



EU TIMBER REGULATION PREPARING FOR THE REGULATION

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If you would like to find out more about how Proforest can help you comply with the EU Timber Regulation, please get in touch on **+44 (0)1865 243439** or email **info@proforest.net**

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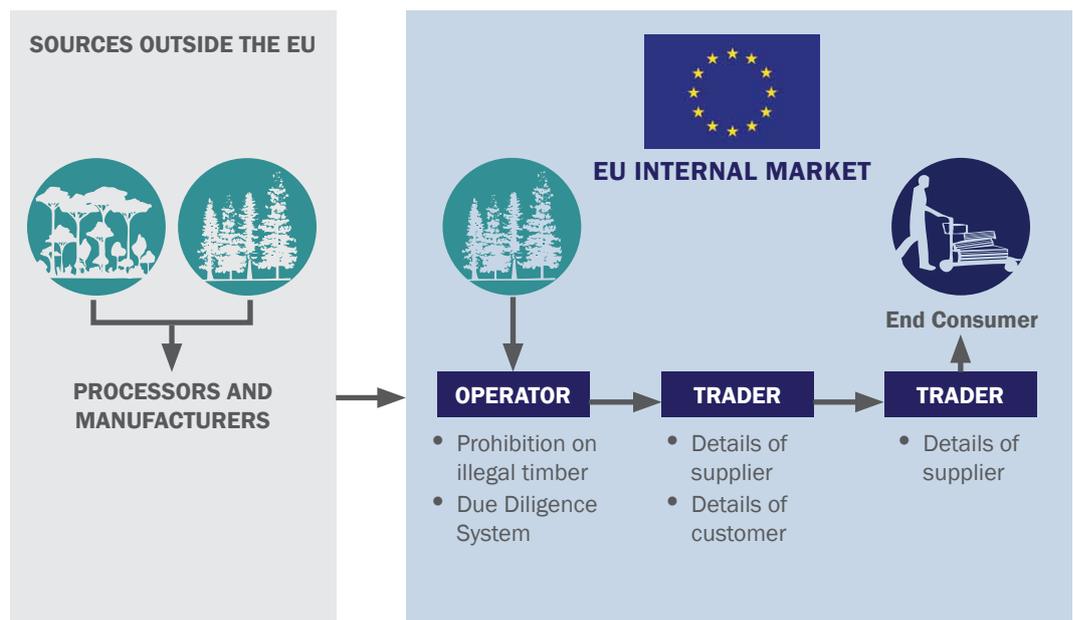
In March 2013 the requirements of the EU Timber Regulation will come into force. This new legislation prohibits placing timber on the EU market if it was illegally harvested. To achieve this, it sets out procedures which those trading timber within the EU must put in place to minimise the risk of illegal timber being sold.

This Briefing Note provides guidance on preparing for the regulation but it is very important to note that the detailed rules for implementation are still being developed by the European Commission and Member States so things may change¹. In particular, the secondary legislation setting out the rules for implementation in more detail is only due to be finalized in 2012. Further information can be found at http://ec.europa.eu/environment/forests/timber_regulation.htm.

Scope of activities and products

The Regulation covers trade in timber products on the EU market and applies to both imported and domestically produced timber. The exact scope of products covered by the legislation is listed in an annex to the Regulation and covers most timber products commonly traded in the EU except for recycled products.

Figure 1: Key elements of supply chains of timber products in the EU



¹ The guidance in this Briefing Note has been developed based on currently available information from the text of the EU Timber Regulation and Proforest's experience of working with timber legality. However, the detailed rules for implementation are still being developed and may differ from the guidance in this Briefing Note. Therefore it is important to confirm any interpretation by reference to the text of the regulation and the information provided by the European Commission which is definitive. Copies of the regulation and updates on the current development of the implementation rules can be obtained from the European Commission website at http://ec.europa.eu/environment/forests/timber_regulation.htm

Regulation requirements in a nutshell

The regulation applies to two types of organisation within the EU timber supply chain. The bulk of the requirements apply to whoever **first places the timber product on the EU market**. This organisation is referred to as the **operator**. In addition to requirements for operators, there are also requirements for **traceability** for all the other participants in the supply chain prior to sale to the final consumer. These organisations are all referred to as traders.

