



July 2003

Page 1 of 4

## Steps to stop illegal logging: An analysis of the European Commission's action plan on illegal logging

### 1. Introduction

**Concern over the extent of illegal logging around the world has grown significantly in recent years, with discussions taking place in many international forums, including the G8 and the World Summit on Sustainable Development. As a result the European Commission committed itself to develop an Action Plan on Forest Law Enforcement, Governance and Trade (FLEGT). The Action Plan was released in May 2003 when it was sent to the Council and the European Parliament.**

#### Strengths and weaknesses

The European Commission's FLEGT Action Plan is a first step in the fight against forest crime. The Action Plan rightly acknowledges the seriousness and complexity of the problem and that the EU as a major consumer of timber products should direct demand towards only legally harvested timber. The Commission recognises that law enforcement – without changing unjust laws<sup>1</sup> – can make the situation worse for forest people. This understanding is crucially important in the search for solutions that will work. The Commission has reviewed a wide range of solutions, many of which need to be developed further. However, none is sufficiently concrete to give clear guidance to member states. Furthermore, by just listing 'options' the Commission presents no clear strategy, which one would expect in an Action Plan. Therefore the Commission fails to ensure that these initiatives will adequately address forest crimes.

<sup>1</sup> See FLEGT Action Plan points 4.1.1 Equitable and Just Solutions, and 4.1.5 Policy reform

Finally, the Action Plan mentions only the need for "further research" into the need for legislation to make it illegal to import illegally sourced timber into the European Union. While not pre-empting the outcome of such research, the current wording allows the EU to continue to launder large volumes of illegally harvested timber. Given that the Action Plan states that illegal logging undermines many of the essential elements of the EC's development objectives, more far-reaching suggestions would have been more appropriate.

### 2. What does the Action Plan say?

The Action Plan covers a wide range of issues: support for producer countries, trade in timber, public procurement, private sector initiatives, finance and investment, existing legislation such as money laundering and CITES, conflict timber. An analysis of the most interesting initiatives follows.

#### Support to timber-producing countries: Section 4.1

The Action Plan recognizes the need to address illegal logging without threatening the livelihoods of the most vulnerable people in society. In some countries the enforcement agencies and the justice system are so corrupt that the powerful players may be immune to prosecution. Furthermore, the Action Plan states that forest laws may favour large-scale operations to the detriment of local people, forcing the communities that depend on forests to operate illegally if they want to survive.

The European Commission and the member states can favour community based initiatives and help ensure that the lessons learnt are integrated into national laws and policies.



Published by Fern, the international forest campaign group focusing on EU policy.  
For other Fern Briefing Notes visit our website at [www.fern.org](http://www.fern.org)

**Fern Brussels**, 20 Avenue des Celtes, 1040 Brussels, Belgium.

Tel: +32 2 742 2436. Fax: +32 2 736 8054. E-mail: [info@fern.org](mailto:info@fern.org)

**Fern UK**, 1c Fosseyway Business Park, Stratford Road, Moreton-in-Marsh, GL56 9NQ, UK.

Tel: +44 1608 652 895. Fax: +44 1608 652 878. E-mail: [info@fern.org](mailto:info@fern.org)

The Solomon Islands is one of the few places where local land rights are legally recognised.

Nonetheless commercial logging is having a powerful negative impact on society and the environment. Photo: O Tickell.

**Steps to stop illegal logging**

Donors should also encourage transparency of information. This includes information on timber concessions, land tenure, and the state of the forest. Therefore partner countries will need support for the reforms to ensure improved governance and revise the laws and policies that may be outdated. The Commission proposes to integrate activities to address illegal logging in country and regional strategy papers. There will be an emphasis on countries that wish to enter partnerships with the European Union to address both the producer and consumer aspects of illegal logging.

The Action Plan rightly acknowledges the seriousness and complexity of the problem and FERN specifically welcomes the acknowledgement that the EU as a major consumer of timber products should direct demand towards legally harvested timber only.

