

EU Timber Regulation summary

1. What is the EU Timber Regulation?

It is an EU-wide law that includes two main elements:

- 1. Obligation to follow a Due Diligence System:** All companies placing timber products on the EU market must follow a "Due Diligence System" (DDS) to minimize the risk of importing illegal timber into the EU

Art 4 § 2: "Operators shall exercise due diligence when placing timber or timber products on the market. To that end, they shall use a framework of procedures and measures, hereinafter referred to as a 'due diligence system', as set out in Article 6. Each operator shall maintain and regularly evaluate the due diligence system which it uses, except where the operator makes use of a due diligence system established by a monitoring organisation referred to in Article 8.

2. Prohibition to place illegally harvested timber or timber products on the EU market

Art. 4 § 1: "The placing on the market of illegally harvested timber or timber products derived from such timber shall be prohibited."

But what does "illegally harvested" actually mean?

Art. 4 § g) 'illegally harvested' means harvested in contravention of the applicable legislation in the country of harvest;

And what is the "applicable legislation" in the country of harvest?

*Art. 4 § (h) 'applicable legislation' means the legislation in force in the **country of harvest** covering the following matters:*

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

Operators wanting to place timber on the EU market must be sure their products have been harvested in compliance with above mentioned laws of the country of harvest.

2. Entry into force

The EU TR has entered into force in Dec 2010 and will become operational on 3 March 2013. Given common lead-in times, orders placed in spring/summer 2012 will need to comply with the Regulation as these products will be placed on the EU market in 2013 when the regulation is operational. Enforcement only starts as of 3 March 2013 though.

3. Who is liable?

The most stringent elements of EU TR (1.Obligation to undertake DDS and 2.Prohibition) apply only to those companies that *first place timber and timber products on the European market*. In the Regulation, they are referred to as "*operators*". The European Commission is expected to provide more clarity on the definition of "first placing on the market" in June 2012 through so-called "Delegated Acts". The term may also be further clarified in Guidelines to be developed by the EC within 2012.

*Art 2 § b) " placing on the market means the **supply** by any means, irrespective of the selling technique used, of timber or timber products **for the first time** on the **internal market** for distribution or use in the course of a **commercial activity**, whether in return for payment or free of charge. [...]*

Certain characteristics of “placing on the market” however are already clear:

- For the first time – Timber already placed on the EU market will not be considered
- Internal market – the timber must be physically present in the EU, either harvested in the EU or imported and cleared by customs for free circulation
- Commercial activity - it is not confirmed yet but likely that “commercial activity” as used in the definition of placing on the market also covers situations of *internal use*, eg. a European retailer importing paper rolls to be used for the tills in its shops.

Art 2 § c) “**operator**” means any natural or legal person that places timber or timber products on the market”

What do EU companies who are not “first placers” have to do?

Companies further down the supply chain that don’t place products for the first (but the second or third or...time) on the EU market will be considered “traders” under the regulation. EU TR makes it mandatory for all traders to provide basic traceability information indicating from whom they buy their products and to whom they sell them on and to keep these records for at least 5 years.

This requirement makes sense, as a trader being investigated by enforcement authorities for importing illegal timber could not prove that he is not the first placer and hence not liable if he does not have any evidence to show from whom he bought his timber.

Art. 2 § d) ‘trader’ means any natural or legal person who, in the course of a commercial activity, sells or buys on the internal market timber or timber products **already** placed on the internal market

Art. 5 Obligation of traceability

Traders shall, throughout the supply chain, be able to identify:

- (a) the operators or the traders who have supplied the timber and timber products; and
- (b) where applicable, the traders to whom they have supplied timber and timber products.

Traders shall keep the information referred to in the first paragraph **for at least five years** and shall provide that information to competent authorities if they so request

4. Due Diligence System (DDS)

The Regulation makes it mandatory for operators (first placers) to follow a DDS.

A DDS must contain the following three elements:

4.1. Provision of information:

Operators need to indicate the following information for all wood products they place on the EU market. Only exception is made for exempt products as mentioned under section 7 “products covered” below.

- a. Description (trade name, type of product, common name of tree species, to be confirmed: full scientific name if there is ambiguity about the common name)
- b. Country of harvest (to be confirmed: where legislation or the risk of illegal harvesting differs between sub-national regions, the exact sub-national region has to be indicated in addition to the country of harvest; if there is a specific level of risk associated to a particular concession of harvest, this information has to be provided, too)
- c. Quantity (volume, weight or number of units)
- d. Name and address of supplier
- e. Name and address of internal trader to whom timber has been supplied

4.2. Risk assessment

This step requires operators to risk assess their products and evaluate if their products have been produced in compliance with the laws of the harvesting country. The following questions must be asked:

- How do I assure that my suppliers comply with the applicable legislation? Are my products certified or legally verified?
- Does illegal harvesting of specific tree species exist in the country/area where I source my products from?
- Do illegal harvesting practices exist in the country of harvest/sub-national region where I source my products from? Does armed conflict exist there?
- Are there any sanctions by the UN Security Council or the European Union placed on the country/area where my products come from?
- Is my supply chain complex?

