

**PUBLIC CONSULATATION ON  
'ADDITIONAL OPTIONS TO COMBAT ILLEGAL LOGGING'  
ANALYSIS AND REPORT**

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## **SUMMARY**

In December 2006 the European Commission launched a public consultation on 'Additional Options to Combat Illegal Logging'. The consultation was aimed at supporting decision-making on the need for, appropriateness and feasibility of EU policy measures to address the problem of illegal timber and timber products being introduced to the European market. Such policy measures would be additional to the bilateral approach envisaged so far through FLEGT Voluntary Partnership Agreements.

The public consultation was part of an impact assessment process for policy formulation and was conducted as an internet-based questionnaire. Additional options identified so far were submitted to citizens, NGOs, private sector and national authorities from within and outside the EU.

The substantive response (93 contributions) was not large in terms of numbers. In terms of contents and variety of perspectives provided it however met the Commission's expectations. Most responses came from within the EU. Forty respondents were individuals, 31 from the private sector, 19 from NGOs and 3 from national authorities in EU Member States.

The Commission also received 7.161 e-mails through a 'Ban Illegal Timber' campaign launched by Greenpeace.

Most of the respondents felt that the bilateral FLEGT approach was insufficient to address the problem of illegal logging. Many also felt that further private sector voluntary schemes could only play a complimentary role to a robust binding framework. However some respondents felt that combining these approaches could allow targeting of those areas with highest risk of illegal logging.

A significant proportion of the respondents firmly expressed a wish for the EU to put an end to 'business as usual' and in particular address possible loopholes in the system under FLEGT VPAs. In general these responses favoured a legislative approach. Often the positions expressed did not clearly favour a specific option, or supported more than one option.

Many respondents considered an import ban on illegally harvested timber to be the most problematic of the options and were concerned that in designing legally binding measures it would be hard to overcome discriminatory impacts of such a measure.

The option which would require that only legally harvested timber and timber products are placed on the EU market attracted a lot of positive attention. However respondents, whether in favour or not, did not seem to understand fully the distinction between the sub-options included in the broader framework – an option that would 'prohibit the trading and possession of timber and timber products harvested in breach of the laws of the country of origin' or one that would 'require that only legally harvested timber and timber products be placed on the market'. These were generally treated as equivalent in terms of effectiveness and the impact on the forest sector -inside and outside the EU- and on the governance problems.

Many respondents considered that development cooperation and capacity-building are an essential element for halting illegal logging and felt that this had not been adequately addressed in the consultation.

There were widely differing views on the need for, and practicability, of a common definition of legality in the context of the timber trade.

The variety of responses again highlights the fact that as illegal logging has deep-rooted and complex causes, halting illegal logging requires a full understanding of the root causes. To be effective any measures should also contribute to addressing the root causes and not just the symptoms

## 1. **INTRODUCTION**

This report analyses the results of the European Commission's public consultation on 'Additional Options to Combat Illegal Logging'. The public consultation was held in the form of a questionnaire available on the internet for anyone to complete. The questionnaire was published on the internet website 'Your Voice in Europe' and ran for 10 weeks from 22 December 2006 until 22 March 2007. Private sector and NGO networks with a known interest in the topic were alerted to the consultation by email.

Following an introduction to the subject, which summarised the existing legislation at national, community and international level and the underlying issues affecting its effectiveness, the consultation outlined the possible options identified so far to address illegal logging and associated trade. Each option was followed by a number of questions to which respondents were invited to reply. The questions were a mixture of "open" and "closed" questions – the latter being questions for which a choice was made between one of several possible responses. At the end of the questionnaire respondents were given the opportunity to provide additional comments as regards other possible actions, risks and implications that were not taken into consideration in the consultation document. The consultation document was in English only.

The options presented were:

- Expanded coverage of the bilateral approach through FLEGT Voluntary Partnership Agreements (VPAs) between the EU and timber exporting countries
- Private sector measures such as codes of conduct as well as certification schemes with third party monitoring
- An import ban on illegally harvested timber
- Legislation prohibiting the placing on the EU market of illegally harvested timber or products derived from such timber. This included two variants – one making it an offence to trade or possess of timber and timber products harvested in breach of the laws of the country of origin and one that would require that only legally harvested timber and timber products be placed on the market i.e. require proof of legality.

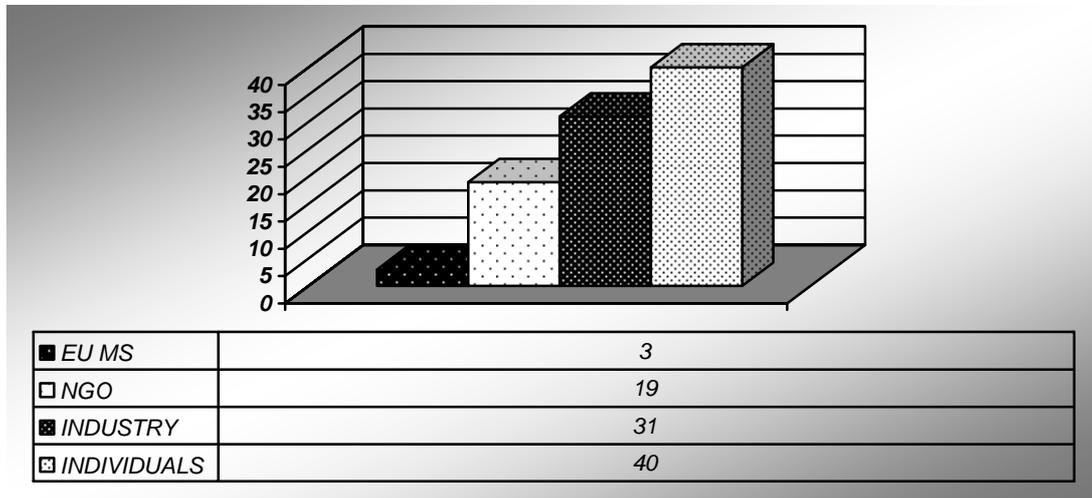
The Commission designed the questionnaire with a view to obtain feedback directly from all interested individuals and groups in order to learn from their experience. The report will feed in the impact assessment.

This report gives a general overview of the views expressed. It is important to recall that the consultation was internet-based, available only in English, and touched upon complex issues of a legal and technical nature and with environmental, economic and social aspects. Not all interested groups might therefore have been able to equally take part or express their views. The report will feed in the impact assessment exercise but it can not serve as a substitute for a comprehensive analysis of the subject, nor can it dictate the content of a future decision.

