



Frequently Asked Questions (FAQs) **concerning the EU Timber Regulation (995/2010)**

Below you can find an overview of FAQ's related to the EU Timber Regulation (995/2010). The questions are sorted by topic.

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Timber and timber products covered by the Regulation

1. Is the timber/are the timber products I am trading covered by the EU Timber Regulation?

The EU Timber Regulation 995/2010 covers a wide range of timber products which are listed in its Annex using the EU Combined Nomenclature¹. 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 cooperers' 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
9403 30, 9403 40, 9403 50 00, 9403 60 and 9403 90 30	<i>Wooden furniture</i>
9406 00 20	<i>Prefabricated buildings</i>

¹ 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.

Click here for the [EU Timber Regulation](#) and its Annex.

2. What timber/timber products are 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: anything which is not imported as self-standing product under a particular heading but to protect, secure or support another product is not covered. This applies to dunnage as well.

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.

Due diligence

3. What is “due diligence”?

“**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, that risk can be mitigated by adequate and proportionate measures aimed at effectively minimizing the risk, which may include: additional information 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 (!)
4. ***For the industry to conduct due diligence right, where do they get the set of rules? Can they do it all themselves or should they hire someone?***

The requirements of a due diligence system are described in the [EU Timber Regulation](#).

The timber 'industry' refers to a company, an organisation or an individual producing timber within the EU or importing timber into the EU and making this timber available on the market for the first time. Such a person or organisation is classified as an 'operator' under the EU Timber Regulation and has to conduct due diligence. To comply with the requirements, the operator's due diligence approach must comprise three elements inherent to risk management:

1. access to information
2. risk assessment
3. mitigation of the risk identified.

The decision of whether to design an own due diligence system, to get a service provider to create one or to follow the system of a monitoring organisation is a decision that every operator has to make according to its own capacity, resources and knowledge. The EU Timber Regulation does not prescribe an approach. The amount of effort required to build a system will depend on the complexity of the supply chain and of the operator's business.

'Industry' can also be a company, an organisation or an individual buying or selling timber or timber products for the second, third or subsequent time in the EU. Such person or organisation is classified as a 'trader'. Any trader or retailer buying or selling will have to be able to identify:

1. from whom the timber or timber products were bought; and
2. to whom the timber or timber products were sold.

This information must be kept for at least five years and be made available for checks if requested.

Operator and responsibilities

5. *What is meant by the term "operator"?*

The Regulation makes a distinction between "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).

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 of 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.

6. What is required of me as an “operator”?

Operators need to put in place a due diligence system which includes the three elements required by the EU Timber Regulation. This needs to be done for every timber product traded (except those not covered by the Regulation).

Following the explanation of the due diligence system (question 2):

Element 1

Information: the first stage is to look at what information you already have for each product which you buy. The Regulation requires that you either have, or can access, two types of information:

- Information on the product:

Most companies already routinely keep records of the type of information being shown in blue;

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

- Information on the species and forest:

The information not being shown in blue is not routinely supplied with all products and is likely to require more work.

Element 2

Risk assessment procedure: the risk assessment procedure can be very basic or may need to be relatively complex depending on the complexity of the supply base. The risk assessment procedure needs to address two components:

- Legal harvesting – is there evidence to show that there is negligible risk that the timber was illegally harvested from the forest of origin?
- Traceability – is there evidence showing that there is sufficient control throughout the supply chain to ensure that the timber really is from the forest of origin identified?

It may be helpful to have a two-stage procedure. The first stage identifies products with a negligible risk which can be placed on the market without further work. The second stage identifies timber with a non-negligible risk and the risk mitigation procedures will be necessary.

1st stage - Identifying negligible-risk products

The product is certified to a scheme which delivers the requirements of the Regulation

In case the timber / timber product is certified under a certification scheme which provides adequate assurance of compliance with applicable legislation, then the risk is negligible. Both FSC and PEFC schemes are likely to provide assurance of negligible risk. National schemes, particularly those in countries with high levels of illegality, may be less reliable and may not provide Chain of Custody certification. ISO 9000 and 14001 do not provide assurance of legal harvesting.

