

**Support study for development of the non-legislative acts  
provided for in the Regulation of the European Parliament and of  
the Council laying down the obligations of operators who place  
timber and timber products on the market**

*Final report*

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## ABBREVIATIONS

ASI	Accreditation Services International
BV	Bureau Veritas
CA	Competent Authority
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CoC	Chain of Custody
CPET	Central Point of Expertise for Timber Procurement
CPI	Corruption Precision Index
CW	Controlled Wood
CSR	Corporate Social Responsibility
DD	Due Diligence
DDS	Due Diligence System
DG	Directorate General
DLH	Dalhoff Larsen and Horneman
EC	European Commission
EU	European Union
EUTR	European Union Timber Regulation
FLEGT	Forest Law Enforcement, Governance and Trade
FSC	Forest Stewardship Council
GFTN	Global Forest and Trade Network
IAF	International Accreditation Forum
IEC	International Electrotechnical Commission
ILO	International Labour Organization
IRCA	International Register of Certificated Auditors
ISEAL	Global Alliance for Social and Environmental Standards
ISO	International Organization for Standardization
MO	Monitoring Organization
MS	European Union's Member State
NGO	Non-Governmental Organization
PEFC	Programme for the Endorsement of Forest Certification
RA	Rainforest Alliance
RIL	Reduced Impact Logging
RWE	Round Wood Equivalent
SCS	Scientific Certification Systems
SGS	Société Générale de Surveillance
SME	Small and Medium Size Enterprises
SW	SmartWood
TFEU	Treaty on the Functioning of the European Union
TFF	Tropical Forest Foundation
TFT	The Forest Trust
TTF	UK Timber Trade Federation
TI	Transparency International
TLTV	Timber Legality and Traceability Verification
TTAP	Timber Trade Action Plan
UN	United Nations
VAT	Value Added Tax
VLC	Verified Legal Compliance
VLO	Verified Legal Origin
VPA	Voluntary Partnership Agreement
VVNH	Royal Netherlands Timber Trade Association
WWF	World Wide Fund for Nature

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## **EXECUTIVE SUMMARY**

### **Potential Due Diligence Systems**

The first part of the report presents the results of Task 1 of the Support study for the implementation of Regulation No 995/2010 laying down the obligations of operators who place timber and timber products on the market ("European Union Timber Regulation" - EUTR). The EUTR envisages that detailed rules shall be adopted by the Commission to ensure its uniform implementation by the Member States. Task 1 of the Support Study is related to Article 6 of the EUTR that deals with the due diligence system (DDS) as referred to in Article 4(2). Article 6 describes in general terms the DDS that economic operators should have in place to make sure they place only legally harvested timber and products derived from such timber on the internal market. The DDS should contain the following 3 elements:

1. Measures and procedures providing access to information concerning the operator's supply of timber or timber products placed on the market;
2. Risk assessment procedures enabling the operators to analyze and evaluate the risk of illegally harvested timber or timber products derived from such timber being placed on the market;
3. Risk mitigation procedures, except where the risk identified is negligible, 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.

This report aims to give an objective, in-depth analysis of existing information in relation to risk assessment and risk mitigation procedures, described above as parts of the DDS, which many companies and industry federations have in place to ensure that only legally harvested wood or products made of such wood enter their supply chain. In addition, tools and methodologies developed by NGOs and national governments within the EU were assessed. These DDSs were chosen to present importers and operators of different characteristics, dealing with wood products of different level of processing and from different supplying regions. Moreover, adequate geographical distribution of the DDS owners was seen desirable. DDSs of ten study subjects were confirmed by the client to be examined in more detail using questionnaires, subsequent interviews and further examination of the publicly available and confidential documents. In addition, some of the most recognized third party verification schemes were reviewed along with examples of DDSs from other sectors. Consultation with relevant stakeholders was carried out mainly through a specific stakeholder consultation meeting on 28<sup>th</sup> of April, 2011. Furthermore, discussions were carried out with relevant experts, professionals and federations by emails and in several seminars and workshops attended by the study team members. It was considered important to acknowledge the variety of different operators in the sector and how the suitability of different risk assessment tools depends on the characteristics and resources of the operators concerned. Hence, field visits were also made in several countries.

Soon after initial research on the available DDSs it became evident that identifying small and medium enterprises (SMEs) that have adequate DDSs in place is a considerable challenge. Thus, various experts, professionals as well as industry and trade federations and associations were consulted on the matter. It was concluded that the SMEs handling domestic (EU), already verified, or otherwise low risk timber are not in risk of having to significantly change their business-as-usual working methods. However, those small importers and merchants with many product lines (complexity) and high risk timber sources (e.g. tropical hard-wood) are principally vulnerable. Experts and federation leaders, particularly representing SMEs dealing with high risk products, were contacted in pursuit of finding examples of adequate DDSs. According to the feedback, in most cases, SMEs importing high risk timber into the EU do not currently have the mechanisms in place to follow the requirements of the Article 6.

When reviewing the DDSs the project team identified several categories of tools some very general whereas others more specific. Signed commitment is a flexible way to get assurance from the supplier side to deliver legal wood or wood based products to the operator. Nevertheless, this statement will not serve as a proof for legality. However, it can be used to explore the supplier's attitude on timber legality issues and to provide a base for further information request to prove legal compliance. Signed legal document is, in most cases, a written contract signed between the parties of the transaction. It often contains some or all of the information required by the Article 6(1). The operator may also use Information collection forms to collect the lacking data.

In terms of risk assessment, operators may use publicly available information sources and apply their own internal assessment in order to estimate the expected risk. In case this proves inadequate, a call for additional information can be made. All the relevant information is then processed to determine the risk. Sometimes decision trees can be developed to manage the obtained information.

Risk mitigation measures need to be applied if the risk is determined "not negligible". In this situation the operator will usually determine if the risk is worth mitigating or if it is better to dismiss or replace the supplier. In case the supplier is important, and there are adequate resources for mitigation, the operator may call for additional evidence of legality, initiate audits and/or support the supplier's processes towards third party verification schemes. After the mitigation efforts, a risk reassessment is carried out to estimate if the mitigation was successful. In all the stages of a DDS, results, documentation and relevant information will be stored as a part of record keeping process.

Throughout the study the heterogeneity of the forest sector, particularly of the industry, has been highlighted repeatedly. It is evident that any possible outcome of the implementation regulation must acknowledge the variety of affected actors across the different industry sectors. For example, SMEs have fewer resources to spend for verifying legality than the big corporations have. Therefore, the operators should define their respective DDSs and include the most suitable tool set for their implementation. Due to the high degree of different conditions, it is not feasible to develop a fixed and uniform DDS description which would be applicable for all operators.

Even though it is not feasible to create a fixed and uniform DDS for all, some elements of such system would benefit from a more common approach. This is demonstrated by calls for information services to ease the administrative burden of the risk assessment and support the evaluation of the relevant evidence. Such calls were presented in various stakeholder consultations, study interviews and in voluntary commentaries delivered to the project team. This information service could provide information on the relevant applicable legislation, determine risks for certain regions, indicate the status of FLEGT and CITES in different countries, as well as contain other useful information that has to be currently compiled from various different sources in various different languages. This would support a more consistent approach and make it less costly and more time-efficient for the SMEs, as well as other operators, to develop and implement their own DDSs. There are already some existing databases and tools aiming for this approach, as well as others in the development.

Communications with the SMEs indicated that very few of them were aware of the EUTR. Even membership in a well represented association or federation does not mean that the information would reach them. Similar message was delivered from the consulted government entities, associations, European forest owners and involved officials in the SME-matters. In addition, the situation is much worse among the small-scale retailers whose business only partly overlaps with the EUTR requirements. Therefore, there is an urgent need for effective, far reaching and targeted awareness raising. This will need temporary and innovative capacity building as the current methods of communication do not seem to reach all the relevant parties. The responsible bodies for raising awareness should be determined in the national context in order to map out the optimal routes of delivering the information in the most efficient way. For example, CAs and the relevant national associations could be part of this process.

## Recognition of Monitoring Organizations

The second part of the report presents the results of Task 2, which is related to Article 8 of the EUTR and deals with the role of Monitoring Organizations (MOs), third party organizations responsible in assisting and monitoring whether operators meet the requirements of the Regulation.

MOs are expected to have the expertise and capacity to exercise monitoring functions including: to maintain and regularly evaluate a due diligence system, to verify the proper use of a due diligence system by operators and to take appropriate actions in the event of failure by an operator to properly use the due diligence system.

The EUTR has put the steps of the initial recognition and the ordinary control under the responsibilities of two different authorities (the European Commission - EC - and the Competent authorities - CAs) that have to be coordinated and harmonized through a clear definition of (A) the recognition requirements and (B) the recognition procedure.

Existing practices have been examined to define how bodies, and in particular membership based organizations, guarantee objectivity when they are obliged to monitor and control their members' activities. Reference has been made to the criteria and procedures for endorsing/accrediting organizations involved in third- and second-party certification processes developed in various fields of action (norms and regulations approved by ISO, ISEAL, EC and other institutions for sectors that can be considered comparable with forestry, e.g. EC and MSs rules regarding EC labelling, fishery, organic farming, etc.).

**Recognition requirements:** Article 8 of Regulation (EU) No 995/2010, titled "Monitoring Organisations", defines functions and basic requirements for MOs wishing to get recognition from the EC. The list of requirements a MO shall comply with in order to successfully apply for recognition includes: it has legal personality and is legally established within the Union; it has appropriate expertise and the capacity to exercise the required functions; it ensures the absence of any conflict of interest in carrying out its functions.

The first two requirements are sufficiently clear, they are well defined by already existing primary and secondary legislation and do not need further regulation. As regards the absence of any conflict of interest, MOs should provide all parties with confidence that relies on independent evaluation/verification. The main principles for generating confidence are independence, impartiality and competence both in action and appearance. In practice this means MOs personnel and staff involved in verification/evaluation activities - as well as staff/experts in charge of taking final decisions about evaluation/verification outputs and results - should be independent of the activity being audited and free from bias and conflict of interest. Threats to MOs independence and impartiality are sources of potential bias that may compromise, or may reasonably be expected to compromise a MO's ability to make unbiased evaluation/verification observations and conclusions.

MOs should identify, analyze and document the possibilities for conflict of interests arising from provision of services dealing with the EUTR, including any conflicts arising from their relationships or from the activities of related bodies and subcontractors. A relationship that causes a threat to the impartiality of a MO can be based on ownership, governance, management, personnel, shared resources, finances, contracts, marketing and payment of a sales commission or other inducement for the referral of new clients, etc. If the MO is part of a larger organisation, the links with other parts of the larger organization shall be clearly defined and should demonstrate that no conflict of interest exists.

Any MO should provide evidence of its independence by defining, maintaining and implementing written policies and procedures for avoidance of conflicts of interest both at organisation and individual level. These procedures should include: separation of evaluation and granting decision;

impartiality of the MO as well as of related bodies and subcontractors; the support of a committee charged with the duty of reviewing the MO's performance in maintaining full independence; documented procedures for determining timely and appropriate responses to declarations of conflict of interest as they arise; maintenance of relevant records dealing with conflicts of interest; transparency of sources of income; avoidance of individual conflicts of interest, for example through the contractual obligation for all personnel contributing to MO decisions to disclose in writing to the MO all possible and actual conflicts of interest, at the time that the conflict or possibility of conflict becomes evident.

**Recognition procedure:** Regulation (EU) No 995/2010 does not provide details about criteria and procedures for MOs recognition by the EC, nevertheless in the preamble (paragraph 28) it clearly states "(...) the Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) concerning the procedures for the recognition and withdrawal of recognition of monitoring organisations".

The study suggests the following procedure: In order to get the recognition of third party organization, the MO should address a formal request to the EC. Once the request has been received and eligibility verified, the EC should open a registration account and send an "Application Pack" to the applicant. In response, the applicant MO should a filled application, together with other relevant documents. If complete, the MO should be notified, the CA will be informed by the EC and the recognition process may start: the EC will implement a desk verification and assessment of the applicant MO. The CA will join the recognition process. The documentation will be analyzed and the main assessment will be planned, with the support of the MO. The recognition team will implement the main assessment, both at office and field level. Once the assessment report has been edited and a positive decision been taken, a "Recognition Certificate" should be issued and the MO should be listed among the accredited ones. A periodical surveillance should be ensured from the CA.

## 1. INTRODUCTION OF TASK 1

This report presents the methods and results of *Task 1: “Best options for risk assessment and risk mitigation procedures”* of the support study. This part of the study focused on the existing examples and potential solutions of the Article 6 of the European Union Timber Regulation EUTR, which lays down obligations for all operators<sup>1</sup> to exercise due diligence systems (DDS) when placing timber on the EU market<sup>2</sup>. The DDS shall contain the following 3 elements:

1. Measures and procedures providing access to information concerning the operator's supply of timber or timber products placed on the market;
2. Risk assessment procedures enabling the operators to analyze and evaluate the risk of illegally harvested timber or timber products derived from such timber being placed on the market;
3. Risk mitigation procedures, except where the risk identified is negligible, 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.

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<sup>1</sup> ‘operator’ means any natural or legal person that places timber or timber products on the market; (EUTR)

<sup>2</sup> ‘placing on the market’ means 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. 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 (3). The supply on the internal market of timber products derived from timber or timber products already placed on the internal market shall not constitute ‘placing on the market’; (EUTR)

## **2. OBJECTIVE OF THE TASK 1**

The aim of this report is to provide an objective overview of existing and practiced examples of risk management systems in forestry and other sectors, taking into account the EUTR DDS elements. The report also concludes various proposals on potential types of systems for the consideration of the European Commission (EC), which could fulfil the requirements of the EUTR and could provide support during the development procedure of the foreseen detailed regulations.

### 3. METHODOLOGY

#### 3.1 Selection process of the reviewed systems

According to the target set by the Client, the study concentrates on risk assessment and mitigation tools used by four categories of organisations:

- Timber trade federations,
- Private sector companies,
- Non-governmental organizations (NGOs), and
- Member states within the EU.

In the beginning of the first phase of the study, a target population among the four categories was defined. A desk review was carried out on what kind of due diligence (DD) tools and systems exist and are endorsed in the chosen population of NGOs, member states and which are recommended or applied by timber trade federations and private sector companies trading wood and wood products in Europe and globally. Based on the findings of the desk review, a tentative gross list of various functional DD systems was formulated. These DD systems were chosen to present importers and operators of different characteristics, dealing with wood products of different levels of processing and from different supplying regions. Moreover, adequate geographical distribution of the DD system owners was seen desirable.

In the second phase, the Client confirmed ten DDSs from the gross list to be examined in more detail using questionnaires (form sent by email), subsequent interviews (by Skype and phone) and further examination of the publicly available and confidential documents. Structure of the questionnaires was designed thoroughly to ensure that all relevant aspects were covered. The subsequent interviews were used to fill in any possible gaps of information and to clarify unclear issues, as well as to gain information on practical experiences, costs of DD systems and feedback on the study and EUTR. After this the DD system reviews were sent to their owners for checking that the system and its components were understood correctly. Furthermore, a supplementary questionnaire with a feedback option was distributed to those that were not included in the shortlist of ten, but still showed interest to take part in a lighter manner.

In addition to the DD systems used in industries using wood as their raw material, a review on at least one DD system from three other sectors each was seen advantageous. The chosen other sectors were based on a desk review complemented with interviews and included DD systems related to palm oil production (Neste Oil Corp.), diamond industry (Kimberly Process), money laundering (Norkom Technologies) and food safety (EU Regulation on general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety). These three cases present well-established risk assessment and mitigation procedures used in both public and private sectors. The focus was directed to features which may in principle be of interest to the implementation of the Timber Regulation. In addition, a review of Lacey Act was carried out and practical experiences on the implementation of the Act were collected.

Consultation with all relevant stakeholders was carried out mainly through a specific stakeholder consultation meeting on 28<sup>th</sup> of April, 2011. In addition, discussions were carried out with relevant experts, professionals and federations by emails and in several seminars and workshops attended by the study team members<sup>3</sup> (Annex 5 presents a selection of specific stakeholder comments from all the correspondence). The outcome of the desk study was evaluated against the consultation results. In addition, the outcomes of the analyses were compiled in a draft report and circulated to stakeholders for written comments. Finally, the results of the detailed assessment were used to identify the most appropriate options for the risk assessment and risk mitigation procedures, the relative pros and cons of these options and their suitability to the different circumstances and end users. It was considered important to acknowledge the variety of different operators in the sector and how the suitability of different

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<sup>3</sup>See Annex 5

risk assessment tools depends on the characteristics and resources of the importers. Hence, field audits were carried out to various operators in different countries. These visits were directed mainly to Small and Medium Sized Enterprises (SMEs) as their inclusion into the ten shortlisted study participants turned out to be unfeasible; see section 3.1.1 below.

### **3.1.1 Small and Medium Sized Enterprises**

Soon after initial research on the available DDSs it became evident that identifying SMEs that have adequate DDSs in place is a considerable challenge. Thus, various experts, professionals as well as industry and trade federations and associations were consulted on the matter. It was concluded that the SMEs handling domestic (EU), already verified, or otherwise low risk timber are not at risk of having to significantly change their business-as-usual working methods. However, those small importers and merchants with many product lines (complexity) and high risk timber sources (e.g. tropical hardwood) are extremely vulnerable.

Experts and federation leaders, particularly representing SMEs dealing with high risk products, were contacted in pursuit of finding examples of adequate DDSs. According to the feedback, SMEs importing high risk timber into the EU do not currently have the mechanisms in place to follow the requirements of the Article 6. And even if such suitable DDSs existed, those SMEs would not necessarily be willing to share them with others. In many cases, the strategy is to wait for the exact implementation guidelines from the Commission and act accordingly in a last-minute-manner. Currently the majority of the SMEs do not have the technical (IT and expertise) and financial resources (money and personnel) available to carry out complex DDSs. In this context the potential role of the monitoring organisations is important.

### **3.1.2 European Forest Owners**

Operators under the EUTR are not only the importers who are importing timber and timber products to the EU. The requirements are applicable for all European forest owners, regardless of private or state ownership, since they could be the first ones to place timber on the EU market. The significance of these players is unquestionable, taking into account the 27 state owners, the 16 million individual forest owners and a number of communities in the EU with 177 million hectares of forest land. However, the effect of the EUTR is not expected to be fundamental, partially because the supply chain is significantly shorter compared to the non-EU supplies and therefore the traceability requirement is more easily achievable. Considering the established legal frameworks in the EU member states and their respective regulations for practicing forest management, it should be possible for the national authorities to check and monitor how forest owners comply with the national legislation to integrate checks on compliance with the EUTR.

## 4. THIRD PARTY VERIFICATION SCHEMES

The majority of the reviewed systems used by the timber trade federations, private sector companies, NGOs and national governments within the EU apply third party verification schemes as part of their own in-house systems. Therefore it is justified to examine briefly the three general classes of third party verification schemes: certification, voluntary legality verification systems, and stepwise technical support programmes.

### 4.1 Certification

Forest certification schemes provide a way of defining sustainable forest management as well as third party, independent verification that a timber source meets the definition of sustainability. Legality is part of the sustainability definition, and therefore forest certification schemes thus provide evidence of legal and/or sustainable timber. Various forest certification schemes operate around the world. Some schemes are international, others limited to one country or region. The best known, international forest certification schemes Forest Stewardship Council (FSC) and Programme for the Endorsement of Forest Certification PEFC (presented in the following chapters) provide also a mechanism for tracing products from the certified source forest to the end use, called the Chain of Custody (CoC) certificate.

Although they may vary in details, each certification scheme is made up of four main components. The standard sets out the requirements that must be met in forest management – how the forest should be managed. Certification is the process through which a third party (the certifier) checks a forest's compliance with the standard. Accreditation is the process for approving the certifier's procedures and ensuring that they produce credible results. Finally, the certification scheme defines how the CoC – the supply chain from forest to final consumer – is managed, ensuring that products sold as 'certified' really are certified.

During the certification process, the certifier checks that a specified, geographically defined area of forest is being managed according to the requirements set out in the standard. The owner or manager of the forest must be committed to achieving certification. Sometimes the certification process involves an initial visit by the certifier to help identify issues and provide guidance on meeting the requirements. The main certification assessment is usually done by a team, who check technical, social and environmental performance in relation to the standard. Following the assessment, the certifier provides the forest owner or manager with a report detailing areas of compliance and non-compliance with the standard. Non-compliances may have to be addressed before the forest can be certified. Once the certifier is satisfied that the forest management meets the standard, a forest management certificate is issued for the specified area. The certifier makes regular monitoring visits following the certification, often annually. To be able to sell the forest's products as certified, the management of the supply chain must also be evaluated at all stages from forest gate to final consumer.

#### FSC

FSC is an international certification and labeling system that guarantees that the purchased forest products come from responsibly managed forests and verified recycled sources. Under FSC certification, forests are certified against a set of strict environmental and social standards, and fiber from certified forests is tracked all the way to the consumer through the chain of custody certification system. The end result is products in the marketplace carrying the FSC 'check-tree' logo. FSC certification is a voluntary and market-based mechanism for ensuring that certified forests are healthy. Consumer demand for FSC-certified products encourages forest managers and owners to become FSC-certified. Independent third-party auditors conduct all FSC certification audits.

**Forest Management (FM) certification** involves the inspection of a forest management unit by an independent FSC-accredited certification body. If the forest complies with FSC standards, it is issued a certificate. FSC-certified forests are managed according to standards based on FSC's ten Principles & Criteria (Table 1). FM certification is applicable to industrial

or private forest owners, forest license holders, community forests, and government-managed forests. FM certificates can be individual certificates or group certificates.

**CoC certification** tracks the path taken by raw materials from the forest to the consumer. This includes all successive stages of processing, transformation, manufacturing and distribution. All companies that process, transform, manufacture, convert or distribute forest products must be CoC certified in order to put the FSC label on products. To become FSC-certified companies are verified by third-party auditors to FSC's rigorous standards.

<p><b>1. Compliance with laws and FSC Principles</b>  <i>Forest management shall respect all applicable laws of the country in which they occur, and international treaties and agreements to which the country is a signatory, and comply with all FSC Principles and Criteria.</i></p> <p><b>2. Tenure and use rights and responsibilities</b>  <i>Long-term tenure and use rights to the land and forest resources shall be clearly defined, documented and legally established.</i></p> <p><b>3. Indigenous peoples' rights</b>  <i>The legal and customary rights of Aboriginal peoples to own, use and manage their lands, territories, and resources shall be recognized and respected.</i></p> <p><b>4. Community relations and worker's rights</b>  <i>Forest management operations shall maintain or enhance the long-term social and economic well being of forest workers and local communities.</i></p> <p><b>5. Benefits from the forest</b>  <i>Forest management operations shall encourage the efficient use of the forest's multiple products and services to ensure economic viability and a wide range of environmental and social benefits.</i></p> <p><b>6. Environmental impact</b>  <i>Forest management shall conserve biological diversity and its associated values, water resources, soils, and unique and fragile ecosystems and landscapes, and, by so doing, maintain the ecological functions and the integrity of the forest.</i></p> <p><b>7. Management plan</b>  <i>A management plan -- appropriate to the scale and intensity of the operations -- shall be written, implemented, and kept up to date. The long-term objectives of management, and the means of achieving them, shall be clearly stated.</i></p> <p><b>8. Monitoring and assessment</b>  <i>Monitoring shall be conducted -- appropriate to the scale and intensity of forest management -- to assess the condition of the forest, yields of forest products, chain of custody, management activities and their social and environmental impacts.</i></p> <p><b>9. Maintenance of high conservation value forests</b>  <i>Management activities in high conservation value forests shall maintain or enhance the attributes which define such forests. Decisions regarding high conservation value forests shall always be considered in the context of a precautionary approach.</i></p> <p><b>10. Plantations</b>  <i>Plantations shall be planned and managed in accordance with Principles and Criteria 1 - 9, and Principle 10 and its Criteria. While plantations can provide an array of social and economic benefits, and can contribute to satisfying the world's needs for forest products, they should complement the management of, reduce pressures on, and promote the restoration and conservation of natural forests.</i></p>
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Table 1: FSC's ten Principles & Criteria

## Risk assessment according to FSC

Described in: Standard for Company Evaluation of FSC Controlled Wood (FSC-STD-40-005 V2-1 EN)<sup>4</sup> Document adopted: 04. October 2006 (amendments approved in April 2007)

### *Criteria and Indicators:*

- I. **Illegally Harvested Wood** - The district of origin may be considered low risk in relation to illegal harvesting when all the following indicators related to forest governance are present:
  1. Evidence of enforcement of logging related laws in the district;
  2. There is evidence in the district demonstrating the legality of harvests and wood purchases that includes robust and effective systems for granting licenses and harvest permits;
  3. There is little or no evidence of reporting of illegal harvesting in the district of origin;
  4. There is a low perception of corruption related to the granting or issuing of harvesting permits and other areas of law enforcement related to harvesting and wood trade.
  
- II. **Wood harvested in violation of traditional or civil rights** - The district of origin may be considered low risk in relation to the violation of traditional, civil and collective rights when all the following indicators are present:
  1. There is no UN Security Council ban on timber exports from the country concerned;
  2. The country or district is not designated a source of conflict timber (e.g. USAID Type 1 conflict timber);
  3. There is no evidence of child labor or violation of ILO Fundamental Principles and Rights at work taking place in forest areas in the district concerned;
  4. There are recognized and equitable processes in place to resolve conflicts of substantial magnitude pertaining to traditional rights including use rights, cultural interests or traditional cultural identity in the district concerned;
  5. There is no evidence of violation of the ILO Convention 169 on Indigenous and Tribal Peoples taking place in the forest areas in the district concerned.
  
- III. **Wood harvested from forest in which high conservation values are threatened by management activities** – The district of origin may be considered low risk in relation to threat to high conservation values if: a) indicator III.1 is met; or b) indicator III.2 eliminates (or greatly mitigates) the threat posed to the district of origin by non-compliance with III.1.
  1. Forest management activities in the relevant level (eco-region, sub-eco-region, local) do not threaten eco-regionally significant high conservation values.
  2. A strong system of protection (effective protected areas and legislation) is in place that ensures survival of the High Conservation Values (HCV) in the ecoregion.
  
- IV. **Wood harvested from areas being converted from forests and other wooded ecosystems to plantations or non-forest uses** - The district of origin may be considered low risk in relation to conversion of forest to plantations or non-forest uses when the following indicator is present
  1. There is no net loss AND no significant rate of loss (> 0.5% per year) of natural forests and other naturally wooded ecosystems such as savannahs taking place in the eco-region in question.
  
- V. **Wood from forests in which genetically modified trees are planted** - The district of origin may be considered low risk in relation to wood from genetically modified trees when one of the following indicators is complied with:

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<sup>4</sup>[http://www.fsc.org/fileadmin/web-da-public/document\\_center/international\\_FSC\\_policies/standards/FSC\\_STD\\_40\\_005\\_V2\\_1\\_EN\\_Company\\_Evaluation\\_of\\_Controlled\\_Wood.pdf](http://www.fsc.org/fileadmin/web-da-public/document_center/international_FSC_policies/standards/FSC_STD_40_005_V2_1_EN_Company_Evaluation_of_Controlled_Wood.pdf)

1. There is no commercial use of genetically modified trees of the species concerned taking place in the country or district concerned;
2. Licenses are required for commercial use of genetically modified trees and there are no licenses for commercial use;
3. It is forbidden to use genetically modified trees commercially in the country concerned.

Other useful FSC-documentation in relation to Risk Assessment:

- FSC Directive on FSC Controlled Wood (FSC-DIR-40-005 EN) Last Updated: 08 December, 2010.
- FSC Controlled Wood Standard for Forest Management Enterprises (FSC-STD-30-010 (V2-0) EN) Approved October 4th, 2006.
- FSC Controlled Wood Risk Assessments by FSC accredited National Initiatives, National and Regional offices (FSC-PRO-60-002 V 2-0) February 28<sup>th</sup>, 2009.
- List of approved National and Regional Controlled Wood Risk Assessments (FSC-PRO-60-002a (V1-0) EN) Last updated: 22nd March, 2011.

Please note that the system provided by the **PEFC** is described under the Chapter 5.5

## 4.2 Voluntary legality verification systems

There are a number of voluntary legality verification systems available in the market, some of which may be used to meet market requirements on legality. 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.

Voluntary legality verification systems are not as well-developed as forest certification schemes and may not follow international good practice (such as ISO Guides) in their standard setting process, certification, accreditation, product tracing and labelling. This is due to the fact that there is no accreditation for legality verification systems and therefore there is no common approach on how legality verification systems are developed and managed. Voluntary legality verification systems are developed by certification bodies and there are differences how legality is defined, how verification is carried out, and what kind of public claims can be used.

Recent developments include a process to discuss the potential of harmonizing legality standards applied by the certification bodies. This process is led by Rainforest Alliance (RA) while Bureau Veritas (BV), Société générale de surveillance (SGS) and Scientific Certification Systems (SCS) actively participate. A range of interested parties supports this process and preliminary results are expected in mid 2011. Both SGS - Timber Legality and Traceability Verification (TLTV) and RA's SmartWood (SW) offer Verified Legal Origin (VLO) and Verified Legal Compliance (VLC) services, while BV, SCS and Certisource do not differentiate these two levels of legality and offer a legal compliance service. VLO standards from SGS and SW do not fully deal with all aspects of legality. Both of them cover aspects on legal right to harvest and compliance with legislation related to taxes and royalties. Additionally, SW VLO deals with respect for other parties' tenure or use rights and compliance with requirements for trade and export procedures. However, both VLO standards only partially cover compliance with legislation related to forest management, environment, labour and welfare, health and safety. The differences between the aspects of legality covered by different systems are demonstrated in the Table 2. Please note that the analysis is based on CPET's (Central Point of Expertise for Timber Procurement) rough review of relevant documents.