## 2. REPRESENTATIVENESS

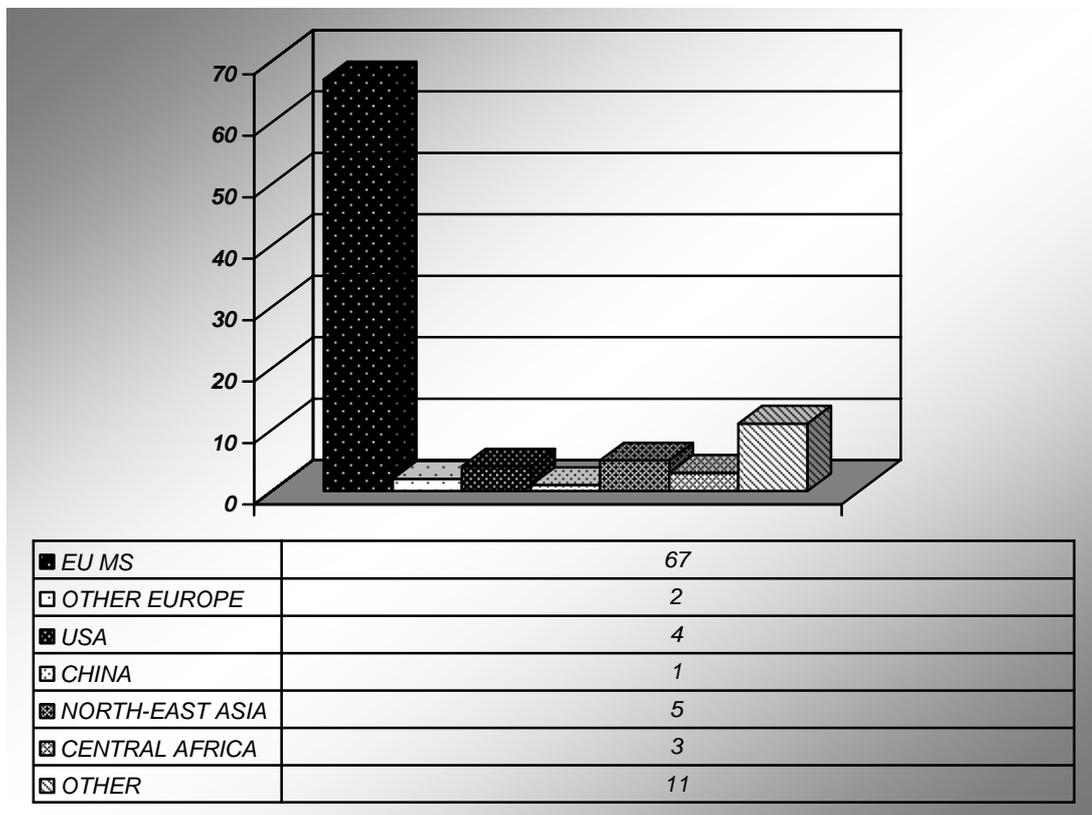
The consultation received 93 contributions which break down into the following groups:

**Figure 1**  
RESPONDENT GROUP PROFILE



Although there were responses from Non-European countries the consultation was largely dominated by responses from within the EU.

**Figure 2**  
RESPONDENT COUNTRY PROFILE

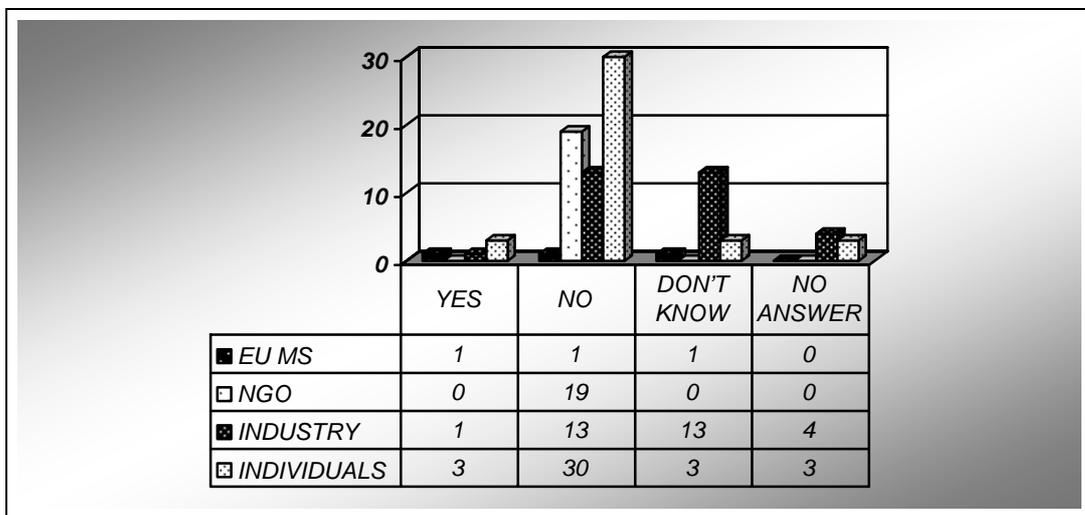


### 3. ANALYSIS OF THE RESULTS

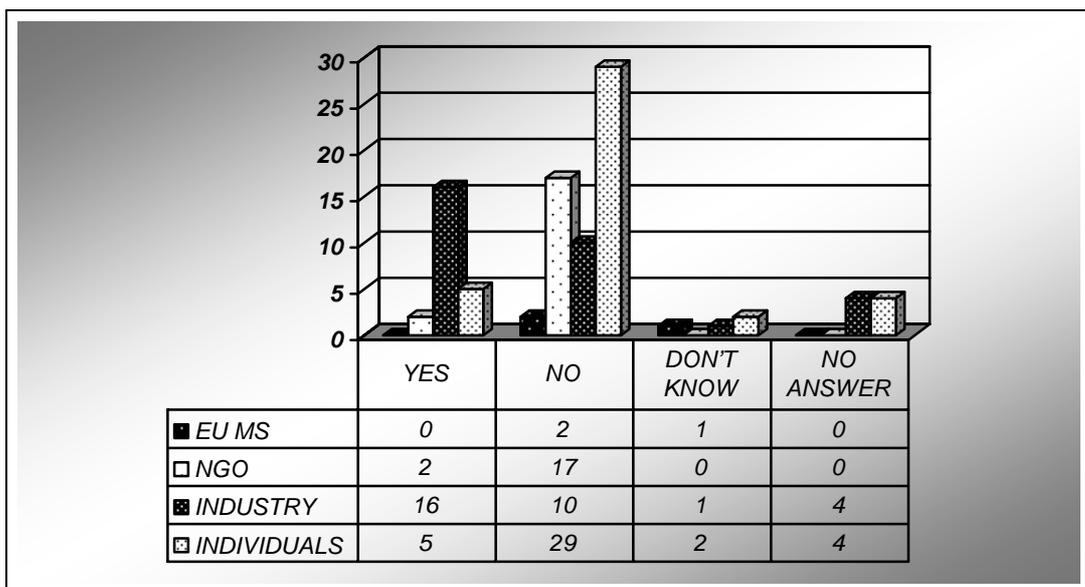
#### 3.1 FLEGT VOLUNTARY PARTNERSHIP AGREEMENTS

Here two fundamental questions were asked on the effectiveness of the bilateral approach pursued through the FLEGT VPAs and on the need to consider further measures in parallel to the negotiation of the FLEGT VPAs. There were differences between the different interest groups, with NGOs and individuals being clearly in favour of further measures, representatives from the private sector tending to feel less convinced and MS national authorities being somewhat divided. Figure 3 and 4 illustrate the main inclinations per respondent profile.