**Trade in timber: section 4.2**

The action plan recognizes that the EU is an important market for both legal and illegal timber trade at the international level. The Action Plan also underlines the fact that once illegally-sourced timber has been exported there is nothing the producer country can do to stop it. Similarly, importers often find it difficult to distinguish between legal and illegal. The Commission is therefore proposing to negotiate partnership agreements with willing countries. These agreements would be based on a log tracking system that would identify timber that has been produced legally. The partnerships would also provide support to review existing legislation and ensure that it is enforceable and supports sustainable forest management.

However, the Commission will also have to help establish an environment where human rights are respected and good governance is applied before entering negotiations for bilateral agreements. The Commission should recognize that in some countries participation in negotiations might expose local stakeholders to the risk of human rights abuses. Where this is possible, the Commission should assess the risk and act accordingly, taking every opportunity to seek participation without endangering vulnerable stakeholders. The bilateral agreements will need to be built around fair and effective consultation with all non-state actors in producer countries (specifically local people) and the European Union and establish within the framework of the agreements monitoring and complaints mechanisms for non-state actors.

The bilateral agreements must be built around establishing a certificate of legality based on a system of independently-

monitored legality verification in the producer country as well as spot checks. In order to ensure these activities can be carried out the Commission will need to agree with partner countries the amount of funds to be allocated for the implementation of these bilateral agreements in the review of Country Strategy Papers, next due to take place during 2004.

As not all producing countries are likely to agree to enter partnership agreements and may in some cases also launder illegal timber from neighbouring countries, the Commission proposes to look at further legislative options that would allow the European Union to recognize illegally sourced timber.

The Action Plan mentions only the need for "further research" into the need for legislation to make it illegal to import illegally-sourced timber into the European Union. While not pre-empting the outcome of such research, the current wording allows the EU to continue to launder large volumes of illegally harvested timber. Given that the Action Plan states that illegal logging undermines many of the essential elements of the EC's development objectives, more far-reaching suggestions would have been more appropriate.

**Public Procurement: Section 4.3**

Public procurement: the Commission states that there are a number of possibilities to address illegal logging under the current and proposed Directives on public procurement. With the help of the Handbook on Green Procurement that is currently being drafted, the Commission will show member states how they can take legal harvest and sustainable management into account when procuring goods. The Commission also intends to encourage member states to develop policies that support the procurement of legal timber.

FERN agrees with the Commission that the member states should develop public procurement policies that only allow governments and local authorities to buy timber from legal sources and also stressed the need to procure from sustainable sources.

FERN believes the Council should go one step further and ensure that the new Directives on public procurement currently being adopted allow timber and wood products to be bought from 'legal and sustainable sources'. The Council should therefore adopt the amendments made by the European Parliament in its second reading in July 2003, specifically to article 53, which allows the use of

environmental and social criteria in the contract award phase.

Private sector initiatives: Section 4.4

This section is based on the Commission's communication<sup>2</sup> on corporate social responsibility that defines the concept as "companies integrating social and environmental concerns in their business operations and in their interaction with stakeholders on a voluntary basis". The emphasis in this section is placed on voluntary measures and codes of conduct.

EU governments should encourage industry associations to make public commitments to the elimination of illegal logging and to develop and implement codes of conduct to that end. However, FERN believes that voluntary approaches have never been satisfactory and that it is time to recognize the need for legally binding initiatives.

Financing and investment: Section 4.5

The Commission recognizes the role that investment plays in fuelling illegal logging and will therefore encourage private banks and Export Credit Agencies (ECAs) to apply environmental and social standards and procedures to their decision making process when they review projects to underwrite or finance.

This is an extremely important conclusion and more concretely FERN would suggest that EU governments should:

- ensure that European ECAs and the European Investment Bank apply best available environmental, human rights and social standards and procedures<sup>3</sup> to all their operations;
- improve information disclosure practices of ECAs and the EIB on basic project information and on environmental, social and human rights impact assessments and economic analyses;
- implement independent, third-party monitoring of projects to assess them against the above-mentioned standards and procedures, once in force; and
- instruct the European Commission to develop and implement legally binding, environmental, social, human rights and information disclosure standards and procedures for the Cotonou Investment Facility.

