



## Questions and Answers about FSC and the EU Timber Regulation Revised November 2014

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

The [EU Timber Regulation](#) (EUTR)<sup>1</sup> prohibits the “placing on the market of illegally harvested timber or timber products derived from such timber”. It came into force on 3 of March 2013. The origin of the timber can be inside or outside the EU. The EUTR covers the markets inside the EU (and, in the future, also Norway, Liechtenstein and Iceland<sup>2</sup>).

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

Operators can run their own DDS or work with a “*monitoring organization*” which provides them with a DDS. Monitoring organizations are comparable to certification bodies, but they have to be recognized by the European Commission and are controlled by national authorities<sup>3</sup>.

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

Products with FLEGT<sup>4</sup> or CITES<sup>5</sup> licenses are considered to comply with the EUTR (so-called “green lane”).

The EUTR 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

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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> These countries are part of the European Economic Area and have to adopt trade related EU legislation. It is unclear, however, when they will do so.

<sup>3</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](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:115:0012:0016:EN:PDF)

<sup>4</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 and Indonesia.

<sup>5</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.



chapters of the EU Combined Nomenclatura. A more accessible list of, both, included and excluded products can be found in the annex of the FSC Implementation Guide<sup>6</sup>

## **2. Is certification accepted as automatic proof of compliance with the EU Timber Regulation?**

It is not. The Regulation does say that “*any voluntary chain of custody mechanism*” can be the basis for a DDS, 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 were discussions about a “green lane” for certified products, but this was not accepted by the lawmakers.

The [DDS Implementing Act](#)<sup>7</sup>, of 6 July 2012, provides further clarification when certification schemes “may be taken into account” in the risk assessment and risk mitigation procedures (see Question 3 for details). A [Guidance Document](#) which was published by the European Commission in February 2013 (and updated in September 2013) gives further indications.

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

The DDS described in Article 6 of the EUTR starts with collecting the following required information:

- a. The common name of tree species, and, “where applicable”, the full scientific name<sup>8</sup>;
- b. The country where the timber was harvested, and, “where applicable”,<sup>9</sup> information about the region or, even, specific timber concession within the country.

The FSC system does not ensure automatic provision of this information to an “operator” buying FSC certified products. In the future, the FSC Online Claims Platform will be able to help (see below). In the meantime, a new advice note, *Access to Information Required by Timber Legality*

<sup>6</sup> <https://ic.fsc.org/timber-regulation.46.htm> - see “implementation guide”

<sup>7</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:177:0016:0018:EN:PDF>

<sup>8</sup> Meaning: in case of “ambiguity in relation to the common name” (Implementing Act)

<sup>9</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).



*Legislations*<sup>10</sup> requires cooperation between FSC certificate holders within the supply chain to provide 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, and most operators are already responsible for collecting and storing it.

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

The FSC forest management and controlled wood procedures cover such compliance in principle, but the definition of “applicable legislation” includes one element – “trade and customs [legislation], in so far as the forest sector is concerned” – that is not included in the FSC chain of custody certificate standard. FSC has published an *Advice Note on Trade and Customs Laws* which obliges companies exporting FSC certified products and/or controlled wood materials to comply with the relevant legislation.<sup>11</sup>

As 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, in our view, provides sufficient certainty that the risk for this particular timber, or derived product, is “negligible” (“low risk” in FSC terms), given that legality is addressed by the first principle of all FSC standards. In our view, no further risk mitigation is needed. (It must be noted that several national competent authorities appear not to accept FSC certification as sufficient evidence of negligible risk, in particular if the country of harvest is high risk. They have been asking for additional evidence that the FSC chain of custody is reliable).

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 chain of custody certificate and assessing all such material by this methodology, or changing to purchasing FSC certified timber and timber products.

<sup>10</sup> Advice-40-004-10 in *FSC Directive on Chain of Custody Certification*, revised 10 July 2014, see <https://ic.fsc.org/ensuring-compliance.493.htm>

<sup>11</sup> Advice-40-004 -11 in *FSC Directive on Chain of Custody Certification*, see <https://ic.fsc.org/ensuring-compliance.493.htm> see <https://ic.fsc.org/ensuring-compliance.493.htm> .The formulation of this Advice Note goes beyond exporting from countries of harvest, because this means it also assists in compliance with the US Lacey Act, which seeks legality in all stages of a supply chain.



**4. How can an operator importing FSC certified products and/or controlled wood materials justify inclusion of FSC controls in its due diligence system?**

In order for the FSC scheme to be recognized for risk assessment and risk mitigation, operators need to explain to national competent authorities<sup>12</sup> that FSC can be regarded as complying with the four criteria mentioned in the EUTR Implementing Act, as well as to be able to respond to three more questions presented in the *Guidance Document* of February 2013. This does not mean that the operator can transfer any liability to FSC; operators will themselves remain responsible for the discovery of illegal wood or wood products.

In the *FSC Guidance for Operators*<sup>13</sup>, FSC goes into detail on how it complies with the four criteria and three questions and provides references to all the FSC documents that support this analysis. Here we show the four criteria (a–d) and provide a short summary of FSC’s own evaluation of how it complies with each.

- 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 complies with this criterion. All relevant requirements of the applicable legislation regarding forest management units are covered in the FSC Principles and Criteria and its implementing measures, such as national standards, controlled wood standards and advice notes that specify what types of legislation are covered by the FSC standards<sup>14</sup>, as well as the advice note-related trade and customs laws of the country of harvest<sup>15</sup>.

