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**GUIDANCE DOCUMENT**

**FOR THE EU TIMBER REGULATION**

## GUIDANCE DOCUMENT

### FOR THE EU TIMBER REGULATION<sup>1</sup>

#### INTRODUCTION

Regulation (EU) No 995/2010 laying down the obligations of operators who place timber and timber products on the market<sup>2</sup> (the EU Timber Regulation or EUTR) makes it possible for the Commission to adopt non-legislative measures that ensure uniform implementation. The measures adopted so far are:

- A delegated Regulation that specifies the requirements for recognition of monitoring organisations and sets out a procedure for awarding and withdrawing this recognition,<sup>3</sup> and
- An implementing Regulation that sets out detailed rules of the due diligence system and the frequency and nature of checks to be carried out on monitoring organisations by competent authorities in the Member States.<sup>4</sup>

Following consultations with stakeholders, experts from Member States and members of the FLEGT (Forest Law Enforcement, Governance and Trade) Committee, there was consensus that certain aspects of the EU Timber Regulation needed clarification. It was agreed that a guidance document was necessary to address issues related to the EU Timber Regulation and its non-legislative acts. The guidance document was discussed and developed in cooperation with the FLEGT Committee.

This guidance document is not legally binding; its sole purpose is to provide information on certain aspects of the EU Timber Regulation and the two Commission non-legislative acts. It does not replace, add to or amend the provisions of Regulation (EU) No 995/2010, Commission Regulation (EU) No 363/2012, or Commission Regulation (EU) No 607/2012, which remain as the legal basis that must be applied. This guidance document should not be considered in isolation; it must be used in conjunction with the legislation, and not as a ‘stand-alone’ reference.

This guidance document is, however, useful reference material for anyone who must comply with the EUTR as it clarifies parts of the legislative text that are difficult to understand. It can also guide national competent authorities and enforcement bodies in the process of implementing and enforcing the EUTR legislative package.

The issues addressed in this document were decided during the consultation process for the two Commission non-legislative acts and after numerous bilateral meetings with stakeholders. More issues can be added after there is more experience in applying the EUTR, and in this case the document would be revised accordingly.

#### **1. DEFINITION OF ‘PLACING ON THE MARKET’**

<b>Relevant legislation: <i>EUTR - Article 2 Definitions</i></b>
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Under Article 2, timber is considered to be ‘placed on the market’ if it is supplied:

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<sup>1</sup> Nothing in this guidance document either replaces or substitutes direct reference to the instruments described and the Commission does not accept any liability for any loss or damage caused by errors or statements made in it.

Only the European Court of Justice can make final judgments on the Regulation’s interpretation.

<sup>2</sup> OJ L 295, 12.11.2010, p. 23.

<sup>3</sup> OJ L 115, 27.4.2012, p. 12.

<sup>4</sup> OJ L 177, 7.7.12, p. 16.

- **On the internal market** — this means that the timber 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 subject to special customs procedures (e.g. temporary importation, inward processing, processing under customs control, customs warehouses, free zones), in transit or being re-exported are not considered to be placed on the market.
- **For the first time** — timber products already placed on the EU market and products derived from timber products already placed on the market are not covered. 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. 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 a series.
- **In the course of a commercial activity** — timber products must be placed on the market for the purpose of processing or for distribution to commercial or non-commercial consumers, or for use in the business of the operator itself. The Regulation does not impose requirements on non-commercial consumers.

All the above elements must be present 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 its commercial activity. To make it possible to clearly, logically and consistently identify operators, it is necessary to define them according to how their timber is made available on the EU market, which varies depending on whether the timber is harvested inside or outside the EU.

Where timber is being harvested in the EU or imported into the EU for the first time in the course of a commercial activity, the following definitions of ‘operator’ apply:

(a) For timber harvested within the EU, the operator is the entity that distributes or uses the timber once it has been harvested.

(b)(i) For timber harvested outside the EU, the operator is the entity acting as the importer when the timber is cleared by EU customs authorities for free circulation within the EU. In the majority of cases, the importer can be identified as the named or numbered “Consignee” in Box 8 of the customs declaration document (the Single Administrative Document).

(b)(ii) For timber or timber products imported to the EU, the definition of ‘operator’ is independent of the ownership of the product, or other contractual arrangements.

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.

Annex 1 includes examples of how the interpretation of ‘placing on the market’ works in practice.

The EUTR has no retroactive effect. This means that the prohibition does not apply to timber and timber products placed on the market before its entry into force on 3 March 2013. However, during checks performed by national competent authorities, operators must show that they have set up a due diligence system that has been operational since 3 March 2013. Therefore, it is important that operators are able to identify their supply before and after that date. The traceability obligation for traders also applies from that date.

## 2. DEFINITION OF ‘NEGLIGIBLE RISK’

<b>Relevant legislation: <i>EUTR - Article 6 – Due diligence systems</i></b>
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Due diligence requires the operator to gather information about the timber and timber products it is handling and about its suppliers in order to carry out a full risk assessment. Article 6 specifies the two categories of information that must be assessed:

- Article 6(1)(a) — specific information related to the timber or timber product itself: a description, the country of harvest (and, where applicable, the sub-national region and concession), the supplier and trader, and documentation showing compliance with applicable legislation.
- Article 6(1)(b) — general information that provides the context for assessing the product-specific information, on the prevalence of illegal harvesting of specific tree species, the prevalence of illegal harvesting practices in the place of harvest, and the complexity of the supply chain.

While the general information provides operators with the context in which to evaluate the level of risk, the product specific information is necessary to determine the risk linked to the timber product itself. This means that if the general information shows potential risks, special attention must be given to gathering product-specific information. If the product is derived from several timber sources, it is necessary to assess the risk for each component or species.

