

MCPFE Working Group on exploring the potential added value of and possible options for a legally binding agreement on forests in the pan-European region



MAIN FINDINGS AND RECOMMENDATIONS

OF THE MCPFE WORKING GROUP ON EXPLORING THE POTENTIAL ADDED VALUE OF AND POSSIBLE OPTIONS FOR A LEGALLY BINDING AGREEMENT ON FORESTS IN THE PAN-EUROPEAN REGION

28 October, 2009

Explanatory note:

The following report presents the results and main findings of the work conducted by the open-ended MCPFE Working Group in the period from November 2008 till October 2009. The report reflects views of the MCPFE Working Group members and outlines a set of Working Group recommendations. This technical report is prepared for discussion at the MCPFE Expert Level Meeting and does not reflect any specific political positions with regard to the issue of a legally binding agreement on forests in Europe.

1. Introduction

Forests and their sustainable management play an active role in the sustainable development and well being of European society, for both rural and urban areas. Sustainable management of forests that maintains their biodiversity, productivity, regeneration capacity and vitality, ensures to continue their potential to fulfill, now and in the future, indispensable ecological, economic and social forests functions. Forests serve as a source of direct and indirect employment and provide potentials to generate new job and income opportunities. The social-cultural and economic functions of forests are essential element for sustainable forest management. Significant opportunities are vested in green economy to decrease greenhouse gas emissions. The contribution of wood-based products to green construction and other wood products with wood as a renewable can be significant.

Over the last 19 years the MCPFE has developed a common understanding of and a conceptual framework for sustainable forest management for the pan-European region and its political commitments had a positive influence on policy development and implementation.

However, European forests face new challenges posed by changing circumstances and severe impacts, in particular caused by climate change, land use changes, urbanisation, demographic changes. Forests and forestry offers a basis and an opportunity for a new green economy, development and prosperity throughout Europe. These call for robust political solutions, effective means and a strengthened policy framework on forests in the pan-European region.

While recent statistics show that in Europe both forest area and the volume of growing timber is still increasing, expert reports warn that the severe consequences of climate change put the mere existence and the vital functions of some of Europe's forests under threat. The rate and frequency of droughts, wild fires, storms, pests and deceases affecting forests has increased alarmingly within the last years.

These rapid impacts together with gradual ecosystem changes require measures for forests adaptation. Securing the provision of forest services, such as water security and supply, soil protection, recreation, conservation of biodiversity and supply of renewable materials and energy will depend on successful adaptation strategies for forests to climate change.

Forest management practices need a new and broadened scope in order to be able to handle and respond to these new challenges and to control risks related to avalanches, land slides, erosion and other natural hazards.

All states share the responsibility to mitigate green house gas emissions and to optimise carbon cycles. Forests and their management are considered vital factors in this equation and the expectations, what forests should and could do are high. Increased demands for carbon neutral commodities and renewable energy at the same time offer an opportunity for new economic activities.

The global economic turmoil has resulted in reduced demand for wood, shrinking investments in forest industries and forest management. Wood revenues are also declining due to falling prices. These are global problems, but they need to be addressed at all levels.

Changes in land use and their impact on forests and sustainable forest management due to e.g. demands for alternative energy in many cases pose challenges for forest governance The 2010 Biodiversity Target to halt the loss of biodiversity still remains a challenge. Sustainable production and consumption challenges suggest improved trade measures for sustainably produced wood products.

There is a need for comprehensive and improved forest monitoring in order to provide better information on forest status and trends. Possible climate change impacts call for better and more précised information on carbon data and other aspects of forest health and vitality, economic demands call for better information on the development of natural resources.

Although some of the issues highlighted above were addressed by the MCPFE in the past, the challenges still remain, and with new dimensions. This applies in particular to the effects and possible

consequences of climate change, increased demand for renewable energy and commodities, financial crisis, global competition and other pressures on forests caused by economic factors.

At the fifth Ministerial Conference on the Protection of Forests in Europe in November 2007 in Warsaw, it was proposed to examine the potential of a legally binding agreement on forests in the pan-European region. The MCPFE Expert Level Meeting, comprising 46 European states and the European Community, set out the Terms of Reference (ToR)¹ for a respective Working Group (WG) in order to prepare technical background for future considerations and decisions on this issue at political level.

2. The scope of the analysis

The open-ended MCPFE Working Group, consisting of MCPFE signatories and observer organisations, in the period from November 2008 till October 2009² carried out the following tasks:

- Identified main challenges and emerging issues at national, regional and global level, relevant to any type of forest arrangement for the pan-European region;
- Compiled and analysed information on relevant existing global and regional legal agreements with special focus on content, structures, financial aspects and implementation experiences³;
- Identified and analysed possible legally binding agreement options, including objectives and core elements as well as dynamic components such as update mechanisms and follow-up⁴;
- Analysed the potential added value and pros and cons of a legally binding agreement on forests in the pan-European region, also building on the work of the MCPFE External Review⁵;
- Assessed costs of different legally binding agreement options⁶;
- Assessed possible relations or implications of legally binding agreement options for the MCPFE process, other European agreements, bodies and processes, the EU forest related activities, as well as international forest related agreements, bodies and processes⁷;

¹Terms of Reference for an MCPFE Working Group on exploring the potential added value of and possible options for a legally binding agreement (LBA) on forests in the pan-European region, as adopted by the MCPFE Expert Level Meeting, 7- 8 May 2008, Oslo, Norway

² There were four meetings of the WG, in Athens, November 2008, Oslo, May 2009, Rome, September 2009 and Brussels, October 2009 documented with the minutes of the meetings in the Annex to this report. List of the WG participants is also attached.

³ Overview on existing international and multilateral agreements relevant to the tasks of the Working Group, Background Document 1: First meeting of the MCPFE Working Group, 27 -28 November, 2008, Athens, Greece. Paper developed by Helga Pülzl, Doris Wydra, University of Salzburg, Austria, and Christoph Wildburger.

⁴ Developing Options for a legally Binding Agreement on forests in Europe. Draft of the Facilitators and the Friends of Facilitators. Background Paper 1, 2nd meeting of the MCPFE WG, 19-20 May, 2009 Oslo, Norway

⁵ Compilation on added value of and concerns for an Legally Binding Agreement as well as on pros and cons of Legally Binding Agreement Content Options, Based on the reports from the break out groups from the 2nd meeting of the MCPFE WG, Background Paper 6, 3rd meeting of the MCPFE WG, 1-2 September, 2009 Rome, Italy

⁶ General costs assessment of a potential Legally Binding Agreement on forests in Europe, Background Paper nr 4, 3rd meeting of the MCPFE WG 1-2 September, 2009 Rome, Italy. Paper developed by the Liaison Unit Oslo and Dr. Helga Pülzl and Dr. Doris Wydra, University of Salzburg, Austria

⁷ Assessment of possible relations or implications of LBA Content Options 2 and 3 on selected international forest related agreements and on the EU (EC) competence. Background Paper 5. 3rd meeting of the MCPFE WG 1-2 September, 2009 Rome, Italy. Faculty of Law with Northern Institute for Environmental and Minority Law, Sébastien Duyck, Timo Koivurova and Kai Kokko, 2009

- Analysed a possible negotiation process⁸;

On the basis of several analytical papers prepared by experts, facilitators, the Friends of the Facilitators (FoF's) and the Liaison Unit and based on the WG discussions and analysis conducted by the WG.