4.3. Mitigation

If the outcome of step 2 “risk assessment” is that there is a non-negligible risk (aka high risk) of your timber product being illegal, the operator has to set up risk mitigation procedures to minimise that risk effectively.

Examples include requiring additional information or documents from suppliers and/or third party verification. If the outcome of step 2 is that the timber is of negligible risk of being illegal, there is no need to set up risk mitigation procedures.

Products that are by definition legal

When risk assessing products in step 4.2, operators can consider FLEGT licensed products and CITES products with valid permits and licenses as by EU TR definition legal. No risk mitigation will have to be undertaken for these products. Note that this is *not* the case for certified or legally verified products.

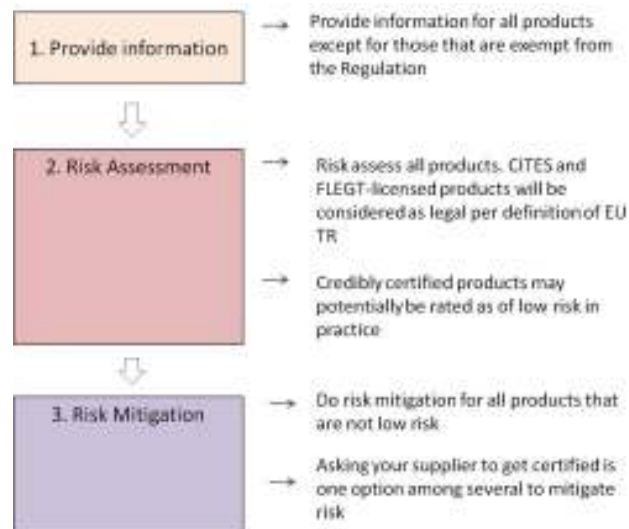
Art. 3 [FLEGT-licensed] Timber ... shall be considered to have been legally harvested for the purposes of this Regulation.

Art. 3 Timber of species listed in [CITES] Annex A, B or C to Regulation (EC) No 338/97 and which complies with that Regulation and its implementing provisions shall be considered to have been legally harvested for the purposes of this Regulation.

Information Platform

The EC is expected to provide further clarification on how to undertake risk assessment and mitigation, such as defining the concept of “complex supply chain” in June 2012 through so-called “Delegated Acts” and in Guidelines to be developed within 2012. For diplomatic reasons however, the EC will never issue a list of countries or regions where there is high risk of illegal logging. Some Member States are therefore pushing the development of an information platform on timber trade and legality (EU TR platform). This Platform should provide detailed guidance and information about prevalence of illegal logging in timber exporting countries, applicable harvesting and export laws etc. and could potentially compensate for the lack of information/details provided by the EC. The platform will be overseen by IFIA/ATIBT but receive input from various other organizations and NGOs to increase its international credibility and to make sure it becomes a reference for the whole European timber trade.

The DDS in short:



5. Monitoring Organisations (MOs)

Operators can set up their own Due Diligence System or follow one provided by a Monitoring Organisation (MO). If an operator wants to develop its own Due Diligence System, the system does not need to be previously approved by the EC.

If an organisation wants to offer its Due Diligence System to operators and be officially recognised as a Monitoring Organisation by the EC, the latter in cooperation with competent authorities will check and evaluate if the Due Diligence System is robust and in line with the Regulation. The role of MOs is not only to offer Due Diligence Systems to operators, but also to maintain the systems and ensure operators correctly use them.

It remains to be confirmed if intensity and frequency of checks undertaken by enforcement bodies wanting to assess if operators comply with the Regulation will be different for operators who use their own DDS than for those who follow a DDS offered by a Monitoring Organisation. It seems likely that checks on operators using an officially approved DDS provided by a recognised Monitoring Organisation will be less intensive than checks on operators using their own, unapproved DDS.

MOs can be recognised as such in several Member States at the same time.

Art. 8

Monitoring organisations

1. A monitoring organisation shall:

- (a) maintain and regularly evaluate a due diligence system as set out in Article 6 and grant operators the right to use it;*
- (b) verify the proper use of its due diligence system by such operators;*
- (c) take appropriate action in the event of failure by an operator to properly use its due diligence system, including notification of competent authorities in the event of significant or repeated failure by the operator.*

6. Competent authorities

Competent authorities are those governmental departments who are responsible for the application and enforcement of the Regulation. A list of competent authorities can be found here:

http://ec.europa.eu/environment/forests/pdf/list_competent_authorities.pdf

Competent authorities have to enforce the Regulation and check if operators fulfill the requirements of the Regulation. This includes the organization of spot check missions at operator's premises to see they follow a robust Due Diligence Systems and if illegal timber has been placed on the market.

