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COVER NOTE

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 9 June 2016

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the
European Union

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Subject: COMMISSION DELEGATED REGULATION (EU) No / of XXX
amending Annexes I and III to Council Regulation (EC) No 2173/2005
following a Voluntary Partnership Agreement with Indonesia for a
FLEGT licensing scheme for imports of timber into the European Union

Delegations will find attached document C(2016) 3438 final.

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

of 9.6.2016

**amending Annexes I and III to Council Regulation (EC) No 2173/2005 following a
Voluntary Partnership Agreement with Indonesia for a FLEGT licensing scheme for
imports of timber into the European Union**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan, launched in 2003, sets out the EU response to tackle illegal logging and associated trade by improving forest governance, strengthening law enforcement and promoting trade in legally and sustainably harvested timber and timber products.

The establishment of a FLEGT licensing scheme to ensure that only legally harvested timber is imported from countries participating in the scheme is one of the main elements of the FLEGT Action Plan. Regulation (EC) 2173/2005 lays down EU procedures for the implementation of the FLEGT licensing scheme through the conclusion of Voluntary Partnership Agreements (VPAs) with timber producing countries, including a requirement for imports into the Union of timber products originating in FLEGT partner countries to be covered by a FLEGT licence. Under the FLEGT VPA, exporting countries develop systems to verify the legality of their timber exports to the EU and a licensing system to provide assurance that timber imported into the EU has been harvested in compliance with the legal requirements of the partner country, as set out in the relevant FLEGT VPA.

The FLEGT VPA between the EU and the Republic of Indonesia entered into force on 1 May 2014. The Agreement establishes the framework, institutions and systems of the FLEGT licensing scheme for Indonesia. It sets out the supply chain controls, legal compliance framework and independent audit requirements of the system, termed the Timber Legality Assurance System (TLAS). The Agreement covers a wide range of exported timber products as specified in its Annex I.

Article 14(5)(e) of the Agreement foresees that the Joint Implementation Committee (JIC) set up to consider issues relating to the implementation and review of the VPA "shall agree on the date from which the FLEGT licensing scheme will start operating after an evaluation of the functioning of the TLAS on the basis of the criteria set out in Annex VIII". This provision means that the operation of the FLEGT licensing system did not start when the agreement came into force but is conditional on a positive assessment of the JIC that it fulfils the criteria referred to above. To this end, a joint independent assessment of the Indonesian TLAS, also known by its Indonesian acronym SVLK (Sistem Verifikasi Legalitas Kayu), established under the Agreement, was completed in the course of 2014 by a team of experts jointly contracted by the EU and Indonesia. The findings of the assessment served as the basis for further strengthening of the system and for ensuring that the SVLK satisfactorily complied with the provisions of the VPA, including the criteria for assessing the operability of the Indonesian system set out in Annex VIII to the Agreement.

In parallel, technical meetings between the two Parties have also shown major progress in the roll-out of the SVLK at the national level. In particular, available data confirms that 100% of the concessions in natural forests are SVLK certified, as well as all timber coming from plantation forest concessions.

In addition, nearly all formally registered exporters of timber and timber products, as well as over 1,700 timber industries, particularly large scale industries, are also SVLK certified. Available data also shows increased uptake of the SVLK system by Small and Medium-sized Enterprises (SMEs) and continued efforts by the Indonesian government to ensure that the few remaining exporting companies who are not yet certified will be able to obtain their certification before the start of the licensing.

A new ministerial regulation (P30/MenLHK/Setjen/PHPL.3/3/2016) has recently addressed several outstanding issues, including information sharing between relevant actors, monitoring of the system by Independent Forest Monitors, supply chain controls, public disclosure and access to data. A "due diligence" legislation to regulate timber imports has entered into force from 1 January 2016.

Based on this remarkable progress, the two Parties are now in a position to convene a meeting of the JIC which will make a decision on the start date of the FLEGT licensing scheme for Indonesia. To this end, the Commission needs to ensure by way of a delegated act under Articles 10(1) and 10(3) of Regulation (EC) 2173/2005 that Annex I and III to the same Regulation are amended so as to include the Republic of Indonesia and its Licensing Information Unit under the list of "Partner countries and their designated licensing authorities" contained in Annex I, and the list of products covered by the FLEGT licensing scheme in Annex III "Timber products to which the FLEGT licensing scheme applies only in relation to the corresponding partner countries".

