

Due diligence, certification and enforcement of the EU Timber Regulation

1. 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 chain-of-custody 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.

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 Regulation (EU) No 995/2010 (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:295:0023:0034:EN:PDF>) (EU Timber Regulation) and the Commission Implementing Regulation (EU) No 607/2012 (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:177:0016:0018:EN:PDF>).

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

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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.

a. Certification by the Forest Stewardship Council (FSC), the Programme for the Endorsement of Forest Certification (PEFC) as well as other third part 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. 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 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. 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.

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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 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.

5. 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 the 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.

6. 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.

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.

7. 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 December 15, 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 to the EU TR (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32010R0995:EN:NOT>).



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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.

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