Supporting the Action Plan with existing legislative instruments: Section 4.6

Money laundering: The Commission will work to identify

whether illegal logging activities can be captured under the existing member state legislation. The Commission will then inform banks and financial crimes units about illegal logging. The Commission will also encourage member states to list illegal logging as a crime under their money laundering legislation. Finally, the Commission will provide assistance to producer countries to strengthen their capacity in relation to money laundering.

The action points made by the Commission are all very good. However, FERN would have liked them to take one extra step and list illegal logging as an offence under the third Directive on money laundering in the draft legislative proposal the European Commission will submit to the Council and Parliament. This would shift the burden of proof to banks who would have to report any activity they *should* consider suspicious, based on the information they have available. In turn, the Council must commit to adopting these amendments.

CITES: The Commission proposes to eliminate the loopholes in the permit system which regulates the trade in endangered tree species. FERN believes that the Commission proposal is correct but that CITES was not designed to deal with illegal trade for all timber and will have a limited impact.

Conflict timber: Section 4.7

The Action Plan defines timber trade by armed forces and that funds armed conflict is conflict timber. The Commission proposes to endeavor to recognize this in its development cooperation as well as the rights of local and indigenous peoples to the forests they depend on.

The EU could play a useful role in promoting this issue in the UN and other suitable forums, such as the G8. The EU should ensure that member states do not veto UN Security Council resolutions for the sake of national interests.

### 3. Recommendations

FERN has submitted extensive recommendations to the representatives of member states working on illegal logging who will approve the Action Plan in the Council of the European Union. These ask the Council to:

- provide the European Commission with a mandate to negotiate bilateral agreements to ensure legality in the trade of forest products that include certificates of legality based on a system of independently-monitored legality verification in the producer country. These agreements need to be fair and workable, include the participation of affected communities and respect human rights.

<sup>2</sup> COM (2002) 347 final, 2 July 2002

<sup>3</sup> *Key Reforms Needed for Export Credit Agencies* January 2003 available at [www.fern.org](http://www.fern.org)

- make it illegal to import illegally-sourced timber into the EU.

In addition to new legislation FERN believes that it is important for the Council to:

- ensure mandatory application of best available environmental and social standards and procedures by European ECAs to all their operations and instruct the European Commission to develop and apply binding standards and procedures to the Cotonou Investment Facility;
- ensure all EU member states adapt their government procurement policies to incorporate legality criteria as well as sustainability criteria for timber and wood products;
- instruct the European Commission to include illegal logging in the list of offences in the draft of the new Money Laundering Directive, to be agreed within the next three years, and shift the burden of proof so that banks have to report any activity they should consider suspicious based on the information they have available;
- ensure all member states implement the EU Money Laundering Directive in such a way that banks have to report on any activity they *should* consider suspicious and that all criminal activities are eligible;
- instruct the European Commission to include funds for the prevention of illegal logging under the programming of Country Strategy Papers;
- request the European Commission to develop concrete strategies to address illegal logging in accession countries and Russia.

#### 4. The way forward

The Action Plan has been sent to the Council and the European Parliament. The role of member states and the European Parliament in pushing the Action Plan forward will be crucial. Under the Italian presidency (July to December 2003), the Council will be expected to draft conclusions on the proposed Action Plan. It is vital that the Council gives the Commission the mandate to negotiate bilateral agreements with partner countries to combat illegal trade in forest products and set up the proposed licensing scheme. However, the Action Plan does not adequately address the issue of prohibiting illegally-sourced timber and wood products from entering the EU. The Council conclusions should also demand that the Commission

includes an article in the Regulation underpinning the bilateral agreements making it illegal to import illegally sourced timber.

**For FERN's detailed proposals to the European Union see *Controlling Imports of Illegal Logging: Options for Europe*,<sup>4</sup> published in December 2002 by FERN and the Royal Institute of International Affairs. This sets out actions the EU should take to tackle the complex global problem of illegal logging by strengthening or extending existing legislative tools and by developing a new Regulation.**

This briefing was written by Chantal Marijnissen of FERN: [chantal@fern.org](mailto:chantal@fern.org)

---

<sup>4</sup> Available at [www.fern.org](http://www.fern.org)