



# The EU Timber Regulation

October 2017

- **Introduction:** history, requirements and scope
- **Who's involved?**
- **Defining obligations:** operators, traders, monitoring organisations, competent authorities, the EC
- **What is 'legal'?**
- **Product scope:** what is covered and what is not
- **Enforcement:** penalties, liability, proof, drivers, cases
- **Resources**

# Introduction



# The EU Timber Regulation - 995/2010



12.11.2010

EN

Official Journal of the European Union

L 295/23

**REGULATION (EU) No 995/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
of 20 October 2010**

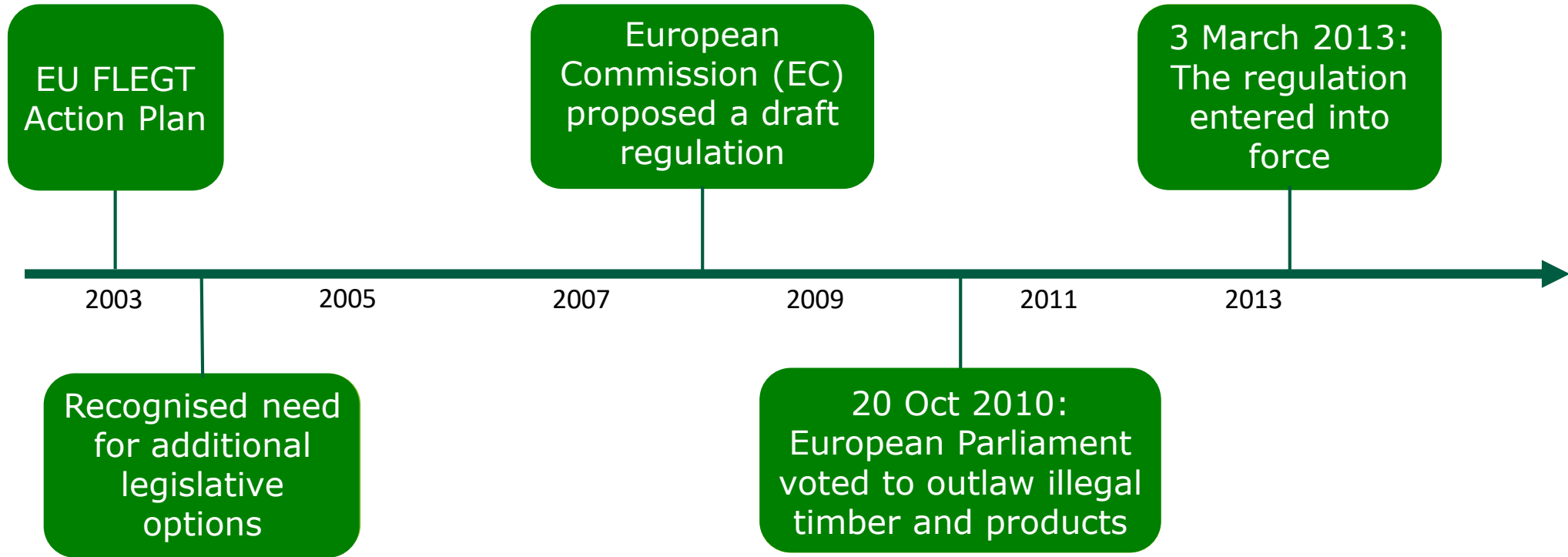
**laying down the obligations of operators who place timber and timber products on the market**

(Text with EEA relevance)

# The EU Timber Regulation - 995/2010

- Part of the EU FLEGT Action Plan
- Aims to reduce illegal logging and the trade in illegally harvested timber
- Prohibits placing illegally harvested timber/timber products on the EU market
- Requires companies to conduct due diligence