**Figure 3**  
WILL FLEGT VPAs BE SUFFICIENT?



**Figure 4**  
IS IT PREMATURE TO CONSIDER FURTHER MEASURES?



### **3. 1.1 Respondents Arguments Defending Continued Focus on the Bilateral FLEGT Approach**

The principal objections to developing new legislation in parallel with the negotiations for FLEGT VPAs mainly concerned the negative impact additional legislation would have on the negotiations and in general on the motivation to engage in the process. It was suggested that the FLEGT licensing scheme and its implementation through the VPAs should be allowed to prove its effectiveness and efficiency before considering taking further steps. The VPA process would help work out implementation details and identify best practices, which could then be drawn upon in any further legislation. Concerns were expressed that if additional legislation were pursued:

- Complying with such legislation would be perceived as the ultimate need or objective
- It could lead to uncertainty over the value of the FLEGT VPA approach
- It could send mixed signals to countries that are committed to the VPA process.
- It could be a disincentive to enter into FLEGT VPA negotiations if producing countries were offered another option of complying with EU requirements, possibly easier in terms of the scope of legislation to be taken into account as well as the level of verification of legality requested.

It was argued that the FLEGT VPAs could be sufficient if all timber imported into or exported from a FLEGT partner country would undergo a process similar to the FLEGT licensing scheme. This would not, however, extend to non-FLEGT Partner countries exporting directly to the EU.

### **3.1.2 Respondent's Arguments in Support of Further Measures**

A number of respondents had reservations on the effectiveness of the FLEGT licensing scheme and argued that additional legislation would reinforce FLEGT VPAs and private sector initiatives. Among the arguments put forward, the following refer to the loopholes detected already in the current system:

- The bilateral nature of the VPAs.
- The unpredictable time frame as regards implementation
- The restricted range of products covered by the EU's FLEGT Regulation
- The limited geographical scope
- The circumvention risk: timber and timber products from FLEGT Partner countries diverted to non-EU countries, either for immediate consumption or for re-exportation to Europe with a different official origin.
- The laundering risk: illegal timber imported to a FLEGT Partner country legally, processed with legal timber and exported to the EU as FLEGT-licensed timber.
- The risk of future VPAs allowing for low standards, notably if partner countries were to decide to weaken their laws or legalise currently illegal practices.

It was argued that producing countries would therefore not be willing to enter a scheme that could increase costs and bureaucracy but which would not prevent competition from illegal but cheap timber from non-VPA countries – thus affecting the market share of their products. From this perspective it would be an additional incentive if VPAs are presented as a reliable means to meet the requirements of broader EU legislation. Countries would then speed up negotiations in anticipation of a law to benefit from 'first mover' advantage and the technical/financial support provided.

Those arguing that the bilateral FLEGT approach is useful but insufficient note that legality is a pre-requisite for healthy, sustainable and economic development. In their

view fair, practical clearly defined and cost-effective legislation to ensure the legality of timber imported into or traded in the EU would level the playing field for legal producers and traders within and outside the EU. It would restore the image and market share of timber on the market and the normal-price-setting mechanisms.

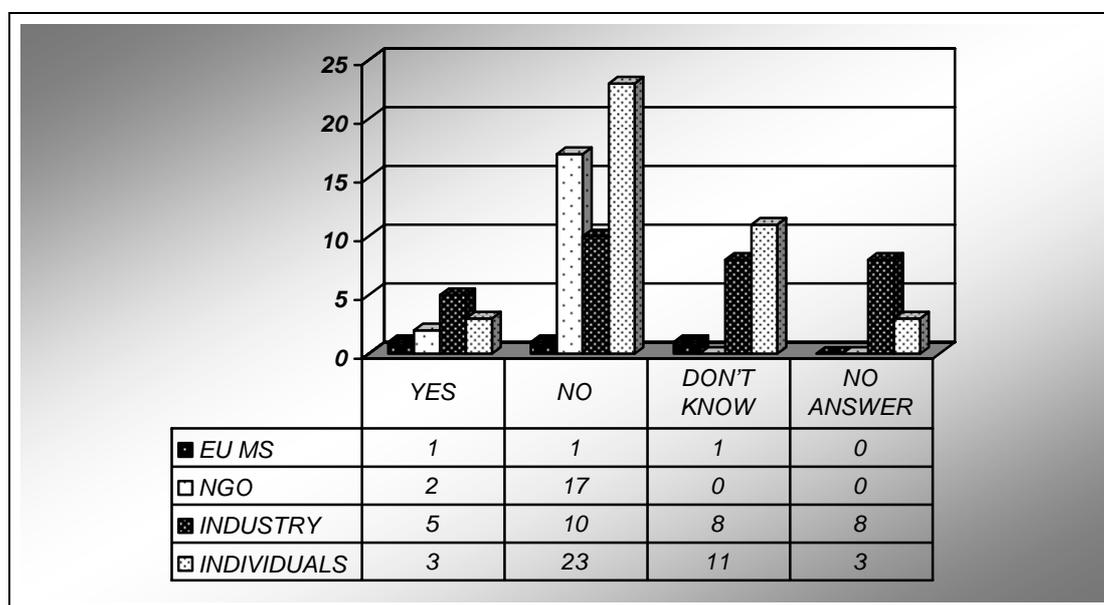
It was pointed out that measures introduced by VPA countries to address circumvention could not provide a 100% guarantee of legality in the supply chain due to the principles of the rules of origin used in international trade. These rules define the country of origin as the place where the product was grown or where it had its last substantial transformation. Thus companies processing timber in third countries do not need to declare geographical origin – or the legality - of the raw materials in the final product. Furthermore, not even the most robust VPA would be able to address timber that is harvested and shipped illegally via a neighbouring non-VPA country, as that would require credible legislation, proper enforcement and reliable tracking systems in the third countries and strong border controls at both ends.

### 3.2 PRIVATE SECTOR VOLUNTARY SCHEMES

Those favouring the development of private sector voluntary schemes argued that over the last ten years they have proven flexible and cost-effective as they allow for engagement with suppliers and encourage progressive improvement rather than simply boycott. On the other hand, a number of respondents felt that self-regulation is not a reliable mechanism due to its voluntary nature, and that it can not uphold the fight against illegal logging and associated trade. Figure 5 illustrates how different groups score the usefulness of such initiatives when compared to a legislative option.

