



Fédération Européenne des Fabricants de Palettes et Emballages en Bois

European Federation of Wooden Pallet and Packaging Manufacturers
Europäischer Verband der Holzpackmittel und Palettenhersteller

Overview of the EU Timber Regulation

**FEFPEB EU TR Working Group
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Introduction

On 20 October 2010, the European Parliament and the European Council adopted EU Regulation 995/2010. The Regulation is part of the EU Action Plan on Forest Law Enforcement, Governance and Trade in forestry (FLEGT) initiated by the European Commission in May 2003. The aim of the EU Timber Regulation is to reduce illegal logging by the exclusion of illegally harvested timber from the EU internal market and to reinforce the existing EU policy framework.

Background

Illegal logging / FLEGT Action Plan

Illegal logging is the harvesting of timber in contravention of the laws and regulations of the country of harvest. Illegal logging is a global problem with significant negative economic, environmental and social impact.

In economic terms illegal logging results in lost revenues and other foregone benefits. In environmental terms illegal logging is associated with deforestation, climate change and a loss of biodiversity. In social terms illegal logging can be linked to conflicts over land and resources, the disempowerment of local and indigenous communities, corruption and armed conflicts. Illegal activities also undermine the efforts of responsible operators by making available cheaper but illegal timber and timber products on the market.

EU policy on fighting illegal logging

The European Union's policy to fight illegal logging and associated trade was defined back in 2003 with the Forest Law Enforcement Governance and Trade (FLEGT) Action Plan. The key regions and countries targeted in the FLEGT Action Plan, which together contain nearly 60% of the world's forest and supply a large proportion of internationally traded timber, are Central Africa, Russia, tropical South America and Southeast Asia. The FLEGT Action Plan covers both supply and demand side measures to address illegal logging, and was endorsed by the EU Council of Ministers in November 2003.

The FLEGT Action Plan has led to two key pieces of legislation:

1. FLEGT Regulation adopted in 2005, allowing for the control of the entry of timber to the EU from countries entering into bilateral FLEGT Voluntary Partnership Agreements (VPAs) with the EU;
2. EU Timber Regulation, adopted by the European Parliament and by the Council in October 2010, as an overarching measure to prohibit placing of illegal timber and timber products on the internal market.

The EU Timber Regulation

EU Regulation No 995/2010 lays down the obligations of operators who place timber and timber products on the market. The Regulation enters into force from 3 March 2013.

Objectives

The objectives of the EU Timber Regulation are to:

- Prohibit the sale of illegal timber and timber products in the EU-market;

- Minimize the risk of trading illegal timber and timber products by asking companies that place timber or timber products for the first time on the EU-market to adopt a due diligence system;
- Implement a traceability system reliable enough to identify traders or retailers supplying timber and timber products.

Scope

The Regulation lays down obligations for “operators” and “traders”:

- “Operators” are natural or legal persons who place timber or timber products for the first time on the internal market;
- “Traders” are natural or legal persons who, in the course of a commercial activity, sell or buy on the internal market timber or timber products that are already placed on the internal market (by an operator).

Scope regarding FEFPEB-members

FEFPEB-members can be classified as “operator”, “trader” or both, depending on whether they first place the timber or timber products on the EU market. In the supply chain of wooden packaging it is common that the European packaging and pallet industry obtains timber or timber products from sawmills and/or timber traders.

- In case timber or timber products are purchased from European sawmills or timber merchants, FEFPEB-members are classified as “traders”;
- In case timber or timber products are purchased from non-European sawmills or timber merchants (f.e. Russian timber merchants), FEFPEB-members are classified as “operators”, as they place timber or timber products for the first time on the EU market.

Please note that a FEFPEB member also is an operator in case it orders f.e. Russian timber or timber products from European importers, but receives the products directly from Russia. In this case the importer does not see the products and has no possession of it at any time. The FEFPEB member is the first party in the internal market which physically takes possession of the timber or timber products and therefore it is classified as an operator.