It should further be noted that as part of a future decision on the start of FLEGT licensing, the parties have agreed to develop a Joint Action Plan for longer term activities (after FLEGT licensing started) with a view to continuously monitor critical aspects of the system during future operation of FLEGT Licensing in Indonesia and provide the basis for possible future strengthening of the system.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In line with paragraph 4 of the Common Understanding on delegated acts between the European Parliament, the Council and the European Commission, appropriate and transparent consultations, including at expert level, have been carried out on this delegated act. The Commission Expert Group on Forest Law Enforcement, Governance and Trade was consulted in meetings held on 18 May and 15 June 2015, and subsequently kept informed about progress in addressing remaining issues that were required before start of the FLEGT licensing scheme from Indonesia.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

- Summary of the proposed action

Amends Annex I "Partner countries and their designated licensing authorities" and Annex III "Timber products to which the FLEGT licensing scheme applies only in relation to the corresponding partner countries" to Council Regulation (EC) No 2173/2005.

- Legal basis

Council Regulation (EC) No 2173/2005 as amended by Regulation (EU) No 657/2014 of the European Parliament and of the Council of 15 May 2014 amending Council Regulation (EC) No 2173/2005 as regards the delegated and implementing powers to be conferred on the Commission, and in particular Article 10(1) and Article 10(3) thereof.

- Objective of the measure

The objective of the proposed act is to amend Annexes I and III of Council Regulation (EC) No 2173/2005 to operationalise the Indonesian FLEGT licensing scheme.

- Choice of instrument

Proposed instrument: delegated Regulation

Other measures would not be adequate for the following reasons: Pursuant to Articles 10(1) and Article 10(3) of Council Regulation (EC) No 2173/2005 as amended by Regulation (EU) No 657/2014 of the European Parliament and of the Council of 15 May 2014 amending Council Regulation (EC) No 2173/2005 as regards the delegated and implementing powers to be conferred on the Commission, the Commission is empowered to adopt delegated acts to amend Annexes I and III to Council Regulation (EC) No 2173/2005.

- Subsidiary principle

The draft delegated Regulation implements Articles 10(1) and Article 10(3) of Council Regulation (EC) No 2173/2005 as amended by Regulation (EU) No 657/2014 of the European Parliament and of the Council of 15 May 2014 amending Council Regulation (EC) No 2173/2005 as regards the delegated and implementing powers to be conferred on the Commission.

- 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.

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of 9.6.2016

amending Annexes I and III to Council Regulation (EC) No 2173/2005 following a Voluntary Partnership Agreement with Indonesia for a FLEGT licensing scheme for imports of timber into the European Union

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 2173/2005 , and in particular Article 10(1) and (3) thereof,

Whereas:

(1) A Voluntary Partnership Agreement (VPA) between the Union and the Republic of Indonesia (hereinafter referred to as the 'Agreement') was ratified by the Parties and entered into force on 1 May 2014.

(2) Article 14(5)(e) of the Agreement provides that the Joint Implementation Committee (JIC) set up by that Agreement is to agree on the date from which the FLEGT licensing scheme will start operating after an evaluation of the functioning of the Indonesian Timber Legality Assurance System (TLAS) on the basis of the criteria set out in Annex VIII to that Agreement.

(3) A joint independent assessment of the Indonesian TLAS has concluded that the Indonesian TLAS is a robust system and that the system meets the criteria to assess its operability established in Annex VIII to the Agreement.

(4) The two Parties are now in a position to make a decision on the start date of the FLEGT licensing scheme for Indonesia.

(5) With a view to start the FLEGT licensing scheme for Indonesia, Annexes I and III to Regulation (EC) No 2173/2005 need first to be amended so as to include the Republic of Indonesia and its Licensing Information Unit under the list of "Partner countries and their designated licensing authorities" contained in Annex I, and the list of products covered by the FLEGT licensing scheme in Annex III "Timber products to which the FLEGT licensing scheme applies only in relation to the corresponding partner countries".

(6) Regulation (EC) No 2173/2005 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 2173/2005 is amended as set out in the Annex to this Regulation.

Article 2

Annex III to Regulation (EC) No 2173/2005 is amended as set out in the Annex to this Regulation.

Article 3

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 from [the ninetieth 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, 9.6.2016

For the Commission

The President

Jean-Claude JUNCKER