**Figure 5**

WOULD STRENGTHENING THESE MEASURES ACHIEVE MOST OR ALL OF THE RESULTS A LEGISLATIVE PROPOSAL COULD?



Those favouring this approach argue that the main advantage of private sector schemes is their good cost/efficiency balance. They consider that voluntary schemes which are flexible to market changes provide a powerful motivation and ensure a high degree of commitment and compliance. The development and execution of these schemes do not give rise to concerns regarding compatibility with international trade obligations and generally do not entail heavy administrative requirements. They have an impact regardless of the international politics and do not interfere with issues of national sovereignty.

On the other hand, other respondents (including some from within the private sector) felt that the voluntary nature and the lack of sanctions for non-compliance challenge the credibility and sustainability of those initiatives. They point out the incoherence between standards/schemes which, combined with enforcement problems and lack of policing over implementation, weakens the objective to be pursued, while the lack of control over the content of the codes undermines initiatives such as the FLEGT licensing scheme. Certain voluntary private certification schemes have been attacked for containing serious flaws (low environmental standards, fuelling social conflicts and ignoring indigenous people's rights) which led to further confusion over their value. They feel that the EU can not rely on a purely voluntary policy as this could be seen as a signal by consumers that the problem of illegal timber is under control.

Views expressed on these schemes included the following. The European Community should encourage self-regulation by recognising existing traceability and forest certification schemes in the FLEGT VPAs and more generally. In addition, it should support information campaigns and projects that encourage private sector, NGOs and public institutions in producing countries to work together and raise public awareness that could result in a stronger market demand for legal products and thus pressure for companies to change behaviour. Furthermore it should strengthen the initiatives by widening the country and product scope of the FLEGT VPAs, by assuming a reference role concerning the validity of proofs of legality and by supporting additional measures such as consistent public and private timber procurement policies, financial incentives (e.g. tax regime favouring products that have been produced respecting the highest ecological and social standards) or regulatory incentives (e.g. privileged market access for eco-labelled products) and programmes such as the Timber Trade Action Plan and the WWF Global Forest and Trade Network.

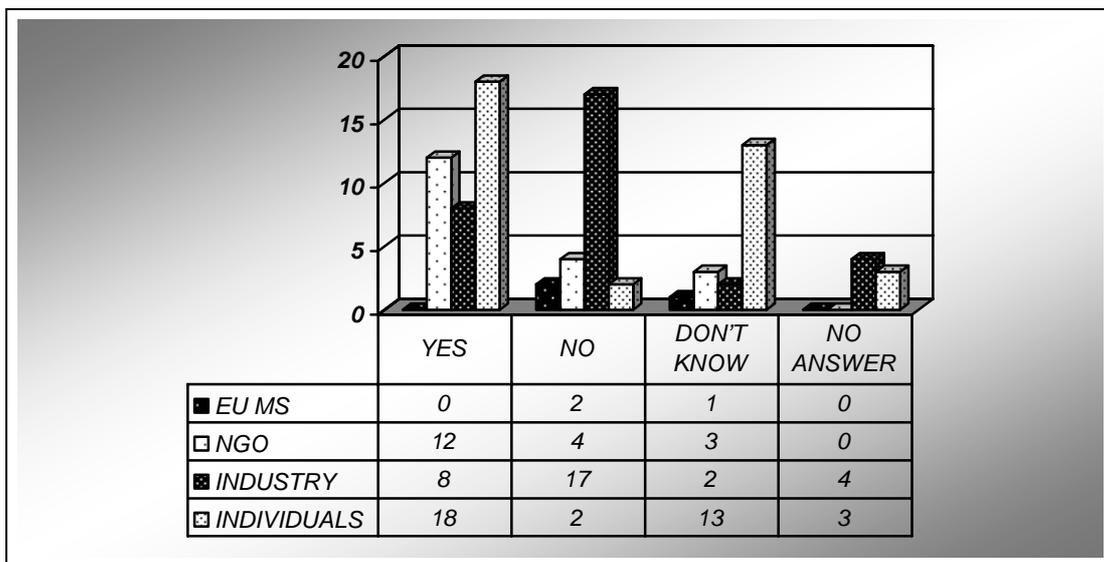
Other suggestions include making membership of a national federation as a pre-condition for the right to trade in timber, increase direct EU funding for forest conservation and ecologically and socially responsible forest use, promote alternatives to industrial logging, introduce building regulations that encourage the use of legal and sustainable timber in buildings, adopt favourable trade terms for countries exporting legal timber to the EU, through the use of the GSP system and tariffs where appropriate.

### 3.3 IMPORT BAN ON ILLEGAL TIMBER

The import ban raises a number of specific issues, in particular its compatibility with international trade obligations, which could not only provoke trade disputes but reciprocal measures by countries importing timber from the EU. Another key issue in this context is whether such measures would go beyond what is necessary to achieve the ultimate objective. The questionnaire included some specific questions on these points. The scores show that many respondents felt that such a measure need not be discriminatory or disproportionate.

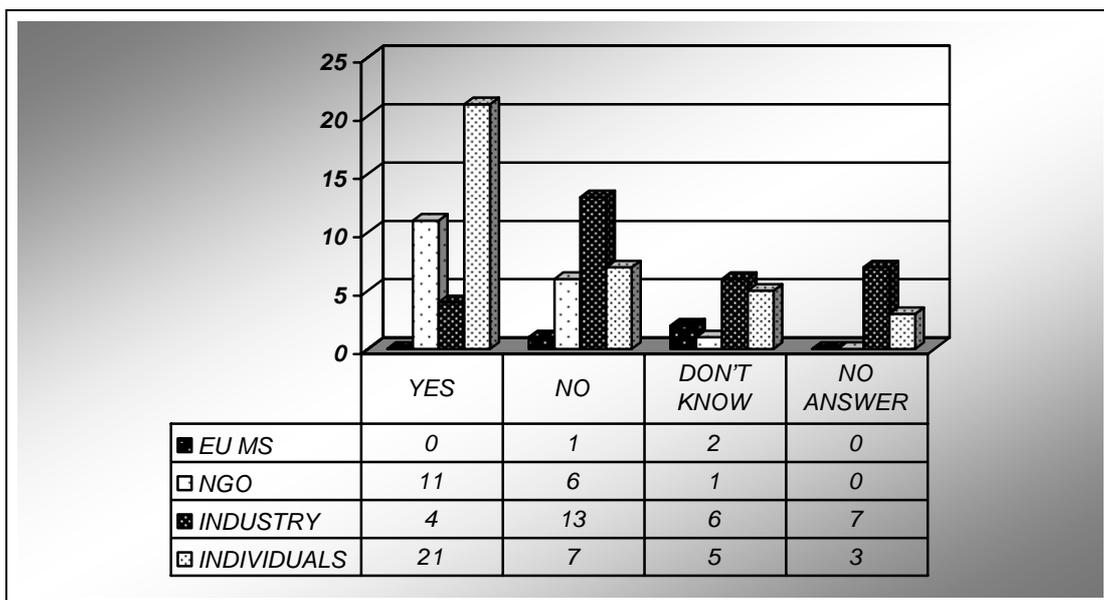
**Figure 6**

COULD SUCH LEGISLATION BE IMPLEMENTED IN A NON-DISCRIMINATORY MANNER?