Requirements for operators: It is **prohibited** to place timber on the EU market if it was illegally harvested. Anyone placing timber or timber products onto the EU market for the first time must implement a due diligence system to mitigate the risk that the timber was illegally harvested.

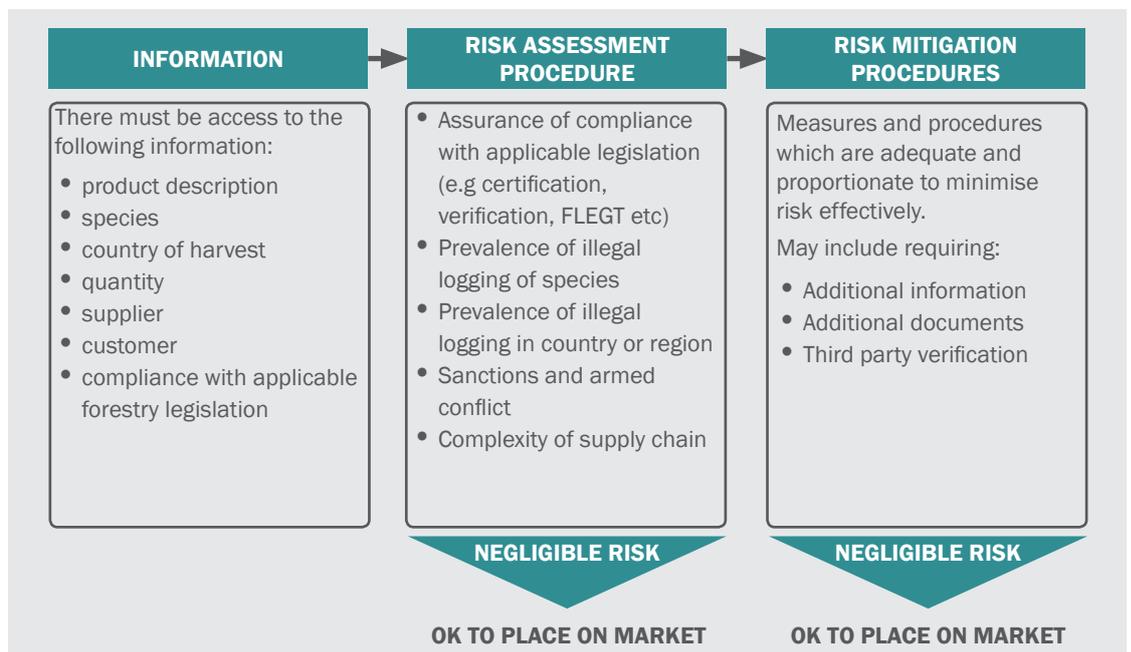
The regulation sets out the basic components of the due diligence system which must be in place. This will be further elaborated by secondary legislation being developed by the European Commission due to be finalised by June 2012. The **due diligence system** consists of three main components (see Figure 2):

- **Information:** There are specific requirements for the type of information which must be available including information on the product and supplier, the country where the timber was harvested and information on compliance with applicable forestry legislation in the country of harvest. It is important to note that the operator does not have to have all this information directly, but needs to have ready access to it in order to make a risk assessment.
- **Risk assessment procedure:** Each operator is required to have a risk assessment procedure which takes into account the information collected about the product and also relevant risk criteria. Risk criteria include indicators of high risk such as prevalence of illegal harvesting in the country of harvest or long and complex supply chains, as well as indicators of low risk such as certification or credible verification of legality.
- **Risk mitigation procedures:** Where the risk assessment indicates that there is some risk of a product containing illegally harvested timber, risk mitigation procedures must be put in place. The regulation does not provide much guidance on what these should be but does indicate that they should be adequate and proportionate and might involve requesting further information.

Requirements for traders: Any trader purchasing and selling timber products which have already been placed on the internal market (see Figure 1), must keep records for 5 years, which identify:

- The operator or trader who supplied the timber and timber products
- Where applicable, the trader to whom the timber and timber products were sold.