The level of risk can only be assessed on a case-by-case basis, as it depends on a number of factors. Although there is not a single accepted system for risk assessment, as a general rule the operator has to address the following questions:

- **Where was the timber harvested?**  
Is illegal logging prevalent in the country, sub-region or concession from which the timber originates? 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 and exports?
- **Is the level of governance a concern?**  
The level of governance might undermine the reliability of some documents showing compliance with applicable legislation. Therefore, the country’s corruption level, business risk indices, and other governance indicators should be considered.
- **Are all documents showing compliance with applicable legislation made available by the supplier, and are they verifiable?**  
If all relevant documents are readily available, it is more likely that the product’s supply chain is well established. The operator can be confident that the documents are genuine and reliable.
- **Are there indications of a company in the supply chain being involved in practices related to illegal logging?**  
There is a higher risk that timber purchased from a company that has been involved in practices related to illegal logging will have been illegally harvested.
- **Is the supply chain complex?<sup>5</sup>**  
The more complex the supply chain, the harder it may be to trace the origins of a product’s timber back to the logging source. Failure to obtain the necessary information at any point in the supply chain may increase the possibility of illegally harvested timber entering the chain.

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<sup>5</sup> For clarification of the ‘complexity of supply chain’ concept, see section 3.

Negligible risk should be understood to apply to timber supply if a full assessment of both the product-specific and the general information shows no cause for concern.

The list of risk assessment criteria is not exhaustive; operators may choose to add further criteria if these would help determine the likelihood that a product's timber had been illegally harvested, or if it would help prove legal harvesting.

### **3. CLARIFICATION OF 'COMPLEXITY OF THE SUPPLY CHAIN'**

**Relevant legislation: *EUTR - Article 6 - Due diligence systems***

'Complexity of the supply chain' is explicitly listed among the risk assessment criteria in Article 6 of the EUTR and is therefore relevant to the risk assessment and risk mitigation part of the due diligence exercise.

The rationale underpinning this criterion is that tracing timber back to its place of harvest (country of harvest and, where applicable, the sub-national region and concession of harvest) may be more difficult if the supply chain is complex. Failure to obtain the necessary information at any point in the supply chain can increase the possibility of illegally harvested timber entering the supply chain. However, the length of the supply chain should not be considered as a factor of elevated risk. What matters is the possibility of tracing a product's timber back to its place of harvest. The level of risk will increase if the complexity of the supply chain makes it difficult to identify the information required under Article 6(1)(a) and (b) of the EUTR. The existence of unidentified steps in the supply chain can lead to the conclusion that the risk is non-negligible.

The complexity of the supply chain increases with the number of processors and intermediaries between the place of harvest and the operator. Complexity may also increase when more than one species or timber source is used in a product.

In order to assess the complexity of the supply chain, operators may use the following questions (note that the list is not exhaustive):

- ✓ Were there several processors and/or steps in the supply chain before a particular timber product was placed on the EU market?
- ✓ Have the timber and/or timber products been traded in more than one country before they were placed on the EU market?
- ✓ Does the product's timber to be placed on the market consist of more than one tree species?
- ✓ Does the product's timber to be placed on the market come from different sources?

### **4. CLARIFICATION OF THE REQUIREMENT FOR DOCUMENTS SHOWING TIMBER'S COMPLIANCE WITH APPLICABLE LEGISLATION**

**Relevant legislation: *EUTR - Article 2 and Article 6 - Due diligence systems***

The rationale behind this obligation is that the basis for defining what constitutes illegally harvested timber is the legislation of the country in which the timber was harvested.

Under the last indent of Article 6(1)(a) of the EUTR, documents or other information showing compliance with applicable legislation in the country of harvest must be collected as part of the due diligence obligation. It is important to note that documentation must be collected for the purposes of the risk assessment and should not be viewed as an independent requirement. In order to be able to exercise due diligence in accordance with the EUTR, operators must be able to evaluate the content and reliability of the documents they collect and to show that they understand the links between the different

information in the documents.

The EUTR takes a flexible approach by listing a number of legislative areas without specifying particular laws, as these differ from country to country and may be subject to amendments. In order to obtain documents or other information showing compliance with the applicable legislation in the country of harvest, operators must first of all be aware of what legislation exists in the particular country. In this effort, they may be supported by the Member States' Competent Authorities in collaboration with the European Commission. They may also make use of the services of monitoring organisations (MOs). In cases where operators are not using services of a MO, they may seek assistance from organisations with specialist knowledge of the forest sector in specific countries where timber and timber products are harvested

The obligation to obtain documents or other information should be interpreted broadly, as there are different regulatory regimes in the various countries, and not all of them require the issuing of specific documentation. Therefore, the obligation should be read as including: official documents issued by competent authorities, documents showing contractual obligations, documents showing company policies, codes of conduct, certificates issued by third-party-verified schemes, etc. Documents and information may be provided in hard copy or in electronic form.

Actors in the supply chain should take reasonable measures to satisfy themselves that such documents are genuine, depending on their assessment of the general situation in the country or region of harvest.

The following table gives some concrete examples which are for illustration purposes only and cannot be considered compulsory or exhaustive:

1. Documentation on rights to harvest timber within legally gazetted boundaries	Generally available documents in hard copy or electronic form, e.g. documentation on ownership/rights to land use/contract or concession agreements
2. Payments for harvest rights and timber, including duties related to timber harvesting	Generally available documents in hard copy or electronic form, e.g. contracts, bank notes, VAT documentation, official receipts, etc.
3. Timber harvesting, including environmental and forest legislation including forest management and biodiversity conservation, where directly related to timber harvesting.	Official audit reports; environmental clearance certificates; approved harvest plans; coupe closure reports; codes of conducts; publicly available information showing rigorous legislative supervision and timber tracking and control procedures; official documents issued by competent authorities in a country of harvest; etc.
4. Third parties' legal rights to use and tenure affected by timber harvesting	Environmental impact assessments; management plans; environmental audit reports; social responsibility agreements; specific reports on tenure and rights claims and conflicts.
5. Trade and customs, in so far as the forest sector is concerned	Generally available documents in hard copy or electronic form, e.g. contracts, bank notes, trade notes, import licenses, export licenses, official receipts for export duties, export ban lists, export quota awards, etc.