Criterion	SGS TLTV-VLO	SGS TLTV VLC	SW VLO	SW VLC	SCS LHV	BV OLB	Certisource
1. Legal right to harvest	Yes	Yes	Yes	Yes	Yes	Yes	Yes
2. Compliance with legislation related to forest management, environment, labour and welfare, health and safety	Partial	Yes	Partial	Yes	Yes	Yes	Yes
3. Compliance with legislation related to taxes and royalties	Yes	Yes	Yes	Yes	Yes	Yes	Yes
4. Respect for tenure or use rights of land and resources that may be affected by timber harvest rights	Yes	Yes	Yes	Yes	Yes	Yes	Yes
5. Compliance with requirements for trade and export procedures	No	Yes	Yes	Yes	Yes	Yes	Yes
6. Additional criteria, compliance with international treaties e.g. ILO, CBD, CITES	Yes	Yes	Yes	Yes	Yes	Yes	Yes

*Table 2: Aspects of legality covered by different systems*

Source: CPET, as presented at: <http://www.cpet.org.uk/evidence-of-compliance/other-evidence-as-assurance/verification-systems/defining-legality>

### **SGS – TLTV**

The SGS-TLTV service assures forest management companies as well as everyone else working within the timber supply chain that timber products are produced in compliance with the relevant legality and chain of custody criteria. TLTV consists of two verification components: Legality of Production (LP) and CoC. The LP component is applied at the forest level, assessing both the legal right to access the forest resource as well as compliance with forest management regulations. Prospective clients have two options: to directly verify their operations against the full TLTV Standard or to take a phased approach in two steps, VLO and VLC.

The CoC component applies at the processing and trade level (i.e. transportation, manufacturing, etc.), verifying the traceability throughout each purchase and production stage of the supply chain controlled by the company. The CoC Standard aims to establish the legality of timber products from the moment the products first enter the supply chain down to the end of the supply chain – typically the consumer.

Depending on their needs and their type of business, companies are evaluated either against the TLTV-LP or the TLTV-CoC Standard. In certain instances both standards may be applicable. TLTV audits are based on a desktop review of the company's documentation in conjunction with field assessments. As part of the evaluation auditors will also consult staff and affected stakeholders in order to collect feedback on the company's performance. As soon as the audit is completed, an audit report is issued and a summary published on the SGS Forestry Monitoring website.

Taking into account local differences, the Generic TLTV Standard is further adapted to each country's laws and regulations. Following international best practice, SGS runs stakeholder consultations with NGOs, community representatives and other parties involved in the adapta-

tion of local standards and planned forestry audits. In addition to the standards, the TLTV programme includes policies, procedures, work instructions, and reference documents that ensure a consistent implementation of the service.

### **Bureau Veritas – OLB**

The OLB system (Origine et Légalité des Bois) was developed in 2004 by BV Certification to meet their clients' demand for an official third party certificate regarding the legality of wood products. OLB describes the requirements to be met in order to comply with legal requirements in regards to forest management and logging activities, employment, security and environment. It also mainly deals with wood traceability within the company until the sale or primary processing.

The certification of wood processing and trading is based on the chain of custody standard which describes the requirements to be met in order to be entitled to use the OLB trademark on the products. The key steps in the OLB approach are:

- Production of a specific contract for the company
- Pre-assessment (optional) based on an analysis of the gaps between the present situation and the standard requirements
- Initial assessment: global assessment against the standard requirements
- Certification committee decision
- Certificate issuance
- Surveillance audits to verify the continuity of the system conformity
- After a 5-year period, certificate renewal

At each stage, a complete report will be provided and BV ensures a follow up of the certificate throughout its validity period.

### **SCS – LegalHarvest Verification**

Assessments at the forest level under SCS LegalHarvest Verification (LHV) are essentially identical to that of VLO – both assess the forest management entity's legal right to harvest. However, LHV goes a step further, including a more robust standard for timber product companies that are further down the supply chain from the forest of harvest.

Options for LegalHarvest Verification:

1. **Supply Chain Pre-Assessment:** This option is for companies further down the supply chain from the forest of harvest. The pre-assessment provides these companies with a better picture of their supply chain risk. A participating company will be required to put in place a purchasing policy and circulate supplier questionnaires. The results from the questionnaires will be assessed and summarized into a detailed report with actionable findings for lowering overall risk. Full Legal Harvest Verification audits would be a likely second step for all high-risk supply chains.
2. **LHV:** This option is for organizations that directly manage forests and want to provide the extra assurance to the market that their timber products are legally harvested. Regular on-site assessments of the forestry operation to the LHV Standard for Forests are required for program recognition. Verification of legally-required documents will be checked against on-the-ground practices before the LHV claim can be used.
3. **LHV for Factories & Traders:** For all forest products manufacturers and forest product traders who want to demonstrate their wood products came from legal sources. It requires regular on-site auditing against the LHV Standard for Chain of Custody to determine the veracity of documentation and on-the-ground procedures for accurately identifying and tracking legal wood throughout their processes. Sometimes this will require audits of specific upstream suppliers and forests that do not already have a LHV or VLO verification statement (certificate).
4. **LHV for Groups & Multi-Sites:** This option is a variation on 2 & 3 above and allows for the grouping of multiple entities or sites on a single verification statement (certificate).

This option is most applicable to organizations with the capacity to manage and oversee larger networks. Examples include: Larger corporations with many sites performing similar operations, business associations, trade federations, and capacity building/consulting organizations. Additional capacity and over site requirements in the LHV Standard for Groups & Multi-Sites must be met to take advantage of this option.

### **CertiSource – Legality Verification**

CertiSource offers 'verified legal' timber certification, using an independent ISO accredited Certification Body to carry out an audit of timber legality against the Certisource Standards, policies and procedures (the 'Certisource Legality Verification System').

CertiSource is the first verification system to offer DNA Verified™ Timber, a solution that secures the CoC at lower cost compared to traditional paper-based audit methods. DNA samples are taken at separate points in the supply chain and physically matched together using the paper-based chain of custody. The paired samples are DNA-tested in a similar way to a human paternity test to verify whether they come from the same tree, scientifically and independently validating the CoC documentation. This method reduces the need for physical audits of paper-based systems that are generally acknowledged to be difficult to manage and vulnerable to fraud. It also decreases the related costs.

Please note that RA provides also related services. These approaches are described in detail under the Chapter 5.6

### **4.3 Stepwise technical support programmes**

Stepwise technical support programmes are NGO initiatives aimed at helping companies to achieve forest certification. Examples of these are WWF's Global Forest and Trade Network (GFTN) (described in detail under the Chapter 5.10), The Forest Trust (TFT) and RA's Smart-Step (described in details under the Chapter 5.6). They are not designed to be used as legality verification *per se* although participants of these programmes have to demonstrate legal compliance as part of validating progress towards forest certification. In addition, two NGO initiatives focus on achieving legality verification. These are the Tropical Forest Foundation (TFF) and Timber Trade Action Plan (TTAP). The TFF developed a standard for Reduced Impact Logging (RIL) in 2006, which was revised in 2008 and 2009. The RIL standard is not equivalent to a legality verification system but contains a legality component. TFF does not carry out verification, but endorses the verification audit carried out by an independent auditor.

#### **TFT**

TFT has been operating as Tropical Forest Trust in the tropics for over ten years now, working directly with suppliers offering a support programme with expertise in forest management and responsible sourcing to achieve FSC certification. TFT also administers and runs the TTAP on behalf of a number of European timber trade federations. Both TFT and TTAP use the same expertise and approach, the key difference is that the TTAP project is aimed at achieving verified legality, and TFT's support programme goes beyond legality towards certification. TFT and the TTAP project are not third party verifiers but rather offer technical guidance to forest producers and manufacturers to assist them towards their verification and certification goals.

#### **TTAP**

The Timber Trade Action Plan is an EU FLEGT funded trade response to tackle the problem of illegal logging which results in market and policy failure. Illegal logging and the associated trade in illegal timber/wood products can reduce the incentive to invest in improved forest management and, in many cases, to operate legally. Buyer engagement provides the incentive and is the key driver for change. Taking the right approach increases positive engagement in the process for both buyers and suppliers. The TTAP carries out its work in three steps:

**Gap Assessment:** identifies the gaps at each individual site (forest and factory) that need to be resolved to enable companies to meet legality standards, including requirements for a robust chain of custody system. The gap assessment includes a detailed action plan.

**Action Plan:** The action plan outlines the steps and budget the company needs to implement to achieve legal compliance including a rigorous CoC system. This ensures legality of compliance, as well as legality of origin. The TTAP team supports the company technically and financially to implement the action plan, however it is the suppliers' own responsibility to move forward and improve its performance. Active buyer engagement with the supplier is vital to the success of the process. The TTAP team, the buyer and supplier work hand in hand to achieve results.

**Third Party Verification:** TTAP is not an accredited auditing body. TTAP provides technical guidance and financial support for companies who wish to pursue a particular legality verification scheme or step-wise programme.

TTAP currently operates in Cameroon, Congo Brazzaville, Gabon, Indonesia, Malaysia, Bolivia, Brazil and China.

### **TFF**

Tropical Forest Foundation has developed a verification program that provides standards for RIL and Legal Chain of Custody. TFF's programs give timber harvesters and tropical governments the opportunity to take the first step towards full certification by providing on-site training and demonstration of RIL, as well as independent auditing to confirm to customers and the authorities that tropical wood products have been sustainably harvested through RIL and are legal for sale in countries around the globe. There are two levels of verification:

The TFF **Legal Verified Chain of Custody® program** provides a widely recognized standard to prove that manufacturers have performed due diligence and buyers can be assured that their products are legally sourced.

The TFF **RIL Verified® Program** is more rigorous than the TFF Legal Verified CoC® Program and asserts that the harvester has applied all of the forest harvesting elements that make up the TFF RIL standard. TFF has found that when these standards are implemented, sustainable forest management is highly achievable.

## 5. REVIEW OF THE SELECTED RISK MANAGEMENT SYSTEMS APPLIED IN THE FORESTRY SECTOR

### 5.1 Central Point of Expertise for Timber Procurement

#### a. General description

Central Point of Expertise for Timber Procurement (CPET) is a UK Government funded body managed by Proforest which provides technical support and practical guidance to public buyers and suppliers on how to ensure compliance with the UK Government's timber procurement policy. They provide various tools for this purpose, which include a website, a helpline, capacity building activities and services for assessment of evidence on timber legality and sustainability.

These services are designed, but not fully limited for the following types of UK public sector bodies and their suppliers:

- Central government departments
- Executive agencies
- Local governments
- Non-departmental public bodies
- Direct suppliers and contractors to central and local government

Participation in the training sessions and workshops are currently free of charge and is not limited to contracted suppliers, but potential suppliers of the public sector could participate as well.

#### b. Applied system description

CPET provide the risk assessment based on a review of evidence (information and documentation) on behalf of public buyers, suppliers and contractors. There are two risk categories identified, which determine the procedure of the evidence assessment.

#### Category A<sup>5</sup>:

Category "A" evidence refer to certification schemes. FSC and PEFC both schemes have been assessed by CPET and found to ensure compliance with the UK Government's legality and sustainability criteria. FSC and PEFC certified products with full CoC are therefore accepted as ensuring compliance with the UK Government's timber procurement policy.

#### Category B<sup>6</sup>:

For this category the risk assessment is based on the evidence provided and follows the guidance for assessing all forms of credible evidence other than certification schemes. Broadly, Category "B" evidence indicates that the forest source meets the UK Government's criteria for sustainability and legality, which are set in the UK's timber procurement policy. Taking into account the potential diverse composition of the evidences, these are always judged on a case-by-case basis. A framework has been developed to provide support to both procurement staff and suppliers on the provision and assessment of Category "B" evidence. It is important to note that broken CoC sources are also considered under Category "B" (e.g. purchasing chairs for a school from a company, which uses certified timber for their product although the company itself is not certified). However, if a contracted company carries out timber procurement on behalf of a UK public institution and the contracted company is the only one not having a CoC certificate, the timber would still be considered under the Category "A" (e.g. a public institution grants a contract to a construction company to build a school).

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<sup>5</sup> <http://www.cpet.org.uk/evidence-of-compliance/category-a-evidence>

<sup>6</sup> <http://www.cpet.org.uk/evidence-of-compliance/other-evidence-as-assurance>

Once a licensing scheme has been established in a country which implements the Voluntary Partnership Agreement (VPA), licensed timber products arriving in the EU from that country should be accompanied by appropriate FLEGT (Forest Law Enforcement, Governance and Trade) licence documentation, which will be checked at import. It will then be necessary to have adequate supply chain controls in place from the point of import to the point of delivery to Contracting Authorities to demonstrate that the material being delivered was FLEGT-licensed. This is exactly the same as for any Category B-based evidence and could take the relevant forms for certified generic chain of custody system or adequate documented evidence of supply chain control. Once a FLEGT-licensing system is fully operational the FLEGT licence will apply to relevant products from the partner country.

The criteria for assessing the provided evidence for Category “B” are divided into two sections<sup>7</sup>:

1. The requirements for information and evidence to demonstrate supply chain management which provides traceability from the forest source to the point of supply
2. The requirements for information and evidence to demonstrate that forest management meets UK Government requirements for legality and sustainability

Compliance with each criterion will be assessed. Existing programs and ad hoc evidence must achieve adequate compliance with every criterion in order to be acceptable. Checklists have been developed to assist suppliers in providing all the information required in a format which can be systematically and consistently assessed by procurement staff. These three checklists are covering the following:

1. Supply chain information
2. Forest source information for legality
3. Forest source information for sustainability

The supplier is responsible for filling out these checklists.

The evaluation process is also supported by CPET databases, which basically include all the evaluated cases and related compliance evidence from the past five years and draw on Proforest’s on-the-ground experience. Besides this data, CPET considers NGO reports related to the actual source and available web based information resources, like the Global Forest Registry<sup>8</sup> or the Corruption Perceptions Index (CPI)<sup>9</sup> as well, if the case requires.

After CPET has evaluated the documentation provided by the public institution and the supplier, an official response will be drafted. This response to the public institution includes evaluation of the evidence and, if required, suggestions for improved information or verification. Finally, the public institution is responsible for stating whether the evidence is “adequate” or “not adequate”.

In the context of the UK Government’s timber procurement policy, legality of forest source refers to legal use rights, compliance with local and national laws, payment of royalties and taxes and respecting CITES requirements. Because the term “illegal timber” refers to laws that have been broken in the country of origin, it is still possible to import the timber into the UK without necessarily breaking any UK laws. The EUTR is expected to tackle this issue. In order to provide Category “B” evidence for legality, forest source information is required. This includes verification that the requirements for legality have been met, and provision of supporting documentation and evidence. This information should be presented in Checklist 2 (Forest source information for legality).

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<sup>7</sup> <http://www.cpet.org.uk/files/CPET%20Category%20B%20Framework%20July%202010.pdf>

<sup>8</sup> <http://www.globalforestregistry.org/>

<sup>9</sup> [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2010/results](http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results)

The risk assessment service of the CPET system identifies the risk level of timber products by validating the evidence of the approved certification schemes. Timber products are classified into categories as a result of the risk assessment. Category "A" includes certified timber and Category "B" all other timber products. After the risk assessment, there are additional risk mitigation procedures in place for Category "B". The criteria and the adequate evidence provided by checklists are mitigating the risk level of the Category "B" to enable UK public bodies to purchase timber products, which are not certified by any of the approved schemes.

Based on last year's experiences the majority (around 80%) of the publicly purchased timber and timber products are considered as Category "A". The estimated share of Category "B" is 20% in total, which includes also the timber from broken CoC sources, where in general the traceability related evidences could be provided without major problems. This amount stands for 15% and only around 5% of the total public procurements in the UK is estimated to be from sources without any certification.

## **5.2 DLH Group**

### **a. General description**

Dalhoff Larsen & Horneman A/S (DLH) is a Denmark-based wholesale supplier of timber and timber products in the building, construction and furniture industry. It is headquartered in Høje Taastrup, Denmark, and is one of the world's major timber wholesalers with sales and procurement offices in more than 25 countries on five continents and employing approximately 716 people worldwide. DLH operates within two business segments: the Hardwood Division, which provides tropical hardwood from South America, Africa and South East Asia, and temperate hardwood from Eastern Europe and North America, as well as the Timber & Board Division, which trades in sheet materials and softwood. The major sales markets are Europe, USA and Russia and the major sourcing markets South America, Africa and Asia. DLH handles approximately one million cubic meters of wood products annually with a turnover of 500 million EUR.

DLH is part of the United Nations Global Compact which is the world's largest initiative for companies and organizations working actively on Corporate Social Responsibility (CSR). In addition, DLH is working with suppliers to raise awareness and encourage participation in independent certification and legal verification schemes. The Group acknowledges that sustainable forest certification is the best way to guarantee the sustainable status of timber and that independent third party legal verification is the best way to assure the legal status of wood products as the first step towards sustainable forestry.

### **b. Applied system description**

DLH will implement and maintain responsible purchasing practices, which are consistent with their Environment Policy. In areas where there is a potential risk of inconsistency with this policy, the Group will apply their Good Supplier Programme (GSP). GSP was first launched in 2002 in a number of African countries. Since then, it has been revised several times and today it covers all tropical countries, Russia, Ukraine, Belarus and China. More than 700 suppliers are currently participating in the programme. GSP functions as an "early warning" tool that allows DLH to be pro-active in problematic situations. As a direct consequence of GSP, DLH has stopped procurement in some countries and regions altogether and is phasing out suppliers from high risk areas that are not able to provide them with adequate information.

GSP is a tool used to collect and evaluate information on how suppliers in high risk countries produce process and trade wood. Suppliers have to fill in a set of questions that is based on the activities they perform as a company. When necessary, the specific information has to be backed up by appropriate documentation. DLH's approach to the information requirements and the following risk assessment is supplier-oriented and not product-oriented. Hence, the required information does not necessarily include the tree species or exact volume received from each specific forest origin. However, supplier-specific total volume, percentage of certified and verified content, as well as other relevant information from the GSP is always

recorded as part of a monthly country-specific spreadsheet. Accurate information on volumes, suppliers, forest concessions etc will then be incorporated into the accounting system of DLH.

During 2010, DLH underwent a transition period and major organizational changes took place worldwide. The focus was set primarily on strategic issues, thus affecting operational processes such as GSP and its targets. In view of DLH's new corporate strategy and in line with the Groups commitment to continuously improve their work on CSR, DLH has revised and further developed their GSP. The new edition of GSP will allow DLH to: 1) improve data gathering and analysis; 2) collect further information and documentation on timber origin and legality; and 3) collect information on social and labour standards at the supplier level. The new GSP is expected to be fully operational in early 2012.

In 2010, 96% of all purchases from risk countries were covered by GSP and DLH had information on the origin of 87% of all timber purchases in risk countries covered by the programme. These results are promising in terms of DLH's mid-term goal of being able to document the origin and legality of all timber purchases, but unfortunately the results are below the targets for the year. The goals for 2011 are as follows:

- 100% of all wood from risk countries will be covered by GSP by the end of 2011.
- DLH will know the origin of 95% of all their wood from risk countries by the end of 2011.

Determining the origin of timber and wood products can be very simple in some cases and extremely complicated in others. DLH often buys semi-finished products from suppliers who in turn have a number of sub-suppliers who also have a number of sub-suppliers etc. Therefore the Group works with a step-wise approach to suppliers in order to obtain adequate knowledge and documentation about the products they buy (Figure 1).

#### **Step 1: Obtaining known origin**

The first step is to obtain knowledge about the origin of the product. DLH's primary tool to get the necessary information is their GSP. With the GSP the Group collects information regarding the origin of the timber and wood products that they buy directly from their suppliers.

#### **Step 2: Independent verification**

The next steps are to implement systems that enable DLH's suppliers to document the legality of their products. These systems (e.g. VLO and VLC) require verification by an independent third party. VLO and VLC verification systems enable the Group's suppliers to document that their timber and wood products have been harvested legally.

For DLH this means that they can document that the products they buy and sell have been harvested legally. For the consumer, timber or wood products with VLO or VLC guarantee that the wood product they buy comes from a legal source.

#### **Step 3: Sustainability**

VLO, VLC and other third party verification systems are important steps towards full certification for sustainable forestry. Sustainable forestry entails complying with a range of requirements for the forest management. FSC and PEFC are the best known international certification schemes.



Figure 1: Different levels of certification or verification

Source: DLH Group: Guide to Certification & Verification

### 5.3 France

#### a. General description

The review relies on the specifications laid down in the “Annex to the circular from the French Prime Minister on ways to implement public procurement of timber and timber products to promote sustainable forest management”. This annex is intended to promote the inclusion of sustainable forest management in public procurement. It is complemented by a Technical Information Document prepared by the Standing Group market research "Sustainable Development and the Environment, which describes the eco-labels and certification schemes for sustainable forest management.

#### b. Applied system description

The wood-based products ordered by public purchasers can be classified into two categories:

Category I: Raw wood, which include roundwood, sawnwood, veneer and plywood;  
 Category II: All other products of wood (joinery, carpentry, flooring, furniture and interior products, furniture and landscaping products, boats, containers, small tools and supplies, etc.).

The purchasing department must seek to define their needs so that they relate to one or other of these two categories. Indeed, the precautions to be taken into account may be different from one category to another. Moreover, when awarding contracts for works involving the use of wood-based products, it should take certain precautions. The requirement, unless specific reasons, must be defined in terms of technical performance rather than in terms of species to use to allow providers to freely determine for their supplies, the species best adapted to the subject of the contract. The attention of the Ministries is drawn to the fact that the timber trade is subject to strict regulatory measures in some species. These measures are part of the CITES which is implemented at Community level by Regulation No. 338/97 of December 9, 1996. If the contract gives rise to the use of wood species covered by CITES, the purchasing departments must remember, in the market, the provisions established by this regulation.

Using wood in construction and building design requires a design suited to the characteristics of wood in order to optimally exploit the natural qualities of this material. The use of specialist and consulting services when defining programs is highly recommended. Moreover, during the preparation of documents for works, purchasing departments must ensure, for technical solutions that rely on or are likely to demand wood-based products, to set the requirements for sustainable forest management.

The following details concern the two categories of wood-based products. To support applications, and to the extent where they are needed to assess the technical and candidate's professional services, the purchasing departments may request a provision of information or the following documents:

- Professional certificates. The public purchaser must, in this case, specify that evidence of the competence of the company may be provided by any means, including certificates of identity or professional references work demonstrating the competence of the company to perform the service for which it is a candidate. As such, the candidate can, for example, provide a certificate that guarantees its membership to a professional charter envisaging that the supply of wood products come from legally regular and sustainable sources;
- Certificates or attestations issued by an authority responsible for monitoring the quality and authorized to certify compliance of supplies to specifications or standards (e.g., certification by an independent certification body to ensure compliance of the chain control implemented to ensure the tracking of wood-based products). However, the public purchaser must accept other evidence of equivalent quality of assurance produced by the candidates if they do not have access to such certificates or no possibility of obtaining them within the time frames;
- Samples, descriptions and/or photo of products.

To allow authorities to carry out checks on the origin of wood used after award of contract, they are asked to envisage the steps in a clause stating that the holder commit themselves, during the execution and the warranty period for services performed, to provide proof, upon request by the administration, that the products which were used fulfil the requirements relating to the sustainable forest management defined in the contract specifications.

Moreover, in case the contract covers products composed of species covered by Regulation (EC) No 338/97 of 9th December 1996 implementing CITES at EU level, the purchasing departments should require bidders to demonstrate the lawful origin of products. Depending on circumstances, such evidence may consist of the following documents:

- Purchase invoice in the EU indicating particularly the scientific name of the species, the full number of CITES import permit or the date and place of import notification;
- Any document proving the age of the pre-Convention specimens;
- Yellow copy of the CITES import permit required by Customs;
- Yellow copy of the import notification.

In case of suspicion on the species from which the wood products was made or the validity of documents, public purchasers are requested to contact the competent authority of the Ministry for the Environment (Directorate of Nature and Landscapes Office of International Trade in Endangered Species).

## **5.4 IKEA**

### **a. General description**

The IKEA Group is the world's largest home furnishing retailer. In 2010, the IKEA Group had operations in 41 countries. Wood is one of the most important raw materials for IKEA and more than half of the products sold are wood based. Approximately 12.5 million m<sup>3</sup> RWE of solid wood and board materials are used in IKEA products annually.

Due to the global raw material sourcing, IKEA has set up a forestry organisation within the group that works with sourcing across 48 different countries. In 2010, IKEA had 1 074 suppliers in 55 countries. Majority of the wood used in IKEA products originate from Poland, Germany, Lithuania, Russia, China, Sweden and Romania.

The share of certified wood used in IKEA products increased substantially in 2010 to 24%, from 16% percent the year before. This corresponds to 3.0 million cubic meters of wood and

wood products. This progress results partly from the cooperation IKEA has with WWF to support responsible forestry, and to increase the availability of certified wood. For example, there are joint WWF projects aiming to ensure responsible forest management practices and to curb illegal logging in the cross-border trade between China and Russia, as well as a number of projects in Laos, Cambodia, Vietnam, Lithuania, Bulgaria, Romania and Ukraine.

b. Applied system description

The IKEA Way on Purchasing Products, Materials and Services (IWAY) is the IKEA Supplier Code of Conduct. It states the IKEA minimum requirements relating to the Environment and Social & Working Conditions. The IWAY standard includes a particular section on forestry (IWAY Standard: Forestry Section. Edition 5, 2010.06.02) which covers all virgin fiber contained in solid wood, plywood, veneer, layer-glued, and board materials that are used for manufacturing IKEA products. For practical implementation, a document titled Supplier Guidance to the IWAY Standard – Forestry Section ED5 (2010.06.02) has been created.

The Forestry Section of the IWAY Standard is divided in three sections. First section defines what kind of wood material IKEA accepts for its products. Second sets the minimum requirements that the potential suppliers need to fulfil before business with IKEA can be initiated, and defines how compliance will be verified. Third section sets the requirements that the contracted suppliers need to fulfil and tasks they need to accomplish in order to maintain their position. These three sections are namely:

- (i) Requirements on wood raw material used in IKEA products.
- (ii) IWAY Must requirements and procedures for start-up.
- (iii) Requirements for IKEA suppliers.

Concerning the (i) requirements on wood raw material, the standard stipulates that the wood raw material can originate from either a) Preferred Wood Sources, or b) sources fulfilling the Minimum Requirements. Currently, the Preferred Wood Sources include sources certified according to FSC Forest Management and Chain of Custody standards. The Minimum Requirements, developed by IKEA, list five points where the wood used by IKEA cannot originate: (such as illegally harvested forests or identified High Conservation Value Forests).

IWAY Must requirements and procedures for start-up (ii) are based on the Requirements on wood raw material. IWAY Must requirements state that wood of unknown origin or non-compliant with the Minimum Requirements shall not be used for IKEA products. Procedures for start-up then define how this can be verified: either by a valid FSC CoC certificate that covers the production for IKEA, or by valid Wood Procurement Plan describing for each source the wood origin, species and volume delivered/expected to be delivered. The Wood Procurement Plan is evaluated by IKEA.

Within 90 days after the first delivery, the supplier has to comply with the Requirements for IKEA suppliers (iii). These supplier requirements are divided in four categories based on the origin, volume and purpose of the wood handled by the supplier:

- Requirements for IKEA suppliers representing preferred wood sources.
- Requirements for IKEA suppliers implementing minimum requirements on wood raw material.
- Requirements for IKEA suppliers using small wood volumes.
- Requirements for IKEA suppliers using board sources acknowledged by IKEA as compliant with minimum requirements on wood raw material.

These requirements define actions and measures that suppliers under each category need to implement. IKEA suppliers representing preferred wood sources face the lightest requirements as their sources are certified by FSC. Suppliers implementing minimum requirements on wood raw material need to undertake a number of actions to prove that they commit to the IWAY standard, have an established wood procurement procedure in place, inform sub-suppliers about the requirements, collect, manage and report wood origin data, assess risks and carry

out risk verification, separate unverified wood and train relevant personnel. Relevant documents, defined by IKEA country-by-country, need to be available if required in the audits.

Requirements for IKEA suppliers from low risk countries using small wood volumes (less than 1 000 m<sup>3</sup> annually) are simplified and cover the collection, management and reporting of wood origin data. IKEA suppliers using small volumes but located in high risk countries are obliged to follow the same requirements as those suppliers implementing minimum requirements on wood raw material. The requirements are simplified also for those suppliers that use board materials from sources that IKEA has specifically categorized as compliant with minimum requirements on wood raw material. Suppliers that use board materials from sources that do not fulfil these specific requirements need to undertake actions described in Requirements for IKEA suppliers implementing minimum requirements on wood raw material.

## 5.5 Programme for the Endorsement of Forest Certification

### a. General description

The Programme for the Endorsement of Forest Certification (PEFC) is an international non-profit, non-governmental organization dedicated to promoting Sustainable Forest Management (SFM) through independent third-party certification. PEFC works throughout the entire forest supply chain to promote good practices in the forest sector and to ensure that timber and non-timber forest products are produced with respect for the highest ecological, social and ethical standards. Their established eco-label allows the customers to identify products from these forests. PEFC is an umbrella organization. It works by endorsing national forest certification systems that are developed through multi-stakeholder processes and tailored to local priorities and conditions. To date some 230 million hectares of forest have been PEFC certified, though with the major share in Europe and North America

### b. Applied system description

PEFC provides a recently updated, international standard (PEFC ST 2002:2010, *Chain of Custody of Forest Based Products - Requirements*<sup>10</sup>), which lays down the requirements for PEFC CoC scheme users, and is required to be implemented for the purposes of third party conformity assessment. However, the standard also offers a DDS, which can be implemented voluntarily by any organization. It is expected that organizations (acting as operators) will use this system to meet the EUTR requirements without aiming for the full PEFC CoC certification. The “Appendix 2: PEFC Due Diligence System (DDS) for avoidance of raw material from controversial sources” of this standard gives detailed description of the requirements of this system. This Appendix was adopted as part of the revised PEFC CoC standard by the PEFC General Assembly on 26<sup>th</sup> November 2010 and serves two main purposes.