FSC and PEFC certification schemes certify both forest management and Chain of Custody thus addressing both legal harvesting and traceability.

Note: many suppliers have FSC or PEFC Chain of Custody certificates, but not all the products they sell are certified. It is important to ensure that the product is certified and not just the supplier. This is best done by including the requirement for certification in the purchasing documents and ensuring it is stated on the invoice.

The timber in the product is verified as legal by a scheme which delivers the requirements of the Regulation

If the product is made with timber from a forest verified by a legality verification scheme which provides adequate assurance of compliance with applicable legislation, then the risk is negligible. There are a number of different schemes available, only some of which provide adequate assurance. It is important to check the scope of laws which are assessed (this must be all relevant legislation, not just the right to harvest) and the quality of verification. Schemes run by international accredited certification bodies are likely to include robust verification.

Not all verification schemes include Chain of Custody control, so this may be needed.

The product is made with FLEGT-licensed timber or timber with a CITES permit

The Regulation states that timber with a FLEGT-licence or CITES permit automatically meets the requirements of the legislation. FLEGT-licences and CITES permits are checked at the point of import to the EU after which it is necessary to provide for traceability in the supply chain within the EU.

The product is made with timber harvested in a country with negligible levels of illegality

There are many countries where law enforcement is robust and the risk of timber being harvested illegally is negligible. Where this can be shown (e.g. via a credible independent review of legal enforcement) then products made with timber from that country can be considered of negligible risk. Adequate Chain of Custody controls will be needed.

2nd stage - Identifying products where risk mitigation is needed

The species from which the product is made is subject to illegal harvesting

There are some species, particularly rare or valuable species, which are particularly subject to illegal harvesting. If the product is made with a species which has a risk of illegal harvesting then more information will be needed to prove it was legally harvested.

More information is available from www.illegal-logging.org and www.globalforestregistry.org.

The country where the timber was harvested has a risk of illegality

There are some countries which are known to have high levels of illegality. Sometimes country governments themselves highlight this, while in other cases it is external observers. If the timber was harvested in a country with a risk of illegal harvesting, then more information will be needed to prove it was legally harvested.

More information on risk of illegal harvesting is available from www.illegal-logging.org and www.globalforestregistry.org. Where no information is available, it is also possible to assess potential risk from indices such as the Transparency International Corruption Perceptions Index.

There are sanctions against the country of harvest

Occasionally the UN or EU institute sanctions against particular countries which include timber. This is usually because income from timber sales is being used to fund civil wars or oppression. Timber from countries with current sanctions should not be placed on the EU market.

The supply chain is long or complicated

Timber often goes through many processing stages between the forest and final product, frequently involving several different owners and countries. Where the supply chain is long or complex, it is much more difficult to be sure of the origin of the timber since each additional link in the chain is one more point where illegal timber could have been mixed – accidentally or knowingly – into the supply chain.

If the supply chain is long or complex, it will be necessary to have robust evidence that there is adequate control throughout the chain to be sure where timber in the final product comes from.

Chain of Custody certification provides assurance that the supply chain is being controlled. This is usually associated with forest management certification schemes, but many certification bodies also provide chain of custody certification for non-certified timber (e.g. legally verified or FLEGT-licensed).

The product is a composite made with timber from many different sources

Many timber products are made with timber from several different sources. This ranges from solid wood products such as furniture to panel products (plywood, MDF) and paper.

For composite products it will be necessary to work with suppliers to find ways of identifying the source of all the different components. Certification is one option since this provides assurance without having to collect individual information about each source. Another option is to buy from mills which have a robust policy of requiring legal supply in all contracts with suppliers and have a system to verify that these contract conditions are fulfilled.