The documentation collected must be assessed as a whole, with traceability throughout the supply chain. All information must be verifiable. In all cases, the operator must check for example:

- Whether the different documents are in line with each other and with other information available,
- What exactly each document proves,
- On which system (e.g. control by authorities, independent audit, etc.) the document is based,
- The reliability and validity of each document, meaning the likelihood of it being falsified or issued unlawfully.

In addition, the operator must also take into account the risk of corruption, specifically in relation to the forestry sector. In cases where the risk of corruption is not negligible, even official documents issued by authorities cannot be considered reliable. Various sources provide generally available information about the level of corruption in a country or subnational region. The most common used is the Transparency International's Corruption Perceptions Index (CPI), but other similar indices or relevant information may also be used.

A low CPI score shows that further verification may be required, meaning that special care is necessary when checking the documents as there might be reason to doubt their credibility. The operator must be aware that a country's CPI score is an average indication of the public's perception of corruption, and as such might not directly show the specific situation in the forestry sector. It is also possible that the risk of corruption varies between subnational regions within a country.

The higher the risk of corruption in a specific case, the more it is necessary to get additional evidence to mitigate the risk of illegal timber entering the EU market. Examples of such additional evidence may include third-party-verified schemes (see section 6 of this guidance document), independent or self-conducted audits, or timber tracking technologies (e.g. with genetic markers or stable isotopes).

## **5A. CLARIFICATION OF THE PRODUCT SCOPE — PACKAGING MATERIALS**

### **Relevant legislation: *EUTR - Article 2 and Annex to the EU Timber Regulation***

The Annex sets out the 'timber and timber products as classified in the Combined Nomenclature<sup>6</sup> set out in Annex I to Council Regulation (EEC) No 2658/87, to which this Regulation applies'.

HS Code 4819 covers: '*Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibres; box files, letter trays, and similar articles, of paper or paperboard, of a kind used in offices, shops or the like*'.

- **If any of the above articles is placed on the market as a product in its own right, rather than as packaging for another product, it is covered by the Regulation and therefore due diligence must be applied.**
- **If packaging, as classified under HS code 4415 or 4819, is used to 'support, protect or carry' another product, it is *not* covered by the Regulation.**

This means that the above restriction to HS Code 4415 within the annex to the EUTR also applies to HS Code 4819.

Within these categories, there is a further distinction between packaging that is considered to give a product its 'essential character' and packaging which is shaped and fitted to a specific product but is not an integral part of the product itself. General rule 5 on interpreting the Combined Nomenclature<sup>7</sup> clarifies these differences, and examples are presented below. However, these additional distinctions are only likely to be relevant to a small proportion of goods subject to the Regulation.

<sup>6</sup> [http://ec.europa.eu/taxation\\_customs/customs/customs\\_duties/tariff\\_aspects/combined\\_nomenclature/index\\_en.htm](http://ec.europa.eu/taxation_customs/customs/customs_duties/tariff_aspects/combined_nomenclature/index_en.htm).

<sup>7</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2015:076:FULL&from=EN>.

**In summary, the following is covered by the Regulation:**

- Packaging material with HS codes 4415 or 4819 placed on the market as products in their own right;
- Containers with HS codes 4415 or 4819 which give a product its essential character: e.g. decorative gift boxes.

**The following is exempt from the Regulation:**

- ✓ Packaging material presented with goods inside and used exclusively to support, protect or carry another product (which may or may not be a wood-based product).

**5B. CLARIFICATION OF THE PRODUCT SCOPE – WASTE  
AND RECOVERED PRODUCTS**

**Relevant legislation: EUTR - Recital (11) and Article 2 + Directive 2008/98/EC - Article 3(1)**

This exemption applies to:

- ✓ Timber products of a kind covered by the Annex, produced from material that has completed its lifecycle and would otherwise have been discarded as waste (e.g. timber retrieved from dismantled buildings, or products made from waste wood).

This exemption **does not** apply to:

- ✓ By-products of a manufacturing process that involves material which has *not* completed its lifecycle and would otherwise have been discarded as waste.

**Scenarios**

**Are wood chips and sawdust produced as by-products of sawmilling subject to the Regulation?**

Yes. However, wood chips or other timber products produced from material which had previously been placed on the internal market are not subject to the Regulation's requirements related to 'placing on the market' (Article 2(b) EUTR, final sentence).

**Is furniture made from timber recovered after the demolition of a house subject to the Regulation?**

No, the material in these products has completed its lifecycle and would otherwise have been discarded as waste.

**6. THE ROLE OF THIRD-PARTY-VERIFICATION SCHEMES IN RISK  
ASSESSMENT AND RISK MITIGATION<sup>8</sup>**

**Relevant legislation: EUTR - Recital (19) and Article 6 – Due diligence system + Commission implementing Regulation (EU) No 607/2012 - Article 4 – Risk assessment and mitigation**

**A. Background information**

Voluntary forest certification and timber legality verification schemes are often used to meet specific customer requirements for timber products. Typically these include a standard that describes management practices that must be implemented within a forest management unit, comprising: broad principles, criteria and indicators; requirements for checking compliance with the standard and awarding certificates; and separate chain-of-custody certification to provide assurance along the supply chain that a product only contains timber, or a specified percentage of timber, from certified forests.

When an organisation that is not the forest manager, manufacturer or trader, nor the customer requiring certification, carries out an assessment and awards a certificate, this is known as third-party certification.