The PEFC standard allows mixing certified material with non-certified material, when in compliance with the requirements for percentage based method. In this case non-certified materials come from outside an existing CoC or Forest Management certificate but must be from non-controversial sources. The non-certified sources of the “percentage based method” are controlled by this PEFC DDS and this is obligatory for all PEFC scheme users. The Appendix aims to provide compliance with the EUTR, for PEFC CoC certified organisations mixing certified material with uncertified material as well as uncertified organisations solely implementing this Appendix. Therefore it will be amended according to the foreseen, detailed EUTR regulations, if required.

Before going into the detailed description, it is important to examine the two main definitions in the standard:

#### Controversial sources:

Forest management activities which are:

1. not complying with local, national or international legislation, in particular related to the following areas:

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<sup>10</sup><http://www.pefc.org/standards/technical-documentation/pefc-international-standards-2010/item/673#tb>

- forestry operations and harvesting, including conversion of forest to other use
  - management of areas with designated high environmental and cultural values,
  - protected and endangered species, including requirements of CITES,
  - health and labour issues relating to forest workers,
  - indigenous peoples' property, tenure and use rights,
  - payment of taxes and royalties,
2. utilising genetically modified organisms,
  3. converting forest to other vegetation type, including conversion of primary forests to forest plantations

#### Organisation:

Any entity which is making the claims on products and is implementing requirements of this standard. Such an entity has ability to clearly identify the supplier of raw material and the customer of its products.

These definitions are not only applied for PEFC CoC certified organisations, but also for the PEFC DDS implementers. Traceability is a basic requirement for the users of the PEFC CoC standard. This is the reason why the term "organisation" was defined with the ability to clearly identify its suppliers and customers.

The organisation shall implement the PEFC DDS in three steps:

- Supplier's self-declarations
- Risk assessment
- Management of high risk supplies

#### Supplier's self declarations

The supplier of uncertified material covered by the scope of the organisation's PEFC DDS is requested to give to the organisation a signed self-declaration on the supplied material. This includes information on the origin and states that: *"to the best of the supplier's knowledge the supplied material does not originate from controversial sources"*. The declaration could be extended with additional features, such as identifying the exact forest management unit of supply and the supplier enabling second or third party checks. However this declaration is not necessary, if the organisation and the supplier have signed a contract, where all the above mentioned details are spelled out.

#### Risk assessment

For every delivery of uncertified material covered by the scope of the organisation's DDS the organisation needs to identify the risk of the supply. The identification is based on the characteristics of the supply chain and the country of origin. The assessment on country level considers Corruption Perceptions Index (CPI)<sup>11</sup>, level of forest governance and provides also room for any external information source. The supply chain component considers certification schemes (e.g. FSC), other verifications (e.g. FLEGT license) and also documentation issued by national authorities. As a result of the risk assessment the source will be identified "low risk" or "high risk" (See Figure 2 and Table 3). In case the source is considered as "low risk", no additional procedures are required.

#### Management of high risk supplies

When the source is classified as "high risk", the organisation is requested to carry out a risk mitigation measure, which is the establishment of second or third party verification. The previously mentioned self declarations will give the right of the organisation to proceed with this action. The verification process includes the identification of the whole supply chain, which requires the supplier to give detailed description and information on the origin of the raw material. Based on the identified chain the verification should carry out on-site inspections, however this could be substituted with documentation as well. Finally the organisation needs to define

<sup>11</sup> [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2010/results](http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results)

written corrective measures, in case the verification results with non-compliance. The gaps and missing elements should be communicated to the supplier with the request for improvement. In case the supplier is not able or willing to improve the conditions the organisation must cancel the supplier's supplies.

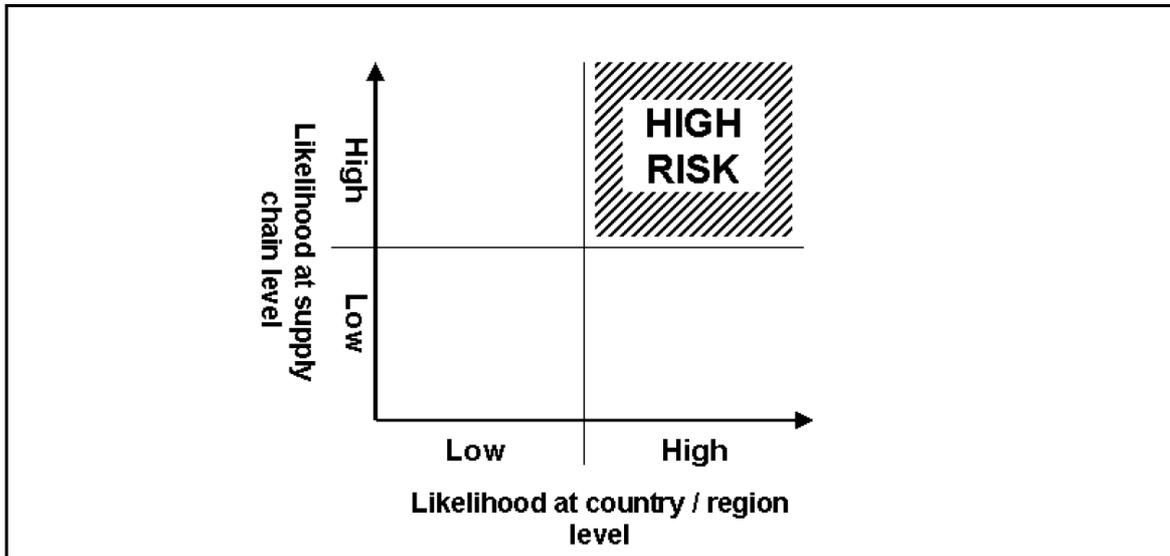


Figure 2: Determination of “high” risk supplies by combination of likelihood at country / region level and supply chain level

Indicators	Examples of external reference sources
The actual corruption perception index (CPI) of the country presented by Transparency International (TI) is lower than 5.0.	The TI CPI is presented at <a href="http://www.transparency.org">www.transparency.org</a> . On the provision of sufficient evidence that the TI CPI does not reflect the level of corruption in the forest based sector in a specific country scoring less than 5.0, the PEFC Council may make a different determination for this indicator.
The country / region is known as a country with low level of forest governance and law enforcement.	In defining this indicator, the organisation can use its internal surveys or results of surveys of external governmental or non-governmental organisations active in monitoring forest governance and law enforcement and corruption such as <ul style="list-style-type: none"> <li>- The World Bank FLEG Newsletter (<a href="http://go.worldbank.org/FMKUFABJ80">http://go.worldbank.org/FMKUFABJ80</a>);</li> <li>- UK based Chatham House, (<a href="http://www.illegal-logging.info">www.illegal-logging.info</a>);</li> <li>- Environmental Investigation Agency (<a href="http://www.eia-international.org">www.eia-international.org</a>, Global Witness (<a href="http://www.globalwitness.org">www.globalwitness.org</a>), etc.</li> </ul>
The organisation has received comments supported by reliable evidence from their customers or other external parties, relating to its supplies with respect to controversial sources, which have not been disproved by the organisation's own investigation.	

Table 3: The organisation shall classify the likelihood at country / region level as “high” for all supplies where any of the above indicators apply

## 5.6 Rainforest Alliance

### a. General description

Rainforest Alliance (RA) and NEPCo (partner of the RA in Europe) provides both certification and verification services. They work in 66 countries worldwide and have currently FSC certified more than 100million hectares of forest.

RA offers a range of different services that support and promote forest managers to achieve FSC certification. Among these are the SmartStep Program and the RA legality verification program. Though the ultimate goal of the RA program is improved forest management through FSC certification, they also recognize the need for implementing the possibility for sources that is in progress towards certification, or that cannot attain certification, to achieve a certain level of verification of their products.

The currently implemented services provided by the RA are considered to provide importers with the possibility to source verified or certified products:

1. Verification of Legal Origin (VLO)
2. Verification of Legal Compliance (VLC)
3. FSC Controlled Wood (CW)
4. FSC Certification of forest management enterprises (FMEs)

These standards provide product based verification and certification that all include verification of legality. Also partner organizations provide support to achieve PEFC certification. RA has developed a separate service for forest managers that need time and guidance in achieving forest certification. This program is called the SmartStep Program (see Figure 3) and allows Forest Management Enterprises (FMEs) a maximum of five years to achieve FSC certification status under an approved and audited work plan.

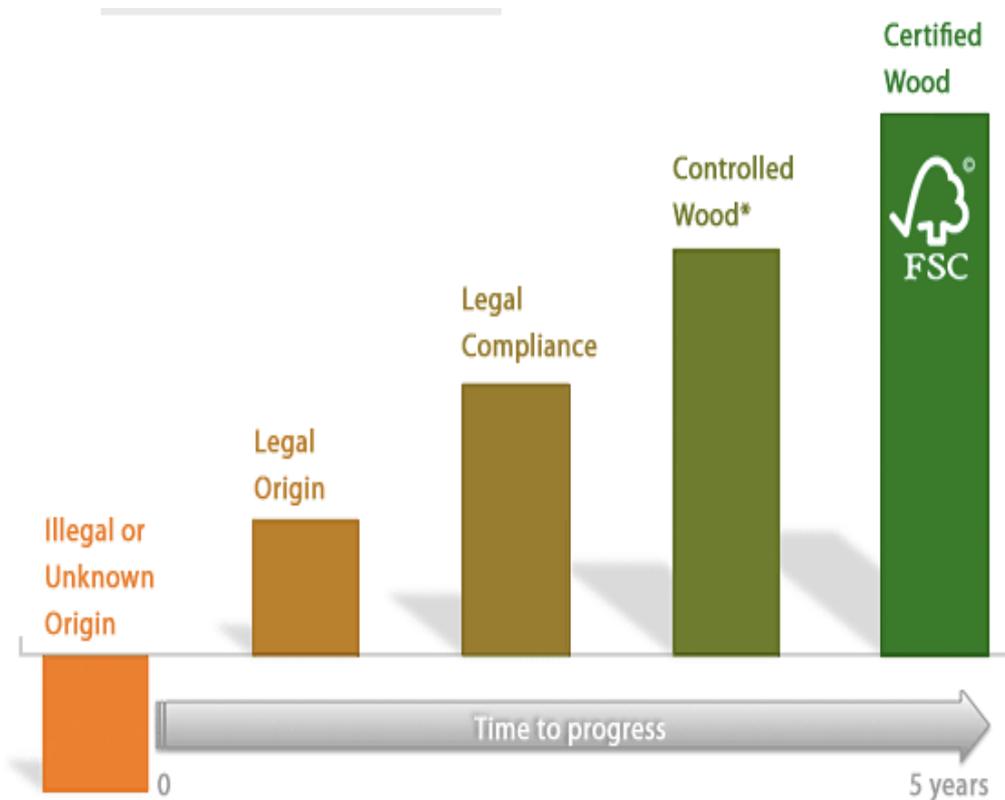


Figure 3: Stepwise approach developed by the Rainforest Alliance

b. Applied system description

Verification of Legal Origin (VLO)<sup>12</sup>

VLO verifies that timber comes from a known and licensed source and that the entity that carried out the harvest had a documented legal right to do so. Suppliers of VLO timber must follow and maintain documented chain-of-custody systems according to the VLO standard.

Verification of Legal Compliance (VLC)<sup>13</sup>

VLC is a product verification program that verifies that timber comes from a source that has a documented legal right to harvest, pursuant to the laws and regulations of the government of the jurisdiction as well as verifying that timber harvesting complies with a broad range of applicable and relevant laws and regulations related to forestry, including environmental protection, wildlife, water and soil conservation, harvesting codes and practices, worker health and safety, and fairness to communities.

Legality verification services are available both to forest management enterprises as well as to companies producing and selling wood products and to companies wishing to verify the sources of products they purchase.

Controlled Wood (CW)

CW certification enables forest management companies to demonstrate that their wood products have been controlled to avoid sourcing wood that has been illegally harvested, harvested in violation of traditional and civil rights, harvested in forests where high conservation values are threatened by management activities, harvested in forests being converted to plantations or non-forest use, and harvested from forests where genetically modified trees are planted. CW certification involves a five-year contract with annual auditing.

SmartStep

To provide more opportunities and incentives for forest management operations to pursue FSC certification, RA has developed an innovative service called SmartStep. With SmartStep, forest management operations can take a logical path to achieving FSC certification while gaining access to potential market benefits along the way. RA auditors identify areas in which a forest management operation needs to improve social, economic and environmental performance. The company then produces an action plan with clearly defined targets. If this action plan is approved, companies can then enroll in SmartStep. The operation is then audited for up to five years on its progress toward meeting the targets and ultimately achieving FSC certification.

In connection with enrollment into the SmartStep program companies can also be verified against the VLC standard or potentially against the FSC CW standard if they meet the relevant requirements.

Support to achieve Forest management certification

Forest management operations that meet the principles and criteria for the environmental, economic and social standards of FSC are awarded certification. Candidates for certification undergo a detailed on-the-ground assessment that includes input from all interested parties, species inventories, management plan reviews and forest inspections. Forest Management certification is valid for five years, subject to successful completion of annual audits. The FSC forest management standard includes requirements for meeting applicable laws and regulations and is therefore assumed to be appropriate as evidence for the legal status of the material.

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<sup>12</sup> The full RA VLO Standard is available on the following website:

[http://rainforest-alliance.org/sites/default/files/site-documents/forestry/documents/vlo\\_standard.pdf](http://rainforest-alliance.org/sites/default/files/site-documents/forestry/documents/vlo_standard.pdf)

<sup>13</sup> The full RA VLC Standard is available on the following website:

[http://rainforest-alliance.org/sites/default/files/site-documents/forestry/documents/vlc\\_standard.pdf](http://rainforest-alliance.org/sites/default/files/site-documents/forestry/documents/vlc_standard.pdf)

In addition, RA's partner NEPCo is already drafting measures to provide services addressing directly the EUTR requirements. This process includes a verifications service for responsible purchasing and a global wood legality risk registry, which will consider risks originating from source, supply chain and species.

## 5.7 Stora Enso

### a. General description

Stora Enso is a global paper, packaging and wood products company producing newsprint and book paper, magazine paper, fine paper, consumer board, industrial packaging and wood products. The Group's customers include publishers, printing houses and paper merchants, as well as the packaging, joinery and construction industries. Stora Enso has some 26 000 employees and 85 production units worldwide. Its annual production capacity is 11.8 million tonnes of paper and board, 1.3 billion square metres of corrugated packaging and 6.4 million cubic metres of sawn wood products, including 3.2 million cubic metres of value-added products.

Wood is Stora Enso's most important raw material. The Group uses spruce, pine and birch saw logs, pulp wood, chips and saw dust as their main assortments. Stora Enso does not use wood from natural tropical forests, neither do they use protected tree species as raw material. The Group procures most of its wood from private forest-owners, state forests and companies in Finland, Sweden, the Baltic countries, Continental Europe and Russia. In addition, the purchase mode varies from stumpage purchase to free mill purchase with all possible steps in between (e.g. free at roadside, free on truck, free on board, free on railway wagon, delivered at frontier). Some 6% (in 2010) of Stora Enso's wood was sourced from tree plantations in the Southern Hemisphere, including pulp produced by its joint venture Veracel in Brazil. Although this is still a small share, plantations are becoming increasingly important for Stora Enso. In 2010, the Group continued developing its plantations in Brazil, Uruguay, China and Laos, and also maintained its trial plantation in Thailand. In 2010, the total amount of wood delivered to Stora Enso's mills was 35.5 million cubic metres.

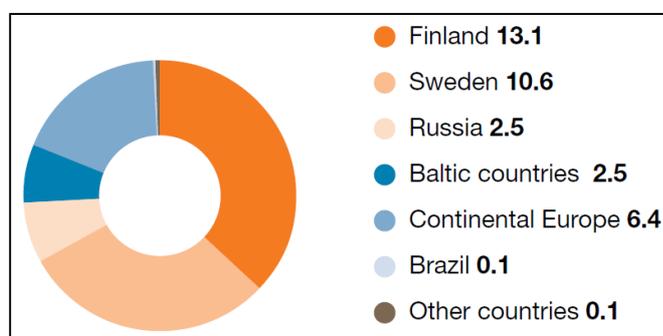


Figure 4: Stora Enso's wood procurement by region\*

\* Total amount of wood (roundwood, chips and sawdust) delivered to own mills in these areas (million m<sup>3</sup>, solid under bark).

Source: Stora Enso Sustainability Report 2010

### b. Applied system description

Stora Enso promotes independent forest certification to demonstrate sustainable forest management. The two major forest certification systems recognised by the Group are FSC and PEFC. Both FSC and PEFC offer opportunities for group certification, which allows forest-owners to apply for certification collectively with assistance from a certification group manager. Other acceptable forms for demonstrating proper DD are mainly FSC CoC/CW, PEFC CoC as well as VLO from SmartWood (RA). Stora Enso procures wood in many different countries with different legislation and varying risk levels related to illegal wood trade. Therefore risk assessments are carried out for each specific region mainly based on the FSC CW standard (if

not available, then PEFC CoC standard). If the country/region/district/supplier is defined as “unspecified/high risk” further country specific information/documentation will be required and has to be available for internal, as well as external audits. The required documents are determined by Stora Enso on country-by-country basis. Furthermore, Stora Enso aims to keep the supply chain as short as possible and establish long lasting relationships with the suppliers. In the main procurement areas the Group has their own employees for wood procurement and rely on well established traders in non-core areas.

Stora Enso implements its own traceability systems parallel and as a part of the risk assessment and risk mitigation procedures in order to check that all wood has been harvested in compliance with national legislation and according to the company’s own Wood Procurement Principles (Figure 5). These traceability systems 1) provide initial data for carrying out the risk assessment, included in the contracts, 2) are used to collect relevant documentation, 3) include a company’s own database for the essential wood origin data, and 4) contain an internal audit system. Each country/region-specific traceability system has been third-party verified and covers all roundwood, chips, sawdust and externally purchased pulp.

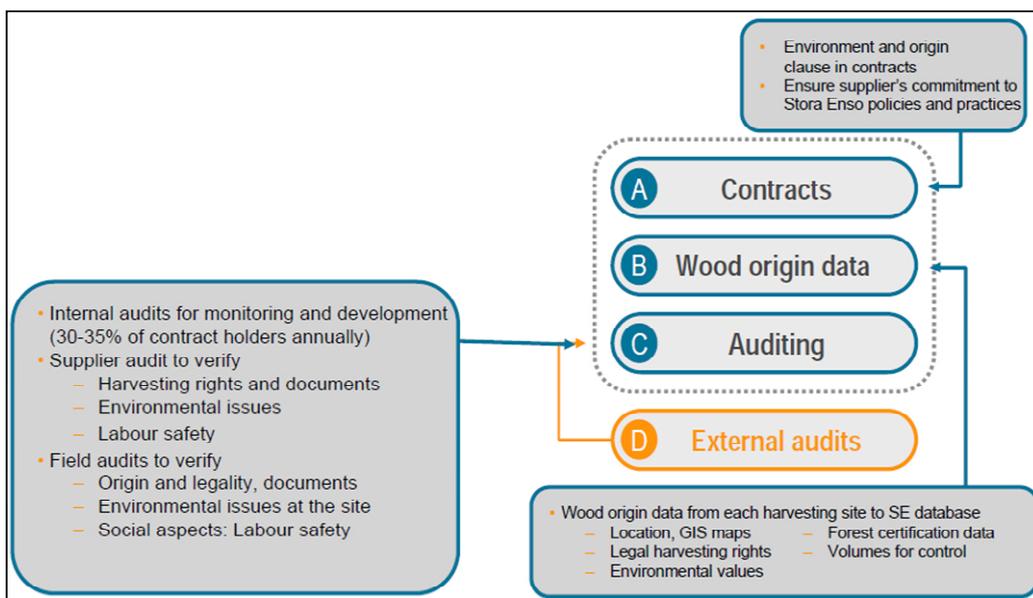


Figure 5: Example of one applied traceability system by Wood Supply Russia specifically for the roundwood procurement in Russia  
Source: Stora Enso

## 5.8 UK Timber Trade Federation

### a. General description

The UK Timber Trade Federation (TTF) is the official voice of the UK timber trade, representing timber importers, agents and other suppliers and users of wood and wood products. The Federation covers more than 70% of timber used in the UK and 80% of its members are SMEs. TTF represents the timber industry’s views to central and local government, the devolved political institutions and the European Commission. It is working closely with the Department of the Environment, Food and Rural Affairs and the Department for International Development on a number of issues. Its role is to administrate and advise. CoC, forms, administration guidance, advice and training are all taken care of by the TTF. Currently this also includes governance procedures and communication protocols as well as sanctions for non-compliance. The Federation has also guarantees through its Conduct Assurance Scheme should any customer have a complaint against a TTF Member it will be independently investigated.

The Federation promotes the environmental advantages of timber and timber products as well as encourages environmentally responsible trading practices. TTF offers Members advice and technical support on packaging waste regulations, life cycle analysis, climate change issues, forestry management and certification. It acts as the environmental voice of the timber industry as more than 150 companies use TTF as their “environmental department”.

b. Applied system description

The Federation made Due Diligence mandatory in 2008 and hence all of its members are implementing the TTF’s Responsible Purchasing Policy (RPP) or an equivalent system that has been assessed as meeting the RPP criteria. These criteria were developed in conjunction with the Dutch and French Federations. The RPP has evolved and improved over many years in cooperation with external consultants and members. RPP is a mechanism which provides consumers of timber and wood-based products with the confidence that they are sourcing these materials from companies which have a risk management system in place to minimize the risk of illegal timber entering their supply chain. Whilst Due Diligence is mandatory on all members there are two exemptions; those members that buy timber solely from UK TTF members or are minimum 95% certified. In addition, the companies that have European-wide presence do not need to take the RPP.

Under the RPP, no or minimal risk assessment is carried out to members that source products that are fully certified or third party verified, or sourced from an EU member state or from another TTF member. In addition, GTFN and TTAP suppliers are not required to be risk assessed as it is deemed that the risk is already being managed by a third party. However, the TTF acknowledges that these processes do not guarantee legality and are work in progress. Suppliers falling outside any of these requirements will receive further forms to provide additional information. These forms aim at establishing where the timber is coming from and the associated risk. The member is required to assess this information using a RPP Decision Tree and TTF Country Guidance to consider whether the risk is low, medium or high. If it is high an action plan needs to be put in place. The whole system is then assessed by an auditor (second or third party) who principally checks the risk rating, appropriate action plans and continuous improvement. The whole scheme is overseen by the Federation’s Forest Forever Board which does include external independents such as WWF and TFT.

1. Management Structure

The company has appointed a Director to be responsible for the implementation of this Policy and will ensure that relevant environmental issues are discussed regularly at the highest level of management. The company will ensure that all employees associated with timber purchasing are aware of the Policy and its commitments, and are given appropriate education and training to allow its full implementation.

2. Responsibility

The company recognises that it has a responsibility to the environment, customers, suppliers and staff to base its commercial activities on well-managed forests.

3. TTF Code of Conduct

The company is committed to the Timber Trade Federation Code of Conduct and applies the Environmental Code of Practice to all wood procurement activities.

4. Legality

The company is committed to purchasing all timber from legal sources and will seek evidence of compliance from suppliers that they are operating in accordance with the laws of their country. The company unreservedly condemns illegal logging practices and will keep informed of international processes and changes in legislation.

5. Endangered Species

The company will not trade in timber species prohibited under Appendix 1 of the CITES legislation and will obtain the appropriate documents for trade in all other CITES listed

timber species.

#### 6. Traceability and Supplier Monitoring

The company will perform a Risk Assessment on all Suppliers, as documented by the RPP. The assessment will seek to provide the clearest practicable information regarding the sources of raw material used in the manufacture of wood products. This information will form part of purchasing decisions and will be made available on request to independent verifiers.

#### 7. Timber Certification

The company supports international efforts to improve forest management, for example, the development of credible timber certification schemes. This company recognises that the independent certification of forests and the process chain is the most useful tool for providing assurances that the timber comes from legal and well-managed forests. The company will only accept, or use labels or certificates that include environmental or sustainability claims – only if they are supported by publicly available standards drawn up in a fully participatory, transparent and objective manner, and are backed by independent inspection.

#### 8. Avoid Boycotts

The company will not encourage boycotts or bans on specific species of timber. Notwithstanding this, the company will cease to purchase any timber and timber products whose supply is in breach of the Timber Trade Federation Code of Conduct and, in particular, the Environmental Code of Practice.

#### 9. Continuous Improvement

The company is committed to work with relevant trade organisations, NGOs and governments to develop its purchasing policy. The company is committed to continuously raise the proportion of timber and timber products, in accordance with the stepwise approach, that originate from legal and sustainably managed forests.

#### 10. Reporting and Audit

The company will report annually to the appointed auditors. The auditors will assess and verify the company's progress and compliance under the Policy. A copy of the company's Responsible Purchasing Policy Company Commitments will be available to all stakeholders on request.

*Table 4: TTF Commitments for the Responsible Purchasing of Timber and Timber Products*

### **5.9 The Royal Netherlands Timber Trade Association**

#### **a. General description**

The Royal Netherlands Timber Trade Association (Vereniging Van Nederlandse Houtondernemingen, VVNH) is the umbrella organization representing the interests of 273 timber wholesalers in the Netherlands. The vast majority of the employees in the sector (around 7 000) work for the member companies. There are also a number of related trade associations that are extraordinary members: the Netherlands Association of Timber Agents, National Association for Forestry Contractors, Roundwood Trade and Roundwood Processing Industries and Vereeniging van Importeerende Groothandelaren in Hout.

In 2008, The Netherlands imported approximately 5.5 million m<sup>3</sup> of wood and board materials. Of this, coniferous roundwood, sawn or further processed wood amounted to 2.8 million m<sup>3</sup>, deciduous roundwood, sawn or further processed wood to 0.8 million m<sup>3</sup>, and board materials covered 1.9 million m<sup>3</sup>.

The VVNH works to represent the interests of the Dutch timber wholesales, enhance the sustainability of the industry, promote the use of wood and provide assistance and training to its members. When working with its member companies to enhance the sustainability of the sector, the VVNH has in particular emphasized the goal to eliminate the trade and use of illegal timber and timber products. According to the official VVNH goal, 50% of the hardwood, 100% of the softwood and 85% of the board material imported/procured by the VVNH members will be labelled by sustainable forest management certificates by 2015.

b. Applied system description

All the VVNH members have endorsed a code of conduct and are therefore legally obliged to observe it. The VVNH code of conduct states that the VVNH members shall exclusively bring timber in the Netherlands market in conformity with current legislation and regulations (agreed nationally as well as internationally). The coverage and definition of legislation and regulations applied is determined by the members<sup>14</sup>. The members shall preferably deal with timber demonstrably originating from sustainably managed forests. Additionally, the VVNH members are committed to increasing the amount of certified timber entering the Dutch market. Also issues such as transparent communication and high-level of labour conditions are covered by the code of conduct.

The VVNH members need to report of their sustainability, including the origin of the timber used, biannually. Based on the reports the VVNH compiles a summary of the results, as well as creates and publishes a star-based grading system (scale of 1 to 5 stars, 5 being the highest) to award those members who have performed well in sustainability issues, including legality of the raw materials they use. The VVNH has a system of sanctions, which is applied in the event that members fail to observe any of the provisions of the code. There is also a complaint system in place.

The VVNH runs several types of activities to support its members in fulfilling the objectives of the code of conduct. The activities include organization of training and creating guidance documents on sustainable procurement. In 2008 the VVNH published a Guide to Responsible Timber Sourcing (Handleiding Verantwoord Hout Inkopen<sup>15</sup>). The Guide for Responsible Timber Sourcing is an instrument that guides to the assessment and mitigation of the risk of including illegal timber in wood supply. It presents a structured questionnaire on how to collect information from the sources and suppliers, and categorize them based on the replies achieved. Based on the supplier categories, it is possible to distinguish the demonstrated sustainable sources from those who are not. The VVNH members shall not trade with suppliers that do not fit into the eight categories.

To support wood importing companies in the practical challenges in identifying the relevant documents demonstrating the origin and legality of the wood, the VVNH has compiled a document Rapport Herkomst Bekend: Benodigde exportdocumenten (2009)<sup>16</sup>. This document lists the documents that are needed for tracking the wood to its origin in twenty different countries. Scanned examples of some of the documents are annexed to it.

## 5.10 WWF- Global Forest and Trade Network

a. General description

The Global Forest and Trade Network (GFTN) is an international non-governmental organization, which started in 1991 and works today directly with nearly 300 companies trading over 200 million cubic meters round wood equivalent across 30 countries. These companies are required to use a stepwise approach to responsible purchasing (Trade Participants) or are working towards credible forest certification (Forest Participants). Therefore the GFTN has two functions:

<sup>14</sup> VVNH has however produced guidance material on the issue, see footnote 15

<sup>15</sup> [http://www.vvnh.nl/system/files/handleiding\\_verantwoord\\_hout\\_inkopen.pdf](http://www.vvnh.nl/system/files/handleiding_verantwoord_hout_inkopen.pdf)

<sup>16</sup> [http://www.vvnh.nl/system/files/rapport\\_documenten\\_herkomst\\_bekend\\_10jun09.pdf](http://www.vvnh.nl/system/files/rapport_documenten_herkomst_bekend_10jun09.pdf)

- It is a membership organization which supports companies to become responsible purchasers of forest products within a rule bound mechanism based on continuous improvement, and
- An advocacy body that promotes best practice in responsible purchasing of forest products, mainly via its website<sup>17</sup> and related activities.