No information is available on the source of the timber in the product

There are inevitably going to be many cases where suppliers are unable to provide any information on the source of the timber used in a product, since they do not require this information from their own suppliers. In this case there are two options:

- Stop buying from suppliers who are unable to provide adequate information
- Work with suppliers to help them to understand and manage their own supply base so they can provide negligible risk products

Element 3

Risk mitigation procedures: the approach taken to risk mitigation will vary depending on the type of product, the complexity of the supply chain and the origin of the timber. In some cases it is straightforward, but in others it is not since suppliers often do not have the information themselves.

If adequate information on legality of the product is not available, then there is a risk that the product may have been illegally harvested. Because of the prohibition on illegal timber in the regulation, an operator risks prosecution if the product is placed on the EU market. Therefore, a decision has to be made about whether to discontinue that product from that supplier, or to work with the supplier to understand the supply chain for the product and provide evidence that the timber used is from legal sources.

Fortunately many companies have already been working to exclude illegal and unsustainable timber from their products for the last decade in response to customer demand or internal policy commitments, so there is considerable experience of the various options available:

- Requesting more information: sometimes, particularly for products with a relatively short supply chain, suppliers can provide more information such as documents proving timber came from a legal source quite easily.
- Using certified and verified products: a widely used option is to preferentially purchase certified or verified timber products. Some suppliers sell both certified and uncertified, so it is possible to switch from one to the other without changing supplier. In other cases it involves changing supplier or even changing product ranges;
- Third-party checks: in some cases, particularly for high-value or “one-off“ purchases, it may be effective to hire an independent third party (e.g. a certification body) to check both legality in the forest and control of the supply chain for a specific consignment of timber or product line.

Ensuring that all products have a negligible risk can take some time. Therefore it is important to start preparing for the new regulation as soon as possible in order to have time to work with existing suppliers or, if necessary, to find and change to new suppliers.

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.

7. *What do I have to do in case I am importing timber or timber products from outside the EU?*

If you buy timber or timber products directly from a supplier outside the EU you are considered an “operator”. under the EU Timber Regulation and you will have to undertake due diligence. See what is meant by the term “operator” (question 5) and what is required being an “operator” (question 6).

8. *What do I have to do in case I am producing timber or timber products in the EU?*

If you are “placing timber [...] on the EU market”, i.e. if you are producing timber in the EU, you will be classified as an “operator”. You therefore have to conduct due diligence. See what is meant by the term “operator” (question 5) and what is required being an “operator” (question 6).

Traders responsibilities

9. *What is meant by the term “trader”?*

The Regulation makes a distinction between “operators” and “traders”:

“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).

10. What is required of me as a “trader”?

In case you are a trader you need to keep information on who you buy timber / timber products from and who you sell to. Almost all organisations already keep records of this information; consequently it is unlikely this will require additional work. Note that information is only needed up to the last point of sale within the trade. No information is needed on sales to end consumers.

Tracking documentation needs to be kept for at least five years and shall be provided to Competent Authorities if they so request.

11. What do I have to do in case I am buying timber or timber products from a supplier based in the EU?

As a buyer or seller of timber or timber products in the EU, you are classified as a “trader”. As is also the case for any trader or retailer you are selling to, you will have to be able to identify:

- a. who the timber or timber products have been bought from; and
- b. where applicable, who the timber or timber products have been sold to.

This information shall be kept for at least five years and be provided for checks if requested.

For timber and timber products bought from a supplier based within the EU, you are *not* required to undertake due diligence and provide proof of origin or legality, but only to record where the timber / timber products were bought from and, where applicable, who it is sold to.

Monitoring Organisation

12. What is a Monitoring Organisation?

The role of monitoring organisations is to maintain and regularly evaluate due diligence systems, which will be available to operators to use. Monitoring organisations also need to ensure that operators apply the due diligence systems correctly.

The use of a monitoring organisation is optional and operators can choose to implement their own due diligence system.

13. How do I become a Monitoring Organisation?

Any entity legally established in the EU may submit to the Commission an application to be recognised as a monitoring organisation. To be recognised as a monitoring organisation, an applicant shall demonstrate that it fulfills all requirements set out in art. 8 of the [EU Timber Regulation](#).