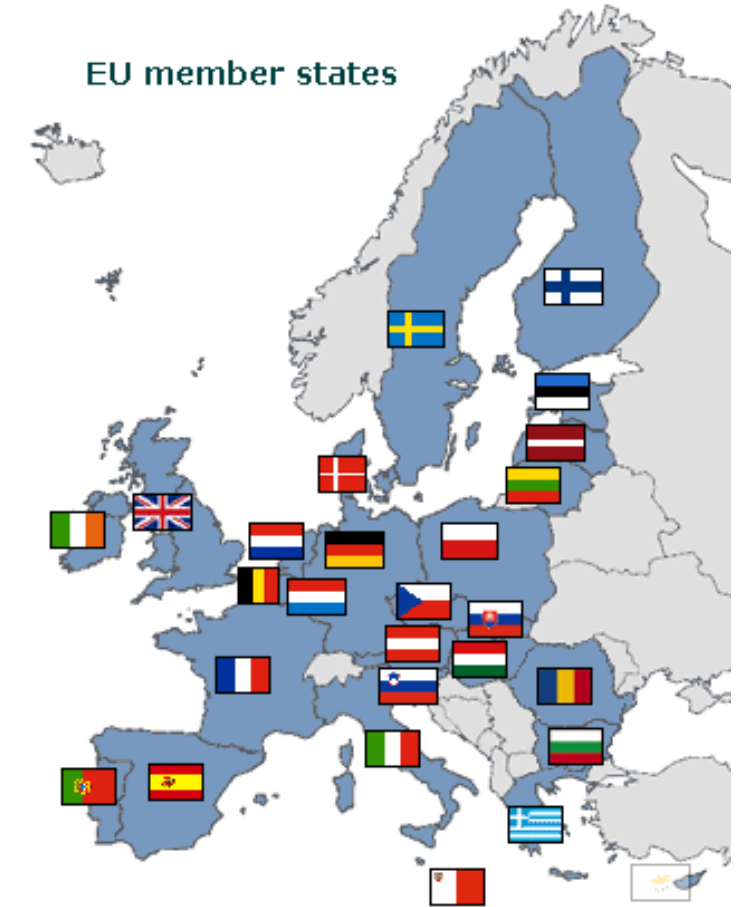
As of 3 March 2013, the EU Timber Regulation made it illegal to place illegally harvested timber and timber products on the EU market

- Prohibits placing illegally harvested timber/timber products on the EU market
- **'Operators'** placing timber/timber products on the EU market must conduct due diligence
  - obtain information
  - assess risk of illegality
  - mitigate risk
- **'Traders'** of timber already on the EU market must record who they buy/sell to

Only products with a FLEGT licence or a CITES permit/certificate automatically comply with the EUTR - products with a certificate/license do not need due diligence

# Requirements and scope

- Binding on all member states
- Applies to a wide range of timber and timber products, including pulp and paper, harvested in EU and non-EU countries