GFTN is a programme of WWF International. The participation process is governed by bilateral agreements with the participating companies. GFTN itself is managed by a Support Unit working at the global supervisory level. GFTN itself is governed by representatives of 25 WWF national and programme offices. Advisory groups are established in a number of countries, made up of GFTN participant companies and other stakeholders.

WWF's driving force to develop the GFTN system was to ensure that forests are managed responsibly and they identified that this is best manifested through credible forest certification. GFTN's guidance is freely available for all interested stakeholders to support this goal. The system was developed solely by GFTN itself.

#### b. Applied system description

GFTN has developed the *Global Forest Trade and Trade Network Participation Rules*<sup>18</sup>, which describes specific requirements both for Forest Participants and Trade Participants. In this framework the Forest Participants are directed on how to achieve and maintain credible forest certification. The rules also contain the requirements for all Trade Participants to develop public purchasing policies that comply with WWF's policies and to make progress in improving the environmental profile of the wood and fiber in their supply chain. There is also guidance as to responsible purchasing of forest products and the latest updated version is available publicly on the internet<sup>19</sup>. It is suitable both for GFTN participants and to any other organizations seeking guidance. The guidance supports a stepwise approach to improvements in the supply chain and contains sections relating to legality and mechanisms to identify and manage risks.

The risk management systems are managed by the GFTN Trade Participants, not by GFTN itself. However, the systems should be based on the guidance and should not contradict the GFTN rules. In each country that GFTN operates in the local GFTN Manager is responsible for following a series of procedures that ultimately lead to a company being accepted as a participant. The GFTN Support Unit manages the overall system, ensures that the procedures followed on a local level have been complemented adequately, and has an oversight of all agreements signed with participant companies.

For more than a decade, GFTN had worked with companies without providing explicit guidance as to how to establish and run a system that comprehensively assessed the supply chain for forest products. GFTN's goals were to drive the market for credible forest certification, but the companies they engaged with needed to understand the whole supply chain in order to be able to plan their transition. A stepwise approach was adopted as it was seen as pragmatic and suited to business. The stepwise approach allows the various aspects of risk to be assessed and quantified, starting with sources that are either "*Unknown*" (the point of harvest cannot be identified) or "*Unwanted*" (either a source that remains unknown for too long or which has attributes that go against the policy of the company).

The step "*Unwanted*" includes sources that cannot be identified as legal<sup>20</sup>, amongst other criteria. The Trade Participants can then make efforts to establish that the source complies with policy and that the risk of illegality is low or non-existent, afterwards move to the step "*Known source*" and finally to "*Known licensed source*". Beyond this, there are also steps for "*Pro-*

<sup>17</sup> <http://www.gftn.panda.org>

<sup>18</sup> [http://www.wwf.se/source.php/1254571/GFTN\\_Participation\\_Rules\\_July-30-2008.pdf](http://www.wwf.se/source.php/1254571/GFTN_Participation_Rules_July-30-2008.pdf)

<sup>19</sup> <http://sourcing.gftn.panda.org>

<sup>20</sup> Compliance with national law in country of harvest

*gressing toward certification*" and *"Credibly certified or recycled"*. This approach is acceptable to business and it is based on systems developed by participant companies.

Legality and governance are key foundations towards sustainable forest management and therefore a priority for WWF as well. Legal compliance alone is regarded as a stepping stone by WWF and the GFTN mechanisms are set up to ensure that companies do not recess having achieved legality, as a minimum level of performance.

GFTN also provides and updates *"Keep it Legal Country Guides"* to support the companies in their efforts to verify timber origin and legality. The guides include the relevant national forms and documents in national languages with explanatory notes describing their role in the verification process.

In order to monitor the implementation process, GFTN collects data on an annual basis from participating companies. This monitoring mechanism uses a generic template and requires the Trade Participants to provide information on their total sourcing within the past years. The report includes information on country of origin, species, volumes, environmental status, and other supporting activities. The annual report is used to develop an action plan for improvement for the following year. Continuous participation is subject to adequate performance on an annual basis. However, this does not require participant companies to provide evidence on details of all transactions or sources of forest products. The validity relies on the individual participant company and on the established system to capture and assess this data using the guidance provided by GFTN. Participant companies are required to verify data periodically. In Europe this is undertaken mainly by third parties commissioned by the local GFTN office.

The rules describe procedures for suspension and termination of the GFTN membership as well. The manager of the relevant GFTN local office can suspend the membership in case the company provides inaccurate information, action plan activities of an uncertified participant company are not adequately completed or targets not achieved within the specified time-frame or it is otherwise in breach of the Rules. There are also mechanisms in place to manage complaints.

In 2011 the GFTN will further review the guidance and will ensure that the provided system offers the best possible advice for compliance with the EUTR.

## 6. EXPERIENCES AND LESSONS LEARNT FROM THE LACEY ACT IMPLEMENTATION

### a. General description

In May 2008, the U.S. Congress passed a law banning commerce in illegally sourced plants and their products, including wood and wood products. This law is an amendment to a 100-year-old statute named the Lacey Act. Currently, Lacey Act makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken, possessed, transported or sold in violation of the laws of the United States, a State, an Indian tribe, or any foreign law that protects plants or that regulates certain plant related offenses. As stated in the Lacey Act, all importers are now required to declare the country of origin of harvest and the species name of all plants contained in their products. The Lacey Act also makes it unlawful to make or submit any false record, account or label for, or any false identification of, any plant covered by the Act.

A plant, as defined by the law, includes any part or derivative product of any wild member of the plant kingdom, including trees harvested from plantations. Majority of the wood products are covered by the regulation, although there are some exceptions:

- Live trees or other live plants intended for replanting, unless they are listed on the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Endangered Species Act (ESA) or a state endangered species list.
- Scientific specimens to be used only for research, unless they are listed on CITES, the ESA or a state endangered species list.
- Common food crops and cultivars, such as corn, cotton or cut flowers.

The Lacey Act defines the illegally sourced plant as a plant that is taken, harvested, possessed, transported, sold or exported in violation of an underlying law in any foreign country or the U.S. The underlying laws are limited to those laws which protect plants or regulate the following:

- theft of plants;
- taking plants from an officially protected area, such as a park or reserve;
- taking plants from other types of “officially designated areas” that are recognized by a country’s laws and regulations;
- taking plants without, or contrary to, the required authorization;
- failure to pay appropriate royalties, taxes or fees associated with the plant’s harvest, transport or commerce; or
- laws governing export or trans-shipment, such as a log-export ban.

As stated, the prohibitions of the amended Lacey Act apply to domestic (interstate) commerce as well as international trade (both imports and exports). In the United States, illegally taken plants are those plants taken in violation of Federal, State or Tribal law, including State forest practice acts. Therefore, if a tree is illegally harvested in a national park, Lacey Act charges may be brought against any person who exports, transports (even if the transport remains within the same Federal jurisdiction), sells, receives, or purchases that tree, timber from the tree, or any product thereof. Concerning imported wood, it is the responsibility of the importer to be aware of any foreign laws that may pertain to their merchandise prior to its importation into the United States. Based on the current information, the U.S. Government has no plans to create a database on applicable legislation.

The Act requires an import declaration (electronic or paper form) for plants or plant products that includes the scientific name of any plant, a description of the value, quantity, and the name of the country from where the plant was taken. The declaration has been compulsory on plant and plant product imports from December 2008 onwards.

The number of products covered by the Lacey Act has been increasing in phases so that 1<sup>st</sup> of April 2010 the coverage of the Act reached its current level. The schedule of the enforcement of the declaration requirements is found in Table 5. The declaration requirement is assigned to

those complete products listed in the table. In case components of the product would require declaration but the complete product is not listed in Table 5, the declaration is not required.

April 1, 2009	October 1, 2009	April 1, 2010
4401 – Fuel wood	4402 – Wood charcoal	4421 – other articles of wood
4403 – Wood in the rough	4412 – Plywood, veneered panels, except 44129906 and 44129957	6602 – Walking sticks, whips, crops
4404 – Hoopwood, poles, piles, stakes	4414 – Wooden frames	8201 – Hand tools
4406 – Railway or tramway sleepers	4419 – Tableware & kitchenware of wood	9201 – Pianos
4407 – Wood sawn or chipped lengthwise	4420 – Wood marquetry, caskets, statuettes	9202 – Other stringed instruments
4408 – Sheets for veneering	PLUS ITEMS INCLUDED APRIL 1, 2009	9302 – Revolvers and pistols
4409 – Wood continuously shaped		93051020 – Parts and accessories for revolvers and pistols
4417 – Tools, tool handles, broom handles		940169 – Seats with wood frames
4418 – Builders' joinery and carpentry of wood		950420 – Articles and accessories for billiards
		9703 – Sculptures
		PLUS ITEMS INCLUDED OCTOBER 1, 2009

Table 5: Schedule of the enforcement of the Lacey Act

There are some plant products to which the declaration requirements do not apply. Firstly, these are complex products which commonly utilize material from a variety of countries or species. If either the specific country or the specific species are unknown for a given shipment, the law allows declarations to contain the name of each likely species of plant, and/or each possible country of origin which must include the correct country. Secondly, declarations for paper products made with recycled fibers do not need to name the species and source for the recycled material. Instead, they must list the average percent of the recycled content, as well as species and origin information for any non-recycled plant material also contained in the products. Thirdly, importers do not need to declare plant-based packaging material such as cardboard or pallets, unless the packaging itself is what is being imported.

At the moment, the declaration requirements are not enforced on all types of shipments imported to the United States. Currently the declaration requirements are enforced for all formal entries, i.e. most commercial shipments. All informal entries (most personal shipments), personal importations, or mail, transportation and exportation entries, in-transit movements, carnet importations (i.e. merchandise or equipment that will be re-exported within a year), and foreign trade zone and warehouse entries (goods entering the USA under bond to temporarily store goods in a warehouse without paying duties and/or taxes) do not need to fill in the declaration.

The Government must review the implementation of the declaration requirement after two years. Based on this review, the Government may issue regulations adjusting the scope of the requirement.

Lacey Act civil and criminal penalties vary according to how much the company or individual knew about the crime, as well as the value of the goods or shipment in question. If a person or a company *knowingly* a) participates in a trade of illegally sourced wood, or b) feeds false information on import declaration, the following sanctions may be fines, possible prison, and/or forfeiture of goods. Those operators who have unknowingly committed to actions a) or b) above, the sufficiency of “due care” determines the severity of sanctions that follow.

Due care is a concept that has been developed over time by the U.S. legal system. Due care is the legal term for exercising the level of appropriate action that would be taken by a rea-

sonably prudent person under the same circumstances to minimize the risk of purchasing plant products that were harvested or traded illegally. As a result, it is applied differently to different categories of persons with varying degrees of knowledge and responsibility.

The electronic declaration information will be collected by Customs and Border Protection, Department of Homeland Security. The paper declaration will be collected by Animal and Plant Health Inspection Service, United States Department of Agriculture (APHIS) who will also play the primary role in processing declarations. APHIS will share responsibility for investigating illegal plant cases with the U.S. Department of the Interior's Fish and Wildlife Service (FWS). If federal inspectors uncover or receive evidence of criminal activity, further investigation will occur. If there is sufficient evidence that the product is illegal, the shipment can be seized. At this point, the case may be referred to the Department of Justice and/or forfeiture proceedings may be initiated.

b. Due care under Lacey Act

The Lacey Act does not describe what constitutes "due care". This approach gives industry operators the opportunity to implement any actions they consider necessary for legality verification on the one hand. On the other hand, it makes it more difficult for companies to judge the adequacy of the actions they have taken to prevent the trade of illegally sourced wood, i.e. the adequacy of their due care.

The adequacy of the due care is determined by the judicial system. Several reference cases have already been trialled under the Act. The first illegal timber case was analysed in 2009 when agents of the U.S. Fish & Wildlife Service seized three pallets of tropical hardwood as they entered the Port of Tampa, Florida from Iquitos, Peru. The wood was confiscated on grounds that the shipment violated Lacey's declaration requirements. The seizure was supported by substantial evidence that the exporter was using stolen and forged documents. The Office of the Solicitor stated that the buyer of the Peruvian wood "did not do all he could within his power to comply with regulations and ensure that the shipment was authorized by an export permit that properly documented the required information and was declared appropriately under the Lacey Act upon arrival to the United States."

The second, and so far the most famous case, is taking place in Nashville, Tennessee where U.S. federal agents raided Gibson Guitar Corporation's manufacturing facility as part of an investigation into the illegal trade of a rare wood species allegedly used in some of Gibson's musical instruments. The Nashville plant is under investigation for violations of the Lacey Act, allegedly for the use of Madagascar rosewood.

Given that Gibson Guitar has had earlier problems related to illegal timber, the company has decided to only import wood from legal, certified sources in Honduras and Guatemala. The company acquired a CoC certificate issued by FSC, and has been subject to annual inspections. Given that the shipment from Madagascar was not FSC certified, the U.S. FWS will have to demonstrate that illegalities involving other wood have occurred, providing an interesting test case of direct relevance to the trade in Madagascar rosewood.

However, as the reference cases are not yet many in the wood and wood products industry, there is a certain level of ambiguity around how the court might view due care with respect to the new plant provisions. Therefore the range of measures used by the companies in the industry is likely to vary. Companies with large-scale operations, adequate resources and/or concerns over reputational issues are likely to apply a wide array of tools, technologies and resources for assessing and eliminating illegal wood from their supply chains. Internal company policies and tracking procedures are a critical element. Steps may also include bar-code or other tracing systems; legality verification; certification under third-party schemes; stepwise programs offered by various organizations, and other public-private partnership models.

c. Practical experiences of the Lacey Act<sup>21</sup>

Implementation has focused on the phase-in of the declaration requirement. The amendments were passed in May 2008 and it was viewed as ambitious to have full implementation of the declaration by the end of 2008. A Federal Register process was introduced to gather comments from the public, and stakeholder dialogues were held with importers, brokers and retailers, resulting in recommendations. Voluntary declarations were introduced in December 2008, with the requirement becoming mandatory in May 2009. There is a phase-in schedule with six-month intervals, theoretically “taking into consideration the risk and an importer’s ability to accurately identify a plant or plant product and the country of origin”. Product identification is done by customs codes.

There is growing consciousness of the Act in the private sector. The general awareness among importers is high, although the understanding of the specifics is probably less so. However, there is a consensus that market opportunities for low-risk products exist. Discussions in relation to the Lacey Act have been going on concerning a number of issues, such as:

- Composite products, such as MDF and fibreboard, for which it is difficult to identify the origin.
- Whether there should be a ‘blanket’ declaration system for major importers bringing in repeated identical shipments.
- The creation of genus-level categories where products may contain timber of many different species.
- How to declare hybrid species or recycled wood (recycled paper fibre does not have to be declared by species, only by percentage).
- Whether ‘common food crops’ and ‘common cultivars’, such as cotton and oil palm, should be made subject to the Lacey Act (currently they are exempted).

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<sup>21</sup> Mostly compiled and reproduced from the presentation by Andrea Johnson (EIA) at the *Illegal Logging Update and Stakeholder Consultation*, Chatham House, 23rd – 24th June 2009. Available at: <http://www.illegal-logging.info/uploads/MEETINGNOTESUPDATENO14.pdf>

Additional inputs from IKEA and American Pacific Plywood.

Further experiences available also in the publication by the Forest Legality Alliance (2010): “*Findings from Stakeholder Interviews and Survey*”. Available at: <http://www.forestlegality.org/publications/forest-legality-alliance-stakeholder-survey-research-findings>

## 7. EXPERIENCES AND LESSONS LEARNT FROM OTHER SECTORS' DUE DILIGENCE SYSTEMS

### 7.1 Neste Oil

This chapter provides a description of the information and risk management system used to control palm oil production's raw material supply.

Neste Oil is a refining and marketing company, with a production focus on premium-quality, lower-emission traffic fuels. The company produces a comprehensive range of major petroleum products and is the world's leading supplier of renewable diesel. The company had net sales of EUR 11.9 billion in 2010 and employs around 5,000 people. Neste Oil's share is listed on the NASDAQ OMX Helsinki and the company has also been selected into the Dow Jones Sustainability World Index.

Biofuels represent a tool for increasing the proportion of renewable energy used in traffic and transport. The EU directive on renewable energy requires that renewables should account for at least 10% of the energy used in traffic and transport by 2020. There are also other national mandates covering the use of renewable energy that are being introduced, having a clear impact on the demand for biofuels.

Neste Oil has invested heavily in expanding its renewable diesel production capacity. Based on Neste Oil technology, NExBTL renewable diesel is produced in three units and the fourth is under construction, expected to start up in mid-2011. In 2010, the global annual production of palm oil reached 46 million tons. Of the total production, Neste Oil procured 1% corresponding to 460 000 tons in 2010. In addition to crude palm oil, the company uses the by-products of palm oil production, such as stearin and palm fatty acid distillate, as well as waste fat from the food industry and rapeseed oil.

Neste Oil procures its palm oil from suppliers that are either certified or committed to and well-advanced in their certification process. Neste Oil's goal is to use solely certified palm oil by the end of 2015. If Neste Oil is about to buy palm oil from an uncertified source, the sustainability of the production has to meet the requirements set by the company. On a general level, Neste Oil expects its raw material suppliers to:

- comply with the applicable laws and regulations of the country in question;
- support sustainable development and commit to continuous improvement of Health, Safety and Environment (HSSE) issues in its operations;
- respect human rights and actively work towards employee safety;
- cooperate with governments and organizations in the development and implementation of effective HSSE and sustainability regulations and standards;
- carry out its businesses according to good business ethics.

In order to ensure that its expectations are met, Neste Oil has developed its own information and risk management scheme. The basis for the scheme is formed by three studies: i) Sustainability Due Diligence Study carried out by company's HSSE department and The Full Counterparty Study consisting of ii) Company Profile Study by internal risk management function and iii) Counterparty Study compiled by external experts.

The Sustainability Due Diligence Study (i) describes the approach, awareness and performance of the potential supplier in sustainability issues. The study is based on a due diligence questionnaire that is sent to selected potential suppliers as a first step in the process. The questionnaire is formulated according to Neste Oil's own requirements, the EU Renewable Energy Directive (RED) requirements as well as Principles and Criteria of the Roundtable on Sustainable Biofuels (RSB), and in palm oil cases following also the Principles and Criteria of the Roundtable on Sustainable Palm Oil (RSPO). The aim of the questionnaire is to collect relevant information on the potential suppliers and also assist them in analyzing their environmental and social situation. Neste Oil is willing to cooperate with its partners in developing

business and sustainability management systems. No evidence or documents are required to be delivered with questionnaire as they are checked by auditors at a later stage.

The template of the Due Diligence Questionnaire is 12 pages long and follows the structure described below:

- General information (details of mother/daughter/JV companies, supplying companies, status of operations and R&D, land and ownership status)
- Sustainability commitment (status of sustainability analysis and reporting, certifications, memberships)
- Traceability and logistics (traceability systems in use, details of supplying estates)
- Communications, Transparency and Stakeholder engagements (cooperation with NGOs, local communities, government; previous problems)
- Social responsibility (human rights; labour, occupational health and safety issues; social disputes and community cases; smallholders and CSR)
- Environment: best practices and conservation (environmental guidelines, policies; high conservation values; greenhouse gases and carbon stocks; data on fertilizing, emissions, etc)

The Full Counterparty Study (ii) is compiled on all potential suppliers parallel to the development of the Sustainability Due Diligence Study. The Full Counterparty Studies present information on the company details and its history, ownership and organizational structure, operations and market share, financial status and counterparty risks, social and environmental issues, and indicators of reputation and possible conflicts. The information is collected from both public and non-public sources. In short, the study provides material for analysing the potential suppliers' operations and reputational issues.

The results of the Sustainability Due Diligence study and the Full Counterparty Study are analysed by Neste Oil's HSSE personnel. If the material indicates that the supplier is capable of managing sustainability issues, reaching compliance with the RED requirements, and willing to commit to the sustainability in its operations, the process leading to the supply contract will be initiated. As Neste Oil policies prioritize suppliers that are committed to the international certification schemes, the data on supplier's certification status or plans will be reviewed in the beginning of the contracting process. The next step will be drafting of the agreement. All Neste Oil's supplier agreements include a sustainability clause, which includes origin and traceability of the material, compliance with the RED land use related and greenhouse gas criteria, general regulatory compliance and buyer right to audit the seller's operations.

Neste Oil is committed to procure only sustainably produced palm oil from 100 % traceable sources. The company does not procure any batches of palm oil of which proof of origin is not available. Therefore, part of the contracting process consists of a traceability planning in cooperation with Neste Oil and the supplier. The traceability system of the palm oil must cover from supplier's side the chain from the oil palm estate through pressing facilities and transportation to the delivery port. Each supplier has to deliver the relevant information and documents required for the traceability . Neste Oil carries out random checks to verify the information provided.

Neste Oil is correspondingly responsible for the traceability from the delivery port to its own refining plants and finally to the clients. The traceability system used is shipment-based meaning that each shipment from supplier to Neste Oil has to be delivered together with relevant information and documents . These documents are determined by Neste Oil as evidence of the legal and sustainable harvest, production and delivery of palm oil.

Control of the Neste Oil's information and risk management system includes a range of different measures. All palm oil suppliers are subject to verification process, and audited in the frequency described in the RED voluntary verification scheme being evaluated by the European Commission . In addition, a development plan including corrective actions is formulated together with the suppliers. Neste Oil monitors the progress of the actions described in the development plans. The suppliers have also reporting requirements. Neste Oil assists suppliers

also in terms of communications planning, including drafting of an issue management plan. The issue management plan includes clear roles and responsibilities for the partners in handling the potential disputes, etc. In addition, Neste Oil works in close co-operation with various stakeholders in order to ensure the compliance with the sustainability related principles and criteria in practice.

## **7.2 Kimberley Process<sup>22</sup>**

The Kimberley Process (KP) is a joint governments, industry and civil society initiative to stem the flow of conflict diamonds – rough diamonds used by rebel movements to finance wars against legitimate governments. The trade in these illicit stones has fuelled decades of devastating conflicts in countries such as Angola, Cote d'Ivoire, the Democratic Republic of Congo and Sierra Leone.

The Kimberley Process Certification Scheme (KPCS) imposes extensive requirements on its members to enable them to certify shipments of rough diamonds as 'conflict-free'. As of December 2009, the KP has 49 members, representing 75 countries, with the European Union and its Member States counting as an individual participant.

The Kimberley Process Certification Scheme (KPCS) has evolved into an effective mechanism for stemming the trade in conflict diamonds and is recognized as a unique conflict-prevention instrument to promote peace and security. The joint efforts of governments, industry leaders and civil society representatives have enabled the Kimberley Process (KP) to curb successfully the flow of conflict diamonds in a very short period of time. Diamond experts estimate that conflict diamonds now represent a fraction of one percent of the international trade in diamonds, compared to estimates of up to 15% in the 1990s.

The KP has done more than just stem the flow of conflict diamonds, it has also helped stabilise fragile countries and supported their development. As the KP has been successful in curbing criminal activity, it has brought large volumes of diamonds onto the legal market that would not otherwise have made it there. This has increased the revenues of poor governments, and helped them to address their countries' development challenges. For instance, some \$125 million worth of diamonds were legally exported from Sierra Leone in 2006, compared to almost none at the end of the 1990s.

In 2006, a review of the KP confirmed its effectiveness, and recommended a number of actions to further strengthen the system in areas such as monitoring of implementation and strengthening internal controls in participating countries, as well as greater transparency in the gathering of statistical data.

Annex I of the Kimberley Process Certification Scheme stipulates minimum requirements for certificates as well as some optional ones.

Minimum requirements are as follows:

- Each Certificate should bear the title "Kimberley Process Certificate" and the following statement: "The rough diamonds in this shipment have been handled in accordance with the provisions of the Kimberley Process Certification Scheme for rough diamonds"
- Country of origin for shipment of parcels of unmixed (i.e. from the same) origin
- Certificates may be issued in any language, provided that an English translation is incorporated
- Unique numbering with the Alpha 2 country code, according to ISO 3166-1

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<sup>22</sup> Review relies on the following sources:

Van Waas (2008): Recommendations on Transparency Measures for VPA's.

Advisory report EU FLEGT team. Result from Internship March-May 2008.

Kimberley Process (2011): Kimberley Process website. Accessed on 4 May 2011

<http://www.kimberleyprocess.com>

- Tamper and forgery resistant
- Date of issuance
- Date of expiry
- Issuing authority
- Identification of exporter and importer
- Carat weight/mass
- Value in US\$
- Number of parcels in shipment
- Relevant Harmonised Commodity Description and Coding System
- Validation of Certificate by the Exporting Authority

A Certificate may include the following optional features:

- Characteristics of a Certificate (for example as to form, additional data or security elements)
- Quality characteristics of the rough diamonds in the shipment
- A recommended import confirmation part should have the following elements:
  - Country of destination
  - Identification of importer
  - Carat/weight and value in US\$
  - Relevant Harmonised Commodity Description and Coding System
  - Date of receipt by Importing Authority
  - Authentication by Importing Authority

A Peer Review Monitoring System (PRMS) was developed by the Kimberley Process where member states monitor other member states in order to decide on compliance with the rules and to comment and give recommendations on the implementation procedure. KP member states value the PRMS highly, saying that it is one of the biggest successes of the KP process.<sup>23</sup>

Looking at compliance, what the Kimberley Process has shown is that a process/treaty needs to have sufficient measures to push a member state into compliance. The Kimberley Process has none of these measures. This leads to a strange situation: when a member state is in non-compliance the only thing that the KP board can do is to end the membership of that particular member state. Since the KP has no other measures to force member states into compliance a situation comes into existence where member states only can be “in” or “out” of the process, member states can only be part of the KP (“in”) *or* be forced to leave the KP (“out”). The recent history of the KP has shown their “in” or “out” approach to be unworkable. (Van Waas, 2008)

### 7.3 Norkom Technologies<sup>24</sup>

Established in 1998, Norkom Technologies® is a leading provider of financial crime and compliance software solutions to the global financial services industry. In 2011 the company is merging its services into Detica NetReveal®. The company enables financial organizations to detect and combat financial crime, control defenses and evolve strategies against fraud, money laundering and other types of financial crime.

<sup>23</sup> The Kimberley Process Certification Scheme Third Year Review  
[http://www.kimberleyprocess.com/documents/third\\_year\\_view\\_en.html](http://www.kimberleyprocess.com/documents/third_year_view_en.html)

<sup>24</sup> Review relies on the following sources:  
 NorKom website: URL consulted on 20110511: <http://www.norkom.com> ; after summer 2011, content will have been moved to URL: <http://www.deticanetreveal.com>  
 NorKom case study: KBC Bank leading the way in anti-money laundering and the fight against financial crime. URL consulted on 11 May 2011:  
[http://www.norkom.com/images/stories/KBC\\_Bank\\_leading\\_the\\_way\\_in\\_AML\\_and\\_the\\_fight\\_against\\_financial\\_crime.pdf?phpMyAdmin=5Ymluiiz%2C9Z805jEls%2CPmpl3p%2C2](http://www.norkom.com/images/stories/KBC_Bank_leading_the_way_in_AML_and_the_fight_against_financial_crime.pdf?phpMyAdmin=5Ymluiiz%2C9Z805jEls%2CPmpl3p%2C2)  
 NorKom brochure: Anti Money Laundering. URL consulted on 11 May 2011:  
[http://www.norkom.com/images/stories/AML\\_Brochure\\_US\\_2010Jul.pdf?phpMyAdmin=5Ymluiiz%2C9Z805jEls%2CPmpl3p%2C2](http://www.norkom.com/images/stories/AML_Brochure_US_2010Jul.pdf?phpMyAdmin=5Ymluiiz%2C9Z805jEls%2CPmpl3p%2C2)

Deployed in more than 100 countries across four continents, Norkom's financial crime and compliance solutions monitor millions of transactions a day for global financial services clients. Norkom's client base includes six of the top ten financial services organizations in the world.

Due to its wide application and experience with top players in the financial services industry, the company's DDS for anti-money laundering was selected for exposure in the EUTR study. Norkom's experience in Anti-Money Laundering (AML) and Compliance expands to over 100 financial crime and compliance projects globally addressing the requirements of different regulators around the world, including:

- Customer due diligence and risk assessment
- Sanctions screening
- Payment filtering
- Enterprise Investigation Management

The Norkom AML systems are applied in retail banking, correspondent banking, private and off-shore banking and insurance.

Norkom's AML solutions for Financial Institutions manage all aspects of the anti-money laundering process, from account on-boarding to disclosures in a single, fully-integrated platform.

- *Transaction monitoring*: detects and profiles customer and transaction activity across all products and channels
- *Automated risk assessment*: evaluates geography, product and business type, coupled with an evaluation of transactions, behavior and static information
- *Know Your Customer (KYC) / Customer Due Diligence (CDD)*: manages the customer on-boarding process through a defined sequence of steps in a due diligence workflow ; and a variation dubbed *Know Your Customer's Customers (KYCC)* applied in correspondent banking
- *Link Analysis*: discovers hidden relationships among transactions, customers, accounts, alerts, cases, products and channels
- *Integration with legacy systems and databases*: built-in connectors accelerate integration with disparate existing systems and data sources
- *AML Investigative Management*: automatically triages AML alerts and provides investigative tools to manage alerts through pre-defined workflows
- *Sanctions and Politically Exposed Person (PEP) Screening*: matches names and addresses to a range of internal and external lists using Norkom's advanced Watch List Management technology, which monitors against watch lists established both by the bank and by the regulatory authorities. The solution identifies transactions from or to individuals, organizations or countries that the bank or the regulators view, as 'high risk', either because they are politically exposed or have been involved in crime before.
- *Transaction & Payment Filtering*: identifies financial transactions throughout an organization involving persons or entities contained on watch lists. More details on this step in the AML DDS is presented in the following section.
- *e-Filing of regulatory reports*: automates the creation, population and filing of reports in many national and international regulatory formats.

