



## Questions & Answers about FSC and the EU Timber Regulation

revised 7 November 2012

### 1. What is the EU Timber Regulation?

The [EU Timber Regulation](#) (EU TR)<sup>1</sup> prohibits the “*placing on the market of illegally harvested timber or timber products derived from such timber*” from the 3<sup>rd</sup> of March 2013. The origin of the timber can be inside or outside the EU. The Regulation covers the markets inside the EU (and, most likely, also Norway, Liechtenstein and Iceland).

It also obliges “*operators*” (first placers of timber or derived products on the EU market) to work with a due diligence system (DDS) to minimise the risk of putting such illegal timber or derived products on the market. The DDS is to consist of three elements: information, risk assessment and risk mitigation.

Operators can run their own DDS or work with a “*Monitoring Organisation*” which provides them with a DDS. Monitoring Organisations are comparable to Certification Bodies, but they have to be recognized by the European Commission and will be controlled by national authorities<sup>2</sup>.

Companies further down the chain are called “*traders*”: their only obligation is to keep records of from whom they bought and to whom they sold.

Products with FLEGT<sup>3</sup> or CITES<sup>4</sup> licences are considered to comply with the Regulation by definition (so-called “*green lane*”).

The Regulation covers roundwood as well as a long list of wood products, including several categories of furniture and paper. Exemptions also exist, such as “*printed media*”, “*musical instruments*”, certain kinds of “*seats*”, and smaller product groups. The list of included materials/products can be found in Annex 1 of the Regulation, but it is described in a complicated manner, referring to chapters of the EU Combined Nomenclature. . . A more accessible list of both included and excluded products can be found on the website of the UK CPET<sup>5</sup>

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<sup>1</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:295:0023:0034:EN:PDF>

<sup>2</sup> More info on Monitoring Organisations in the [Delegated Act](#): <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:115:0012:0016:EN:PDF>

<sup>3</sup> FLEGT: Forest Law Enforcement, Governance and Trade; in fact FLEGT-licences will be the result of implemented Voluntary Partnership Agreements between the EU and individual (tropical) exporting countries. The first countries likely to successfully implement the FLEGT licensing scheme in the coming years are Ghana, Cameroun, Republic of Congo, Gabon and Indonesia.

<sup>4</sup> CITES: Convention on International Trade in Endangered Species of Wild Fauna and Flora; a CITES licence comes with a plant/tree species under CITES protection that has been explicitly cleared for trade.

<sup>5</sup> <http://www.cpet.org.uk/eutr/timber-and-timber-products#not-covered>



## **2. Is Certification accepted as automatic proof of compliance with the EU TR?**

It is not. The Regulation does say that “any voluntary chain of custody mechanism” can be the basis for a Due Diligence System, but it needs to fulfil the requirements of the Regulation. “Certification or other third-party verified schemes” are also mentioned as potential tools in assessing risks of illegality related to timber or derived products.

There have been discussions about a “green lane” also for certified products, but this was not accepted by the Commission.

The [DDS Implementing Act](#)<sup>6</sup>, of 6 July 2012, provides further clarification when certification schemes “may be taken into account” in the risk assessment and risk mitigation procedures (details see next question).

## **3. How does the current FSC certification scheme assist companies in implementing a DDS?**

The Due Diligence System (described in Article 6 of the EUTR) starts with collecting **information**.

The Regulation describes the categories of information required:

- a. *The common name of tree species, and, “where applicable”<sup>7</sup>, the full scientific names.*
- b. *The country of origin: the country where the timber was harvested. And “where applicable”<sup>8</sup> information about the region within the country or even the specific concession of harvest.*

The FSC system does not ensure automatic provision of such information to an “operator” buying FSC certified products. In the future an Online Claims Platform will help (see below). In the meantime, a new Advice Note on access to information regarding species and origin of timber<sup>9</sup> requires cooperation between FSC Certificate Holders (CHs) within the supply chain to produce such information on request to operators.

- c. *quantity (expressed in volume, weight or number of units),*
- d. *name and address of the supplier to the operator,*
- e. *name and address of the trader to whom the timber and timber products have been supplied,*

This information is usually included in each common invoice for purchase and sale. Collection and storage of such information is a logical responsibility for the operator itself.

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<sup>6</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:177:0016:0018:EN:PDF>

<sup>7</sup> meaning: in case of “ambiguity in relation to the common name” (Implementing Act)

<sup>8</sup> meaning: “in case risk of illegal harvesting between sub-national regions varies”, and/or “where the risk of illegal harvesting between concessions/rights of harvest in a country or sub-national region varies.” (Implementing Act).

