

Draft
19th November 2008

**Terms of reference of the SFC
ad hoc working group on
PUBLIC PROCUREMENT OF WOOD**

Background

During the 106th meeting of the SFC on 1st October 2008, members of the Committee expressed their interest in establishing an ad hoc Standing Forestry Committee (SFC) working group (WG) on public procurement of wood. The possibility to set up working groups is laid down in Article 7 of the rules of procedure of the SFC (AGRI/2001/53015/02 EN).

The exchange of views on the application of the public procurement directives to forest products was placed on the agendas of the SFC meetings held on 30th May and 20th July 2007. In the context of implementation of the EU Forest Action Plan (FAP), two workshops were organised on the subject in 2008. One - on public procurement policies for timber - was organised in Copenhagen by the Danish Ministry of the Environment and Chatham House (Royal Institute of International Affairs) and took place on 7-8th April. Another workshop - on public procurement policy on wood and wood-based products - was organised by the European Commission in Brussels on 13th June.

On 16th July 2008, the Commission adopted the Communication on Public Procurement for a Better Environment (COM(2008) 400). The Communication provides for a process of cooperation with the Member States, aimed at setting common criteria for use in green public procurement for a series of identified priority sectors. Four sectors (construction, paper, furniture and energy) are relevant for wood and wood-based products.

Objectives and scope of work

This WG will contribute to implementation of Key Action 17. Activity 17.2 of the Work programme for implementation of the FAP (2007-2011) calls for an exchange of experience between the Member States, Commission services and stakeholders on developing guidelines for application of the public procurement directives to forest products. According to the work programme, this exchange of views should serve to achieve better compatibility of individual approaches with each other and also in support of the EU FLEGT Action Plan.

The WG will also contribute to the follow-up of the Commission Communication on Public Procurement for a Better Environment (COM(2008) 400), in order to further facilitate the uptake of green public procurement of wood and wood products through the provision of more detailed guidance.

The main objectives of the WG are to continue the cooperation in order to exchange information with and among Member States, identify more detailed guidance on green/sustainable procurement of wood and wood products, and in doing so, to contribute to the work set out in the Communication on Public procurement for a better environment. Specific issues to be addressed include:

- How to address the concept of "legal timber" in Green Public Procurement (GPP)?
- What means of verification of compliance with the "legality" requirements could be feasible for use in tendering procedures?
- Which sustainability criteria can be considered appropriate for use in public tendering procedures?
- What forms of proof of compliance with sustainability criteria could be used?
- What approach could be used to assess "any other equivalent means of proof" of compliance with criteria for legality and sustainability?

The above questions should be addressed within the existing framework of EU public procurement rules. An overall objective of this WG is also to promote the active participation of more EU Member States in the discussion on GPP.

The above list of issues and objectives to be addressed by the WG is not exhaustive. The group itself may propose additional elements of the subject to be considered. It will take into account outcomes of the ad hoc expert meeting of legal and sustainable timber, 26 January 2009¹. The work in the WG will be coordinated with similar developments in other frameworks (e.g. eco-label, bio-energy).

Mode and timing of work

The WG will be composed of experts nominated by the members of the SFC and several Commission representatives from relevant Commission departments. The nominated experts shall coordinate their positions with the respective national representatives in the Public Procurement Consultative Committee (CCMP) and in the expert group on Green public procurement (GPP expert group).

The Advisory Group on Forestry and Cork and the Advisory Committee on Forestry Policy and the Forest-based Industries will be invited by the Commission to nominate experts representing forest-based sector stakeholders, who will also contribute to the work of the WG. The Green 10 (group of major environmental NGOs with representation in Brussels) will also be invited to participate in the WG. The MCPFE Liaison Unit will be invited to nominate a representative to follow the work. The WG may suggest other experts to be heard on specific issues².

The mode and detailed timing of work of the WG will be decided by the group itself during the first meeting. The WG will hold from four to six meetings during a period of 18 months, starting the work in the first half of 2009. DG Internal Market (Unit C.3) from the Commission will be

¹ Preparatory meeting with a limited number of GPP experts who have experience with national or international policies in the field of procurement of sustainable and/or legal timber in order to provide general guidance for the SFC WG.

² Any conflict of interest between their function as experts regarding the subject matter to be discussed in this working group and their other occupations should be avoided.

closely associated with the work of the WG's and shall be the main point of contact for issues relating to the interpretation of EU public procurement legislation. In the process of work, the WG will periodically report to the SFC about the progress, completing the work and presenting a final report to the SFC by the end of 2010.