As a result of both exposure and increased regulatory requirements, financial institutions must assess transactions into, out of, and through their institution to see if they involve any sanctioned entities including:

- person or entity;
- vessel or aircraft;
- export sanctioned goods;
- financial institution or intermediaries;
- sanctioned territories;
- sanctioned financial institutions;
- export sanctioned services.

Most of these checks could be of use also in context of EUTR's DDSs.

The compliance net is much wider than just payments and is getting wider all the time. When an organisation looks for compliance, it typically does so across its operations in a number of areas. These include:

- payments, especially but not exclusively cross border;
- trade finance;
- cash management;
- treasury;
- securities;
- foreign exchange.

All of these transaction types have the potential to move criminal assets. The Detica NetReveal® transaction and payment filtering solution can assist in reviewing these types of transactions.

When looking beyond payments, there is a need to interdict transactions where the transaction is not a direct funds transfer – but perhaps another form of asset transfer such as a contract exchange, a documentary credit or collection to be exchanged in the future. The Detica NetReveal® solution allows to monitor and analyse – in real-time and batch mode - every customer and transaction against numerous industry and internal lists, enabling institutions to detect known high-risk entities and avoid engaging in business with them. This technology automates and streamlines the entire process, from list management through to detection, investigation and reporting.

There are over 300 official regulatory sanction lists in the world. Many solutions focus on a limited set of lists for screening within a single jurisdiction. Some solutions even define themselves by their ability to screen a single list, for example OFAC screening for persons or entities. In contrast, as the market leader and the only global player, Detica NetReveal® provides packaged options for hundreds of watch lists, including:

- Office of Foreign Assets Control (OFAC) (US)
- 314(a) Lists (US)
- Bureau of Industry and Security (BIS) (US)
- Her Majesty's Treasury (UK)
- Common Security and Foreign Policy List (CSFP) (EU)
- The Office of the Superintendent of Financial Institutions (OSFI) (Canada)
- Bundesanzeiger (Germany)
- Department of Foreign Affairs and Trade (DFAT) (Australia).

#### **7.4 EU Food Law<sup>25</sup>**

Food safety standards and regulations have become a key topic for most food industries, as well as a structuring force for entering or competing on some markets. Several agriculture export oriented countries faced this big challenge to adapt to the requirements of international food safety standards, among which, the EU Food Law can be considered one of the strictest, as it is aimed at providing a very high level of protection to the consumer. Article 18 of the Regulation describes a strict traceability requirement for the food trade is an important pillar for this objective.

Past food incidents have demonstrated that being able to trace food and feed throughout the food chain is of prime importance for the protection of public health and consumers' interests. In particular, traceability records help to facilitate targeted withdrawal and recall of food, thereby avoiding unnecessary disruption of trade; enable consumers to be provided with accurate

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<sup>25</sup> [Reg. No 178/2002: General principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety](#)

information concerning implicated products, thereby helping to maintain consumer confidence and facilitate risk assessment by control authorities. Clearly, traceability does not itself make food safe. It is a way of assisting in containing a food safety problem. The focus of Regulation 178/2002 is on food safety and the removal of unsafe food from the market. However, apart from their food safety role, traceability requirements also help to ensure the fair trading amongst operators and the reliability of information supplied to consumers in terms of substantiating claims made by manufacturers.

Article 18 of the Regulation 178/2002 has two strict requirements for food business operators:

1. To be able to identify from whom and to whom a product has been supplied; and
2. To have systems and procedures in place that allow for this information to be made available to the Competent Authorities upon request.

The requirement relies on the “one step back-one step forward” approach which implies for food business operators that they shall have in place a system enabling them to identify the immediate supplier(s) and immediate customer(s) of their products, link “supplier-product” shall be established (which products supplied from which suppliers) and link “customer-product” shall be established (which products supplied to which customers). Nevertheless, food business operators do not have to identify the immediate customers when they are final consumers. Although traceability is not a new notion in the food chain, it is the first time that the obligation for all food business operators to identify the suppliers and direct recipients of their food and feed is stipulated explicitly in a horizontal Community legal text. Consequently, Article 18 created a new general obligation for food business operators. Article 18 is worded in terms of its goal and intended result, rather than in terms of prescribing how that result is to be achieved. Without prejudice to specific requirements, this more general approach allows industry greater flexibility in the implementation of the requirement and is thus likely to reduce compliance costs. However, it requires both food businesses and the control authorities to take an active role in ensuring effective implementation.

#### *Implementation of traceability requirements*

A food business operator should be able to identify any “person” from whom food or raw materials are received. This person can be an individual (for example a hunter or a mushroom collector) or a legal person (such as a business or company). It should be clarified that the term “supply” should not be interpreted as the mere physical delivery of the food, feed or food producing animal. This term refers more to the transfer of ownership of the food, feed or food producing animal. However, brokers must be considered as a form of supplier for the purposes of this Article, whether or not they take physical possession of the goods. Identifying the name of the person physically delivering is not the objective pursued by this rule and it would not be sufficient to guarantee the traceability along the food chain. A food business operator must also identify the other food or feed businesses to whom it provides its products (excluding final consumers). In the case of trade between a retailer such as a supermarket and a restaurant, the traceability requirement still applies. Without prejudice to sector specific rules, the Regulation does not expressly compel operators to establish a link (so called internal traceability) between incoming and outgoing products. Nor is there any requirement for records to be kept identifying how batches are split and combined within a business to create particular products or new batches. Nevertheless an internal traceability system would contribute to more targeted and accurate withdrawals. Food business operators are likely to save costs in terms of time of a withdrawal and in avoiding unnecessary wider disruption. This in turn would help maintain consumer confidence. Traceability systems also provide information within food businesses to assist in process control and stock management. The decision on whether to adopt an internal traceability system and the level of detail is left to the Food Business Operator, commensurate with the size and nature of the food business.

Apart from specific legislation establishing food safety traceability rules for certain sectors or products, such as Beef Labeling<sup>26</sup>, Fish Labeling<sup>27</sup> and Genetically Modified Organisms (GMOs)<sup>28</sup>, there are specific regulations laying down marketing and quality standards for certain products. These regulations often have fair trade purposes and contain provisions about the identification of the products, the transmission of the documents accompanying the transactions or the keeping of records. Any other system of identification of products existing within the framework of specific provisions may be used to satisfy the requirement established by Article 18, insofar as it allows the identification of the suppliers and of the direct recipients of the products at all stages of production, processing and distribution. However, the traceability requirements of the Regulation are general requirements and are therefore always applicable. Food Business Operators should determine whether sectoral traceability provisions already meet Article 18 requirements.

Article 18 does not specify what type of information should be kept by the food and feed business operators. However, to fulfil the objective of Article 18, the following information should be kept at least:

- Name, address of supplier, and identification of products supplied;
- Name, address of customer, and identification of products delivered;
- Date and, where necessary, time of transaction / delivery;
- Volume, where appropriate, or quantity.

It may be that if printed traceability records are kept, these will already have on them the date and time of delivery as well as the name and address of the supplier and customer. If not, the date should be specifically recorded, and the time if there is more than one supply or delivery in a particular day. Whilst not compulsory, it would also be very helpful if details are kept of any reference or batch number enabling the product to be identified. Food crises in the past have shown that tracing the commercial flow of a product by keeping invoices was not sufficient to follow the physical flow of the products, as food or feed could be, for example, sent for storage. Therefore, it is essential that the traceability system of each food or feed business operator is designed to follow the physical flow of the products.

Article 18 requires food and feed operators to have in place systems and procedures to ensure the traceability of their products. Although the Article does not provide any details about these systems, the use of terms “systems” and “procedures” implies a structured mechanism able to deliver the needed information upon request from the competent Authorities.

When developing a traceability system, it does not necessarily mean that Food and Feed Business Operators need to have a dedicated system. It is the need to provide information that is important, not the format in which it is kept. The traceability records should be sufficiently organized to enable availability ‘on demand’, without unduly delaying the requirements imposed by Article 19 of the EU Food Law. A traceability system is good when it delivers accurate information in a fast manner; this would help to satisfy the objective pursued as described in Recital 28 of the Regulation. A delay in the delivery of this relevant information would undermine a prompt reaction in case of crisis.

The EU Food Law initiated a number of the examples on traceability, which aimed to support the implementation and demonstrates the benefits of the implementation:

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<sup>26</sup> [Regulation \(EC\) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation \(EC\) No 820/97](#), OJ L 204, 11.8.2000, p. 1

<sup>27</sup> [Regulation \(EC\) No 2065/2001 of 22 October 2001 laying down detailed rules for the application of Council Regulation \(EC\) No 104/2000 as regards informing consumers about fishery and aquaculture products](#), OJ L 278, 23.10.2001 p.6

<sup>28</sup> [Regulation \(EC\) No 1829/2003 of the European Parliament and of the Council on genetically modified food and feed](#), OJ L 268, 18.10.2003, p. 1; [Regulation \(EC\) No 1830/2003 of the European Parliament and of the Council concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms and amending Directive 2001/18/EC](#), OJ L 268, 18.10.2003, p. 24.

- The EU has provided almost €12 million to the 5-year TRACE project, which kicked off in January 2005. Supported by over 50 European organisations and one from China, the initiative will deliver integrated traceability systems, guides to traceability best practice, and food verification systems, specifically in the mineral water, chicken, meat, honey and cereal sectors. For additional information, please consult the project's website: <http://www.trace.eu.org>
- To enable the traceability of animals across borders, in April 2004 the EU introduced the TRAdE Control and Expert System (TRACES). This provides a central database for tracking the movement of animals both within the EU and from third countries. In the event of a disease outbreak, TRACES ensures that all potentially affected animals can be quickly identified and that authorities can take appropriate measures. Further information is available: <http://ec.europa.eu/idabc/en/document/5377/5637.html>
- FoodTrace is an EU programme which began in 2002 and is designed to enhance traceability procedures between businesses. It seeks to establish a clear identification system and a network of databases so that information can be centralized and shared. Project's website: <http://www.eufoodtrace.org>
- The EU carried out an analysis of its existing animal health policy between 1995 and 2004, in order to identify future policy options. This covered several aspects related to intra-Community trade, including traceability. As a result of the evaluation, the EU is promoting a gradual move towards integrated electronic identification and certification procedures for intra-Community trade in its 2007-2013 Community Animal Health Strategy. The Strategy is published on the EC's website: [http://ec.europa.eu/food/animal/diseases/strategy/index\\_en.htm](http://ec.europa.eu/food/animal/diseases/strategy/index_en.htm)

## 8. ASSESSMENT OF THE REVIEWED SYSTEMS IN RELATION TO EUTR

This chapter concentrates on presenting and analysing the tools for due diligence systems identified through the questionnaire replies, the additional provided material as well as the complementing interviews from the ten study objects. Furthermore, the project team has taken into account the information and opinions obtained from the stakeholder consultations and correspondence, field visits, supplementary questionnaires, and existing relevant reports. After the first three subchapters (8.1, 8.2 and 8.3) presenting a set of available tools according to the Article 6 to the EUTR, the project team has formulated a flowchart in order to illustrate a possible structure for due diligence systems. This will be laid out in the subchapter 8.4. The project team acknowledges that the list of reviewed tools is not exhaustive but anyhow provides an extensive overview of the relevant applied due diligence methods.

Please note, that some of these tools (e.g. signed contract) are not necessarily applicable for European forest owners, which may act as operators. Therefore, their relation with the EUTR is described more in detail in Chapter 3.1.2.

### 8.1 Access to information

The following tools are found to be feasible to deliver the requested information content according to the EUTR. However, attention should be given to the fact that these tools can be applied and modified in a number of ways. Hence, the description focuses on their general role and how they fit into the potential DDS.

#### 8.1.1 Signed commitment

The main aim of a *signed commitment* is to get assurance from the supplier side to deliver legal wood or wood based products to the operator. Nevertheless, this statement will not serve as a proof for legality. However, it can be used to explore the supplier's attitude on timber legality issues and to provide a base for further information request to prove legal compliance. Moreover, the content of the signed commitment can include various other elements such as information listed in the paragraph 1(a) of the Article 6 or issues otherwise considered important by the particular operator. One such example is the supplier's commitment to provide, upon the request from the operator, further documents or additional information (such as maps, licenses, FMU contacts). The requested information is identified by the operator to be relevant for the further risk assessment and/or risk mitigation procedure and can provide evidence for legal compliance.

The signed commitment is a flexible tool, since the structure can be easily tailored for the various conditions and demands of all type of operators. This can start with a simple, one page statement and, if necessary, can be developed to correspond a well detailed purchasing or sourcing policy. In the latter case the extent of the requirements reaches beyond the legality of the products as some additional claims are included. Furthermore, company-level sourcing policies are considered as an effective way to put in place and maintain supply chain management procedures such as systematic review of the suppliers, establishment of sourcing agreements and maintenance of long term partnerships. However, most likely these detailed policies are not expected from all small scale operators and therefore their focus will be only on legality.

#### 8.1.2 Signed legal document

One of the tools identified and used for the purpose of the information management is a *signed legal document*. In the majority of the cases this is a written contract signed between the parties of the transaction. The contracts used by the study objects include information such as type and description of the product, species (either a common name or scientific name), volume, country of harvest and contact details of the parties. Depending on the country of origin and the related risk level, the buyer may ask for more detailed information on the origin of the timber on a regional, sub-regional or stand level.

The contract may also include a section for commitment to deliver legal wood. In this case the aspects of the previously described tool could be incorporated.

Some of the study objects have included a wider commitment statement to the contract so that all contracted suppliers assure that they have read, understood as well as are willing and capable to comply with the operators' contract conditions and requirements such as terms of the sourcing policy. In addition, contract may include a statement that either the operator or an independent third party are eligible to carry out field checks to audit the data and request to see all the relevant documents.

### 8.1.3 Information collection forms

All tools, which are used for information requests, distributed by the operator and responded by the supplier, fall under this category. Common approach is a questionnaire or a fixed form, where the operator requests various pieces of information from the supplier. The study showed that since this is the most widely applied method for collecting information, it has countless application possibilities. The main factor, which will direct the operator to develop the structure of the *information collection forms*, is the applied *record keeping* process. When the operator collects information about the source, the data can be directly fed into the internal *record keeping* system, which will be relevant in the further risk assessment as well.

Please note that the EUTR requirements related information can also be collected as a part of the *signed commitment* or the *signed legal document*. The remaining information gaps depend on the exact content of these two tools. In case such gaps exist, they can be filled with questionnaires or fixed forms requesting the relevant missing information. Moreover, these forms can request the supplier to deliver additional information, besides the legal compliance. Some of the study subjects collect information also on sustainability, as well as environmental and social issues, that can provide more in depth supplier analysis. This can help to map out the supplier's operations or identify additional details in the supply chain.

The content and details of this information request are adjustable to the operator's demand and condition. The same applies to the structure of the form, which should be in line with the operator's resources and technical capacities. This can be done for example through web-based information collection where suppliers insert the relevant data into the operator's database. In other cases, manual simplified worksheets may be more suitable option (Examples<sup>29</sup> are available online).

### 8.1.4 Record keeping

The *record keeping* gathers and stores the various pieces of information that the operator has collected during the due diligence measures. The records can contain for example species info, GIS maps with location of harvest sites, information on harvesting rights, environmental values, forest certification data, product volumes or additional information, which has reached the operator via the previously described information tools. The actual content of the record keeping depends on the operator's requirements and the availability of the additional internal information resources (e.g. information supplied from the operator's field staff). It should include the relevant parts of the *signed commitment*, the *signed legal document*, and the content of the *information collection forms*. In addition it can rely on alternate sources, such as regularly delivered supplier reports.

The internal information management is important in all kinds of businesses and therefore very likely to be already available in some form. Hence, if deemed necessary, it can be extended or modified according to the operator's scale to build up its DDS. Many of the study objects maintain a significant amount of data, which is used as information resource. Often these records provide the base for risk assessment or serve as a traceability system. In terms of

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GFTN: [http://sourcing.gftn.panda.org/files/PDF/Example\\_Questionnaire\\_1.pdf](http://sourcing.gftn.panda.org/files/PDF/Example_Questionnaire_1.pdf)

CPET: <http://www.cpet.org.uk/files/Checklist%202.doc/view>

heavy data loads, functional IT-systems make managing information easier and more efficient. Nevertheless, many SME's lack such capacity and would need to invest in the equipment, software and personnel training to enhance their efficiency in record keeping. In other cases manual record keeping (e.g. invoices, hardcopies, excel supplier forms) is still a viable option.

The *record keeping* is generally product- or supplier based. However, the shipment-based method could also be applicable for some operators.

This information base plays a significant role in the *operator's internal assessment*, which is already part of the risk assessment.

## **8.2 Risk Assessment**

During the risk assessment the operator considers various information sources and evaluates their content. The below described tools can support the operator to set up the DDS, which complies with the EUTR requirements. However, the features of these tools should be tailored according to operator's type and available resources. The risk assessment process should have a result where the operator identifies the risk level as "negligible" or not.

### **8.2.1 Operator's internal assessment (Source specific information)**

The *operator's internal assessment* relies on the information that is available internally at the operator. Hence the process does not require direct involvement from the supplier. This component of the risk assessment relies on the *record keeping* data, which functions as an information system that gathers all the operator's potential information sources. Please note, that the information maintained during the *record keeping* process may be submitted directly by the supplier. However, the supplier is not involved when the *operator's internal assessment* is carried out. During the assessment the source specific information should be considered and used to complement the *publicly available information sources*.

The operator's DDS can filter the available information and weigh various aspects differently. For some the "known origin" is the primary issue and serves as the baseline for risk assessment. Others may use or develop systems that highlight different criteria.

### **8.2.2 Publicly available information sources**

All information sources that support the risk assessment procedure of the operator, are available free of charge, and are not delivered directly by the supplier, belong to this category. Generally they include mainly web based resources, although various hardcopies could be considered as well. Regardless to the form of the information, special attention should be given to the validation, particularly that the content is up to date. Some operators use more sources than others. The information filters should be in line with the operator's functions.

The study objects referred often to the Corruption Perceptions Index updated and released every year by Transparency International. The Transparency International is an international NGO, which ranks countries in terms of the degree to which corruption is perceived to exist among public officials and politicians. It is a composite index, drawing on corruption-related data in expert surveys carried out by a variety of reputable institutions. It reflects the views of business people and analysts from around the world, including experts who are locals in the countries evaluated. However, this index is not forest sector specific, but focuses on corruption in the public sector and defines corruption as the abuse of public office for private gain.

WWF as an international NGO provide various reports on individual countries and compiles main findings with sector related news in its Annual Reports. In addition, other NGOs, governmental institutions and consultancies have produced reports that present risk estimations for certain regions and/or businesses.

Federations and membership-based organizations also provide relevant information tools. For example the GFTN support its members with country specific guides and the same applies for

the UK-TTF. This guidance includes description on the forestry sector related legal framework as well. However, these resources are available for operators only with the particular memberships. Nevertheless, the project team considers them suitable under this category as they are usually based on publicly available information. In addition, the members of such organisations are not charged for using these guides or reports.

In addition, if the operators aim to purchase certified products, they can also check online the supplier's certification related details<sup>30</sup>.

### 8.2.3 Call for additional information (Source specific information)

This tool includes all operator initiated processes where the information and/or documents are delivered directly by the supplier, and then used to support the operator's risk assessment. The purpose of the additional information collection is to fill the potential gaps, which are left after the *operator's internal assessment* and the analysis of the *publicly available information sources*.

The content design may be similar to the *information collection forms*. However this should focus more on source and risk specific details, instead of the general supplier related information. Please note, that the *information collection forms*, can be structured in a way to already gather partial or full information on the source as well (in this case this information is already considered during the *operator's internal assessment*). Therefore the structure of these two potential tools should be harmonized and made complementary to each other, in order to avoid unnecessary duplications.

The *call for additional information* should be uniform for all suppliers according to the operator's demands and should include, but not be limited to, the EUTR requirements. Therefore the supplier could provide additional evidence beyond the predefined questions if the information is seen as beneficial to the operator's risk assessment. In this case the particular national conditions, which are not necessarily possible to cover with a unified form or method, may be considered.

The process could be implemented in various ways as described previously under the *information collection forms*.

### 8.2.4 Decision tree

Various operators use so called "decision trees" or "question cascades" in order to determine the expected risk of a certain supplier and/or product (Figure 6). The basic idea is that each step or question gives an outcome. Then according to the particular outcome, a risk category will be determined or a further step or question will be introduced. The number of the steps depends primarily on the simplicity of the operators sourcing practices (region, product composition etc). Thus, in some simple cases, using a decision tree would be irrelevant. However, otherwise it may bring clarity to the operator's sourcing practices as the steps will be added on until the supplier and/or product has been properly assessed. In case the risk is determined "not negligible", mitigation measures have to be appropriately applied.

There are many variations to this particular tool depending on the required detail and the operator's resources. Some operators have introduced decision trees that are divided into two distinct levels in order to avoid duplication of the risk assessment. The first level merely checks if the supplier or sourced product belongs to a category that can be regarded as due diligent by default according to the operator's sourcing policy<sup>31</sup>. This information should usually be available in the *signed legal document*. If the document indicates that due diligence has already been carried out according to the operator's policy, then no further risk assessment is required. On the other hand, if the supplier or sourced product is considered as not due diligent by default, then full on risk assessment (second level) will be carried out. Implementation

<sup>30</sup>For FSC: <http://info.fsc.org> and for PEFC: <http://register.pefc.cz/search1.asp>

<sup>31</sup>Please see Chapter 5.1 and 5.8

of such an approach would be ameliorated by establishing clear definitions, to be applied in the first level, on sources/ regions/ schemes of negligible risk. Alternatively, making this distinction can be laid upon the operator's own judgement.

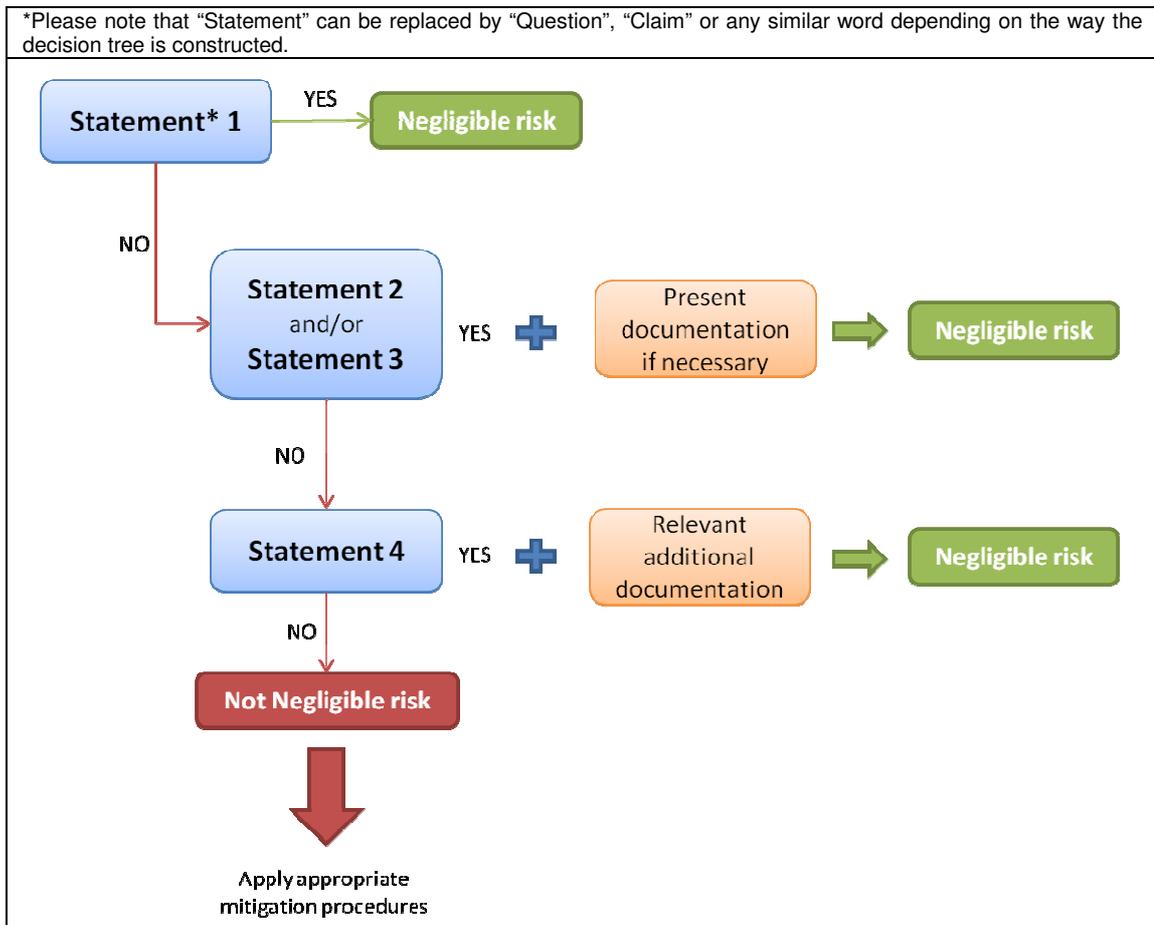


Figure 6: A generic example of a one type of decision tree

### 8.3 Risk Mitigation

Risk mitigation is typically carried out if the result of the risk assessment indicates risk that is not negligible. However, some operators may mitigate risks also passively (or pre-emptively). In this case mitigation is not carried out particularly as an active response to observed risk, but as a way of doing business or following company policy. Such practices include e.g. working with NGOs and local governments, as well as establishing long-lasting business/supplier partnerships which are respected even though occasional new, but unknown, suppliers would offer better prices. In addition, operator's local offices and staff may provide useful insight on optional new sources that may lead to dismissing certain opportunities even without formal risk assessment. As for the other DDS elements discussed before, also the risk mitigation actions and results should be incorporated in the record keeping process.

#### 8.3.1 Call for additional evidence

Operator should request additional evidence from the supplier if the risk assessment exposes deficiencies in the available information required to make a just conclusion for negligible risk. Such additional evidence will then be used to reassess the supplier/ product. This loop can be repeated as long as a justifiable conclusion is reached or relevant evidence which influences the risk level on the source is found. In case the risk remains "not negligible", further mitigation action discussed later in the subchapter can be applied.

### 8.3.2 Audits

Audits are performed to confirm that a given data and/or systems comply with the reported figures and committed policies. There are three main variations depending on who performs the audit.

1. First Party Audit: self-auditing by the supplier
2. Second Party Audit: the operator carries out the audit on the supplier
3. Third Party Audit: auditing by an auditor independent of either organization

Audits are usually performed regularly in order to sustain reliable due diligence. The intervals range typically between six months to two years depending on the policy of the audit's initiator.

Generally audit costs on documentations range between 250 - 1300 € depending on the size of the audited company, the travel costs of the auditor and the availability of the necessary documentation. Hence, in cases where the costs are related to auditor's work hours, skilled local staff may reduce the audit costs by preparing the relevant documentation well. It is good to underline here that the above mentioned figures represent the audit costs of domestic operators. These audits are mainly document-based, performed within a working day and do not usually require trips abroad.

### 8.3.3 Support the supplier's processes towards 3<sup>rd</sup> party verification schemes

One efficient way for an operator to mitigate risks is to support its supplier(s) to achieve legal verification or certification through third party induced schemes (as presented in Chapter 4. *Third party verification schemes*). However, these processes are typically time-consuming as reaching full certification may take even 5 years. In addition, the preparatory tasks for these schemes take usually excessive resources. Generally the final cost of third party verification depends on three major elements<sup>32</sup>:

1. Complexity of the verification/certification modalities
2. Quality of the project documentation
3. The project type, size and regional dispersion (complexity)

Standards that have easy to follow project documentation guidance and that provide straightforward tools and templates require less labour and expertise to prepare the requisite documentation and thus reduce transaction costs associated with preparing projects for verification/certification. Furthermore, the expertise and the ability of project developers to prepare project documentation that serves as the basis for third-party audits have significant impacts on the costs. In short, the better the quality of the documents the valuers receive the easier and more efficient it is to audit projects, thus making the auditing process quicker. Finally, the project location and size is decisive for the cost, particularly with respect to field visits of auditors. If projects are large, in remote areas and are dispersed over several areas, they require more time and effort to collect representative samples within the project's boundaries.

In most cases, third party auditors that are accredited under the well known accreditation programs normally charge a daily rate ranging between 350 – 1100 €<sup>33</sup>. Hence the total cost of third party verification usually ranges between 11 000 – 35 000+ € depending on the factors mentioned above; the higher estimation being the case for many complex and remote tropical

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<sup>32</sup> Merger, E., Dutschke, M. & Verchot, L. (April 2011). Options for REDD+ Voluntary Certification to Ensure Net GHG Benefits, Poverty Alleviation, Sustainable Management of Forests and Biodiversity Conservation. *Forests* 2: 550-557. Available at: <http://www.mdpi.com/1999-4907/2/2/550/pdf>

<sup>33</sup> Comments from stakeholders; Merger et al. (April 2011); Timber Development Association (NSW) Ltd (December 2009). *A Generic Code of Conduct to Support Procurement of Legally Logged Wood-based Forest Products - Final Report*. Prepared for Department of Agriculture, Fisheries and Forestry. Canberra, Australia.

sources. Needless to say, this is an impossible burden for SMEs sourcing from tropical countries. However, many of the bigger companies may support important suppliers and pay the necessary fees to obtain the required level of verification.

Most third party certification/verification programmes include some sort of monitoring and reporting mechanism that updates the right to claim compliance to the particular standard. The interval for the reassessment is often maximum 5 years.

Finally, it is good to note that only around 10 %<sup>34</sup> of the world's forests are certified to date, and mostly outside of the tropics. Therefore the current global needs for wood cannot be fulfilled purely from certified forests. Moreover, due to the lengthy certification process, the associated costs, and the limited amount of licensed certifiers, this mitigation option has its restrictions as a quick and extensive mitigation response in a global scale.