Figure 2: Components of a due diligence system



Operators can either develop and implement their own due diligence system, or they can utilise a due diligence system developed and monitored by a Monitoring Organisation (see Box 1).

Box 1: Monitoring organisations

Monitoring organisations will be private entities (e.g. companies, associations) which can provide operators with a ready-made due diligence system. The regulation specifies that they must be legally established within the EU, have appropriate expertise and be free of any conflicts of interest. Monitoring organisations will:

- Develop a functional due diligence system;
- Grant operators the right to use the due diligence system;
- Verify the proper use of the system by the operators;
- Take appropriate action in case of a failure by an operator;

Monitoring organisations must be formally recognised by the European Commission. The procedural rules for this recognition will be developed by the European Commission by March 2012.

Stages in a timber supply chain



Photo source:
clockwise from top left:
Leszek Nowak, Stephn Jansson,
Matt Adams, Carlo Spencer,
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Enforcement

A **Competent authority** will be appointed in each Member State to verify that the law is complied with. Member states must identify the Competent Authority by June 2011 while the European Commission will develop further rules on the nature and frequency of the checks to be carried out by June 2012.

Each Member State has to develop national rules on **Penalties** applicable for infringements of the provisions of the Regulation. The penalties developed must be effective, proportionate and dissuasive and may include:

- a. fines proportionate to the environmental damage, the value of the timber or timber products concerned and the tax losses and economic detriment resulting from the infringement;
- b. seizure of the timber and timber products concerned;
- c. immediate suspension of authorisation to trade.

Implementing the Regulation

Complying with the regulation will be very straightforward for some organisations, while for others it will be more challenging. This section provides some basic advice on preparing to meet the regulation, followed by a series of case studies to provide practical illustrations.

1 Am I an operator or a trader?

The starting point for any organisation in the EU is to decide whether it is an operator or a trader since it is only operators which need to implement a due diligence system. Operators are defined as the organisation which first places a timber product on the EU market, whether the timber was imported or grown domestically. The examples below should provide some guidance.

<p>My company buys furniture from suppliers in China and Vietnam and sells it to retailers in several EU countries</p>	<p>You are an operator as you are the first participant in the supply chain to place the furniture on the EU market</p>
<p>My company sells furniture supplied by a company in Italy but the timber is US hardwood imported by the Italian manufacturing company</p>	<p>You are a trader since you are buying from a company in the EU</p>
<p>My company imports sheet materials from suppliers all over the world including China, US, Finland and France and sells throughout the EU</p>	<p>You are both an operator and a trader. For the material you import from outside the EU you are the first to place on the EU market making you an operator. For the material you buy from suppliers in other EU countries you are a trader</p>
<p>I am part of a purchasing team of a large retailer. We buy mainly from China. The purchasing contracts are directly between my company and the Chinese suppliers, but shipping, customs and import in the EU and distribution to the different warehouses is all undertaken by an agent. We sell direct to end consumers.</p>	<p>You are an operator. Although an agent is involved they do not buy or sell the products which are sold directly from the Chinese manufacturer to you. Therefore, you are the first to place the products on the EU market</p>
<p>I buy logs for a small sawmill from a local harvesting contractor who buys standing timber, harvests it and sells logs.</p>	<p>You are a trader. The harvesting contractor is the operator as they are the first to place timber on the EU market (standing timber is not included in the regulation so it is the first point of sale after cutting)</p>
<p>I own 50 ha of forest which I harvest at irregular intervals. Depending on circumstances at the time, I may harvest myself and sell the logs or I may sell the trees standing to a logging contractor.</p>	<p>You are sometimes an operator. When you harvest yourself and sell logs you are an operator placing timber on the EU market. When you sell the trees standing the Timber Regulation does not apply directly to you as standing timber is not included. However, you may need to provide the harvesting contractor with the information he requires for his due diligence system as he will be the one placing the timber on the market, thus the operator.</p>

2 What do traders have to do?

If you are a trader then you need to keep information on who you buy timber products from and who you sell to. Almost all organisations keep records of this information anyway so it is unlikely to 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.

3 What do operators have to do?

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).