The main findings and conclusions are summarised in the next chapters.

3. Main findings

3.1. Possible elements of a legally binding agreement on forests in Europe

The process of elaborating options for a legally binding agreement (LBA) on forests in Europe is complex and needed appropriate conditions for transparent and solid technical consideration. The overall logical framework for developing options for an LBA on forests in Europe was based on content and examples of the level of commitments and possible institutional arrangements, including bodies and procedures. On that basis the WG analysed several possible options with regard to content and possible institutional arrangements (see Annexes to this report). As regards the content of a possible LBA on forests in Europe two main options were regarded as relevant for analysis and further consideration.

The main objective for both options is: *to support and enhance sustainable forest management and the multifunctional role of forests and to enhance cooperation at European level to this end*. Both options aim for better protection of European forests and for optimising the provision of their services and goods. Both options also aim towards strategies for adaptation of forests to face new challenges posed by changing circumstances.

Under this overall objective several thematic issues could be addressed. A possible legally binding agreement could also provide a framework that could be useful when developing means for verification of sustainable forest management in the region.

Option 1

This option is based on selected and updated MCPFE content developed over the past 20 years and transmitted into a legally binding status.⁹ The basis would be formed by the agreed definition of sustainable forest management and general guidelines on how to achieve it. Objectives related to the main pillars of sustainable forest management (SFM) would be aimed for in this option: maintaining and enhancing environmental functions, including forest biodiversity, water, soil, forest health and provision of other goods and services; contributing to the quality of life by addressing social and cultural dimensions in SFM; strengthening economic viability of SFM.

Option 2

This option builds on Option 1, but broadens the scope and the goals for the possible legal framework. It would add new elements to be addressed in the Pan-European cooperation on forests, e.g.

⁸ Institutional aspects of possible scenarios of a process for establishing a potential LBA on forests in Europe and a description of possible negotiation process Background Paper 3, 3rd meeting of the MCPFE WG, 1-2 September, 2009 Rome, Italy. Paper developed by the Liaison Unit Oslo and Dr. Helga Pülzl and Dr. Doris Wydra, University of Salzburg, Austria

⁹ This alternative is referred as „Content Option 2” in the background documents for the WG, 2nd meeting, 19-20 May, 2009, Oslo, Norway. See full text of this alternative in the Annex.

supporting a comprehensive monitoring system across Europe on environmental, economic, social and cultural functions of forests; forest adaptation to climate change; pest and disease control and payments for forest ecosystem services or similar measures. Option 2 would also address law enforcement on production and trade of forest products and other trade measures¹⁰.

General remarks

Both option 1 and option 2 provide for flexibility in determining the level of commitments (loose versus strict commitments) and for their implementation in a dynamic manner by the countries.

Policy instruments (e.g. NFPs framework, C&I, PEOLG and others) could constitute dynamic components, which could be complemented and updated without changing the core legal text (these components could be legally binding or in the form of non-binding decisions), see annex to chapter 3.1.

Dynamic components could have more technical character and could contain tools, instruments or other technical documentation that could support the implementation of a legally binding agreement in a flexible way. Dynamic components could be constantly improved and updated on the basis of technical work. They could be in form of decisions that could be endorsed with a broad scope and high degree of flexibility for choosing the most suitable tools for the national requirements (e.g. protocols, work programmes of other conventions, such as CBD).

Other relevant MCPFE commitments could be referred to in the preamble part of an agreement.

On the basis of discussion and analysis WG members expressed the views that a combination of option 1 and option 2 could be a good basis for developing further content elements of a possible legally binding agreement for further considerations. Indicative elements for a potential legally binding agreement, proposed by WG members for further consideration, are listed in the box in the annex.

3.2 Pros and Cons and potential Added Value of a legally binding agreement on forests in Europe

The potential added value, as well as pros and cons could only be assessed on the basis of rough assumptions on how an LBA would look like and what it would contain (objective, content and level of commitment). The status quo of the MCPFE process was used as reference point for the analysis of the added value, pros and cons and other assessments, according to the ToR of the WG. The WG did not consider or analyse other options for restructuring the MCPFE process as this was beyond the WG mandate.

Depending on objectives, content and level of commitment, both options used for analyses could generate additional value. One of the main arguments put forward in support of a legal instrument on forests is the need for a comprehensive and more effective way to address cross border forest related problems across the pan-European region. In addition, the following views have been expressed in support of a legally binding agreement:

- A number of issues call for harmonised approaches, increased cooperation and strengthened institutional capacities; e. g. forest threats and negative impacts on forests, in particular climate change and its severe consequences in terms of storms, pests, droughts and forest fires, as well as the role of forests as carbon sinks combined with the rising demand for renewable commodities and forest biodiversity preservation. Also related monitoring and research call for harmonised approaches;

¹⁰ This alternative is referred as „Content Option 3” in the background documents for the WG, 2nd meeting, 19-20 May, 2009, Oslo, Norway. See full text of this alternative in the Annex.

- Option 2 could add further value through addressing challenges that were not dealt with yet at trans-boundary level in the pan-European region;
- A legal agreement could also provide a framework that could be useful when developing means for verification of sustainable forest management in the region in response to the call for strengthening forest law enforcement and governance;
- A legal agreement would establish a compliance system which could encourage implementation of sustainable forest management, which is a key to securing multiple forest goods and services;
- Strict commitments in combination with active and broad participation by the private sector and other stakeholders would improve the effectiveness of an LBA;
- An LBA could help to generate more systematic approaches in mobilising resources for SFM at different levels and to increase the economic value of forestry;
- A legally binding agreement could play a role in bridging the gap between possible contradicting interests related to forests, including potential conflicts between forest biodiversity conservation and climate change mitigation;
- A legally binding agreement could provide a framework for more effective policy making at national and European level by offering means to develop common minimum standards for SFM and hence facilitating a more coherent treatment of forest issues, give guidance to other forest-related policies and advance cooperation with stakeholders;
- An LBA would also provide a central focal point for information on forests and consequently improve and help streamlining information, create a better framework for communication with other sectors and society, promote consistent law-making, and facilitate horizontal and cross-sectoral cooperation regarding forests.

