

Government bill to the Parliament containing an Act on the Placing on the Market of Timber and Timber Products and an Act amending Chapter 48 a of the Criminal Code

## **MAIN CONTENTS OF THE BILL**

The proposal concerns passing an Act on the Placing on the Market of Timber and Timber Products and an amendment to the Criminal Code.

The purpose of the bill is to implement nationally the Regulation of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market and the legal acts of the European Union adopted by virtue of it. These acts concern the prevention of illegal logging within and outside the European Union. A precondition for placing timber and timber products on the market is compliance with a due diligence system.

The bill would contain a provision under which the Agency for Rural Affairs would serve as the competent authority referred to in the aforementioned Regulation of the European Parliament and of the Council. The act would also contain provisions on the monitoring tasks of the competent authority and, in the context of the monitoring, the competent authority's access to information from private parties and exchange of information between authorities.

The aforementioned regulation obliges the Member States to lay down rules on penalties. The Act on the Placing on the Market of Timber and Timber Products would contain provisions on a timber offence. It is also proposed that a penal provision on a timber offence be added to the Criminal Code.

These acts are to enter into force as soon as possible.

## **RATIONALE**

### **1 Introduction**

The European Union considers illegal logging a major international concern and has thus in recent years taken action to contribute to curbing this phenomenon. Illegal harvesting means the harvesting, treating or trading of timber in contravention of the applicable legislation in the country of harvest. Illegal logging is a complex problem that has many causes. It stems from a great demand for timber, deficiencies in forest-related and general governance and law enforcement, as well as problems associated with corruption. No accurate data on the quantity and value of illegal logging is available, as these activities are clandestine. However, the existing evidence points to a significant

and growing problem. In many developing countries, in particular, the volume of illegal logging equals or even considerably exceeds the volume of legal timber harvesting. Illegal logging also occurs in Europe, albeit not in great quantities.

Illegal logging has a significant impact on global deforestation and thus also on climate change and biodiversity loss. It also undermines the commercial viability of operators acting in accordance with the applicable legislation in both export and import countries and causes significant losses of income to governments. It also blocks sustainable development in developing countries and helps to fund armed conflicts. Illegal logging may also be associated with serious human rights violations.

Combating illegal logging and illegal timber trade first came up in intergovernmental discussion in connection with the G8 Action Programme on Forests in 1998. Within the framework of this programme, leading industrial countries and the World Bank organised the Forest Law Enforcement and Governance (FLEG) meeting of Asian Ministers of Forestry in Bali in 2001 that addressed illegal logging. Similar meetings have later taken place in other areas. The issue was also brought up when preparing the agenda for the United Nations Forum on Forests in 2001 and at the World Summit on Sustainable Development (WSSD) held in Johannesburg the following year. Finding solutions to the problem of illegal logging is one of the key actions taken by the European Commission as follow-up to the Johannesburg summit.

In 2003, the European Union published its action plan on Forest Law Enforcement, Governance and Trade with third countries, or FLEGT (COM(2003) 251 final). The action plan covers an extensive range of options related to preventing illegal logging, including support to timber-producing countries, measures that affect trade in timber (licensing system, additional legislative options), public procurement, private sector initiatives, financing and investment as well as utilising existing international conventions. Key elements of implementing the action plan are a regulation on a voluntary licensing scheme, FLEGT partnership agreements with timber-producing countries and possible other additional measures.

Provisions on a voluntary licensing scheme are contained in Council Regulation (EC) No 2173/2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community (below referred to as the Licensing Scheme Regulation). The licensing scheme that controls imports of timber into the European Union is implemented through voluntary bilateral partnership agreements with timber-producing countries. Under the regulation, each shipment shall be covered by a valid FLEGT licence when timber referred to in the regulation is imported from a partner country into European Union territory.

Provisions on additional measures are contained 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 (below referred to as the Timber Regulation) and legal acts of the European Union adopted by virtue of it. The Timber Regulation lays down obligations on traders who import timber or timber products into the European Union market. The regulation also applies to traders who place timber produced within the Union territory on the Union market. According to the definition contained in Article 2 of the Timber Regulation, 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. The mainstay of the regulation is the principle of due diligence. The regulation obliges operators to take due care and show judgement and to implement concrete measures by which they can ensure that the timber and timber products they procure for their supply chains are legal and avoid the risk of importing illegally logged timber and

timber products manufactured from it to the Union market. Whether or not logging is legal is determined under the legislation on forest management, logging and timber trade of the country in which the timber was harvested.

Both the Licensing Scheme Regulation and the Timber Regulation make reference to the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES). This convention applies to trade in over 30,000 endangered species of plants and animals, their parts and products derived from them. The purpose of CITES is to protect wild flora and fauna by overseeing international trade in them. The CITES Convention is part of European Union legislation. Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein (below referred to as the CITES Regulation) is associated with the convention. The Finnish Nature Conservation Act (1096/1996) contains provisions related to the implementation of the CITES Regulation. The competent authority in terms of permits and certificates under the CITES Convention is the Finnish Environment Institute. The Customs is tasked to supervise imports, exports, re-importation and transit transport relevant to the CITES Regulation.

The Licensing Scheme Regulation is linked to the CITES convention in that under Article 4 of the regulation, timber products of species listed in Annexes A, B and C of the CITES Regulation imported from partner countries shall be exempt from the licensing requirement. On the other hand, the Timber Regulation is linked to the CITES convention in that under Article 3 of the regulation, timber and timber products which are covered by a FLEGT or a CITES permit shall be considered legal.

## **2 Current situation**

### **2.1 Legislation and the current practice**

#### **2.1.1 Introduction**

The purpose of the bill is to implement nationally the Timber Regulation and the legal acts of the European Union adopted by virtue of it. The Timber Regulation prohibits the placing on the market of illegally harvested timber or products derived from such timber. The Timber Regulation lays down an obligation to comply with a due diligence system. The due diligence system means various procedures aiming to ensure that no illegally harvested timber or products derived from such timber can be placed on the market.

In the context of the provisions of the Timber Regulation, provisions related to forest management are first discussed in the subsections of section 2.1, as under the Timber Regulation, the applicable legislation means, among other things, legislation on timber harvesting. The section also deals with legislation on timber measurement, as the due diligence system under the Timber Regulation includes access to information on the quantity of harvested timber and parties to timber trade. This data is contained in measurement documents. The subsections of section 2.1 also shortly examine coercive measures and the competence of the Customs. The competence of the Customs is relevant to the proposal as pursuant to the Timber Regulation, the applicable legislation means, among other things, legislation on customs. The proposal also discusses coercive measures as the Timber Regulation cites seizure as an example of measures that the authorities may take in order to intervene in timber and timber products that are in breach of the Timber Regulation. Coercive

measures and the competence of the Customs are examined because the proposal considers that the competent authority referred to in the Timber Regulation cannot decide whether or not timber or a timber product is of a legal origin and that these matters should be heard by a court in connection with court proceedings on a criminal matter.

### **2.1.2 Forest management and use and applicable restrictions**

#### **Forest management and use**

The Forest Act (1093/1996) entered into force on 1 January 1997. The purpose of the Act is to promote economically, ecologically and socially sustainable management and utilisation of forests in order that the forests produce a good output in a sustainable way while their biological diversity is being preserved. In order to secure continuous timber production, the act contains an obligation to ensure that a harvested forest is replaced by a new tree stand. The act also restricts excessive intermediate fellings in growing forests and regeneration fellings in young forests, as well as interfering with habitats of special importance in terms of forest biodiversity.

The Forest Act has been amended several times. The most recent amendment was associated with complementing and specifying its provisions on authorisations. A definition of terminating a regeneration felling and provisions on tree species to be used to establish a seedling stand after a regeneration felling were added to the Forest Act. A seedling stand may be established using seedlings or seeds of species specified in the act that are suitable as regards their origin or the site, or by natural regeneration. Using seedlings and seeds of a suitable origin is a precondition for successful forest regeneration. The purpose of the new provisions was to promote the planting of seedling stands with a good growth condition. The amendment to the Forest Act also laid down more specific deadlines for seedling stand establishment after regeneration felling and a definition of a stand with economic growth potential.

The government decree on sustainable forest management and use (1234/2010) and the Ministry of Agriculture and Forestry decree on forest use and seedling stand establishment declarations (1308/2010) were issued by virtue of the Forest Act.

The tasks associated with Forest Act implementation are mainly performed by the Finnish Forest Centre. As an organisation, the Finnish Forest Centre represents so-called indirect central government administration, and provisions on its competence, responsibilities and obligations are laid down in the Act on the Finnish Forest Centre (418/2011). Those tasks related to Forest Act implementation that involve significant exercise of public authority are performed by the Agency for Rural Affairs. The Agency for Rural Affairs is a public authority, and its tasks are laid down in the Act on the Agency for Rural Affairs (666/2006).

The government has submitted a government bill amending the Forest Act (HE 75/2013 vp) to the Parliament. The proposed bill would bring significant changes to the contents of the Forest Act that aim to promote the operating preconditions of forestry and the timber industry, improve the protection of a landowner's property, safeguard forest biodiversity and simplify the supervision of the Forest Act. It would lay down more specific provisions on timber harvesting to take the preconditions of cultivating uneven-aged forest into account.

The bill amending the Forest Act proposes changes to the scope of the act and modifications to the provisions on carrying out regeneration and intermediate felling, obligations that must be met when

the forest regeneration obligation applies and the definition of a seedling stand with growth potential. More detail would be added to the act regarding the responsibilities of the forest harvester and planner. In the context of the harvester's responsibilities, the landowner's obligation to notify the harvester of any known habitats of special importance that may be located within the treatment area of a felling would be added to the act. A similar obligation to notify would also apply to a regional unit of the Finnish Forest Centre. The criteria based on age and diameter set for regeneration felling, the felling and regeneration plans required for measures in timberline forest areas, the declaration procedure related to seedling stand establishment, the inspection procedure referred to in the Forest Act as well as the security procedure laid down to ensure that a new tree stand will be established would be removed from the act. In addition, the proposal contains the amendments to the Criminal Code (39/1889) required by the proposed changes.

#### Act on the Prevention of Insect and Fungi Damages to Forest

The Act on the Prevention of Insect and Fungi Damages to Forest (263/1991), below referred to as the Forest Damages Prevention Act, entered into force on 1 July 1991. The purpose of this act is to ensure that the risk of damage to growing trees caused by insects and fungi are taken into account in forestry measures and that the necessary actions to prevent the occurrence and spread of such damage is prevented. The act obliges operators to remove freshly felled timber from conifers from the forest and intermediate storage areas before certain dates in the summer. Felling residues, such as pine and spruce stumps and other trunk parts that are not suitable for raw material as well as damaged trees that will obviously spread insects causing damage to the forest shall be removed from the forest before the summer.

To complement the Forest Damages Prevention Act, such statutes as the decree on the prevention of insect and fungi damage to forest (1046/1991), the decree on the monitoring of plant diseases and pests that cause damage to forest (1045/1991) as well as the Ministry of Agriculture and Forestry decision on preventing damages caused by insects and fungi to forests (1397/1991) have been issued.

The contents of the statutes on preventing damages caused by insects and fungi have remained more or less unchanged. The scope of the act and the provisions on long-term storage of timber were clarified in 1998. In 2010, a new section 7 a was added to the act, under which the Ministry of Agriculture and Forestry may authorise landowners at their own cost to carry out aerial spraying of a biological plant protection product approved by the Ministry. This amendment improved the forest owner's possibilities of preventing damage caused by the pine sawfly, in particular, the only efficient method for which is aerial spraying of the forest with a biological pesticide.

The Forest Damages Prevention Act is to be overhauled. A government bill to this effect is to be submitted to the Parliament in autumn 2013. Safeguarding the good health of the forests remains the purpose of the bill. In particular, it would strive to keep the populations of the insects causing the worst damage to forest at sufficiently low levels. The act would apply to the same areas as the Forest Act. The contents of the bill mainly correspond to the valid provisions. However, changes to the deadlines for removing fresh timber and damaged wood are proposed. The amendment would respond to changing natural conditions, which include earlier swarming times of insects as the springs become warmer. Supervision of compliance with the act would in the future be mainly based on self-supervision by professional operators. As required in the Constitution, the provisions on the principles governing the rights and obligations of private individuals would be laid down in an act rather than a decree. In addition, the provisions on authorisations would be made more specific. The new act is to enter into force from the beginning of 2014.