So far there are no monitoring organisations recognised by the European Commission (May 2013).

Legality and compliance

14. How do I ensure compliance with the EU Timber Regulation?

To ensure compliance with the Regulation the following requirements have to be met:

- If you are a “trader”, buying or selling timber or timber products in the EU, you have to be able to identify:
 - (a) who you bought the timber or timber products from; and
 - (b) where applicable, who you have sold the timber or timber products to.This information shall be kept for at least five years and be provided for checks if requested.
- If you are an “operator”, “placing timber or timber products on the market” – i.e. if you buy timber or timber products directly from a supplier outside the EU or you are producing timber in the EU – you will have to conduct due diligence.

See what is meant by the term “ due diligence” (question 3).

15. What is the best certification standard to ensure I can keep importing our products into the EU?

The acceptability of a certification standard as proof of legality to comply with the requirements of the EU Timber Regulation is a decision that the operator that places the timber on the EU market for the first time has to make after a careful assessment of the credibility of a particular third party verified scheme as required by the EU Timber Regulation and the Commission implementing Regulation; the responsibility lies with the operators.

There are several different certification standards currently being implemented globally and many of these provide some level of assessment of legality as well as provide the ability to access information about the country, region or area of origin of the material.

An useful recent report of Proforest “Assessment of Certification and Legality Verification Schemes against the EU Timber Regulation” is useful for this scope. The report is available at the following link www.proforest.net/publication/bibliog.2012-12-11.9951964156

16. Is there a declaration or text regarding the EU Timber Regulation which I can use in the communication with clients?

Regarding the EU Timber Regulation (995/2010) frequently the question is raised whether FEFPEB-members (either classified as “operator” or “trader” under the EU TR) can hand over a certificate or declaration to their client in order to show that the delivered timber is of legal origin.

As from 3 March 2013 it is a (minimum) requirement that the timber and timber products are of legal origin and are in compliance with the EU TR assuming that the “operator” (properly) applied due diligence. A certificate or declaration is therefore not needed.

As a number of clients insist on obtaining such a certificate/declaration, members are provided with the following standard text which can be used in the communication / documentation towards clients:

“Based on the obtained information/documentation we confirm that the delivered timber and/or timber products are in compliance with the EU Timber Regulation 995/2010 and are therefore considered of legal origin.

Please note that following introduction of the EU Timber Regulation (995/2010) on 3 March 2013, no requirement exists for operators and/or traders to provide a declaration/certificate that the delivered timber and/or timber products are in compliance with the EU Timber Regulation.”

FLEGT and CITES

17. What is FLEGT?

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.

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

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 VPAs .

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

More information on VPA countries can be found on:

www.euflegt.efi.int/portal/home/vpa_countries

18. What is CITES?

CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora) is an international agreement between governments. Its aim is to ensure that international trade in specimens of wild animals and plants does not threaten their survival.

CITES is an international agreement to which States (countries) adhere voluntarily. States that have agreed to be bound by the Convention ('joined' CITES) are known as Parties. Although CITES is legally binding on the Parties – in other words they have to implement the Convention – it does not take the place of national laws. Rather it provides a framework to be respected by each Party, which has to adopt its own domestic legislation to ensure that CITES is implemented at the national level.

Timber and timber products covered by a valid CITES permit are considered to comply with the requirements of the Regulation: CITES permits for the export of timber listed in Annexes A, B or C of the CITES Regulation to be accepted as proof of legality.

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

More information about CITES can be found on:

http://ec.europa.eu/environment/cites/home_en.htm

Certification schemes such as FSC and PEFC

19. Is the EU Timber Regulation similar to the Forest Stewardship Council (FSC) or the Programme for the Endorsement of Forest Certification (PEFC)?

No. The EU Timber Regulation is a piece of European Union legislation that prohibits illegally harvested timber from being placed on the EU market. The EU Timber Regulation sets out mandatory procedures for those trading in timber within the EU designed to minimise the risk of illegal timber being sold. It applies to both imported and domestically produced timber. The Regulation governs the trade in timber products on the EU market and covers most timber products commonly traded. Compliance with this legislation is obligatory for all operators and traders concerned.