The WG did also raise concerns with regard to a possible legally binding agreement and possible negotiations:

- A European LBA would only address forest related challenges in Europe, but not forest problems in other regions;
- Objectives, content and level of commitment of a LBA should be further clarified;
- The political attractiveness is uncertain. Repeating past resolutions and declarations developed over the past 20 years only would not make forest issues politically attractive;
- An LBA bears the risk of being less flexible than the MCPFE process and more bureaucratic;
- Negotiations and entry into force would require time and resources and occupy forest policy development in Europe for some time (e.g. 5 or more years);
- An LBA process could result in a two speed approach, depending on the positions and pace in each country;
- The legal obligations achieved could be less ambitious than existing voluntary commitments. An LBA without real ambition and content would not add any value;
- There is a risk that a LBA negotiation could break the existing wide consensus between countries and stakeholders and further polarise the negotiations and debate between the EU

and “others” and forest policy approaches;

- In respect to the EU, clarity is needed about the role and competences of individual Member States and the Community, and the legal procedures, institutional framework in possible negotiation process;
- The diversity across Europe in terms of stringency of national laws, implementation and enforcement, the difficulty in transposing international rules to national realities and the risks of additional bureaucracy calls for certain flexibility in any kind of multilateral forest arrangement;
- Certain aspects i.e. trade, illegal logging and climate change would need careful consideration if included, due to the complexity and the fact that these issues are already dealt with by other bodies and processes;
- The effects of an LBA on restrictions against harvesting and on the use of wood would be unpredictable, and extra costs might incur because of stronger restrictions;

On basis of the descriptions of options for a legally binding agreement, a general comparison between an LBA and MCPFE process status quo can be summarised in the following table:

	<i>MCPFE¹¹</i> <i>(status quo)</i>	<i>Legally binding agreement¹²</i>
Pros	Cost effective; Uncontroversial exchange of views; Transparent and participatory; Provides for flexibility; Provides for dynamics; Comprehensive; Consistent with other processes and conventions	Comprehensive, including a more coordinated policy response for arising challenges for forests in Europe; Comprehensive response to needs for forest monitoring, research; Building institutional capacity; Legal definitions and basis for verification of SFM; Legal status and compliance system could improve implementation; Broad coverage of issues, consistency for definitions;
Cons	Loose commitments; Voluntary nature; lack of legal status and power to implement its commitments; Slowness of the process; Small structure with limited resources, depending totally on good will of only a few; Not strong enough to shape forest-related policy issues in other fora; Lack of effective means of implementation or compliance system; No legal definitions that can be used for verification of sfm; Lack of institutional capacity.	Less dynamic; Risk for two speed approach; Fragility due to need for critical mass; Difficulty in transposing international rules to national realities and the risks of additional bureaucracy; Difficult to make an agreement on; Long negotiation and entry into force process possible ; Difficult to negotiate and find consensus, risk for a polarization on forest policy approaches; Cost generating; Highly depended on positions of sub-regional groupings (e.g. EU) - risk of weak outcome or lack of support; Overlapping with other initiatives and MEAs; Risk of restrictions against harvesting and on the use of wood. Extra costs might incur with no compensation provided to forest owners; Risk for reduced transparency and participation.

The table below is an attempt to illustrate some aspects for value adding of a possible LBA as compared to the status quo of the MCPFE process, drawing from the findings of the WG. The table presents the comparison of a LBA to the status quo only, as the WG was not mandated to develop any other options for a possible development of the MCPFE process:

¹¹ Compiled on the basis of the mid-term MCPFE Review outcome, presented at the 3rd WG meeting

¹² Subject to the content and levels of commitments

Value added criteria	MCPFE¹³ (status quo)	Legally binding framework
Operating cost	Low	Increase of circa. 40% or more
Costs of implementation (at national level)	Unknown	Unknown
Comprehensives of addressing new challenges (relevance)	Average Medium depending on the context and scope	Medium – High depending on content
Efficiency	Average – medium, depending on the context	Unknown
Level of commitments	Voluntary, political commitment	Stronger, compulsory
Precised targets	None	Possible
Timetable for achievements	None	Possible
Compliance procedure	None	Possible, form medium to strong

3.3 Possible implications of a legally binding agreement on forests in Europe

Possible implications for the MCPFE

If a legally binding agreement on forests in the pan-European region is to be concluded it will have implications for the present functioning of the MCPFE process. Such implications can only be assessed in detail if a text of an agreement would be in place. The WG has based its assessment on assumed scenarios for a negotiation process and future institutional arrangements of a possible legal agreement in relation to the MCPFE process.

The Working Group considered a possible negotiating process for a legal agreement carried out under the auspices of the MCPFE as the most interesting way to proceed. Three scenarios for establishing an LBA were taken into consideration:

SCENARIOS	Scenario 1 Two Track Approach	Scenario 2 Two Track moving towards One Track Approach	Scenario 3 One Track Approach
Name	MCPFE + negotiation process for reaching legally binding agreement	Replacement of MCPFE by the entry-into-force of legally binding agreement	Termination of MCPFE and start of negotiation process for LBA
Thresholds	<i>No specific thresholds</i>	- Time limit: e.g. 5 or more years transitional period - Number of ratifications: e.g. 20 ratifications - Forest cover: certain number of low forests cover countries and high forested cover countries that have to ratify - Geographical regions: e.g. southern, northern, eastern and western European countries have to ratify	<i>No specific thresholds</i>
Expected Outcome	Voluntary political process + Legally Binding Agreement	Replacement of voluntary process by Legally Binding Agreement only when threshold is met	Legally Binding Agreement

The WG saw scenario 3 (*termination of MCPFE and start of negotiation process for LBA*) as rather theoretical and not desirable, as important MCPFE achievements would be given away even before any outcome of LBA negotiations were granted.

¹³ The MCPFE carried external review during 2008-2009. The review assessed in particular: strategic positioning of the MCPFE, the relevance, the added value, effectiveness and efficiency. The full report from the MCPFE Review will be available in October 2009. . The reference in the table is based on mid term results presented at the 3rd WG meeting in Rome.

If the MCPFE members decide to enter into negotiations on a legally binding agreement on forests, scenario 1 (the two track process) would be an option maintaining the integrity of the MCPFE voluntary regime and at the same time moving towards to a legally binding agreement on forests in Europe. In this case negotiations on an LBA would be conducted, while the MCPFE process would be continued in parallel.

If the negotiations prove successful, and a legal agreement is concluded, the agreement has to be signed and ratified in order to enter into force. The agreement, as almost all international treaties, would contain a threshold number of parties that need to ratify the LBA on forests before it enters into force. This number could be set high in order to secure that most of the current members will become parties to an LBA on forests. Therefore, it is impossible to predetermine whether scenario 1 or 2 would be the most appropriate. A potential outcome could be a combination of the two scenarios.