<sup>9</sup> Advice-40-004 -10, FSC Directive on Chain of Custody Certification, 1 November 2012, see <http://ic.fsc.org/download.fsc-dir-40-004-en-directive-on-chain-of-custody-certification.151.htm>



- f. *“Documents or other information indicating compliance of those timber and timber products with the applicable legislation”.*

The FSC FM and CW certificates are covering, in principle such compliance, but the definition of *“applicable legislation”* includes one element that so far is not included in the FSC CoC certificate standard, being *“trade and customs [legislation], in so far as the forest sector is concerned”*.

With regards to the two other elements of the DDS: **risk assessment** and **risk mitigation**, the FSC scheme is very useful: When the information collected indicates a substantial risk of illegal timber, FSC certification provides sufficient certainty that the risk for this particular timber or derived product is “negligible” (“low risk” in FSC terms) given that legality addressed by the first Principle of all FSC forest stewardship standards. No further risk mitigation is needed.

Where an operator works with *non*-certified timber with a substantial risk of illegality, risk mitigation may be implemented by FSC Certified Operators by including an FSC Controlled Wood Verification Program (as described in FSC-STD-40-005) within the scope of their CoC certificate and assessing all such material by this methodology, or change straight to purchasing FSC certified timber/products.

In order for the FSC scheme to be recognised for risk assessment and risk mitigation, operators need to get confirmation from national Competent Authorities<sup>10</sup> that FSC can be regarded as complying with the four criteria mentioned in the Implementing Act.

**FSC’s own evaluation of these four criteria is as follows:**

*“ (a) they have established and made available for third party use a publicly available system of requirements, which system shall at the least include all relevant requirements of the applicable legislation;*

**FSC almost entirely complies:** all relevant requirements of the applicable legislation regarding forest management units are covered in the FSC Principles & Criteria plus its implementing measures, such as National Standards, Controlled Wood Standards and Advice Notes. As mentioned above, FSC recognises explicit compliance with “customs and trade laws” needs to be dealt with still.

*(b) they specify that appropriate checks, including field-visits, are made by a third party at regular intervals no longer than 12 months to verify that the applicable legislation is complied with;*

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<sup>10</sup> The national authorities inside the EU that are responsible for the enforcement of the Regulation



**FSC almost entirely complies:** as it requires annual checks, including field visits<sup>11</sup> for all types of forest management certificates covering single or multiple forest management units, with the exception of a part of the so-called SLIMF<sup>12</sup> operations, who don't always require annual visits due to their size or low intensity production. These operations cover 0,3% of the global FSC area coverage, and much less in terms of timber production. FSC is working on a solution for these cases.

*(c) they include means, verified by a third party, to trace timber harvested in accordance with applicable legislation, and timber products derived from such timber, at any point in the supply chain before such timber or timber products are placed on the market;*

**FSC complies:** As mentioned above, a new Advice Note on access to information regarding species and origin of timber requires cooperation between FSC Certificate Holders (CHs) within the supply chain to produce such information on request to operators.

*(d) they include controls, verified by a third party, to ensure that timber or timber products of unknown origin, or timber or timber products which have not been harvested in accordance with applicable legislation, do not enter the supply chain."*

**FSC complies:** it requires a separation of certified and uncertified products throughout the supply chain, which is evaluated and annually controlled by the Certification Bodies. Two new Advice Notes, on Non Conforming Products and on Minor Components have been launched to ensure that FSC certified products entering the EU are entirely based on FSC certified materials<sup>13</sup>.

#### **4. What is FSC doing further to ensure compliance with the EU TR?**

- a. FSC is developing an **Online Claims Platform (OCP)**. This will be a web-based cloud tool to both improve and simplify control over FSC certified transactions along the supply chain. FSC certificate holders entering claims that come directly from forest management units will be required to collect and enter species and country/region of origin. This information will then be passed along and will be available to certificate holders receiving goods from a certified supplier. The information on species and origin could then be made

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<sup>11</sup> Which on average means every 12 months, but there could be intervals longer than those 12 months to allow for some flexibility to consider the heterogeneity of local conditions in natural production systems.

<sup>12</sup> SLIMF: Small and Low Intensity Managed Forests: FSC has developed special certification requirements for such forests, which include a reduced regime of auditing. Under certain conditions field visits can be done less frequently than every year. Normally this is the case when there are no significant harvesting activities.