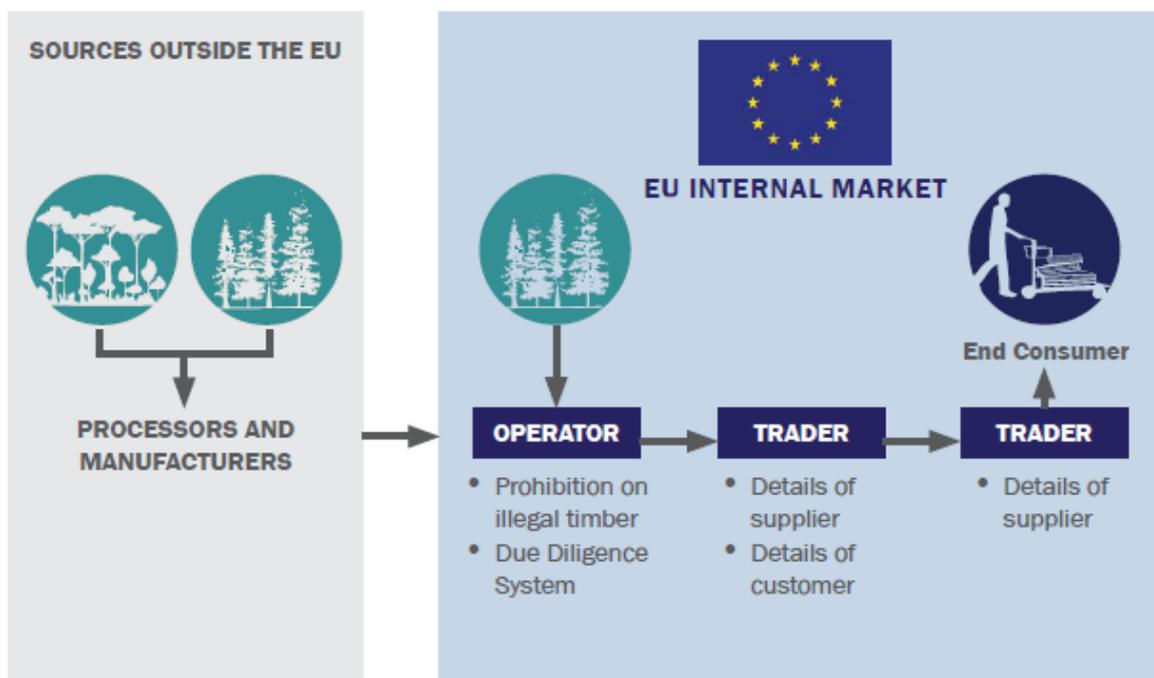


Figure 1: Key elements of the supply chains of timber / timber products in the EU (source: Proforest 2011, www.proforest.net)

Examples in which cases FEFPEB-members are classified as “operator” or as “trader” are shown in the document *“Is my company acting as “operator” or “trader”?”*

The Regulation applies to both from outside the EU imported timber and timber products and within the EU produced timber and timber products.

Obligations of the EU Timber Regulation

The EU Timber Regulation contains three main obligations for operators:

1. It prohibits the placing on the EU market for the first time of illegally harvested timber and products derived from such timber;
2. It requires companies that place for the first time timber and timber products on the EU market to exercise “due diligence”;
3. Each operator shall maintain and regularly evaluate the due diligence system which it uses, except where the operator makes use of a due diligence system established by a monitoring organisation.

Information concerning the operator’s supply and application of risk mitigation procedures shall be documented through adequate records, which shall be stored for at least five years and made available for checks by the Competent Authorities if they so request.

Traders shall, throughout the supply chain, be able to identify:

- the operators or the traders who have supplied the timber and timber products; and
- if applicable the traders to whom they have supplied timber and timber products.

Traders shall keep the tracking documentation for at least five years and made available for checks by the Competent Authorities if they so request.

The “due diligence system”

“Due diligence” requires an operator to gather information about timber and timber products and their suppliers in order to conduct a full risk assessment so as to minimize the risk of placing illegally harvested timber or timber products containing timber of illegal origin on the EU market. The due diligence system shall contain the following elements:

1. **Measures and procedures providing access to the following information** concerning the operator’s supply of timber or timber products placed on the market:
 - a. description, including the trade name and type of product as well as the common name of tree species and where applicable, its full scientific name
 - b. country of harvest (and where applicable the sub-national region and concession of harvest)
 - c. quantity (expressed in volume, weight or number of units)
 - d. name and address of the supplier to the operator
 - e. name and address of the trader to whom the timber and timber products have been supplied
 - f. documentation indicating compliance with the applicable legislation (of the harvesting country)