<sup>8</sup> Note that certification is not given the same status as FLEGT licenses and CITES permits (section 10 below).



Certification schemes generally require third-party organisations to be able to demonstrate their qualifications to perform assessments through a process of accreditation that sets standards for the skills of auditors and the systems that the certification organisations must adhere to. The International Organisation for Standardisation (ISO) has published standards covering both requirements for certification bodies and assessment practices. Proprietary timber legality verification schemes, though often provided by organisations that offer accredited certification services, generally do not require accreditation themselves.

A requirement for compliance with legislation governing the management of the forest management unit is generally part of forest management certification standards. Systems management standards, such as those for environmental management or quality management, generally do not include such a requirement, or the latter might not be rigorously checked in assessment.

## **B. Guidance**

In considering whether to make use of a certification scheme or legality verification as assurance that the timber in a product had been legally harvested, an operator must determine whether the scheme incorporates a standard that includes all the applicable legislation. This requires some knowledge of the scheme the operator is using and how it is applied in the country where the timber was harvested. Certified products generally carry a label with the name of the certification organisation that has set the criteria for the certificate and has set the requirements for the auditing process. Such organisations will normally be able to provide information on coverage of the certification and how it was applied in the country where the timber was harvested, including such details as the nature and frequency of field audits.

The operator should be satisfied that the third-party organisation that issued a certificate was sufficiently qualified and is in good standing with the certification scheme and the relevant accreditation body. Information about how schemes are regulated can usually be obtained from the certification scheme.

Some schemes allow certification when a specified percentage of the timber in a product has met the full certification standard. This percentage is usually stated on the label. In such cases, it is important that the operator obtains information about whether checks on the non-certified portion have been performed and whether those checks provide adequate evidence of compliance with the applicable legislation.

Chain-of-custody certification may be used as evidence that no unknown or non-permitted timber enters a supply chain. These are generally based on ensuring that only permitted timber is allowed to enter the supply chain at ‘critical control points’, and a product can be traced to its previous custodian (who must also hold chain-of-custody certification) rather than back to the forest where it was harvested. A product with chain-of-custody certification may contain a mix of certified and other permitted material from a variety of sources. When using chain-of-custody certification as evidence of legality, an operator should ensure that permitted material complies with applicable legislation and that controls are sufficient to exclude other material.

It is important to note that an organisation may hold chain-of-custody certification as long as it has systems in place to segregate certified, and the allowed percentage of, permitted material and non-permitted material, even if it is not producing any certified product at that time. When operators rely on certification as assurance and purchase from suppliers with chain-of-custody certification, they must check that the chain of custody certification covers the specific product they are purchasing.

In the process of assessing the credibility of a third-party-verification scheme, operators may use the following questions (note that the list is not exhaustive):

- ✓ Are all requirements under Article 4 of the Commission implementing Regulation (EU) No 607/2012 fulfilled?
- ✓ Is the certification or other third-party-verification scheme compliant with international or European

- standards (e.g. the relevant ISO-guides or ISEAL codes)?
- ✓ Are there substantiated reports about possible shortcomings or problems of the third-party-verification schemes in the specific countries from which the timber or timber products are imported?
  - ✓ Are the third parties that perform the checks and verifications referred to under Article 4 (b)(c) and (d) of the Commission implementing Regulation (EU) No 607/2012 independent accredited organisations?

## **7. REGULAR EVALUATION OF A DUE DILIGENCE SYSTEM**

**Relevant legislation: *EUTR - Article 4 – Obligations of operators***

A ‘due diligence system’ can be described as a documented, tested, step-by-step method that includes controls and aims to produce a consistent desired outcome in a business process. It is important that an operator that uses its own due diligence system evaluates this system at regular intervals to ensure that those responsible are following the procedures that apply to them and that the desired outcome is being achieved. Good practice suggests that such an evaluation should be conducted annually.

The evaluation can be carried out by someone within the organisation (ideally independent from those carrying out the procedures) or by an external body. It should identify any weaknesses and failures and the organisation’s management should set deadlines for addressing them.

In the case of a timber due diligence system, the evaluation should for example check if there are documented procedures:

- For collecting and recording key information about supplies of timber product to be placed on the market,
- For assessing the risk of any component of the product containing illegally harvested timber,
- Describing proposed actions to take according to the level of risk.

The evaluation should also check if those who are responsible for carrying out each step in the procedures both understand and are implementing them, and that there are adequate controls to ensure that the procedures are effective in practice (i.e. that they identify and result in the exclusion of risky timber supplies).

## **8. COMPOSITE PRODUCTS**

**Relevant legislation: *EUTR - Article 6(1)***

When fulfilling this ‘access to information’ obligation for composite products or products with a composite wood-based component, the operator needs to get information on all virgin material in the mix, including the species, the location where each component was harvested, and the legality of origin of those components.

It is often difficult to identify the precise origin of all components of composite timber products. This is especially true for reconstituted products such as paper, fibreboard and particleboard, where identifying species may also be difficult. If the species of wood used to produce the product varies, the operator will have to provide a list of each species of wood that may have been used to produce the wood product. The species should be listed in accordance with internationally accepted timber nomenclature (e.g. DIN EN 13556 ‘Nomenclature of timbers used in Europe’, Nomenclature Générale des Bois Tropicaux, ATIBT (1979)).

Where it can be established that a component in a composite product had already been placed on the market prior to its incorporation into the product, or that it is made from material which has completed its lifecycle and would otherwise have been discarded as waste (see 5 b), a risk assessment is not required

for that component. For example, if an operator manufactures and sells a product that contains a mix of wood chips part of which originate from timber products already placed on the market in the EU and part from virgin timber it has imported into the EU, risk assessment is only required for the imported portion. Example descriptions of operator supplies are included in Annex II.