# Who's involved?

The European  
Commission

Monitoring  
Organisations

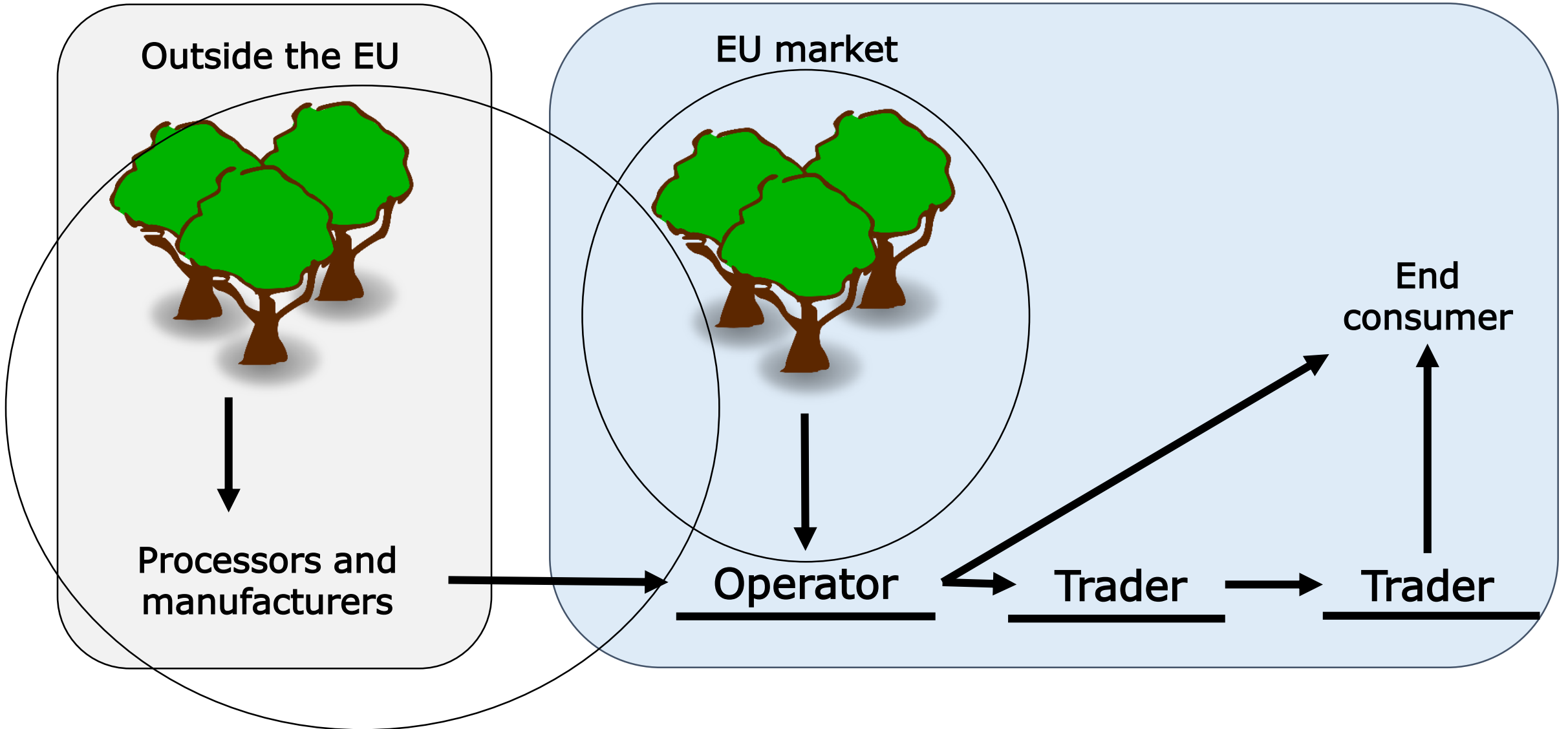


Member states  
(Competent Authorities)

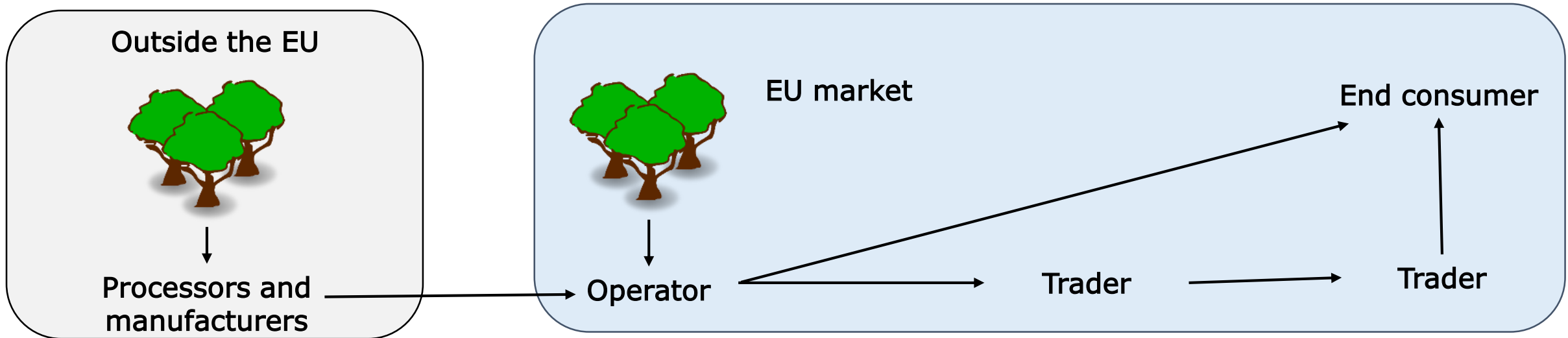
Industry  
(Operators & Traders)

What are their obligations?