2. **Risk assessment procedures** enabling the operator to analyse and evaluate the risk of illegally harvested timber or timber products derived from such timber being placed on the market. Such procedures shall take into account the information set out in point 1 as well as relevant risk assessment criteria. Although there is not a single accepted system for risk assessment, as a general rule however, the operator will have to address each of the following criteria:
- *Are all documents indicating compliance with applicable legislation made available by the supplier, and are verifiable?* If all possible documents are readily available, there is a stronger likelihood that the product's supply chain has been established. There should be well founded confidence that the documents are genuine and reliable;
 - *Are there indications of involvement of any company in the supply chain in illegal practices?* There is greater risk that the timber purchased from a company that has been involved in illegal practices will have been illegally harvested;
 - *Is illegal logging prevalent in the country of harvest and/or sub-national region where the timber was harvested?* Thereby including consideration of the prevalence of armed conflict;
 - *Is the specific tree species involved particularly at risk of illegal logging?*
 - *Are there sanctions imposed by the UN Security Council or the Council of the European Union on timber imports or exports?*
 - *Is the level of governance of concern?* The level of governance might undermine the reliability of some documents indicating compliance with applicable legislation. Thus the country's corruption level, business risk indices, or other governance indicators should be considered;
 - *Complexity of the supply chain of timber and timber products:* the more complex the supply chain, the harder it will be to trace the origins of the product back to the logging source. Failure to establish necessary information at any point in the supply chain will increase the possibility of illegally harvested timber entering the chain.
3. **Risk mitigation procedures:** when the assessment shows that there is a risk of illegal timber in the supply chain (the result of the risk assessment procedure has been: not negligible risk), that risk can be mitigated by adequate and proportionate measures aimed at effectively minimizing the risk (negligible risk), which may include: additional information/documentation and/or independent third party monitoring, through to the final decision to not purchase the batch of timber or timber products. Measures to mitigate the risk can also mean changing the supply source (!)

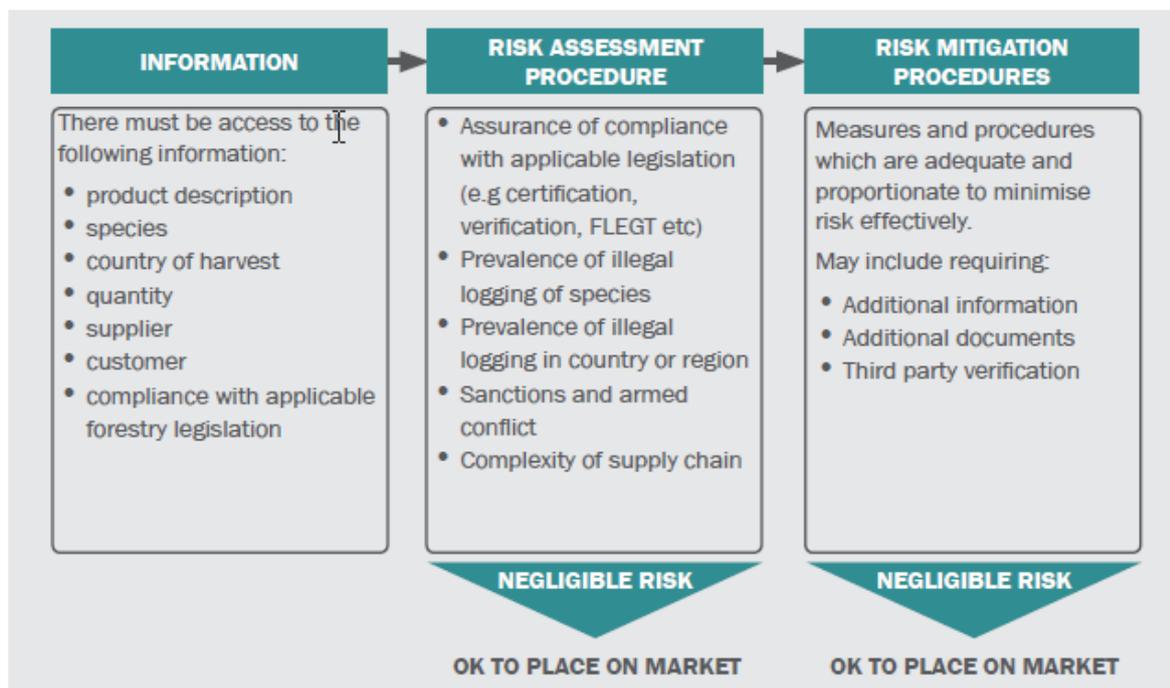


Figure 2: Components of a due diligence system (source: Proforest 2011, www.proforest.net)

Complying with the requirements of the Regulation?