## Restrictions to treatment of forest and permits for landscape work

Section 128 of the Land Use and Building Act (132/1999) lays down restrictions on actions. Under this provision, earth works, tree-felling or corresponding action altering the landscape may not be carried out without a permit in areas

- 1) covered by a local detailed plan;
- 2) covered by a local master plan, if the plan so stipulates; nor
- 3) where a building prohibition is in force for the purpose of drawing up a local detailed plan, or where it has been so ordered for the purpose of drawing up or amending a local master plan.

In other words, a permit for landscape work may in certain situations be required to harvest forest. However, no permit is needed if, for instance, the actions are minor. Whether or not the actions are minor will be assessed separately in each individual case.

Protection regulations may also have an impact on forestry. Under the Land Use and Building Act, protection regulations may be issued in a regional plan (section 30), a local master plan (section 41) and a local detailed plan (section 57). The protection regulations may totally prevent felling in an area.

### 2.1.3 Measurement of timber

The Timber Measurement Act (364/1991) contains provisions on measuring timber and batches of chips or sawdust exceeding 20 loose cubic metres in volume. The act also contains provisions on the organisation of timber measurement, official measurement and control measurement. Official and control measurement tasks are performed by official measurer and the Timber Measurement Board. The provisions of the act are primary and binding within its scope of application; in other words, contract terms not compliant with the act are void. A key objective of the provisions is to secure the position of the more vulnerable party in timber measurement operations.

From the perspective of its use, timber is measured as a transfer measurement or measurement carried out to assess a work performance. The purpose of a transfer measurement is to determine the volume and quality of timber specified in a contract for the determination of the purchasing price. A work performance measurement establishes the quantity of work results for the determination of wages or other compensation. Official measurement can be seen as an interested party's control method and legal remedy. An official measurement is carried out by an official measurer or a measurement board on request of the interested parties. The purpose of the measurement is to resolve a dispute concerning the quantity or quality of timber.

A control measurement refers to the checking of an instrument, program or procedure used for factory measurement. It is performed by an official measurer or a measurement board on their own initiative or on request. A control measurement is an independent procedure aiming to prevent any problems that might occur in factory measurement. Each factory measurer may be subjected to an unannounced control measurement by an official measurer.

In 2012, the government submitted a government bill on the Timber Measurement Act (HE 192/2012 vp) to the Parliament. Under this bill, the methods used to measure timber would be organised into groups on which uniform provisions could be enacted. Regulation focusing on individual instruments would be dropped. The current official supervision of timber measurement by official measurers would mainly be preserved, while the provisions on resolution of disputes and legal protection would be clarified. Companies and large-scale contractors would also be given the possibility of agreeing upon certain aspects of measuring timber in an appropriate manner if the reliability of measurement could otherwise be ensured. Contrary to earlier legislation, official measurers and the measurement board could resort to administrative coercive measures. The Timber Measurement Act (414/2013) entered into force on 1 July 2013.

#### **2.1.4 Coercive measures**

Chapter 4 of the Coercive Measures Act (450/1987) contains provisions on confiscation. The prerequisites for confiscation are laid down in section 1 of this Chapter. An object or a document may be confiscated if there are grounds to suspect that it may be used as evidence in a criminal case, it has been taken from someone in an offence, or it may be forfeited by a court order. Section 4 of this Chapter contains a provision on interception of a delivery for confiscation. Under section 5 of the Chapter, the decision on confiscation is made by an official with the power of arrest. A court may decide on a confiscation when considering charges. When deciding on the charges, the court shall decide whether or not the confiscation shall remain valid until other orders are issued (section 15). Section 6 concerns taking possession of an object by a police office. Under section 7, the person from whose possession an object has been taken for confiscation or copying shall be notified of this without delay, if he or she had not been present when possession was taken of the object.

Chapter 5 of the Coercive Measures Act contains provisions on searches of premises. Sections 1 and 2 of this Chapter contain provisions on the prerequisites for a search of a domicile in order to find an object, property and a person. In addition to a search of a domicile, searches of premises may include a search of an area, which under section 8 of this Chapter may be conducted in an area other than that referred to in section 1(1), even though the public does not have access to it, regardless of the punishment laid down for the offence.

Under Chapter 5, section 3 of the Coercive Measures Act, an official with the power of arrest decides on a search of a domicile. In urgent cases, for example, a police officer may conduct a search of a domicile without a decision of an official with the power of arrest. Under section 8, a prosecutor, the head investigator or an investigator decides on a search of an area.

Under section 43 of the Customs Act (1466/1994), the Customs is also a pre-trial investigation authority. When investigating a customs offence, the provisions of the Customs Act shall be complied with, in addition to the specific provisions on pre-trial investigations and coercive measures. A customs officer shall have the same powers to take investigative measures in a preliminary investigation carried out by the customs authority as a police officer in a preliminary investigation carried out by the police authority. The Customs has the right to conduct a search of a domicile and confiscation.

A new Coercive Measures Act (806/2011) will enter into force on 1 January 2014, repealing the Coercive Measures Act of 1987. The provisions on confiscation will be contained in Chapter 7 and provisions on searches in Chapter 8 of the new Coercive Measures Act.

### 2.1.5 Tasks and powers of the Customs

This subsection contains a short discussion of the powers of the Customs. Pursuant to Article 2h of the Timber Regulation, applicable legislation means the legislation in force in the country of harvest covering, among other things, trade and customs in so far as the forest sector is concerned. The powers of the Customs are associated with carrying out customs measures.

Sections 13—20 contain provisions on the powers of the customs authority. Under section 14 of the Customs Act, in order to undertake a customs measure, the customs authority has the right to:

- stop and inspect a means of transport (subsection 1(1)),
- stop and, where required, seize goods which have not been appropriately cleared through customs (subsection 1(3)),
- have access to warehouses, premises and other places where goods are manufactured, stored or offered for sale (excluding any part thereof used exclusively as residence or any part of the building serving as living quarters), and undertake the required inspection (subsection 1(4)),
- obtain all necessary documents and information related to the goods holder, other parties concerned, goods, means of transport, passenger and crew of the means of transport (subsection 1(6)),
- issue orders relating to the unloading, loading, release, transport and warehousing of the goods (subsection 1(7)),
- attach a customs seal, customs lock, or other identification mark onto a means of transport, goods, warehouse, or another site placed under customs supervision (subsection 1(8)),
- isolate, close, or empty a place or area intended for manufacture, loading or unloading of goods or another place or area of control as well as a means of transport if necessary with a view to maintaining public safety or undertaking a customs measure, and prohibit or restrict movements in such a place, area or means of transport (subsection 1(9)).

These powers of the customs authorities are associated with carrying out customs measures. According to the definition in section 3 of the Customs Act, a customs measure means any measure taken within the competence of Customs with the exception of the preliminary investigation of customs offences.

Under section 14(3) of the Customs Act, the customs authority may retain goods exported from or imported to the country, if there is reasonable cause for this in order to prevent or investigate an offence. The authority deciding upon seizure must be notified of the retention without delay. According to the preliminary work on this provision (HE 178/1995 vp), the exportation of goods that are suspected of being stolen or that could be used as evidence in a criminal matter, for example, can be prevented by virtue of this provision. Under this provision, a customs authority may seize the goods in connection with an attempt to import or export them, but not in connection with other customs activities.



Under section 10a of the Police Act, Police officers have the right to take customs measures laid down in the Customs Act to seize objects or substances illegally produced, imported or possessed, using the powers laid down in section 14 of the Act.

### **2.1.6 Certain penal provisions and forfeiture as a penalty**

#### **Forestry offence and infringement**

Chapter 48a, section 3 of the Criminal Code contains a provision on forestry offences. Acts punishable as forestry offences include felling of forest in violation of section 5(1) or 5a(1) of the Forest Act, or a provision on intermediate or regeneration felling issued by virtue of section 5(2) or 5a(2) of the Forest Act, or provisions on a timberline forest area or a protection zone contained in the Forest Act or a provision or order issued by virtue of it. A precondition for committing a forestry offence is deliberate action or gross negligence. The penalties for a forestry offence are either a fine or imprisonment for at most two years.

The provisions on corporate criminal liability do not apply to a forestry offence.

Section 18(2) of the Forest Act contains provisions on a forest infringement. Acts punishable as forest infringements include neglecting, deliberately or through gross negligence, the forest use declaration laid down under section 14 of the Forest Act or submitting the declaration after the set time limit of 14 days. The forest use declaration is a key instrument for supervising the legality of felling. A violation of the provisions on wood harvesting in sections 5, 5a or 5b of the Forest Act or a provision issued by virtue of it is also punishable as a forest infringement. Section 5 of the Forest Act contains provisions on intermediate felling, section 5a on regeneration felling and section 5b on carrying out a felling. Acts punishable as forest infringements also include carrying out a management or use operation targeted at a habitat of special importance in terms of forest biodiversity referred to in section 10 of the Forest Act or a provision issued by virtue of it, or without a permit or contrary to a permit condition. Other acts punishable as forest infringements include violations of certain provisions on timberline forests referred to in section 12 of the Forest Act and on protection zones referred to in section 13 of the Forest Act. Unless a more severe punishment is laid down in other law, one who deliberately or through negligence violates these provisions shall be sentenced to a fine.

The government bill amending the Forest Act that is being debated by the Parliament contains a proposal under which section 18 of the Forest Act on forest offences and forest infringements would be reviewed due to the proposed amendments to other sections of the Forest Act, and that the sentencing requirement for a forest infringement be amended by replacing negligence by gross negligence. In addition, amendments resulting from the proposed changes in the Forest Act would be made to the Criminal Code.

#### **Nature conservation offence and infringement**

Chapter 48a, section 5 of the Criminal Code contains a provision on nature conservation offences. Under Chapter 48, section 5(1)(1) of the Criminal Code, a person who deliberately or through gross negligence unlawfully destroys or impairs a natural area, an animal, a plant or another natural object protected by the Nature Conservation Act or protected, restricted or placed under an injunction based thereon shall be sentenced for a nature conservation offence. Under Chapter 48, section 5(1)(2) of the Criminal Code, a person who deliberately or through gross negligence in violation of

the Nature Conservation Act or of a provision or order based thereon, removes from its environment, imports or exports an object or transports an object through the territory of Finland, or sells, conveys, purchases or receives an object so removed, imported or exported, shall also be sentenced for a nature conservation offence. Chapter 48, section 5(1)(3) of the Criminal Code is associated with the CITES Regulation. Under Chapter 48, section 5(1)(3) of the Criminal Code, a person who in violation of the CITES Regulation imports, exports or transfers through the territory of Finland an object mentioned in annex A or B of the Regulation without the permit or certificate referred to in the Regulation or in violation of the terms of the permit or certificate shall also be sentenced for a nature conservation offence. A person who, in violation of the CITES Regulation, buys, offers to buy, obtains for commercial purposes, presents in public for commercial purposes, uses with intent of commercial gain, sells, possesses with intent to sell, offers or transports for sale an object referred to in annex A or B of said Regulation shall also be punished. The penalties for a nature conservation offence are either a fine or imprisonment for at most two years.

Under Chapter 48, section 9 of the Criminal Code, the provisions on corporate criminal liability shall be applied to a nature conservation offence.

Section 58 of the Nature Conservation Act contains provisions on nature conservation infringements. Certain acts in breach of the CITES Regulation are punishable as nature conservation infringements under the cited section. A precondition for the act being punishable is deliberate action or gross negligence. The penalty is a fine, unless the action is punishable as a nature conservation offence.

#### Cat or dog fur marketing violation

Chapter 17, section 15a of the Criminal Code contains a provision on a cat or dog fur marketing violation. Under Article 3 of Regulation (EC) 1523/2007 of the European Parliament and the Council banning the placing on the market and the import to, or export from, the Community of cat and dog fur, and products containing such fur, the placing on the market of cat or dog fur or products containing such fur and importing them to the EU or exporting them from the EU is prohibited. Chapter 17, section 15 of the Criminal Code contains a provision on a cat or dog fur marketing violation. Under this provision, a person who in violation of the regulation places on the market cat or dog fur or products containing such fur shall be sentenced for a cat or dog fur marketing violation to a fine. The ban on marketing products containing cat or dog fur is not directly relevant to the provisions of the Timber Regulation. The fact that both the aforementioned Regulation 1523/2007 and the Timber Regulation ban the placing on the market of certain products forms a type of a link between them, however. Both regulations require Member States to lay down penalties for placing certain goods on the market in violation of the regulation.