**Figure 7**

WOULD SUCH LEGISLATION BE PROPORTIONATE TO THE PROBLEM?



### **3.3.1 Evidence of Legality**

In response to a question on how legality would be demonstrated under the import ban option respondents mentioned use of the FLEGT license, use of criteria developed by the UK Central Point of Expertise on Timber (CPET), existing traceability systems and certification schemes –upon approval by the European Commission.

Some respondents indicated that unless an internationally agreed definition of what would constitute illegal logging is established it would be difficult for such legislation to be rigorously implemented as it would have to rely on the laws and regulations of the country of export.

It was argued by some that an interactive, regularly up-dated and monitored database of information provided by the corresponding competent authorities of all exporting countries and communications between enforcement agencies at both ends would strengthen the effective implementation of this option. This resource would provide examples of all documents and other evidence required to demonstrate legality and would be made available to enforcement agencies as well as traders.

It was further noted that the capacity building foreseen in the FLEGT VPAs would facilitate compliance and enforcement of import ban-type legislation.

### **3.3.2 Respondents Arguments Supporting an Import Ban**

Respondents argue that trade measures have a very important role to play in the combat against illegal logging and should be part of any action to promote legality. The requirement should apply to EU exports as well as imports and should apply to all countries, in order to be non-discriminatory and thus comply with international trade obligations. Reliable border controls enforced by competent officials would contribute to a robust checking mechanism in addition to clear, standardized documentation, issued by authorized bodies in the exporting country.

It was suggested that one way to ensure effective enforcement would be for the importing countries' national authorities to issue permits on the basis of evidence provided by the authorities in exporting countries, although that evidence might need to be combined with chain of custody systems and independent verification especially in countries with legal compliance problems.

As regards the impact an import ban would have on the forest sector within the EU, it was argued that it would:

- Establish a level playing field.
- Increase transparency.
- Improve the image of timber as an ecologically and socially responsible material against other competing materials e.g. steel and plastics
- Set up a clear regulatory framework
- Raise consumer confidence
- Increase the economic viability of the forest sector in the medium to the long term
- Enhance the fight against illegal logging in EU countries with serious problems.

It was also argued that the forest sector outside the EU would also be positively affected as such legislation would:

- Establish fair competition for legal traders.
- Improve the image of timber
- Increase market share for legitimate operators
- Increase prices of timber

### **3.3.3 Respondent's Arguments Not In Favour of an Import Ban**

The opposing view considered an import ban as described in the consultation paper as clearly incompatible with international trade obligations as it would only affect imports of timber into the EU and not timber traded within the EU. Arguments put forward were:

Requirements for law enforcement can marginalize communities and small scale producers. Such a measure would only create incentives for increasingly sophisticated illegal practices.

The proof of legality required could not be very stringent as it would be based on documentation issued by the exporting countries themselves. In producer countries with serious problems of forest governance and law enforcement there is a risk that such documentation would not guarantee legality.

If trading partners introduced reciprocal measures the forest sector within the EU - producers and traders - would probably have to face additional implementation costs, reduction of profitability and decrease of interest for investments.

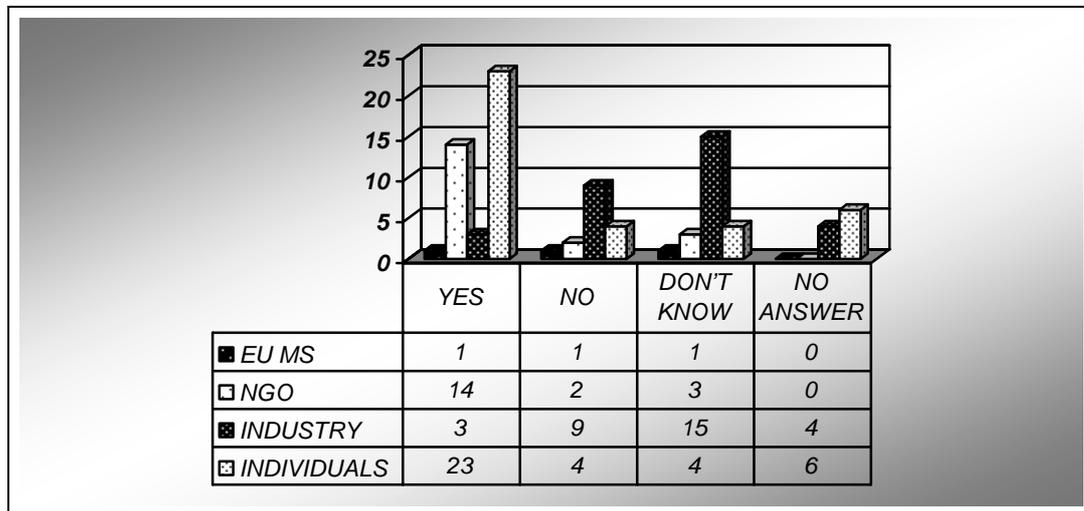
Legislation that would ban illegal timber exports to the EU market would negatively influence the economic viability of the forest sector in wood producing countries. Trade could also switch to less discriminatory markets and therefore the overall objective to reduce illegally harvested and traded timber would not be met.

### 3.4 LEGISLATION REQUIRING THAT ONLY LEGALLY HARVESTED TIMBER AND TIMBER PRODUCTS ARE PLACED ON THE EU MARKET

The responses to the questions for this option showed a high level of misunderstanding of the content and scope of the sub-options. Many respondents seem to attach the same importance to both sub-options and develop the same argumentation without providing any additional comments specific to the particulars of each sub-option. A considerable number of commentators replied to a question by making a cross-reference to their response given to the same, similar or even different question posed under the other sub-option. Also a number of respondents stated that without more details it was difficult to provide firm positions. Most respondents felt that further legislation would be effective, though critical voices prevailed amongst the private sector")

