

EU Timber Regulation - Frequently Asked Questions

Due diligence, certification and enforcement of the EU Timber Regulation

1. Is the EU Timber Regulation similar to the Forest Stewardship Council (FSC)?

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) is one of the existing voluntary systems that forest managers, timber processors and traders can choose for forest management and chain-of-custody certification. The FSC standard is based on current understanding of best practices for sustainable forest management worldwide. Governments can choose for their state forests to become certified against the FSC standard or to endorse the FSC 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 FSC certificates.

2. For the industry to do the 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 (Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010; website: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32010R0995:EN:NOT>). Further legally binding measures describing details on due diligence will be adopted by the European Commission in July 2012.

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.

3. **Will the Forest Stewardship Council (FSC) and the Programme for the Endorsement of Forest Certification (PEFC) be due diligence partners?**
 - a. **Will their certifications be sufficient proof of legality?**
 - b. **Will Malaysian Timber Certification Scheme (MTCS) certificates issued by the Malaysian Timber Certification Council (MTTC) be valid?**

The wording 'due diligence partners' does not appear in the legislation. 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. It is not yet clear whether the Forest Stewardship Council (FSC) and the Programme for the Endorsement of Forest Certification (PEFC) will apply and/or be recognised as monitoring organisations.

- a. Certification by the Forest Stewardship Council (FSC) and the Programme for the Endorsement of Forest Certification (PEFC) is not considered valid proof of legality under the EU Timber Regulation. 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 valid is deemed legal. 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 to the CITES Regulation will be accepted as proof of legality.
- b. Certification under the Malaysian Timber Certification Scheme (MTCS) will not be considered as valid proof of legality under the EU Timber Regulation.

4. What is the best certification standard to ensure we can keep exporting our products to 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 your client in Europe – the operator that places the timber on the EU market for the first time – has to make, because the responsibility lies with the operators. Operators are legally required to exercise due diligence through a system comprising three elements inherent to risk management: access to information, risk assessment and measures to mitigate the identified risk to eliminate any potentially illegal timber.

Certification can lower the risk where the risk has been assessed as non-negligible. It is important that the certification standard applied offers reliable and credible evidence of compliance with the legislation in force in the country of harvest. According to the EU Timber Regulation, the certification standard must cover the following matters relating to applicable legislation in force in the country of harvest:

- rights to harvest timber within legally gazetted boundaries;
- payments for harvest rights and timber including duties related to timber harvesting;
- timber harvesting, such as environmental and forestry legislation including forest management and biodiversity conservation, where it is directly related to timber harvesting;
- third parties' legal rights concerning use and tenure that are affected by timber harvesting; and
- trade and customs, insofar as the forestry sector is concerned.

5. Can wood from chain of custody systems such as the Forest Stewardship Council (FSC), Programme for the Endorsement of Forest Certification (PEFC), Malaysian Timber Certification Scheme (MTCS) or Verification of Legal Origin (VLO), among others, be considered compliant with the EU Timber Regulation?

Wood that has been certified or verified against one of the certification/verification systems mentioned above can potentially be considered to lower the risk of illegal timber entering the EU market, if so determined by due diligence system of the operator buying and placing the timber on the market. The certification standard applied must be able to supply reliable and credible evidence of compliance with the legislation in force in the country of harvest.

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6. Who will enforce the EU Timber Regulation?

The EU Member States will be responsible for implementing and enforcing the EU Timber Regulation. The European Commission is responsible for monitoring its effective and uniform implementation by the Member States.

EU Member States have designated Competent Authorities responsible for implementation of the EU Timber Regulation. Their tasks include carrying out checks on operators, monitoring organisations and traders, and maintaining and communicating records of their actions.

Member States have to enact penalties for infringements of the EU Timber Regulation, which have to be effective, proportionate and dissuasive.

7. What are the EU, the USA and Australia doing to harmonise 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. Hence, their requirements for documentation and systems will differ too. The important differences may lie in the details.

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

Phasing in of products as set out in the Lacey Act is not foreseen.

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 to the EU TR (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32010R0995:EN:NOT>).

The EU may adopt further delegated acts to amend or supplement the list of timber and timber products mentioned in the Annex to the EU Timber Regulation, after it is operational. If developments regarding technical characteristics or end-user and production processes require amendments to the legislation, such changes can be considered and specified in further delegated acts.

For comments or questions, please contact EFI at: info@euflegt.efi.int

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