#### Other penal provisions

Other punishable acts relevant to the scope of the Timber Regulation could include theft, forgery, fraud, and smuggling. Under Chapter 28, section 1 of the Criminal Code, a person who appropriates movable property from the possession of another shall be sentenced for theft to a fine or to imprisonment for at most one year and six months. Under Chapter 33, section 1 of the Criminal Code, a person who prepares a false document or other item or falsifies such a document or item in order for it to be used as misleading evidence or uses a false or falsified item as misleading evidence shall be sentenced for forgery to a fine or imprisonment for at most two years. Under Chapter 36, section 1 of the Criminal Code, a person who in order to obtain unlawful financial benefit for himself or herself or another or in order to harm another, deceives another or takes

advantage of an error of another so as to have this person do something or refrain from doing something and in this way causes economic loss to the deceived person or to the person over whose benefits this person is able to dispose, shall be sentenced for fraud to a fine or to imprisonment for at most two years.

Chapter 46 of the Criminal Code contains provisions on offences connected to import and export. Under Chapter 46, section 1(1)(9) of the Criminal Code, a person who violates or attempts to violate a regulatory provision contained in or issued on the basis of Regulations of the European Union on import and export shall be sentenced for a regulation offence to a fine or to imprisonment for at most two years. Under Chapter 46, section 4 of the Criminal Code, a person who without the appropriate permission or otherwise in violation of import or export provisions or regulations imports, exports or attempts to import or export goods, the import or export of which is prohibited or requires the permission or inspection of an authority, shall be sentenced for smuggling to a fine or to imprisonment for at most two years.

### Forfeiture

Chapter 10 of the Criminal Code contains provisions on the general prerequisites of forfeiture, forfeiture of the proceeds of crime, extended forfeiture of the proceeds of crime, forfeiture of an instrument of crime, forfeiture of certain other property (in other words, an object which has been brought about by way of an offence or at which an offence has been directed), restrictions on forfeiture, lapse of forfeiture, forfeiture of value, request for forfeiture, adjustment of forfeiture as well as certain complementary provisions. For example, Chapter 10, section 5 of the Criminal Code contains provisions on forfeiture of an object at which an offence has been directed or which has been brought about by way of an offence. Under subsection 2(3) and (4) of this section, an object or property which has been produced, manufactured or brought about by way of an offence, or at which an offence has been directed, may be ordered fully or partially forfeit, if forfeiture is necessary in order to achieve the objective of provisions or orders pertaining to economic regulation, import or export or to achieve the objective of provisions or orders for the protection of nature and the environment. The preliminary work on the provision in Chapter 10, section 5 of the Criminal Code (HE 80/2000 vp) notes that the product of an offence means an object or property brought about by way of an offence. According to the preliminary work, the definition “produced, manufactured or brought about” was intended to cover both cases where the activities themselves are illegal and those where illegality is due to, for example, the manufacturing method. The provision would also apply to situations where acting without a licence is punishable.

Section 38 of the Enforcement of Fines Act (672/2002) contains a provision on the enforcement of forfeiture. Pursuant to this provision, the property shall, in accordance with the order of the appropriate central government authority, be taken into use by the state, sold or destroyed (enforcement measure) once the decision concerning forfeiture to state has become enforceable.

Under section 19 of the Forest Act, the provisions laid down in Chapter 10, section 2 of the Criminal Code apply to forfeiture to the State of the financial benefit arising from a forest offence. The costs of remedial measures referred to in section 20 of the Forest Act are deducted from the financial benefit to be forfeited.

Section 59 of the Nature Conservation Act contains provisions on forfeiture. Whosoever is guilty of a violation referred to in section 58 (i.e. a nature conservation offence or infringement) shall be sentenced to forfeit to the State that which constitutes the object of the offence. In addition, the monetary value of a protected plant or animal as a representative of its species shall be forfeited.

The Ministry of the Environment shall set standard monetary values for protected animals and plants. Otherwise, what is provided in Chapter 10, sections 1–4 and 6–11, of the Criminal Code shall apply where appropriate.

## **2.2 International development, legislation in other countries and EU law**

### **United States**

European Union legislation on illegal felling has similar objectives as the so-called Lacey Act in the United States. The US law prohibits trade in fish, game and plants obtained illegally outside the United States. The prohibition also covers illegally felled timber.

### **Illegal fishing**

Illegal, unregulated and unreported fishing (so-called IUU fishing) is one of the most central human activities that threaten sustainable fish stocks globally. The European Union is the largest importer of fisheries products in the world, and consequently, also a large market for illegally caught fish. This issue is addressed by Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2874/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999. The regulation is complemented by a Commission implementing regulation.

The UII legislation contains provisions on a catch certificate system which, with a few exceptions, applies to fisheries products imported to the EU from non-EU countries and fisheries products exported from the EU to non-EU countries. The system covers both processed and unprocessed fisheries products. The catch certificate is one of the documents that must be attached to the customs declaration when importing fisheries products included in the catch certificate system into the European Union. By producing an appropriately validated catch certificate, the importer proves that the fish from which a fisheries product was made was caught in compliance with the fishing statutes and regulations in force in the area where the fish were caught. When exporting fisheries products falling within the system from the European Union, the catch certificate must be attached to the customs documents if the fisheries product will be reimported to the EU as such or after further processing. A third country may also demand a catch certificate even if the product is not intended for re-importation to the European Union market.

### **CITES**

The CITES Convention signed in Washington in 1973 (Convention on International Trade in Endangered Species of Wild Flora and Fauna) is one of the most extensive international conventions on environmental protection in the world. This convention applies to trade in over 30,000 endangered species of plants and animals, their parts and products derived from them. The purpose of CITES is to protect wild flora and fauna by overseeing international trade in them. The convention covers species which have been found to be endangered, or which are at risk of becoming endangered, as a result of international trade in them.

In the European Union, the CITES Convention was implemented through specific CITES legislation, including Council Regulation (EC) No 338/97 on the protection of species of wild fauna

and flora by regulating trade therein. The penal provisions related to the CITES Regulation were discussed above. The CITES Regulation is complemented by several Commission regulations.

In addition to trade across the EU borders, the CITES legislation also applies to trade in endangered species within the Union. Non-EU parties to the convention have implemented the convention through their national legislation. In imports, exports and trade in animals and plants, CITES legislation of both the export and the import country must be complied with.

Trade in plants and animals referred to in the CITES legislation is mainly supervised by means of import and export restrictions of various degrees, depending on how endangered the species is and to what extent its populations can sustain use. In practice, supervision of trade is based on written permits granted by the environmental authorities in the relevant countries that must be produced at the customs.

## WTO

European Union legislation on illegal felling contains not only environmental viewpoints but also elements of trade and internal market policy. The rules of the World Trade Organisation, WTO, require that legislation on illegal felling may not be discriminatory, it must be proportionate to achieving its goals and it may not create unnecessary barriers to trade. It is specifically because of WTO rules that the obligations under European Union legislation apply to both timber imported from third countries to the European Union market and timber produced within the European Union territory.

## 2.3 European Union legislation on illegal felling

European Union legislation on illegal felling comprises statutes on both a voluntary licensing scheme and so-called additional measures.

### Voluntary licensing scheme

The voluntary licensing scheme is regulated by the Licensing Scheme Regulation. This regulation is based on the trade policy article in the Basic Treaty. The licensing scheme that controls the importation of timber into the European Union is implemented by means of voluntary bilateral partnership agreements with timber-producing countries. Under the regulation, each shipment shall be covered by a valid FLEGT licence when timber referred to in the regulation is imported from a partner country into European Union territory. The regulation only specifies the structure of the licensing scheme at a general level as well as defining the shipments and operator-specific licences associated with it. The implementation of the licensing scheme is regulated under Commission Regulation (EC) No 1024/2008 laying down detailed measures for the implementation of Council Regulation (EC) No 2173/2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community.

The partnership agreements related to the voluntary licensing scheme are based on content-related requirements individually agreed upon with each country on the basis of the partner country's definition of illegal felling. The agreements cover both the establishment of an FLEGT licensing scheme and projects to improve forest management and other governance. FLEGT licences are granted by the licensing authorities of the country in which the timber product is produced. The

European Union has concluded partnership agreements with Cameroon, the Central African Republic, Ghana, Indonesia, Liberia and the Republic of Congo.

#### Additional measures

The additional measures are regulated by the Timber Regulation. The objective of the Timber Regulation is to reduce the import and other placement in the European Union market of timber and timber products where reasonable guarantees of such timber and timber products being legal are not available and thus promote international fight against illegal timber trade. In terms of applying the regulation, the crucial time is the moment when the timber or timber products, regardless of their origin, are placed on the European Union market for the first time. The regulation lays down obligations on operators who import timber or timber products to the European Union market. It also applies to traders who place timber produced within the Union territory on the Union market. The regulation is based on the principle of due diligence. The due diligence system contains measures and procedures intended to give actors a possibility of tracing timber and timber products and to access information on compliance with the applicable legislation.

The due diligence system is a requirement of acting proactively based on the regulation. It obliges actors to take due care and show judgement and to implement concrete measures by which they can ensure that the timber and timber products they procure for their supply chains are legal and avoid the risk of importing illegally logged timber and timber products derived from it to the Union market. Whether or not logging is legal is determined under the legislation on forest management, logging and timber trade of the country in which the timber was harvested. Under the regulation, timber and timber products for which an FLEGT or CITES licence has been granted will be deemed legal.

The operators liable to apply a due diligence system may either develop their own systems or use a due diligence system approved by monitoring organisations referred to in the regulation. The regulation lays down the principles that the operators must follow when establishing a due diligence system. The mechanisms that bring the required results may be selected by the operators themselves. The following two regulations apply to the implementation of the due diligence system:

— Commission Delegated Regulation (EU) No 363/2012 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

— Commission Implementing Regulation (EU) No 607/2012 on the detailed rules concerning the due diligence system and the frequency and nature of the checks on 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

Under Article 21 of the Timber Regulation, the regulation shall apply as from 3 March 2013.

Regarding the national implementation of the Timber Regulation, it can be noted that under section 18(1)(15) and (18) of the Act on the Autonomy of Åland (1144/1991), the county has legislative powers in respect of farming and forestry as well as the maintenance of the productive capacity of the farmlands, forests and fishing waters. Under section 18(1)(25), Åland also has legislative powers in issues that concern the creation of an offence and the extent of the penalty for such an offence in respect of a matter falling within the legislative competence of Åland. Under section

27(1)(12) of the Act on the Autonomy of Åland, the State shall have legislative powers in issues that concern foreign trade.

## 2.4 Assessment of the current state

As directly applicable legislation, the Timber Regulation and the Commission Delegated Regulation and Implementing Regulation issued by virtue of it only require a few amendments to the national legislation. Under Article 7 of the Timber Regulation, each Member State shall designate one or more competent authorities responsible for the application of the Regulation. Under Article 19 of the Timber Regulation, the Member States shall lay down the rules on penalties applicable to infringements of the provisions of the Regulation and take all measures necessary to ensure that they are implemented. At minimum, provisions on a competent authority and penalties must thus be enacted in national legislation.

The Timber Regulation contains provisions on the competent authority's access to information and checks. In this respect, the enactment of more detailed provisions is not required under the Timber Regulation, but in order for the competent authority to have adequate powers related to access to information and checks allowing it to implement the regulation, national provisions will also be needed on these aspects.

Article 10(5) of the Timber Regulation cites two examples of interim measures taken by the competent authority when shortcomings have been detected in checks on operators. These are the seizure of timber and timber products and the prohibition of marketing timber and timber products.

The checks referred to in the Timber Regulation would be inspections carried out by an administrative authority rather than investigations of an offence. The provisions on confiscation in the Coercive Measures Act are relevant to criminal matters. In the light of both the current legislation and the legislation on fundamental rights (protection of property), confiscation would be difficult to justify as an administrative measure. The duties of the competent authority referred to in the Timber Regulation would naturally not include investigating offences, and neither would the competent authority have the powers to confiscate a batch of timber or timber products or carry out a search of premises referred to in the Coercive Measures Act. Instead, a provision must be enacted under which the competent authority would have the duty to report suspected offences related to non-compliance with the Timber Regulation to pre-trial investigation authorities.

Under the proposal, a prohibition of marketing timber would be possible as an interim measure ensuing from an administrative check when certain criteria are met. According to the definition contained in Article 2 of the Timber Regulation, 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. According to the Guidance Document on the Timber Regulation found on the Commission's website ([http://ec.europa.eu/environment/forests/timber\\_regulation.htm](http://ec.europa.eu/environment/forests/timber_regulation.htm)), internal market means that the timber must be physically present in the EU, either harvested here or imported and cleared by customs for free circulation. According to the aforementioned document, goods subject to special customs procedures (e.g. temporary importation, inward processing, processing under customs control, customs warehouses, free zones), in transit or being re-exported are not considered to be placed on the market.