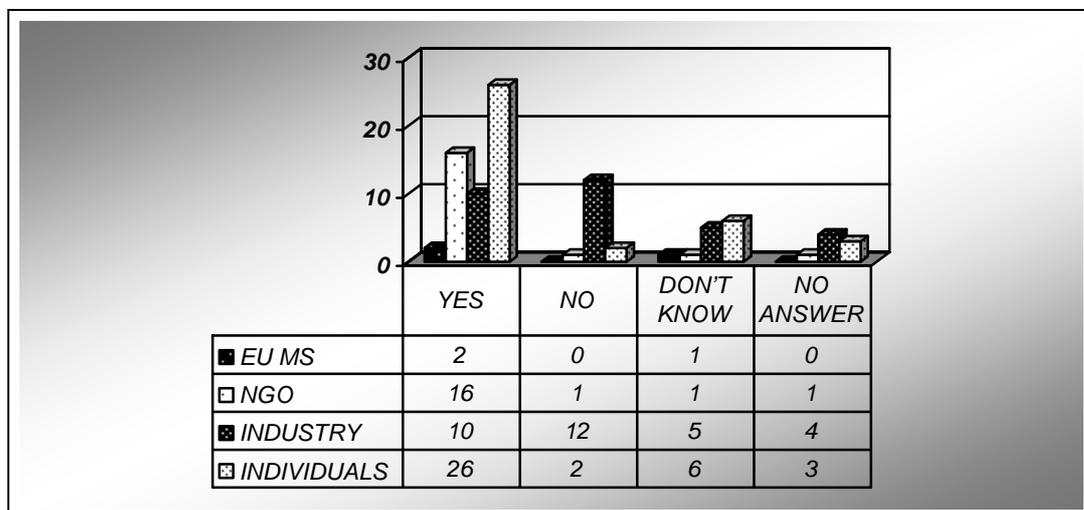
**Figure 8**

4. A - WOULD SUCH LEGISLATION BE EFFECTIVE?



**Figure 9**

4. B - WOULD SUCH LEGISLATION BE EFFECTIVE?



### **3.4. A. SUB-OPTION A - LEGISLATION WHICH PROHIBITS THE TRADING AND POSSESSION OF TIMBER AND TIMBER PRODUCTS HARVESTED IN BREACH OF THE LAWS OF THE COUNTRY OF ORIGIN**

The perception that such legislation would not be a trade measure applicable at the border seems to give confidence to supporters that it would tackle the problem at the appropriate point (when placed on the market) and would be light on 'red tape'. Opponents argue that such legislation would have to rely on a 'one-size fit all definition of legality' – often dependent upon weak, contradictory laws and corrupt enforcement agencies in producing countries.

#### **3.4. A.1. Respondent's Arguments in Favour**

A significant aspect of the responses showed a high awareness of the constraints in implementing such legislation. While supporting the measures, respondents took the view that the success of such measures will not be guaranteed unless actions are taken to underpin such legislation, notably relating to its enforcement and the severity of penalties, the adoption of an internationally agreed legality definition and auditing mechanisms.

Many respondents drew parallels with the US Lacey Act, the coverage of which includes fish and wildlife caught illegally in a third country and imported and brought into the US market. They invoked its success to highlight their confidence that it would be the most appropriate solution.

It was further considered that such legislation would strengthen the FLEGT Licensing Scheme as it would give a clear competitive edge to VPA countries with the appropriate systems in place.

As regards the countries with forest governance problems, such legislation would raise awareness within local companies on verification systems and legal compliance and create incentives for good practices. The market for illegal timber would be reduced. Furthermore it would enhance transparency and reinforce the fight against corruption, tax evasion and money laundering; it would increase tax revenues, decrease poverty, social unrest and susceptibility to criminality. More jobs would be created while the working and living conditions would be improved. Legislation that would criminalise illegal practices would contribute to the protection and sustainable use of natural resources. Support from EU and the international community was necessary for the development and implementation of infrastructure and tracking systems.

The forest sector within the EU would be positively influenced by a clear regulatory framework that rewards good practices and oblige illegal operators to modify their practises. European forest owners are already familiar with instruments for forest management and Chain of Custody certification so existing systems would just have to be adjusted. Importers of legal timber would become more financially viable while importers of illegal timber would become less until they would switch to legal sources. The fight against illegal activities within the EU would be strengthened. The image of wood as an ecologically and socially responsible material against other e.g. steel would be enhanced. The customer's confidence would be raised.

Finally it was argued that the forest sector outside the EU would benefit due to an improved image which would help to improve market shares. The adaptation costs were expected to be small compared to the significant losses caused across many sectors of the forest industry and in particular compared to the benefits to society

overall. Prices would increase to reflect the real value following the improvement of the image of timber. More jobs would be created and working and living conditions would be ameliorated.

### **3.4. A. 2. Respondent's Arguments Not in Favour**

Respondents argued that punishment and penal sanctions is not the solution to the problem, nor would such an action have precedents. They also stressed that it would prove difficult if not impossible to implement in practise as it would depend on a number of unpredictable factors including:

- The willingness and success of prosecution
- The cooperation with the competent authorities of the third country
- The detection of 'crimes'
- The evidence of legality and continuity of proof throughout the supply chain
- Enforcement.

These respondents argue that the true problems relate to forest governance, poverty, corruption, land tenure issues, lack of capacity of state authorities and that such legislation might change the market orientation but would not address these issues. Furthermore it would be constrained by the absence of an internationally agreed definition of "legal timber". They argue that the leverage provided by international trade is in fact rather small as most timber is not traded on the international market and only a small proportion of that timber reaches the EU. While agreeing that a serious response by the EU is necessary as it would serve as a model for other consumer countries they consider that legislation criminalising illegal timber trade and possession wouldn't really address the problem. Communities and small producers and traders would be marginalised as capacity building would not be included in the 'package' and even if it was it would not be provided for all developing countries.

They also pointed out that the forest sector within the EU would have to 'respond' to the new bureaucratic requirements and the cost of doing business would increase. Marginal operations would be pushed to 'red' due to the disproportionate share of compliance costs. They considered that there would be a risk that timber transformation activities would relocate outside the EU, hence increasing unemployment. The increased bureaucracy and costs would lower investment interest and decrease competitiveness, especially if the implementation failed to 'recognise' the proper sources of the problem. They also pointed out that small businesses might take no action, judging that the risk of non-compliance is small or of prosecution rather low and thus the 'cost' of non-compliance lower than the true costs for compliance.

It was argued that the potential impact on the forest sector outside the EU would include an increased financial and administrative burden. The overall effect would depend upon the number of businesses trading with the EU, the pressure put on them by the importers and the costs of compliance. Some felt that this would probably force companies, especially those with fragmented supply chains, to switch to non-discriminatory markets or to shut down.

#### Market share of timber and timber products

There were substantial differences between and within groups with regards to views on the impact such legislation would have on the market share of timber and timber products (question 28). Many respondents did not reply and others appeared to be unclear about the impact on market share and no clear pattern stands out.

### Sanctions

Almost half the respondents felt that sanctions or penalties at Community level are necessary to ensure the efficiency of Community legislation on illegal logging (question 29). Private sector representatives tended to be more divided on this issue. EU Member States national authorities felt that this could be dealt with at national level.