The Forest Stewardship Council (FSC) and the Programme for the Endorsement of Forest Certification (PEFC) are two of the existing voluntary systems that forest managers, timber processors and traders can choose for forest management and ChainofCustody certification. These standards are based on current understanding of best practices for sustainable forest management worldwide. Governments can choose for their state forests to become certified against these or other existing standards or to endorse such standards for their public procurement. However, governments do not administer the system and they are not involved in the auditing or decision-making processes relating to the issue of any third party verified certificates.

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: 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.

20. Can wood from Chain of Custody systems such as FSC, PEFC, Malaysian Timber Certification Scheme (MTCS) or Verification of Legal Origin (VLO), among others, be considered compliant with the EU Timber Regulation?

Certification by the Forest Stewardship Council (FSC), the Programme for the Endorsement of Forest Certification (PEFC) as well as other third party verified schemes can be used as a tool in the risk assessment and risk mitigation process if operators assess them as sufficiently credible; certificates however, are not an evidence of legality and do not absolve operators from the obligation to collect all the information and assess all risk mitigation factors as required by the EU Timber Regulation and the Commission Implementing Regulation (EU No (607/2012)). Only 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 CITES permits for the export of timber listed in Annexes A, B or C to the CITES Regulation will be accepted as proof of legality.

The Malaysian Timber Certification Scheme (MTCS) is endorsed by PEFC and as such the same provisions apply to this scheme as well as to any other third party verified scheme.

21. Will FSC and PEFC be due diligence partners?

The wording 'due diligence partners' does not appear in the Regulation. If this is referring to organisations that help operators to comply with their due diligence requirements, then the correct term is 'monitoring organisations'. These are organisations authorised to provide assistance with the due diligence requirement.

[Enforcement and penalties](#)

22. Which organisation will enforce the EU Timber Regulation?

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.

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:

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

The list of (nominated) Competent Authorities for each EU-country can be found on:

http://ec.europa.eu/environment/forests/timber_regulation.htm

23. What will the control and penalties be?

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 other **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.

Implementation as of 3 March 2013

24. Will I be able to import into the EU after 3 March 2013?

The EU Timber Regulation is not banning or impeding trade in timber products. However, as EU operators are prohibited from placing illegally harvested timber on the EU market and must exercise due diligence to ensure that their timber is not illegal, they will require information and documentation from their suppliers ensuring the wood's legality.

If an operator exercising due diligence concludes that one of its timber sources constitutes a 'non-negligible' risk, that operator has to apply risk mitigation measures. Measures to mitigate the risk can range from changing the supply source to requiring additional information, documentation or certification against a third party verification or certification standard that complies with the

applicable legislation in force in the country of harvest, according to the requirements of the EU Timber Regulation

25. How to deal with timber / timber products being ordered now, coming physically on the EU market after 3 March 2013?

If timber / timber products will be placed on the market after 3 March 2013, they will be under the scope of the EU Timber Regulation: in this case, it will be necessary to implement a due diligence system.

It's important to underline what Regulation states in art. 2. According to the art. 2 the "supply" must be:

- **on the internal market** - therefore the timber / timber products must be physically present in the EU, either harvested here or imported and cleared by customs for free circulation, as products do not acquire the status of "European Union goods" before they have entered the territory of the customs union. Goods under special customs procedures (e.g. temporary importation; inward processing; processing under customs control; customs warehouses; free zones) as well as transits and re-exportation are not considered to be placed on the market;
- **for the first time** - timber products already placed on the EU market will not be covered by the Regulation nor will products derived from timber products already placed on the market. Making a product available for the first time further refers to each individual product placed on the market after the date of entry into application of the EU Timber Regulation (3 March 2013), and not to the launch of a new product or product line. Moreover the concept of placing on the market refers to each individual product, not to a type of product, irrespective of whether it was manufactured as an individual unit or as series;
- **in the course of a commercial activity** – so the Regulation does not impose requirements on non-commercial consumers.