The prohibition of marketing would not be the primary means of intervening in shortcomings observed in a check. The competent authority would have to provide general advice related to the due diligence system and, if necessary, set a deadline for correcting any shortcomings observed in a due diligence system. The proposal considers that a prohibition of marketing could only be possible in the case that the competent authority has repeatedly found significant shortcomings when carrying out checks and these shortcomings have not been corrected within the deadline set by the competent authority. The competent authority could thus intervene in shortcomings in the due diligence system and the documents relevant to it. On the other hand, whether or not certain shipments comprise illegally harvested timber or products manufactured from such timber would not be assessed in the context of an administrative matter concerning a prohibition of marketing. The prohibition of marketing would be an interim measure. In other words, the competent authority could only impose a fixed-term prohibition of marketing, and the prohibition would have to be revoked immediately once the shortcomings in the due diligence system have been corrected.

Under Article 19 of the Timber Regulation, the Member States shall lay down rules on penalties applicable to infringements of the regulation. The penalties must be effective, proportionate and dissuasive. As examples of the penalties are cited fines, seizure and suspension of authorisation to trade.

Under Article 4 of the Timber Regulation, the placing on the market of illegally harvested timber or timber products derived from such timber shall be prohibited. Under Article 2 g of the Timber Regulation, illegally harvested means harvested in contravention of the applicable legislation in the country of harvest. Under Article 2 h of the Timber Regulation, applicable legislation means the legislation in force in the country of harvest covering:

- rights to harvest timber within legally gazetted boundaries,
- payments for harvest rights and timber including duties related to timber harvesting,
- timber harvesting, including environmental and forest legislation including forest management and biodiversity conservation, where directly related to timber harvesting,
- third parties' legal rights concerning use and tenure that are affected by timber harvesting, and
- trade and customs, in so far as the forest sector is concerned.

The definitions contained in the Timber Regulation do not specify which authority should decide whether timber has been felled illegally or whether a timber product has been manufactured from illegally felled timber. In its report Skogstyrelsen, the Swedish forest administration, considered that the potential illegality of timber should be assessed by a court (see Uppdrag om nationella bestämmelser som kompletterar EU:s timmerförordning, Meddelande 2/2012 p. 41).

This proposal considers that placing illegally felled timber or products derived from such timber on the market should be made a punishable act. A court would then decide whether the case concerned illegal timber or a product derived from such timber.

Under Chapter 46, section 1(9) of the Criminal Code, violating the provisions contained in Regulations of the European Union on import and export is punishable as a regulation offence. An attempt is also punishable. When this section was enacted and amended, it was deemed to apply to regulations within the scope of common trade policy (PeVL 24/1994 vp and PeVL 4/1997 vp). In



the decades since this Criminal Code provision was enacted, however, the concept of common trade policy has been given a broad interpretation in the European Union, and its scope has been considered to include commercial measures with objectives also related to other fields, including environmental protection. Similarly, provisions have been adopted in other policy areas where the objective may be related to environmental protection, for example, while the chosen instrument is regulation of imports, exports and/or placing on the market. While the Timber Regulation was issued by virtue of Article 192(1) of the Treaty on the Functioning of the European Union (environment), its substantial contents also concern importation. The importation of illegal timber or products derived from such timber is thus punishable as a regulation offence, even without a legislative amendment. On the other hand, placing illegally felled timber originating in Finland on the market is not punishable under the currently valid legislation.

The proposal considers that there is no need for separate provisions on confiscation of timber and timber products, for example, as in those cases the relevant provisions of the Coercive Measures Act would be applicable. Similarly, such as the provisions on forfeiture of benefits could be applicable. In the case of timber and timber products imported to Finland, the Customs would also have the right to take certain actions in so far as they comprise a customs measure. The Customs is also a competent pre-trial investigation authority regarding the importation of illegally felled timber and timber products. Pre-trial investigations of customs offences referred to in section 3(1)(5) of the Customs Act are carried out by the Customs.

Preamble 27 of the Timber Regulation notes, in the context of penalties, that illegally harvested timber or timber products derived from such timber does not necessarily need to be destroyed but may instead be used or disposed of for public interest purposes. As Article 4 of the Timber Regulation prohibits the placing on the market of such products, however, for information purposes a provision has been included in the bill that enables the selling of such timber or timber products by auction when the timber or the products have been forfeited to the state.

The proposal takes the view that violations of the obligations related to a due diligence system and traceability under the Timber Regulation should also be punishable. In order to efficiently ensure compliance with the due diligence obligation under national legislation, a mere administrative consequence, or a fixed-term prohibition of marketing, would not be an effective way of intervening in situations where violations of the due diligence system obligation are continuous and deliberate, for instance. The proposal finds that violations of the obligation of following a due diligence system should only be punishable if the actions were deliberate. The operator could not be deemed to have been acting deliberately if individual shortcomings only are found in the due diligence system. If the operator had no due diligence system, or if the due diligence system were completely lacking in some essential components, the operator could be deemed to have been acting deliberately. As the aforementioned key shortcomings of a due diligence system could be regarded the fact that the system contains no risk assessment or risk reduction measures or, for example, that the system contains no information on the origin of the timber or timber product or the parties from whom the timber or timber products were obtained.

## **3 Purpose and key proposals of the bill**

### **3.1 Purposes**

The purpose of the bill is the national implementation of the Timber Regulation. The Timber Regulation contains rather detailed provisions on procedures aiming to prevent the placing on the market of illegally harvested timber and timber products derived from such timber. The Timber Regulation contains provisions on, among other things, the operators' obligations, the obligation of traceability imposed on traders, a due diligence system, monitoring organisations and checks. The objective is to only enact national provisions to the extent that this is necessary in relation to checks and access to information by the authorities.

The Timber Regulation requires the Member States to designate a competent authority. In practice, the competent authority will need to work together with other authorities and organisations performing official duties. The aforementioned regulation further requires Member States to lay down penalties for violating the regulation. Consequently, the objective is to pass an act that includes provisions on the competent authority and the organisations that assist it in the national implementation of the Timber Regulation, as well as penal provisions.

### 3.2 Implementation alternatives

A working group appointed by the Ministry of Agriculture and Forestry (Working Group on national implementation of the FLEGT Timber Regulation; Working group memorandum mmm 2012:9) deliberated on which organisations could serve as competent authorities. The working group looked at the choice of the competent authority in terms of both domestic timber and imported timber and timber products.

First and foremost, the aforementioned working group investigating the implementation of the Timber Regulation focused on the Forestry Centres (currently, the Finnish Forest Centre) in its scrutiny, as the public administrative tasks of the Finnish Forest Centre include duties associated with Forest Act implementation and as Forest Act provisions play a key role in assessing the legality of domestic timber. In this respect, the working group noted that rather than an authority, the Finnish Forest Centre is a private operator that performs statutory public administrative tasks referred to in section 124 of the Constitution. Under section 124 of the Constitution, an organisation of this type cannot perform tasks that involve significant exercise of public powers. Consequently, the working group concluded by proposing the Agency for Rural Affairs as the competent authority for the part of domestic timber. The Agency performs, among other things, certain duties related to the Forest Act that involve significant exercise of public authority.

The working group that investigated the implementation of the Timber Regulation looked at a number of different organisations as alternatives for the competent authority to deal with imported timber. Key ones of these were the Finnish Food Safety Authority, the forestry centres (today the Finnish Forest Centre), the Agency for Rural Affairs, the Customs and the Finnish Environment Institute.

The Finnish Food Safety Authority inspects shipments of timber that require a phytosanitary certificate. The duties of the Finnish Forest Centre include supervising compliance with the Forest Act. It also has expertise in domestic forest certification. Among its other duties, the Agency for Rural Affairs performs certain tasks related to the supervision of the Forestry Act that involve significant exercise of public authority. However, the Finnish Food Safety Authority, the Finnish Forest Centre and the Agency for Rural Affairs have no expertise in assessing due diligence systems. The Finnish Forest Centre and the Agency for Rural Affairs currently have no tasks that would be relevant to the importation of timber or timber products.

The Customs supervises foods and consumer goods imported to the country and, by means of inspections, controls compliance with export and import restrictions. The supervision of import restrictions carried out by the Customs focuses on one shipment at a time, whereas the Timber Regulation is based on checks on due diligence systems. The Finnish Environment Institute grants permits for international trade in endangered plants and animals, and it has also processed licences associated with the international transfer of wastes. The tasks of the Finnish Environment Institute are mainly associated with conservation. While the Customs and the Finnish Environment Institute perform duties related to importation, both authorities felt that the task of supervising a due diligence system would be incompatible with their mandates. Ultimately, the working group that investigated Timber Regulation implementation proposed that the Agency for Rural Affairs be selected as the competent authority referred to in the Timber Regulation, also in the context of imported timber and imported timber products.

The obligation laid down in the Timber Regulation to maintain a due diligence system is a new duty. Of the aforementioned authorities, only the Finnish Food Safety Authority has tasks relevant to both domestic and imported timber. However, the duties of the Finnish Food Safety Authority are related to plant health, whereas the supervision of due diligence systems referred to in the Timber Regulation is associated with trading in more general terms. The proposal takes the view that Timber Regulation implementation should be assigned to a single authority and finds that the Agency for Rural Affairs would be the best suited to perform this task.

### 3.3 Key proposals

The Act on the Placing on the Market of Timber and Timber Products would ensure the national implementation of the Timber Regulation and the legal acts of the European Union related to the prevention of illegal felling adopted by virtue of it. Article 4 of the Timber Regulation prohibits the placing on the market of illegally harvested timber or products derived from such timber. In the context of this prohibition, compliance with a due diligence system is a precondition for placing timber and timber products on the market.

The act would contain a provision under which the Agency for Rural Affairs would serve as the competent authority referred to in Article 7 of the Timber Regulation. Article 2 h of the Timber Regulation specifies the applicable legislation. It lists the aspects that the applicable legislation in the country of harvest covers. The definition is broad, and in the context of Finnish legislation, the relevant tasks are performed by the Finnish Forest Centre, the Finnish Food Safety Authority, the Customs and the Finnish Environment Centre. The act would thus contain a provision under which the aforementioned agencies would perform the duties imposed on them associated with the implementation of the proposed act.

The bill contains provisions on carrying out checks. The act would contain provisions on the targets of the checks, using the assistance of external experts when carrying out checks, as well as the duty of operators, traders and others that the checks concern to assist in carrying out the checks. It would also contain provisions on the right of the Agency for Rural Affairs to take possession of documents that concern a due diligence system and the traceability of timber or timber products if this were essential in order to investigate matters that the check concerns. The bill would also allow the taking of samples of timber and timber products in connection with a check. The Agency for Rural Affairs could, additionally, authorise the Finnish Forest Centre or the Finnish Food Safety Authority to carry out checks.

The act would contain provisions on the right of the Agency for Rural Affairs, the Finnish Forest Centre, the Customs and the Finnish Food Safety Authority to obtain information from operators and traders. The act would also contain provisions on information exchange between the authorities. It would include a provision on information related to suspected offences that the Finnish Forest Centre would have the duty to report to the Agency for Rural Affairs on its own initiative.

The Agency for Rural Affairs should intervene in shortcomings observed in operators' due diligence systems by issuing a written notice urging the operators to rectify the shortcomings and to take remedial action within a set period of time. If the request did not lead to the desired outcome, the Agency for Rural Affairs would have the duty to issue an order to take remedial action. Under the bill, however, the order to take remedial action would only apply to situations that involve placing timber or timber products on the market without a due diligence system, or significant and recurring shortcomings in the due diligence system. If the operator did not rectify the shortcomings after receiving an order to take remedial action, the Agency for Rural Affairs could by its decision prohibit an operator from placing timber or timber products on the market. This prohibition would be issued for a fixed period, and it would have to be revoked once the shortcomings in the due diligence system have been rectified in a manner approved by the Agency for Rural Affairs.

It is proposed that a provision on a timber offence be added to Chapter 48a of the Criminal Code. A provision on a timber offence would be included in the bill on the Placing on the Market of Timber and Timber Products.

## **4 Impacts of the bill**

### **4.1 Economic impacts**

In supplementary budget II for 2012 (item 30.01.03), additional resources amounting to EUR 100,000 of financing for operational expenditure and one person-year were transferred from the Finnish Forest Centre to the Agency for Rural Affairs for the performance of the tasks related to implementing the Timber Regulation that concerns the legality of the origin of timber products as from 2012.