The functions for different bodies and administration of possible LBA would require new modalities. The legal agreement could be established within or connected to the existing organisational structures, however with clearly distinct rules of procedure for participation, decision taking and compliance.

Possible costs implications – general considerations

The WG was provided with the background on three categories of costs, the costs for negotiating an agreement, operational costs and costs for implementation. It was underlined that for any change of the framework for policy at the pan-European level, whether to a legally binding agreement or by adapting the existing voluntary arrangement for strengthening the cooperation, a need for additional resources is foreseen.

Concerning the implementation of an agreement, each party would in general be responsible for own financing. However, it was also noted that theoretically a regional level financing system, e.g. to support monitoring and specific other overall important aspects of implementation could also be established. Without knowing content and level of commitment, it is not possible to provide cost estimates for implementation.

The costs for maintaining the present organizational structure, work and operational arrangement of the MCPFE process are taken as reference baseline¹⁴ for estimating new and additional costs born by negotiating, establishing and maintaining a legal agreement. The cost estimates are presented in the table below related to the two considered scenarios for a process of establishing an LBA:

SCENARIOS	Scenario 1 Two Track Approach	Scenario 2 Two Track moving towards One Track Approach
	<i>MCPFE + negotiation process for reaching legally binding agreement</i>	<i>Replacement of MCPFE by the enactment of legally binding agreement</i>
Costs for negotiation	Costs for LBA negotiation process are new and additional <i>Cost increase: ~40%- higher than now</i>	Costs for LBA negotiation process are new and additional <i>Cost increase: 40%-50% higher than now</i>
Operational costs	Costs for continuing MCPFE process Costs for: - Conference of the Parties meetings (back to back to ELM) - High Level meeting (very few costs) - Bureau Meeting(s) - Liaison Unit (labour costs, equipment and contract work) - Expert bodies between COPs	Costs for continuing MCPFE process through transitional period Costs for: - Conference of the Parties meetings (higher costs) - High Level meeting - Bureau Meeting(s) - Liaison Unit - Expert bodies between COPs Costs arise only after the MCPFE process has been terminated:

¹⁴ The MCPFE LUO annual budget, provided by the GCC countries is estimated to be approximately EUR 740 000, (based on the budget for 2009). The European Forest Institute (EFI) Convention costs estimate at circa 1mln EURO/year.

	<i>Note: two processes, costs for MCPFE + costs for LBA</i>	<i>Note: termination of costs for MCPFE process, but operational costs for LBA alone are higher than in scenario 1</i>
	<i>Cost increase: ~30% - 40% higher than now</i>	<i>before LBA agreement is in force: cost increase ~20%: higher than now after LBA agreement is in force: ~20% higher than now</i>
	<i>Cost increase depends on compliance mechanism chosen – but is the same in two scenarios</i>	
Costs of implementation	<i>MEMBER STATES: Implementation of LBA in national, regional and local contexts</i>	<i>MEMBER STATES: Implementation of LBA in national, regional and local contexts</i>

If a combination between scenario 1 and 2 was considered to be a desirable one, it would make sense to find a pragmatic solution for minimising the costs to the level between 20 – 40% in addition to the present costs. The MCPFE Liaison Unit Oslo annual budget, provided by the GCC countries is estimated to be approximately EUR 740 000, (based on the budget for 2009).

Possible implications for other processes and bodies

The WG built its findings on detailed analyses carried out by independent experts.¹⁵

The Non-legally Binding Instrument on All Types of Forests (NLBI)

There are a number of regional and eco-regional multilateral legal agreements on forests, e.g. ITTA, Amazon Treaty, Central America treaty, COMIFAC treaty and others. However, there is no global treaty focusing solely on forests and their management. The attempts under the auspices of the United Nations have led to a non-legally binding instrument on forests, the *Non-legally Binding Instrument on All Types of forests* NLBI. The 2007 NLBI and a possible legally binding instrument on forests in Europe, as described by the WG, would most probably be in synchrony with each other since the content options would facilitate regional implementation of the global soft-law regulation contained in NLBI. This would have been the case even if NLBI was legally binding.

A possible LBA on forests in Europe should be linked from the very beginning to the larger international forests policy-making bodies, especially to the UNFF. This linkage can be created e.g. if the secretariat is mandated and obligated to establish such links with other processes and instruments.

The Convention on Biological Diversity, the United Nations Framework Convention on Climate Change and the United Nations Convention on Combating Desertification

The CBD and the UNFCCC

The two relevant international environmentally oriented treaty regimes from the perspective of a possible legally binding agreement on forests in Europe are the biological diversity (Convention on Biological Diversity, CBD) and climate change regimes: United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol. They all are global, dynamic and broad regimes that must be taken into account when considering a possible instrument on forests in Europe. Since both regimes, especially the climate change regime, are evolving at such a fast speed, it is difficult to tell exactly what they require at any given point in time.

¹⁵ *Assessment of possible implications of LBA Content Options 2 and 3 on selected international forest related agreements and on the EC/EU competence, Faculty of Law with Northern Institute for Environmental and Minority Law (NIEM) Sébastien Duyck, Timo Koivurova and Kai Kokko, August 2009. Technical report and its summary to be annexed to the final version of this document*

The only explicit conflict provision having legal consequences is contained in the Convention on Biological Diversity. Article 22 of the Convention provides:

The provisions of this Convention shall not affect the rights and obligations of any Contracting Party deriving from any existing international agreement, except where the exercise of those rights and obligations would cause a serious damage or threat to biological diversity.

As is clear from the wording of this conflict clause, if the application or implementation of an international treaty would cause – or would threaten to cause - a serious damage to biological diversity, this treaty would be in conflict with the Convention on Biological Diversity.

Since the content options of an LBA as developed by the WG are fairly general and overall aim to promote biological diversity goals (biological diversity is understood as part of sustainable forest management, *MCPFE Helsinki Resolution 1*), there seems to exist no such conflict between the possible legally binding agreement on forests and the Convention on Biodiversity. On the contrary, a possible instrument could create synergies for the conservation of biodiversity in the European forests.

However, if a possible instrument as a whole will contain objectives aiming to enhance forest biodiversity and adapt to and mitigate climate change and while concluded would steer its normative activities more towards mitigating climate change, this should in a longer run include simultaneously conservation of biological diversity, in order to avoid contradicting goals.

Therefore it should be considered to make it clear in the preamble of an agreement on forests that the regime aims to promote and enhance sustainable forest management in a way that biodiversity goals are not threatened and climate change mitigation and adaptation enhanced.

The UN Convention on Combating Desertification

The UN Convention on Combating Desertification (UNCCD) includes issues related to forestry in its scope. According to art. 1 (f), reduction or loss of productivity of forests and woodlands are included in the definition of “land degradation”, land degradation being defined as a manifestation of desertification if taking place in arid, semi-arid and dry sub-humid areas (art. 1 (a)). Since the main objective of the convention is to combat desertification (art. 2), implementation of the convention at the national level should include actions related to the conservation of forests and woodlands.