Art. 7 § 1

Competent authorities

Each member state shall designate one or more competent authorities responsible for the application of this Regulation.

Preamble (21):

Competent authorities should carry out checks at regular intervals on monitoring organisations to verify that they effectively fulfill the obligations laid down in this Regulation. Moreover, competent authorities should endeavor to carry out checks when in possession of relevant information, including substantiated concerns from third parties.

Preamble (22)

Competent authorities should monitor that operators effectively fulfill the obligations laid down in this Regulation. For that purpose the competent authorities should carry out official checks, in accordance with a plan as appropriate, which may include checks on the premises of operators and field audits, and should be able to require operators to take remedial actions where necessary. Moreover, competent authorities should endeavor to carry out checks when in possession of relevant information, including substantiated concerns from third parties.

Preamble (23)

Competent authorities should keep records of the checks and the relevant information should be made available with Directive [...] on public access to environmental information.

7. Products covered

The EU TR applies to all timber and timber products entering the European market except for:

- Used timber and timber products that have completed their lifecycle and would otherwise be disposed of as waste (recycled/recovered/waste products)
- Packing material used exclusively to support, protect or carry another product
- Note that bamboo and other products of wooden nature (such as rattan) primarily used for plaiting, in the rough, whether or not split, sawn lengthwise or cut to length are exempt from the Regulation. Wherever bamboo or other woody materials are used to make products covered by chapter 44 (eg flooring), they are covered by the Regulation.
- See a full list of exempt products in Annex of this document

Please note that the list of products to be covered by the Regulation can be amended at any time. It is likely that products listed in the Annex and exempt so far will be covered by the Regulation at some point in the future.

8. Penalties

The level of penalties is currently being defined by Member States and will differ in each Member State, but the Regulation clarifies that penalties should at least be “effective, proportionate and dissuasive”; Actions may include

- Seizure of timber and timber products concerned
- Immediate suspension of authorization to trade
- Fines proportional to the damage resulting from the infringement

Art. 19

Penalties

1. The Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented.

2. The penalties provided for must be effective, proportionate and dissuasive and may include, inter alia:

(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, calculating the level of such fines in such way as to make sure that they effectively deprive those responsible of the economic benefits derived from their serious infringements, without prejudice to the legitimate right to exercise a profession, and gradually increasing the level of such fines for repeated serious infringements;

(b) seizure of the timber and timber products concerned;

(c) immediate suspension of authorization to trade

Penalties will be imposed...

on operators

- If they place illegally harvested timber or timber products derived from such timber on the market
- If they fail to exercise due diligence when placing timber or timber products on the market

on traders

- If they are unable to identify the operators or traders who have supplied them the timber
- If they are unable to identify, where applicable, the traders to whom they have supplied timber

Monitoring Organisations may be liable for fines and revoked their recognition as Monitoring Organisation if:

- They fail to maintain and regularly evaluate a Due Diligence System as set out in Article 6 of the Regulation
- They fail to verify the proper use of their Due Diligence System by operators
- They fail to take appropriate action if an operator doesn't properly use their Due Diligence System, including notification of competent authorities in the event of *significant or repeated failure* by the operator

9. Role of Certification & Legality Verification

The Regulation refers to Certification and Legality Verification in Art. 6 (b) under risk assessment:

Art. 6(b): “[...] Risk assessment procedures shall take into account [...] relevant risk assessment criteria including: Assurance of compliance with applicable legislation, which may include certification or third-party-verified schemes which cover compliance with applicable legislation [...]”

In simple terms, when assessing the risk of a product, operators should take into account if a product is certified (eg. against FSC/PEFC) or legally verified (eg. against VLC). In practice, operators may rate credibly certified or legally verified products as negligible risk (aka low risk) of being illegal and will do no or few risk mitigation activities. It remains to be confirmed though if this approach will be accepted by enforcement authorities, and it is already clear that certification or legality verification will never be a proof for legality like FLEGT- or CITES-licenses will be.

Certification and legality verification schemes (FSC/PEFC/VLC) are currently adapting their standards and procedures to ensure full compatibility with the Regulation, hoping that enforcement authorities will accept operators rating certified or legally verified products as negligible risk (aka low risk) of being illegal. Among other things they need to ensure their relevant standard is in line with the definition of “legal” in the Regulation, as outlined in section 1 above (the standard needs to cover all “applicable legislation”). This is why products verified against the Verified Legal Origin (VLO) standard may never be rated as low risk - the standard is based on a restricted set of laws that does not cover all applicable legislation as outlined in the Regulation. VLO certified products compared to uncertified products may nevertheless have a reduced risk of being illegal as the standard requires full traceability and compliance with administrative legal requirements of permitting, planning, taxes or fees, and harvesting.