The central government budget for 2012 or 2013 contained no proposal to grant additional resources to other authorities, mainly the Customs, for the new tasks arising from implementing the regulation.

The Finnish Forest Centre assists the Agency for Rural Affairs in supervising the legality of timber, specifically timber harvested in Finland, within the limits of its annual operating appropriation.

Operators placing timber on the market will be required to invest their own resources in establishing and maintaining a due diligence system as required under the Timber Regulation. This will increase the administrative costs, especially for small operators. Major timber importers in Finland, on the other hand, are already using chain of custody systems for establishing the origin and legality of timber. The operators will incur administrative costs for meeting the obligations laid down directly in the Timber Regulation. As a consequence of this bill, operators will incur costs in situations where the timber or timber products are forfeited. According to the proposal, an operator would be

liable to pay the central government's storage costs while the forfeiture is in force. The preconditions for forfeiture were examined in section 2.1.4 above.

The impacts of the increase in administrative costs on end product prices cannot be estimated.

## **4.2 Impacts on public administration**

Information activities have been a particularly demanding aspect of Timber Regulation implementation, which started on 3 March 2013. The objective was that as many companies placing timber on the market as possible would be aware of the implementation of the Timber Regulation by 3 March 2013. The public servants of the Agency for Rural Affairs and the Ministry of Agriculture and Forestry have participated in numerous seminars and given press interviews on the theme of the Timber Regulation. The planning and implementation of the information activities have been demanding and labour-intensive, especially where small companies are concerned, as they do not necessarily belong to any trade organisations through which information on the Timber Regulation could be communicated directly. The information activities will be continued and updated on the basis of experiences gained on implementing the Regulation.

The Agency for Rural Affairs has created an EUTR website and distributed bulletins to stakeholders, interest groups and the media. The Customs has posted a bulletin on Timber Regulation implementation on its customer service website. Additionally, the Customs customer services have e-mailed a fact sheet on the regulation compiled by the Agency for Rural Affairs to importers of timber and timber products on its existing distribution lists. The customer services of the Customs estimated that by these means, the message was brought to some 70% of the potential 2,500 operators that import timber and timber products from outside the European Union. The communication efforts of the Agency for Rural Affairs and the Customs are estimated to have reached a relatively large number of the companies within the scope of the Regulation before its implementation began. This is also indicated by feedback from stakeholders who have contacted the Agency for Rural Affairs.

The Customs supervises importation in connection with electronic customs clearance. When the customs clearance is performed electrically, the customs declaration is transmitted as a so-called EDI message, the information contents of which are more or less the same as those of the SAD form ([www.tulli.fi](http://www.tulli.fi)). In the customs declaration, information is provided on the consignor of the goods, the consignee (basically, the final recipient in the country of destination) and the declarant/agent among other things.

The Agency for Rural Affairs is to serve as the competent authority in Timber Regulation implementation. The task of supervising the legality of imported timber and timber products would be assigned to the Agency for Rural Affairs. For this purpose, the act is to contain a provision on the right of the Agency for Rural Affairs to obtain from the Customs information on, for example, the importers of timber and timber products, the quantities imported and other customs declaration information that is necessary in terms of implementing the Timber Regulation.

Under the Timber Regulation, 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 their functions and comply with their requirements laid down in the regulation. If a competent authority determines that a monitoring organisation either no longer fulfils its functions

or no longer complies with the requirements laid down in the regulation, it shall without delay inform the Commission.

The competent authorities shall carry out checks to verify if operators comply with the requirements imposed on them. These checks shall be conducted in accordance with a periodically reviewed plan following a risk-based approach. In addition, checks may be conducted when a competent authority is in possession of relevant information, including on the basis of substantiated concerns provided by third parties, concerning compliance by an operator with the Timber Regulation. The aforementioned checks may include, inter alia:

- a) examination of the due diligence system, including risk assessment and risk mitigation procedures;
- b) examination of documentation and records that demonstrate the proper functioning of the due diligence system and procedures;
- c) spot checks, including field audits.

Pursuant to the bill, the Finnish Forest Centre and the Finnish Food Safety Authority would have the right to carry out checks under authority conferred on them by the Agency for Rural Affairs. It is considered likely that of these two organisations, checks on due diligence systems could only be carried out by the Finnish Forest Centre, as it has special expertise in forest certification. Any checks carried out by the Finnish Food Safety Authority under authority conferred on it by the Agency for Rural Affairs, on the other hand, would be limited to sample taking according to current estimates. The idea is that the checks will be carried out by the competent authority, or the Agency for Rural Affairs. It is estimated that only a few checks under conferred authority will be carried out every year, and the bill is thus deemed to have no effect on the resource requirements of the Finnish Forest Centre or the Finnish Food Safety Authority.

Pursuant to the bill, the Agency for Rural Affairs could prohibit an operator from marketing timber or timber products if the operator has placed timber or timber products on the market without a due diligence system, or if significant shortcomings have repeatedly been found in the operator's due diligence system, and these shortcomings have not been rectified within the deadline set by the Agency for Rural Affairs. A prohibition of marketing would not be a primary measure. Providing advice is part of good governance. A prohibition of marketing could thus only be imposed if the operator fails to rectify the shortcomings in the system after receiving advice or requests to do so from the Agency for Rural Affairs.

It is estimated that no more than a few prohibitions of marketing would be imposed every year. The prohibitions of marketing would be supervised by the Agency for Rural Affairs, while imports would be supervised by the Customs. It is estimated that the prohibition of marketing will be an exceptional measure, and the proposed prohibition of marketing is thus not expected to have a significant impact on the resource requirements of the Agency for Rural Affairs or the Customs.

The competent authorities shall keep records of the checks, indicating in particular their nature and results, as well as of any notice of remedial actions. Records of all checks shall be kept for at least five years.

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



The competent authorities shall exchange information on serious shortcomings detected through the checks referred to in Articles 8(4) and 10(1) and on the types of penalties imposed in accordance with Article 19 with the competent authorities of other Member States and with the Commission.

A technical interface with the Finnish Forest Centre's system used to supervise compliance with the Forest Act is to be set up for the Agency for Rural Affairs, enabling the Agency to verify that Forestry Act supervision also meets the supervision requirements laid down in the Timber Regulation. As before, the supervision of legality of Finnish timber would be based on the forest use declarations required under the Forest Act. Based on the forest use declarations submitted to it, the Finnish Forest Centre oversees that the treatment of the forest meets the Forest Act requirements in each case. The origin of timber can be verified from the measurement document received by the forest owner as the timber is measured. In the future, the obligations laid down in the Timber Regulation will be taken into account when supervising compliance with the Forest Act and reporting on the supervision activities.

Under the bill, an operator would have the duty to pay the storage costs of timber or timber products forfeited to the state. In this respect, the bill will not have impacts on the authorities' resource requirements.

#### **4.3 Environmental impacts**

The provisions of the Forest Act and other legislation relevant to timber harvesting must be complied with when felling trees. The purpose of the Forest Act is to promote economically, ecologically and socially sustainable management and utilisation of forests in order that the forests produce a good output in a sustainable way while their biological diversity is being preserved. Where a felling is carried out in compliance with the Forest Act, timber produced in Finland can be deemed to meet the definition of sustainability in principle. The forests produce many types of environmental, economic and social benefits, including timber and other forestry products as well as ecosystem services essential for humans, including preserving biodiversity and ecosystem functions as well as protecting the climate.

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 and forest degradation, which is responsible for about 20% of global CO<sub>2</sub> emissions, threatens biodiversity, and undermines sustainable forest management and development including the commercial viability of operators acting in accordance with applicable legislation. It also contributes to desertification and soil erosion and can exacerbate extreme weather events and flooding. Combating the problem of illegal logging in the context of the Timber Regulation is expected to contribute to the Union's climate change mitigation efforts in a cost-effective manner and should be seen as complementary to Union action and commitments in the context of the United Nations Framework Convention on Climate Change.

#### **4.4 Societal impacts**

While the bill is not regarded as having major societal impacts in Finland in itself, the actual Timber Regulation is considered to have significant positive impacts globally on preventing illegal timber trade. Many timber-producing countries are troubled by institutional and governance deficiencies, and illegal logging and the associated trade have thus become matters of ever greater concern related to such areas as the rights of indigenous populations.

In developing countries, illegal timber trading has social, political and economic implications, often undermining progress towards good governance and threatening the livelihood of local forest-dependent communities, and it can also be linked to armed conflicts.

## **5 Drafting of the bill**

### **5.1 Drafting phases and documents**

On 9 March 2011, the Ministry of Agriculture and Forestry appointed a working group to examine the implementation of the Timber Regulation in Finland (Working Group on the national implementation of the FLEGT Timber Regulation; MMM004:00/2011). The working group's interim report and other information related to the drafting of the national implementation of the Timber Regulation is available on the website of the Ministry of Agriculture and Forestry at [www.mmm.fi](http://www.mmm.fi) (see *metsät/hankkeet ja työryhmät/muut lainsäädäntöhankkeet/FLEGT-lisätoimiasetuksen toimeenpano Suomessa*). This website also contains the working group's final report (working group memorandum mmm 2012:9) under publications.

The bill was drafted at the Ministry of Agriculture and Forestry as part of the official duties in cooperation with the Agency for Rural Affairs.

### **5.2 Statements and their consideration**

Statements on the government bill were requested from the following: Prime Minister's Office, Ministry for Foreign Affairs, Ministry of Finance, Ministry of Justice, Ministry of the Environment, Ministry of Economic Affairs and Employment, Ministry of the Interior, Customs, Finnish Forest Centre, Finnish Food Safety Authority, Agency for Rural Affairs, Finnish Environment Institute, Centres for Economic Development, Transport and the Environment (ELY Centres), Metsähallitus, Provincial Government of Åland, Finnish Forest Industries, Central Union of Agricultural Producers and Forest Owners MTK, Svenska lantbruksproducenternas centralförbund SLC r.f., Trade Association of Finnish Forestry and Earth Moving Contractors, PKMO Association, Finnish Sawmills Association, Finnish Association for Nature Conservation, WWF, Federation of the Printing Industry in Finland, Confederation of Finnish Construction Industries (RTT), RTT/Timber Products Division/Puuteollisuus Association, RTT/Low-rise Building Division/Pientaloteollisuus Association, Association of Finnish Woodworking and Furniture Industries, Sahayrittäjät Association, Sisusta kotia Association, Finnish Hardware Association, Finnish Commercial Federation, Erikoiskaupan liitto Federation and Finnish Grocery Trade Association. The request for statements was also sent to the European Forest Institute (EFI) for information.

Statements were received from the following: Ministry of Finance, Ministry of Justice, Ministry for Foreign Affairs, Ministry of the Interior, Customs, Agency for Rural Affairs, Finnish Environment Institute, Provincial Government of Åland, Finnish Food Safety Authority, Central Union of Agricultural Producers and Forest Owners MTK, Finnish Forest Industries and Finnish Commercial Federation. No comment or statements were received from Ministry of the Environment, Finnish Forest Centre, ELY Centre for Uusimaa, Svenska lantbruksproducenternas centralförbund SLC r.f. and Finnish Association for Nature Conservation.



In the statements that were received, the proposed act was considered necessary. A summary that contains the key observations made in the statements received can be found in the Project Register of the Government (MMM050:00/2012).

After the circulation for comments, the Ministry of Agriculture and Forestry discussed the role of the Customs with both the Ministry of Finance and the Customs. The Ministry of Agriculture and Forestry discussed the penal provisions with the Ministry of Justice. Many parts of the Rationale were revised and complemented on the basis of the statements received and the aforementioned discussions. The bill was also revised.

## **6 Interdependencies with other proposals**

The bill has no interdependencies with other proposals. The government bill amending the Forest Act (75/2013 vp) and the government bill on the new Forest Damages Prevention Act to be submitted to the Parliament in autumn 2013 do not have interdependencies with this bill that would necessitate their simultaneous processing.

### **DETAILED RATIONALE**

## **1 Rationale of the bills**

### **1.1 Act on the Placing on the Market of Timber and Timber Products**

Section 1. Purpose of the act. The Act on the Placing on the Market of Timber and Timber Products needs to be passed to ensure the national implementation of the Timber Regulation and the legal acts of the European Union issued by virtue of it. Under the Timber Regulation, the Member States shall designate a competent authority and enact on penalties. Certain complementary provisions also need to be enacted.