# Operators and traders



# Placing on the market



## For imported timber

(harvested outside the EU)

- The Operator is the entity acting as the importer when the timber is cleared by EU customs for free circulation
- The definition of operator is independent of the ownership of the product, or other contractual arrangements

## For domestic timber

(harvested within the EU)

- The operator is the entity that distributes or uses the timber when it has been harvested



# Placing on the market

## Importers to 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 - SAD)”.

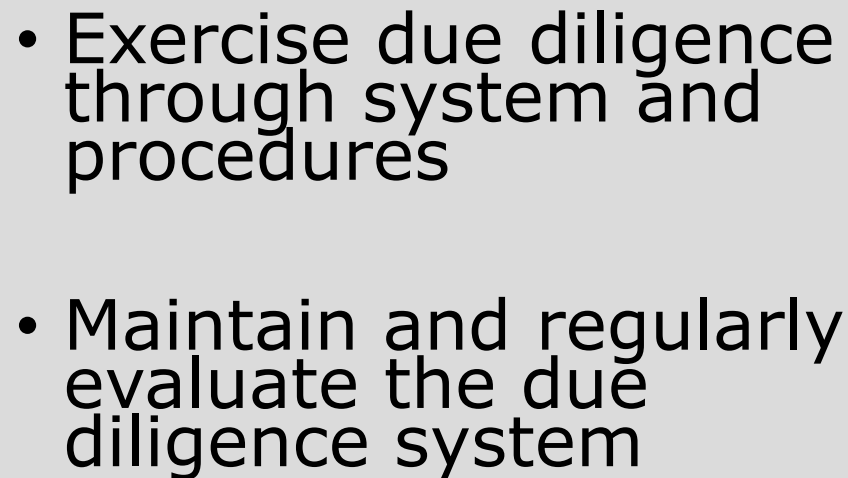
EUROPEAN COMMUNITY		1	2	3	4	5	6	7
Copy for the country of dispatch/export	1	2 Consignor/Exporter	No	1 DECLARATION				
		<input type="checkbox"/>		3 Forms	4 Loading lists			
				5 Items	6 Total packages	7 Reference number		
		8 Consignee	No	9 Person responsible for financial settlement		No		
		14 Declarant/Representative	No	10 Country first destin.	11 Trading country			
				15 Country of dispatch/export		15 C disp./exp. Co		
						a <sub>1</sub>	b <sub>1</sub>	
				16 Country of origin		17 Country of destination		
		18 Identity and nationality of means of transport at departure		19 Ctr.	20 Delivery terms			
		21 Identity and nationality of active means of transport crossing the border			22 Currency and total amount invoiced		23 Exchange rate	
	25 Mode of transport at the border	26 Inland mode of transport	27 Place of loading	28 Financial and banking data				
	1	29 Office of exit	30 Location of goods					
31 Packages and description of goods	Marks and numbers — Container No(s) — Number and kind			32 Item No	33 Commodity Code			
					34 Country origin Code	35 Gross mass (kg)		
					a <sub>1</sub>	b <sub>1</sub>		
				37 PROCEDURE		38 Net mass (kg)		
				40 Summary declaration/Previous document				

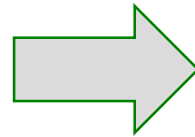
# Placing on the market

- Placed on EU Market (physically)
- For the first time
- Used in a commercial activity
  - whether or not sold



- Placing on the market of illegally harvested timber or timber products shall be *prohibited*

- 
- Exercise due diligence through system and procedures
  - Maintain and regularly evaluate the due diligence system



**Minimise the risk of illegally harvested timber and timber products**

The due diligence system must include:

- ✓ Access to information
- ✓ Risk assessment procedures
- ✓ Risk mitigation procedures

Plus: keep record for 5 years

## Key: Traceability

- Must be able to identify buyers and suppliers throughout their supply chain
- Keep information for at least five years
- Provide information to competent authorities



- Formulates the Regulation (995) and implementing regulations
- Recognises and controls Monitoring Organisations





# Defining obligations: EU Member States

Ensure the EUTR is implemented throughout their jurisdiction

- Provide for “effective, proportionate and dissuasive” penalties for infringements
- Designate one or more Competent Authorities responsible for the application of the EUTR
- Report to the European Commission every two years



Governmental body responsible for application and enforcement of the EUTR

- Carry out checks on monitoring organisations
- Check that Operators effectively fulfil obligations – official checks of premises and field audits. Require remedial actions where necessary.
- Keep records of checks and make them publicly available



**Nominated Competent Authorities**

[http://ec.europa.eu/environment/forests/pdf/list\\_competent\\_authorities\\_eutr.pdf](http://ec.europa.eu/environment/forests/pdf/list_competent_authorities_eutr.pdf)

- Maintain and regularly evaluate a due diligence system
- Verify the proper use of its due diligence system
- Take appropriate action in the event of failure, including notifying competent authorities in cases of significant or repeated failure by an Operator



Recognised Monitoring Organisations  
<http://ec.europa.eu/environment/forests/mos.htm>

Note: Operators don't have to use the due diligence system of a Monitoring Organisation – they may use their own

What is legal?

# What is 'legal'?

Legally harvested: harvested in accordance with the...

Illegally harvested: harvested in contravention of the...

... applicable legislation in the country of harvest.





# What is 'legal'?

## Applicable legislation



- Legal right to harvest



- Taxes/fees linked to harvesting



- Compliance with timber harvesting laws



- Respect for third parties' tenure/use rights



- Relevant trade and customs rules



# What is 'legal'?

## Role of international conventions

Aside to national legislation, the international conventions to which a country is party also apply in the definition of legal/illegal timber



In the absence of an internationally agreed definition, the legislation of the country where the timber was harvested, including regulations as well as the **implementation in that country of relevant international conventions to which that country is party**, should be the basis for defining what constitutes illegal logging.

# Product scope

# Product scope – what is covered?

- Virtually any product containing wood, wood fibre, cardboard or paper
- Complete list in the Regulation's annex
- Identification based on EU customs codes. E.g.:
  - 4403 Wood in the rough
  - 4412 Plywood
  - Chapters 47 & 48 Pulp & paper



Regulation can be amended - product list could change in the future

# Product scope – what is covered?

- Fuel wood
- Wood in the rough
- Railway sleepers
- Sawn/chipped wood
- Veneer sheets
- Wood with shaped edges
- Particle/strand board etc.
- Fibreboard
- Plywood
- Densified wood
- Wooden frames
- Packing cases, boxes etc.
- Casks, barrels, vats etc.
- Joinery and carpentry of wood
- Pulp and paper (except bamboo and recovered products)
- Wooden furniture
- Prefabricated buildings







# Product scope – what is NOT covered?

- Waste products = timber products or components of products manufactured from timber/timber products that have completed their lifecycle (would be disposed of as waste)
- “Seats”
- Plaited products and pulp and paper made from bamboo
- Packaging (used as packaging)
- Printed material



# Product scope – important distinctions



Product type or material	Covered 	Not covered 
<b>Printed materials</b>	Paper or tissue that may carry print e.g. facial tissue, toilet paper, or stationery paper	Products where the print itself is the essential product e.g. books, brochures, and photos
<b>Furniture</b>	Most wooden furniture	Seats, plaited/weaved bamboo, and medical, surgical, dental or veterinary furniture
<b>Bamboo</b>	Solid bamboo products e.g. flooring, tabletops and furniture parts	Products made from plaited or woven bamboo, pulp and paper, seats
<b>Packaging</b>	Packaging sold as a product or that gives the product its essential character (e.g. decorative gift boxes)	Packaging used to 'support, protect or carry' another product e.g. in transport & specific packaging for long-term use e.g. musical instrument cases

# Enforcement

- National law of member states defines the possible penalties
- Sanctions shall be *effective*, *proportionate* to the severity of the violation and have *deterrent effect*
- Possible sanctions include:
  - Fines
  - Confiscations
  - Suspension of trade permit
  - Imprisonment



## Fines may be imposed:

On:

If they:

### Operators

- place illegally harvested timber/timber products on the market
- fail to exercise due diligence

### Traders

- cannot identify the operators or traders who have supplied them the timber
- cannot identify the traders to whom they have supplied timber

### Monitoring Organisations

- fail to maintain and regularly evaluate a DDS
- fail to verify the proper use of their DDS by operators
- fail to take appropriate action if an operator doesn't properly use their DDS

## UK Example

A person found guilty of an offence is liable:

- (a) on summary conviction; Fine up to £5,000 or imprisonment up to 3 months, or both.
- (b) on conviction on indictment; (unlimited) fine or imprisonment up to two years, or both.

### Clarification from the CA:

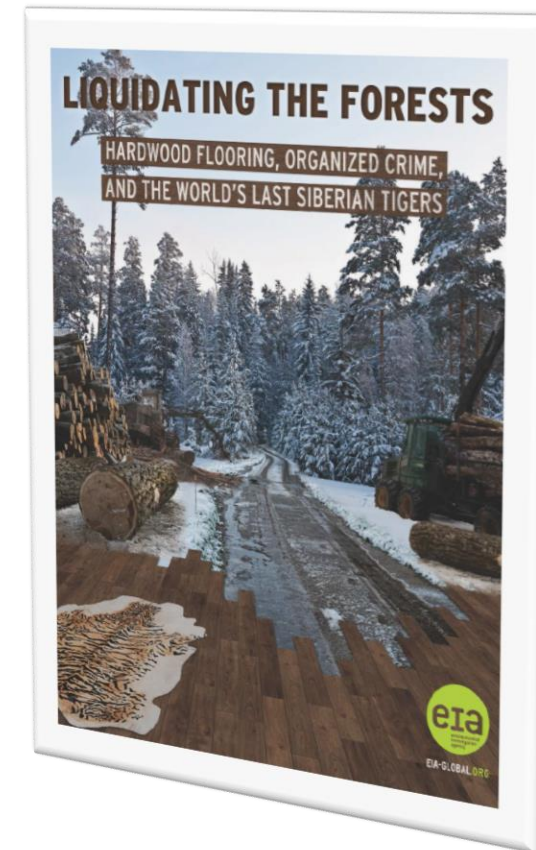
*“the offence may be applied to each individual piece of timber within a consignment”*

Perhaps more importantly...



Confiscation of  
supplies and disrupted  
supply flow

Loss of buyers and  
brand damage





# Perhaps more importantly...



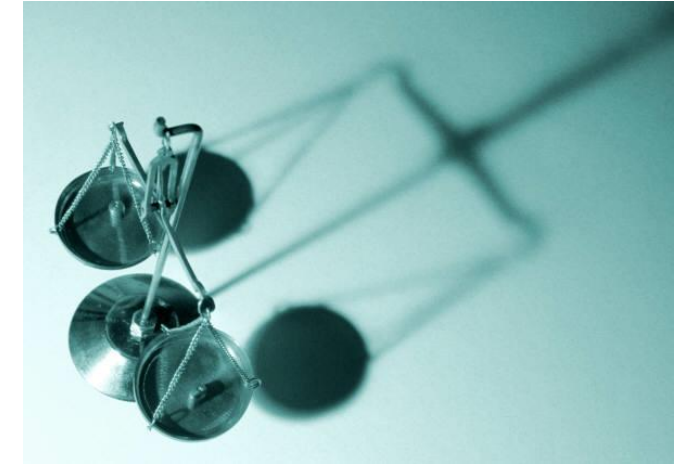
Open 13.96  
Close 13.90  
Low 13.71  
High 14.21  
Vol 1.08M  
% Chg -0.43%

6m YTD 1y 2y 5y 10y Max



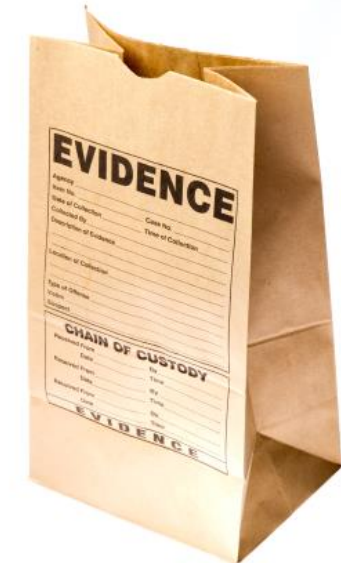
## Who is liable?

- Operators are liable to prosecution and penalty under the Regulation
- Operators' obligations, responsibilities or liabilities are not removed by the use of a Monitoring Organisation



## Who needs to prove what?

- The burden of proof of non-compliance rests with the authorities
- Violations of requirements must be proven by Competent Authorities, possibly with police



- Inconsistent across member states
- Some have been more active  
e.g. Denmark, UK, Germany, Sweden
- No public records of penalties being issued to Operators
- Audits are taking place in some member states



- UK CA [microscopic wood anatomy testing project](#) on Chinese plywood.
- Skogsstyrelsen, the Swedish CA, fined Almtra Nordic 17,000 Swedish krona (approximately 1800 EUR) [Teak from Myanmar](#)
- Danish CA [requires 7 Operators to improve due diligence on Burmese Teak](#) (more inspections in BE, IT, NL, SP, UK)
- Dutch CA sanctions [Fibois BV over purchase of Azobe \(\*Lophira alata\*\)](#) from CCT in Cameroon upheld by Dutch court (potential fine for future issues = 1800 EUR / m<sup>3</sup>)
- German court rules that [German CA \(BLE\) was correct to confiscate Wenge timber](#) imported in 2013 from DRC, due to falsified documents.

- Raising profile of high risk cases in various countries
- Targeting specific companies
- Putting information in the public domain which Operators should consider as part of their risk assessment
- Highlighting the dangers on relying on documents alone





# Resources



## Main law

Regulation (EU) No 995/2010 laying down the obligations of operators who place timber and timber products on the market

## Secondary legislation

- Delegated Regulation (EU) No 363/2012 - (rules for the recognition and withdrawal of recognition of monitoring organisations)
- Implementing Regulation (EU) No 607/2012 – (Regulation to ensure the uniform implementation of the law)

## Guidance document

- Guidance document



The screenshot shows the top navigation bar of the European Commission website, including the European Commission logo and the word "ENVIRONMENT". Below this is a breadcrumb trail: "European Commission > Environment > Nature and Biodiversity > Forests > Illegal logging". A green navigation bar contains links for "Home", "Who's who", "Policies", "Integration", "Funding", "Law", "Resources", and "News & Developments". The main content area features a sidebar on the left with a menu of "EU Forests and Forest related policies" including "The GP on Forest Protection and Information", "Forest Information", "Forest Fires", "Studies and published articles", and "International Forest Issues". The main content is titled "Timber Regulation" and includes a sub-header "Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market – also known as the (Illegal) Timber Regulation counters the trade in illegally harvested timber and timber products through three key obligations:". A list of two points follows, and the text continues: "Once on the market, the timber and timber products may be sold on and/or transformed before they reach the final consumer. To facilitate the traceability of timber products economic operators in this part of the supply chain (referred".

[http://ec.europa.eu/environment/forests/timber\\_regulation.htm](http://ec.europa.eu/environment/forests/timber_regulation.htm)

# NEPCon Sourcing Hub



Timber



Palm Oil



Beef



Soy

[www.nepcon.org/sourcinghub](http://www.nepcon.org/sourcinghub) 

Time for:

