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Introduction
The EU Timber Regulation - 995/2010

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

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

- 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?
Who’s involved

- Monitoring Organisations
- The European Commission
- Industry (Operators & Traders)
- Member states (Competent Authorities)
What are their obligations?
Operators and traders

Outside the EU

- Processors and manufacturers

EU market

- Operator

Trader

End consumer

Trader

 Trader

Operator

EU market

End consumer

Trader

Trader

Outside the EU

- Processors and manufacturers

EU market

- Operator

Trader

End consumer

Trader

Trader
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)”.
Placing on the market

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

- 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

Plus: keep record for 5 years

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
Defining obligations: Traders

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
Defining obligations: European Commission

- 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

Picture source: BBC
Defining obligations: Competent Authorities

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
Defining obligations: Monitoring Organisations

• 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

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

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

• 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
## Enforcement: Penalties

**Fines may be imposed:**

<table>
<thead>
<tr>
<th>On:</th>
<th>If they:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Operators</strong></td>
<td>• place illegally harvested timber/timber products on the market</td>
</tr>
<tr>
<td></td>
<td>• fail to exercise due diligence</td>
</tr>
<tr>
<td><strong>Traders</strong></td>
<td>• cannot identify the operators or traders who have supplied them the</td>
</tr>
<tr>
<td></td>
<td>timber</td>
</tr>
<tr>
<td></td>
<td>• cannot identify the traders to whom they have supplied timber</td>
</tr>
<tr>
<td>**Monitoring</td>
<td>• fail to maintain and regularly evaluate a DDS</td>
</tr>
<tr>
<td>Organisations**</td>
<td>• fail to verify the proper use of their DDS by operators</td>
</tr>
<tr>
<td></td>
<td>• fail to take appropriate action if an operator doesn’t properly use</td>
</tr>
<tr>
<td></td>
<td>their DDS</td>
</tr>
</tbody>
</table>
Enforcement: penalties

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

EIA (2013) *Liquidating the Forests*. 
Perhaps more importantly...

Lumber Liquidators
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
Enforcement activity

• 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
Enforcement activity

- 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 / m³)

- German court rules that German CA (BLE) was correct to confiscate Wenge timber imported in 2013 from DRC, due to falsified documents.
NGO Campaigns

• 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
NGO Campaigns

Source: *The Amazon’s silent crisis: licence to launder.* (Greenpeace, 2015)
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
Timber Regulation

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:

1. It prohibits the placing on the EU market for the first time of illegally harvested timber and products derived from such timber;
2. It requires EU traders who place timber products on the EU market for the first time to exercise ‘due diligence’;

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
NEPCon Sourcing Hub

- Timber
- Palm Oil
- Beef
- Soy

www.nepcon.org/sourcinghub
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