FLEGT and CITES

Timber and timber products covered by a valid FLEGT-license or CITES permit are considered to comply with the requirements of the Regulation:

1. FLEGT-licensed timber coming from a country that has a Voluntary Partnership Agreement (VPA) with the EU and whose timber legality assurance system has been declared functional and valid is deemed legal¹.

There are currently six countries developing the systems agreed under a Voluntary Partnership Agreement (VPA) and six countries that are negotiating with the EU. Furthermore, there are around 15 countries from Africa, Asia and Central and South America that have expressed interest in VPAs².

2. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) permits for the export of timber listed in Annexes A, B or C of the CITES Regulation to be accepted as proof of legality³.

By importing timber and timber products covered by a valid FLEGT-license or CITES permit, operators do not need to conduct due diligence on those products.

Certification schemes such as FSC and PEFC

Certification by the Forest Stewardship Council (FSC) and the Programme for the Endorsement of Forest Certification (PEFC) is currently not considered valid proof of legality under the EU Timber Regulation.

¹ More information about FLEGT can be found on: <http://ec.europa.eu/environment/forests/flegt.htm>

² More information on VPA countries can be found on: www.euflegt.efi.int/portal/home/vpa_countries

³ More information about CITES can be found on: http://ec.europa.eu/environment/cites/home_en.htm

At an earlier stage, it was discussed to set up a “green lane” for credible certification schemes, exempting certified products from risk assessment. This was not accepted and as a result only products carrying a FLEGT or CITES timber export license are exempt from the EU due diligence requirements.

The use of certification schemes such as FSC and PEFC is valuable in the risk assessment procedure and timber and timber products from certified sources are likely to provide assurance of negligible risk. However, such schemes are only a part of the due diligence process and operators must ensure that they meet their EU Timber Regulation obligations in full.

Caution should be exercised with Chain of Custody documentation as it is essential to ensure that certification covers each specific product and / or component concerned.

Timber and timber products covered by the Regulation

The Regulation covers a wide range of timber products which are listed in its Annex using EU Combined Nomenclature⁴. Below the complete overview is listed. Products related to the wooden packaging industry are shown in bold:

4401	<i>Fuel wood in logs, in billets, in twigs, in faggots, or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms</i>
4403	Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared
4406	<i>Railway or tramway sleepers (cross-ties) of wood</i>
4407	Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end-jointed, of a thickness exceeding 6 mm
4408	Sheets for veneering (including those obtained by slicing laminated wood), for plywood or for other similar laminated wood and other wood, sawn lengthwise, sliced or peeled, whether or not planed, sanded, spliced or end-jointed, of a thickness not exceeding 6 mm
4409	<i>Wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, V-jointed, beaded, moulded, rounded or the like) along any of its edges, ends or faces, whether or not planed, sanded or end-jointed</i>
4410	Particle board, oriented strand board (OSB) and similar board (for example waferboard) of wood or other ligneous materials, whether or not agglomerated with resins or other organic binding substances
4411	Fiberboard of wood or other ligneous materials, whether or not bonded with resins or other organic substances
4412	Plywood, veneered panels and similar laminated wood
44130000	<i>Densified wood, in blocks, plates, strips or profile shapes</i>
441400	<i>Wooden frames for paintings, photographs, mirrors or similar objects</i>
4415	Packing cases, boxes, crates, drums and similar packings, of wood; cable-drums of wood; pallets, box pallets and other load boards, of wood; pallet collars of wood (Not packing material used exclusively as packing material to support, protect or carry another product placed on the market.)
44160000	Casks, barrels, vats, tubs and other cooper's products and parts thereof, of wood, including staves
4418	<i>Builders' joinery and carpentry of wood, including cellular wood panels, assembled flooring panels, shingles and shakes</i>
Pulp and paper of Chapters 47 and 48 of the Combined Nomenclature, with the exception of bamboo-based and recovered (waste and scrap) products	
<i>9403 30, 9403 40, 9403 50 00, 9403 60 and 9403 90 30 Wooden furniture</i>	
9406 00 20	<i>Prefabricated buildings</i>

⁴ The Annex sets out the timber and timber products as classified in the Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87, to which this Regulation applies.