All the above elements must be presented simultaneously. 'Placing on the market' should therefore, be understood as occurring when an operator first makes timber or timber products available on the EU market for distribution or for use in the course of his commercial activity.

The EU Timber Regulation does not have retroactive effect. This means that the prohibition will not apply to timber and timber products placed on the market before its entry into application on 3 March 2013. However operators will need to show, when checked by the competent authorities, that they have established a due diligence system which is operational as of 3 March 2013. Therefore it is important that operators are able to identify their supply before and after that date. The obligation for traceability for traders also applies from that date. All operators, whether EU or non-EU based, must comply with the prohibition on placing illegally harvested timber on the market and the obligation to exercise due diligence.

Similar legislation in USA and Australia

26. What are the EU, the USA and Australia doing to harmonize their systems in terms of legislation and due diligence regulations so that our company can go through the same process to export to these different markets?

US, Australian and EU regulations take a substantially similar approach in seeking to deny illegally harvested timber access to the market but the regulatory frameworks of these countries work differently. For implementation purposes it will mean that operators in the US and the EU will need substantially similar information demonstrated in different ways. In particular they will need to know the origin of the timber imbedded in their products and to ensure it has been legally harvested.

27. Why can the EU not phase in products like the Lacey Act?

The Lacey Act requires importers to provide a basic declaration (also known as PPQ 505) to accompany every shipment of plants or plant products. Declaration requirements were effective as of 15 December 2008, but enforcement of those requirements was phased in, i.e. enforcement for certain product groups and products was scheduled for a later date. A phasing-in of enforcement for different products is not foreseen under the EU Timber Regulation. However, the EU Timber Regulation does not cover all existing timber products. The timber and timber products to which the EU Timber Regulation applies are listed in the Annex of the [EU Timber Regulation](#).

The EU may amend or supplement the list of timber and timber products mentioned in the Annex to the EU Timber Regulation, after it has become operational and some experience in its implementation is gathered. In particular amendments might be necessitated by future developments regarding technical characteristics or end-user and production processes.

Practical issues

28. Am I classified as an operator in case my agent places the timber and timber products for the first time on the EU market?

For timber harvested outside the EU:

- Where an EU based company buys timber or timber products in a third country and imports them into the EU, the EU based company becomes an operator when the timber or timber products enter the EU;
- Where an EU based company buys timber or timber products in a third country and then has an agent import them into the EU, the EU based company becomes an operator when the timber or timber products enter the EU;
- Where an EU based company orders timber or timber products in a third country from a non-EU based supplier who imports them into the EU, the EU company becomes an operator when the timber enters the EU (even if ownership does not formally transfer until the timber is delivered to the EU based company);

- Where a non-EU based company imports timber or timber products into the EU, obtains the release for free circulation and then seeks a buyer, the non-EU based company becomes an operator when the timber or timber products enter the EU (because the non-EU company has made the timber products available on the EU market);
- Where a non-EU based company sells timber or timber products from a third country directly to non-commercial end-users in the EU, the non-EU company becomes an operator when the timber or timber products enter the EU.

All operators, whether EU or non-EU based, must comply with the prohibition on placing illegally harvested timber on the market and the obligation to exercise due diligence.

In case your company and your agent/importer are situated inside the EU: your company orders the timber / timber products directly from outside the EU and the agent/importer – who places timber and timber products for the first time on the EU market – has no possession of the timber / timber products at any time, then your company is classified as an operator:

your company becomes an operator when your agent imports timber and timber products into the EU for distribution in the course of your company's business. The shipping agent is merely acting as a 'postman'; as an agent, he is merely transporting goods on behalf of my company and so does not place them on the market himself.

For example: a FEFPEB member orders 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.

29. What if I purchase timber / timber products from an extra-EU sawmill / trader, that purchased the timber / timber products from several timber sources?

If the timber / timber products is / are derived from several timber sources, it will be necessary to assess the risk for each component or species.