### 8.3.4 Dismiss or replace supplier

Often used after the violations of the *signed commitment* and/or *the signed legal document*. This is a simple and cost-effective way to motivate suppliers to act legally. Many SMEs do not have the capacity and resources to invest in expensive legal verification and certification schemes (especially in the tropics) to strengthen the legality and sustainability of their source. Thus, in case of a risky supplier, the only viable mode of action is to dismiss the supplier and to replace it with alternate sourcing options.

Dismissing or replacing the supplier is also a viable option for the larger operators. Even though they may have extensive resources for mitigation, it is not always feasible to apply these resources. The expected reward from the mitigation efforts needs to be significant enough to attract the investment. If this is not the case, it may be more cost-effective to source from elsewhere. However, sometimes the risky supplier might have a special strategic importance for the operator, thus making it easier to invest heavily for mitigation. Even in these situations a point may be reached, where the operator needs to dismiss the supplier in case the mitigation efforts, and subsequent reassessments of risk, continuously lead to "not negligible" risk.

## 8.4 Flowchart

As demonstrated by this chapter so far, operators use various tools for their DDSs depending on their size, scope of activities and available resources. Figure 7 illustrates the general structure of a common DDS. Even though all the reviewed components of the DDS are incorporated in the figure, this does not mean that they would be necessarily applied. Different operators would thus compile their own DDS according to their specific needs.

The central factor in the DDS is the record keeping. All the relevant collected information, as well as assessment and mitigation results should be recorded and stored in the operator's internal records. Thus, in case of an audit, the information would be easily available. In addition, the past assessments and mitigation efforts would provide essential information to guide future business decisions.

A DDS can be seen as a loop. First, relevant information is gathered depending on the operators needs. If the acquired information is not sufficient to provide a reasonable assumption of negligible risk, a risk assessment should be carried out. The depth and scope of the assessment would primarily depend on the complexity of the supply chain, as well as the available information. As a result of this assessment a risk category is defined and the relevant information stored as part of the record keeping process. If the risk is not negligible, mitigation measures should be applied. In case the operator does not have the will or resources to mitigate, it would dismiss or replace the risky supplier. Otherwise the operator should carry out appropri-

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<sup>34</sup> UNECE/FAO 2009-2010 Forest Products Annual Market Review, page 113. Available at: <http://timber.unece.org/fileadmin/DAM/publications/sp-25.pdf>

ate risk mitigation actions. After the risk mitigation, the risk ought to be reassessed in order to evaluate if the mitigation was successful. Again, the risk category will be assigned and, if the risk is deemed negligible, the business can continue. However, in case the risk would remain not negligible, the operator should decide upon a further mitigation response. This response can lead to a refined mitigation action or to the dismissal or replacement of the risky source.

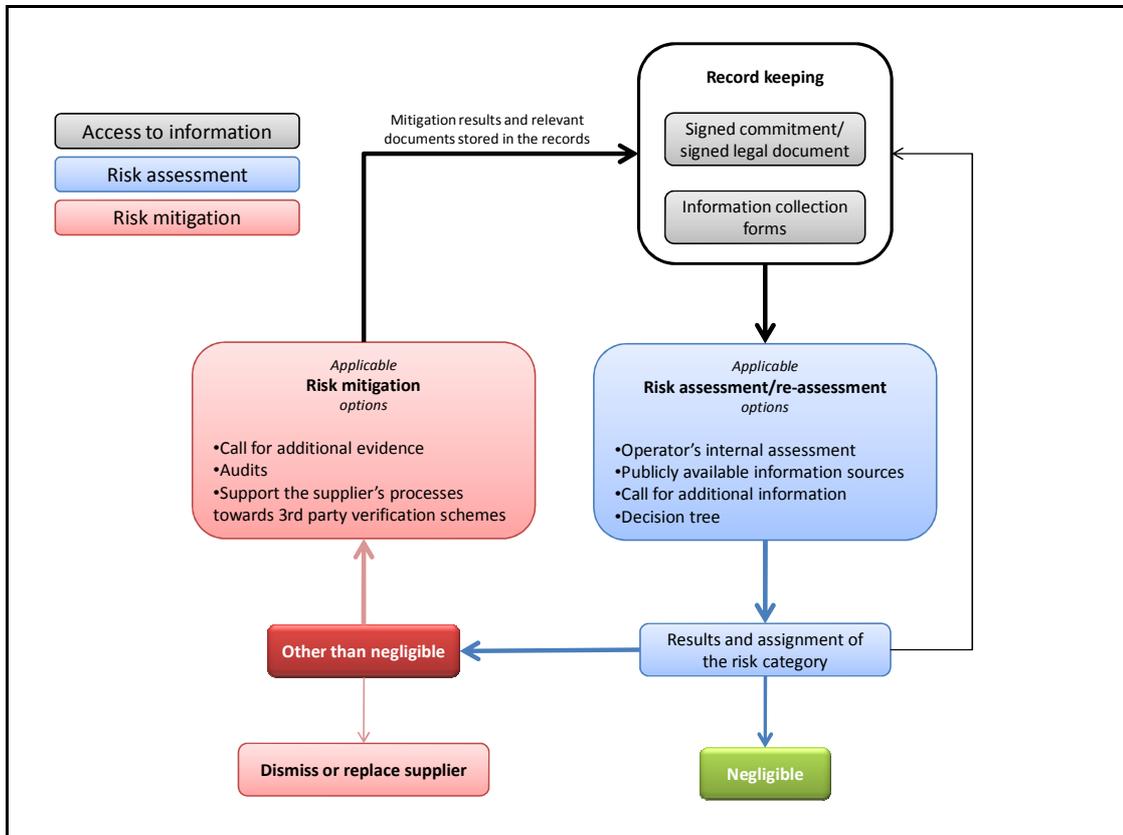


Figure 7: Demonstration of a due diligent system

## **9. INTRODUCTION OF THE TASK 2**

This report presents the results of Task II of the Support study for development of the non-legislative acts related to the Regulation No 995/2010 laying down the obligations of operators who place timber and timber products on the market ("European Union Timber Regulation" - EUTR).

Task II of the Support Study is related to Article 8 of the EUTR that deals with the role of Monitoring Organizations (MOs), third party organizations responsible in assisting and monitoring whether operators meet the requirements of the Regulation.

Article 8 lays down the basic requirements third parties shall meet to qualify as a MO and be recognized officially by the Commission as such.

## **10. OBJECTIVE OF THE TASK 2**

The objective of this Report is to present an in-depth analysis of different ways for demonstrating compliance with the requirements laid down in Article 8 (Monitoring Organizations), paragraphs 1 and 2 of the EUTR.

More precisely, criteria and procedures to be introduced in the secondary legislation in order to recognize MOs by the EC will be presented and discussed, by gathering information and finding out how applicants could demonstrate that they fulfil the EUTR requirements.

## 11. METHODOLOGY

Two broad categories of criteria have been set out in Article 8 of the Regulation to recognize MOs: legal criteria and criteria in substance.

Legal criteria require MOs: (i) to have legal personality and to be legally established within the EU; (ii) to have appropriate expertise and the capacity to exercise their functions and (iii) to ensure the absence of conflict of interest in carrying out MO functions. The first criterion is sufficiently clear, since it includes requirements that are well defined by already existing primary and secondary legislation and do not need further regulation. Attention should be given to the second and, above all, to the third criterion that could be interpreted and defined in different ways.

Criteria in substance that have been considered to define the appropriate MO expertise and capacity to exercise monitoring functions are:

- a. to maintain and regularly evaluate a due diligence system;
- b. to verify the proper use of a due diligence system by operators;
- c. to take appropriate actions in the event of failure by an operator to properly use the due diligence system.

The present report focuses on legal criteria. Existing practices have been examined to define how bodies, and in particular membership based organizations, guarantee objectivity when they are obliged to monitor and control their members' activities. Reference has been made to the criteria and procedures for endorsing/accrediting organizations involved in third- and second-party certification processes developed in three fields of action:

- a. at international level the norms and guides developed by the International Organization for Standardization (ISO) and the Global Alliance for Social and Environmental Standards (ISEAL);
- b. the criteria and regulations approved by EC and MSs for sectors and/or field of activities that can be considered comparable with forestry, e.g.:
  - Regulation (EC) No 765/2008 regarding requirements for accreditation and market surveillance relating to the marketing of products and the correlated Decision No 768/2008/EC on a common framework for the marketing of products (Annex 7),
  - EC and MSs rules employed in organic farming certification (Regulation (EC) No 834/2007 on organic production and labeling of organic products),
  - Regulation (EC) No 1005/2008, establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing;
- c. the criteria and internal control systems approved by some private organizations to provide services for the verification/certification of legality with reference to the forest sector.

With reference to the above listed points some explanations are needed. First of all it shall be clarified that ISO norms are widely adopted as reference documents for accreditation and standardisation within the private sector. ISEAL itself makes reference to ISO norms and guides for most of its documentation, dealing with accreditation and standard setting. Although EUTR does not prevent governmental structures and public entities to become MOs, it can be assumed most of them will be private entities<sup>1</sup>. Thus, making reference to the norms and criteria generally applied by the private sector (i.e. ISO norms) seems to better fit the EUTR context.

When considering EC and EU MSs regulations listed at the point b. above, reference to ISO norms is still relevant. Regulation (EC) No 834/2007 on organic production and labelling of organic products, for example, states control bodies - i.e. independent private third parties

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<sup>1</sup>Stakeholder Consultation on Options and best practices for the use and recognition of third party organizations entrusted with certain responsibilities in the framework of EUTR legislation. (Annex 3)

carrying out inspections in the field of organic production - shall be accredited according to European Standard EN 45011 or ISO Guide 65, and be approved by the competent authorities<sup>2</sup>. Besides using terminology which is quite close to that of EUTR, EU Regulations on organic production also represent a good (and, in many respects, unique) example at EU level of a two-level control system, integrating the role of National Competent Authorities (CAs) - i.e. public authorities designated by Member States - with that of private bodies carrying out monitoring activities. Although the field of application is different, the general structure has clear similarities to that of CAs and MOs introduced by Regulation (EU) No 995/2010 and briefly described in Chapter 12 (Figure 8).

As regards Regulation (EC) No 765/2008 and Decision No 768/2008/EC - reference to which was suggested during the Stakeholder Consultation<sup>3</sup> - it unequivocally deals with accreditation procedures and market surveillance, but it also explicitly refers to product conformity declaration based on clearly defined sets of performance requirements. This is not properly the case of EUTR that deals with control of a management system, as - for instance - in the case of quality and/or environmental management systems according to ISO 9001:2008 and ISO 14001:2006 respectively, rather than control of product performances. What is to be checked and kept under control, in fact, is the capacity of operators to properly implement and maintain a due diligence system.

Regulation (EC) No 765/2008 and, above all, Decision No 768/2008/EC also provide requirements relating to notified assessment bodies<sup>4</sup> and the relative notification procedure<sup>5</sup>. Some parallelism with EUTR can be identified, however big differences exist as well: in the implementation of Regulation (EC) No 765/2008 the process is quite simplified and involves a reduced number of actors (operators, national accreditation bodies, and the conformity assessment bodies), with the EC playing a general role as supervisor. In the EUTR the structure is more complex, because the EC plays a central role and, moreover, a new group of actors is included: MOs.

It shall also be noticed that Decision No 768/2008/EC defines requirements for assessment bodies that only partly overlap with those defined by Regulation (EU) No 995/2010 for MOs. In particular Decision No 768/2008/EC doesn't mention the avoidance of conflict of interest<sup>6</sup> in a full and explicit way. The Decision focuses on the topic of independence (at organisation and individual level), stating that conformity assessment bodies shall be third-party bodies independent of the organisation or the product they assess. Last but not least, following indications set up by Regulation (EC) No 765/2008 - as it was suggested by some involved stakeholders - would mean to consider MOs similar to conformity assessment bodies, while CAs should be seen as national accreditation bodies. Implications from such an approach would be quite relevant, because CAs would be requested to meet the (quite complex) rules defined by Regulation (EC) No 765/2008. It can be assumed this would result quite problematic for the practical implementation of the EUTR.

Just to complete the methodological overview on EC Regulations, reference to Regulation (EC) No 1005/2008 was suggested during the Stakeholder Consultation. There is no doubt about the fact that - despite referring to different thematic areas - the basic purpose and the general framework of this Regulation and EUTR are quite similar. As for Regulation (EC) No 765/2008, however, the process is quite simplified in terms of involved actors and again MOs are totally missing.

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<sup>2</sup>Regulation (EC) No 834/2007, Art. 27, paragraph 5c.

<sup>3</sup>Stakeholder Consultation on Options and best practices for the use and recognition of third party organizations entrusted with certain responsibilities in the framework of EUTR legislation. (Annex 3)

<sup>4</sup>i.e. the bodies in charge for the process of demonstrating whether specified requirements are met

<sup>5</sup>i.e. the procedure against which assessment bodies are notified by national accreditation bodies.

<sup>6</sup>Conflict of interest is just mentioned by Decision No 768/2008/EC, Art. R15, paragraph 1 with reference to notifying authorities that shall not be in conflict of interest with conformity assessment bodies.

## 12. RESULTS AND RECOMMENDATIONS

Many actors are involved in the EUTR implementation (Figure 8). This report concerns the role of the EC in dealing with the MO recognition process in coordination with the activities of CAs in controlling MOs ordinary activities. Normally, in a process of accreditation, only one organization is in charge of the initial recognition and the surveillance activity through desk and field audits. The EUTR has put the two steps of the initial recognition and the ordinary control under the responsibilities of two authorities that have to be coordinated and harmonized through a clear definition of the recognition requirements (Chapter 12.1) and the recognition procedure (Chapter 12.2).

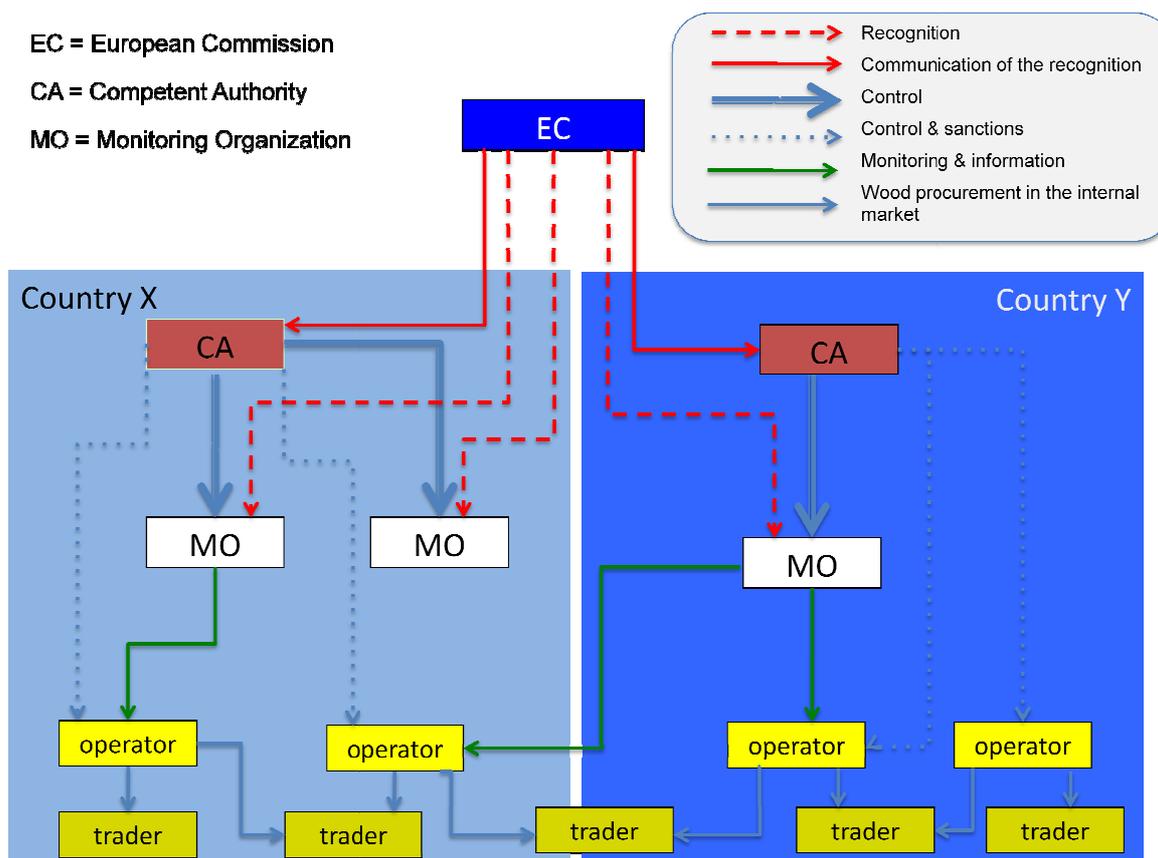


Figure 8: Actors involved in EUTR implementation and their main functions

### 12.1 Monitoring Organization's requirements

As already stated in Chapter 11, Article 8 of Regulation (EU) No 995/2010 titled "Monitoring Organisations", defines functions (paragraph 1) and basic requirements (paragraph 2) for MOs wishing to be recognised by the EC. The list of requirements a MO shall comply with in order to successfully apply for recognition includes (EU, 2010):

- it has legal personality and is legally established within the Union;
- it has appropriate expertise and the capacity to exercise the functions referred to in article 8, paragraph 1; and
- it ensures the absence of any conflict of interest in carrying out its functions.

Regulation (EU) No 995/2010 does not provide details about criteria and procedures for MOs recognition by the EC, nevertheless in the preamble (paragraph 28) it clearly states "(...) the Commission should be empowered to adopt delegated acts in accordance with Article 290 of

*the Treaty on the Functioning of the European Union (TFEU) concerning the procedures for the recognition and withdrawal of recognition of monitoring organisations” (EU, 2010).*

### **12.1.1 Requirement (a): legal personality and establishment within the EU**

The requirement can be intended as a basic pre-requirement and is quite intuitive: MOs shall be legally established according to the national law of a MS. This requirement is in line with clauses mentioned in several ISO/IEC accreditation documents<sup>7</sup> stating accreditation (in the case of EUTR: recognition) shall only be granted to a body that is a legal entity. Similar requirements are included in several EC Regulations, including those specifically taken into consideration for the purposes of the present report<sup>8</sup>. If an applicant MO can only demonstrate its legal entity status within part of a larger legal entity, recognition shall only be granted to the larger legal entity<sup>9</sup>. MOs that are part of government, or are government departments, will be deemed to be legal entities on the basis of their governmental status<sup>10</sup>.

MOs shall be established in one Member State of the European Union.

Evidence of compliance can be reached by providing copies of official documents (including, for example, company act, company register, VAT Registration Document, Official Gazette, etc.) showing the name of the legal entity, the address of the head office and the registration number given to it by the national Competent Authority.

### **12.1.2 Requirement (b): appropriate expertise and capacity to exercise the functions**

The requirement can be structured into three different MO dimensions:

- organisation;
- financial stability;
- personnel expertise and competence.

#### **Organisation**

The organisation and structure of the MO should be such as to foster confidence in its functions. In order to reach such a goal, two sets of requirements have been identified. The first one reports requirements that are common to Decision No 768/2008/EC and ISO/IEC Guides<sup>11</sup>, while the second one includes requirements that are only required by ISO/IEC Guides without being explicitly mentioned by the above-mentioned EC Decision and related Regulation (EC) No 765/2008. It will be up to the EC to decide whether to adopt just the first set or to additionally include the second one or at least part of it.

*Set 1 - Requirements that are common to Decision No 768/2008/EC and ISO/IEC Guides 65 and 66*

The MOs should:

- take full responsibility over decision/action relating with maintenance, regular evaluation, verification of proper use and action-taking in case of failure of its due diligence system;

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<sup>7</sup>For example: ISO/IEC Guide 65:1996 paragraph 4.2.d, ISO/IEC 45011:1999, ISO/IEC Guide 66:1999 paragraph 4.1.2.d and IAF Guidance on the Application of ISO/IEC Guide 66:1999, paragraph G.4.1.8. ISO/IEC 17021:2006 and ISO/IEC 17021:2011.

<sup>8</sup>For example: Regulation (EC) No 765/2008, Annex 7 and Decision No 768/2008/EC, Article R17, paragraph 2.

<sup>9</sup>IAF Guidance on the Application of ISO/IEC Guide 65:1996, paragraph G.4.2.4; IAF Guidance on the Application of ISO/IEC Guide 66:1999, paragraph G.4.1.9.

<sup>10</sup>IAF Guidance on the Application of ISO/IEC Guide 65:1996, paragraph G.4.2.6; IAF Guidance on the Application of ISO/IEC Guide 66:1999, paragraph G.4.1.10.

<sup>11</sup>ISO/IEC Guide 65:1996 part 4.2 and ISO/IEC Guide 66:1999 part 4.2.

- have adequate arrangements to cover liabilities arising from its functions, operations and/or activities;
- have documented procedures describing how its functions are carried out and responsibilities for them. It is suggested that such procedures cover at least: maintenance, evaluation and verification of the proper use of its due diligence system; reporting; action in the event of failure of its due diligence system; notification to competent authorities of failure of its due diligence system;
- have appropriate policies and procedures in place that distinguish between tasks they carry out as MOs and other activities they can eventually carry out;
- have the financial stability and resources required for its functions (please refer to “Financial stability” below);
- employ a sufficient number of personnel having the necessary education, qualification, experience and training for performing its functions (please refer to “Personnel expertise and competence” below);
- be free from any financial, commercial, corporative and other pressures which might influence the results of its functions.

*Set 2 – Additional requirements required by ISO/IEC Guides without being explicitly mentioned by Decision No 768/2008/EC*

The MOs should:

- identify the management (committee) which has overall responsibility for: performance of the MO functions, decisions on the MO functions, supervision for the implementation of the MO procedures, supervision of the finances of the body, and delegation of authority to committees or individuals as required to undertake defined activities on its behalf;
- have rights and responsibilities relevant to its functions;
- have formal rules and documented procedures for the appointment of any committees which are involved in the exercise of its functions. These may include, for example, independence committee (please refer to paragraph 4.1.3 below), financial committee, committee in charge of granting operators with the right to use a MO’s due diligence system (please refer to paragraph 4.1.3 below), scientific board, etc.;
- have policies and procedures for the resolution of complaints, appeals and disputes received from operators, traders or other parties about the performance of its functions;
- have policies and procedures for the identification and participation of relevant stakeholders when setting up due diligence systems. These procedures shall also include clear instructions about reception, recording, evaluation and follow-up of comments from stakeholders.

A MO may subcontract work (e.g. evaluation of its due diligence system) to another body, provided that a written agreement with the subcontracted body exists and it requires the subcontracted body to comply with all the relevant requirements for MOs. MOs shall provide the EC with a full list of their subcontractors or subsidiaries and to provide the evidence that they comply with requirements set out for MOs. The list of subcontractors or subsidiaries can be extended over time to include new subcontractors or subsidiaries, provided that MOs inform relevant CAs and provide evidence that the new subcontractors or subsidiaries comply with requirements set out for MOs. When a MO subcontracts work related to its functions in the frame of the Regulation (EU) No 995/2010 it takes full responsibility for such subcontracted work and for the tasks performed by subcontractors or subsidiaries wherever these are established<sup>12</sup>.

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<sup>12</sup>See also Decision No 768/2008/EC, Art. R20.

### **Financial stability**

The MO should demonstrate that it is able to provide and to continue to provide services in accordance with its contractual obligations and Regulation (EU) No 995/2010. This requirement is also in line with those for notified bodies defined by Decision No 768/2008/EC<sup>13</sup>. In other words, MOs are requested to prove they have the means necessary to perform the technical and administrative tasks connected with their functions, including access to all necessary equipment or facilities. This is to be evaluated with regard to the geographical scope and operating area of each MO. As it was commented by EC DG Environment during the Stakeholder Consultation held in Brussels on 21<sup>st</sup> March, Regulation (EC) No 995/2010 does not prevent MOs from specialising in certain areas or products, thus concentrating themselves on certain countries or sectors<sup>14</sup>.

MOs should provide the EC with appropriate and sufficient evidence to demonstrate viability. Evidence can include, for example, management reports, annual reports, financial audit reports, financial plans, etc.<sup>15</sup>.

### **Personnel expertise and competence**

MO personnel - including individual persons who work for the MO on a contractual basis and other external resources - should be competent, have appropriate technical knowledge and sufficient experience for the functions they perform. In order to ensure these functions are carried on properly, effectively and uniformly, minimum criteria for the personnel expertise and competence are to be established by the EC. They should include criteria dealing with:

- *education and qualification*: a university level education (or equivalent) or at least five (5) years of professional experience in a discipline relevant to the MO functions (for example: forest management sector, forest industry and trade - including wood, wood-based products, pulp, paper and paper products -, forest/environmental/agro-food certification and auditing, forest/environmental consultancy, management of natural resources, law, finance, etc. This list is not intended as exhaustive, because EUTR is a new topic - and related education and qualification requirements are quite new as well - and moreover it involves different sectors and disciplines, suggesting a multidisciplinary approach that should be reflected in the composition of MOs staff);
- *experience*: at least five (5) years professional experience in an area of work relevant to the MO functions for senior positions (for example senior experts co-ordinating the set-up of a due diligence system). At least two (2) years professional experience in an area of work relevant to the MO functions for junior positions;
- *training*: successful completion of a formal technical and vocational training program carried out by or on behalf of the MO. Training shall be performed by experienced and qualified trainers. External training, set up by the EC, shall complement internal training activities. Such external training is mainly intended to assure the continuity of MOs' operations and to help up-dating MOs' competences and knowledge. Minimum contents and duration of internal and external training are to be established by the EC. It is suggested that training covers at least: knowledge of Regulation (EU) No 995/2010 and related Regulations (e.g. Council Regulation (EC) No 338/97, Council Regulation (EC) No 2173/2005, etc.) and documents, knowledge of relevant national and international Laws, Regulations and Conventions (e.g. CITES), risk analysis techniques, reporting, and third party verification and certification systems specific to the forest sector with special reference to chain of custody requirements.

MO personnel should maintain and improve knowledge and skills aiming at continual professional development. This can be achieved through several means, such as additional

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<sup>13</sup>Decision No 768/2008/EC, Art. R17, paragraph 6.

<sup>14</sup>Stakeholder Consultation on Options and best practices for the use and recognition of third party organizations entrusted with certain responsibilities in the framework of EUTR legislation. (Annex 3)

<sup>15</sup>ISO/IEC Guide 65:1996, paragraph 4.2.i, IAF Guidance on the Application of ISO/IEC Guide 65:1996, paragraph G.4.2.16, ISO/IEC Guide 66:1999 paragraph 4.1.2.i and IAF Guidance on the Application of ISO/IEC Guide 66:1999, paragraph G.1.17.

work experience, training, private study, coaching, attendance at meetings, seminars and conferences or other relevant activities<sup>16</sup>. The MO shall maintain up-to-date records about educational qualification, experience and training of each member of the personnel.

### 12.1.3 Requirement (c): absence of any conflict of interest

As regards the absence of any conflict of interest, it shall be underlined that the EUTR system as it is presented in Regulation (EU) No 995/2010 aims at establishing and implementing a third-party evaluation/verification system intended to fight against illegal logging and related trade, preventing illegally harvested timber or timber products derived from such timber being placed on the market (EU, 2010). The overall aim of third-party evaluations/verifications, as those carried out by MOs, is to provide all parties with confidence that relies on independent evaluation/verification. The main principles for inspiring confidence are independence, impartiality and competence both in action and appearance (IRCA, 2005). Independence is defined by ISO (2002) as “*the basis for the impartiality of the audit and objectivity of the audit conclusions*”. In practice this means MOs personnel and staff involved in verification/evaluation activities - as well as staff/experts in charge of taking final decisions about evaluation/verification outputs and results - should be independent of the activity being audited and free from bias and conflict of interest. The above-mentioned considerations are not merely academic, because threats to MOs independence and impartiality are sources of potential bias that may compromise, or may reasonably be expected to compromise, a MO ability to make unbiased evaluation/verification observations and conclusions. In other words this may undermine the credibility of the whole EUTR system.

Conflicts of interest can arise in almost any area of an initiative’s operations but - although they can occur under a large number of different conditions and situations - they normally rise from a relatively limited number of causes that can be found at either individual or organisational level. According to Proforest (2005) and ISEAL (2007), six key areas of potential conflict of interest can be identified (Figure 9).

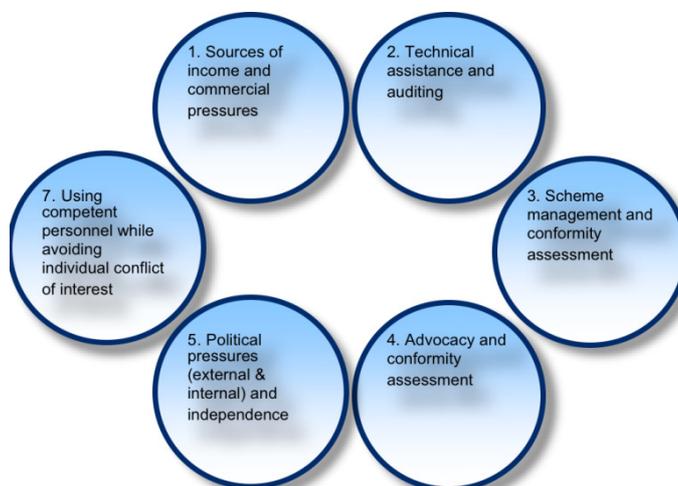


Figure 9: Key areas of potential conflict of interest

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<sup>16</sup>ISO 19011:2002, paragraph 7.5.1.

