for the last financial year or
- a declaration concerning the sales turnover or
- other substantiating documents if the applicant cannot, for valid reasons, provide those indicated above;
- proof of liability insurance.

#### ***Absence of conflict of interest:***

- declaration of absence of conflict of interest;
- description of the written policies and procedures for avoidance of conflict of interest at organisational and individual level, which may include third party audits.

***Subcontracting:***

- description of tasks subcontracted;
- evidence that all subcontractors or the subsidiaries, where these are established, meet the relevant requirements above.