## **9. FOREST SECTOR**

**Relevant legislation: *EUTR - Article 2***

This refers exclusively to compliance with laws and regulations covering the export of timber and timber products in countries where the timber was harvested. The requirement relates to export from the country of harvest and not the country of export to the EU. For example, if timber was exported from country X to country Y and then from country Y to the EU, the requirement would apply to the export from country X, and not from country Y to the EU.

The applicable legislation includes, but is not restricted to:

- Bans, quotas and other restrictions on the export of timber products, for example bans on the export of unprocessed logs or rough-sawn lumber,
- Requirements for export licences for timber and timber products,
- Official authorisation that may be required by entities exporting timber and timber products,
- Payment of taxes and duties applicable to timber product exports.

### **10A. TREATMENT OF CITES AND FLEGT-LICENSED TIMBER**

**Relevant legislation: *EUTR - Article 3***

The Regulation considers that timber and timber products covered by FLEGT licences or CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora) certificates fully meet its requirements. This means that:

- a) Operators who place products on the market covered by such documentation do not need to conduct due diligence on these products, apart from being able to demonstrate coverage by valid relevant documentation; and
- b) The competent authorities in the Member States will consider any such products to have been legally harvested, eliminating any risk of breaching the Regulation's provisions.

This is because legality verification controls – and hence due diligence – will have been carried out in the exporting country in accordance with the Voluntary Partnership Agreements between the country and the EU, and so operators can consider the timber concerned as risk-free.

### **10B. TREATMENT OF CITES-UNLISTED TIMBER PRODUCTS MADE OF CITES-LISTED TIMBER SPECIES**

**Relevant legislation: *EUTR - Article 3 + Council Regulation (EC) N° 338/97***

#### **CITES and the EU Wildlife Trade Regulations**

CITES is an inter-governmental agreement which aims to ensure that international trade in specimens of wild animals and plants does not threaten their survival. It accords varying degrees of protection to more than 30,000 species of animals and plants. CITES works by making international trade in specimens of selected species subject to certain controls. These include a licensing system that requires the authorisation of the import and (re-)export of species covered by the Convention.

Species covered by the Convention are listed in one of three Appendices, depending on the degree of protection required according to scientific assessments. Appendix I includes species currently threatened with extinction. Trade in specimens of these species is permitted only in exceptional circumstances. Appendix II includes species not necessarily threatened with extinction in the immediate term, but in which trade must be controlled in order to avoid ‘utilisation incompatible with their survival’. Appendix III contains species that are protected in at least one country which has asked the other CITES parties for assistance in controlling their trade.

In the EU, CITES is implemented through Regulations jointly known as the EU Wildlife Trade Regulations (WTR).<sup>9</sup> Council Regulation (EC) No 338/97 (the basic Regulation) lays down the provisions for the introduction into, export and re-export from, and movement within the EU of specimens<sup>10</sup> of species listed in four Annexes (A-D). Different regulatory controls apply, depending on the Annex in which a species is listed. Certain WTR provisions go beyond those laid down by CITES.

### The issue

The Appendices to CITES and the Annexes to Council Regulation 338/97 sometimes list only specific parts or derivatives of a species, or only specific populations of a species.<sup>11</sup> If an item or product is not covered by the provisions of Council Regulation 338/97 (for example, because of a limited listing in the Annexes), it is not regulated under the WTR. Article 3 of Regulation 995/2010 does not apply to such an item, so the item would not automatically be considered as legally harvested for the purposes of the Regulation.

The following table gives two specific examples:

<p>1) Annex B - <i>Swietenia macrophylla</i> (II) (Population of the Neotropics - includes Central and South America and the Caribbean) #6</p>	<p>For this species, only logs, sawn wood, veneer sheets and plywood are currently listed in Council Regulation 338/97 (Annex B). Furthermore, only the neo-tropical populations are covered, and trees growing for example in Indonesia (on plantations) are excluded. Introduction of these items from these populations into the EU must comply with the provisions under Council Regulation 338/97.</p>	<p><u>Only</u> logs, sawn wood, veneer sheets and plywood are covered by Council Regulation 338/97 and (if their introduction is compliant with the Regulation) are covered by the presumption of legality under Article 3 of Regulation 995/2010. All other products made from this species are not regulated under Council Regulation 338/97 and are not covered by the presumption of legality under Article 3 of Regulation 995/2010.</p>
<p>2) Annex B - <i>Swietenia mahagoni</i> (II) #5</p>	<p>For this species, only logs, sawn wood and veneer sheets are currently listed in Council Regulation 338/97</p>	<p><u>Only</u> logs, sawn wood and veneer sheets are covered by Council Regulation 338/97 and (if their</p>

<sup>9</sup> Currently these are: Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein; as last amended by Commission Regulation (EU) No 1320/2014 (the Basic Regulation); Commission Regulation (EC) No 865/2006 (as last amended by Commission Regulation (EU) 56/2015) laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97 (the Implementing Regulation); Commission Implementing Regulation (EU) No 792/2012 of 23 August 2012 (as amended by Commission Implementing Regulation (EU) 57/2015) laying down rules for the design of permits, certificates and other documents provided for in Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating the trade therein and amending Regulation (EC) No 865/2006 (the Permit Regulation) and Commission Implementing Regulation (EU) No 888/2014 prohibiting the introduction into the Union of specimens of certain species of wild fauna and flora. In addition, a Suspensions Regulation is in place to suspend the introduction into the EU of particular species from certain countries.

<sup>10</sup> The term ‘specimen’ has a specific meaning. It is defined in regulation 2(t) of Council Regulation 338/97.

<sup>11</sup> When a species is included in Annex A, B or C, all parts and derivatives of the species are also included in the same Annex unless the species is annotated to indicate that only specific parts and derivatives are included. Footnote 12 to Regulation 338/97 describes the marking system, using the symbol #.