There is large consensus about the value of ISO normative documents in providing effective guidance on good operating practices and foundation references for both certification and accreditation. Table 6 provides a summary of key ISO documents in this field. With regard to the European Union context, accreditation is also regulated by Regulation (EC) No 765/2008 (and Decision No 768/2008/EC) which, however, has been defined on the ground of the ISO norms. In the frame of the EUTR, as of Reg. (EU) No 995/2010, accreditation is to be referred to the process of “*recognition*” - *ex art. 8* - of MOs by the Commission. On the other hand certification is to be referred to as the activity of granting operators the right to use MOs due diligence systems as well as verifying the proper use of these systems by such operators.

	<b>Document code: year</b>	<b>Title</b>
<b>Accreditation bodies</b>	ISO/PAS 17001:2005	Conformity assessment -Impartiality - Principles and requirements
	ISO/IEC 17011:2004	Conformity assessment – General requirements for accreditation bodies accrediting conformity assessment bodies
<b>Certification bodies</b>	ISO/IEC 17021:2011	Conformity assessment - Requirements for bodies providing audit and certification of management systems
	ISO/IEC 19011:2002	Guidelines for quality and/or environmental management systems auditing
	ISO/IEC Guide 65:1996	General requirements for bodies operating product certification systems
	ISO/IEC Guide 66:1999	General requirements for bodies operating assessment and certification/registration of environmental management systems (EMS)

*Table 6: ISO key-guidance documents for accreditation and certification bodies*

The EUTR should take conflict of interests seriously, and shall not allow MOs personnel to perform professional activities where an actual or potential conflict of interest exists.

MOs should identify, analyze and document the possibilities for conflict of interests arising from provision of services dealing with the EUTR, including any conflicts arising from their relationships or from the activities of related bodies<sup>17</sup> and subcontractors. Having relationships does not necessarily present a MO with a conflict of interest. However, if any relationship creates a threat to impartiality, the MO should document and be able to demonstrate how it eliminates or minimizes such threats. A relationship that causes a threat to the impartiality of a MO can be based on ownership, governance, management, personnel, shared resources, finances, contracts, marketing and payment of a sales commission or other inducement for the referral of new clients, etc. If the MO is part of a larger organisation, the links with other parts of the larger organization shall be clearly defined and should demonstrate that no conflict of interest exists<sup>18</sup>. If MOs belong to business associations or federations representing operators that implement a due diligence system according to the EUTR requirements, they can be recognised by the EC on condition that their independence and the absence of any conflict of interest are demonstrated<sup>19</sup>. This

<sup>17</sup>As defined by IAF (2006).

<sup>18</sup>This may be, for example, the case of MOs being part of sectoral business associations or federations.

<sup>19</sup>Decision No 768/2008/EC, Art. R17, paragraph 3.

may be obtained, for example, by means of third party verifications provided by subcontracted bodies operating on behalf of MOs.

In line with ISO/IEC requirements, any MO should provide evidence of its independence by defining, maintaining and implementing written policies and procedures for avoidance of conflicts of interest both at organisation and individual level. These procedures shall include:

- **separation** of maintenance/evaluation and granting decision on the due diligence system;

*Explanation and details*

The decision of granting operators the right to use MOs due diligence systems must be made by individuals not involved in the maintenance/evaluation. For example a specific Committee or Panel of experts can be created for these purposes within each MO.

- **impartiality** of the MO as well as of related bodies and subcontractors;

*Explanation and details*

This requirement can only be met by a structure that enables the participation of all parties significantly concerned in the development of policies and procedures regarding the content and functioning of the due diligence system. The structure required for the safeguarding of impartiality should be separate from the management established to meet other requirements listed in paragraph 4.1.2. under the title "Organization". Activities of related bodies and subcontractors should not compromise MOs impartiality. According to IAF (2006) a related body is one which is linked to the MO by common ownership in whole or part, common directors, contractual arrangement, a common name, informal understanding or other means such that the related body has a vested interest in any evaluation/verification decision or has a potential ability to influence the process.

- the support of a **committee** charged with the duty of reviewing the MO's performance in maintaining full independence;

*Explanation and details*

The committee may have different functions and need not be limited to the oversight of independence. In any case it:

- meets at least annually;
- is independent of the financial control of the MO;
- is independent of MO decision making with regard to granting operators the right to use its due diligence system as well as verifying the proper use of its due diligence system by such operators;
- formally records its discussions and recommendations;
- formally records the MO response(s) to its discussions and recommendations.

A structure where committee members are chosen to provide a balance of interests and where no single interest dominates is deemed to meet this requirement.

- documented **procedures** for determining timely and appropriate **responses** to declarations of conflict of interest as they arise;

*Explanation and details*

Procedures shall define how, by whom and within what timeframe such declarations are to be evaluated to ensure that the declared interests neither influence, nor are perceived to influence, the decisions of the MO.

- maintenance of relevant **records** dealing with conflicts of interest;

*Explanation and details*

Relevant records include:

- all declarations of potential conflicts of interest (including involved personnel and explanation of reasons generating the conflicts);
- every action which has been taken to neutralize or avoid conflicts of interest or to resolve the possibility and actual occurrence of them.

Record-keeping should be adequate to allow processes and decisions by the MOs to be checked.

- **transparency** of sources of income;

*Explanation and details*

MOs should have a description of their sources of financing and make a general summary publicly available.

- avoidance of **individual conflicts of interest**, for example through the contractual obligation for all personnel contributing to MO decisions to disclose in writing to the MO all possible and actual conflicts of interest, at the time that the conflict or possibility of conflict becomes evident.

*Explanation and details*

As a general rule a MO shall not allow its personnel to perform professional activities where an actual or potential conflict of interest exists. MOs' personnel includes:

- MO staff;
- sub-contracted assessors and experts;
- members of any committee or panel such as Advisory Committee, Appeals Committee, Independence Committee etc.;
- any person who may have access to confidential information through their association with the MO.

In the case of MO staff and sub-contracted assessors and experts this is to be included in the contract of employment and in the sub-contract agreement respectively.

MO personnel as previously described must declare any interest in or connection with an applicant or verified/monitored organisation or other organisation involved in or subject to the evaluation/verification action/monitoring process, before taking on the work, or before the situation arises. Such interests or connections apply to past, present and future involvement and may include (but are not limited to):

- being employed by an organisation or individual that is subject to evaluation/verification (i.e. an operator<sup>1</sup>), or is affiliated to an operator subject to assessment;
- having worked with, or consulted to an operator in the past two years; or having reasonable future prospect of such work;
- any immediate family member working with or consulting to the operator in the past two years; or having reasonable future prospect of such work;
- owning shares or any immediate family member owning shares in the operator or parent organisation (more than 2%);
- having, or any immediate family member having, any other commercial or voluntary involvement with any operator;
  - arrangement or directorship with the operator;
  - having a relationship with any operator; or
  - is in direct competition with an applicant or already verified operator.

As already observed, when speaking about conformity assessment bodies Decision No 768/2008/EC only focuses on the topic of independence, without mentioning avoidance of

conflict of interest. It is not possible here - as already done in paragraph 4.1.2. under the title "Organization" - to distinguish different sets of requirements differentiating between those that are shared by Decision No 768/2008/EC and ISO/IEC Guides and those that are only defined by the second ones. Nevertheless, when assuming independence as a basic requirement, differentiation should be done between conflict of interest at individual level and at organisation level. While the first one represents a cross requirement that should never be omitted, with reference to the second one three different sets of requirements can be identified. Starting from basic criteria at organisation level (Set 1), additional requirements can be included. It will be up to the EC to decide which of the three sets should be adopted.

*Set 1 – Basic requirements*

- impartiality;
- procedures of conflict of interest;
- records of conflicts of interest.

*Set 2 – Additional medium-level requirements*

- separation of evaluation and granting decision;
- transparency of sources of income.

*Set 3 – Additional high-level requirements*

- establishment of a committee reviewing MO's performance in maintaining full independence.

**12.2 Recognition procedure**

The process for recognition of a MO shall follow the procedure set out below and laid-out in Figure 10. The steps were inspired by ASI Accreditation Procedure (2010 – v. 3.0) for certification bodies that was simplified and adapted to EUTR purposes.

The different steps are described in detail as follows:

*Step 1: Enquiry and application*

In order to get the recognition required by Regulation (EC) No. 995/2010, the MO has to address a formal request to the EC (Figure 11). When receiving a request, the EC shall open a registration account and send back an "Application Pack" within a properly defined time frame.

It should be made clearer that at this stage the "examination" of the Application is only to verify that all documents have been submitted and have been correctly filled in. If there were parts of documentation missing, a deadline would be given to the applicant to submit a full set of the application documentation.

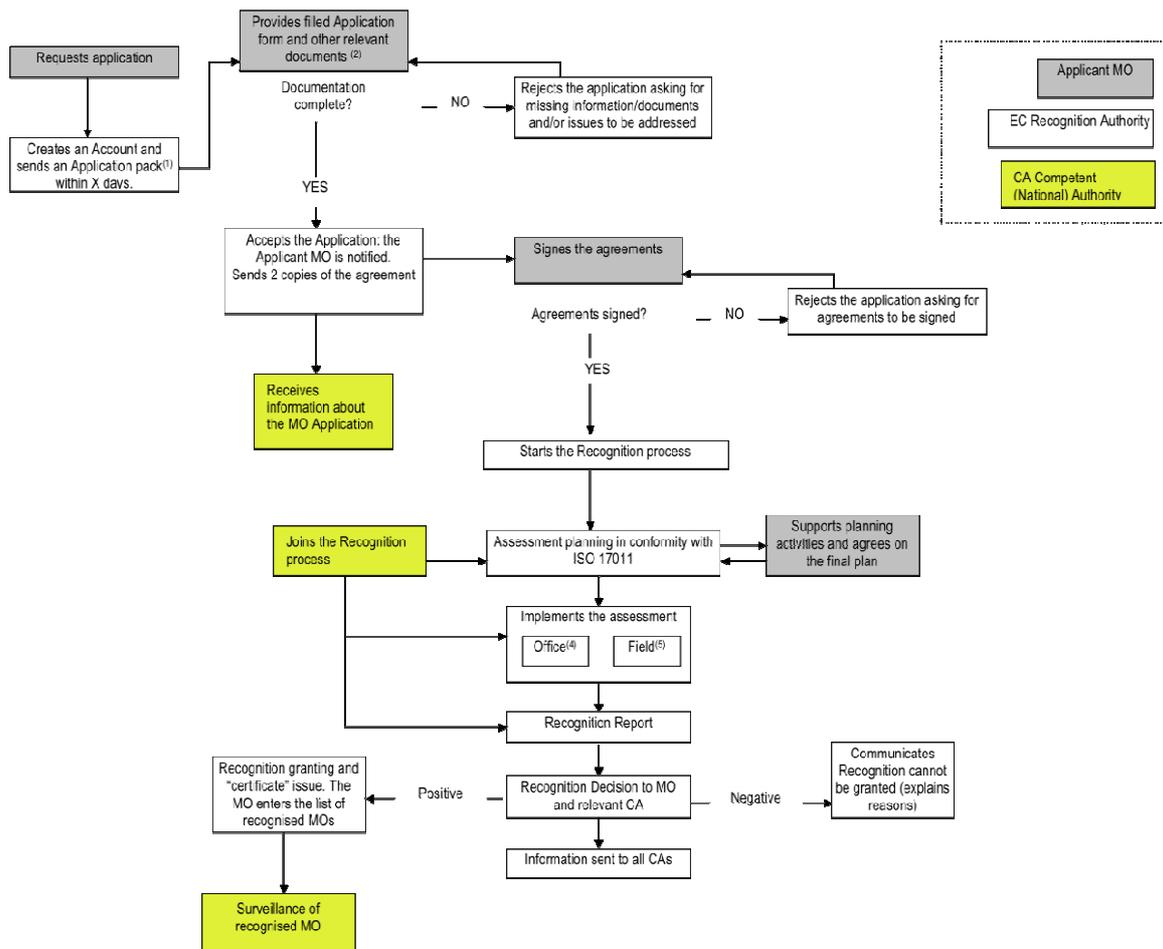


Figure 10: A tentative lay-out of the procedure for MOs recognition

#### NOTES

- (1) including application information with instructions on how to apply for Recognition, including timing, paying, etc.; the current version of the relevant Recognition Procedures; the current version of Complaint and Appeal Procedures; all other documents relevant to EUTR.
- (2) the applicant MO can withdraw the application.
- (3) a checklist listing all required documents and their characteristics is included in the Application Pack
- (4) it shall start with a visit at the head office (i.e. the office legally responsible for any MO decision regarding due diligence and other EUTR related issues and where decision making on due diligence and other EUTR activities takes place) and at all key sites where one or more of the following activities occur: (i) signing of contracts with clients; (ii) planning monitoring activities; (iii) approval or review of reports immediately prior to decision making.
- (5) only once the initial office assessment has been completed and no major non-conformity is pending a witness assessment is organised in the field.

At this stage, the EC will examine the Application and verify that all documents have been submitted and have been correctly filled in:

- if submitted documentation is found to be complete, the MO will be notified and will receive two copies of the agreement (simultaneously, the relevant CA<sup>20</sup> will be informed by the EC);
- if submitted documentation is found to be incomplete, a deadline will be given to the applicant MO to submit a full set of the application documentation.

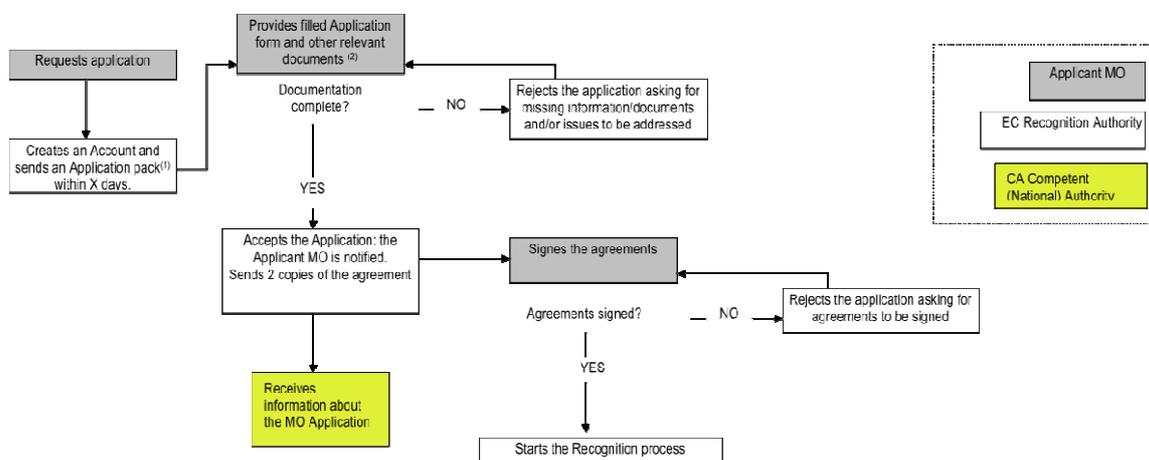


Figure 11: Step 1 of the procedure for MOs recognition: enquiry and application

## Step 2: Assessment

Once the applicant MO signs the agreements, the EC will start to plan assessment activities, keeping the relevant CA informed (Figure 12). The recognition team will implement the assessment, both at office and field level. It would be recommendable that the team assessing the applicant MO is made up of staff from both the EC and the relevant CA. If this is not feasible, EC could take full responsibility for desk verification, while relevant CA staff could join the assessment team at field level. It is suggested that assessment activities follow the approach and the requirements set up in the document ISO/IEC 17011:2004. It will be up to the EC to decide to what extent such requirements are to be adopted.

At the end of the assessment, the EC - supported by the relevant CA - will prepare a recognition report summarising findings and evidence collected during the assessment and suggesting whether the applicant MO can be recognised or not.

The EC has also to decide whether control activities on MOs are to be carried out only in the form of preliminary controls at the very beginning of the MOs' activities or additional controls are to be carried out after a certain time period (e.g. 3 to 6 months) after recognition, or - as an alternative - when a MO reaches a minimum number of monitored operators.

<sup>20</sup>i.e. the CA having responsibility for the Member State where the applicant MO is based.

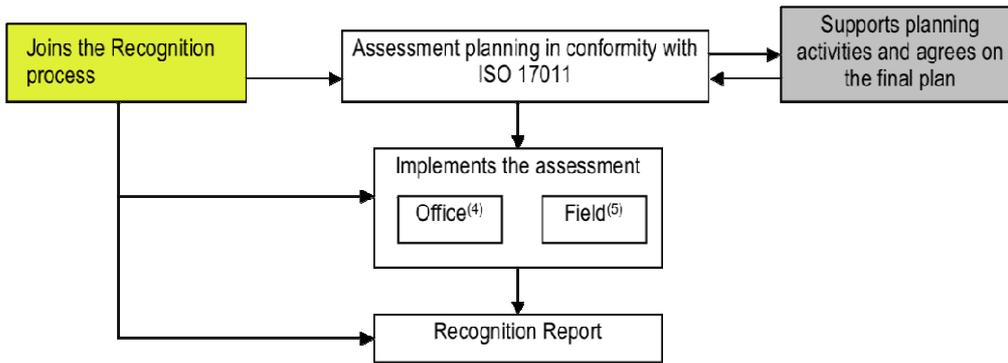


Figure 12: Step 2 of the procedure for MOs recognition: assessment

### Step 3: Recognition and assessment

On the basis of the recognition report the EC decides whether to grant the applicant MO with recognition or not (Figure 13). If a positive decision is taken by the EC, then the applicant MO will be officially recognised and a “Recognition Certificate” will be issued. All CAs are informed accordingly. The recognised MO will be included by the EC in the list defined by Regulation (EC) No. 995/2010, Article 9. A periodical surveillance will be carried out by the relevant CA.

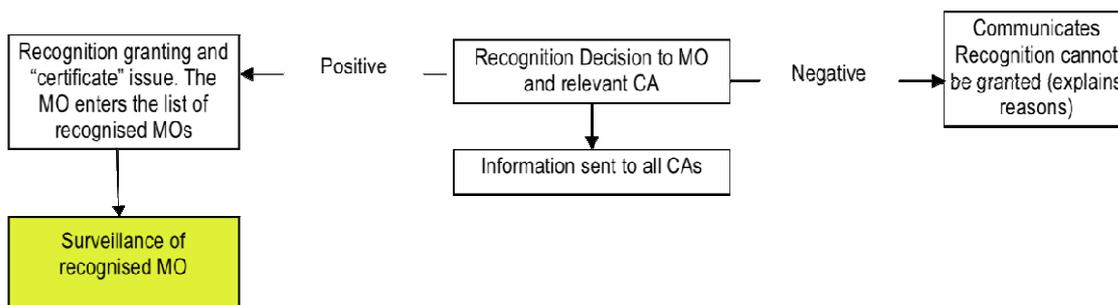


Figure 13: Step 3 of the procedure for MOs recognition: recognition and assessment

Some questions regarding surveillance of MOs and maintenance and duration of the recognition are still pending.

As for surveillance, a minimum frequency (e.g. annual) for MOs assessment is to be defined. In case non-compliances are identified during the surveillance, CAs shall inform the EC that shall have the possibility to suspend and/or withdraw the recognition, depending on the number and nature of the reported non-compliances.

Regarding surveillance activities, it is not clear whether the EC and other CAs are to be involved. This is mainly linked to the necessity to harmonize CAs control activities in order to guarantee a proper quality level and full credibility of the whole EUTR system.

The definition of a proper duration (3 to 5 years) for MOs recognition is recommended. After that, a re-assessment is to be carried out by the EC, unless the Commission itself decides the re-assessment should be under full responsibility of relevant CAs.

### 13. CONCLUDING COMENTS

Throughout this study the heterogeneity of the forest sector, particularly of the industry, has been highlighted repeatedly. It is evident that any possible outcome of the implementation regulation must acknowledge the variety of affected actors across the different industry sectors. For example, SMEs have fewer resources to spend for proofing legality than the big corporations have. Furthermore, certain aspects of legality related to the importers may well be utterly irrelevant to operators dealing with domestic and local European timber or timber products. Moreover, some forest industry sectors will face greater difficulties in proving legality than the others depending on the product traded. Indeed, tracking whole logs will certainly be simpler than keeping records of the origin of pulp, paper or composite products. In addition, the knowledge on applicable legislation varies greatly. Whereas the legislation is usually well mapped out and complied with by the bigger companies, the SMEs do not often have the resources or the expertise to carry out adequate measures. On the other hand, most operators seem to be well aware of the tree species they use or trade, even though this may not always be the case for some composite products.

The operators should define their respective DDSs and include the most suitable tool set for their implementation. Due to the high degree of different conditions, it is not feasible to develop a fixed and uniform DDS description which would be applicable for all operators. Even though the goal is well defined in the EUTR, the exact implementation should rely on the foreseen details of the Implementing and Delegated Acts. The requirements of these legal documents should be communicated widely and explained with practical information on evidence evaluation and legal compliance, in order to support the operators.

Even though it is not feasible to create a fixed and uniform DDS for all, some elements of such system would benefit from a more common approach. This is demonstrated by calls for information services to ease the administrative burden of the risk assessment and support the evaluation of the relevant evidence. Such calls were presented in various stakeholder consultations, study interviews and in voluntary commentaries delivered to the project team. This information service could provide information on the relevant applicable legislation, determine risks for certain regions, indicate the status of FLEGT and CITES in different countries, as well as contain other useful information that has to be currently compiled from various different sources in various different languages. This would support a more consistent approach to illegality and make it less costly and more time-efficient for the SMEs, as well as the big corporations, to develop and implement their own DDSs. There are already some existing databases and tools aiming for this approach, as well as others in the development.

Communications with the SMEs indicated that very few of them were aware of the EUTR. Even membership in a well represented association or federation does not mean that the information would reach them. Similar message was delivered from the consulted government entities, associations, European forest owners and involved officials in the SME-matters. In addition, the situation is much worse among the small-scale retailers whose business only partly overlaps with the EUTR requirements. Therefore, there is an urgent need for effective, far reaching and targeted awareness rising. However, this will need temporary and innovative capacity building as the current methods of communication do not seem to reach all the relevant parties. The responsible bodies for raising awareness should be determined in the national/subnational context in order to map out the optimal routes of delivering the information in the most efficient way. For example, CAs and the relevant national associations could be part of this process.

The project team looked at the various options of the recognition procedures of the MOs under the Task 2. However, some operators requested more guidance on the role of the MOs *vis a vis* the competent authorities. It is expected that few MOs will be established in each Member State, based on the preliminary expressions of interest. Most likely various MOs will concentrate on specific conditions in the sector to support their efforts to meet the EUTR requirements. Therefore the various responsibilities and conditions should be continuously monitored.

Regarding the recognition of MOs considered in this report, i.e. criteria and procedures to be further described in the foreseen Delegated Act in order to recognize MOs by the EC. It should be underlined that EUTR represents a new piece of legislation and its implementation cannot be based on totally comparable experiences. Although some similarities can be identified with other experiences in the frame of EU norms, the EUTR introduces new entities, problems and challenges. Some aspects still need clarification and specific interpretation. This suggests looking beyond EC Regulations, integrating them with lessons learned and experiences from other initiatives, including with respect to avoiding conflict of interest, with special attention to those developed in the private sector.

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# Questionnaire

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**Note:** This questionnaire was prepared to assess the scope and depth of existing timber supply related risk management systems. The questionnaire structure is based on (but not limited to) the specifications stated in Article 6 of the European Union Timber Regulation (EUTR). By no means do we want to validate any system vis-à-vis the requirements of the EUTR. When sending out this questionnaire, we included a copy of the EUTR for reference purposes, please find attached to this mail.

Please send any further enquiries and your **replies by 4<sup>th</sup> March to the person as indicated below:**

**Hubert Inhaizer** (email: [hubert.inhaizer@efi.int](mailto:hubert.inhaizer@efi.int))

**Jussi Viding** (email: [jussi.viding@indufor.fi](mailto:jussi.viding@indufor.fi))

## GENERAL INFORMATION

This section collects general contact and profile information on your organization.

### Contact details

**Provide name and contact details for the main correspondent of this questionnaire:**

- . Select title    Select title
- . First name
- . Last name
- . Address
- . Telephone
- . Email
- . Expertise and responsibility

**In case additional correspondent(s) contributed significantly to certain sections or questions of the questionnaire, could you please highlight their name, related expertise and the relevant section or question numbers of their contribution?**

### Profile

Please provide information about your organisation.

**Organisation Name and Unit:**

**Could you provide a brief description of your organisation/unit profile?**

**Category (select all that apply):**

- Public organisation
- Private company

- Industry Federation
- Certifier of sustainable forest management
- Chain-of-Custody certifier
- Other:

**Will your organisation apply to be recognized by the European Commission as “monitoring organisation”<sup>1</sup>?**

- Yes. If so: are you interested to comment a draft proposal for the process of recognition as monitoring organisation? ( yes;  no)
- No
- Not applicable

**Has your country (or for companies with international office network, the country of registered headquarters in the EU) already initiated the identification of the national competent authority<sup>2</sup>?**

- Yes, please explain:
- No
- I am not aware about related developments

**GENERAL INFORMATION ON THE APPLIED RISK MANAGEMENT SYSTEM**

**Please indicate which risk management system components you have in place<sup>3</sup>.**

- Access to Chain of Custody information
- Risk assessment procedures
- Risk mitigation procedures

**Specify which risk management system you rely on.**

- National or regional public procurement system (Name: \_\_\_\_\_ )
- FSC (Forest Stewardship Council)
- PEFC (Programme for the Endorsement of Forest Certification)
- Other in-house system:
- Other third-party system:

**Specify who implements your risk management system.**

- We have own staff that implement the system
- We rely on a second-party organisation.  
Please specify the organisation(s):
- We rely on a third-party organisation.  
Please specify the organisation(s):
- Other. Please specify and give contact details or website:

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<sup>1</sup> As specified in the EUTR Article 8

<sup>2</sup> As specified in the EUTR Article 7

<sup>3</sup> The definition of the given option are described in the EUTR Article 6.1.a; b; and c.

## **DESCRIPTION OF YOUR RISK MANAGEMENT SYSTEM**

Please answer the following questions in this section only if your company or organisation operates an own proprietary risk management system.

**General introduction of the system owner, which shall include the main characteristics relevant for the EUTR, as follows:**

- . Name of the system owner :
- . Contact person :
- . Full contact details :
- . Main area of work :
- . Relevance for the EUTR :

**What is the geographical interest and/or experience of the applied system?**

**What is the timber volume which will be affected by the EUTR?**

**Please explain what were the main driving factors for establishing the current system?**

**Who were the main organisations involved with the development and maintenance of the system?  
Which are the decision-taking bodies involved in the system?**

## **DETAILED DESCRIPTION OF YOUR EXISTING RISK ASSESSMENT AND RISK MITIGATION TOOLS**

### **Access to Information**

**Describe the procedure to collect particular information elements on the timber products**

**Describe the procedure to verify the above described information elements**

**Please indicate which of the following information is collected:**

- Trade name, type ;  Tree species (Please select)
- Country of harvest
- Region of harvest
- Concession of harvest)
- Quantity
- Name and address of supplier

Name and address of trader

Additional documents that demonstrate compliance with applicable legislation:

**Can you please attach an example of a form that is used to record the above-mentioned attributes in Annex to your questionnaire reply?**

Yes, I will include that with the email reply

No

## **Risk Assessment Procedures**

**Please indicate which of the following issues are covered in your risk assessment procedure:**

. Assurance of compliance with applicable legislation

Please select

. Prevalence of illegal harvesting of the tree species

Please select

. Prevalence of illegal harvesting/practices in the country of harvest

Please select

. Sanctions imposed on timber imports/exports

Please select

. Complexity of the supply chain

Please select

. Protection status of tree species

Please select

. Other: please specify

. Do you rely on any ranking system by international organisations?

World Bank Worldwide Governance Indicators

Transparency International Corruption Perceptions Index

Other system, please specify:

**Which risk categories does the due diligence system distinguish (e.g. *high risk* and *low risk*)?**

**How does your system determine risk categories?**

**What are the indicators and what are the benchmarks used in the decision taking?**

**Can you please attach relevant documentation, which includes details on the feedback stated under questions 4.2.1-4.2.4, in Annex to your questionnaire reply?**

Yes, I will include that with the email reply       No

**Can you please attach an example of a form that is used to record the risk assessment attributes as an Annex to your questionnaire reply?**

Yes, I will include that with the email reply       No

## **Risk Mitigation Procedures**

**Please describe the measures that are in place for reducing any doubts about the legal origin of wood or wood products.**

Additional information collection. Please specify what kind of information is collected and who supplies it:

Particular procedures are in place, described as follows:

**Can you please attach the reference material that includes the above-mentioned details in Annex to your questionnaire reply?**

Yes, I will include that with the email reply       No

**Can you please attach an example of a form that is used to record the information needed for the risk mitigation procedure in Annex to your questionnaire reply?**

Yes, I will include that with the email reply       No

## **IMPLEMENTATION AND MAINTENANCE**

**The expected answers for the following questions might be considered as confidential information. Would you agree to include these details in the final report of the study and allow us to present them during the stakeholder consultations?**

Yes, I agree       No, data should not be published or used in any further document

**Please describe how widely the risk management procedures (as you described under the Questions 3 and 4) are applied in practice?**

**Please estimate the annual quantity of timber and timber products to which the procedures are applied.**

**Could you give information about the direct costs for tool implementation?**

**Could you give information about staff requirements for the implementation and maintenance of the system? (e.g. how many monthly working hours and/or how many staff members are assigned for this purpose)**

**What do you consider as the strengths of the system?**

**If any, what could be the possible weaknesses of the system?**

**Does your system have a procedure that allows issuance of complaints? If so, could you give examples of the type of feedback that was received so far?**

- No, we do not have a procedure
- Yes, here are some examples of feedback:

#### **FORESEEN DEVELOPMENTS**

**Is there any regular update of the above described procedures?**

- Yes. Please explain:
- No. Please explain:

**Are there any external factors, which have an impact on the further development?**

- Yes. Please explain:
- No. Please explain:

**Please explain the expected effect of the EUTR on the above described system?**

# Supplementary Questionnaire

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**Note:** This questionnaire was prepared to assess the scope and depth of existing timber supply related risk management systems. The questionnaire structure is based on (but not limited to) the specifications stated in Article 6 of the European Union Timber Regulation (EUTR). By no means do we want to validate any system vis-à-vis the requirements of the EUTR. When sending out this questionnaire, we included a copy of the EUTR for reference purposes, please find attached to this mail.