- 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.”

FSC complies with this criterion as it requires annual checks, including field visits<sup>16</sup> for all types of forest management certificates covering single or multiple forest management units. Only in the case of so-called small and low-intensity managed forest<sup>17</sup> operations does FSC allow a reduced frequency for on-site visits, but only if there are no “significant forest activities” taking place, nor “corrective actions” or complaints outstanding.

<sup>12</sup> The national authorities inside the EU that are responsible for the enforcement of the Regulation

<sup>13</sup> [https://ic.fsc.org/timber-regulation.46.htm?lightbox\[width\]=720#file-details-1793](https://ic.fsc.org/timber-regulation.46.htm?lightbox[width]=720#file-details-1793)

<sup>14</sup> See for an overview: <https://ic.fsc.org/ensuring-compliance.493.htm>

<sup>15</sup> See note 12

<sup>16</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>17</sup> FSC has developed special certification requirements for such forests, which include a reduced regime of auditing.



- 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 with this criterion. As mentioned above, an advice note on access to information regarding species and origin of timber requires cooperation between FSC certificate holders 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 with this criterion by requiring a separation of certified and uncertified products throughout the supply chain, which is evaluated and annually controlled by the certification bodies. Two advice notes, *Non-Conforming Products* and *Minor Components* aim to ensure that FSC certified products entering the EU are entirely based on FSC certified or controlled materials. A third advice note concerning the application of due diligence on materials that are considered by FSC as “pre-consumer reclaimed material” but by the EUTR as virgin materials, provides further clarification, and completes the set of adaptations.<sup>18</sup>

The European Commission’s *Guidance Document* also poses three questions. We show these here (1–3) and provide a short summary of FSC’s own evaluation of how it answers each.

1. “Is the certification or other third party-verified scheme compliant with international or European standards (eg. the relevant ISO Guides and ISEAL Codes)?”

The answer to this question for the FSC certification scheme is yes, as it is based on ISO Guide 65. [Accreditation Services International](#) (ASI) evaluates the compliance of the implementation of the FSC scheme against ISO Guide 65, and accredits certification bodies if they are compliant. FSC is also a full member of ISEAL, and to become a member it had to demonstrate compliance with ISEAL norms, including the Impact Code.

2. “Are there substantiated reports about possible shortcomings or problems of the third party verified schemes in the specific countries from which the timber or timber products are imported?”

<sup>18</sup> Advice-40-004-08, Advice-40-004-09 and Advice-40-004-12. 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 January 2013 is also relevant to the US, to comply with the Lacey Act



FSC can help operators answer this question, but responses need to be about the specific countries involved in the operators' own supply chain, in particular the countries of harvest.

FSC has a special [stakeholder portal](#) on its website where you can find information about ongoing and closed disputes around FSC certificates brought forward by stakeholders. The portal also contains information about current and past assessments of certified forest management units, as well as of certification bodies (mainly carried out by ASI). The information is not arranged by country. If this information is not sufficient, you can approach the FSC national offices or the Quality Assurance Unit at the FSC International office in Bonn.

3. "Are the third parties that are making the checks and verifications referred to in Article 4 (b)(c) and (d) of the Commission implementing Regulation (EU) No 607/2012 independent accredited organizations?"

The answer to this question for the certification bodies that verify compliance with FSC certificate criteria is yes, because they are legal entities, independent from FSC. They are accredited by ASI, a 'fourth party' that is contracted by FSC to carry out accreditation and evaluation of certification bodies. While ASI is owned by FSC, it has an independent management structure.

### **5. What is FSC doing further to ensure compliance with the EUTR?**

The chain of custody standard (FSC-STD-40-004) is being revised. The revision process started in 2012 and should result in a new standard by September 2015. There will be two rounds of consultation at the end of 2014 and in early 2015. The revision has several objectives, but includes an improvement for confirming the accuracy of the claims in terms of origin used in FSC products throughout the supply chain, which is relevant for due diligence. The standard is likely to include the Online Claims Platform (OCP) as one option to achieve this improvement, while leaving options for companies to use alternative tools. The OCP is a web-based tool that enables FSC claims to be verified between organizations, and can also be used to find information about origin of harvest and species.

FSC is revising its controlled wood standard (FSC-STD-40-005) and is changing its related risk verification program. This process should also be finalized mid-2015. 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.

Finally, 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 Cameroon and the Republic of Congo (Brazzaville) as the FLEGT Voluntary Partnership



Agreements with these countries include the possibility of evaluating private certification schemes against the requirements. National standards for these two countries were finalized in 2013 and were presented to the respective FLEGT-competent authorities for assessment on compliance. It is expected that in 2015 in both countries FSC forest management certification will be recognized as FLEGT-compliant.

**6. Will all this lead to a 'green lane' for FSC certified products?**

The current EUTR does not allow for official recognition of certification schemes as compliant. So operators working with FSC certificates are being 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 while using, where needed, the new advice note on Information, and in the future the OCP, is sufficient evidence of a good DDS as far as certified products are concerned.

**7. Will FSC itself produce a full due diligence system?**

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 timber 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 evaluation of the risk of supplies which do not carry an accepted certificate.

For FSC, legality is not enough. The controlled wood standard 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 timber legality enforcement efforts.

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