	(Annex B). Introduction of these items into the EU must comply with the provisions under Council Regulation 338/97.	introduction is compliant with the Regulation) are covered by the presumption of legality under Article 3 of Regulation 995/2010. All other products made from this species (including plywood) are not regulated under Council Regulation 338/97 and are not covered by the presumption of legality under Article 3 of Regulation 995/2010.
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## Conclusion

The operator should pay particular attention to imports of products which are regulated by the EUTR but which are **not** regulated under the WTR (for example because of a limited listing in the relevant Annexes to Council Regulation 338/97). There is no presumption of legality for the import of such products under the EUTR.

The operator should therefore carry out due diligence for these, as for other imports. In cases of doubt, it should contact the relevant CITES management authorities of the relevant exporting countries, whose contact details can be found on the CITES website at <http://www.cites.org/cms/index.php/component/cp>.

The operator should bear in mind that Annexes to Council Regulation (EC) No 338/97 are amended at least every two to three years to reflect amendments to CITES Appendices I and II. Amendments of Annex C to Council Regulation (EC) No 338/97 (new listing or deletion) take place as appropriate, following amendments to CITES Appendix III (as communicated to the contracting parties by the CITES secretariat).

It should also be aware that some Member States have stricter rules than those set out in Council Regulation (EC) No 338/97 (e.g. they may require additional permits for the import and trade in species listed in Annexes C or D).

## 11. TREATMENT OF AGENTS

<b>Relevant legislation: EUTR - Article 2, Article 6, Article 10</b>
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### A. Background information

An ‘agent’ is a representative working in the name of, and for the account of, a principal to a contract. In the timber industry, an agent may act on behalf of the supplier or of the buyer. In all cases, the contractual partners are the supplier and the buyer, and the agent is an intermediary.

Some agents may be unable or unwilling to share certain details of their contacts or supply chains with the importer, often due to commercial reasons. In such cases, importers may be prevented from accessing the basic information necessary to exercise due diligence, as required for operators under the EUTR.

Agents may be based in a different country to that of the importer.

### B. Guidance

#### Agents and due diligence

Due diligence requirements for operators remain the same regardless of whether or not they use an agent. If an agent who provides timber to an operator is unable or unwilling to provide sufficient information for

that operator to exercise satisfactory due diligence, the operator should alter its supply lines to be able to do so.

### **Agents and operators based in different countries**

The responsibility of competent authorities to carry out checks on operators is not affected by the involvement of an agent. The operator should still be checked by the competent authority of the country in which the timber is placed on the market. If an operator is supplied with timber via an agent based in a different country, the competent authority responsible for checks on the operator may wish to cooperate with the competent authority, or other authorities, in the country where the agent is based, or elsewhere.

## **12. TREATMENT OF MONITORING ORGANISATIONS**

<b>Relevant legislation: EUTR - Article 8 + Commission Delegated Regulation (EU) 363/2012 - Article 8 + Commission Implementing Regulation (EU) 607/2012 - Article 6</b>
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### **1. Communication and coordination between monitoring organisations (MOs) and competent authorities (CAs)**

#### **A. Background information**

Effective communication between MOs and CAs can improve the work of both. If the CA knows which operators use MOs, it can take this into account in its risk-based planning, for example by making fewer visits to these operators. This is advantageous for the CA, operators and MOs.

Similarly, if the CA knows which operators fail to correctly use due diligence systems provided by an MO, it can take this into account, for example by increasing the number of visits to these operators. This is advantageous for the CA. Note that MOs are obliged to share this information with CAs under paragraph 8(1)(c) of Regulation 995/2010.

If an MO finds specific evidence of illegality, it can be of immediate use to CAs in all Member States.

#### **B. Guidance**

MOs are encouraged to share their customers' annual reports, with details of contract validity and duration, with CAs in the Member States in which they provide services.

### **2. Conflicts of interest**

#### **A. Background information**

The EUTR and the associated Regulations reference conflicts of interest and state that systems should be set up to avoid these.

*Conflicts of interest arise from a situation in which a person has a private or other secondary interest, which is such as to influence, or appear to influence, the impartial and objective performance of his or her duties (based on Council of Europe [Recommendation No. R \(2000\)10E](#))*

#### **B. Guidance**

To avoid conflicts of interest, the MO should have, implement and regularly update:

- Written procedures under a contractual obligation for all staff to disclose in writing all possible and actual conflicts of interest;

- Written procedures on how to react to third parties' substantiated concerns on possible conflicts of interest;
- Written procedures for determining timely and appropriate responses to possible conflicts of interest, to ensure that they neither influence nor are perceived to influence decisions made by the MO;
- Written procedures for documenting all possible conflicts of interest and the actions which have been taken to resolve them.

### **3. The use of 'due diligence certificates' in third countries**

#### **A. Background information**

As part of due diligence, some operators have been presented with certificates issued by non-EU sister companies of MOs. In some cases, the operators seem to have been informed that these certificates relieve them from the obligation to exercise due diligence. The legislation does not explicitly address the treatment of such certificates.

#### **B. Guidance**

Receiving such a certificate does not relieve an operator of the obligation to exercise due diligence described under Article 6 of the EUTR. If an MO or its non-EU sister company issues such a certificate, it should specify that this does not relieve the operator of the due diligence obligation.

A certificate may however be used as part of a due diligence system, similar to other documents that show compliance (e.g. legality assurance system certificates). In this case, the operator should establish precisely what the certificate certifies and the frequency of checks as part of their due diligence. It should also have a contact point at the company that performs the checks, in case of further questions or a need to verify the certificates' validity.

### **4. Checks on MOs that provide services in a Member State in which they do not have an office**

#### **A. Background information**

Several MOs offer services to operators in all Member States, although they do not have offices in all of them. This raises the question of whether CA checks on MOs must be carried out in all Member States or just in the ones in which the MO has an office.

#### **B. Guidance**

Article 8(4) of the EUTR states that 'competent authorities shall carry out checks at regular intervals' on 'the monitoring organisations operating within the competent authorities' jurisdiction ...'. 'Operating' should be understood here in the sense of Article 8(1) of the EUTR, which includes: 'grant[ing] operators the right to use [the MOs DDS]' and 'verify[ing] the proper use of its [DDS]... by such operators'.

If an MO provides services to operators within a CA's jurisdiction, the CA should carry out checks on this MO at least once every two years. If an MO does not currently provide services to operators within a CA's jurisdiction, the CA does not need to carry out checks on the MO.

MOs should be aware that, even if they do not have an office in a certain Member State, if the CA of that Member State wishes to carry out a check on them, they must provide staff and make information available to the CA at the CA's convenience. The CA will not travel to the MO.

However, the CA of the Member State in which an MO has its main office must carry out checks on the MO at least once every two years. The main office is the address specified on the Commission's website. CAs are encouraged to share their findings with one another.

## **5. CA checks on operators that use MOs**

### **A. Background information**

Regulation 995/2010 paragraph 8(1)(b) states that an MO should ‘verify the proper use of its due diligence system’ by operators. CAs should carry out checks on all operators, including those that use MOs’ due diligence systems.

### **B. Guidance**

CAs should include operators that use MOs’ due diligence systems in their risk-based planning. They may choose to consider specifically the use of MOs during this exercise, for example by regarding operators that use satisfactorily checked MOs’ due diligence systems as having a lower risk.



## ANNEX I

### HOW DOES THE INTERPRETATION OF 'PLACING ON THE MARKET' APPLY IN PRACTICE?

The following scenarios outline situations in which a company/individual is considered an operator under the EU Timber Regulation.

#### **Scenario 1**

Manufacturer C buys paper in a third country outside the EU and imports it into the EU (any country), where he uses the paper to produce exercise books. He then sells the exercise books to retailer D in another EU Member State. Exercise books are a product covered by the Annex to the EUTR.

- ▶ Manufacturer C becomes an operator when he imports the paper for use in his own business.

#### **Scenario 2**

Retailer G buys till rolls in a third country outside the EU and imports them into the EU, where he uses them in his stores.

- ▶ Retailer G becomes an operator when he imports the till rolls into the EU for use in his own business.

#### **Scenario 3**

An EU-based manufacturer C imports coated craft paper directly from a third-country producer and uses it to package products that are subsequently sold on the EU market.

- ▶ Manufacturer C becomes an operator when he imports the craft paper into the EU for use in his business and, although it is only used as packaging, the craft paper is imported as a product in its own right.

*[Scenarios 4, 5 and 6 deal with the purchase of timber and timber products by EU entities from non-EU entities in slightly varying circumstances which are explained at the end of each scenario]*

#### **Scenario 4**

An EU-based timber merchant H buys particleboard online from a supplier based outside the EU. Under the contract, ownership is immediately transferred to timber merchant H while the particleboard is still outside the EU. The particleboard is transported to an EU Member State and brought through customs by shipping agent J, who delivers it to timber merchant H. Timber merchant H then sells the particleboard to builder K.

- ▶ Timber merchant H becomes an operator when his agent J imports the particleboard into the EU for distribution or use in H's business. Shipping agent J is merely acting as an agent, transporting goods on behalf of timber merchant H.

*[In this scenario, ownership is transferred from a non-EU entity to an EU entity before the product physically enters the EU]*

#### **Scenario 5**

An EU-based timber merchant H buys particleboard online from supplier L, who is based outside the EU. Under the contract, ownership is only transferred when the particleboard is delivered to timber merchant H's yard in the UK. Shipping agent J imports the board into the EU on behalf of supplier L and delivers it to timber merchant H's yard.

- ▶ Timber merchant H becomes an operator when supplier L's shipping agent J imports the

particleboard into the EU for distribution or use in H's business.

*[In this scenario, ownership is only transferred from the non-EU entity to the EU entity after the product has physically entered the EU]*

### **Scenario 6**

A non-EU based supplier L imports a consignment of timber or timber products into the EU and then looks to find a buyer. Timber merchant H purchases the timber or timber products from L once the consignment has physically entered the EU and has been released for free circulation by customs by supplier L, and timber merchant H uses it in his business.

- ▶ Supplier L becomes the operator when he imports the products into the EU for distribution through his own business. Timber Merchant H is a trader.

*[In this scenario ownership does not transfer from the non-EU entity to an EU entity until after the product has physically entered the EU and no contract exists before this point]*

### **Scenario 7**

An EU-based retailer M imports timber products into the EU and sells them directly through his shop to non-commercial consumers.

- ▶ Retailer M becomes an operator when he imports the timber products into the EU for distribution through his own business.

### **Scenario 8**

Energy company E purchases wood chips directly from a third country outside the EU and imports them into the EU, where it uses them to produce energy which it then sells to a national grid in an EU Member State. Although the wood chips are within the scope of the EUTR, the final product – energy, which the company sells – is not.

- ▶ Energy company E becomes an operator when it imports the wood chips into the EU for use in its own business.

### **Scenario 9**

Timber merchant F purchases wood chips directly from a third country outside the EU and imports them into the EU, where he sells them to energy company E. Energy company E then uses these wood chips in the EU to produce energy, which it sells to a national grid in an EU Member State.

- ▶ Timber merchant F becomes an operator when he imports the wood chips into the EU for distribution through his own business.