Section 2. Competent authority. Under Article 7 of the Timber Regulation, each Member State shall designate one or more competent authorities responsible for the application of the regulation. The Working Group on the national implementation of the FLEGT Timber Regulation deliberated on the organisations that could serve as competent authorities. The working group ultimately proposed that the Agency for Rural Affairs be selected as the competent authority referred to in the Timber Regulation. The Agency for Rural Affairs already performs many tasks associated with the Forest Act and the Act on the Financing of Sustainable Forestry (1094/1996), which involve significant exercise of public authority.

Under this section, the Finnish Forest Centre, the Finnish Food Safety Authority, the Customs and the Finnish Environment Institute would perform the tasks assigned to them that are associated with the implementation of the proposed act. The Finnish Forest Centre would continue to perform duties related to the supervision of the Forest Act. Similarly, the Customs would perform tasks associated with the customs taxation and customs control of timber products and serve as a pre-trial investigation authority. The Customs is tasked to supervise imports, exports, re-importation and transit transport relevant to the CITES Regulation. The Finnish Environment Institute would, for its part, perform those tasks associated with the implementation of the proposed act that pertain to the granting of CITES permits and certificates.

Section 3. Definitions. The bill complements the legislation contained in the Timber Regulation and the legal acts issued by virtue of it. It is thus logical that the concepts used in the Timber Regulation are also used in the bill. The definitions in section 3 of the bill refer to the definitions of the Timber Regulation.

Section 4. Supervision. Under the proposed section 4, supervision related to the implementation of the Timber Regulation and its organisation would be assigned to the Agency for Rural Affairs. The proposed section is included in the act for information purposes. Under section 2 of the bill, the Agency for Rural Affairs would be the competent authority referred to in the Timber Regulation. The Timber Regulation obliges the competent authority to carry out checks and to report on them to the Commission at regular intervals.

Section 5. Checks. Subsection 1 of the proposed section contains a provision on the places where the Agency for Rural Affairs may carry out checks. The Agency for Rural Affairs could carry out checks to the extent required under the Timber Regulation and the legal acts of the European Union issued by virtue of it in vehicles as well as on business, storage or other similar premises used for practising a profession or a trade and in other areas where documents related to a due diligence system or traceability, or timber or timber products are found. The checks intended in this subsection are spot checks carried out as field audits referred to in Article 10(3)(c) of the Timber Regulation. In order to perform the competent authority's supervisory task effectively, the Agency for Rural Affairs must have adequate powers to do so. Under subsection 1 of this section, the right to carry out checks would not extend to premises used for permanent residence.

The proposed subsection 1 of this section would contain a provision on an obligation to comply with section 39 of the Administrative Procedure Act (434/2003) when carrying out checks. According to the preliminary work on the Administrative Procedure Act (HE 72/2002 vp), inspections referred to in section 39 of the act only concern inspections within an authority's competence under other legislation that have to be performed in order to investigate an administrative matter or to verify the preconditions for making a decision. Provisions on inspections of a supervisory nature that are within the competence of an authority will be laid down in other legislation also in the future. Rather than being associated with investigating an administrative matter, the checks referred to in this section would in most cases specifically be inspections of a supervisory nature.

Under subsection 2 of this section, the Agency for Rural Affairs could rely on the assistance of an external expert when carrying out checks. The provisions of the Administrative Procedure Act, the Language Act (423/2003), the Sámi Language Act (1086/2003), the Act on the Openness of Government Activities (621/1999) and sections 14 and 15 of the State Civil Servants Act (750/1994) would apply to an external expert. Among other things, the Administrative Procedure Act contains provisions on disqualification. An external expert should also use the language determined pursuant to the Language Act when carrying out checks. Key provisions in terms of the checks in the Act on the Openness of Government Activities include those on disclosure and duty of non-disclosure, as well as the obligation to comply with good practice of information management in the documentation, archival and disclosure of information and documents. Under subsection 2 of this section, provisions on criminal liability for acts in office would be applied to an expert who is performing tasks referred to in the bill. Provisions on offences in office are contained in Chapter 40 of the Criminal Code. Subsection 2 of this section would also state that provisions on liability are contained in the Tort Liability Act (412/1974). The tasks of an external expert would be limited to providing expert assistance. Making decisions on measures to be taken as a consequence of a check

would be the duty of the authorities carrying out the check. An external expert would thus not exercise public authority.

Under subsection 3, operators, traders and other persons who are the object of a check shall assist the Agency for Rural Affairs in carrying out the check. The obligation to provide assistance would generally concern an operator or a trader. The obligation to provide assistance could in some cases also apply to an operator's contracting party, for example if timber or timber products or documents with evidence of their legality are in that party's possession. Under subsection 3, the Agency for Rural Affairs would have the right to take possession of documents related to a due diligence system or traceability of timber products or their copies if this is essential in order to investigate matters that the check concerns. It is estimated that the checks would mainly involve checks on documents of this type. It is additionally proposed that a provision be included in subsection 3 on the Agency for Rural Affairs' right to carry out tests and take samples related to timber or timber products in connection with a check. Samples could be taken free of charge.

The proposed subsection 4 of this section would contain a provision under which the Agency for Rural Affairs can authorise the Finnish Forest Centre or the Finnish Food Safety Authority to carry out a check. Authorising the Finnish Food Safety Authority to carry out a check could be possible when, for example, samples are to be taken of timber or timber products. The Finnish Forest Centre already performs supervisory tasks associated with the Forest Act. Under authorisation referred to in subsection 4 the Finnish Forest Centre could, for example, also carry out a check of a due diligence system. As an organisation, the Finnish Forest Centre represents so-called indirect central government administration, and provisions on its competence, responsibilities and obligations are laid down in the Act on the Finnish Forest Centre. Among other things, section 15 of the aforementioned act contains provisions on compliance with general administrative legislation and criminal liability. The tasks related to checks referred to in this section at the Finnish Forest Centre could only be performed by persons who have a right to exercise public authority confirmed as required in legislative provisions.

Section 6. Access to information from operators and traders. This section would contain provisions on the right of the Agency for Rural Affairs and, under the Agency's authorisation, the Finnish Forest Centre and the Finnish Food Safety Authority, to obtain information from operators and traders. This information should be relevant to supervising compliance with the Timber Regulation or the legal acts of the European Union issued by virtue of it. The right of access to information would apply to, for example, due diligence system documents, accounts and commercial and customs documents. The same right would apply to the Finnish Forest Centre and the Finnish Food Safety Authority when authorised by the Agency for Rural Affairs to carry out a check on an operator or a trader. Under subsection 2, the right to information would also cover information on private business or the financial position of a private individual that would otherwise be secret.

Section 7. Access to information from authorities and other actors performing public administrative tasks. The competent authority must, regardless of secrecy provisions, have access to all information necessary for supervising compliance with the Timber Regulation and legal acts of the European Union issued by virtue of it in order to ensure the effective implementation of the Timber Regulation and legal acts of the European Union issued by virtue of it. Section 2 of the bill specifies that tasks associated with implementing the act are performed by the Finnish Forest Centre, the Finnish Food Safety Authority, the Customs and the Finnish Environment Institute, each in their fields of operation. In this context, the proposed subsection 1 of this section is to contain provisions both on information exchanges between the supervising authorities and their right to obtain information necessary for the supervision from other authorities or parties performing public

administrative tasks. Customs activities are an essential and inseparable part of international trade and the transport chains of goods across the boundaries of individual states. In the context of this task, the Customs has knowledge of such areas as the importers of timber and timber products as well as the quantities of timber and timber products imported. In terms of supervising the legality of timber and timber products imported from outside the European Union, it is crucial that the Agency for Rural Affairs as the competent authority can obtain information on the importation of timber and timber products from the Customs. As another example can be cited information on CITES permits granted in Finland. The Finnish Environment Institute serves as the CITES management authority in Finland, and it is thus important that the Agency for Rural Affairs can obtain information on CITES permits from the Centre.

Subsection 2 of this section is relevant to supervision of compliance with the Forest Act, which is one of the public administrative tasks of the Finnish Forest Centre. From the perspective of supervising the legality of Finnish timber, it is crucial that the Agency for Rural Affairs as the competent authority can be notified as soon as possible if the Finnish Forest Centre has substantiated grounds to suspect that an act or neglect referred to in section 18 of the Forest Act associated with submitting a forest use declaration or felling has been taken place. The reporting obligation would not, however, apply to situations where remedial measures related to an illegal measure referred to in section 20 of the Forest Act have been taken, or if under section 22 of the Forest Act, reporting the act to the police can be waived. Section 11 of the bill contains a provision on cases that the Agency for Rural Affairs should report to the police. The reporting obligation would apply to acts referred to in section 12 of the bill. The Finnish Forest Centre should report the information referred to in subsection 2 to the Agency for Rural Affairs on its own initiative. In this respect, the government bill amending the Forest Act that is being debated by the Parliament contains the same procedures as the valid Forest Act.

Under subsection 3 of this section, the information referred to in subsections 1 and 2 could be disclosed using a technical interface. The provision only imposes an obligation to set up a technical interface on the Finnish Forest Centre. The Finnish Forest Centre would be obliged to set up a technical interface for the use of the Agency for Rural Affairs. The technical interface to be set up would be linked to the system for supervising compliance with the Forest Act. The provision on the Finnish Forest Centre would thus be a specific provision in terms of section 8(1) of the Act on the Forest Information System of the Finnish Forest Centre (419/2011). In other respects, the provisions of the aforementioned act would apply to the Finnish Forest Centre's forest information system.

Section 8. Issuing a notice. Article 10 of the Timber Regulation contains provisions on checks on operators. Under paragraph 5 of this Article, the competent authorities may issue a notice of remedial actions to be taken by the operator. The proposed section 8 is associated with these remedial actions. The scope of this provision is restricted to shortcomings observed in a due diligence system, as it is not possible to target remedial actions at timber and timber products. It is proposed that a provision be included in this section under which the Agency for Rural Areas shall issue an operator with a written notice urging them to correct the shortcomings observed in the due diligence system within a set period. The same obligation to issue a notice as a result of supervision activities would also apply to the Agency for Rural Affairs when shortcomings are observed in the traceability of timber and timber products. No provision on the authority's duty to provide advice has been included in the bill, as this provision is contained in section 8 of the Administrative Procedure Act.

Under section 8 of the Administrative Procedure Act, an authority must provide to its customers the necessary advice, within their competence, for taking care of administrative matters; as well as

respond to the questions and queries on their service. In most cases, a notice urging an operator to rectify shortcomings within a set period referred to in subsection 1 would only be issued if the operator has not corrected their due diligence system after being advised to do so. When issuing a notice referred to in the proposed section 8, however, the Agency for Rural Affairs would have to take into consideration section 28(1)(2) of the Administrative Procedure Act, under which an authority shall be disqualified if he/she assists or represents an interested party. The instructions related to a notice referred to in subsection 1 must thus be general in nature. For example, they could concern the requirements laid down on due diligence systems in the Timber Regulation. The actual implementation of the due diligence system is the operator's duty.

Section 9. Order to take remedial action, prohibition and conditional fine. It is proposed that provisions on administrative coercive measures be included in this section. Administrative coercive measures refer to special provisions in the legislation under which a competent authority may issue the requisite orders or prohibitions to an interested party, or take other statutory measures to ensure that legislation is complied with.

Under subsection 1 of this section, the Agency for Rural Affairs would be authorised to make a decision under which an operator is ordered to take remedial action to address shortcomings in their due diligence system. This decision should state how and by which date the operator would have to take action. An order to take remedial action could be issued where an operator has no due diligence system, or significant shortcomings have repeatedly been noted in an operator's system. Issuing an order to take remedial action would not be the first measure by which the Agency for Rural Affairs could intervene in the lack of, or shortcomings in, the due diligence system. The first step would be issuing a notice referred to in section 8 to correct the shortcomings within a set period.

It is proposed that a provision be included in subsection 2 of this section under which the Agency for Rural Affairs could prohibit an operator from placing on the market timber or timber products for the part of which the operator has not complied with an order to take remedial action referred to in subsection 1. It was considered that in terms of implementing the Timber Regulation, the fact that an operator has no due diligence system, or that significant shortcomings have repeatedly been found in an operator's due diligence system, could be considered a highly serious infringement. The fact that the prohibition could only be issued after the operator has not complied with an order to take remedial action within the set period plays a key role for the operator's legal protection.