The Regulation also refers to Certification and Legality Verification in Art. 6(c) under risk mitigation:

Art. 6(c): “[...] risk mitigation procedures [...] may include requiring additional information or documents and/or third party verification”.

In plain terms, if an operator rates his products as of non-negligible (aka high risk) of being illegal, he could among other activities ask his supplier to get certified or legally verified to mitigate this risk.

Resources

- http://ec.europa.eu/environment/forests/timber_regulation.htm
- http://www.euflegt.efi.int/portal/home/eu_timber_regulation/
- <http://www.cpet.org.uk/eu-timber-regulation>
- www.illegal-logging.info

This document is for informational purposes only. Persons seeking legal advice on compliance with the EU Timber Regulation should consult with a legal professional.

Annex:

List of products not included in the scope of EU TR

Chapter of Combined Nomenclature	Description
4202	Trunks, suitcases, vanity cases, executive-cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; travelling-bags, insulated food or beverages bags, toilet bags, rucksacks, handbags, shopping-bags, wallets, purses, map-cases, cigarette-cases, tobacco-pouches, tool bags, sports bags, bottle-cases, jewellery boxes, powder boxes, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanised fibre or of paperboard, or wholly or mainly covered with such materials or with paper
4417	Tools, tool bodies, tool handles, broom or brush bodies and handles, of wood; boot or shoe lasts and trees, of wood
4419 00	Tableware and kitchenware, of wood
4420	Wood marquetry and inlaid wood; caskets and cases for jewellery or cutlery, and similar articles, of wood; statuettes and other ornaments, of wood; wooden articles of furniture not falling in Chapter 94
4421	Other articles of wood; clothes hangers (includes garden trellis and toilet seats)
45	CORK AND ARTICLES OF CORK
46	MANUFACTURES OF STRAW, OF ESPARTO OR OF OTHER PLAITING MATERIALS; BASKETWARE AND WICKERWORK
49	PRINTED BOOKS, NEWSPAPERS, PICTURES AND OTHER PRODUCTS OF THE PRINTING INDUSTRY; MANUSCRIPTS, TYPESCRIPTS AND PLANS
64	FOOTWEAR, GAITERS AND THE LIKE; PARTS OF SUCH ARTICLES
65	HEADGEAR AND PARTS THEREOF
66	UMBRELLAS, SUN UMBRELLAS, WALKING STICKS, SEAT-STICKS, WHIPS, RIDING-CROPS AND PARTS THEREOF
82	TOOLS, IMPLEMENTS, CUTLERY, SPOONS AND FORKS, OF BASE METAL; PARTS THEREOF OF BASE METAL
85	ELECTRICAL MACHINERY AND EQUIPMENT AND PARTS THEREOF; SOUND RECORDERS AND REPRODUCERS, TELEVISION IMAGE AND SOUND RECORDERS AND REPRODUCERS, AND PARTS AND ACCESSORIES OF SUCH ARTICLES
87	VEHICLES OTHER THAN RAILWAY OR TRAMWAY ROLLING STOCK, AND PARTS AND ACCESSORIES THEREOF
90	OPTICAL, PHOTOGRAPHIC, CINEMATOGRAPHIC, MEASURING, CHECKING, PRECISION, MEDICAL OR SURGICAL INSTRUMENTS AND APPARATUS; PARTS AND ACCESSORIES THEREOF
91	CLOCKS AND WATCHES AND PARTS THEREOF
92	MUSICAL INSTRUMENTS; PARTS AND ACCESSORIES OF SUCH ARTICLES
9401	Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof
9402	Medical, surgical, dental or veterinary furniture (for example, operating tables, examination tables, hospital beds with mechanical fittings, dentists' chairs); barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements; parts of the foregoing articles:
9404	Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered
9405	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:
95	TOYS, GAMES AND SPORTS REQUISITES; PARTS AND ACCESSORIES THEREOF
96	MISCELLANEOUS MANUFACTURED ARTICLES:
9603	Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand-operated mechanical floor sweepers, not motorised, mops and feather dusters; prepared knots and tufts for broom or brush making; paint pads and rollers; squeegees (other than roller squeegees)
9606	Buttons
9608	Pens
9609	Pencils (other than pencils of heading 9608), crayons, pencil leads, pastels, drawing charcoals, writing or drawing chalks and tailors' chalks
9614 00	Smoking pipes (including pipe bowls) and cigar or cigarette holders, and parts thereof
9619 00	Sanitary towels (pads) and tampons, napkins and napkin liners for babies, and similar articles, of any material
97	WORKS OF ART, COLLECTORS' PIECES AND ANTIQUES