The regional annexes on the Northern Mediterranean and Central and Eastern Europe both include a focus on the threat of forest fires and consequently require regional cooperation including research activities in relation to this threat (annex IV, article 7.2 and annex V, article 5.3). This requirement has also been provided by the MCPFE Strasbourg Resolution 3 which creates a European database on forest fires. The “Pan-European Guidelines for Afforestation and Reforestation with a special focus on the provisions of the UNFCCC” adopted by the MCPFE refer to the synergy between these guidelines which complement the General Guidelines for Sustainable Forest Management in Europe (Resolution H1) and the Pan European Operational Level Guidelines (Annex 2 of Resolution L2) and the relevant provisions of the UNCCD. These guidelines are proposed as a possible dynamic element of a possible legally binding agreement on forests in Europe.

The overall objective of the Convention provided by its article 2 relates to the adoption of an integrated approach in order to achieve optimal utilization of land leading to an improvement of the land productivity and the rehabilitation, conservation and sustainable management of land resources.

Insofar as this provision calls for the adoption of an integrated approach involving different forms of land uses, this objective corresponds with a proposed objectives for a legally binding agreement on forests in Europe (see annexes to chapter 3.1.).

The European Community

The Treaty establishing the European Community makes no specific provision for a common forestry policy. However, there are a number of areas of Community competence related to forests and forestry based on provisions of the Treaty, such as: environmental policy, common agricultural policy, internal market and trade. Other competences the EU has relied on to legislate or to adopt policies include development, research, education and culture, and industrial policy. When the Lisbon Treaty enters into force, it will also provide the EU with an additional competence related to forest management in the field of energy.

There is now a substantial body of legislation and Community policy affecting forests and forestry, such as the Habitat and Birds Directives, the Water Framework Directive, the Renewable Energy Directive and the Regulation on rural development. In addition to the above, specific forest-related initiatives include the Forestry Strategy, the Forest Action Plan, the Communication on Innovative and Sustainable Forest-based Industries and the FLEGT Action Plan. Such Community legislation and policies derive from shared or exclusive competences¹⁶ established in the Treaty Establishing the European Community. The content of the current MCPFE provisions overlap to a large extent with such legislations and policies, however, has been developed in synchrony and signed up by all Member States and the European Commission.

As the Member States of the EU are bound by the Community acquis¹⁷, it is important to ensure that a LBA is consistent with the Community acquis.

Thus, if the current objectives in a possible legally binding agreement are translated into specific and legally binding provisions, the risk of conflicting commitments should be avoided through taking full account of the EU legislation during the negotiation of the agreement. Given that the proposed LBA is likely to touch upon issues of EC competence (e.g. environment, in particular biodiversity and climate change, internal market, trade, rural development etc.), the participation of the European Community in negotiations of a legally binding agreement should be foreseen for matters falling under Community competence, on the basis of a mandate adopted by the Council upon a recommendation from the Commission. The fact that at present the area of forest management falls under subsidiarity, as neither the European Community nor the European Union treaties provide the Community or the Union with specific competencies in this regard, needs to be taken into account.

Once the negotiations are finished, the European Community would need to formally conclude the agreement (to become a Party). The choice of one or many legal bases for conclusion of the agreement by the Community would be made once the final text has been adopted at MCPFE. Such a choice is made by the Community institutions. In case of doubt, the ruling of the European Court of Justice may be requested. Determining a legal basis requires careful analysis and consideration of the objectives and instruments envisaged. The European Court of Justice seems to indicate that it evaluates each choice of the legal basis on the basis of the treaty's own special character. The content elements to be included into the proposal of the possible LBA will determine the legal basis for negotiation and conclusion of the agreement. Preliminary analysis of the possible content elements, as developed and recommended by this ad hoc WG, suggests that the possible LBA may embrace policy areas of both shared and exclusive Community competence.

EU FLEGT and forest law enforcement and governance processes

Measures to combat illegal logging are under development in various regions of the world, one of these means being non-discriminatory trade measures to restrict placing on market of timber and wood products derived from illegal logging. This has also been taken up by the WG when developing possible content for a legally binding instrument on forests in Europe (see annexes). For the possible European legally binding agreement on forests, these measures must be evaluated from both a global and a European viewpoint.

¹⁶ http://europa.eu/scadplus/glossary/competences_en.htm

¹⁷ http://europa.eu/scadplus/glossary/community_acquis_en.htm

FLEGT (forest law enforcement, governance and trade) activities of the EU have been initiated by the European Commission communication on in the aftermath of the WSSD. The European Commission proposed in 2003 a FLEGT Action Plan which provides the main frame within which the EU and its Member States have addressed since then illegal logging. The European Council in its conclusions published in November 2003 endorsed the Action Plan.¹⁸ The EU FLEGT Action Plan comprises seven focus areas: Support to timber-producing countries; Activities to promote trade in legal timber; Promoting public procurement policies; Support for private sector initiatives; Safeguards for financing and investment; Use of existing legislative instruments or adoption of new legislation to support the Plan; Addressing the problem of conflict timber.

Hence the FLEGT Action Plan addresses both the supply- and the demand side of the trade in illegal timber. Four key regions and countries fall within the frame of the Action Plan: Central Africa, Russia, Tropical South America and Southeast Asia. The inclusion of Russia as a particular focus of the action plan is particularly relevant to the MCPFE LBA work as it highlights in relation to the issue of trade in illegal timber the fact that the membership of the MCPFE includes both importing and exporting states.

Since the MCPFE process involves also other European countries than EU (EC) Member States, any trade measures would need to be taken between the possible contracting parties to a possible European legally binding agreement and the EU as a single trading block. The EC has already taken legislative measures to create a licensing system linked to voluntary but legally binding agreements between third states and the European Community. Hence, the EC lays down additional requirements for timber exported from the countries participating in the voluntary partnership agreements with its licensing system. This system correspond with EC's trade law obligations, given that it has established agreements with exporting countries voluntarily consenting to the system.

Both the NLBI and the International Tropical Timber Agreement (where many of the MCPFE members are parties) refer to trade related measures to combat illegal logging, showing that also globally such a system is in development. In addition, the Forest Law Enforcement and Governance (FLEG) initiatives around the world studied in this report show the increasing importance of taking measures against illegal logging.

The situation may become more complicated within the MCPFE region, given that the EC is promoting such a system unilaterally and, at least up till now, has not concluded voluntary agreements with those MCPFE members that are not EU Members. Based on these considerations, the WG underlined that the issue of trade would be an element creating additional value of an LBA, but its inclusion may also complicate the negotiation process.