Under subsection 2 of this section, the prohibition would be issued for a fixed term, and it could be valid for no more than three months. A period of validity of three months would be the main rule. However, there are operators who fall within the scope of application of the Timber Regulation and who only place timber and timber products on the market occasionally. A prohibition that is valid for three months is not an effective intervention in situations where, for example, timber products are placed on the market seasonally. The latest data obtained from the Customs indicates that in 2012, there were some 1,500 operators who had only completed a single customs clearance procedure, in other words only imported one shipment of timber and timber products referred to in the Timber Regulation into the country. A longer period of validity could thus be imposed where timber or timber products would be placed on the market with intervals of several months. Under this section, in these exceptional cases the prohibition could be valid for no more than a year. Under subsection 2 of this section, the prohibition would have to be revoked as soon as the shortcomings in the due diligence system have been rectified in a manner approved by the Agency for Rural Affairs. In a manner approved by the Agency for Rural Affairs in this context means that the shortcomings in the due diligence system have in essential parts been rectified as set out in the written notice and order to take remedial action issued by the Agency for Rural Affairs.

It is estimated that an order to take remedial action will in most cases be an adequate means of intervening in shortcomings in the due diligence system. If the order did not lead to the desired results, however, the competent authority could impose a prohibition referred to in subsection 2.

It is proposed that a provision be included in subsection 3 of this section under which the Agency for Rural Affairs could enforce the prohibition with a conditional fine. Provisions on conditional fines are contained in the Act on Conditional Fines (1113/1990). Under section 10 of the Act on Conditional Fines, a court may order a conditional fine to be paid if a prohibition or a decision has not been complied with and there is no valid reason for the non-compliance. Pursuant to section 22 of the Act on Conditional Fines, the interested party (here the operator) shall be reserved an opportunity to submit an explanation as prescribed in section 34 of the Administrative Procedure Act. It was considered that in most cases, the threat of having to pay a conditional fine will be a sufficient deterrent to persuade the operator to take action to rectify shortcomings in the due diligence system, and it is likely that ordering a conditional fine to be paid will only be necessary in rare cases.

Under section 4 of the bill, the Agency for Rural Affairs would be the competent authority supervising the implementation of the Timber Regulation. The idea is that the Agency for Rural Affairs would supervise compliance with the obligation of following a due diligence system as regards importation. The supervision of a prohibition referred to in section 9(2) of the bill in the context of importation would be an exception to this. As far as importation is concerned, compliance with a prohibition issued by the Agency for Rural Affairs would be supervised by the Customs.

Section 10. Executive assistance. In this section it is proposed that the Agency for Rural Affairs could, where necessary, obtain executive assistance from other authorities in order to carry out supervision and checks referred to in the bill. It was estimated that if necessary, executive assistance related to timber and timber products from outside the EU territory could be requested, for example, from the Customs or the Finnish Environment Institute. In order to supervise a prohibition of marketing, it may be necessary to request executive assistance from a Centre for Economic Development, Transport and the Environment (ELY Centre).

Section 11. Report to a pre-trial authority and hearing the Agency for Rural Affairs. Section 12 of the bill would contain provisions on penalties. If the Agency for Rural Affairs had substantiated grounds to suspect that an act referred to in the aforementioned section 12 has been committed, it would, under section 11(1) of the bill, be obliged to report this to a pre-trial investigation authority so that a pre-trial investigation could be conducted. However, the Agency for Rural Affairs could waive submitting the report if the act is minor considering the circumstances and a closer inspection of the matter for reasons of public interest is not required. The idea is that the Agency for Rural Affairs would only report shortcomings in the due diligence system to a pre-trial authority if administrative coercive measures did not bring the desired results. However, the preconditions for reporting would exist when a prohibition referred to in section 9 of the bill has been violated. The pre-trial investigation authorities referred to in subsection 1 of this section are the police and the Customs. The Customs carries out pre-trial investigations of offences referred to in section 3(1)(5) of the Customs Act. In other words, the Customs could also conduct pre-trial investigations of timber infringements and timber offences referred to in this bill. These would include acts that clearly meet the aforementioned definition of a customs offence in the Customs Act.

Subsection 2 of this section would contain a provision on hearing the Agency for Rural Affairs in a pre-trial investigation and during court proceedings.

Section 12. Penalties. It is proposed that a provision be included in subsection 1 of this section under which the penalty for a timber offence would be laid down in Chapter 48, section 3b of the Criminal Code. The bill does not contain a separate provision on forfeiture referred to in Chapter 10 of the Criminal Code, as in these cases, the cited provisions of the Criminal Code may be applied.

It is proposed that subsection 2 of this section contain a provision on violations of the proposed act for which a person may be sentenced to a fine, unless a more severe punishment has been provided for the act elsewhere in the law. Under subsection 2, a person who deliberately violates the obligation of having a due diligence system could be sentenced to a fine. Provisions on this obligation are contained in Article 4 of the Timber Regulation. The act would be considered deliberate if the operator has violated, or intends to violate, a prohibition of marketing imposed by a competent authority. If the operator had no due diligence system, or if the due diligence system were completely lacking in some essential components, the operator could be deemed to have been acting deliberately. As the aforementioned key shortcomings of a due diligence system could be regarded the fact that the system contains no risk assessment or risk reduction measures or, for example, that the system contains no information on the origin of the timber or timber product or the parties from whom the timber or timber products were obtained. In that case, the operator could not make appeal to the fact that their acts were not deliberate, as a prohibition referred to in section (9)(2) of the bill would have been preceded by a notice (section 8) and an order to take remedial action (9(1)), and the order would indicate which shortcomings in the due diligence system should be rectified. The operator would not be deemed to have acted deliberately when individual shortcomings that are regarded as minor are found in the due diligence system.

Under subsection 2 of this section, a person who deliberately fails to comply with the obligation related to the traceability of timber and timber products could also be sentenced to a fine. Provisions on this obligation are contained in Article 5 of the Timber Regulation. The definition of a trader plays a key part in understanding the obligation related to traceability. Under Article 2 d of the Timber Regulation, a trader means “any natural or legal person who, in the course of a commercial activity, sells or buys on the internal market timber or timber products already placed on the internal market”. The obligation of traceability means that traders shall, throughout the supply chain, be able to identify the operators or traders who have supplied the timber and timber products. Under the aforementioned Article, traders must, “where applicable”, also be able to identify the traders to whom they have supplied timber and timber products. This obligation does not include identifying those purchasers of timber or timber products who do not engage in commercial activity. In other words, the obligation does not extend to identifying consumers. If a trader has deliberately destroyed the information on those who have supplied timber or timber products to their company, it would be an infringement referred to in this section. When assessing whether or not an act is deliberate, attention should be paid to the trader’s actions after they were issued with a notice referred to in section 8 by the Agency for Rural Affairs urging them to rectify shortcomings. A trader would not be considered to have acted deliberately when individual and minor shortcomings are found in information on traceability.

Under subsection 2 of this section, the act will be punishable unless a more severe punishment has been provided for the act elsewhere in the law. If the act simultaneously meets the characteristics of both the proposed timber infringement and a timber offence whose inclusion in the Criminal Code is proposed, a penalty could only be imposed for the timber offence.

Subsection 3 of this section would contain a provision on cumulation of sanctions. Under this subsection, a court could refrain from sentencing a person who has violated a prohibition subject to a conditional fine issued under section 9 of the bill for the same act if the conditional fine has been ordered to be paid by an enforceable decision.

Under Chapter 6, section 12(4) of the Criminal Code, due to the accumulation of penalties, a court may waive punishment or, under Chapter 6 section 7(1), take into consideration as grounds mitigating the punishment another sanction falling on the offender as a result of the offence or a sentence. If both a conditional fine and a punishment were imposed for the same neglect, this could constitute unreasonable cumulation of sanctions. Refraining from sentencing could only be justified, however, if a conditional fine had also been ordered to be paid.

Section 13. Forfeiture. The section would contain a reference to Chapter 10 of the Criminal Code that contains provisions on forfeiture. Under subsection 1 of this section, illegal timber or timber products that are ordered to be forfeited to the state could be sold in a public auction. The background to this section is Preamble 27 of the Timber Regulation that concerns the Member States' obligation to enact sanctions. The Preamble notes that "such timber and timber products should not necessarily be destroyed but may instead be used or disposed of for public interest purposes".

It is proposed that provisions be included in subsections 2 and 3 of this section on the storage costs incurred for the confiscation of timber and timber products. To the extent that the storage costs could not be recovered in connection with a public auction, they would be paid for by the operator. If timber or timber products have been confiscated and it later emerges that the criteria for confiscation are not met, the operator would also be responsible for the storage costs in this case. The operator would be required to pay the storage costs to the state because, under the Timber Regulation, it is the operator who is obliged to comply with a due diligence system and, in this connection, to ascertain the legal origin of the timber and timber products placed on the market and its adequate documentation.

Section 14. Guidance and supervision tasks of the Ministry of Agriculture and Forestry. It is proposed that a provision be included in subsection 1 of this section on the Ministry of Agriculture and Forestry's duty to supervise the activities of the Agency for Rural Affairs in performing the tasks imposed on the Agency in the bill. Subsection 1 of this section would contain provisions on the Ministry's right to, regardless of secrecy provisions, access information necessary for the supervision and the Ministry's right to carry out inspections necessary for supervising compliance with the proposed act in the Agency for Rural Affairs.

Under Article 20(1) of the Timber Regulation, Member States shall submit to the Commission, by 30 April of every second year following 3 March 2013, a report on the application of the Regulation during the previous two years. Subsection 2 is associated with the aforementioned Article, while it also is a specific provision that complements subsection 1. The idea is that the Agency for Rural Affairs as the competent authority would prepare the report and submit it to the Commission. It is proposed that under subsection 2 of this section, the Agency for Rural Affairs would have to seek the approval of the Ministry of Agriculture and Forestry for the draft report. Subsection 2 would also lay down a deadline by which the draft report would have to be submitted to the Ministry.

Section 15. European Union inspectors. The bill is based on European Union legislation, and compliance with this legislation in Member States is supervised by the Commission. Under this section, European Union inspectors would have the same rights to conduct checks and access



information as the Agency for Rural Affairs. However, Union inspectors would not have an independent right to access information or carry out checks under this section. Under this section, Union inspectors would only have these rights in association with checks carried out in cooperation with the Agency for Rural Affairs. The Ministry of Agriculture and Forestry has the duty to supervise the activities of the Agency for Rural Affairs. It is proposed that, in connection with this supervision task, the Ministry of Agriculture and Forestry should have the same right to access information and carry out checks as a European Union institution and a competent authority of a European Union Member State.

Section 16. Entry into force. This section would contain a provision on the entry into force of the act. The act is to enter into force as soon as possible after it has been passed and adopted by the Parliament.

## **1.2 Act amending Chapter 48a of the Criminal Code**

Section 3b. Timber offence. It is proposed that a provision on a timber offence be included in Chapter 48 a of the Criminal Code, which contains provisions on natural resources offences (including forestry offences). Under subsection 1 of this section, placing on the market of illegally harvested timber or timber products derived from such timber in violation of the Timber Regulation in a professional capacity would be punishable. Placing on the market is defined in Article 2(1)(b) of the Timber Regulation. 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. According to the Guidance Document on the Timber Regulation found on the Commission's website ([http://ec.europa.eu/environment/forests/timber\\_regulation.htm](http://ec.europa.eu/environment/forests/timber_regulation.htm)), internal market means that the timber must be physically present in the EU, either harvested here or imported and cleared by customs for free circulation. According to the aforementioned document, goods subject to special customs procedures (e.g. temporary importation, inward processing, processing under customs control, customs warehouses, free zones), in transit or being re-exported are not considered to be placed on the market. The scope of the proposed penal provision would be determined under Chapter 1 of the Criminal Code.

The act would have to be deliberate in order to be punishable. The operator thus needs to know that the origin of the timber or timber products they place on the market is not legal. In the case of Finnish timber, this means that the operator has, for example, consciously violated the provisions on felling laid down in the Forest Act. For Finnish timber, it may also mean that the operator has felled forest in an area where harvesting is prohibited directly under the act or under an agreement on conserving the area. Compliance with a due diligence system referred to in the Timber Regulation means that the operator must complete certain measures and procedures to ascertain the origin of the timber and timber products. The criteria for a deliberate act is met at least if the operator knows that the timber has been logged in violation of the legislation in the country of harvest, or that the product has been derived from such timber. Legislation to be applied in this case is determined by the definition of applicable legislation in Article 2 h of the Timber Regulation. These cases may thus involve a situation where the operator who logged the timber did not have ownership, control or other rights to the shipment of timber in question under the legislation in the country of harvest. They also include cases of stolen timber. The criteria for a deliberate act would also be met if the actor is aware of the fact that fees related to timber or harvesting have been neglected in violation of the legislation in the country of harvest. This would also include situations where the timber has been harvested in breach of legislation on the management or use of the logging area or

preservation of forest biodiversity. Situations where the timber is not compliant with the legislation on forestry trade applied in the country of harvest would be another example.