### **3.4. B. SUB-OPTION B: LEGISLATION WHICH REQUIRES THAT ONLY LEGALLY HARVESTED TIMBER AND TIMBER PRODUCTS ARE PLACED ON THE EU MARKET**

Most of the respondents to the questionnaire indicated a preference for this option as it seems to accommodate clearer administrative procedures by requiring proof of legality. Supporters consider that demonstrating the origin and the legal harvesting for timber and timber products placed on the EU market would be an advantage on the EU market and that this option is the closest to a multilateral system. Nevertheless, opponents stress that demand for illegal timber from emerging importing countries would remain or even increase the deterrent global impact of such legislation will be very limited. They also express doubts about how stringent the proof of legality could be compared to a certificate of origin.

Concerning the potential scope of products that could be covered by such legislation there is a clear division of views, with half the respondents advocating coverage of all timber and timber products, while the rest disagree for a number of reasons including technical difficulties in tracing timber in a globalised forest sector.

#### **3.4. B. 1 Respondent's Arguments in Favour**

Respondents feel that it would underpin both the FLEGT VPAs and the voluntary private schemes. For countries outside the VPAs it would set a minimum standard for compliance for the EU market. Adoption of such legislation would consolidate and support existing best practises against illegal logging and the associated trade. Its effectiveness would largely depend on the enforcement and the severity of penalties at the EU side and on the auditing systems at the exporting country's end, the evidence of legality and the corresponding documentation, the perceptions of risks in trading illegal timber and the efficiency of prosecution. Further arguments are:

The requirement for 'legality' does not violate World Trade Organisation's (WTO) rules, as sustainable development is among the primary goals of WTO. Respondents suggest that the same requirement is imposed on both domestic and imported products. Some respondents argued that such legislation should be applied in a horizontal/ cross-sectoral manner rather than just for forest products.

Such legislation would strengthen the ability of developing countries with forest governance problems to deal with illegal logging. It would provide an incentive for the development of equitable legislation, raise awareness within local companies on verification systems and legal compliance and would provide an incentive to gain control over the supply chain, to improve Chain of Custody documentation and ultimately management and control in the forest.

While recognising that small businesses within the EU might be affected more than larger ones for manufacturers the pain won't be enormous as the price of timber is often a small proportion of the price of the finished product. Furthermore European forest owners are already familiar with instruments for forest management and chain of custody certification so for the EU producers systems would just have to be adjusted. Importers of legal timber would become more financially viable while importers of illegal timber would become less so until they would switch to legal sources. Such legislation would enhance fair competition, healthy economic development and thus increase the economic viability of the forest sector in the long-term as it would stop undercutting of prices and preserve employment.

The forest sector outside the EU would benefit from the increased prices and better market share as a result of the improved image of the sector. Initially production capacity would have to decrease in line with reduced flows of illegal timber in some countries and thus would need to accommodate changes and meet with the new conditions, but these adjustments would be offset by better prices and an improved image of the forest sector. Additional costs, at least of short-term transition, should be covered by the market. The likely costs would be relatively small compared to the losses caused by illegal logging across many sectors of the forest industry.

#### **3.4. B. 2 Respondent's Arguments Not in Favour**

Respondents did not share a single perspective but expressed a variety of views. Many see this as an abusive EU interference in the national affairs of the exporting country while doubting whether it would be effective without a series of conditions such as (a) obliging countries to comply with their international commitments and international law (b) requiring robust traceability systems throughout the supply chain (c) foreseeing enforcement and monitoring mechanisms (d) engagement of civil society and local communities and (e) provision for capacity building. They consider it unlikely that such conditions can be imposed or met. Additional doubts relate to the proportionality of the measure and its cost-effectiveness, as they view it as a strict, burdensome and complex system of legislation. Other arguments put forward were:

A requirement for documentary proof of origin and legality of harvesting may be incompatible with the EU's international trade obligations as set out in the World Trade Organisation's rules – mainly on the grounds of it being a disproportionate measure.

As the EU imports only 1% of all tropical timber introducing legislation at the EU level won't have a significant effect on overall trade or domestic consumption and would result in an expansion of trade with less discriminatory markets. It would not address the need for broader governance reform with the aim of tackling the core problems which undermine sustainable forest management and eliminate the incentives for illegal practices.

The impact on the forest sector would be significant due to the major increase in costs and in administrative burdens and that this would disadvantage on the one hand legitimate business within and outside the EU and would switch trade to less discriminatory markets or to domestic markets as it would be unlikely that all countries would invest in the necessary tracking systems. A lack of capacity would mean that developing countries exporting tropical timber would lose market share and this would be substituted by temperate timber.

#### **3.4. B. 3 Implementation Costs**

When asked who should pay to implement the necessary tracing and documentation systems which would be required under such legislation many respondents think that they should be born by either the exporting country or the exporting company or be shared between them. Others feel the financial burden should be spread over the supply chain and a few believe the consumer should have a share as well. The role of the EU was also highlighted in ensuring that clear standards for business are set, legislation is implemented in a cost effective, clear and non-discriminatory manner and reliable control mechanisms are provided for implementation.

### **3.4. B. 4 Information Technology**

In response to questions on the potential use of information technology most of the respondents do not doubt the advantages of such technology. However some consider it too costly and therefore unlikely to be adopted by developing countries which don't enter FLEGT VPAs, while others underline the difficulties to track natural resources as figures can be manipulated. Conventional paper-based systems have already proven they are commercially viable albeit not fraud-resistant. While considering that technology has a role to play it was also suggested that business to business discussions and contractual agreements will probably be more effective.

An important point noted was that the information technology is only one element of the traceability mechanism; the physical examination of paper-based documentation still forms a considerable part of the overall controls. However, information technology in particular barcode technology, GIS technology, satellite surveillance and remote sensing seem to have the potential to monitor the passage of products through the supply chain as well as to monitor forests.

It was pointed out that a number of certification systems already have the means of tracing certified products through the supply and processing chains and those that have been clearly defined and entail robust implementation have proven successful. Most do not depend on tracking individual pieces of wood from the forest to the end-product, but rely more on a system of control points at which specific volumes are vouched for as being from certified sources.

The set-up of an internationally accessible database was also suggested. This would provide information on national laws regarding timber production, on permits issued for timber species, volumes, date of export and destination. Imports into the EU could be matched with this database and discrepancies investigated. It was suggested that data would be contributed by the exporting countries but the oversight of the database would lie with the EU.

## **4. FINAL CONSIDERATIONS**

### **4.1 Critical Factors That May Have Been Omitted from the Questionnaire**

Comments on the above question were rather varied. The main comments are listed below:

More detail on the options would have allowed better responses.

Certain questions were unclear or not neutral, or were too technical.

Finance for capacity building for better forest governance had not been sufficiently addressed.

On private sector schemes there should have been a distinction between those that are verified by third parties and those that are not.

More questions should have been asked about the potential impact of the options on global forest trade patterns and on the potential substitution of wood products by other materials.

### **4.2 Common Definition of Legality**

Responses on the need for a common definition of legality also varied widely. There was general agreement that such a definition would need to be based on national laws in the country where the trees were grown, while some also referred to relevant international conventions to which the countries concerned are parties.