The pan-European region (together with North American and North Asian countries) is part of the ENA-FLEG co-operation, which has also addressed trade in timber and wood products originating from illegal logging. The ministerial declaration of ENA FLEG endorses in general the need to combat illegal logging and associated trade.

It would seem advisable for a possible legally binding agreement on forests in Europe to start out with general recognition of the role of trade related measures aiming to curtail illegal logging.

Other processes and bodies

The general analysis conducted by the WG shows that the existing international treaties most likely do not contain provisions, which are in conflict with some of the provisions outlined in proposed content for a legally binding agreement on forests in Europe. However, it is important to note that in order to explore possible conflicting provisions with accuracy, it would be necessary to have a detailed text of possible provisions of a legally binding agreement on forests in Europe.

¹⁸ 2003/C 268/01

The WG was also provided with technical information and analysis on several other international treaties that contain relevant normative guidance from the viewpoint of a possible legally binding agreement on forests in Europe. These include global treaties, such as the Ramsar Convention on Wetlands; and regional ones, such as the Council of Europe's European Soil Charter and the UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes or the Bern Convention. The Convention on the European Forest Institute provides a framework for undertaking research on the pan-European level. In addition, there are two other sub-regional treaties that address similar issues, the Alpine Convention and the Carpathian Convention.

Since 1996 the Alpine Convention has been equipped with a legally binding instrument on the protection of the Alpine mountain forests in place (the Mountain Forest Protocol). The Carpathian Convention contains provisions on sustainable forest management, and is in the process of developing a Protocol on Sustainable Forest Management for the specific needs of the Carpathian region.

4. Recommendations of the Working Group

Explanatory note:

The following recommendations reflect views of the MCPFE WG and outline general recommendations and proposals to be considered by the Expert Level Meeting, as a result of the analysis conducted by the WG during 2008 -2009.

General consideration

The findings of the MCPFE Working Group on exploring the potential added value of and possible options for a legally binding agreement on forests in the pan-European region provide rationale to consider a legal framework as a possible effective policy option for strengthening cooperation in the pan-European region and for addressing the challenges and opportunities for the forest sector.

4.1. Possible elements of a legally binding agreement on forests in Europe

4.1.1. On the basis of main findings concerning possible elements of a legally binding agreement on forests in Europe further work should be done to specify and elaborate elements of a legally binding agreement, in particular on objectives, content and levels of commitments.

4.2. Recommendations for an appropriate process for establishing a legally binding agreement on forests in Europe

4.2.1. The scenario envisaging the continuation of the existing institutional set up of the MCPFE process and its voluntary nature and a parallel process of further consideration of a legally binding agreement for forests in Europe is recommended by the WG. Possible future negotiations could be conducted under the auspices of the MCPFE.

4.2.2. Future work on a possible legally binding agreement should aim towards a framework agreement, containing overall objectives and broad obligations, and providing at the same time flexibility for parties to develop standards and measures at the national level in order to reach the overall objectives.

4.2.3. A legally binding agreement on forests in Europe should provide for the possibility of adopting related protocols in the future.

4.2.4. Taking into account the positive MCPFE achievements regarding stakeholder participation it is recommended to explore new modes and a “new culture” of society and stakeholder participation in the frame of a possible legally binding agreement on forests in Europe.

4.2.5. The agreement, as almost all international treaties, would contain a threshold number of parties that need to ratify the LBA on forests before it enters into force. It is recommended that this number is set high in order to secure that most of the current members will become parties to a possible LBA on forests.

4.2.6. Special consideration should be given to the EU community dimension in order to clarify the role of the Community and the Member States in the possible preparation process.

4.2.7. It should also be considered that a possible pan-European legally binding agreement on forests would be revisited for update in case a global binding agreement on forests was concluded.

4.3. Recommendations for further actions to be taken

4.3.1. It is recommended to continue technical work on a possible legally binding agreement on forests in Europe, in order to prepare the technical basis for political consideration and decision concerning a possible legally binding agreement on forests in Europe, to be taken at the next Ministerial Conference.

Specific recommendations for the ELM

4.3.2. Based on the findings of the WG the ELM should consider setting up a preparatory group/working group under the auspices of MCPFE with the following task:

developing a document (non paper), which describes in more detail possible elements of a legally binding agreement on forests in Europe, including content, institutional arrangements and levels of commitments, as technical background for the next Ministerial Conference.

4.3.3. The preparatory group/working group should start its work as soon as possible after the ELM and present its outcome to the ELM due in advance to the 6th Ministerial Conferences and at the latest in the spring 2011. The ELM should give guidance for this work and decide on Terms of Reference for the group.

4.3.4. It is recommended to invite stakeholders and representatives of civil society to contribute to the work of a preparatory group/working group. It is also recommended to mobilise resources to support necessary translations and to promote and support participation of the signatories to the MCPFE from the pan-European region.

----- • -----

List of annexes *(All documents mentioned in the footnotes to be added to the final version of this report presented to the ELM)*

Annex to Chapter 3.1. Details of the content options 1 and 2, as developed by the WG

Overall Objective	Core and dynamic elements (specific objectives, actions and measures, instruments)	Examples of possible level of commitments	
		Loose Commitment (Content Option 2a)	Strict Commitment (Content Option 2b)
<i>To support and enhance sustainable forest management and the multifunctional role of forests and enhance cooperation at European level to this end</i>	Definition of sustainable forest management	General commitment to promote SFM	Every party would integrate definition into its national legislation
	General guidelines for achieving sustainable forest management	Every party commit to develop national strategies, plans or programmes for sustainable forest management which should reflect the guidelines	Every party would translate the guidelines into its national legislation
	<i>Dynamic element:</i> Pan-European Criteria and Indicators for sustainable forest management	General commitment to use C&I for policy development, monitoring and reporting	Each party shall commit to develop national C&I and to report on their bases
	<i>Dynamic element:</i> Pan-European Operational Level Guidelines for sustainable forest management	General commitment to use PEOLG for policy development, monitoring and reporting	Each party will develop national guidelines e.g. for biomass production
Thematic objectives			
To strengthen synergies for sustainable forest management in Europe through <i>cross-sectoral cooperation</i> and national forest programmes	Work towards an improved understanding of cross-sectoral issues at the pan-European level and enhance coherence and synergies between policies and co-operation and dialogue to pro-actively seek solutions <i>Dynamic element:</i> <i>Nfp framework and MCPFE Approach to National Forest Programmes in Europe</i>	Every party commit to enhance cross-sectoral cooperation Commitment to pan-European cooperation on cross-sectoral issues Every party would develop national strategies	Every party would develop and implement nfp or its equivalent, applying the MCPFE approach to nfps Parties would commit to Pan European cooperation for cross-sectorial elements
	Strategies concerning forest adaptation	Every party commit to develop strategies for long-term adaptation of forests to climate change Commitment to share information on pests and diseases	Each party would be obligated to have impact and vulnerability assessment and to include adaptation measures in the nfps Each party would monitor and report on pests and disease
	Enhance the contribution of forests and sustainable forest management to GHG reduction	Every party commit to enhance the contribution of forests and sustainable forest management to the reduction of greenhouse gas net emissions.	Each party would commit to ensure that forest will be a net sink Each party will commit to develop and implement targets on land use change
To enhance the role of sustainable forest management in <i>climate change</i> mitigation and adaptation	Streamline the concept of sustainable forest management into climate change strategies and policies	Parties commit to share information and exchange experience	
	<i>Dynamic element:</i> <i>Pan-European Guidelines for Afforestation and Reforestation with a special focus on the provisions of the UNFCCC</i>	Commitment to apply guidelines as technical instrument	Each party would apply the pan-European guidelines for afforestation and reforestation relevant to its local situation, and in the national climate change strategy
To strengthen <i>economic viability</i> of sustainable forest management in Europe	Create enabling conditions economic viability including valuation of forest goods and services Promotion of wood as renewable energy Mobilisation of wood resources To take measures to ensure the productive functions of the forests Reconciling sustainable use of wood/forest products with all other functions of forests;	Parties commit to support enabling conditions for sustainable forest management that encourage investment and economic activity in the forest sector Commitment to improve information system e.g. on undetected wood consumption Each party would commit to capacity building and training	Each party would commit to develop concrete targets for the production and use of wood, including for renewable energy