All goods imported into or exported from the EU must be classified for Customs purposes. Each separate product is assigned a particular classification code. Council Regulation (EEC) No 2658/87 created the goods nomenclature called The Combined Nomenclature (CN). The CN sets out the general rules for the classification of goods to an eight-digit level and is updated on a yearly basis. The latest version of the Combined Nomenclature is available at:

http://ec.europa.eu/taxation_customs/customs/customs_duties/tariff_aspects/combined_nomenclature/index_en.htm

Following the Combined Nomenclature HS Code 4819 covers:

Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers; box files, letter trays, and similar articles, of paper or paperboard, of a kind used in offices, shops or the like.

Timber and timber products NOT covered by the Regulation

Exclusion of wooden packaging in use

When any of the on page 8 mentioned timber or timber products are placed on the market as products in their own right, rather than simply being used as packaging for another product, they *will* be covered by the Regulation and therefore due diligence must be applied.

Therefore packaging material will be covered by the EU Timber Regulation when imported as a separate product under Combined Nomenclature codes 4415 or 4819. They will not be covered when they exclusively support, protect or carry another imported product (which may or may not be a wood-based product).

For example: in case a company imports pallets as such they will be covered by the Regulation, but in case a company imports TV sets on a pallet, which is not a separate product, then this pallet is not covered by the Regulation.

The Regulation does not cover timber products derived from timber or timber products already placed on the internal market.

Exclusion of dunnage

Dunnage is not covered by the Regulation as anything which is not imported as self-standing product under a particular heading but to protect, secure or support another product is not covered.

Exclusion of recycled products

The Regulation does not cover recycled products. But when dealing with a product made of a mix of “virgin” timber and other recycled or used materials, it is the products “virgin” element that is covered by the Regulation. The product scope can be amended if necessary.

How to apply due diligence and the monitoring system

The due diligence system in compliance with the EU Timber Regulation, can be:

1. set up and implemented **by the individual company** (“Operator”), or;
2. provided and monitored by a party that is recognized by the European Union and called the **“Monitoring Organization”** which is an entity that may even be private and that can provide and manage a due diligence system for companies (“Operators”).

If the due diligence system is provided by the individual company, the company shall maintain and periodically assess the system it uses, except when it uses a due diligence system that has been set up by a Monitoring Organization since the organization will carry out all the procedures for the companies, including maintenance and regular assessment.

Enforcement by competent authorities

The Regulation is legally binding on all 27 EU Member States, which are responsible for laying down effective, proportionate and dissuasive penalties and for enforcing the Regulation. The Member States of the European Union designate one or more “Competent Authorities” to apply this regulation.⁵

The Competent Authorities carry out checks to verify if operators comply with the EU Timber Regulation. Checks are conducted in accordance with a periodically reviewed plan using a risk-based approach. Checks may also be performed when a competent authority is in possession of relevant information, including information provided by third parties concerning an operator’s non-compliance with the regulation. If the company is part of a Monitoring Organization then the Competent Authority will control the organisation itself.

Checks may include:

1. an examination of the due diligence system, including risk assessment and mitigation procedures;
2. an examination of the documentation and records showing the proper functioning of the system and its procedures;
3. sample checks, including on-site checks.

Penalties under the EU Timber Regulation

Regarding penalties, each Member State shall develop a number of laws to apply in case of infringement of the provisions of the EU Timber Regulation and designate a Competent Authority whose task is to check compliance with the Regulation. Penalties must be effective, proportionate and dissuasive. The EU Timber Regulation (article no. 19) sets among others **the following penalties:**

1. **fin**es proportionate to the environmental damage, the value of the timber or timber products concerned and the tax losses and economic detriment deriving from the infringement. The levels of such fines are gradually increased for repeated serious infringements;
2. **seizure** of timber and timber products concerned;
3. **immediate suspension** of authorization to trade.

⁵ The list of (nominated) Competent Authorities for each EU-country can be found on: http://ec.europa.eu/environment/forests/timber_regulation.htm