Article 6 of the Timber Regulation imposes a relatively extensive obligation to obtain information on the origin of the timber and timber products. The due diligence system referred to in section 6 of the Timber Regulation imposes on the operators the duty to access the following information on timber and timber products placed on the market:

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

The due diligence system referred to in Article 6 of the Timber Regulation obliges the operator to analyse and assess the risk that illegally harvested timber or timber products derived from such timber are placed on the market. These risk assessment methods include “assurance of compliance with applicable legislation, which may include certification or other third-party-verified schemes which cover compliance with applicable legislation”. As the Timber Regulation imposes on operators a relatively extensive obligation to access information on the origin of the timber and timber products placed on the market, the criteria for a deliberate act would also be met if the operator had made no effort to access information on the origin of the timber and timber products placed on the market. The criteria for a deliberate act would also be met if the operator knows that the documents concerning the legality of harvesting the timber they have bought are forgeries.

In parts, both the proposed timber offence and the cat or dog fur marketing violation referred to in section 2.1.6 of the Rationale represent very similar legislation. Both are underpinned by EU regulation level legislation that prohibits the placing on the market of certain products and requires Member States to enact penalties for marketing in violation of the regulation. The proposed timber offence differs essentially from the cat or dog fur marketing violation in that the purpose of the Timber Regulation is to intervene in illegal activities. Instead, using cat or dog fur may be legal in some countries outside the European Union. The definition of illegally logged timber in the Timber Regulation is very broad. It includes more than just activities that are non-compliant with legislation on forest management and use or forest biodiversity. The Timber Regulation also intervenes in other illegal activities associated with harvesting rights, fees related to harvesting rights and timber, the rights of use and ownership of third parties as well as forestry sector trade and excise duties. The legislation contained in the Timber Regulation strives to promote good governance and compliance with legislation in activities associated with timber harvesting.

A timber offence would be punishable by a fine or six months of imprisonment. Under this section, the act would be punishable unless a more severe punishment has been provided for the act elsewhere in the law. Under Chapter 46, section 1(1)(9) of the Criminal Code, a person who violates or attempts to violate a regulatory provision contained in or issued on the basis of Regulations of the European Union on import and export shall be sentenced for a regulation offence to a fine or to imprisonment for at most two years. As noted above, in the Timber Regulation placing on the market also means the import of timber and timber products. If the act met simultaneously the characteristics of both the proposed timber offence and a regulation offence referred to in Chapter 46, section 1(9) of the Criminal Code, the offender could only be punished for a regulation offence. An act punishable as a timber offence may simultaneously also meet the characteristics of a forestry offence (Chapter 48a section 3 of the Criminal Code) or a nature conservation offence (Chapter 48 section 5 of the Criminal Code). The penalties for a forestry offence and a nature conservation offence are either a fine or imprisonment for at most two years. Taking into consideration the maximum penalty for the aforementioned regulation offences, or a forestry offence and a nature conservation offence (two years of imprisonment), it can be considered justified that the maximum penalty for a timber offence is six months of imprisonment.

## **2 More detailed provisions**

The proposal does not contain authorisations for the government or the Ministry to issue decrees.

## **3 Entry into force**

These acts are to enter into force as soon as possible.

## **4 Relationship with the Constitution and procedure of enactment**

The bill contains certain provisions that need to be assessed from the perspective of the Constitution.

Section 5 of the bill contains a proposed provision on checks. The checks referred to in section 5 of the bill are supervisory in nature. Section 39 of the Administrative Procedure Act does not apply to supervisory checks. The bill thus contains a provision under which the aforementioned provision of the Administrative Procedure Act should be complied with. This provision is included in the bill in order to implement and promote good governance and legal protection during the checks.

Under subsection 5(2) of the bill, the Agency for Rural Affairs could rely on the assistance of an external expert when conducting checks. The task of the expert would be to provide assistance. The expert would not perform tasks associated with exercising public authority. The expert's task would comprise delegation of a public administrative task referred to in section 124 of the Constitution to a private person. Under section 124 of the Constitution, a public administrative task may be delegated to others than public authorities only by an Act or by virtue of an Act, if this is necessary for the appropriate performance of the task and if basic rights and liberties, legal remedies and other requirements of good governance are not endangered.

In line with the interpretation practice of the Constitutional Law Committee, a precondition for securing the implementation of the requirements concerning legal remedies and good administration in the sense referred to in section 124 of the Constitution is that the general administrative acts are complied with when dealing with the matter. The provision in section 124 of the Constitution makes it unnecessary to include a reference to general administrative acts in the act. On the other hand, there is no constitutional obstacle to including a list of the applicable acts if the list is exhaustive (for example PeVL 37/2010 vp). On these grounds, a provision on applying the Administrative Procedure Act, the Language Act, the Sámi Language Act, the Act on the Openness of Government Activities and sections 14 and 15 of the State Civil Servants Act to the experts has been included in the bill. The bill also contains a provision under which the provisions on criminal liability for acts in office would be applied to an expert when he or she is performing the tasks prescribed in the act. As regards liability, the bill contains a reference to the Tort Liability Act.

Under section 5(4) of the bill, the Finnish Forest Centre and the Finnish Food Safety Authority would have the right to conduct checks when authorised to do so by the Agency for Rural Affairs. These checks would comprise exercise of public authority. In the case of the Finnish Forest Centre, this would involve delegating a public administrative task referred to in section 124 of the Constitution to a private person. The Finnish Forest Centre already performs public administrative tasks under the existing legislation. For example, the Finnish Forest Centre carries out tasks associated with implementing the Forest Act and Forest Damages Prevention Act discussed above (see section 2.1 of the Rationale). The act on the Finnish Forest Centre contains provisions on the Centre's competence, responsibility and duties. Among other things, section 15 of the aforementioned act contains provisions on compliance with general administrative legislation and criminal liability. The proposed tasks related to checks at the Finnish Forest Centre could only be performed by persons who have a right to exercise public authority confirmed as required in legislative provisions. The proposed tasks related to checks would be similar in nature as the tasks that the Finnish Forest Centre already performs under the existing legislation. The difference would be, however, that decisions on further action taken on the basis of checks carried out pursuant to the proposed act would always be made by the competent authority, or the Agency for Rural Affairs. The Agency for Rural Affairs is an authority to which general administrative acts apply in any case.

Section 5(1) of the bill would contain provisions on the places in which checks could be carried out. Under section 10 of the Constitution, everyone's private life, honour and the sanctity of the home are guaranteed. In the context of this provision, a specific reference to the fact that the checks cannot be extended to premises used for permanent residence has been added to the bill.

Section 9 of the bill would contain provisions on a prohibition of placing timber and timber products on the market. The decision to impose such a prohibition would be made by the Agency for Rural Affairs, and it could be enforced with a conditional fine. The prohibition laid down in section 9 of the bill can be considered necessary because of the obligations laid down in Article 4 of the Timber Regulation. Under this Article, the placing on the market of illegally harvested timber or timber products derived from such timber shall be prohibited. Consequently, operators have the obligation to maintain a due diligence system. The purpose of the due diligence system is to ensure that the origin of timber and timber products is legal.

The prohibition referred to in the bill is not the primary means of intervening in shortcomings in a due diligence system. As part of good governance, the primary means would be a notice issued by the Agency for Rural Affairs urging the operator to rectify shortcomings in the due diligence system within a set period. A provision to this effect would be contained in section 8 of the bill. The primary method, in other words, would be advice and a notice urging the operator to rectify the

shortcomings. If the operator did not comply with the notice within the set deadline, the Agency for Rural Affairs could, by its decision, order the operator to take remedial action to rectify the shortcomings in the due diligence system. Under section 9(1) of the bill, an order to take remedial action could only be issued in cases where non-compliance with the rules of the due diligence system could be considered particularly serious. In other words, the authority to issue a prohibition would depend on the significance of the negligence that it concerns. For this reason, an order to take remedial action could only be issued if the operator had placed timber or timber products on the market without a due diligence system, or if this system had repeatedly had major shortcomings. A prohibition of marketing could only be imposed after the operator had failed to comply with an order to take remedial action issued to them. Consequently, it was considered that a procedure with multiple steps will give the operator sufficient guarantees of predictability in the authorities' actions.

Regarding the regulation of commercial activities, in the established practice of the Constitutional Law Committee withdrawing a licence has been considered an official activity interfering with an individual's legal position that has more severe impacts than declining to grant a licence applied for. In order to ensure that regulation is proportionate, the Committee has consequently found it essential to associate the possibility of withdrawing a licence with serious or material infringements or negligences and the fact that any cautions or warnings issued to the licence holder have not resulted in rectification of the shortcomings observed in the activities (for example PeVL 32/2010 vp, PeVL 58/2010 vp, PeVL 31/2006 vp, PeVL 8/2006 vp and PeVL 48/2005 vp). The Constitutional Law Committee has paid attention to not only the material nature of the act or negligence but also the recurring nature of the act or negligence (for example PeVL 8/2006 vp and PeVL 58/2010 vp). In addition, the Constitutional Law Committee has, in the context of withdrawing an operating licence for rail transport, paid attention to the fact that the licence holder shall, before the licence is withdrawn, be reserved the possibility of rectifying a shortcoming other than those associated with rail transport operation or traffic safety observed in compliance with the licensing conditions (PeVL 66/2002 vp).

A prohibition referred to in section 9(2) of the bill would be relatively similar to the prohibition of marketing forest cultivation materials referred to in section 26 of the Act on Forest Cultivation Material Trade (241/2002). According to the Constitutional Law Committee, the prohibition of marketing forest cultivation materials can in substance be compared to a fixed-term cancellation of the forest cultivation material supplier's registration, to the extent that the prohibition is extended to "apply to the marketing of non-compliant forest cultivation materials more extensively". The Committee noted that the justifications for the aforementioned prohibition had been detailed in section 26(1), which also contains a provision on imposing a prohibition for the period during which the matter is investigated. According to the Committee, the provisions in section 26(2) on cases in which the prohibition shall be issued for a fixed term and on immediate revocation of the prohibition are important in terms of the operator's legal position. Additionally, under section 26(3), the Ministry of Agriculture and Forestry may prohibit the marketing of forest cultivation materials to an end user and issue orders concerning the conditions of using such materials. In the Committee's opinion, the grounds of these actions were also detailed in the proposal. The Committee found that the proposed system gave the operators sufficient guarantees of the predictability of the authorities' activities. Sections 25 and 26 of the bill were thus not problematic in terms of the Constitution.

It was considered that the prohibition referred to in section 9(2) of the bill meets the requirements set in the Constitutional Law Committee's interpretation practice for withdrawing a licence, as imposing a prohibition is associated with serious, material and recurring infringements and with a

failure to rectify the shortcomings in the activities after receiving a notice and an order to take remedial action issued by the Agency for Rural Affairs. It was considered that a procedure with multiple steps based on a notice and an order to take remedial action give the operator sufficient guarantees of predictability in the authorities' actions. In terms of the operator's legal protection, it is essential that this prohibition should be revoked as soon as the shortcomings in the due diligence system have been rectified in a manner approved by the Agency for Rural Affairs. It is also essential in terms of legal protection that a decision concerning a prohibition can be appealed.

A prohibition referred to in section 9(2) of the bill is also associated with the protection of property in the sense that an operator cannot place on the market timber or timber products in their possession. It was considered that the restrictions placed on the freedom to dispose of property can be deemed relatively moderate compared to the societal interest by which they are justified. In other words, the objective is to ascertain that only legally harvested timber or products derived from such timber are placed on the market. In the context of the prohibition referred to in section 9(2) of the bill, it can also be noted that on the subject of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and the government proposal on adopting certain articles of the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (HE 185/1998 vp), according to the Constitutional Law Committee, the general premise is that the legal order does not protect illegal juridical acts or possession of illegally obtained property (PeVL 47/1998 vp).

The proposed Act on the Placing on the Market of Timber and Timber Products and the proposed act amending Chapter 48a of the Criminal Code do not contain restrictions of fundamental rights that would be problematic from the perspective of the Constitution or other problems associated with constitutional law. It was thus considered that the bills contained in the proposal can be processed in the normal enactment procedure.

On the basis of what has been stated above, the following bills are submitted to the Parliament: