

# PAS 2021:2012

Exercising due diligence in establishing the legal origin of timber and timber products –  
Guide to Regulation (EU) No 995/2010



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# Foreword

This PAS was sponsored by WWF-UK Global Forest & Trade Network (GFTN-UK). Its development was facilitated by BSI Standards Limited and it was published under licence from The British Standards Institution. It came into effect on 29 November 2012.

Acknowledgement is given to the technical authors, Charles Drewe of Newleaf Sustainability Practice and WWF's GFTN, and the following organizations that were involved in the development of this guide as members of the Steering Group:

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- PEFC UK
- Proforest
- Timber Trade Federation
- Travis Perkins
- Wood Panel Industries Federation
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This PAS is not to be regarded as a British Standard. It will be withdrawn upon publication of its content in, or as, a British Standard.

The PAS process enables a guide to be rapidly developed in order to fulfil an immediate need in industry. A PAS may be considered for further development as a British Standard, or constitute part of the UK input into the development of a European or International Standard.

## Relationship with other publications

This PAS provides guidance on Regulation (EU) No 995/2010 laying down the obligations of operators who place timber and timber products on the market [1], which applies in the EU on 3 March 2013.

The Regulation is supported by Commission Implementing Regulation (EU) No 607/2012 of 6 July 2012 on the detailed rules concerning the due diligence system and the frequency and nature of the checks on monitoring organizations as provided for in the Regulation (EU) No 995/2012 [2].

This PAS is not a replacement for the Regulation and is intended to be used alongside the Regulation and the Implementing Regulation. Its content is not to be construed as legal advice.

Attention is drawn to the publication of European Commission guidance on the Regulation, which is available from: [http://ec.europa.eu/environment/forests/pdf/guidance\\_document.pdf](http://ec.europa.eu/environment/forests/pdf/guidance_document.pdf). The guidance addresses issues relating to the Regulation and its non-legislative acts. The guidance is not legally binding. Further information is available from: [http://ec.europa.eu/environment/forests/timber\\_regulation.htm](http://ec.europa.eu/environment/forests/timber_regulation.htm).

It is also common practice for competent authorities within the individual EU member states to issue guidance on regulatory measures to assist with understanding and implementation. The National Measurement Office (NMO), the competent authority for the Regulation in the UK, is expected to publish guidance on the Regulation to clarify outstanding issues and provide assistance with definitions and case studies. At the time of publishing this PAS, there is no scheduled date for the publication of NMO guidance, however, it is expected that further information will be available from: <http://www.bis.gov.uk/nmo/enforcement>.

## Use of this document

As a guide, this PAS takes the form of guidance and recommendations. It should not be quoted as if it were a specification or a code of practice and claims of compliance cannot be made to it.

## Presentational conventions

The guidance in this standard is presented in roman (i.e. upright) type. Any recommendations are expressed in sentences in which the principal auxiliary verb is “should”.

! Guidance highlighting points of particular importance is preceded by a red exclamation mark.

↑ Guidance detailing practices that go beyond the minimum requirements of the Regulation is preceded by a green upwards-pointing arrow.

Spelling conforms to *The Shorter Oxford English Dictionary*. If a word has more than one spelling, the first spelling in the dictionary is used.

## Contractual and legal considerations

This publication does not purport to include all the necessary provisions of a contract. Users are responsible for its correct application.

### Compliance with a PAS cannot confer immunity from legal obligations.

Particular attention is drawn to the following regulations:

- 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 [1].
- Commission Implementing Regulation (EU) No 607/2012 of 6 July 2012 on the detailed rules concerning the due diligence system and the frequency and nature of the checks on monitoring organizations as provided for in the Regulation (EU) No 995/2012 of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market [2].

References to the law in this PAS are intended as general information. Any opinions expressed do not constitute legal advice.



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# Introduction

## The context

The world's forests perform a number of critical functions both globally and locally. They are fundamental to regulating the earth's climate, preserving rich sources of biodiversity and providing prosperity for many local communities.

Today many of the world's natural forests have been lost with the majority of losses occurring over the last 100 years. Although there are a variety of reasons for the continued destruction of natural forests, one of the biggest threats comes from unsustainable forest management practices and illegal logging.

Illegal logging leads to the following serious impacts for many timber-producing countries in the developing world:

- environmental impacts;
- lost revenue, which The World Bank estimates at £10 billion to £15 billion per year; and
- corruption, undermining the rule of law and good governance and funding armed conflict.

## The Regulation

On 3 March 2013, Regulation (EU) No 995/2010 laying down the obligations of operators who place timber and timber products on the market (also known as the EUTR and hereafter referred to as the Regulation) [1] will apply in the EU. It is applicable to organizations that trade in a wide range of wood-based materials, including materials made from pulp and paper.

Up until the introduction of Regulation (EU) No 995/2010 in 2010, there has been no specific legislation in the EU to prohibit the trade in illegal timber or to make organizations take significant steps to assure that the timber they trade originates from legal sources. Globally, the major piece of legislation in existence to address illegal timber trade has been the US Food, Conservation and Energy Act of 2008 [3] which bans illegal timber from the US market.

Despite this, over the last 20 years there has been a growing imperative for organizations to undertake voluntary measures to responsibly source timber because of their commitment to reducing the impacts of their timber supply chains to help preserve endangered species and habitats, biodiversity and local communities.

The market for responsibly sourced timber and timber products has been growing, particularly the demand for third party certified timber. Businesses, Governments and local authorities are specifying the supply of legal and responsibly sourced timber in their procurement policies. NGO initiatives, like WWF's GFTN, promote the international trade of responsible timber and timber products through linking networks of responsible suppliers with responsible buyers.

The introduction of the Regulation is only one reason why it is in the interest of organizations to exercise due diligence in the purchase of timber and timber products in their supply chains. Beyond achieving legal compliance within the UK market place, other benefits of adopting practices that lead to the sourcing of both legal and responsible timber are:

- satisfying the increasingly stringent sourcing policies of their customers;
- mitigating the business risk of potential supply failure that can arise through sourcing illegal timber;
- differentiating their brand for responsible customers and consumers; and
- creating more opportunities for innovation in product design through greater awareness of supply chains that legal and responsible sourcing implies.

Those organizations that to date have voluntarily undertaken responsible timber sourcing have raised the bar for others.

The introduction of the Regulation makes it a crime to place illegal timber on EU markets and all organizations affected by the Regulation have to adopt practices to assure that they trade and supply legal timber, as a minimum.

The Regulation has the following purpose:

- to prohibit placing illegal timber and timber products onto the EU market;
- to minimize the risk of trading illegal timber by requiring that organizations placing timber and timber products on the EU market implement a robust due diligence system; and
- to improve the traceability of timber and timber products so that all organizations in a timber supply chain know who has supplied them and whom they have supplied.

The implementation of the Regulation will be enforced by national level competent authorities that will undertake checks and ensure the enforcement of the Regulation, with penalties for non-compliance. In the UK, the competent authority is the National Measurement Office.

The key implications for European organizations include the following for those that are the subject of the Regulation.

- An organization faces penalties if illegal timber is placed on the EU market.
- It is an offence not to have a system that embeds due diligence into an organization's trading practice.
- The route of purchasing certified timber makes compliance with this Regulation more of a formality. It significantly reduces the effort needed to gather data and undertake risk assessments and mitigation processes.

The introduction of the Regulation also has an impact on organizations whose products do not currently fall within the scope of the Regulation. It demands a critical mass of good practice in the sourcing of timber which raises the bar for others within the industry.

The implementation of the Regulation is supported by Commission Implementing Regulation (EU) No 607/2012 of 6 July 2012 on the detailed rules concerning the due diligence system and the frequency and nature of the checks on monitoring organizations as provided for in the Regulation (EU) No 995/2012 of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market (hereafter referred to as the Implementing Regulation) [2].

## This guide

This guide aims to help organizations to:

- understand what the Regulation is;
- understand if they are affected by the Regulation and, if so, how they are affected (i.e. are they operators and/or traders);
- develop and implement a due diligence system to minimize the risk of illegal timber in the supply chain;
- communicate performance of due diligence to interested parties, including regulatory authorities; and
- share good practices, tools and frameworks to enable organizations to go beyond compliance in the responsible sourcing of timber and timber products.

It is not a replacement for the Regulation and is intended to be used alongside the Regulation, the Implementing Regulation and any subsequent guidance issued by the European Commission and competent authorities of the EU member states. Its content is not to be construed as legal advice.

This guide is intended for organizations operating in the UK but could be used by organizations operating in other EU member states.



# 1 Scope

This PAS gives guidance on Regulation (EU) No 995/2010 laying down the obligations of operators who place timber and timber products on the market (hereafter referred to as the Regulation) [1]. In particular it gives guidance on:

- a) who is affected by the Regulation and their obligations (see Clause 3);
- b) how to develop and implement a due diligence system to minimize the risk of illegal timber in the supply chain (see Clause 4 and Clause 5); and
- c) good practices for responsible trade in timber and timber products that go beyond the minimum requirements of the Regulation, including communicating due diligence to interested parties (see Clause 6 and other guidance preceded by a green upwards-pointing arrow ↑).

This PAS also makes reference to the Commission Implementing Regulation (EU) No 607/2012 of 6 July 2012 on the detailed rules concerning the due diligence system and the frequency and nature of the checks on monitoring organizations as provided for in the Regulation (EU) No 995/2012 of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market (hereafter referred to as the Implementing Regulation) [2].

! This PAS is applicable to all organizations that have an obligation to meet the Regulation, which are those organizations that trade in imported and domestically grown timber and timber products on the EU market.

↑ This PAS can also be used by any other organization involved in timber and timber products interested in improving their responsible sourcing practices.

It covers those timber and timber products affected by the Regulation, a list of which is given in the annex to the Regulation. Examples of timber and timber products covered by the Regulation include solid materials like sawn hardwood and softwood, and composite materials like particleboard, pulp, paper and paper-based products like notebooks and envelopes and some packaging when it is sold as a product. The annex to the Regulation has been reproduced in Table 1.

This PAS is also applicable to monitoring organizations, where it can provide a benchmark for developing a due diligence system and be used as a reference to help appraise the services offered by such organizations.

**Table 1** – Timber and timber products to which the Regulation applies

CN code <sup>A), B), C)</sup>	Description
4401	Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms
4403	Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared
4406	Railway or tramway sleepers (cross-ties) of wood
4407	Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end-jointed, of a thickness exceeding 6 mm
4408	Sheets for veneering (including those obtained by slicing laminated wood), for plywood or for other similar laminated wood and other wood, sawn lengthwise, sliced or peeled, whether or not planed, sanded, spliced or end-jointed, of a thickness not exceeding 6 mm

**Table 1** – Timber and timber products to which the Regulation applies (*continued*)

CN code <sup>A), B), C)</sup>	Description
4409	Wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, V-jointed, beaded, moulded, rounded or the like) along any of its edges, ends or faces, whether or not planed, sanded or end-jointed
4410	Particleboard, oriented strand board (OSB) and similar board (for example, waferboard) of wood or other ligneous materials, whether or not agglomerated with resins or other organic binding substances
4411	Fibreboard of wood or other ligneous materials, whether or not bonded with resins or other organic substances
4412	Plywood, veneered panels and similar laminated wood
4413 00 00	Densified wood, in blocks, plates, strips or profile shapes
4414 00	Wooden frames for paintings, photographs, mirrors or similar objects
4415	Packing cases, boxes, crates, drums and similar packings, of wood; cable-drums of wood; pallets, box pallets and other load boards, of wood; pallet collars of wood. (Not packing material used exclusively as packing material to support, protect or carry another product placed on the market.)
4416 00 00	Casks, barrels, vats, tubs and other cooper's products and parts thereof, of wood, including staves
4418	Builders' joinery and carpentry of wood, including cellular wood panels, assembled flooring panels, shingles and shakes
–	Pulp and paper of Chapters 47 and 48 of the CN <sup>A)</sup> , with the exception of bamboo-based and recovered (waste and scrap) products
9403 30	Other furniture and parts thereof (9403): Wooden furniture of a kind used in offices (30)
9403 40	Other furniture and parts thereof (9403): Wooden furniture of a kind used in the kitchen (40)
9403 50 00	Other furniture and parts thereof (9403): Wooden furniture of a kind used in the bedroom (50 00)
9403 60	Other furniture and parts thereof (9403): Other wooden furniture (60)
9403 90 30	Other furniture and parts thereof (9403): Parts (90): Of wood (30)
9406 00 20	Prefabricated buildings (9406 00): Of wood (20)

<sup>A)</sup> The annex to the Regulation lists the products affected by the Regulation according to their combined nomenclature (CN) codes. Whilst the annex to the Regulation can help you quickly identify the main product categories affected, the full listing of all CN codes provides a more comprehensive listing of all sub-classifications, such as the more detailed descriptions required for paper and pulp products which are found in Chapter 47 and Chapter 48 of the combined nomenclature. The full listing of all CN codes is given in Annex I to Council Regulation (EEC) No 2658/87 [4], the latest version of which is available from: [http://ec.europa.eu/taxation\\_customs/customs/customs\\_duties/tariff\\_aspects/combined\\_nomenclature/index\\_en.htm](http://ec.europa.eu/taxation_customs/customs/customs_duties/tariff_aspects/combined_nomenclature/index_en.htm).

<sup>B)</sup> If there is any doubt about whether or not a product is covered by the Regulation, the HMRC Classification helpline 01702 366 077 can help assign which CN code (also known as Customs Code) a product falls under so it can be checked against the annex to the Regulation to determine if it is covered.

<sup>C)</sup> Article 14 of the Regulation states that the European Commission may amend and supplement the list of timber and timber products set out in the Annex to the Regulation.

## 2 Terms and definitions

For the purposes of this PAS, the following terms and definitions apply.

### 2.1 applicable legislation

legislation in force in the country of harvest covering 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, and trade and customs (in so far as the forest sector is concerned)

[Regulation (EU) No 995/2010 [1], Article 2(h)]

### 2.2 certification

third-party attestation related to products, processes, systems or persons

[BS EN ISO/IEC 17000:2004, 5.5]

### 2.3 chain of custody (COC)

physical route taken by raw or processed materials or finished products from the forest to the consumer including each stage of transformation, manufacturing, storage and transport where progress to the next stage involves a change of ownership of the materials or products often supported by accompanying documentation

### 2.4 competent authority

authority designated by an EU member state to ensure the correct application of the Regulation in their jurisdiction and play a key supervisory/regulatory function

**NOTE** *The body appointed as the UK's competent authority is the National Measurement Office.*

### 2.5 country of harvest

country or territory where the timber or the timber embedded in the timber products was harvested

[Regulation (EU) No 995/2010 [1], Article 2(e)]

### 2.6 customer

organization or person that receives a product

[BS EN ISO/IEC 9000:2005, 3.3.5]

### 2.7 final consumer

person who purchases a product for personal use

**NOTE** *The assumption is that if there is no onward trade as part of a commercial activity, the recipient is the final consumer, and as such is exempt from the trader obligations specified in the Regulation.*

### 2.8 illegally harvested

harvested in contravention of the applicable legislation in the country of harvest

[Regulation (EU) No 995/2010 [1], Article 2(g)]

### 2.9 legally harvested

harvested in accordance with the applicable legislation in the country of harvest

[Regulation (EU) No 995/2010 [1], Article 2(f)]

### 2.10 monitoring organization

organization providing due diligence systems to operators that choose to use them, as a means of assisting those operators to satisfy their obligations

### 2.11 operator

natural or legal person that places timber or timber products on the market

[Regulation (EU) No 995/2010 [1], Article 2(c)]

## 2.12 placing on the market

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

**NOTE 1** It also includes the supply by means of distance communication as defined in Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts [5].

**NOTE 2** The supply on the internal market of timber products derived from timber or timber products already placed on the internal market does not constitute “placing on the market”.

[Regulation (EU) No 995/2010 [1], Article 2(b)]

## 2.13 recovered material

material derived from an operation the principle result of which is waste serving a useful purpose by replacing other materials which would otherwise have been used to fulfil a particular function, or waste being prepared to fulfil that function, in the plant or wider economy

[derived from Directive 2008/98/EC [6], Article 3(15)]

## 2.14 recycled material

material derived from a recovery operation by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes

**NOTE** It includes the reprocessing of organic material but does not include energy recovery and the reprocessing into materials that are to be used as fuels or for backfilling operations.

[derived from Directive 2008/98/EC [6], Article 3(17)]

## 2.15 shipping terms

terms that help indicate legal title of goods and therefore responsibilities as an operator

**NOTE** For example, *ex works*, *free on board (FOB)*, *cost and freight (CFR)* and *carriage paid for (CPF)*.

## 2.16 timber and timber products

timber and timber products set out in the annex of the Regulation, with the exception of timber products or components of such products manufactured from timber or timber products that have completed their lifecycle and would otherwise be disposed of as waste

**NOTE 1** A list of timber and timber products set out in the annex of the Regulation is reproduced in Table 1.

**NOTE 2** It is important to note that the phrase “timber products” covers a wide range of wood-based materials, including materials made from pulp and paper.

[Regulation (EU) No 995/2010 [1], Article 2(a)]

## 2.17 traceability

ability (often through documentation) to link one production stage and another

**NOTE** For example, the ability to link a log to a stump, and a printed pad to the paper used to make the pad.

## 2.18 traceability downstream

ability to trace a material from a point of origin or manufacture along the processing stages and towards the final consumer

## 2.19 traceability upstream

ability to trace backwards from a finished product back along the processing stages towards its origin

## 2.20 trader

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

[Regulation (EU) No 995/2010 [1], Article 2(d)]

## 2.21 waste

substance or object which the holder discards or intends or is required to discard

[Directive 2008/98/EC [6], Article 3(1)]



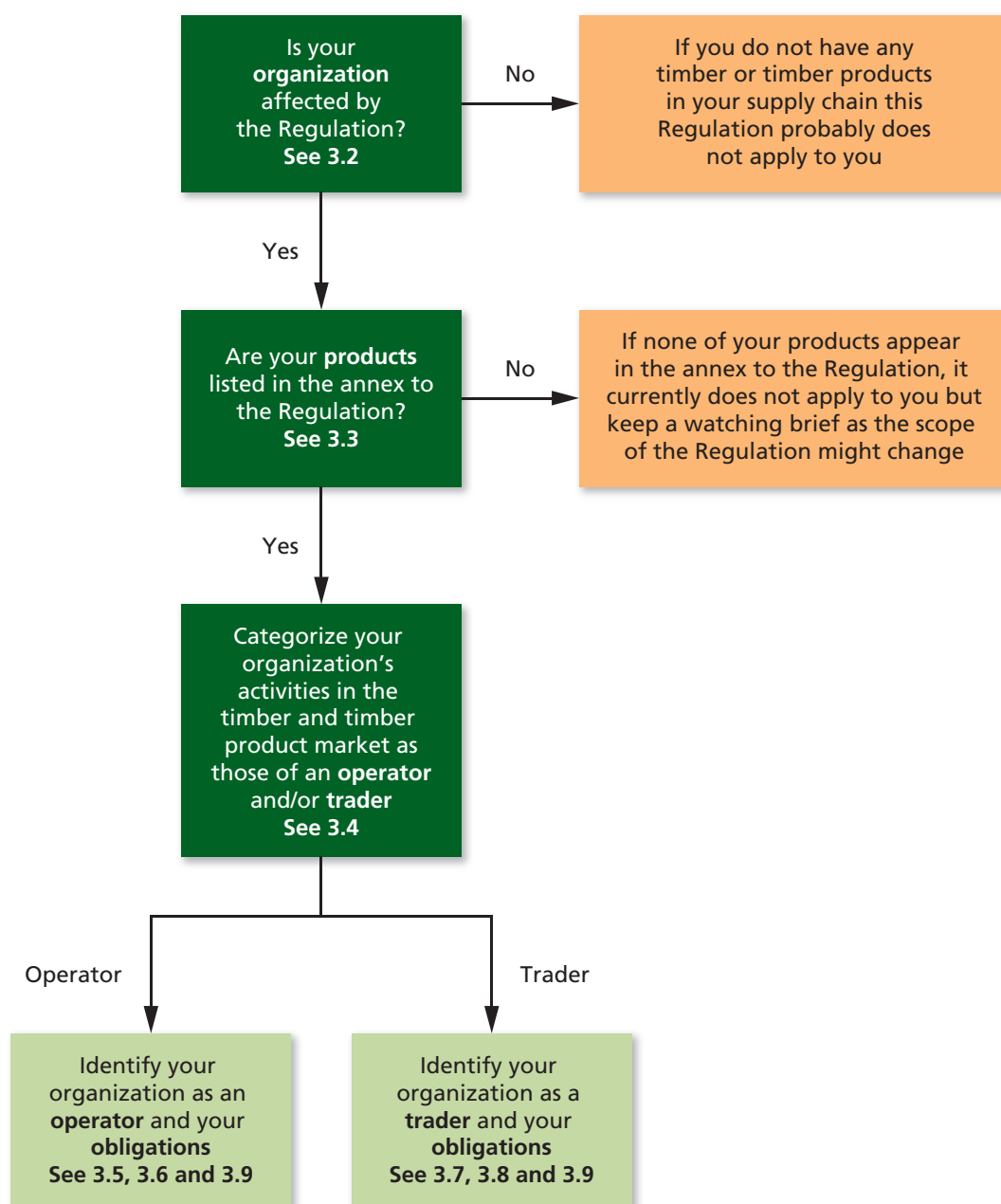
## 3 Organizations affected by the Regulation and their obligations

### 3.1 General

This clause provides guidance on how to identify if your organization is affected by the Regulation and, if so, what your obligations are under the Regulation. It is not the kind of organization you are that determines

if the Regulation applies to you, it is the activities you undertake in the timber and timber product market that might carry obligations. A step-by-step approach to using this guide to help identify your obligations is summarized in Figure 1.

**Figure 1** – Identifying your obligations under the Regulation



### 3.2 Identifying organizations affected by the Regulation

If your organization buys and sells timber and timber products from within the EU market or imports such products into the EU market, then it is very likely to have obligations under the Regulation.

Examples of organizations and business activities affected by the Regulation are given in Figure 2.

**Figure 2** – Examples of organizations and business activities affected by the Regulation

Are you a...	...who places or imports the following on to the EU market?
Forest owner or forestry operator in the EU	Fuel wood, wood in the rough, sawn wood, chips
Pulp and paper mill	Pulp (chemical and mechanical) and paper
Composite board (including wood panel) mill	Composite materials such as plywood, veneers, laminated materials, particle and fibreboards oriented strand board (OSB)
Sawmill or manufacturer	Sawn wood and machined wood, casks, vats and barrels, flooring, builders joinery and carpentry of wood, prefabricated buildings
Retailer, wholesaler or manufacturer	Wooden furniture, frames and mirrors, Paper, envelopes, card, boxed, exercise and notebooks and diaries
Agent, trader or merchant	Timber and timber products, whose legal ownership is taken from or passed on to EU organizations

### 3.3 Identifying products affected by the Regulation

Once you have identified if your organization could be affected by the Regulation, you should check the timber and timber products covered by the Regulation to identify if your products are covered. Figure 2 provides some examples, but there are many other products covered that it does not list.

A list of applicable timber and timber products is given in the annex to the Regulation, which is reproduced in Table 1 for ease of reference. It is important to note that the term “timber products” encompasses a variety of wood-based materials, including materials made from pulp and paper.

**!** A thorough review of the annex to the Regulation is essential to ensure you correctly identify whether the Regulation is applicable to your organization.

Products affected by the Regulation have been listed according to their combined nomenclature (CN) codes. CN is a worldwide system of classification which is harmonized across major countries. They are usually identified by an eight digit code.

Whilst the annex to the Regulation can help you quickly identify the main product categories affected, you should also refer to a full listing of all CN codes. This is because the annex to the Regulation does not list all sub-classifications such as the more detailed descriptions required for paper and pulp products, which are found in Chapter 47 and Chapter 48 of the combined nomenclature. The full listing of all CN codes is given in Annex I to Council Regulation (EEC) No 2658/87 [4], the latest version of which is available from: [http://ec.europa.eu/taxation\\_customs/customs/customs\\_duties/tariff\\_aspects/combined\\_nomenclature/index\\_en.htm](http://ec.europa.eu/taxation_customs/customs/customs_duties/tariff_aspects/combined_nomenclature/index_en.htm).

It is also important for you to be aware that two common timber and timber product areas that an organization might frequently use or trade are only partly covered by the Regulation, these are packaging and the use of recycled/recovered materials.

The following packaging product CN codes are covered when placed on the market as products in their own right, rather than simply being used as packaging for another product:

- CN code 4415, Packing cases, boxes, crates, drums and similar packings, of wood; cable-drums of wood;

pallets, box pallets and other load boards, of wood; pallet collars of wood; and

- CN code 4819, Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibres; box files, letter trays, and similar articles, of paper or paperboard, of a kind used in offices, shops or the like.

If packaging, as classified under CN code 4415 or 4819, is used to “support, protect or carry” another product it is not covered by the Regulation.

! if you deal with a timber or timber product that is made up of a mix of virgin and recycled/recovered materials, the virgin element of the product means it is covered by the Regulation.

↑ Recycled/recovered materials are exempt from the Regulation, however, there is good reason to exercise due diligence for recycled/recovered materials to verify their eligibility for exemption.

There are some product groups where it is not immediately clear if they are covered by the Regulation, such as bamboo- or flax-based products. If you have any doubt about whether or not your products are covered by the Regulation:

- ring the HMRC Classification helpline on 01702 366 077 to find out exactly which CN code (also known as Customs Code) the product falls under; and
- check whether this CN code is included in the annex to the Regulation.

### 3.4 Categorizing an organization's activities in the timber and timber product market as those of an operator and/or trader

Once you have established if your products are affected, you should categorize your organization's activities in the timber and timber product market as being that of an operator and/or trader (see 3.5 to 3.8).

The Regulation defines you as an operator and/or trader in terms of the activities you carry out in the timber and timber product market and sets specific obligations for each. The distinction between operators and traders is adopted to avoid overburdening all actors in the supply chain with obligations to provide access to information on the sources of timber and timber products.

! An organization can be categorized as both an operator and a trader depending on the nature of its activities in the timber and timber product market. For example, a retailer that directly imports affected timber and timber products into the EU as well as purchasing them from EU-based suppliers has obligations in both categories.

! It is critical you correctly identify which category – operator and/or trader – describes your organization's activities for each of your timber and timber products in order to understand your obligation under the Regulation.

### 3.5 Identifying operators

An operator is defined under Article 2(c) of the Regulation as “any natural or legal person that places timber or timber products on the market”.

! The activity of “placing on the market” is defined under Article 2(b) of the Regulation as: “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.”

Operators include organizations whose activities lead them to place EU grown timber or timber products (including domestically grown timber or timber products) on the EU market. Examples of such operators are given in Figure 3. The obligations of the Regulation begin when trees are harvested and traded with or without a financial transaction, for distribution or for commercial activity. Whilst trees are growing in EU forests, known as standing timber, they are exempt from the Regulation as they have not been harvested.

! If you are involved in domestic forestry and/or UK grown timber, you can refer to Annex A for examples of operators placing UK grown timber on the EU market.

**Figure 3** – Examples of operators who place EU grown timber or timber products on the EU market

- a) EU forest owner who supplies their harvested timber, chips or other timber products processed directly from their own forest
- b) Forestry harvesting company in Sweden who has bought standing trees from a Swedish forest owner and employs a contractor to harvest them
- c) Integrated EU mills that supply pulp, paper and other timber products using their own forest material

**NOTE** Further detailed examples of operators placing UK grown timber on the EU market are given in Figure A.1.

**Figure 4** – Examples of operators who import timber or timber products from outside the EU and place them on the EU market

- a) A sawmill who imports plywood and other wood-based panel materials for processing into components or for selling on to other processors/customers
- b) A retailer who directly imports (direct from factory or via an agent or purchased through local sourcing teams) finished products such as furniture made outside of the EU and sells them, for example, in store or online
- c) A factory outside of the EU or agent who has or takes legal ownership of the timber and timber products and sells these products to a company in the EU under “carriage paid to” (CPT) agreements when the title of goods only passes to the buyer at the named place of destination
- d) A wholesaler who directly imports timber or timber products to supply the EU market
- e) A paper mill that directly imports pulp for the production and distribution of paper-based materials
- f) A factory that directly imports timber or wooden board materials and combines them with EU grown material for the manufacture and distribution of finished goods within the EU
- g) A sourcing agent who does not physically handle the timber but who has directly imported it on behalf of an organization
- h) A factory that directly imports packaging materials, such as boxes for house moving, and sells them on to their customers
- i) A retailer that directly imports timber or timber products for their own internal activities and, as such, terms them “goods not for resale” (GNFR)
- j) An energy company that purchases wood chips directly from a supplier outside the EU and imports them into the UK, where it uses them to produce energy that it then sells. In this instance, the energy company becomes an operator even though the company’s final product, energy, is not within the scope of the Regulation.



Operators also include organizations whose activities lead them to import timber and timber products from outside of the EU and place them (i.e. the timber and timber products are physically present in the EU and have cleared customs) on the EU market for the purpose of processing, further sale or for the exclusive use within their own organization. Examples of such operators are given in Figure 4.

**!** Organizations employing service providers in the course of placing timber and timber products on the market, might need to assess whether these service providers become classified as operators under the Regulation, for example if legal ownership of that material is taken on at any point. In circumstances where it is not immediately clear if the services provider becomes an operator, you should seek advice from the competent authority.

To help you get an idea of the types of timber and timber products most likely to have been sourced into the UK from outside the EU, an indication is given in Figure 5. You can see that plywood, wood pulp and sawn hardwood are the types of products that are most likely to be sourced from outside the EU. There will be organizations whose activities in the trade of imported timber and timber products lead them to be defined as operators under the Regulation.

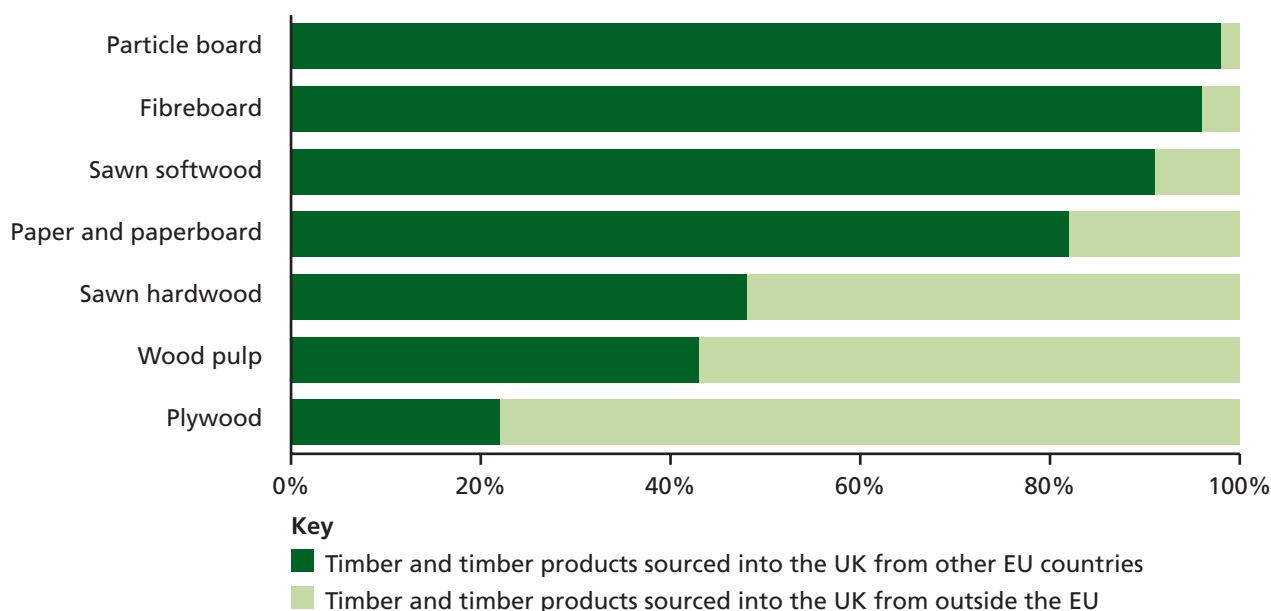
### 3.6 Operator obligations

An operator has the following obligations under Article 4 of the Regulation:

- a) "The placing on the market of illegally harvested timber or timber products derived from such timber on the market shall be prohibited."
- b) "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, referred to as a due diligence system" (see Clause 4, Due diligence system).
- c) "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 organization" (see 4.6.2, Monitoring organizations).

It has also been established under Article 5(1) of the Implementing Regulation that "information concerning the operator's supply as provided for in Article 6(1)(a) of the Regulation (EU) No 995/2010 and application of risk mitigation procedures shall be documented through adequate records, which shall be stored for five years and made available for checks by the competent authority".

**Figure 5** – Country of origin of timber and timber products sourced into the UK in 2010



**NOTE** The data was sourced from the UK HM Revenue & Customs Overseas Trade Statistics and presented by the Forestry Commission of Great Britain in their 2011 Forestry Statistics [7].

### 3.7 Identifying a trader

A trader is defined under Article 2(d) of the Regulation as “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”.

As a trader you either purchase timber or timber products from an operator, or from another trader. You then sell these on to other traders or to the final consumer. A final consumer might, for example, be a customer (making non trade purchases) in a supermarket.

### 3.8 Trader obligations

A trader has the following obligations under Article 5 of the Regulation:

- a) “Traders shall, throughout the supply chain, be able to identify the operators or the traders who have supplied the timber and timber products.”
- b) “Traders shall, throughout the supply chain, be able to identify, where applicable, the traders to whom they have supplied timber and timber products.”
- c) “Traders shall keep the information referred to [...in a) and b)...] for at least five years and shall provide that information to competent authorities if they so request” (see 3.9, Enforcement).

As a trader, your primary responsibility is one of commercial traceability. Most of the information you require to comply with the Regulation is likely to be present within your day-to-day management system.

Purchasing records such as agreements, contracts and purchase orders are likely to clearly document your supplier's name and address. This is generally referred to as traceability upstream.

Similarly, delivery notes and invoices can be used to identify the traders to whom you have sold your timber and timber products. This is referred to as traceability downstream.

In many instances, as a trader, you will sell on to a final consumer. At this point, if the Regulation is effective, the final consumer will only be receiving legal timber and timber products from the EU.

For all products affected by the Regulation, as a trader, you are required to keep these records for a period of five years.

! As a trader, you play an important role as the records you provide help a competent authority in their enquiries to eliminate illegal timber from entering the EU.

### 3.9 Enforcement

Each European member state is required to nominate a competent authority to enforce the Regulation. The body appointed by The Department for Environment, Food and Rural Affairs (Defra) to act as the UK's competent authority, and therefore enforcement agency for the Regulation, is the National Measurement Office, <http://www.bis.gov.uk/nmo/enforcement>. A complete list of competent authorities in each member state is available from: [http://ec.europa.eu/environment/forests/timber\\_regulation.htm](http://ec.europa.eu/environment/forests/timber_regulation.htm).

Due to the prohibition on illegal timber in the regulation, each EU member state is required to lay down rules on the penalties applicable when infringements to the Regulation have taken place. The penalties are required to be effective, proportionate and dissuasive and may include:

- fines in proportion to the environmental damage caused or to the value of the timber or to the tax and economic losses resulting from the infringement;
- seizure of the timber and timber products concerned; or
- immediate suspension of the operator's authorization to trade.

! It is important to note that the competent authority authorized to issue penalties is not only concerned with the issue of illegal timber being placed on the EU market but also the fact that the operator did not or does not have or operate a suitable due diligence system that prevents illegal timber from being placed on the market.

It is the responsibility of the operator to take all reasonable steps available to them and be able to demonstrate the measures and procedures they operate to comply with the Regulation and prevent illegally harvested timber and timber products from being placed on the EU market.

## 4 Due diligence system

### 4.1 General

Operators are required under Article 4 of the Regulation to exercise due diligence when placing timber or timber products on the market to determine these are not illegally harvested. To that end, they are required to use a framework of procedures and measures referred to as a due diligence system.

This clause provides guidance on the different aspects of a due diligence system as described in the Regulation.

It includes guidance on the requirement under Article 6 of the Regulation that a due diligence system contains:

- measures and procedures providing access to the information requirements outlined in the Regulation (see 4.2, Providing access to information);
- risk assessment procedures enabling the operator to analyse and evaluate the risk of placing illegally harvested timber or timber products on the market (see 4.3, Conducting risk assessments); and
- risk mitigation procedures to minimize the risk of placing illegally harvested timber or timber products on the market (see 4.4, Mitigating identified risks).

It also includes guidance on the requirements in the Regulation and Implementing Regulations for keeping records of information relating to a due diligence system (see 4.5, Maintaining records)

In addition, it provides an overview of the different routes to implementing a due diligence system (see 4.6, Implementing a system).

### 4.2 Providing access to information

#### 4.2.1 Operators

The first element of the Regulation's due diligence system requires an operator to have in place "measures and procedures providing access to information concerning the operator's supply of timber or timber products placed on the market". The specific information required under Article 6(1)(a) includes:

- a) a description of the timber or timber product, including the trade name and type of product (see 5.3) and the common name of the tree species and, where applicable, its full scientific name (see 5.4);

***NOTE** The scientific name is expected to be especially necessary where the common name is ambiguous.*

- b) the country of harvest (see 5.5), and where applicable;
  - 1) sub-national region where the timber was harvested;
 

***NOTE** This is expected to be necessary whenever different laws apply for sub-national regions and/or when other important differences occur such as where there is a higher level of risk of illegal timber.*
  - 2) concession of harvest;
- c) the quantity expressed in volume, weight or number of units (see 5.6);
- d) the name and address of the supplier to the operator (see 5.7);
- e) the name and address of the trader to whom the timber and timber products have been supplied (see 5.8);
- f) documents or other information indicating compliance of those timber and timber products with the applicable legislation (see 5.9).

Measures and procedures should be present in your organization to make the information readily available in order to carry out a risk assessment prior to purchasing the product or bringing it into the organization (see 4.3, Conducting a risk assessment).

! If you are only gathering information on products retrospectively, and are found to be placing illegally harvested timber and timber products on the market, this could be deemed inadequate due diligence and result in some form of penalty.

An organization can choose to hold this information wherever it likes, as long as it is available if a request is made for evidence by the competent authority.

Operators are also required under Article 2 of the Implementing Regulation to “apply the due diligence system to each specific type of timber or timber product supplied by a particular supplier within a period not exceeding 12 months, provided that the tree species, the country or countries of harvest or, where applicable, the sub-national region(s) and concession(s) of harvest remain unchanged. This is without prejudice to the operator’s obligation to maintain measures and procedures providing access to the information required by Article 6(1)(a) of Regulation (EU) No 995/2010 concerning each consignment of timber and timber products placed on the market by the operator.” Therefore, in such instances, an operator still needs to have measures and procedures in place to provide access to the information required by the Regulation, even where the supply chain remains constant (see **Case study: Applying due diligence within a period not exceeding 12 months**).

#### Case study: Applying due diligence within a period not exceeding 12 months

An importer of garden furniture, Dynamic Garden Furniture Ltd., places five orders with Devlin Furniture Sales, a furniture manufacturer/exporter in Malaysia over a 12 month period. Due diligence is conducted prior to the first order being placed with the exporter and this is followed up with documentary checks as the products are packed for each shipment. The exporter notifies Dynamic Garden Furniture that the origin of the timber for the last shipment comes from a different concession. Dynamic Garden Furniture carry out due diligence prior to the last shipment as the concession of harvest has changed. Therefore, in this instance, due diligence was formally carried out twice. In addition a system was implemented to ensure access to information was present on all shipments where the supply chain remained constant.

Alternatively, if all proposed concessions were identified at the outset, due diligence of all origins could have been conducted just once as long as procedures providing access to the information for each batch were established.

In the case of certified timber and timber products with chain of custody confirmed, you should check with the certification scheme in question whether their scheme’s standard is comprehensive enough to provide you with access to the information you need to help you comply with the Regulation.

Examples of information that might be gathered as part of a due diligence system are given in Figure 6 for four different operators (with one also acting as a trader). These examples are for illustrative purposes only. The actual information required for a given scenario will vary and should be determined on a case by case basis. Some of the information listed might not always be present but can be made available to the operator for the purposes of carrying out due diligence. Document requirements might change for certified timber as schemes adapt their own requirements to take account of the Regulation.

All example documents listed in Figure 6 can help lower the risk of placing illegally harvested timber or timber products on the market, but only CITES or FLEGT licences are eligible under the Regulation to be considered as evidence that timber or timber products have been legally harvested for the purposes of the Regulation (see 5.10.1, CITES and FLEGT legality licences).

*Any examples given are for illustrative purposes only.*





**Figure 6** – Examples of information gathered as part of a due diligence system

**NOTE** The information required for a given scenario will vary and should be determined on a case by case basis.

<b>a) UK sawmill felling standing timber from the Forestry Commission and other woodland owners</b>	
Product description	Kiln-dried softwood timber
Supplier	Forestry Commission, Savernake Forest and Long Wood Estates
Customers	UK customers such as Bander & Sons Ltd., Wiltshire
Quantity	1 000 tonnes/year
Species name	Spruce ( <i>Picea abies</i> ), Scots pine ( <i>Pinus sylvestris</i> ), larch ( <i>Larix decidua</i> )
Country of harvest	United Kingdom, Wiltshire
Documents	Forestry Commission forest management plan and felling licence for each woodland
<b>b) Flooring manufacturer who imports timber from the USA</b>	
Product description	American Oak Flooring, Product code 12345, hardwood-4418
Supplier	Tennessee Millers, Cumberland Plateau, East Tennessee, USA
Customers	Floors 4 Ever, Riverside Drive, Riverside, Reading, UK
Quantity	130 tonnes/year
Species name	White oak ( <i>Quercus alba</i> )
Country of harvest	United States of America, Eastern Tennessee
Documents	Invoice and delivery note confirming supply of Sustainable Forestry Initiative (SFI) certified timber from forest to factory/sawmill, log lists to support evidence of species, transport permits to support evidence of country of harvest
<b>c) Retailer who imports garden furniture from Malaysia</b>	
Product description	FSC certified Richards garden table, 6 seater code 456-65
Supplier	Devlin Furniture Sales, Kota Kinabalu, Sabah, Malaysia
Customers	Dynamic Garden Furniture Ltd., Severn Edge, Gloucester, UK
Quantity	1 000 pieces for 2011 to 2012
Species name	Red meranti ( <i>Shorea acuminata</i> ), Keruing ( <i>Diperocarpus spp.</i> )
Country of harvest	Malaysia, Sabah, forest management unit concession 52 and 74
Documents	Invoice and delivery note confirming supply of FSC certified garden furniture from Devlin to Dynamic Furniture Sales UK (documents confirm FSC certificate number and FSC claim being made – FSC 100%). Bill of lading confirming seller, port of loading, delivery address and shipment quantity. Copy of invoice and delivery note from sawmill to factory confirming species and country of harvest and FSC certified forest management unit confirming exact forest location and reconfirming species.

Figure 6 – Examples of information gathered as part of a due diligence system (*continued*)

d) Paper mill acting as an operator and trader	
Product description	A4 super white uncoated 80 gm <sup>2</sup> paper
Supplier	A – Pulp supplies Inc., British Columbia, Canada B – United Pulp, Brazil C – Softtext Mills, Finland
Customers	Retail Sales Ltd. and byme.com Ltd.
Quantity	2 000 tonnes
Species name	A – Western hemlock ( <i>Tsuga heterophylla</i> ) and Birch ( <i>Betula spp.</i> ) B – Eucalyptus ( <i>Eucalyptus globulus</i> ) C – Scots pine ( <i>Pinus sylvestris</i> ), spruce ( <i>Picea abies</i> ) and larch ( <i>Larix decidua</i> )
Country of harvest	A – Canada, British Columbia B – Brazil, Sao Paulo state C – Finland, south west
Documents	A – FSC controlled wood risk assessment for area of harvest, invoice and delivery note confirming supply of FSC controlled wood pulp to paper mill, felling documents confirming species and location of felling activities B – Invoice and/or delivery note confirming supply of 100% PEFC certified pulp from Brazil to paper mill, copy of forest management plan for PEFC concession confirming species and location of plantations being felled C – The paper mill acts as a trader in this instance and as such is only required to identify the operators or the traders who supplied them and the traders they supplied

#### 4.2.2 Traders

Even though a trader does not have the obligation to gather the same detailed information on timber and timber products as an operator (see 3.8, Trader obligations), a trader does have an important role in ensuring illegal timber does not contaminate its supply chains. This is why traders are required by the Regulation to be able to identify their upstream and downstream supplier links for the timber and timber products they have traded. Information about these supplier links enables competent authorities to identify operators who are potentially placing non-compliant timber and timber products on the European market in the case of an investigation.



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↑ Whether your organization's activities identify you as an operator or trader, or both, the introduction of the Regulation is just one of many reasons for an organization to exercise due diligence for timber and timber products in their supply chains. As a trader, if you are concerned about the environmental and social impacts of your timber and timber products, you can choose to go beyond the immediate requirements of the Regulation and use the same guidelines on gathering information as operators to satisfy yourself that you are not purchasing products which the Regulation is designed to eliminate from the market. Some traders might already do this as part of managing their business risks. Further benefits to your business in doing so are outlined in Clause 6, Good practices for a beyond compliance approach.

In addition, experience amongst organizations who have undertaken or engaged in due diligence for timber and timber products to date shows it is likely you will be asked by your customers to play your part in avoiding passing illegal timber through the supply chain. You can do this by asking questions about the origin and species of timber and timber products and confirming that your suppliers comply with the Regulation, before passing on to the next customer. Chain of custody (COC) can be a useful tool to demonstrate that timber and timber products have come from specific sources that fulfil the obligations set out in a forest certification scheme's forest management standard, which frequently includes confirmation of legality (see 5.10.2, Forest certification schemes).

Traders might also be asked by their customers for certified timber and timber products with evidence that the COC for these products has not been broken, and/or for other traceability information as part of their sustainable sourcing policies.

Sensitivities can occur between commercial organizations about exchanging information on suppliers and sources, and the necessity to do so will come down to the nature of the relationships among the business community as trade is established. Sharing more information than is required by the immediate obligations of the Regulation might appear onerous, but being prepared to manage requests can be of benefit, as many organizations operate beyond a compliance only approach.

### 4.3 Conducting risk assessments

The second element of the Regulation's due diligence system is described under Article 6(1)(b) and requires an operator to have in place "risk assessment procedures enabling the operator to analyse and evaluate the risk of illegally harvested timber or timber products derived from such timber being placed on the market".

! It is important for you, as an operator, to conduct this risk assessment before a timber and timber product is placed on the market in the EU. You should also be able to demonstrate your risk assessment is systematic, objective, transparent and repeatable.

The risk assessment is required under Article 6(1)(b) to take into account the information requirements of the Regulation (see 4.2, Providing access to information) as well as relevant risk assessment criteria including:

- assurance of compliance with applicable legislation, which may include certification or other third-party-verified schemes which cover compliance with applicable legislation (see 5.10);
- prevalence of illegal harvesting of specific tree species (see 5.11);
- prevalence of illegal harvesting or practices in the country of harvest and/or sub-national region where the timber was harvested (see 5.12), including consideration of the prevalence of armed conflict (see 5.13);
- sanctions imposed by the UN Security Council or the Council of the European Union on timber imports or exports (see 5.14); and
- complexity of the supply chain of timber and timber products (see 5.15).

The risk assessment procedures help you determine whether the risk identified is negligible. If risk is not negligible, the Regulation requires you to establish mitigation procedures to minimize that risk (see 4.4, Mitigating identified risks).

Ultimately, as an operator, you decide how you manage your risks. However, you can use the example risk assessment and mitigation procedure described in 5.2 as an aid for your organization.

## 4.4 Mitigating identified risks

The third element of the Regulation's due diligence system is described under Article 6(1)(c) and requires an operator to have in place "except where the risk identified in the course of the risk assessment procedures is negligible, risk mitigation procedures which consist of a set of measures and procedures that are adequate and proportionate to minimize effectively that risk and which may include requiring additional information or documents and/or requiring third party verification".

The example risk assessment and mitigation procedure described in 5.2 has been designed to help identify where there is negligible risk and where there is potential risk that demands mitigation measures.

Occasions can arise where you reach a conclusion that you have no option but to re-source a product if you are unable to establish the correct level of information, and therefore complete your due diligence and avoid the risk of passing illegal goods through the supply chain.

## 4.5 Maintaining records

Both operators and traders are required to maintain records in order to comply with their obligations under the Regulation.

Operators are required under Article 5(1) of the Implementing Regulation to keep their information for five years and make it available for checks by the competent authority (see 3.6, Operator obligations).

Traders are required under Article 5 of the Regulation to keep their information for at least five years and provide that information to competent authorities if they so request (see 3.8, Trader obligations).

Competent authorities themselves are required under Article 10(1) of the Regulation to "carry out checks to verify if operators comply with their obligations".

Checks under Article 10(3) may include "examination of the due diligence system, including risk assessment and risk mitigation procedures, and examination of documentation and records that demonstrate the proper functioning of the due diligence system and procedures".

So, as an operator, you might be asked to provide:

- documents and evidence for how your system works;
- evidence you used to carry out due diligence;
- evidence on how you have maintained measures and procedures providing access to that information especially when due diligence is carried out on constant supply chains;
- evidence to demonstrate how the information gathered was checked against the risk criteria provided for in Article 6(1)(b); and
- information on how a decision on risk mitigation measures was taken and how you determined the degree of risk.

You are expected to offer all assistance necessary to facilitate checks, including access to premises and the presentation of documentation or records.

## 4.6 Implementing a system

### 4.6.1 Operators

The route to implementing a due diligence system can vary between organizations.

Some organizations are already experienced in assessing the legality of materials and already have a due diligence system in operation with adequate measures and procedures in place. They might operate management systems, such as BS EN ISO 9001 and BS EN ISO 14001, into which a due diligence system can be integrated thereby formalizing much of the decision making processes (see 4.5, Maintaining records). They might have chosen to rely on sourcing certified timber and timber products as an assurance that their products have not come from illegal sources and hence operate within a forest management chain of custody system (see 5.10.2, Forest certification schemes). They might source largely or exclusively from domestic timber sources and refer to *The UK Forestry Standard* [8] as a basis for gathering and maintaining records to demonstrate aspects of due diligence for their products (see Annex A, Placing UK grown timber on the EU market).

For other organizations, particularly small to medium-sized enterprises (SMEs), compliance with the Regulation could be the first time they have had to manage formal risk management techniques.



In all cases, you have the option of conducting due diligence yourself or engaging other parties to manage due diligence on your behalf (see 4.6.2, Monitoring organizations). However, independently of the due diligence system used, it is important to be aware that you ultimately remain liable for ensuring that illegal timber does not enter your supply chain.

Once a due diligence system is implemented you, as an operator, are required to maintain and regularly evaluate the due diligence system you use. This can include keeping abreast of industry best practice, reviewing processes for gathering and assessing data and being mindful of industry case studies as the Regulation becomes business as usual. If you implemented a certified management system such as BS EN ISO 9001 or BS EN ISO 14001, the requirement to regularly evaluate the due diligence system can be integrated into your day-to-day business practices. However, note that there is no requirement under the Regulation to have your due diligence system independently audited by a third party.

If you are an operator with simpler management systems, you should implement internal checks to ensure your organizations' documented procedures for collecting and recording key information about each supply of timber and timber product to be placed on to the EU market are being carried out, to review the procedures ensuring they remain fit for purpose, to assess the decisions that have been made and to ensure the ongoing training for those responsible for carrying out each step in the procedure. This work is ideally managed by someone who is independent of the day-to-day decisions about sourcing these products.

You should proactively and regularly review the information you receive to establish the credibility of the data, the nature of the evidence and whether it is adequate. In particular, where information is provided on the basis of a supplier's own declarations, it is important to verify such claims before making trading decisions to ensure the claims provide adequate assurance of legality.

In the end, you are ultimately responsible for appraising the extent to which the information received will fulfil any obligations you have under the Regulation to undertake due diligence and prevent illegally harvested timber from entering the EU market. So, as an operator, you can mitigate this risk by establishing as part of your due diligence system a basic set of criteria about what information you would accept based on what you wish to place on the EU market.

Often when the timber or timber products are within your organization, you can assemble the relevant evidence and documents necessary to demonstrate your due diligence. Once the material has been processed or traded to another organization and a period of time has passed since the material was first placed on the market, the challenge to provide this information gets harder to achieve without a systematic way of managing the data you have gathered. It is also important that this system demonstrates the risk assessment decisions that have been taken, by whom and the reasons behind such decisions.

For many organizations that have experience of operating responsible sourcing programmes, they often rely upon web-based databases specifically designed to hold product and supply chain information. These databases provide live information to all their staff and customers and provide options for their suppliers to upload new information, documents and certificates.

Systems however can also be kept as simple as possible such as basic spreadsheets containing listings of all the associated documents or help made available to the operator.

Whatever the system used, it should:

- be easily accessible;
- prompt the operator in what information they need to obtain;
- prompt the operator in what decisions they need to make;
- show the decisions made;
- provide full justification of the decisions made;
- provide dated evidence of when the decisions were made and by who;
- provide links to the documents used in support of the decisions; and
- support the operator in being able to repeat the process.

#### 4.6.2 Monitoring organizations

The Regulation establishes a mechanism for organizations that have developed compliant due diligence systems to provide their services to others. These organizations are referred to as monitoring organizations.

Any service provider authorized to act as a monitoring organization is required under Article 8(1) of the Regulation:

- to maintain and regularly evaluate a due diligence system and grant operators the right to use it;
- to verify the proper use of its due diligence system by such operators; and
- to 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.

Additionally, a monitoring organization is required under Article 8(2) and Article 8(3) of the Regulation:

- to have legal personality and be legally established within the EU;
- to have appropriate expertise and the capacity to exercise its functions;
- to ensure the absence of any conflict of interest in carrying out its functions; and
- to be recognized as a monitoring organization by the EU.

There could be a cost involved in using a monitoring organization's service and the responsibility to comply with the Regulation remains with the operator.

Information about monitoring organizations recognized by the EU is available from: [http://ec.europa.eu/environment/forests/timber\\_regulation.htm](http://ec.europa.eu/environment/forests/timber_regulation.htm).



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## 5 Risk assessment and mitigation

### 5.1 General

Risk assessment and mitigation is an important element of the Regulation's due diligence system (see 4.3, Conducting risk assessments and 4.4, Mitigating identified risks).

This clause provides detailed guidance on what information to obtain when assessing risk and how to decide whether there is negligible risk or whether there is a need to mitigate the risk.

It does this by setting out an example risk assessment and mitigation procedure in 5.2, which can be used by operators who are seeking help in reducing the risk of sourcing illegally harvested timber.

The procedure is based around a series of questions to answer before timber and timber products enter your organization. The questions prompt you to identify the risks associated with the risk criteria set out in Article 6(1)(b) of the Regulation. The procedure then helps you to evaluate any information gathered to assess whether or not the risk of sourcing illegally harvested timber is negligible. Detailed guidance on each of the risk criteria is given in 5.3 to 5.15 and is referred to in the procedure.

### 5.2 Example procedure

The following three steps set out an example risk assessment and mitigation procedure that you, as an operator, can follow to establish whether there is negligible risk in terms of the legal origin of your timber and timber products, or whether you need to mitigate your risks. If your organization already has a due diligence system in place, the example procedure can also be used as a gap analysis tool to help you identify the information you have and the risks associated with any identified gaps.

#### Step 1 – Risk assessment and mitigation relating to information about certified timber and timber products

Identify if the products you are placing or intend to place on the market are certified under a forest certification scheme (see 5.10.2, Forest certification schemes). If they are, follow the flow chart in Figure 7a) to identify the recommended documents to demonstrate negligible risk.

Note that two questions are highlighted as primary indicators for assessing the risk of illegally harvested timber being placed on the EU market.

#### Step 2 – Risk assessment and mitigation relating to information about timber and timber products that are not certified

Identify if the products you are placing on the market, or are due to be placing on the market, are supplied as not certified. If they are, follow the flow chart in Figure 7b) to ensure the risk assessment takes account of the information requirements of the Regulation in accordance with Article 6(1)(b).

! This step details the appropriate information you are required to have access to as an operator under the Regulation.

Without a full complement of information a full risk assessment cannot take place and you cannot carry out your obligation under Article 6(1)(b) of the Regulation to analyse and evaluate the risk of illegally harvested timber being placed on the EU market.

Note that Q2 and Q3 are highlighted as primary indicators for assessing the risk of illegally harvested timber being placed on the EU market.

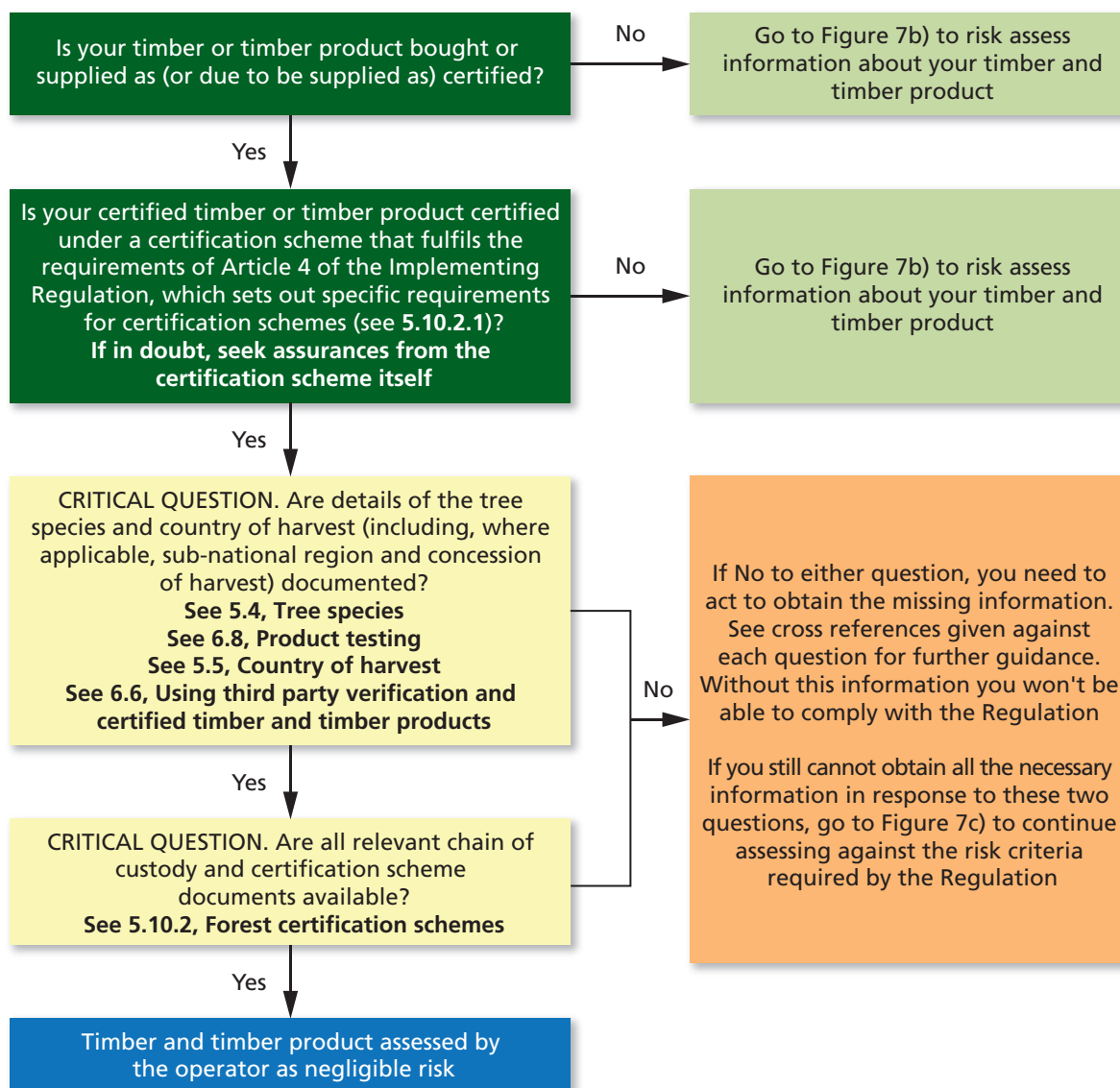
! Missing information therefore indicates a risk and requires mitigation measures to be implemented.

Even if you answer "yes" to all the questions in Figure 7b), if you cannot provide documentary evidence to support your assessment, risk mitigating actions are required.

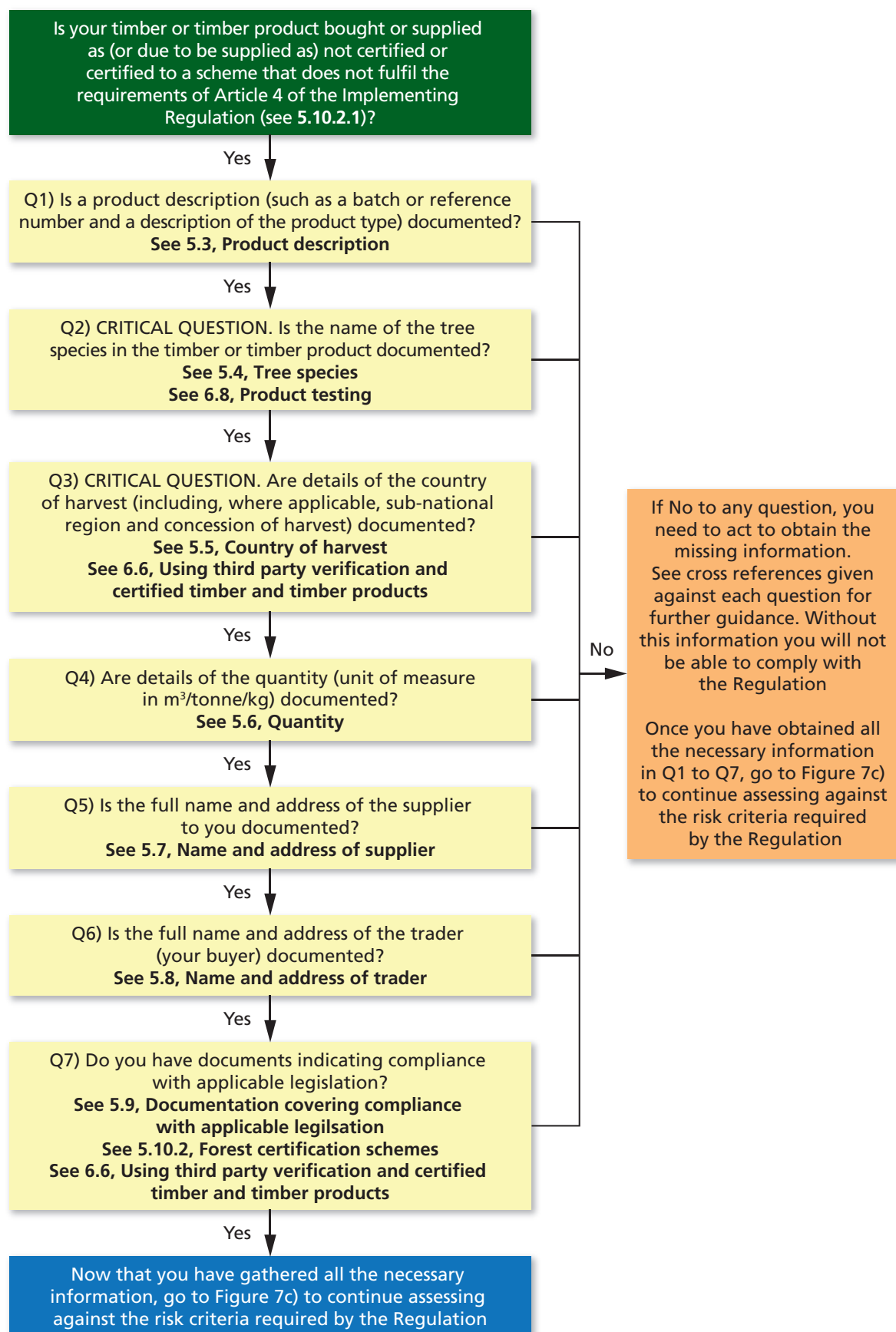
#### Step 3 – Risk assessment and mitigation relating to risk criteria set out in Article 6(1)(b) of the Regulation

Once you have completed Step 2 for a given timber or timber product, follow the flow chart in Figure 7c). It provides you with a series of questions based on the risk assessment criteria outlined in the Article 6(1)(b) of the Regulation. The questions have been designed such that an answer of "no" to any indicates a potential risk and mitigation measures are required.

**Figure 7a)** – Example risk assessment and mitigation procedure – Step 1: Risk assessment and mitigation relating to information about certified timber and timber products

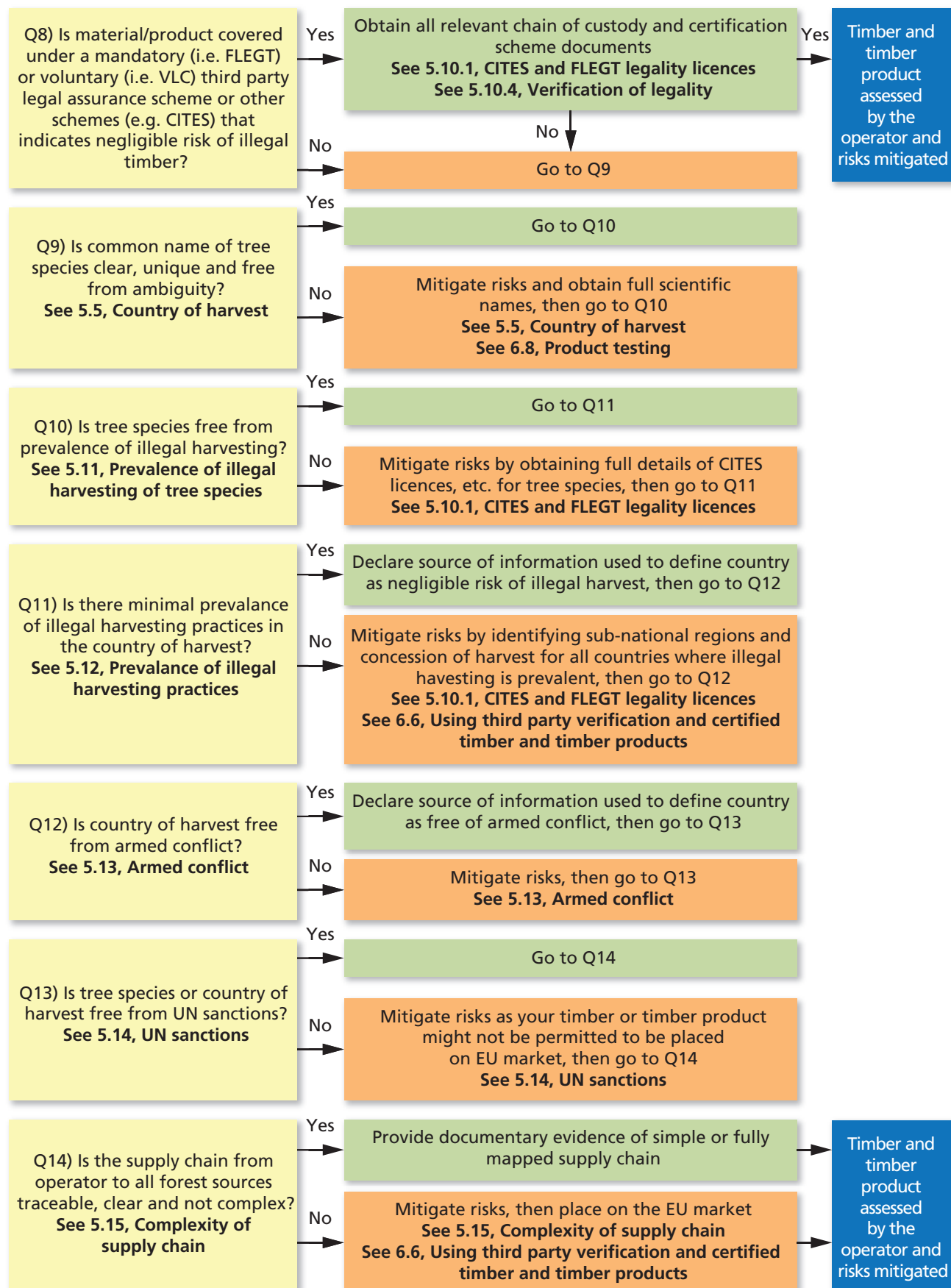


**Figure 7b)** – Example risk assessment and mitigation procedure – Step 2: Risk assessment and mitigation relating to information about timber and timber products that are not certified





**Figure 7** – Example risk assessment and mitigation procedure – Step 3: Risk assessment and mitigation relating to risk criteria set out in Article 6(1)(b) of the Regulation



### 5.3 Product description

The description for your affected products will be readily available and should be as descriptive as possible to help a competent authority in their enquiries.

The Regulation requires that the description includes the trade name and product type. Many products also come with a unique product reference. If the product has been imported the product also has a customs tariff commodity code that indicates the importation taxes due. This information helps clearly define the type of product you are placing on the market and can be directly matched to the products affected by the Regulation. Suppliers are commonly able to provide this information to you or present it via formal trading documents, but as the operator specifying the product or seeking the product for purchase, you probably already have much of this information within your organization. If this information is not available, you should add this request into your supplier's terms and conditions. More information on supplier terms and conditions is given in 6.4, Establishing a responsible timber and timber product purchasing policy.

### 5.4 Tree species

You, as an operator are required under the Regulation to have access to information concerning the common name of the tree species they intend placing on the market. This information is critical for your due diligence. Knowing the tree species is the first step in establishing the level of risk that timber or timber products have been illegally harvested, as some species are endangered and as such high risk (see 5.11, Prevalence of illegal harvesting of tree species). The tree species can be used to identify a mismatch in information provided on the country of harvest and it can alert you to the level of reputational risk associated with sourcing timber or timber products of a particular species.

Establishing the tree species is straightforward when you are dealing with just one species, such as the importation of teak or oak garden furniture or you are selling beech logs to a sawmill, but it becomes more complex when multiple species are involved. In all cases you should detail the steps you have taken to ensure you can identify all species you intend to place on the market. Using plywood as an example, you might know the species of timber used for the face and back of a product but the species used to make the core might change from batch to batch. The most pragmatic route would be to obtain a list of all the species the mill uses as this can help you to demonstrate, when asked by

a competent authority, the controls you have in place to establish the species. Generally, timber and timber products of mixed species can lead to a higher risk so you should conduct due diligence for the tree species with the highest risk first.

In the absence of credible information on the species, mitigation measures can be used to avoid placing on the market species prevalent to illegal harvesting. For example, see 6.8, Product testing.

The full scientific (botanical) name of the tree species is required under Article 3 of the Implementing Regulation to be provided where ambiguity in the use of the common name exists. This provides better accuracy in your due diligence and helps avoid the risk of dealing with timber or timber products that were illegally harvested. For example, the common name of cedar is used to describe the white cedar, incense cedar and Chinese cedar. These are not cedars at all. They are members of the *Calocedrus*, *Chamaecyparis* and *Cunninghamia* genus respectively. Similarly, Douglas fir is not a member of the fir genus but the *Pseudotsuga* genus.

Information is available to provide simple advice on the most common commercial timbers, put together by trade organizations and NGOs. You can find details of some species and common name databases in the bibliography.

! If your suppliers only make reference to terms such as "mixed tropical hardwoods", "mixed softwoods" or "softwood pulp" when selling timber or timber products, these terms alone are not specific enough to be acceptable descriptions of tree species and you might need to request or have access to supplementary information from your supplier to meet the requirements of the Regulation.

### 5.5 Country of harvest

The identification of the country of harvest for operators placing domestically grown timber on the domestic market is straightforward although domestically grown timber is still subject to the due diligence requirements of the Regulation and is not automatically classified by the Regulation as legal. Similarly, placing EU grown timber on the EU market is likewise subject to the due diligence requirements of the Regulation.

For operators who import timber and timber products into the EU, the place of purchase might not necessarily be the country of harvest so good traceability and supply chain controls are required to ensure the operator can establish the country of harvest. For example, Acacia might be sourced from Brazil and shipped to Malaysia where it is manufactured into furniture for the EU market.

If the country of harvest has different laws applying to sub-national regions and/or when other major important differences occur (such as a higher level of risk of illegal timber in that specific region) information on the sub-national region of harvest should be provided. Equally, information on the specific concession of harvest might also be required on a case-by-case basis to mitigate the risk of sourcing illegally harvested timber and timber products.

If the country of harvest is not clear, the Regulation states that mitigation measures “may include requiring third party verification” (see 6.6).

Whatever the nature of the supply chain, operators are required under Article 2 of the Implementing Regulation to “apply the due diligence system to each specific type of timber or timber product supplied by a particular supplier within a period not exceeding 12 months, provided that the tree species, the country or countries of harvest or, where applicable, the sub-national region(s) and concession(s) of harvest remain unchanged.”

## 5.6 Quantity

The quantity of timber or timber products being placed on the market is required to be recorded under the Regulation in either volume terms such as cubic metres or cubic feet, expressed as a weight, such as tonnes and kilograms or their imperial equivalents (imports from USA) or in the number of units such as 1 000 boxes. This information is readily available via formal trading documents and, if imported, on importation documents and bill of lading, etc.

## 5.7 Name and address of supplier

As an operator, you are required under the Regulation to establish the name and address of your supplier. Similarly, as a trader, you are required to be able to identify your supplier.

The best way to confirm this is through formal trading documents such as purchase orders, contracts, delivery documents, shipping terms and invoices.

For materials or products that are being imported shipping documents such as bill of lading, customs and export documents and the shipping companies/ freight forwarders documentation can provide the supplier's details.

The key here is to establish the legal entity that sold you or provided you with the timber and timber products.

Frequently operators are not in the same country as the origin of the timber or timber products so it is important to understand your supplier's relationship within the supply chain. More information on supply chains is available under 5.15, Complexity of supply chain.

For many imported finished products, a record can easily be made of the imported product and the supplier from whom the product was purchased. If you have multiple suppliers, for example, if importing pulps for further processing into paper, or purchasing sawn timber from multiple suppliers for either immediate sale or for further processing, even if identical timber types, this could necessitate establishing more extensive information management processes, according to the system you employ. Whether yours is a simple or more complex case, operators and traders need to have access to information that identifies the supplier of each of the component parts of their timber and timber product.

## 5.8 Name and address of trader

If you are an operator, you are required under the Regulation to establish the name and address of your customer (the trader) as long as the trade or sale you are making is business to business. If you are a trader, you are required to be able to identify any traders to whom you have supplied timber and timber products, again as long as the trade or sale is business to business. For both operators and traders, if the product is sold to a final consumer, these details are not required to be established.

The best way to demonstrate your trader's details are through formal trading documents such as proformas, contracts of sale, delivery notes and invoices.

As with the identification of the names and addresses of suppliers, for many products a link can often easily be made between the product and the trader to whom you sold the product. If asked by the competent authority, operators and traders need to have access to information that identifies any traders to whom they

have supplied their timber and timber products. There might be cases where maintaining this information seems complex, for example where a trader purchases identical types of timber from multiple suppliers and sources, possibly for further processing into multiple product components, and sells these on to one or more customers. The obligation to identify any traders to whom they have supplied their timber and timber products in this case remains the same.

Also important to note is that the sale of timber and timber products to traders does not always occur immediately after they are placed on the market. Sometimes the timescales involved between carrying out the due diligence process prior to placing on the market and the actual time when the title of goods passes to the trader can be months or even years so the operator should be able to retain this information within their organization for a similarly long period of time.

## 5.9 Documentation covering compliance with applicable legislation

Prior to placing timber and timber products on the EU market an operator is required under the Regulation to have access to documents or other information indicating compliance of those timber and timber products with the applicable legislation.

An operator will be in possession of all the required documents if they are forest owners or operators placing domestically grown timber on the EU market.

However, an importing operator will need to be able to provide access to this information prior to placing any products on the EU market.

**!** The sooner you establish this information prior to any products entering your organization, the more likely it is you can satisfactorily assess and mitigate any identified risk or illegally harvested timber or timber products entering your supply chain.

There is currently no definitive guide as to what documents are required per country. However, some examples of types of evidence for the verification of harvesting in compliance with applicable legislation are given in Table 2. These examples are for illustrative purposes only. The actual documents required for a given country will vary and should be determined on a case by case basis. Publically available guidance can also be found in forestry standards, such as those listed in the bibliography, and these can help you to evaluate the veracity or credibility of documentation.



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**Table 2** – Examples of evidence for verification of harvesting in compliance with applicable legislation

Legal requirement	Evidence
Evidence of legal authority to harvest	Concession licence and/or harvesting/felling permit (issued/approved by the appropriate authority), such as that required by <i>The UK Forestry Standard</i> [8]
Evidence of compliance with applicable management planning requirements	Approved management plan or equivalent documentation, as required by local authorities
Specification of applicable harvesting restrictions	Government or industry documentation specifying legal restrictions on harvesting, e.g. diameter limits, species restrictions and volume restrictions
Evidence that timber is harvested from authorized areas, e.g. not from protected areas where harvest is not allowed	Management plans, including maps and/or records showing the area in which harvesting has taken place
Evidence of timber sales	Bill of lading, sales contracts, invoices and purchase orders
Evidence of payment of royalties or other fees, i.e. fees on harvesting rights	Official records confirming payments
Evidence of compliance with applicable provisions and requirements of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) [9]	An up-to-date list of tree species in the forest management unit that are listed in Appendices I to III of the CITES, and/or national permits for harvest, trade, export and UK import of any CITES listed species, if applicable
Evidence of compliance with requirements in relation to transportation of timber	Copies of log lists, removal permits, transport or sales permits with specification of species and volumes as applicable

**NOTE** Examples of evidence for verification of legal compliance is included as guidance only. Other evidence to document compliance may be used.

WWF GFTN's *Guide to Legal and Responsible Sourcing* [10] provides a common legality framework for addressing legality in key trading countries, particularly in developing countries with high biodiversity forests where illegal logging and trade are known to be a significant concern. It also provides guides to legal documentation which provide an overview of the areas they recommend should be covered when assessing the legality of forest products for a selection of different countries. These are available from: <http://sourcing.gftn.panda.org/index.php?id=86>. In the absence of guidance for a specific country, the general guide to legal documentation can be referenced and is available from: [http://sourcing.gftn.panda.org/files/PDF/legal\\_documentation\\_general.pdf](http://sourcing.gftn.panda.org/files/PDF/legal_documentation_general.pdf).

Other sources of information on compiling documentation can be found by reading the various legal compliance forestry standards such as the Rainforest Alliance *SmartWood Generic Standard for Verification of Legal Compliance* [11], which is available from: [http://www.rainforest-alliance.org/forestry/documents/vlo\\_standard.pdf](http://www.rainforest-alliance.org/forestry/documents/vlo_standard.pdf).

Being realistic about being able to meet the Regulation is vital. As an organization, you could be faced with having to make decisions about whether to continue sourcing specific products, or to spend effort instead on seeking more suitable alternatives if the documentation provided for a product is poor or incomplete, and it is simply not possible to establish any level of due diligence for the products.



## 5.10 Mechanisms that play a role in establishing a negligible risk of illegal timber

### 5.10.1 CITES and FLEGT legality licences

#### 5.10.1.1 General

There are two mandatory schemes that are implemented by or on behalf of Governments through a timber licensing system. These are the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the EU's Forest Law Enforcement, Governance and Trade (FLEGT).

**!** Timber and timber products that have a CITES and/or a FLEGT licence are the only cases considered directly as negligible risk under the Regulation and therefore require no further risk assessment or mitigation once these licences have been obtained.

#### 5.10.1.2 CITES

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, <http://www.cites.org>) regulates the trade in live animals, animal parts, ornamental plants, medicinal plant parts, and timber species. It seeks to identify threatened species and create increasingly strong legal barriers to their harvest and trade, depending on their conservation status. CITES is another example of a mandatory legality verification scheme. By subjecting international trade in specimens of selected species to certain controls, all import, export, re-exporting and introduction from the range of species covered by the Convention have to be authorized through a licensing system.

CITES lists threatened or endangered wood species under three classifications, known as the Appendices. The restrictions on trade within these appendices vary depending on the extent to which the species is threatened with extinction. The CITES listing includes species that are traded for timber, traded for medicinal purposes, and rare but not commercially traded. Appendix I includes species threatened with extinction and trade in specimens of these species is permitted only in exceptional circumstances, see <http://www.cites.org/eng/disc/how.php>.

In terms of compliance with the Regulation the operator is required to check the CITES species database <http://www.cites.org/eng/resources/species.html> to identify if the species that it intends to place on the market is listed under any of the relevant Appendices.

If the species is listed in these Appendices, a permit is required from the relevant CITES Management Authority. The permit contains details of the exporter, details of the importer, the quantity, the species and the relevant management authorities' details.

All operators and traders that deal with this species have a legal obligation to ensure that all imports and trades are registered with the relevant authorities. Penalties are often large for failure to register imports of Appendix II and III species.

It is important for all operators and traders dealing with these species to also question the endangered nature of these species. Trade in these species might be legal, but it is important to recognize that, in many cases, it is trade that has led to the need and requirement for close monitoring.

Further information on the enforcement of CITES in the EU is available from: [http://ec.europa.eu/environment/cites/legislation\\_en.htm](http://ec.europa.eu/environment/cites/legislation_en.htm). It refers to Commission Regulation (EC) No 865/2006 [12], which gives examples of European CITES documents in Annex 1.

#### 5.10.1.3 FLEGT

Forest Law Enforcement, Governance and Trade (FLEGT, <http://www.euflegt.efi.int/portal/>) is an EU initiative to support countries to address illegal logging. A key part of the FLEGT action plan is the negotiation of bilateral voluntary partnership agreements (VPAs) between the EU and timber-producing countries. Under the terms of a VPA a country agrees with the EU to implement a timber licensing system. From that country, the EU only accepts licensed products, and unlicensed products are refused customs clearance with the aim of preventing illegal products from entering the EU market.

At the centre of each VPA is a legality assurance system (LAS). Its function is to identify, monitor and license legally-produced timber, and ensure that only legally harvested timber is exported to the EU. The LAS ensures that timber entering the supply chain originates from legal sources and that the timber flows are controlled throughout the supply chain, from the forest where the timber is harvested through transport, storage facilities and processing until the point of export. Timber tracking systems help demonstrate the legal origin so that each stage of the supply chain is duly controlled and no unverified timber has entered the supply chain.

The Regulation recognizes that the legality of FLEGT-licensed timber has been verified through a FLEGT partner country's control systems agreed under the VPA. The Regulation therefore exempts FLEGT-licensed timber and timber products from further due diligence requirements.

The operator can obtain information on all the partner countries where agreements have been made or are in progress to ratification and implementation from the FLEGT website at <http://www.euflegt.efi.int>. It provides a list of country shipments of FLEGT timber which can only pass through customs with appropriate documents issued by a national licensing authority of the exporting country which is commonly termed as the FLEGT licence. The Department for Environment, Food and Rural Affairs' (Defra's) Animal Health and Veterinary Laboratories Agency (AHVLA) is the designated competent authority for implementing the FLEGT licensing system in the UK. The UK Border Agency is the enforcement agency for the regulations at the border and is responsible for handling any timber arriving from VPA countries without a valid FLEGT licence. Away from the border AHVLA wildlife inspectors have a role in checking compliance with the domestic regulations, with the police being responsible for investigating breaches of the regulations and taking forward any charges and prosecutions.

Under Commission Regulation (EC) No 2173/2005 [13], importers of timber coming from a country with which the EU has signed a VPA are required to present their FLEGT licence (issued by the exporting VPA country) to the UK competent authority (AHVLA) for verification. It is important for an operator to be aware that each country might have a different set of product categories within the agreement. For a full list of products subject to FLEGT licensing, see <http://www.cpet.org.uk/flegt-regulation/vpa-partner-countries>.

## 5.10.2 Forest certification schemes

### 5.10.2.1 General

Forest certification schemes were launched in the early 1990s to help protect forests from destructive logging practices by promoting sustainable forest management. It is a process that results in an independent party issuing certification, which verifies that an area of forest is managed to defined environmental and social standards and most importantly in this context that they are in compliance with relevant laws.

Forest certification schemes can play a major role in establishing a negligible risk of illegal timber in the supply chain and is an important consideration in risk assessment and mitigation (see 5.2, Example procedure).

Article 4 of the Implementing Regulation states that certification schemes "may be taken into account in risk assessment and risk mitigation procedures where they meet the following criteria:

- 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;
- 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;
- 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;
- 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."

It is the operator's responsibility to identify whether any forest certification scheme they use meets the criteria set out in Article 4 of the Regulation. Individual certification schemes will be able to assist operators in assessing whether they meet these criteria.

Certification schemes with chain of custody (COC) requirements oblige certificate holders to track all of their logs from certified forests if their products are to be sold as certified. All entities that handle timber along the supply chain are required to ensure that certified timber and timber products are segregated from timber and timber products from sources that are not certified.

**!** Chain of custody matters. It is only by receiving certified timber and timber products, with an unbroken COC for those products, that certification can assist an organization in meeting the requirements of the Regulation.

There can be no guarantees that any scheme ever completely excludes unwanted products from the supply chain, but it is the intention of forest certification schemes to promote better forest management, and to enable operators and traders to be confident the products they buy have not contributed to illegal logging. Therefore, negligible risk does not imply zero risk – be prudent and learn about how these certification schemes and COC systems work and identify if further checks are needed to satisfy your own due diligence system. Schemes set out to comprehensively eliminate bad practice from controlled sources and supply chains, but it is the due diligence and risk assessment that an organization takes right at the beginning of a sourcing decision which really provides the most effective barrier to illegal goods in the supply chain, from any source.

### 5.10.2.2 Documentation

As an operator or a trader receiving timber and timber products from a supplier where the products are said to be from a certified source, you should check the supplier's documentation to confirm that COC requirements have been met.

Simple checks can be the most important, such as:

- checking your supplier's COC certificate number against the relevant forest certification scheme records, e.g. via FSC or PEFC online certificate databases (<http://www.info.fsc.org> and <http://register.pefc.cz/search1.asp>) to make sure it is valid;
- checking the scope of the COC certificate covers the specific products being supplied; and
- checking delivery notes and/or invoices to ensure the products are being supplied as certified under a chain of custody.

Globally, much investment has been made in forest certification schemes' systems to manage information on certified products. Purchasing certified timber or timber products with all their associated documentation, together with evidence on species and country of harvest, is commonly seen as one of the most straightforward routes to mitigate risks as an operator under the Regulation.

## 5.10.3 Mechanisms with a legality element that lead to certification

### 5.10.3.1 General

There are several mechanisms you might come across that can play a major role in establishing a negligible risk of illegal timber in the supply chain, without having achieved certification against a sustainable forest management standard. Such mechanisms generally involve a legality element and can help you work towards achieving certification against a forest certification scheme. For due diligence purposes, the criteria to be met under such mechanisms should be examined on a case by case basis, to establish that they adequately cover legality verification, and are supported by a formal auditing process. Some mechanisms might only help provide some level of risk assessment and transparency on supply source, but not directly provide assurance on the legality of timber and timber products.

The following two types of mechanisms are given by way of example:

- controlled wood and wood from non-controversial sources standards; and
- monitored or stepwise approaches to certification.

### 5.10.3.2 Controlled wood and wood from non-controversial sources standards

Some forest certification schemes operate standards specifically designed to include only certain elements of what is normally regarded as a full forest management assessment. These typically include an assessment for legality verification in addition to other criteria that provide for the control of non-certified timber and timber products entering a forest certification scheme's COC system. Timber and timber products assessed against these standards can play a major role in establishing a negligible risk of illegal timber in the supply chain.

For example, FSC Controlled Wood [14] or PEFC wood from non-controversial sources, i.e. due diligence system (DDS) material [15], is different to FSC or PEFC certified timber as it might not originate from a forest certified against the standard directly, but instead might have originated from a forest or forest region that has been risk assessed against a number of criteria including legality (see Table 2, Examples of evidence for verification of harvesting in compliance with applicable legislation).

Such materials have to be assessed and the sources verified against the relevant scheme's requirements, and the assessment then independently verified by the organization's certification body to allow this material to be combined with other timber from forests certified to full forest management standards.

Evidence of receiving controlled wood or wood from non-controversial sources into your organization can be documented as part of a due diligence system required by the Regulation.

### 5.10.3.3 Monitored or stepwise approaches to certification

A number of NGO-led initiatives support organizations towards achieving forest certification. In common with many is a monitored or stepwise approach towards certification that involves establishing the origin of timber and establishing the legal right to harvest as a starting point. Although these programmes are not legality verification programmes, forest members do have to demonstrate the legal right to harvest as part of the validation towards forest certification and so they are relevant to the Regulation. These types of programmes increasingly utilize third party verification of legality in addition to their own processes to govern the performance of forest managers they work with, however, operators still need to establish evidence for any other country-specific legality requirements that are not covered by these programmes.

Most of the work of these monitored or stepwise approaches is focused in timber-producing countries that are outside the EU.

The following three NGO initiatives are given by way of example:

- the WWF's Global Forest & Trade Network (GFTN) Sound Forest Management, [http://gftn.panda.org/practical\\_info/basics/sound\\_forest/certification/](http://gftn.panda.org/practical_info/basics/sound_forest/certification/)
- the Rainforest Alliance, *Smartstep – A Stepwise Approach toward FSC Forest Management Certification* [16]
- The Forest Trust (TFT), <http://www.tft-forests.org/downloads/get/?d=3099>

These initiatives share the following common operational principles:

- an initial audit or gap analysis against the FSC principles and criteria for forest stewardship [17] to identify key actions;
- development of an action plan to address gaps in forest management activities;
- ongoing audits to track improvements;
- public reporting of forest management activities against agreed timescales; and
- manufacturers and processors of timber and timber products, such as retailers, distributors and other end users commit to eliminating the use of timber and fibre from unacceptable sources, including illegal sources.

An operator can confirm if their supplier is a member of either scheme through consulting the relevant NGO websites:

- WWF GFTN, [http://gftn.panda.org/about\\_gftn/current\\_participants/](http://gftn.panda.org/about_gftn/current_participants/)
- Smartstep, <http://www.rainforest-alliance.org/forestry/certification/services/smartstep-participants>
- TFT, <http://www.tft-forests.org/members>

## 5.10.4 Legality verification

### 5.10.4.1 General

Verification refers to the process of checking that the forest management and supply chain controls meet a defined set of requirements; in this case, legality. It usually involves audits of forest management units and processing facilities, including field inspections, and reviews of documentation and management systems.

There are many different voluntary legality verification systems in operation. They are generally run by certification bodies or organizations that use the certification bodies' standards to assess against. They are used by forest management companies, manufacturers and traders in the supply chain to respond to their customers' requests of proof that the products supplied have been legally produced. As they all differ, care is required as only some can be used to meet market requirements on legality.

#### 5.10.4.2 Legality verification systems

In response to the demands of business to establish whether timber and timber products have been harvested and traded within applicable laws, to date two levels of voluntary verification have been established and operated as services to the market – verification of legal origin (VLO) and verification of legal compliance (VLC).

The following guidance outlines the main details of these voluntary verification services as described in Proforest's *An overview of legality verification systems* [18].

- Verification of legal origin (VLO) verifies that timber comes from a known and licensed source and that the organization that carried out the harvest had the legal right to do so. If the operator receives this material, they are still required to collate other documents relating to applicable legislation as listed in Article 2(h) of the Regulation.
- Verification of legal compliance (VLC) expands upon the basic component of VLO by verifying that timber harvesting and other relevant management activities in the forest where it was harvested complied with all applicable and relevant laws and regulations.

A comparison of several VLO/VLC schemes against basic legality criteria is given in Table 3. The table was reproduced from Proforest's *An overview of legality verification systems* [18] and includes those schemes identified by Proforest as being the main VLO/VLC schemes operating at the time the report was being prepared for publication in February 2011. Rapid changes take place in these schemes so any organization looking for this level of support should check whether any of these schemes meet the requirement for due diligence under the Regulation.

For forests with VLO certificates, the operator would need to mitigate further against other factors relating to compliance with legislation related to forest management, environment, labour and welfare, and health and safety, and compliance with requirements for trade and export procedures.

For an operator, requesting a VLC on the forest sources provides a mitigation tool where illegal harvesting, armed conflict or missing documentation have been identified as a risk (see 5.11, Prevalence of illegal harvesting of tree species and 5.13, Armed conflict).

#### 5.10.4.3 Tools to support legality verification

There are two initiatives that focus on achieving legality verification. These are provided by the Tropical Forest Foundation (TFF) and Timber Trade Action Plan (TTAP).

- The TFF developed a standard for reduced impact logging (RIL) [19], [http://www.tropicalforestfoundation.org/images/PDF/tff\\_standard\\_for\\_reduced\\_impact\\_logging.pdf](http://www.tropicalforestfoundation.org/images/PDF/tff_standard_for_reduced_impact_logging.pdf). The RIL standard is not directly equivalent to a legality verification system but does contain a legality component. TFF endorses the verification audit carried out by an independent third party audit against legality and chain of custody standards. This provides two types of label: "legal verified", based on a VLO standard, and "RIL verified", based on a VLC standard.
- The Timber Trade Action Plan (TTAP), managed by The Forest Trust (TFT) is a private sector project that provides technical assistance to suppliers of the members of European Timber Trade Federations (TTFs) to achieve legality verification of their supply chains. It is not a legality verification system. TTAP provides assistance to forest managers or manufacturers to achieve legality verification. The legality checklist is an internal document used in an assessment to identify gaps between current practice and the standard required for third party legality verification. Companies using the TTAP legality checklist are not allowed to make any claim on legality. TTAP have publicly available legality checklists for Brazil, Cameroon, China, Gabon, Indonesia, Malaysia and Republic of Congo, which are available from: <http://www.tft-forests.org/ttap/page.asp?p=6229>.

For the operator, both initiatives can provide good levels of basic information but could require further mitigation measures to demonstrate compliance with the legal requirements of the country of harvest.



**Table 3** – Elements of legality covered by VLO/VLC schemes

Criterion	SGS TLTV- VLO <sup>A)</sup>	SGS TLTV- VLC <sup>B)</sup>	SW VLO <sup>C)</sup>	SW VLC <sup>D)</sup>	SCS LHV <sup>E)</sup>	BV OLB <sup>F)</sup>	Certi- source <sup>G)</sup>
1. Legal right to harvest	✓	✓	✓	✓	✓	✓	✓
2. Compliance with legislation related to forest management, environment, labour and welfare, health and safety	○	✓	○	✓	✓	✓	✓
3. Compliance with legislation related to taxes and royalties	✓	✓	✓	✓	✓	✓	✓
4. Respect for tenure or use rights of land and resources that might be affected by timber harvest rights	✓	✓	✓	✓	✓	✓	✓
5. Compliance with requirements for trade and export procedures	✗	✓	✓	✓	✓	✓	✓
6. Additional criteria, compliance with international treaties, e.g. International Labour Organization (ILO) standards, the Convention on Biological Diversity (CBD) and CITES	✓	✓	✓	✓	✓	✓	✓

**Key**

✓ Fully covered

○ Partially covered

✗ Not covered

**NOTE** Reproduced with permission from Proforest's An overview of legality verification systems [18].<sup>A)</sup> SGS Timber Legality and Traceability Verification VLO<sup>B)</sup> SGS Timber Legality and Traceability Verification VLC<sup>C)</sup> SmartWood VLO<sup>D)</sup> SmartWood VLC<sup>E)</sup> Scientific Certification Systems LegalHarvest Verification<sup>F)</sup> Bureau Veritas Origine et Légalité des Bois<sup>G)</sup> CertiSource Legality Verification System

### 5.10.5 Environmental labels

The International Organization for Standardization (ISO) classifies three broad types of environmental labelling. Many of these labelling programmes through their scope and objectives provide the operator with varying levels of assurance towards legality.

- Type I environmental labelling programmes are voluntary, multiple-criteria-based third party programmes that award a licence which authorizes the use of environmental labels on products indicating overall environmental preferability of a product within in particular product category based on life cycle consideration. An example of a Type I labelling programme is the EU Ecolabel. Requirements for Type I environmental labelling are specified in BS EN ISO 14024.
- Type II environmental labelling programmes are based on self-declarations of environmental claims by parties likely to benefit from such claims. There are no set criteria to meet, organizations declare the information they wish to declare about the environmental attributes of their products. These programmes often involve claims relating to single attributes. An example of a Type II labelling programme is Paper Profile. Requirements for Type II environmental labelling are specified in BS EN ISO 14021.
- Type III environmental labelling programmes present qualified environmental information on the life cycle of a product to enable a comparison between products fulfilling the same function. Such declarations are provided by one or more organizations, are based on independently verified life cycle assessment data, are determined using predetermined parameters and are subject to the administration of a programme operator. They can, for example, include information about the environmental impacts associated with a product or service, such as raw material acquisition, energy use and efficiency, content of materials and chemical substances, emissions to air, soil and water and waste generation. It also includes product and company information. Such programmes are akin to product profiles rather than a verifiable claim or an assurance that a minimum set of criteria have been met. Requirements for Type III environmental labelling are specified in BS EN ISO 14025.

### 5.11 Prevalence of illegal harvesting of tree species

Two sources of information are available to assist the operator in determining the prevalence of illegal harvesting of tree species: The IUCN Red List of Threatened Species™<sup>1)</sup> and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

The IUCN Red List of Threatened Species™<sup>1)</sup> is widely recognized as the most comprehensive and objective global approach for evaluating the conservation status of plant and animal species. It does not mean that the tree species being harvested is illegal but if the species is threatened, vulnerable or endangered it is a good indicator of the level of risk involved for the operator and therefore the robustness of the due diligence required to risk assess the species and mitigate the risk. Further information is available from: <http://www.iucnredlist.org>.

Further information on CITES is given in 5.10.1.2.

When assessing the prevalence of illegal harvesting of tree species it is also helpful to assess this in conjunction with the prevalence of illegal harvesting practices as there is a strong correlation between the two (see 5.12).

### 5.12 Prevalence of illegal harvesting practices

Illegally harvested is defined under Article 2(g) of the Regulation as “harvested in contravention of the applicable legislation in the country of harvest”.

Simply put it is the harvest, transportation, purchase or sale of timber in violation of laws. The harvesting procedure itself might be illegal, including using corrupt means to gain access to forests; extraction without permission or from a protected area; the cutting of protected species; or the extraction of timber in excess of agreed limits. Illegalities can also occur during transport, such as illegal processing and export; fraudulent declaration to customs; and the avoidance of taxes and other charges.

<sup>1)</sup> The IUCN Red List of Threatened Species™ is a trade mark owned by International Union for Conservation of Nature and Natural Resources. This information is given for the convenience of users of this standard and does not constitute an endorsement by BSI of the product named. Equivalent products may be used if they can be shown to lead to the same results.

An operator needs to be aware of all issues that affect a country's ability to manage effectively its legal timber supply chain.

Chatham House provides a good source of information on the key issues in the debate around illegal logging and the trade in illegal timber, via news stories and key documents, as well as details of relevant events, and links to other relevant websites. Further information is available from: <http://www.illegal-logging.info/index.php>.

WWF also provides public resources and reports to help organizations determine if the country of origin is at risk of supplying illegal timber. Further information is available from: <http://www.panda.org>.

The Corruption Perception Index published by Transparency International is an example of a tool that provides a representation of the perceived corruption level in each country and is readily available for all countries. As a broad indicator, the higher the level of corruption, the greater the likelihood that illegal logging can go unchecked and so the risk of sourcing potentially illegal timber increases. Further information is available from: <http://www.transparency.org>.

The Global Forestry Registry is a free source of information on the risk of sourcing controversial timber throughout the world. The registry covers more than 150 countries worldwide and is targeted towards any party wishing to exercise due diligence on sourcing of raw materials based on the *FSC Standard for company evaluation of FSC Controlled Wood* [14]. Further information on the registry is available from: <http://www.globalforestryregistry.org>.

The Forest Legality Alliance is an initiative designed to achieve better forest government and biodiversity conservation by reducing demand for illegally harvested forest products and increasing the capacity of supply chains to deliver legal timber and paper. It has developed a risk tool designed to present useful information about the sourcing of forest products. It includes information about the forest products trade and relevant legality information by country and species. The tool is continually expanding to include information on a wider range of countries and species. Further information is available from: <http://www.forestlegality.org/risk-tool>.

Where an operator has identified the prevalence of illegal logging in the country of harvest, the sub-national region where the timber was harvested and/or the concession of harvest should be identified. The Regulation states that mitigation measures "may include requiring third party verification" (see 6.6) and in this case it would include third party verification of the legality of the concession of harvest and chain of custody measures to ensure that the material is traceable throughout the supply chain.

When assessing the prevalence of illegal harvesting practices it is also helpful to assess this in conjunction with the prevalence of illegal harvesting of tree species as there is a strong correlation between the two (see 5.11).

## 5.13 Armed conflict

"Conflict timber" is a term used to describe timber that is produced and sold to finance armed conflict. The definition used by the NGO Global Witness (<http://www.globalwitness.org>) is "timber that has been traded at some point in the chain of custody by armed groups, be they rebel factions, regular soldiers, or the civilian administration, either to perpetuate conflict or to take advantage of conflict situations for personal gain".

Conflict timber is not necessarily illegal, though this is dependent on governmental sanctions in place at any given time.

Operators need to be aware of the existence of conflict timber and should adjust their purchasing policy accordingly.

Where countries have regional variations in armed conflict status (i.e. the conflict is regional), an operator should use a clear and detailed chain of custody to ensure that the supply chain involved is not associated with the region in conflict. The complicated nature of conflicts can undermine this process and not satisfy stakeholders that the issues can be sufficiently separated.

More information on conflict timber is available from: <http://www.globalwitness.org>.

NGOs and other stakeholders might be able to assist in identifying sources of conflict timber; the UN also might have information, for example, in the form of embargoes or other dialogue to assist in identifying such sources.

## 5.14 UN sanctions

Under Chapter VII of the Charter, the UN Security Council can take enforcement measures to maintain or restore international peace and security. Such measures range from economic and/or other sanctions. The Council has resorted to mandatory sanctions as an enforcement tool when peace has been threatened and diplomatic efforts have failed. The range of sanctions has included comprehensive economic and trade sanctions and/or more targeted measures such as arms embargoes, travel bans, financial or diplomatic restrictions. <http://www.un.org/sc/committees/index.shtml>.

Sanctions or restrictive measures (the two terms are used interchangeably) have been frequently imposed by the EU in recent years, either on an autonomous EU basis or implementing binding resolutions of the Security Council of the United Nations. Sanctions are an instrument of a diplomatic or economic nature which seek to bring about a change in activities or policies such as violations of international law or human rights, or policies that do not respect the rule of law or democratic principles.

An operator is required to check whether there are no sanctions or embargoes on the country of origin or the products they wish to place on the EU market. The latest information is available from: [http://eeas.europa.eu/cfsp/sanctions/index\\_en.htm](http://eeas.europa.eu/cfsp/sanctions/index_en.htm).

## 5.15 Complexity of supply chain

The complexity of the supply chain of timber and timber products is an important factor in how easy organizations find it to comply with the Regulation.

The simplest supply chain is of an operator placing UK grown timber on the EU market, an example of which is given in Figure 8a). In this case, typically the operator is a forest owner, or perhaps just one step away from the forest origin, such as a forest contractor employed to fell and place timber on the EU market.

The complexity of a supply chain increases as more processors and traders appear in the supply chain between the operator and the original forest source. In this instance the operator should identify all stages and provide documentary evidence to trace the timber back to the forest origin through all of its supply chain partners. An example of a supply chain of intermediate complexity is given in Figure 8b).

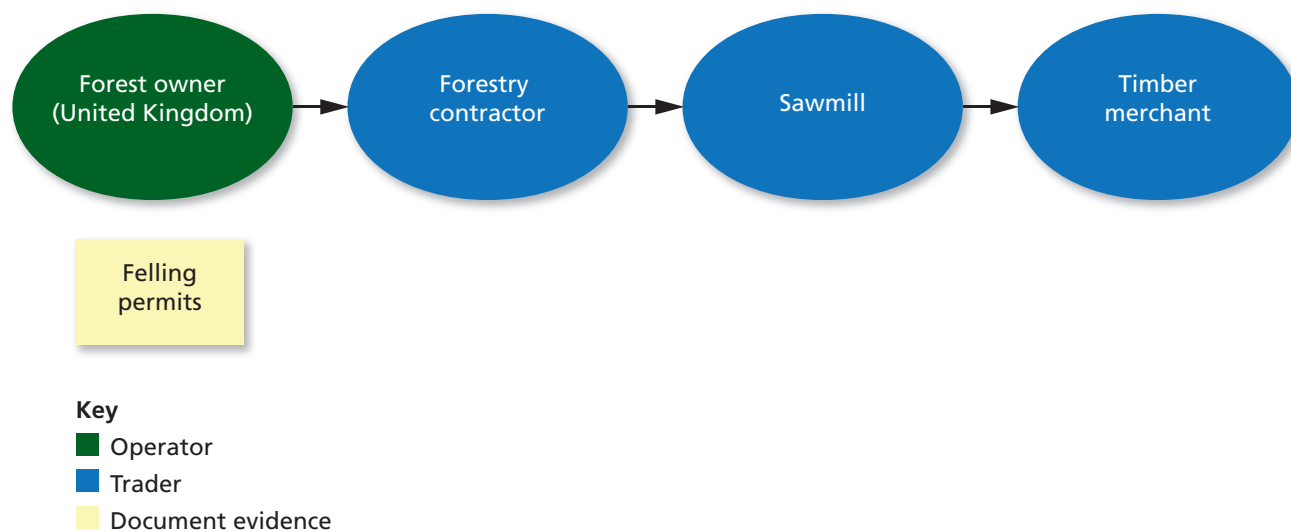
As a supply chain becomes more complex then likewise the more complex this element of the due diligence system becomes, with an associated increase in risk of illegal timber entering the supply chain or a breakdown in the due diligence system. Complex supply chains are likely to require more mitigation measures than simpler supply chains. Any risk assessment undertaken should include an evaluation of the credibility and maturity of each organization to manage its responsibilities on behalf of the operator.

Supply chain mapping is essential to demonstrate clear links between the material being placed on the market and the forest origin. Developing simple supply chain maps helps as a first step in establishing material flows. Once the supply chain has been identified, the operator should assess each element of the supply chain to establish the credibility of the information being supplied. An operator should verify that the information it receives from its supply chain genuinely relates to the products it intends placing on the market.

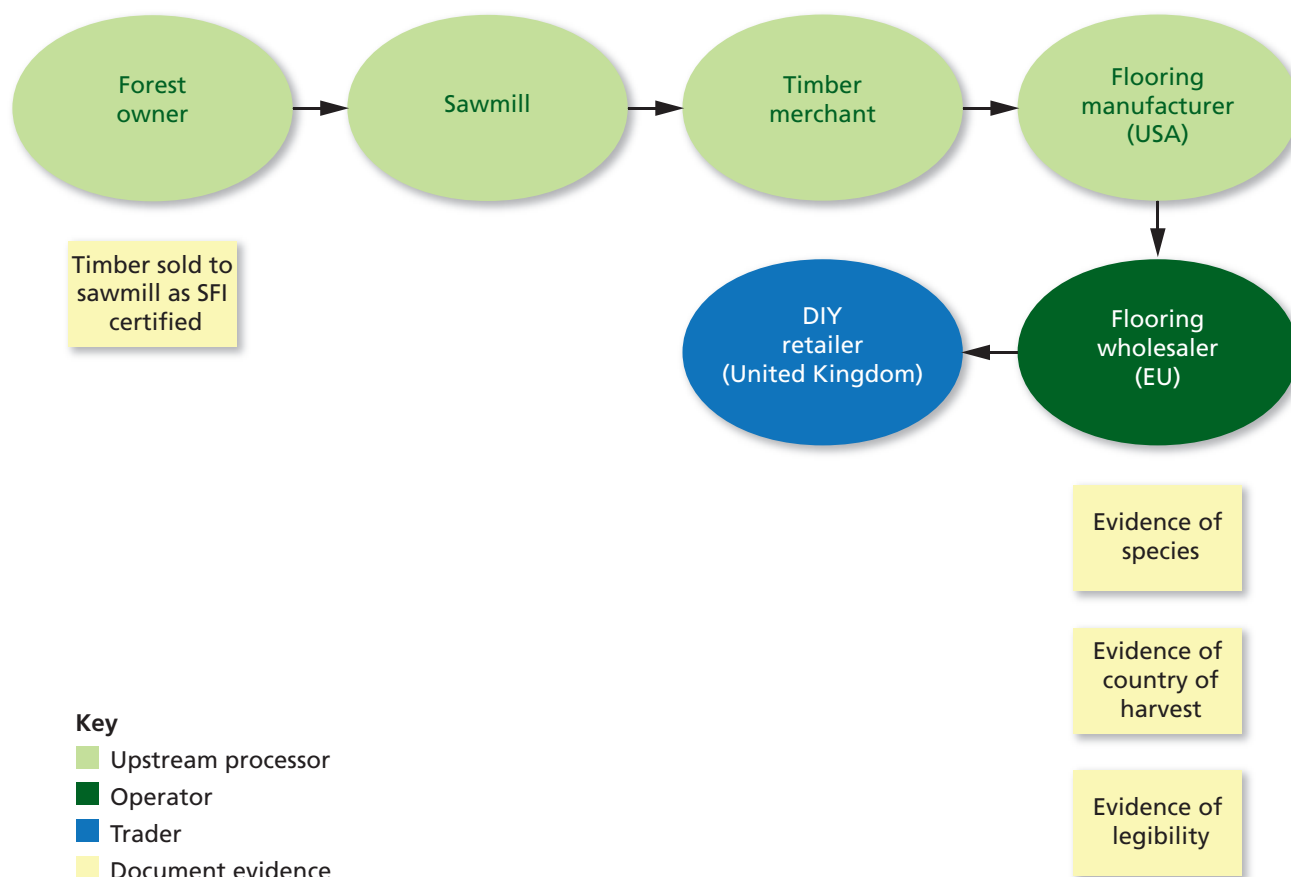
Complexity also increases when more than one species or material is used in the product.

However, even in complex supply chains it is possible to adequately mitigate risk if credible and verified links between all supply chain partners can be achieved, for example through the purchase of certified products with a complete chain of custody. An example of such a supply chain is given in Figure 8c).

**Figure 8a)** – Examples of timber and timber product supply chains – Example of a simple supply chain showing an operator placing UK grown timber on the EU market

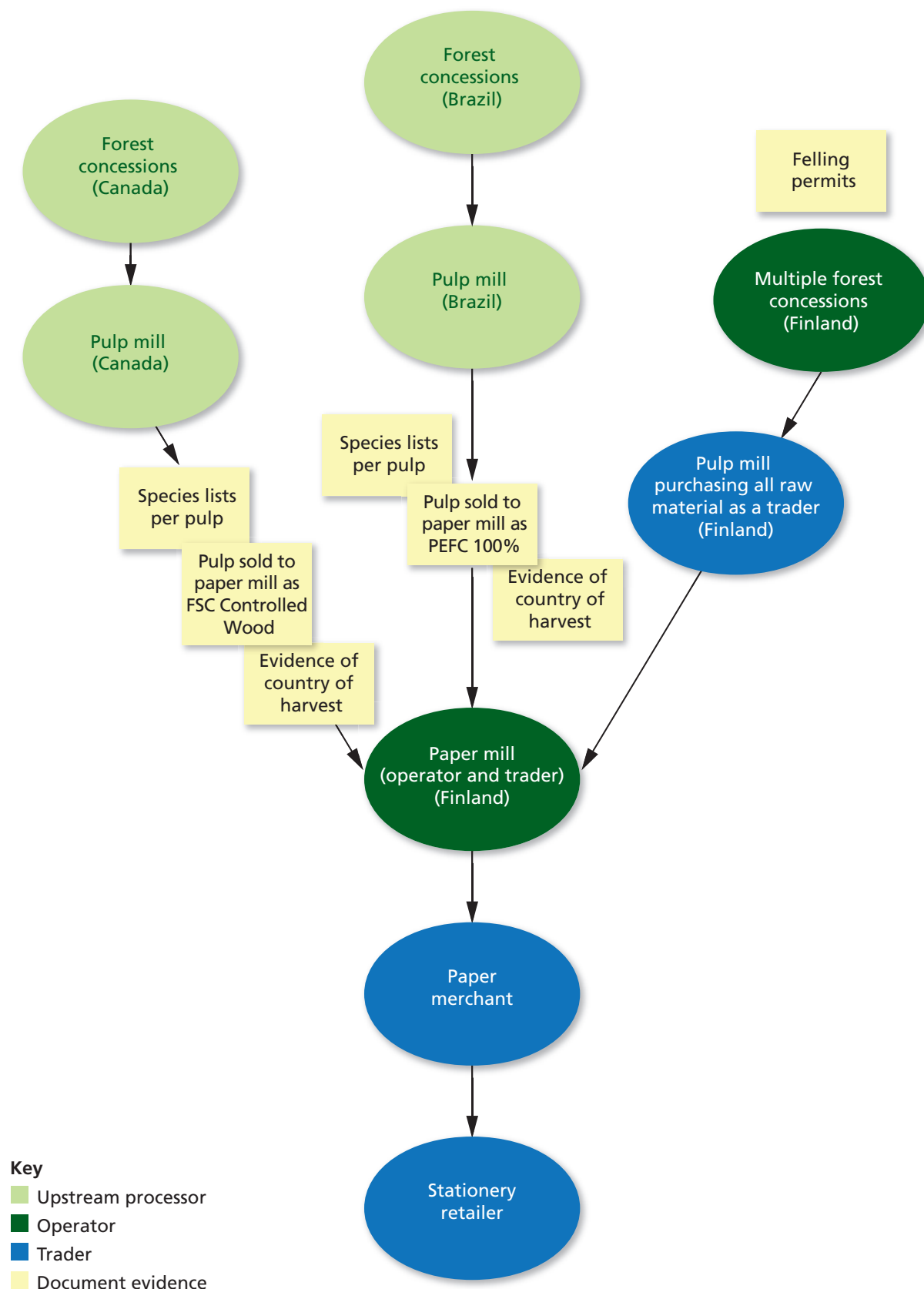


**Figure 8b)** – Examples of timber and timber product supply chains – Example of a supply chain of intermediate complexity showing that the further away the operator is from the forest source the more complex the supply chain becomes





**Figure 8c)** – Examples of timber and timber product supply chains – Example of a complex supply chain where the operator mitigates the risks using a certified chain of custody



## 6 ↑ Good practice for a beyond compliance approach

### 6.1 ↑ General

The way forest resources are used today is not a guarantee of their availability in the future. The introduction of the Regulation presents a number of significant opportunities for an organization to go beyond compliance and ensure its solution to the Regulation adds greater business value at the same time as taking a step towards guaranteeing future supply.

There are cases around the world which exemplify, too, that legality of trade in timber and timber products will not necessarily sustain forest resources for their diverse benefits – such as long-term productivity as forest resources, healthy ecosystems and a source of livelihood for forest dependent people. The drive to go beyond legality where necessary in the shape of sustainable forest management standards and practices helps global business make a positive contribution to sustaining these resources for the future. Legally harvested but unsustainable material can be legal under the Regulation, even if this is undesirable from a sustainability point of view.

Success in due diligence for timber and timber products relies on proactive practical steps to improve transparency of information throughout the supply chain, and is largely dependent on building these steps into usual business practice, and encouraging others to do so too, until this practice becomes the norm.

There are several tried and tested practices that an organization can adopt to mitigate the risk of illegal timber in the supply chain. This clause describes a selection of practices that can be adopted by anyone using this guide, whether an operator, trader or organization wanting to source responsibly and improve the sustainability of sources of timber and timber products. It also explores the business benefits of these practices to go beyond compliance with the Regulation, for example, by extending the spirit of due diligence required by the Regulation to a wider range of timber and timber products and adopting a policy for buying more products certified from well-managed forest sources.

If you are a trader, whilst your organization might not have obligations to exercise due diligence in the same way as operators under the Regulation, there are business benefits in following the same practices required by operators. These include:

- security of supply – if illegal timber contaminates a supply chain, traders can potentially suffer from a break in supply if the products they rely upon are seized by their country's competent authority when being placed on the EU market by the operator;
- brand protection – if an organization has a brand to protect, traders should identify the operator within their supply chain to ensure that the operator is fully complying with its obligations;
- deepened understanding of suppliers and ensuring they are managing your interests; and
- meeting your customers' (potentially other traders) requests for information.

### 6.2 ↑ Extending due diligence to other timber products

The Regulation covers a range of timber and timber products but omits a number of product categories that are relevant to the responsible sourcing of timber.

An example of products currently omitted from the Regulation includes books and printed materials. The production of printed materials, for example, can and does arise from poor sourcing practices including sourcing from illegal origins and badly managed forests and the conversion of natural forests to other land uses.

By extending due diligence to these and other products an organization can demonstrate its commitment to responsible sourcing. In doing so it can reduce the risk to its brand of procuring products that come from an illegal origin or are irresponsibly sourced – even though the organization is complying with the Regulation for the products specified by the Regulation. It can also be more time consuming to direct your organization's procurement with complicated policies and instructions about undertaking due diligence for some goods and not others, rather than apply the same approach to all timber and timber products.

In addition to reducing risk to its brand, an organization that extends its traceability programme to products outside of the scope of the Regulation will be in a position to offer customers with stringent sourcing policies for a wider range of products. It will also reduce overall business risk through more robust sourcing practices.

Extending due diligence to a wider product range can also increase the volume of timber and timber products under scrutiny for legal origin – so benefiting nature and local communities that rely on the forest for their livelihoods. The Regulation itself acknowledges this as one of the main purposes for the introduction of measures to tackle the placement of illegally harvested timber on the European Market. Therefore, it is possible the scope of the Regulation could be extended to cover other timber and timber products at a later date.

### 6.3 ↑ Extending due diligence to recycled materials

Even though timber and timber products that have completed their lifecycle and would otherwise be disposed of as waste are exempt from the Regulation, it is important, as an operator, when you place recycled materials on the market you can clearly demonstrate they are truly recovered from materials that have completed their life cycle.

For example, a mill outside the EU produces an A4 paper and states it is made from 20% recycled fibre. The operator who imports this paper into the EU needs to establish that the 20% recycled fibre has truly completed its life cycle. If the mill purchased a recovered fibre pulp from a waste paper recycling mill, the evidence required would be straightforward to obtain. If the paper mill used its own production waste then this might not satisfy the Regulation's classification of waste and further investigation will be required in order to exempt it from your due diligence requirements.

To help determine if a paper-based material has completed its life cycle, The National Association of Paper Merchants (NAPM) provides the following guide to the types of paper waste that can be considered as genuine recovered fibre:

- converters waste: waste that has left the mill and is waste from a cutting or slitting operation;
- printers waste: printed or unprinted waste collected from a printing operation and that might be either trimmings (guillotine waste), overs, rejects or any other similar waste received direct from a printer;

- domestic/office waste: waste collected from either of these places and that may be printed or unprinted;
- news stand returns; and
- other, for example industrial waste, agricultural waste, etc.

NAPM also advises that under no circumstances can mill broke, virgin wood fibre or virgin non-wood fibre contribute to genuine recovered fibre.

The Waste Resources and Action Programme (WRAP) also provides a useful guide and definition on recycled paper. The principles of this guide also clarify that genuine reclaimed wood where waste from a sawmill would not be classified as recycled or reclaimed but wood that has been collected from processors/converters and end users and reprocessed by a third party would be eligible. The guide is available from: [http://www2.wrap.org.uk/downloads/2.\\_Recycled\\_paper\\_content\\_definition.40381efe.2965.pdf](http://www2.wrap.org.uk/downloads/2._Recycled_paper_content_definition.40381efe.2965.pdf).

### 6.4 ↑ Establishing a responsible timber and timber product purchasing policy

A responsible timber and timber products purchasing policy outlines the criteria an organization sets for the timber and timber products it sources for its business. This in turn sets the expectations an organization has of its suppliers and the criteria suppliers need to fulfil before they can supply timber and timber products.

A good policy can specify many of the requirements of the Regulation, for example that the supply chain provides the operator with the information required under Article 6(1)(a) of the Regulation. A good policy can also clearly convey the values of the organization and show how these values are upheld. An example policy is given in Annex B.

Building such a policy into trading documents such as terms and conditions and purchase orders clearly communicates to your supply chain your requirements. It can also help staff focus on what the organization wants to achieve and why, and lay out what needs to be checked with suppliers when sourcing products.

Everyone has a role to play here in promoting better supply chain appraisal and responsible sourcing practice and in turn sending strong market signals to the primary producers as to the value of responsible forest management.

## 6.5 ↑ Using tools to engage suppliers

### 6.5.1 ↑ Supplier guidance notes

For an operator with many suppliers who can in turn have long supply chains, requests for information can lead to misunderstandings and confusion. This can be due to varying levels of awareness of the Regulation, or even the operator's own trading requirements, but also to changes in policy, products or staff, or the effects of working across different languages.

By developing supplier guidance notes that clearly outline all the steps the operator wishes its supply chain to take and sharing them from the start of a business relationship, all supply chain participants can be in possession of guidance that informs them of their responsibilities and their role within the operator's supply chain. Codes of conduct can also operate in this way, as an agreement between two organizations that certain requirements will be met as a condition of business.

Even supplying this guide to your supply chain and highlighting the relevant clauses can raise awareness and help mitigate impending risks.

### 6.5.2 ↑ Supplier questionnaires

Developing timber and timber product questionnaires for your suppliers helps you, as an operator, obtain the information you require under the Regulation.

There are many publicly available documents that provide examples of what to consider when creating timber and timber product questionnaires for suppliers. WWF's Global Forest & Trade Network (GFTN) provides an example sourcing and supplier risk rating questionnaire, which is available from: [sourcing.gftn.panda.org/files/PDF/Example\\_Questionnaire\\_1.pdf](https://www.gftn.org/panda.org/files/PDF/Example_Questionnaire_1.pdf).

### 6.5.3 ↑ Supplier assessments

Often organizations with experience of managing operational risks outline what they expect of a responsible supplier, and assess their suppliers to gain confidence a supply chain partner is providing the evidence needed to assess legality.

For example, suppliers who are knowledgeable of the market and willing to share this understanding with their customers, or who are resourced with trained technical and environmental staff, can be better equipped to provide access to information about their supply chains. Similarly, organizations who operate transparently, maintain publically available policies and procedures, and communicate results and annual performance targets are on their way to being more

credible than those companies that do not. In essence the operator should be looking for strong corporate governance credentials from their supply chain partners to help mitigate any identified risk.

## 6.6 ↑ Using third party verification and certified timber and timber products

An operator must obtain specific information on its timber or timber products to comply with the Regulations. An operator who has identified a complex supply chain as a key risk might have to employ not one but multiple mitigation measures to satisfactorily minimize the risk of illegal timber being placed on the EU market.

It can achieve this by gathering and verifying the required information itself. However, there are instances where it might need external assistance in physically verifying the movement of timber from a known legally verified forest through its supply chain until the point where it places the material on the EU market. In this case, a third party can be used to investigate its supply chain and provide the required information.

Verification of legal origin (VLO) and verification of legal compliance (VLC) can be issued by certification bodies that have their own legal verification standard or audit against other certification bodies' standards (see Table 3 and 5.10.4, Verification of legality). These provide varying levels of legal verification but can form highly credible mitigation measures in their own right when the risk of illegal harvesting has been established.

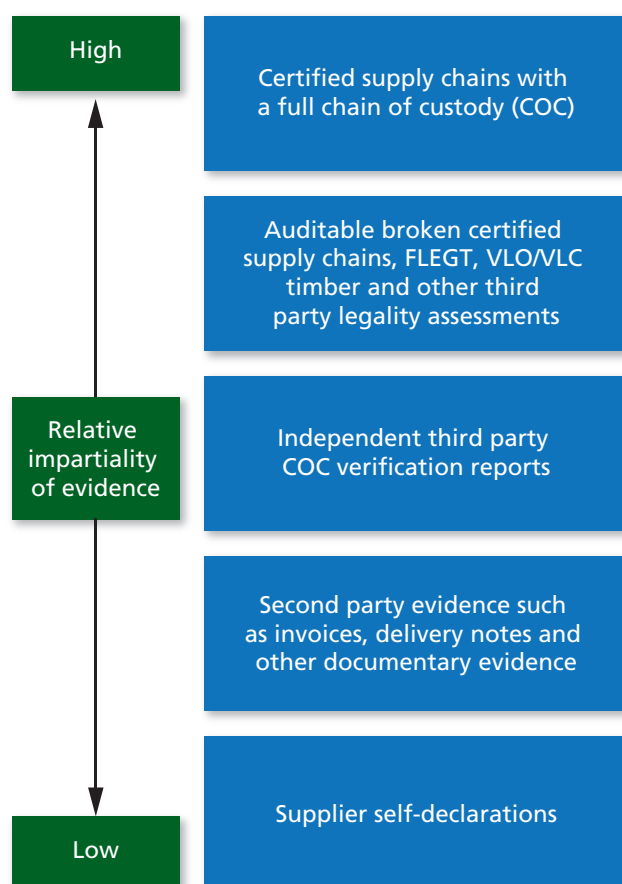
If we consider a hierarchy of options for verification related to responsible forest management, after the option of VLO and VCO for timber and timber products, which aim to rule out illegally harvested supply, the next option up is to buy certified timber and timber products under a chain of custody, where:

- forest management standards are defined and subject to clear governance processes;
- each product is required to be supplied with information needed to comply with the Regulation; and
- there is greater emphasis on key aspects related to sustainability and securing forest resources for the future.

Both options establish, to different degrees, a governance process which aims to build trust with key stakeholders, such as customers, regulatory authorities and NGOs. However, certification presents an opportunity for structured communications around how you are contributing to the environment and reducing the impacts of your sourcing of natural resources for your business. It also presents a standard of information quality that customers are increasingly recognizing. An indicative, but not comprehensive, representation of the relative impartiality of different types of evidence for legality and sustainability of timber and timber products is shown in Figure 9.

With a changing environment where customers are demanding traceability and certification as a prerequisite to supply it is essential for many organizations to understand and trust their supply chains to secure market share and new customers.

**Figure 9** – Relative impartiality of different types of evidence for legality



## 6.7 ↑ Communicating performance

Organizations placing timber and timber products on the European market, and traders procuring them and trading them on, are now even more reliant on each other for credible information about their products. As clients and customers, they need to be able to give each other confidence they are not at risk of failing to comply with the Regulation.

Although sensitivities inevitably exist in passing information on timber and timber products through the supply chain, the information required to exercise due diligence to meet the Regulation is not intended to be a barrier to supporting the exchange of information between operators and traders.

Communicating accurately about your timber and timber products is good practice whether in business to business dialogue, in corporate responsibility publications, on websites when describing your organization and its policies, commitments and performance, or in adverts. Organizations should identify and review existing regulatory requirements, advertising codes and guidelines on green claims to prevent misrepresentation of the products they trade, including timber and timber products. Organizations should also be aware that any claims relating to their sale of, or use of, certified timber will need to be in accordance with the trademark rules of the appropriate certification scheme.

The Advertising Standards Authority (ASA) regulates advertising across all sectors in the UK. The UK advertising regulatory system is a mixture of self-regulation for non-broadcast advertising and co-regulation for broadcast advertising. The ASA works to maintain standards laid down in advertising codes, which are designed to protect consumers and create a level playing field for advertisers. The ASA Committee of Advertising Practice's (CAP's) *UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing* [20] applies in full to marketing messages online, including the rules relating to misleading advertising. More information on the ASA is available from: <http://www.asa.org.uk>.

The Department for Environment, Food and Rural Affairs (Defra) has published *Green Claims Guidance* [21] to promote the use of clear, accurate and relevant environmental claims in marketing and advertising. Good environmental claims that accurately convey the environmental attributes of products help consumers to make informed choices. Misleading, false, meaningless or unclear information can result in consumers losing confidence in environmental claims and labels in



general, lead to unfair business competition and discourage companies from making truthful claims.

Defra's guidance aims to:

- support organizations in making robust environmental claims;
- give organizations confidence that their claims meet good practice standards in the domestic market, Europe and internationally;
- improve the standard of environmental claims found in the domestic market; and
- reduce unfair competition by minimizing claims that may be unfair or misleading.

The guidance represents good business practice to be followed on a voluntary basis, and is not regulated or enforced by the Government. It is mainly aimed at providing useful information for those making self-declared claims in environmental statements, graphics or imagery (i.e. made without independent third-party certification), but it also provides good practice for any type of claim including third party certification and labels.

The guidance is aligned with the international standard on self-declared environmental claims, BS EN ISO 14021, and with *The UK Code of Non-Broadcast Advertising, Sales Promotion and Direct Marketing* [20]. Many countries use BS EN ISO 14021 as a basis to inform national codes and guidance. Defra's guidance in this respect aligns with international practice (see 5.10.5, Environmental labels).

## 6.8 ↑ Product testing

If you are concerned about being offered unidentified species of timber from potentially controversial sources, timber or timber products can be tested against recognized standards. Such tests can help establish the timber species and can help confirm the accuracy of the information declared by your supply chain.

Although testing is growing in popularity, it is important to be aware that it cannot be used in isolation as it might not be able to confirm the exact country of origin. However, it can provide an indication of the likely countries where the species are grown or occur naturally.

## Concluding remarks

The Regulation presents a significant opportunity for businesses to make a difference to the future outlook for global forest habitats and resources. Many businesses in Europe will need to take action to exercise due diligence for timber and timber products if they are to comply with the Regulation's requirements. In doing so, they will progressively exclude illegal timber and timber products. As the Regulation raises this bar, it will in turn help support a fairer market by narrowing the price gap established between these types of goods, which can be cheaper to trade than legally or sustainably sourced ones, thereby making it commercially more feasible to undertake more responsible forest trade without being undermined in the market by less responsible competitors.

# Annex A (informative)

## Placing UK grown timber on the EU market

### A.1 The UK context

As of 2011, the UK produces approximately eight million cubic metres of timber per year and this volume accounts for between 15% and 20% of UK consumption by volume. Information on UK forestry and timber production is available from: <http://www.forestry.gov.uk/statistics>. Operators and traders, as defined under the Regulation, who handle UK grown timber have to meet the requirements of the Regulation (see Figure A.1, Examples of operators placing UK grown timber on the EU market).

The Forestry Commission want organizations in the UK to feel confident about purchasing UK grown timber, and have stated that “operators can draw upon a range of evidence to demonstrate that UK grown timber has a low risk of being illegal. The UK has a low incidence of illegal logging, a high degree of legal compliance, high scores of governance by international indices and an absence of endangered timber species. Moreover the UK has a well developed system of forestry regulation, a policy of freedom of information and a range of factors that ensure a high degree of democratic and legal accountability.”

### A.2 The UK Forestry Standard

*The UK Forestry Standard* (UKFS) [8] is the reference standard for sustainable forest management in the UK. The UKFS, supported by its series of UKFS Guidelines, outlines the context for forestry in the UK, sets out the approach of the UK governments to sustainable forest management, defines standards and requirements, and provides a basis for regulation and monitoring.

The UKFS and guidelines have been developed by the Forestry Commission in Great Britain and the Forest Service, an agency within the Department of Agriculture and Rural Development in Northern Ireland. The UKFS and Guidelines have been endorsed by the UK and country governments and apply to all UK forests and woodlands. The UKFS provides a framework for the delivery of international agreements on sustainable forest management, alongside policies on implementation, together with the national forestry policies and strategies of England, Scotland, Wales and Northern Ireland. It is available from: <http://www.forestry.gov.uk/ukfs>.

### A.3 Forest regulation

The UKFS summarizes relevant legislation that has a bearing in forest management in the UK and the Forestry Commission states that “this equates to the applicable legislation under the Regulation”. Each country of the UK operates regulatory controls that capture both EU legislation (such as environmental impact assessments) and the domestic legislation that requires that tree felling is legally authorized. The Forestry Commission further states that “these controls ensure information required under the Regulation, such as tree species felled, its location, volume and name of supplier is recorded. They provide verification that the necessary checks have been completed and legal permission has been granted.”

The Forestry Commission reports that once the official UK government guidance to the Regulation has been finalized and discussions have been held between the country forestry authorities and the competent authority, more information on the details of the UK implementation of the Regulation will be available. This may involve some revision to existing processes and documentation but the aim will be to ensure the Regulation is captured as far as possible within existing regulatory mechanisms without imposing additional bureaucratic requirements on UK operators.

Some exceptions to felling controls exist that might lead to UK grown timber coming onto the market that has not been subject to the controls described in the UKFS. These exceptions include timber felled through arboriculture, utility way-leaves and trees felled under development control. These are captured under alternative legal provisions and are explained in the UKFS.

**Figure A.1** – Examples of operators placing UK grown timber on the EU market**Forest management company**

A landowner decides to fell an area of woodland and applies to the Forestry Commission for a felling licence. Having obtained the licence, the landowner invites a forest management company to bid for a 12 ha block of standing spruce trees with an estimated volume of 5 000 m<sup>3</sup>. A contract is agreed between the landowner and management company for the standing trees and the management company appoints a selected contractor who fells, extracts and transports the trees as saw logs and small roundwood to processing plants.

In this case, the trees were initially sold as standing volume. As standing trees are not within the scope of the Regulation, the landowner is not the operator. The forest management company is the operator as it first places the timber on the market and sells it to the processors. Although a contractor has undertaken the operation of felling and extraction on behalf of the forest management company, the contractor is not the operator because it at no point owns the timber and is acting on behalf of the forest management company.

The forest management company must exercise due diligence and in this case it must keep copies of the relevant felling licences relating to the timber together with details of the tree species, quantity and the name and address of the traders to whom the timber is supplied.

**Owner and agent**

A forestry agent is engaged by an estate, who advises the estate owner to implement a programme of felling and replanting to bring the woods back into management. The agent submits a forest plan to the Forestry Commission for approval. The agent then employs a contractor to carry out the work for an agreed price and organizes and negotiates the sale of the timber, at a price per tonne of timber delivered, to the local sawmill. Felling and distribution is controlled by the agent, although actually performed by the employed contractors.

In this case ownership of the timber passes from the estate owner to the sawmill, albeit that both a contractor and agent are involved. The estate owner is therefore the operator and must exercise due diligence and keep records of the felling licence, forest plan, tree species, quantity of timber and the name and address of the sawmill to which the timber is supplied. Although the agent employed can act on his behalf, it is the estate owner who is ultimately responsible for ensuring the Regulation is complied with.

**Integrated forest product company**

A large vertically-integrated forest products company owns an area of forest in south Scotland and takes timber from it to feed into its own pulp mill. The forest products company undertakes the forest management itself and its forest holdings are all independently certified. The timber harvested is made into pulp and then newsprint paper and sold to various traders.

In this case the timber is placed on the market when it is harvested for use in the company's own business. The company therefore is an operator and must exercise due diligence and keep records of the felling licence, tree species, quantity of timber and the names and addresses of the various traders to which it is sold.

**Forest owner as the operator**

A farmer owns woodland which the farmer wishes to use for the production of firewood. The firewood is produced in batches and sold from the farm direct to the public. In this case, the farmer is the operator as he is making available logs and chips for distribution. The farmer must exercise due diligence. The farmer will need to keep records of the felling licence, and records which include species used and the quantity of timber traded. As an operator, the farmer must also keep records of the names and addresses of any traders to whom the farmer sells the timber. However, this does not extend to non-commercial customers. This is because a person, such as a householder, who purchases a product for personal use with no onward trade or further use as part of a commercial activity is not themselves considered a trader under the Regulation.

## Annex B (informative)

### Example of a responsible timber and timber product purchasing policy

This organization is committed to the responsible purchasing of timber and timber products. Our long-term intention is that all timber used in products that we purchase or specify is sourced from well-managed forests that have been certified to credible certification standards and/or are from post-consumer recycled materials.

This commitment will be realized through a stepwise approach to responsible purchasing that uses the best available techniques and information.

This organization has a responsibility under the EU Timber Regulation to carry out due diligence to prevent the placing of illegally harvested timber on the EU market. All our suppliers are subject to regular checks to ensure that to the best of our knowledge, our products have a negligible risk of illegal origin.

This organization will not source products containing timber, fibre and other raw materials if the following apply.

- The source forest is known or suspected of containing high conservation values, except where the forest is certified or in progress to certification under a credible certification system or the forest manager can otherwise demonstrate that the forest and/or surrounding landscape is managed to ensure those values are maintained.
- The source forest is being actively converted from natural forest to a plantation or other land use, unless the conversion is justified on grounds of net social and environmental gain, including the enhancement of high conservation values in the surrounding landscape.
- The material was illegally harvested or traded.
- The material was traded in a way that drives violent armed conflict or threatens national or regional stability (i.e. what is commonly called conflict timber).
- The harvesting or processing entity, or a related political or military regime, is violating human rights.
- The material is sourced from genetically modified trees.
- The source forest is unknown.

To ensure that these goals are achieved, this organization will:

- assess all suppliers of timber and timber products for all purchases of goods for resale, not for resale and in all new construction activities;
- seek information on the source of the timber in the products we harvest and the circumstances under which they were harvested;
- seek information on the chain of custody of the timber and timber products we purchase, including the circumstances under which they were manufactured and traded;
- evaluate chain-of-custody information against this policy and supporting operational procedures;
- continually improve the level of compliance with these policies, using annual reviews, reports and actions agreed upon with our suppliers;
- work with and encourage suppliers and forest sources that are actively engaged in a process of time-bound, transparent, stepwise commitment to credible certification;
- work with key stakeholders to ensure that best practice is followed;
- set annual, publicly communicated targets regarding our performance; and
- maximize the use of post consumer recycled timber.

## Bibliography

### Standards publications

For dated references, only the edition cited applies. For undated references, the latest edition of the referenced document (including any amendments) applies.

BS EN ISO 9001, *Quality management systems – Requirements*

BS EN ISO 14001, *Environmental management systems – Requirements with guidance for use*

BS EN ISO 14021+A1, *Environmental labels and declarations – Self-declared environmental claims (Type II environmental labelling)*

BS EN ISO 14024, *Environmental labels and declarations – Type I environmental labelling – Principles and procedures*

BS EN ISO 14025, *Environmental labels and declarations – Type III environmental declarations – Principles and procedures*

BS EN ISO/IEC 9000:2005, *Quality management systems – Fundamentals and vocabulary*

BS EN ISO/IEC 17000:2004, *Conformity assessment – Vocabulary and general principles*

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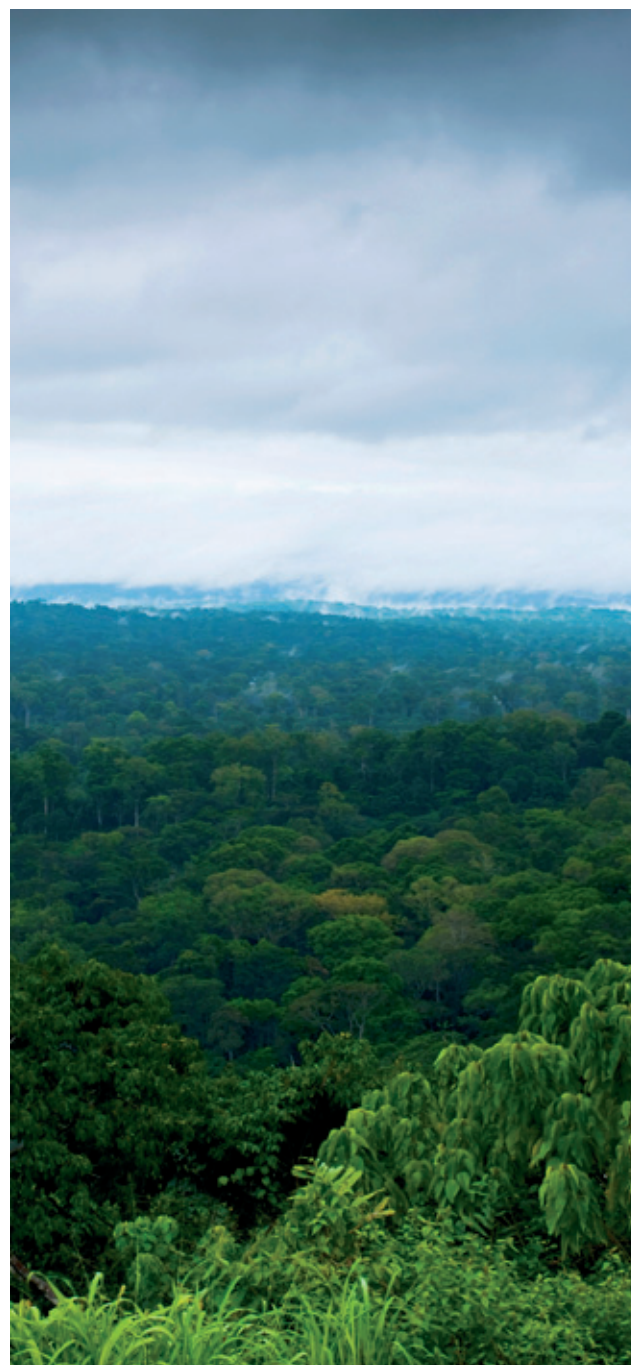
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## Further information

There are many sources of information available to help you exercise due diligence in establishing the legal origin of timber and timber products. The following list is a selection of sources grouped by subject. However, it is not an exhaustive list and is not intended to be an endorsement of one source over another.

Subject	Source
Competent authority	National Measurement Office, <a href="http://www.bis.gov.uk/nmo/enforcement">http://www.bis.gov.uk/nmo/enforcement</a>
Forestry standards	Canadian Standards Association (CSA), <a href="http://www.csa-international.org/product_areas/forest_products_marking/default.asp?language=english">http://www.csa-international.org/product_areas/forest_products_marking/default.asp?language=english</a>
	Forest Stewardship Council (FSC), <a href="http://www.fsc.org/requirements-guidance.105.htm">http://www.fsc.org/requirements-guidance.105.htm</a>
	Forestry Commission of Great Britain, <a href="http://www.forestry.gov.uk/theukforestrystandard">http://www.forestry.gov.uk/theukforestrystandard</a>
	Indonesian Ecolabelling Institute, <a href="http://www.lei.or.id">http://www.lei.or.id</a>
	Malaysian Timber Certification Council (MTCS), <a href="http://www.mtcc.com.my/documents.asp#tech_doc">http://www.mtcc.com.my/documents.asp#tech_doc</a>
	Programme for the Endorsement of Forest Certification (PEFC UK), <a href="http://www.pefc.co.uk/news-page/publications-a-documentation/technical-documentation">http://www.pefc.co.uk/news-page/publications-a-documentation/technical-documentation</a>
	Sustainable Forestry Initiative (SFI), <a href="http://www.sfiprogram.org/sustainable_forestry_initiative_standard.php">http://www.sfiprogram.org/sustainable_forestry_initiative_standard.php</a>
	UK Woodland Assurance Standard (UKWAS), <a href="http://ukwas.org.uk/the-standard/notices-to-users">http://ukwas.org.uk/the-standard/notices-to-users</a>
Species and common name databases	Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) species database <a href="http://www.cites.org/eng/resources/species.html">http://www.cites.org/eng/resources/species.html</a>
	United States Department of Agriculture (USDA) Germplasm Resources Information Network (GRIN) taxonomy for plants, <a href="http://www.ars-grin.gov/cgi-bin/npgs/html/index.pl">http://www.ars-grin.gov/cgi-bin/npgs/html/index.pl</a>
	TRADA (Timber Research and Development Association) Timber Species Database, <a href="http://www.trada.co.uk/techinfo/tsg">http://www.trada.co.uk/techinfo/tsg</a>
Risk registers	Global Forest Register, <a href="http://www.globalforestregistry.org">http://www.globalforestregistry.org</a>
	Global Risk Register, <a href="https://www.globalriskregister.org">https://www.globalriskregister.org</a>
	Transparency International Corruption Perception Index, <a href="http://www.transparency.org">http://www.transparency.org</a>
UK Government resources	Forestry Commission of Great Britain for publications in support of sustainable forest management in England, Scotland and Wales, <a href="http://www.forestry.gov.uk/publications">http://www.forestry.gov.uk/publications</a>
	Her Majesty's Revenue & Customs for help understanding the combined nomenclature [2] and identifying product codes, 01702 366 077, <a href="mailto:tariff.classification@hmrc.gsi.gov.uk">tariff.classification@hmrc.gsi.gov.uk</a>
	Northern Ireland Forest Services for publications in support of sustainable forest management in Northern Ireland, <a href="http://www.dardni.gov.uk/forests-service">http://www.dardni.gov.uk/forests-service</a>
	UK Government's Central Point of Expertise on Timber (CPET), <a href="http://www.cpet.org.uk">http://www.cpet.org.uk</a>

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