		for forest owners	
To maintain and enhance the <i>environmental functions</i> of forests, including <i>biological diversity, water, forest health, and other forest goods and services</i>	To integrate environmental functions into sustainable forest management To maintain soil and water quality and quantity, maintain potential to mitigate hazards	Obligation to develop national level guidelines for integration environmental functions into SFM	Each party would commit to develop national level guidelines for integrating environmental functions into sustainable forest management and a concrete action plan and timelines for its implementation
	Enhance protected forest areas and their effective management	Every party shall protect their key habitats and species Every party commit to analyse and further develop protected forest networks Commitment for qualitative improvement of protected areas with systematic reporting on that	Each party would commit to protect effectively xx% of their forest areas
	To maintain, conserve, restore and enhance forest biological diversity, including genetic resources Address issues such as invasive alien species, forest fragmentation and restoration	Every party commit to address the conservation and appropriate enhancement of forest biological diversity in strategies and programmes for sustainable forest management Each party would determine the level of its own action	Each country would develop and commit to implement a strategy for alien invasive species addressing also rehabilitation, forest restoration and increase of forest cover
	<i>Dynamic element: General guidelines for the conservation of the biodiversity of European forests. MCPFE Assessment Guidelines for Protected and Protective Forest and Other Wooded Land in Europe</i>	Parties commit to use the guidelines in their national context	Parties would integrate the guidelines into their national legislation
To contribute to the quality of life by addressing <i>social and cultural dimensions</i> in sustainable forest management	To address the social and cultural dimension in sustainable forest management and relevant policy instruments	Every party commit to address the enhancement of social and cultural elements in strategies and programmes for sustainable forest management And to improve knowledge and share information	Parties commit to establish a certified training programmes on social and cultural forest related activities for workers Parties commit to provide for free public access for recreations

Details of the additional elements (to option 1) of the content options 2, as developed by the WG

Overall Objectives	Core and dynamic elements (specific objectives, actions and measures, instruments)	Examples of possible level of commitments	
		Loose Commitment (Content Option 3a)	Strict commitment (Content Option 3b)
To foster cross-sectorial coordination and communication on sustainable forest management to improve coherence of forest related policies and programmes in order to balance economic, environmental and socio-cultural dimensions of sustainable forest management	Develop information tools for SFM Develop communication strategy Further develop nfps or equivalent as a format for cross-sectorial coordination	Integrate nfps or equivalents with other sectorial strategies	Each party to establish own mechanism for cross-sectorial coordination/integration on forest –related issues with other sectors, e.g. agriculture, energy
To contribute to work	Promote the use of nfps for	To promote pan-European	Each party would commit to

<i>on sustainable forest management at the global level and to enhance the contribution of forests to the achievement of the internationally agreed development goals</i>	<i>implementation of international forest related commitments</i>	<i>approaches and experiences on SFM at the global level</i>	<i>use nfps or equivalent for implementation of relevant international forest-related commitments and internationally agreed development goals</i>
<i>Enhance forest-based economic, social and environmental benefits and to contribute to the rural development</i>	<i>Contribution of SFM to rural development</i> <i>Tbd</i>	<i>Commitment to integrate forests into national rural development strategies</i>	<i>Each party would develop and implement national strategies for rural development and will integrate forests into them</i>
Thematic objectives			
<i>Improve comprehensive monitoring for such as economic and environmental functions of forests, including climate change issues, pest and disease control</i> <i>Reporting</i>	<i>Develop harmonised monitoring and reporting</i> <i>Tbd</i>	<i>Parties will commit to work together with European institutions and on regional level for harmonized definitions</i> <i>Parties would commit to develop modalities on pests and diseases</i>	<i>Each party would be obliged to establish own monitoring system according to the criteria and indicators for sustainable forest management</i> <i>Each party would monitor and assess progress in the implementation of the LBA</i> <i>Each party would report on progress towards sustainable forest management, based on C&I and on progress in implementing the LBA</i>
<i>To improve the long-term competitiveness of the forest sector and to enhance the sustainable use of forest products and services</i>	<i>Develop PES or other measures</i> <i>Promote the use of sustainably produced wood and timber products</i> <i>To create enabling conditions for mobilisation of wood</i> <i>Support the medium size enterprises and foster cooperation between them</i>	<i>Commitment to promote the development of PES</i> <i>Commitment to promote green public procurement policies</i>	<i>Establish pan-European system of a harmonised system for PES</i> <i>Obligation to implement public procurement policies</i> <i>Parties will commit to promote development of European level timber markets and improved flow of information</i>
<i>Reverse the decline in official development assistance for sustainable forest management and mobilize significantly increased new and additional financial resources from all sources for the implementation of sustainable forest management.</i>	<i>Integrate SFM into national strategies for international cooperation</i> <i>Improve enabling conditions for SFM implementation</i>	<i>Commitment to integrate SFM into national strategies for international cooperation</i> <i>Encourage long-term investments in a forest sector</i>	<i>Parties could commit to finance xxx % for implementing NLBI</i>
<i>To enhance law enforcement on production and trade of forest products; strengthening the governance of the forestry sector</i>	<i>To develop common approach to illegal logging in the region</i>	<i>Parties would commit to improve information exchange and cooperation to eradicate illegal logging</i>	<i>No later than [x] years after the entry into force of this agreement, each Party shall put into place measures consistent with international obligations to address illegal logging</i> <i>Parties shall also develop and implement non-discriminatory trade measures, consistent with their international</i>