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:** the quantity supplied, name of supplier, name of customer to whom product is sold, description of the product. Most companies already routinely keep this type of information.
- **Information on the species and forest:** the common name of the tree species, the country of harvest (and the scientific name, region or concession if applicable) and evidence of compliance with applicable legislation in the forest. This information 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. There are two components the risk assessment procedure needs to address:

- **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 made with low-risk timber which can be placed on the market without further work. The second stage identifies timber which is higher risk and the risk mitigation procedures will be necessary. (See guidance on the following pages)

Manufacturing timber products



Photo source: From left to right
© Alex Potemkin and
George Peters

STAGE 1 - IDENTIFYING LOW-RISK PRODUCTS	
<p>The product is certified to a scheme which delivers the requirements of the regulation</p>	<p>If the product is certified under a certification scheme which provides adequate assurance of compliance with applicable legislation then the risk is low. Both the FSC and PEFC schemes are likely to provide assurance of low 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.</p> <p>FSC and PEFC certification schemes certify both forest management and chain of custody thus addressing both legal harvesting and traceability.</p> <p>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.</p>
<p>The timber in the product is verified as legal by a scheme which delivers the requirements of the regulation</p>	<p>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 low. 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.</p> <p>Not all verification schemes include chain of custody control so this may be needed.</p>
<p>The product is made with FLEGT-licenced timber or timber with a CITES permit</p>	<p>The regulation states that timber with a FLEGT-licence or CITES permit automatically meets the requirements of the legislation.</p> <p>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 .</p>
<p>The product is made with timber harvested in a country with negligible levels of illegality</p>	<p>There are many countries where law enforcement is robust and the risk of timber being harvested illegally is very low. Where this can be shown (eg via a credible independent review of legal enforcement) then products made with timber from that country can be considered low risk. Adequate chain of custody controls will be needed.</p>
<p>The product is accompanied by original documentation demonstrating legality</p>	<p>There are some situations where it is possible to collect documents demonstrating legality in the forest of origin (e.g. concession agreement, management plan and government inspection reports) and evidence of control of the supply chain. This approach works best where the timber is coming from a single source (e.g. one forest concession) and the supply chain is short (e.g. one sawmill).</p>

STAGE 2 - IDENTIFYING PRODUCTS WHERE RISK MITIGATION IS NEEDED	
The species from which the product is made is subject to illegal harvesting	<p>There are some species, particularly rare or valuable species, which are particularly subject to illegal harvesting. Examples include mahogany and rosewood. 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.</p> <p>More information is available from www.illegal-logging.org and www.globalforestregistry.org</p>
The country where the timber was harvested has a risk of illegality	<p>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.</p> <p>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.</p> <p>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.</p>
There are sanctions against the country of harvest	<p>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.</p> <p>Timber from countries with current sanctions should not be placed on the EU market.</p>
The supply chain is long or complicated	<p>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.</p> <p>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.</p> <p>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).</p>
The product is a composite made with timber from many different sources	<p>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.</p> <p>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.</p>
No information is available on the source of the timber in the product	<p>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:</p> <ul style="list-style-type: none"> • 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 low 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. Some examples are provided in the accompanying scenarios.
- **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 are low risk can take some time so it is important to begin 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.

Useful Weblinks:

- European Commission website:
http://ec.europa.eu/environment/forests/timber_regulation.htm
- European Commission presentation on EU Timber Regulation:
http://www.tft-forests.org/downloads/Oct_10_ITTFD_S_Atanasova.pdf
- Chatham House Illegal Logging website:
http://illegal-logging.info/approach.php?a_id=120
- Risk of sourcing controversial timber:
<http://www.globalforestregistry.org>
- Proforest legality verification systems overview:
www.proforest.net/legality-verification-systems
- European Forest Institute:
http://www.euflegt.efi.int/portal/home/eu_timber_regulation/
- US Lacey Act (similar legislation):
http://www.aphis.usda.gov/plant_health/lacey_act/index.shtml
- Forest Legality Alliance:
<http://www.wri.org/fla/>



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Front cover supply chain images from left to right: Evan Spellman, Andreas Beer, Matt Adams and Timber Floors/flickr

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