All experts are expected to contribute actively to the deliberations in the WG as well as by providing the necessary information. Meetings will take place in Brussels and will be chaired by the Commission; English will be used as a working language. To facilitate the work, the WG may appoint *rapporteur(s)*, who will aid the chairman in reporting back to the SFC and preparing the group's final report.

Travel costs will be reimbursed to the participants of the WG meetings according to the same rules and procedure as applied to those attending SFC meetings.

Expected outcome

This WG is intended to develop a better understanding of technical aspects of public procurement schemes for wood and wood-based products in the EU Member States and contribute to the guidance to be given by the Commission on the application of GPP principles to wood and wood-based products.

The outcome of work of this WG will be a report:

- Clarifying the concept of "legal timber" and its relationship with the concept of sustainable forest management in GPP;
- Discussing sustainability criteria which could be further considered sufficiently linked to the subject matter of the contract for being suitable for inclusion in tender documents (to ensure compliance with public procurement legislation as well as principles of GPP);
- Clarifying whether and to what extent certain criteria could be incorporated in tender documents by way of contract performance clauses;
- Suggesting objective means to assess the compliance with legality and sustainability criteria, including how to assess alternative and equivalent means of proof (as compared to e.g. certification or FLEGT licences);
- Aiming to ensure that the mechanisms for verification of compliance comply with conditions regarding their voluntary nature, credibility, transparency, cost efficiency, open access and non-discriminatory character with respect to forest types and owners.

Annex I: Background information.

Background information

Communication on GPP

The Communication on Public procurement for a better environment (COM(2008) 400 of 16 July 2008) provides for a process of cooperation with the Member States aimed at setting common criteria for use in green public procurement for a series of identified priority sectors. 4 sectors (construction, paper, furniture and energy) are relevant for wood and wood-based products. Criteria which are being developed should be compliant with public procurement legislation (Directives 2004/17/EC and 2004/18/EC) and therefore transparent, objective, verifiable and linked to the subject matter of the contract. Where individual materials, such as wood, are addressed within the context of several priority sectors, one coherent set of criteria should be developed. Where different materials can be used to serve the same purpose, criteria setting will take into account the possibility to increase the use of renewable substitutes where appropriate.

The accompanying Staff working document (SEC(2008)2126) provides for specific legal and operational guidance, including a chapter on the procurement of wood and wood products. It discusses frequently used concepts of legality and sustainability and how these concepts may be used in the framework of a green procurement policy. In reference to the Forest Law Enforcement Governance and Trade Action Plan (FLEGT), the document indicates that contracting authorities should require all wood to be legally logged (as a technical specification in supply contracts and a contract performance clause in works contracts) and to promote compliance with sustainability criteria (considered to better assure observance of environmental and social aspects of forest management than the implementation of the legality principle), by way of award criteria. To ensure compliance with public procurement legislation, only these specifications and criteria can be included which are related to the subject matter of the contract.

These recommendations are also included in the examples of green tender specifications for four product groups, including paper, as part of the Staff working document.

Open questions which require further cooperation with and among the Member States

- **What can be understood under "legally" logged wood? Which criteria/conditions are suitable for use in tendering procedures?**

To be in line with public procurement legislation, all conditions for contracting authorities to verify when checking compliance with the legality principle need to be linked to the subject matter; further discussion may be necessary in order to identify those that can be used in tendering procedures.

- **Proof of compliance with legality.**

According to the recommended GPP criteria:

"Certificates of chain of custody for the wood fibres certified as FSC, PEFC or any other equivalent means of proof, will be accepted as proof of compliance. The legal origin of wood can also be demonstrated with a tracing system being in place. These voluntary systems may be third-party certified, often as part of ISO 9000 and/or ISO 14000 or EMAS management system."

If wood stems from a country that has signed a Voluntary Partnership Agreement (VPA) with the EU, the FLEGT licence may serve as proof of legality.

For the non-certified wood fibres bidders shall indicate the types (species), quantities and origins of fibres used in the pulp and paper production, together with a declaration of their legality. As such the fibres shall be able to be traced throughout the whole production chain from the forest to the product.

In specific cases, where the evidence provided is not considered sufficient to prove compliance with the requested technical specifications, contracting authorities may ask suppliers for further clarifications or proof."

There is a need to assess what other means of proof would be considered as acceptable.

– Which sustainability criteria can be considered appropriate for use in tendering procedures?