¹⁹ Examples from the Canadian Initiative: Discussion non-paper for a sustainable forest management agreement, Revised version, October 2008

			<i>obligations, to prohibit the import or export of timber and wood products derived from illegal logging¹⁹.</i>
<i>To further promote sustainable development by encouraging trade of timber and timber products from sustainably managed forests</i>	<i>Implement green ppp Cooperate cross Europe</i>	<i>Parties would commit to enhance cooperation</i>	<i>Parties would commit to implement harmonized public procurement policies</i>
<i>To use sustainable forest management as effective framework for forest-based climate change mitigation and adaptation and through this to contribute to the overall goals of the UNFCCC</i> <i>Research development on the issues of climate change mitigation and adaptation</i>	<i>Role of forest to sequester carbon To increase carbon storage and sustain mitigation measures Substitution of fossil energy Build on IPCC4th report (conclusions) Adaptation issues Etc.</i>	<i>At Pan –European level – link to convention on EFI?</i>	<i>Each party should allocate resources for research in the field of climate change mitigation and adaptation</i>
The second part of the content for this option is like option 1.			

Indicative elements for a potential legally binding agreement, proposed by WG members for further consideration:

<p>Indicative list of possible content elements of a legally binding agreement on forests in Europe</p> <p>Overall goal: to support and enhance sustainable forest management and the multifunctional role of forests in the European region and to strengthen comprehensive actions for forest protection, including monitoring and forest adaptation to climate change</p> <p>Content and scope:</p> <p>1. Defining sustainable forest management “Sustainable management” means the stewardship and use of forests and forest lands in a way, and at a rate, that maintains their biodiversity, productivity, regeneration capacity, vitality and their potential to fulfil, now and in the future, relevant ecological, economic and social functions, at local, national, and global levels, and that does not cause damage to other ecosystems (<i>Helsinki 1, 1993</i>)</p> <p>2. Guidelines for achieving sustainable forest management (<i>based on Helsinki 1, 1993</i>) Twelve general guidelines, summarised below, form the basis for developing updated approach for achieving sustainable forest management: - Human actions must be avoided which lead, directly or indirectly, to irreversible degradation of forest soils, the flora and fauna; forest fires and the pollution of soils must be strictly controlled; forestry policies, should recognise the long-term nature of forestry forest management should be based on stable and long-term land-use policies and regulations; as well as on periodically updated plans or programmes; forest management should provide optimal combinations of goods and services to the benefits of the society; - Forest management practices should have due regard to the protection of areas of ecological fragility, to the conservation of primary forests, areas with cultural heritage, and the landscape, to safeguarding the quality and quantity of water, and to maintaining and developing other protective functions of forests and protection against floods, erosion and avalanches; - Forest management practices should aim at maintaining and, if possible, improving the stability, vitality, regenerative capacity, resistance and adaptive capacity of forest ecosystems towards stresses, including their protection against fire, pests, diseases. The prevention and control of large-scale biotic and abiotic damage should be supported. Special attention should be paid to quality of forest soils; <i>In the management of existing forests and the development of new forests, the chosen tree species should be well suited to local conditions and be capable of tolerating climatic and other stresses; native species and local provenances should be preferred where appropriate; use for energy of forest products should be encouraged to increase the potential of forest products to substitute for products from non-renewable sources; use of wood and non-wood forest products should be encouraged on a basis compatible with the sustainable management of forests; public awareness and understanding of sustainable forest management should be promoted, and research, information and training should be intensified.</i> Those guidelines should be elaborated and further complemented by addressing new challenges.</p> <p>3. Pan-European Criteria for sustainable forest management (<i>based on Lisbon 2, 1998 and Vienna, 2003</i>)</p>

The Six pan-European Criteria for Sustainable Forest Management form the basis for the overall framework for sustainable forest management and to assess progress towards implementing sustainable forest management.

The six pan-European criteria for sustainable forest management include: maintenance and appropriate enhancement of forest resources and their contribution to global carbon cycles; maintenance of forest ecosystems health and vitality; maintenance and encouragement of productive functions of forests (wood and non-wood); maintenance, conservation and appropriate enhancement of biological diversity in forest ecosystems; maintenance, conservation and appropriate enhancement of protective functions in forest management (notably soil and water); and maintenance of other socio-economic functions and conditions.

4. Conserving biodiversity of European forests - general guidelines (based on Helsinki 2, 1993, Vienna 4, 2003)

Four general guidelines adopted in Helsinki, summarised below, form a basis for developing updated approach for achieving biodiversity conservation in the sustainable forest management:

The conservation and appropriate enhancement of biodiversity should be an essential operational element in sustainable forest management and should be adequately addressed, together with other objectives set for forests, in forestry policies and legislation. Forest management should aim at increasing the diversity of forest habitats and variety of structure within stands should be favoured, where the natural dynamics of such associations permit.

Those guidelines should be further elaborate and complemented by addressing new challenges for forest biodiversity conservation.

5. Sustainable forest management and climate change (mitigation and adaptation)/ comprehensive monitoring / adaptation strategy, damage risk control, including pest, diseases and forest fires

To be developed

6. Ensuring productive functions of forests

To be developed

7. Public participation /stakeholders

To be developed

8. Sustainable forest management contributing to rural development

To be developed

9. Promoting sustainable production and consumption of wood and timber products

To be developed

10. Promoting long-term investments in a forest sector

To be developed

11. Developing Payments for ecosystem services

To be developed

12. Illegal logging and related trade

13. Financing the administration of an instrument

The text on financing administration of a possible instrument should be developed during drafting

14. Compliance, monitoring and reporting

The text on compliance for possible instrument should be developed by the Preparatory Committee. Compliance procedures could consist of obligatory reporting, review process by experts, consultative process for correction, enforcement / public assessment reporting.

15. Complaint regime - to be developed.

16. Rules of procedures – to be developed.

Tools

Instruments developed by the MCPFE could be kept voluntary, but given status as tools for the implementation of of SFM and the legal binding instrument, in particular: Pan-European Indicators for sustainable forest management, Pan-European Operational Level Guidelines for sustainable forest management, National forest programmes framework and the MCPFE Approach to National Forest Programmes in Europe, Pan-European Guidelines for Afforestation and Reforestation with a special focus on the provisions of the UNFCCC, MCPFE Assessment Guidelines for Protected and Protective Forest and Other Wooded Land in Europe.

Other voluntary commitments

In order to keep a right balance between elements included in an legally binding instrument and the need for flexibility when dealing with forest management it is proposed that other elements developed in the MCPFE framework or added in a process towards establishing an LBA could continue to be voluntary and worked on in parallel.