Other comments were:

Common principles or a defined scope of legality should be agreed (this was emphasised in particular by the private sector)

A common definition would be very difficult to achieve, given the differences between legislation between countries and even within countries with decentralised forest management administrations. Instead emphasis should be placed on the need for broad agreement within the country concerned on the scope of legislation to be considered for timber to be considered as legal.

A common definition of legality risked legitimising "bad" laws in certain countries, which could go against EU human rights principles e.g. if minority rights are affected.

### **4.3 Special Considerations for Developing Countries**

Concerning special considerations for developing countries the overwhelming message was the need for development cooperation for capacity building in such countries. Some mentioned the need to consider more carefully potential impacts on trade flows between developing countries, including China. Noting that domestic markets for timber products account for most of the consumption of wood products in developing countries, the willingness to pay higher prices for verified legal products on such markets was questioned. The problem of corruption in countries where salaries are low relative to the value of the goods being traded was also mentioned.

It was argued that additional legislation as described in the public consultation would impose a burden on developing producer countries without providing them with the resources or capacity they need to meet the new requirements. It would level the playing field for larger legitimate businesses that are able to meet new administrative requirements and businesses based in VPA countries while on the other hand small scale operators even the legal ones, would be placed in a disadvantaged position.

#### 4.4 Declaration of Origin

Two linked questions asked whether a declaration of origin for timber products would strengthen the measures outlined in the consultation. There were quite varying responses on this point. Many respondents, particularly NGOs, said that the country in which the timber was grown and the species (scientific name) of all forest products should be identified through such a declaration. Others felt that it would be technically difficult to trace timber given global trade patterns, and that corruption or red tape could also make it rather ineffective. However it was suggested that a global database could help overcome some of the difficulties.

One respondent suggested that current Rules of Origin should be modified for timber products so that the country where the trees were grown would always be stated, even if the timber underwent substantial transformation in another country. On the other hand it was also argued that changes of this nature could only be achieved on a bilateral basis such as through FLEGT VPAs.

Finally it was pointed out that such a Declaration might not be necessary if the traceability systems associated with verifying legality provided the same information.

#### 4.5 Additional Comments

Many respondents responded to the question asking for **additional comments** by providing general comments rather than alternative suggestions.

The main comments were:

The need to maintain the presumption of innocence and target the illegal operators rather than place a burden on the whole forest sector – emphasised in particular by the private sector. By making legal operations more onerous the economic attractiveness of illegal operations would be increased.

Only a global solution could have an impact, otherwise trade would simply be diverted from Europe to less discriminating markets.

A comprehensive approach should also include other measures such as a moratorium on commercial logging and long term financing mechanisms for forest conservation.

Forest governance must involve all of society and meaningful improvements can only be obtained through bottom-up processes in the countries concerned.

The emphasis on trade risked taking insufficient account of countries with low international trade in forest products but where the needs to reform forest governance were still important.

The role of independent verification of legality and sustainability. This had not been fully recognised in the questionnaire, - many people only associate legality with the police and judicial system.

More commercial timber species should be listed in Appendix II of CITES (Convention on International Trade in Endangered Species).

Bearing in mind the difficulties in linking an illegal action in a forest to a particular timber shipment, one respondent considered that lessons could be drawn from Directive 2000/43/EC on Racial Discrimination. Recognising that evidence of racial discrimination can be hard to obtain, Article 8.1 states that if a prima facie case is established it will be for the respondent to prove that there has been no breach of the principle of equal treatment. In other words there is some flexibility in the weight of evidence required to determine whether an (illegal) act of discrimination took place. However it should be noted that Article 8.1 does not apply to criminal proceedings, which require a higher level of proof.

## 5. CONCLUSIONS

A major feature of the public consultation was the recognition of the complexity of illegal logging and associated trade and widespread support for more action. With regard to the latter the majority of the respondents feel that additional legislation is required.

Regardless of which option was favoured, attention was drawn to the need for capacity building through the provision of assistance to improve forest governance, and to support small and community-based forest businesses so that they are able to meet any new demands made on them, in particular in developing countries.

The FLEGT licensing scheme and its implementation through the Voluntary Partnership Agreements was generally supported as it helps tackle the root causes and address the consequences of illegal logging. However many felt that the bilateral and voluntary nature of this approach means that high-risk countries can remain outside the system. This, together with the limited product scope envisaged so far, leads many respondents to conclude that the bilateral approach can not resolve the problem in its entirety. The risks of circumvention and laundering undermining the credibility of the VPAs were also highlighted, especially where such circumvention is through countries or operators that ask few questions about the source of the timber.

Similarly, while private sector schemes were considered to have certain advantages of efficiency and effectiveness there were also concerns that their voluntary nature means that they can only be partially effective.

The above led to a widespread – though not universal - view that further legislation should be introduced which would close the "gaps". The results of the consultation did not identify clearly what form such legislation should take, though option 4B – legislation requiring only legally harvested timber or derived products to be placed on the EU market – seemed to have the most support.

Proponents of a legislative approach link its success and effectiveness to the adoption of a legality definition that would include national and international laws in terms of the protection of biodiversity, the conservation of forest and natural resources associated with forests, indigenous peoples rights, climate change and sustainable forest management. They maintain that credible and verifiable evidence of legality through the entire chain of custody, independent monitoring, enforcement mechanisms and sanctions should be foreseen as part of the 'package'.

Respondents who are not convinced of the necessity of additional measures, notably legislation, either feel that it is too early and too risky for the FLEGT VPAs or believe that illegal logging can only be addressed adequately in a multilateral context. They argue that the targeted approach of the FLEGT VPAs and private sector measures are the best means in the short term to ensure equitable and effective solutions. Private sector representatives in particular fear that additional actions would result in trade-restrictive policies that would affect legal and legitimate operators especially since there is little factual and credible information on the extent to which the illegal timber products are entering the EU marketplace. It was also argued that it will be very difficult to obtain an internationally agreed definition of illegal logging and that this would be a major constraint to taking further measures. Furthermore as Europe imports less than 1% of all tropical timber consumed (i.e. domestic consumption as well as exports) further EU legislation would have only a limited impact on tropical countries.

However many also feel that the EU, as a strong player in the international arena and a pioneer of social and environmental issues, has a responsibility to act in order to help achieve the environmental and poverty reduction goals it has signed up to. The impact of additional measures could go beyond that of trade with the EU by giving greater visibility to the issue and stimulating further work.

The consultation has achieved the objective of gathering a wide range of views on the options presented. These will be taken into account during the impact assessment exercise as well as in further deliberations within the Commission. A decision on what further measures to take, if any, will need to carefully consider the objectives of possible measures and in this context whether they are appropriate or proportionate to the problem being addressed – the problem being one which is clearly of major concern to the European public.