*[Scenarios 10 and 10a highlight the fact that standing trees do not fall within the scope of the Regulation. Depending on the detailed contractual agreements, the 'operator' could be either the forest owner or the company that has the right to harvest timber for distribution or use through its own business]*

### **Scenario 10**

Forest owner Z fells trees on his own land and sells the timber to customers or processes it in his sawmill.

- ▶ Forest owner Z becomes an operator when he harvests the timber for distribution or use through his own business.

### **Scenario 10a**

Forest owner Z sells to company A the right to harvest standing trees on Z's land, for distribution or use through A's own business.

- ▶ Company A becomes an operator when it harvests the timber for distribution or use in its own business.

## ANNEX II

## EXAMPLES OF INFORMATION ON COMPOSITE PRODUCTS

Product type	Flat-pack kitchen fittings					Placing on the market possible?
Period	April 2011-Dec 2012					
Volume	3,200 units					
Component	Description	Species	Country/region of harvest	Concession of harvest	Legality evidence	
Core	Medium-density fibreboard	Mixed conifer: mainly Scots pine ( <i>Pinus sylvestris</i> )	More than one EU Member State	Multiple	Previously placed on the market - not required	<b>Not applicable</b>
		Norway spruce ( <i>Picea abies</i> ),	Third boreal emerging country	Multiple	Proprietary legality audits and traceability	<b>Yes (if well founded confidence)</b>
Surface	Facsimile wood-design paper coating, imported from outside EU	Unknown	Unknown	Unknown	None	<b>No</b>

Product type	CKD office furniture					Placing on the market possible?
Period	Jan 2011-June 2011					
Volume	1,500 units					
Component	Description	Species	Country/region of harvest	Concession of harvest	Legality evidence	
Core	particle board	Sitka spruce	EU Member State	Multiple	Previously placed on the market - not required	<b>Not applicable</b>
Face and back	0.5 mm veneer	European beech ( <i>Fagus sylvatica</i> )	EU Member State	Private forest owners	Previously placed on the market - not required	<b>Not applicable</b>

<b>Product type</b>	Wood chips					<b>Placing on the market possible?</b>
<b>Period</b>	Jan 2012-Dec 2012					
<b>Volume</b>	10,000 tonnes					
<b>Component</b>	<b>Description</b>	<b>Species</b>	<b>Country/region of harvest</b>	<b>Concession of harvest</b>	<b>Legality evidence</b>	
	From sawmill slabs/off-cuts from trees purchased standing from forest owners	Mixed spruce, pine and birch	EU Member State	Multiple private forest owners	Sighted owners' regeneration plans	<b>Not applicable</b>
	From sawmill slabs/off-cuts from logs bought at roadside	Mixed spruce, pine and birch	EU Member State	Multiple private forest owners	Previously placed on the market - not required	<b>Not applicable</b>

<b>Product type</b>	Writing paper (90 g/m2) from Indonesia					<b>Placing on the market possible?</b>
<b>Period</b>	Apr 2012-Mar 2013					
<b>Volume</b>	1,200 tonnes					
<b>Component</b>	<b>Description</b>	<b>Species</b>	<b>Country/region of harvest</b>	<b>Concession of harvest</b>	<b>Legality evidence</b>	
	Short-fibre pulp	Acacia mangium	Third tropical developing country, specified province	Industrial forest plantation concession XXX	Legality certificate	<b>Yes (if well founded confidence)</b>
	Short-fibre pulp	Mixed tropical hardwoods	Third tropical developing country, specified province	Natural secondary forest clearing for plantation for pulpwood and oil palm plantations	None provided	<b>No</b>
	Long-fibre pulp	Pinus radiata	Third temperate country	Forest plantations	Chain of custody certificate	<b>Yes (if well founded confidence)</b>

<b>Product type</b>	12-mm plywood					<b>Placing on the market possible?</b>
<b>Period</b>	Apr 2012-Mar 2013					
<b>Volume</b>	8,500 m <sup>3</sup>					
<b>Component</b>	<b>Description</b>	<b>Species</b>	<b>Country/region of harvest</b>	<b>Concession of harvest</b>	<b>Legality evidence</b>	
Face and back	Veneer	Bintangor ( <i>Calophyllum spp.</i> )	Third tropical developing country, specified province	YYY concession	Government agent export certificate	<b>Yes (if well founded confidence)</b>
Core	Veneer	Poplar ( <i>Populus sp.</i> )	Third temperate emerging country	Farm woodlots, unspecified	None provided	<b>No</b>

<b>Product type</b>	Coated Art Board from China					<b>Placing on the market possible?</b>
<b>Period</b>						
<b>Volume</b>	500 Tonnes					
<b>Component</b>	<b>Description</b>	<b>Species</b>	<b>Country/region of harvest</b>	<b>Concession of harvest</b>	<b>Legality evidence</b>	
	Northern Bleached Kraft Pulp (NBKP) Softwood	Western hemlock ( <i>Tsuga heterophylla</i> ), Douglas Fir ( <i>Pseudotsuga menziesii</i> ), Western Red Cedar ( <i>Thuja plicata</i> ), White Spruce ( <i>Picea glauca</i> ), Lodgepole Pine ( <i>Pinus contorta</i> )	Third boreal country	Industrial tree farm concession	Classified "Non-Controversial" under certification guidelines	<b>Yes (if well founded confidence)</b>
	Laubholz Bleached Kraft Pulp LBKP Hardwood	Poplar ( <i>Populus spp.</i> )	Third boreal country	Industrial tree farm concession	Classified "Non-Controversial" under certification	<b>Yes (if well founded confidence)</b>
	Mechanical Pulp	Poplar ( <i>Populus tremuloides</i> , <i>Populus balsamifera</i> ), White Spruce ( <i>Picea glauca</i> ), Jack pine ( <i>Pinus banksiana</i> )	Third boreal country	Multiple private forest owners	Non-Controversial Legality Certificate	<b>Yes (if well founded confidence)</b>