<sup>13</sup> Advice-40-004-08 Advice-40-004-09. See <http://ic.fsc.org/download.fsc-dir-40-004-en-directive-on-chain-of-custody-certification.151.htm>. The phasing out of the allowance for minor components by 1<sup>st</sup> January 2013 in fact also is relevant to the US, to comply with the Lacey Act



available for inspection by the competent authorities in the EU Member States on request. From mid 2013 it is foreseen that FSC certificate holders, will be able to systematically enter their FSC claims into the platform.

- b. The **Chain of Custody Standard (FSC-STD-40-004)** is being revised. The first meeting of the Technical Working Group took place at the end of June 2012 and it is planned to publish the standard mid 2013. This process includes the phase out of the exemption for “minor components” from the requirements of the CoC System by the end of 2012 within the scope of the EUTR and by the end of 2015 altogether. It also lays down the obligation for all CHs to provide the relevant information as required by the DDS to the OCP. Any changes which need to be applied within the CoC System for the purpose of the EUTR prior to this date have been covered by the **Advice Notes** as mentioned in chapter 3, above.
- c. Another **Advice Note** will go out before the end of the years **to National Offices and Certification Bodies** to advise how they include any additional elements of the “applicable legislation” into the current FSC list of laws within National Standards. The consultation about this note has started 1st November<sup>14</sup>. It is considered at the moment to draft such a Note as well specifically on “customs and trade laws” for companies exporting FSC Certified or CW products from the country of origin.
- d. FSC is revising its **Controlled Wood Standard (FSC-STD-40-005)** and changing its related **Risk Verification Program**. This is also aimed to be finalized mid 2013. An **annotated version describing** how specific wording in the Controlled Wood Standard relate to the EUTR is in development and will be finalized now the DDS Implementing Act has come out. The responsibility for Risk Assessment for Controlled Wood is being shifted from companies to FSC International, who will work with FSC National Offices where they exist and otherwise with consultants. This process has commenced and will be ongoing and refined over time as more information becomes available on national risk criteria.
- e. FSC will also seek a solution for the very small portion of FSC SLIMF certificates that do not require annual field visits.
- f. Finally, Furthermore, FSC is ensuring that its **national standards for countries that have a FLEGT Partnership Agreement** are in line with the legality requirements in such agreements. Priority has been given to Cameroun and the Republic of Congo (/Brazzaville) as the Agreements with these countries include the possibility to evaluate private certification schemes against the requirements. It is foreseen that such an evaluation, by the European Commission and the authorities of both countries, will take place in 2013.

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<sup>14</sup> For technical reasons they are in fact three advice notes, for three different audiences.  
<http://ic.fsc.org/advice-notes-on-applicable-legislation.477.htm>



**5. Will all this lead to a “green lane” for FSC certified products?**

The current Regulation does not allow for official recognition of certification schemes as compliant with the Regulation. So operators working with FSC certificates can be inspected just like any others. What FSC aims for is that such inspections then lead to the conclusion that the FSC certificate, combined with the information the operator collects, using, where needed, the new Advice Note on Information, and in the future the Online Claims Platform (OCP), is sufficient evidence of a good DDS, as far as the certified products are concerned.

Competent Authorities will not be able to investigate all operators on a regular basis, due to capacity constraints. The Regulation obliges them to work on the basis of “*a periodically reviewed plan following a risk based approach*”. In such a plan it is quite possible that authorities decide to target non-certified timber/products. However, the Regulation also obliges such authorities to act on complaints.

Besides a possible de facto recognition by Competent Authorities, there is one other mechanism that can, in the coming months, clarify how FSC certification is regarded. The European Commission has started to evaluate applications for recognition as Monitoring Organisations. Some of these organisations are also acting as FSC Certification Bodies. This means that the Commission may accept FSC as part of DDS as proposed by such organisations.

**6. Will FSC itself produce a full DDS?**

FSC has decided not to develop a standalone DDS, but to focus on the delivery of a robust certification system that does contribute to the compliance of FSC-certified companies with the requirements of the EUTR and other legality legislation.

The FSC Controlled Wood Standard (FSC-STD-40-005) already includes a DDS (in the FSC terminology called Company Verification Program) which does allow evaluating the risk of supplies which do not carry an accepted certificate.

For FSC, legality is not enough. Controlled Wood defines the minimum FSC accepts in terms of social, environmental and economic practices for inclusion within the system. Rather than extending to recognition of legality, FSC has decided to concentrate efforts on re-enforcing our core scheme and principles in light of the EUTR and other legality enforcement efforts.

FSC will support FSC accredited Certification Bodies who are approved by the European Commission as Monitoring Organisations and will provide guidance to them and to Certificate Holders on the use of the FSC System within any DDS they provide to operators or that operators are developing themselves.

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