Commission services propose to cooperate with Member State experts who have gone through the exercise of examining existing sustainability criteria (developed under various international certification schemes) and identifying which ones can be considered sufficiently objective, transparent, verifiable and linked to the subject matter (wood) in order to be considered compliant with public procurement legislation (UK, DK, NL, FR, BE, DE). The purpose of this work is to guide procurers with a series of simple, understandable, ready-to-use criteria. We should aim at not being exhaustive as regards the definition of sustainability criteria, but formulating/selecting the main relevant sustainability criteria for use in Green public procurement.

For the time being, GPP criteria are based on ecolabel criteria which refer to the criteria and indicators endorsed by the Lisbon Ministerial Conference on the Protection of Forests in Europe (2 to 4 June 1998). Outside Europe they shall at least correspond to the UNCED Forest Principles (Rio de Janeiro, June 1992) and, where applicable, to the criteria or guidelines for sustainable forest management as adopted under the respective international and regional initiatives (ITTO, Montreal Process, Tarapoto Process, UNEP/FAO Dry-Zone Africa Initiative). Those criteria relate to environmental aspects (appropriate enhancement of forest resources, maintenance of forest ecosystem health and vitality, biological diversity, production functions, protective functions) as well as to social and economic aspects (maintenance of other socio-economic functions and conditions). Criteria related to social and economic aspects would need to be closely examined for compliance with the EU public procurement rules.

The Commission's proposal for a directive on renewable energy (RES Directive) includes a proposal for a sustainability scheme for (a) biofuels for transport and (b) bioliquids used in other sectors. It further provides that the Commission should, by 2010, report on requirements to extend the sustainability scheme to other types of biomass (including biomass from wood). Coordinated action is necessary.

– Proof of compliance with sustainability criteria.

"Certificates of chain of custody for the wood certified, such as FSC, PEFC, etc., or any other equivalent means of proof, such as a technical dossier of the manufacturer or a test report from a recognised body will also be accepted."

It will be necessary to further refine what can be considered equivalent means of proof.

Example from European Ecolabel criteria

For paper stemming from virgin wood fibres, following core criteria are recommended:

Specifications

1. The virgin wood fibres for pulp production shall come from legal sources.

Verification

Certificates of chain of custody for the wood certified, such as FSC³, PEFC⁴, etc., or any other equivalent means of proof, will be accepted as proof of compliance.

The legal origin of wood can also be demonstrated with a tracing system being in place. These voluntary systems may be 3rd party certified, often as part of ISO 9000 and/or ISO 14000 or EMAS management system.

If wood stems from a country that has signed a Voluntary Partnership Agreement (VPA) with the EU, the FLEGT licence may serve as proof of legality⁵.

For the non-certified wood fibres bidders shall indicate the types (species), quantities and origins of fibres used in the pulp and paper production, together with a declaration of their legality. As such, the fibres shall be able to be traced throughout the whole production chain from the forest to the product.

In specific cases, where the evidence provided is not considered sufficient to prove compliance with the requested technical specifications, contracting authorities may ask suppliers for further clarifications or proof.

2. The paper must be at least Elementary Chlorine Free (ECF).

Verification

A technical dossier of the manufacturer will serve as means of proof.

Award criteria

Additional points will be awarded for:

Sustainable forestry sources: Additional points will be awarded in proportion to the amount of virgin wood fibres for pulp production shall come from forests that are verified as being managed so as to implement the principles and measures aimed at ensuring sustainable forest management, on condition that these criteria characterise and are relevant for the product. In Europe, these principles and measures shall at least correspond to those of the Pan-European

³ FSC (Forest Stewardship Council): <http://www.fsc.org/en/>

⁴ PEFC (Programme for the Endorsement of Forest Certification): <http://www.pefc.org/internet/html>

⁵ <http://ec.europa.eu/environment/forests/flegt.htm>

Operational Level Guidelines for Sustainable Forest Management, as endorsed by the Lisbon Ministerial Conference on the Protection of Forests in Europe (2nd to 4th June 1998). Outside Europe they shall at least correspond to the UNCED Forest Principles (Rio de Janeiro, June 1992) and, where applicable, to the criteria or guidelines for sustainable forest management as adopted under the respective international and regional initiatives (ITTO, Montreal Process, Tarapoto Process, UNEP/FAO Dry-Zone Africa Initiative).

Verification

All products carrying the European Ecolabel will be deemed to comply. Other national type I ecolabels fulfilling the listed criteria can also be accepted. Certificates of chain of custody for the wood fibres certified as FSC, PEFC or any other equivalent means of proof will also be accepted as proof of compliance. Any other appropriate means of proof, such as a technical dossier of the manufacturer or a test report from a recognised body will also be accepted.