Please send any further enquiries and your **replies by 1<sup>st</sup> April to the person as indicated below:**

**Hubert Inhaizer** (email: [hubert.inhaizer@efi.int](mailto:hubert.inhaizer@efi.int))

**Jussi Viding** (email: [jussi.viding@indufor.fi](mailto:jussi.viding@indufor.fi))

## GENERAL INFORMATION

**Provide name and contact details for the main correspondent of this questionnaire:**

- . Title Choose an item.
- . First name Click here to enter text.
- . Last name Click here to enter text.
- . Address Click here to enter text.
- . Telephone Click here to enter text.
- . Email Click here to enter text.
- . Expertise and responsibility Click here to enter text.

**Organisation Name and Unit:**

Click here to enter text.

**Category (select all that apply):**

- Public organisation
- Private company
- Industry Federation
- Certifier of sustainable forest management
- Chain-of-Custody certifier
- Other: Click here to enter text.

## GENERAL INFORMATION ON THE APPLIED RISK MANAGEMENT SYSTEM

**Please indicate which risk management system components you have in place<sup>4</sup>.**

- Access to Chain of Custody information
- Risk assessment procedures
- Risk mitigation procedures

---

<sup>4</sup> The definition of the given option are described in the EUTR Article 6.1.a; b; and c.

**Specify which risk management system you rely on.**

- National or regional public procurement system (Name: [Click here to enter text.](#))
- FSC (Forest Stewardship Council)
- PEFC (Programme for the Endorsement of Forest Certification)
- Other in-house system: [Click here to enter text.](#)
- Other third-party system: [Click here to enter text.](#)

**Specify who implements your risk management system.**

- We have own staff that implement the system
- We rely on a second-party organisation.  
[Please specify the organisation\(s\): Click here to enter text.](#)
- We rely on a third-party organisation.  
[Please specify the organisation\(s\): Click here to enter text.](#)
- Other. Please specify and give contact details or website: [Click here to enter text.](#)

**What is the geographical interest and/or experience of the applied system?**

[Click here to enter text.](#)

**What is the (annual) timber volume which will be affected by the EUTR?**

[Click here to enter text.](#)

**Who were the main organisations involved with the development and maintenance of the system?  
Which are the decision-taking bodies involved in the system?**

[Click here to enter text.](#)

**DETAILED DESCRIPTION OF YOUR EXISTING RISK ASSESSMENT AND RISK MITIGATION TOOLS**

**Access to Information**

**Please indicate which of the following information is collected:**

- Trade name, type;  Tree species (Choose an item.)
- Country of harvest
- Region of harvest
- Concession of harvest
- Quantity
- Name and address of supplier
- Name and address of trader
- Additional documents that demonstrate compliance with applicable legislation:

[Click here to enter text.](#)

**Please describe the methods of compiling the information laid out in the previous question.**

[Click here to enter text.](#)

## **Risk Assessment Procedures**

**Please indicate which of the following issues are covered in your risk assessment procedure:**

- . Assurance of compliance with applicable legislation  
[Choose an item. Click here to enter text.](#)
- . Prevalence of illegal harvesting of the tree species  
[Choose an item. Click here to enter text.](#)
- . Prevalence of illegal harvesting/practices in the country of harvest  
[Choose an item. Click here to enter text.](#)
- . Sanctions imposed on timber imports/exports  
[Choose an item. Click here to enter text.](#)
- . Complexity of the supply chain  
[Choose an item. Click here to enter text.](#)
- . Protection status of tree species  
[Choose an item. Click here to enter text.](#)
- . Other: please specify [Click here to enter text.](#)
- . Do you rely on any ranking system by international organisations?
  - World Bank Worldwide Governance Indicators
  - Transparency International Corruption Perceptions Index
  - Other system, please specify: [Click here to enter text.](#)

**Which risk categories does the due diligence system distinguish (e.g. *high risk* and *low risk*)?**

[Click here to enter text.](#)

**How does your system determine risk categories?**

[Click here to enter text.](#)

**What are the indicators and what are the benchmarks used in the decision taking?**

[Click here to enter text.](#)

## **Risk Mitigation Procedures**

**Please describe the measures that are in place for reducing any doubts about the legal origin of wood or wood products.**

- Additional information collection. Please specify what kind of information is collected and who supplies it:  
[Click here to enter text.](#)
- Particular procedures are in place, described as follows:  
[Click here to enter text.](#)

## **ADDITIONAL INFORMATION AND FEEDBACK**

**What do you consider as the strengths of the system?**

[Click here to enter text.](#)

**If any, what could be the possible weaknesses of the system?**

[Click here to enter text.](#)

**Please explain the expected effect of the EUTR on the above described system?**

[Click here to enter text.](#)

**In case you feel unhappy with the way this study is being conducted please feel free to comment.  
Any additional general feedback can also be provided here.**

[Click here to enter text.](#)

### **Annex 3 Consultations conducted with the stakeholders**

#### *Attended workshops:*

- Bridging local and global interests: Integration of domestic timber markets in FLEGT/VPA's and REDD+ (17-18 January 2011, Brussels)  
Website: <http://www.tropenbos.org/index.php/en/news/outcomes-seminar>
- Illegal Logging Update and Stakeholder Consultation Number 17 (27-28 January 2011, London)  
Website: [http://www.illegal-logging.info/item\\_single.php?it\\_id=206&it=event](http://www.illegal-logging.info/item_single.php?it_id=206&it=event)
- Project presentation to the MC Representatives (7 February 2011, Brussels)
- Inception meeting for the DG officials (4 March 2011, Brussels)
- ACE/WWF workshop on the implementation of the EUTR (10 March 2011, Brussels)  
Concept paper:  
<http://www.beveragecarton.eu/uploads/Library/WWF-ACE%20Joint%20Views%20on%20Illegal%20Logging.pdf>
- Does banning illegal logging rule out wood? - Implications of recent trade legislation within the UNECE region for the forest-based sector (13 April 2011, Brussels)  
Website: <http://timber.unece.org/index.php?id=334>
- Consequences of the new European timber regulation (26 May 2011, Breukelen)

#### *Stakeholder consultations carried out under the project:*

#### **Options and best practices for the use and recognition of third party organisations entrusted with certain responsibilities in the framework of EUTR legislation (21 March 2011, Brussels)**

The goals of this particular Stakeholder Consultation were:

- To present the project and its preliminary outcomes, particularly focusing on the draft support study paper on the recognition process of the monitoring organizations
- To provide a platform for comments and suggestions on the process

For the presentations and meeting documents please visit the consultation's webpage:

[http://www.efi.int/portal/news\\_events/events/extra/2011/eutr\\_stakeholder\\_consultation\\_on\\_21\\_march\\_2011/](http://www.efi.int/portal/news_events/events/extra/2011/eutr_stakeholder_consultation_on_21_march_2011/)

#### **Best options for risk assessment and risk mitigation procedures in the framework of EUTR legislation (28 April 2011, Brussels)**

The goals of this particular Stakeholder Consultation were:

- To present the project and its preliminary outcomes, particularly focusing on the various options and solutions for due diligence systems according to the requirements of the EUTR
- To provide a platform for comments and suggestions.

For the presentations and meeting documents please visit the consultation's webpage:

[http://www.efi.int/portal/news\\_events/events/extra/2011/eutr\\_stakeholder\\_consultation\\_on\\_28\\_april\\_2011/](http://www.efi.int/portal/news_events/events/extra/2011/eutr_stakeholder_consultation_on_28_april_2011/)

#### *Meetings and teleconferences with the study subjects:*

- CPET: 31 March, 28 April 2011
- DLH: 28 January, 28 March
- France: 21 and 30 March, 28 April 2011
- IKEA: 10 March, 29 March, 12 April
- PEFC: 21 and 31 March, 28 April 2011
- RA: 21 March, 30 March, 28 April 2011
- Stora Enso: 10 March, 29 March
- TTF: 28 January, 28 March
- VVNH: 30 March
- GFTN: 10 March 2011

*Combined list of represented organizations, input providers and members of the mailing list:*

- 1 Agentschap voor Natuur en Bos
- 2 AgroParisTech
- 3 Asian Pacific Inspection (API)
- 4 Belgian Federation of Wood Import/UEA
- 5 Belgian Federation of Wood Traders
- 6 Belgian Timber Importers Federation
- 7 Bureau Veritas Certification
- 8 Carrefour
- 9 Catholic University of Louvain
- 10 Central Point of Expertise on Timber Procurement, UK
- 11 Chatham House
- 12 Clientearth
- 13 Cohn & Wolfe
- 14 COMIFAC
- 15 Confederation of European Forest Owners (CEPF)
- 16 Confederation of European Paper Industries (CEPI)
- 17 ConLegno
- 18 COPA-COGECA
- 19 Dalhoff Larsen & Horneman A/S
- 20 DeoubleHelix
- 21 Department for Environment, Food and Rural Affairs , UK
- 22 Department for International Development, UK
- 23 DG Agriculture (European Commission)
- 24 DG Enterprise (European Commission)
- 25 Double Helix Tracking Technologies
- 26 Ecologo
- 27 EESC Member/Burns, Burns & Burns
- 28 Efeca
- 29 Embassy of Canada to Finland
- 30 Environmental Investigation Agency
- 31 European Confederation of Woodworking Industries (CEI-Bois)
- 32 European Council
- 33 European DIY Retail Association
- 34 European Federation of Furniture Retailers
- 35 European Federation of Parquet Importers
- 36 European Landowners' Organization
- 37 European Organisation of Sawmill Industry
- 38 European Parliament
- 39 European Retail Round Table
- 40 European Timber Trade Federation
- 41 EUSTAFOR

- 42 Federal Ministry of Agriculture, Forestry, Environment and Water Management, Austria
- 43 Federal Ministry of Food, Agriculture and Consumer Protection, Germany
- 44 FederlegnoArredo
- 45 Fetim Group
- 46 Finland's Permanent Representation to the EU
- 47 Finnish Forest Industries
- 48 Finnish Forest Industries Federation
- 49 Foreign Trade Association (FTA)
- 50 Forest Industries Intelligence Limited
- 51 Forest Products Association of Canada
- 52 Forest Service Ireland
- 53 Forest Stewardship Council
- 54 France Nature Environment
- 55 French Sawmills' Federation
- 56 German Retail Federation
- 57 German Timber Trade Federation
- 58 GFA Consulting Group
- 59 Greenpeace
- 60 Gütegemeinschaft Holzhandel e.V.
- 61 H2 Compliance
- 62 Helveta Ltd.
- 63 HolzLand GmbH
- 64 IKEA
- 65 Italian Federation of Wood, Cork, Furniture and Furnishing Manufacturers
- 66 IUCN
- 67 Kaufland Warenhandel GmbH
- 68 Kingfisher
- 69 Korsnäs
- 70 Le Commerce du Bois
- 71 Malaysian Timber Council
- 72 Marks and Spencer
- 73 Ministry for Rural Affairs Sweden
- 74 Ministry of Agriculture , Czech Republic
- 75 Ministry of Agriculture and Food, Norway
- 76 Ministry of Agriculture and Forestry, Finland
- 77 Ministry of Agriculture, Forestry and Food, Slovenia
- 78 Ministry of Agriculture, France
- 79 Ministry of Agriculture, Italy
- 80 Ministry of Agriculture, Latvia
- 81 Ministry of Economic Affairs, Agriculture and Innovation, the Netherlands
- 82 Ministry of Environment, Denmark
- 83 Ministry of Environment, Germany
- 84 Ministry of Environment, Lithuania

- 85 Ministry of Environment, Luxembourg
- 86 Ministry of Environment, Norway
- 87 Ministry of Environment, Rural and Marine Affairs, Spain
- 88 Ministry of Rural Development, Hungary
- 89 Mission of Canada to the EU
- 90 Municipal and private forest owners, Czech Republic
- 91 NepCON
- 92 Norwegian Agricultural Authority
- 93 Norwegian Forest Owners' Federation
- 94 NSF-Bureau of Nordic Family Forestry
- 95 NWFA
- 96 Nyenrode Business Universiteit
- 97 Otto Group
- 98 PEFC Council
- 99 Permanent representation of Finland to the EU
- 100 Permanent representation of Portugal to the EU
- 101 Permanent representation of the UK to the EU
- 102 Professional Service Industries
- 103 Proforest
- 104 Rainforest Alliance
- 105 Rougier
- 106 SCA Hygiene Products UK Ltd
- 107 Société Royale Forestière de Belgique
- 108 Stora Enso
- 109 Sustainable Forestry Initiative
- 110 Swedish Forest Agency
- 111 The Alliance for Beverage Cartons & the Environment
- 112 The Forest Trust
- 113 TRAFFIC Europe
- 114 Transparency International
- 115 UK Timber Trade Federation
- 116 Unión de Silvicultores del Sur de Europa
- 117 Université catholique de Louvain
- 118 University of Gent
- 119 USDA:APHIS
- 120 WWF
- 121 WWF Global Forest & Trade Network

## **Annex 4 List of related information resources**

*Related to EUTR:*

European Commission's website: [http://ec.europa.eu/environment/forests/timber\\_regulation.htm](http://ec.europa.eu/environment/forests/timber_regulation.htm)

European Forest Institute: <http://www.efi.int/portal/research/projects/?todo=3&projectid=180>

*Other related sources:*

Australian Government: <http://www.daff.gov.au/forestry/international/illegal-logging>

Chatham House: <http://www.illegal-logging.info/>

Forest Legality Alliance: <http://www.forestlegality.org/>

Standing Forest Committee's report on "Public procurement of wood and wood-based products": [http://ec.europa.eu/agriculture/fore/publi/wg4-112010\\_en.pdf](http://ec.europa.eu/agriculture/fore/publi/wg4-112010_en.pdf)

USDA: Aphis (Lacey Act): [http://www.aphis.usda.gov/plant\\_health/lacey\\_act/index.shtml](http://www.aphis.usda.gov/plant_health/lacey_act/index.shtml)

Wood for Good: <http://www.woodforgood.com/procurement.html>

Rainforest alliance: <http://www.rainforest-alliance.org/forestry/sourcing/legal>

ISO: [http://www.iso.org/iso/iso\\_catalogue.htm](http://www.iso.org/iso/iso_catalogue.htm)

UK Timber Trade Federation: [http://www.ttf.co.uk/Environment/Third\\_Party\\_Schemes.aspx](http://www.ttf.co.uk/Environment/Third_Party_Schemes.aspx)

Accreditation Services: [http://www.accreditation-services.com/document\\_management.html](http://www.accreditation-services.com/document_management.html)

ISEAL Alliance: <http://www.isealliance.org/code>

ASI (2009). ASI-QMS-20-100 (Version 4.1). ASI Quality Manual. Accreditation Services International GmbH, Bonn.

ASI (2010). ASI-PRO-20-101 (Version 3.0). ASI Accreditation Procedure. Accreditation Services International GmbH, Bonn.

Byers, A. (2007). ISEAL Emerging Initiatives. Module 8: managing Conflicts of Interest. ISEAL Alliance, London.

EU (2007). Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91. Official Journal of the European Union L 189, pp. 1-23.

EU (2008). Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93. Official Journal of the European Union L 218, pp. 30-47.

EU (2008a). Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC. Official Journal of the European Union L 218, pp. 82-128.

EU (2009). Commission Regulation (EC) No 1010/2009 of 22 October 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing. Official Journal of the European Union L 280, pp. 5-41.

EU (2010). 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. Official Journal of the European Union L 295, pp. 23-34.

FSC (2009). FSC-STD-20-001 (Version 3-0). General requirements for FSC accredited certification bodies - application of ISO/IEC Guide 65:1996 (E). Forest Stewardship Council International Centre Bonn.

IRCA (2005). Third party auditor impartiality and conflict of interest. ISO/IAF Auditing Practices Group Papers. International Registry of Certificated Auditors, London.

ISO (1996). ISO/IEC Guide 65:1996. General requirements for bodies operating product certification systems. International Organization for Standardization, Geneva.

ISO (1999). ISO/IEC Guide 66:1999. General requirements for bodies operating assessment and certification/registration of environmental management systems (EMS). International Organization for Standardization, Geneva.

ISO (2002). ISO/IEC 19011:2002. Guidelines for quality and/or environmental management systems auditing. International Organization for Standardization, Geneva.

ISO (2004). ISO/IEC 17011:2004. Conformity assessment - General requirements for accreditation bodies accrediting conformity assessment bodies. International Organization for Standardization, Geneva.

ISO (2006). ISO/IEC 17021:2006. Conformity assessment - Requirements for bodies providing audit and certification of management systems. International Organization for Standardization, Geneva.

ISO (2011). ISO/IEC 17021:2011. Conformity assessment - Requirements for bodies providing audit and certification of management systems. International Organization for Standardization, Geneva.

Proforest (2005). Managing conflict of interest in certification. A report for the ISEAL Alliance February 2005. Proforest, Oxford.

## **Annex 5 List of issues where private and public sector require additional information**

- If implemented with tough sanctions and proper control mechanisms, including field audits in country of harvest, it will have major impact on the industry and create a level playing field where responsible companies do not have to compete with companies selling illegal timber. If EUTR is weak it will result in worse conditions than today.
- It is very unclear what type of verification of evidence is required to prove DD under the EUTR. Is it going to be document based and, in this case, where the documents will be checked – in the EU-based office or in the local field office of the country of purchase? If the credibility of documentation were to be audited only in the EU-offices, it would make forgery easier.
- How specifically does the information on origin have to be presented? If the concessions have the same risk profile, do they still have to be distinguished from each other?
- If the timber legality checks are directed more frequently to those operators handling big amounts of timber, then this creates a problem. In other words, the role of SMEs is controversial as they are more likely to break the law, but due to their size they would not be as likely candidates for extensive monitoring as the big companies. However, together they bring more timber to EU than any major company.
- Making VLC etc mandatory would not be feasible as it is a long process and there are not enough credited auditors available to carry out the task within the necessary time frame.
- Deviation of suppliers from the requirements, how are these handled and by whom?
- “Where applicable” should add to the integrity of the examined system. For supply chains where for example information on concession does not bring additional information, it is just expensive nice-to-know information.
- System-based DD wished for and probably likely but not clearly stated in the EUTR.
- We very much welcome the new Illegal Timber Regulation of the EC as it will be based on clear legal requirements and not on voluntary standards.
- We expect a clear list per country on the applicable legislation to be followed. We would very much appreciate the development of a unified document which is issued in each member state by authorities indicating the legality of the supplied wood. Such a document could be easily forwarded in the supply chain.
- A certificate for a responsible forest owner would be beneficial and could be passed down the supply chain.
- Clarifications on operator who brings wood to the market. For example, should a forest owner have a DDS as through selling the wood he places it in the market?
- Greater impetus and drive plus categorising risk in accordance with the EUTR guidance (when it comes out)
- If MOs are expected to function as “law and enforcement” then nobody wants to be MO as it’s simply too much work
- Increased expectations are expressed for the FLEGT-VPA process, but the active information dissemination on the actual implementation would be required for the operators

## **Annex 6 EN 45000: General requirements for bodies operating in product certification systems (ISO/IEC Guide 65:1999)**

**Contents:** requirement for certification bodies in order to implement reliable 3<sup>rd</sup> part certification systems.

### **Certification Body (CB)**

#### **Main requirements:**

- Not discriminating or trusting policies and procedures for obtaining the certification/authorization
- Access to certification not influenced by supplier size
- More requirements for the criteria on Guide ISO/IEC 7

**Organization characteristics:** independent, not partial, with juridical identity, financially stable, structured, with qualified staff and with a reliable quality management system.  
The CB has to check and update the skills of its staff.

The CB has to be competent and act according Guides ISO/IEC 25, ISO/IEC 39, ISO/IEC 62.

**Subcontracting** is possible if approved by the certification applicant. The Mo maintains the responsibility on certification issue and control.

#### **Quality management system (QMS):**

- The CB defines its own Quality policy
- The CB implement an effective QMS
- Need of a QMS manual

The CB has to provide **Conditions and Procedures** to issue, maintain, extend and suspend or revoke the certification.

The CB has to implement **systematically** and periodically **internal audits on the QMS**.

**Documents:** the CB has to easily provide documents about its own organization, the operational procedures and claiming procedures. The documents have to be properly delivered or displayed by electronic information systems.

**4. Registrations and Privacy system:** the CB as to establish an accurate registration system in line with local laws and with respect to Privacy rules and prescription.

**7. Claiming procedure:** has to be clearly defined and recorded by the CB.

**8. Certification:** clear procedure for application have to be defined (form) and the issued certification has to be used according to defined rules and scopes.

**Certification steps:** preparation to the audit, main audit, audit report, decision of the CB on the certification, documented and periodic monitoring by CB.

The CB insures the proper control on licence, trademark and logo use, according to Guide ISO/IEC 23.

## **Annex 7      Relevant Articles of Decision No 768/2008/EC**

DECISION No 768/2008/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC

### **[Extract]**

#### ***Chapter R4 - Notification of conformity assessment bodies***

##### ***Article R13 - Notification***

Member States shall notify the Commission and the other Member States of bodies authorised to carry out third-party conformity assessment tasks under this ... [act].

##### ***Article R14 - Notifying authorities***

1. Member States shall designate a notifying authority that shall be responsible for setting up and carrying out the necessary procedures for the assessment and notification of conformity assessment bodies and the monitoring of notified bodies, including compliance with the provisions of Article [R20].
2. Member States may decide that the assessment and monitoring referred to in paragraph 1 shall be carried out by a national accreditation body within the meaning of and in accordance with Regulation (EC) No 765/2008.
3. Where the notifying authority delegates or otherwise entrusts the assessment, notification or monitoring referred to in paragraph 1 to a body which is not a governmental entity, that body shall be a legal entity and shall comply *mutatis mutandis* with the requirements laid down in Article [R15(1) to (6)]. In addition it shall have arrangements to cover liabilities arising out of its activities.
4. The notifying authority shall take full responsibility for the tasks performed by the body referred to in paragraph 3.

##### ***Article R15 - Requirements relating to notifying authorities***

1. A notifying authority shall be established in such a way that no conflict of interest with conformity assessment bodies occurs.
2. A notifying authority shall be organised and operated so as to safeguard the objectivity and impartiality of its activities.
3. A notifying authority shall be organised in such a way that each decision relating to notification of a conformity assessment body is taken by competent persons different from those who carried out the assessment.
4. A notifying authority shall not offer or provide any activities that conformity assessment bodies perform or consultancy services on a commercial or competitive basis.
5. A notifying authority shall safeguard the confidentiality of the information it obtains.
6. A notifying authority shall have a sufficient number of competent personnel at its disposal for the proper performance of its tasks.

##### ***Article R16 - Information obligation on notifying authorities***

Member States shall inform the Commission of their procedures for the assessment and notification of conformity assessment bodies and the monitoring of notified bodies, and of any changes thereto. The Commission shall make that information publicly available.

##### ***Article R17 - Requirements relating to notified bodies***

1. For the purposes of notification, a conformity assessment body shall meet the requirements laid down in paragraphs 2 to 11.
2. A conformity assessment body shall be established under national law and have legal personality.
3. A conformity assessment body shall be a third-party body independent of the organisation or the product it assesses.  
A body belonging to a business association or professional federation representing undertakings involved in the design, manufacturing, provision, assembly, use or maintenance of products which it assesses,

may, on condition that its independence and the absence of any conflict of interest are demonstrated, be considered such a body.

4. A conformity assessment body, its top level management and the personnel responsible for carrying out the conformity assessment tasks shall not be the designer, manufacturer, supplier, installer, purchaser, owner, user or maintainer of the products which they assess, nor the authorised representative of any of those parties. This shall not preclude the use of assessed products that are necessary for the operations of the conformity assessment body or the use of such products for personal purposes.

A conformity assessment body, its top level management and the personnel responsible for carrying out the conformity assessment tasks shall not be directly involved in the design, manufacture or construction, the marketing, installation, use or maintenance of those products, or represent the parties engaged in those activities. They shall not engage in any activity that may conflict with their independence of judgement or integrity in relation to conformity assessment activities for which they are notified. This shall in particular apply to consultancy services.

Conformity assessment bodies shall ensure that the activities of their subsidiaries or subcontractors do not affect the confidentiality, objectivity or impartiality of their conformity assessment activities.

5. Conformity assessment bodies and their personnel shall carry out the conformity assessment activities with the highest degree of professional integrity and the requisite technical competence in the specific field and shall be free from all pressures and inducements, particularly financial, which might influence their judgement or the results of their conformity assessment activities, especially as regards persons or groups of persons with an interest in the results of those activities.

6. A conformity assessment body shall be capable of carrying out all the conformity assessment tasks assigned to it by ... [reference to relevant part of the legislation] and in relation to which it has been notified, whether those tasks are carried out by the conformity assessment body itself or on its behalf and under its responsibility.

At all times and for each conformity assessment procedure and each kind or category of products in relation to which it has been notified, a conformity assessment body shall have at its disposal the necessary:

- (a) personnel with technical knowledge and sufficient and appropriate experience to perform the conformity assessment tasks;
- (b) descriptions of procedures in accordance with which conformity assessment is carried out, ensuring the transparency and the ability of reproduction of those procedures. It shall have appropriate policies and procedures in place that distinguish between tasks it carries out as a notified body and other activities;
- (c) procedures for the performance of activities which take due account of the size of an undertaking, the sector in which it operates, its structure, the degree of complexity of the product technology in question and the mass or serial nature of the production process.

It shall have the means necessary to perform the technical and administrative tasks connected with the conformity assessment activities in an appropriate manner and shall have access to all necessary equipment or facilities.

7. The personnel responsible for carrying out conformity assessment activities shall have the following:

- (a) sound technical and vocational training covering all the conformity assessment activities in relation to which the conformity assessment body has been notified;
- (b) satisfactory knowledge of the requirements of the assessments they carry out and adequate authority to carry out those assessments;
- (c) appropriate knowledge and understanding of the essential requirements, of the applicable harmonised standards and of the relevant provisions of Community harmonisation legislation and of its implementing regulations;
- (d) the ability to draw up certificates, records and reports demonstrating that assessments have been carried out.

8. The impartiality of the conformity assessment bodies, their top level management and of the assessment personnel shall be guaranteed.

The remuneration of the top level management and assessment personnel of a conformity assessment body shall not depend on the number of assessments carried out or on the results of those assessments.

9. Conformity assessment bodies shall take out liability insurance unless liability is assumed by the State in accordance with national law, or the Member State itself is directly responsible for the conformity assessment.

10. The personnel of a conformity assessment body shall observe professional secrecy with regard to all information obtained in carrying out their tasks under ... [reference to the relevant part of the legislation] or any provision of national law giving effect to it, except in relation to the competent authorities of the Member State in which its activities are carried out. Proprietary rights shall be protected.

11. Conformity assessment bodies shall participate in, or ensure that their assessment personnel are informed of, the relevant standardisation activities and the activities of the notified body coordination group established under the relevant Community harmonisation legislation and apply as general guidance the administrative decisions and documents produced as a result of the work of that group.

(...)

#### **Article R22 - Application for notification**

1. A conformity assessment body shall submit an application for notification to the notifying authority of the Member State in which it is established.

2. That application shall be accompanied by a description of the conformity assessment activities, the conformity assessment module or modules and the product or products for which that body claims to be competent, as well as by an accreditation certificate, where one exists, issued by a national accreditation body attesting that the conformity assessment body fulfils the requirements laid down in Article [R17] of this ... [act].

3. Where the conformity assessment body concerned cannot provide an accreditation certificate, it shall provide the notifying authority with all the documentary evidence necessary for the verification, recognition and regular monitoring of its compliance with the requirements laid down in Article [R17].

#### **Article R23 - Notification procedure**

1. Notifying authorities may notify only conformity assessment bodies which have satisfied the requirements laid down in Article [R17].

2. They shall notify the Commission and the other Member States using the electronic notification tool developed and managed by the Commission.

3. The notification shall include full details of the conformity assessment activities, the conformity assessment module or modules and product or products concerned and the relevant attestation of competence.

4. Where a notification is not based on an accreditation certificate as referred to in Article [R22(2)], the notifying authority shall provide the Commission and the other Member States with documentary evidence which attests to the conformity assessment body's competence and the arrangements in place to ensure that that body will be monitored regularly and will continue to satisfy the requirements laid down in Article [R17].

5. The body concerned may perform the activities of a notified body only where no objections are raised by the Commission or the other Member States within two weeks of a notification where an accreditation certificate is used or within two months of a notification where accreditation is not used. Only such a body shall be considered a notified body for the purposes of this ... [act].

6. The Commission and the other Member States shall be notified of any subsequent relevant changes to the notification.

## **Annex 8      Definitions (Art. 2 EUTR)**

**Timber and timber products:** the timber and timber products set out in the Annex, 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, as defined in Article 3(1) of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste.

**Placing on the market:** 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. 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. The supply on the internal market of timber products derived from timber or timber products already placed on the internal market shall not constitute 'placing on the market'.

**Operator:** any natural or legal person that places timber or timber products on the market.

**Trader:** 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.

**Country of harvest:** the country or territory where the timber or the timber embedded in the timber products was harvested.

**Legally harvested:** harvested in accordance with the applicable legislation in the country of harvest.

**Illegally harvested:** means harvested in contravention of the applicable legislation in the country of harvest.

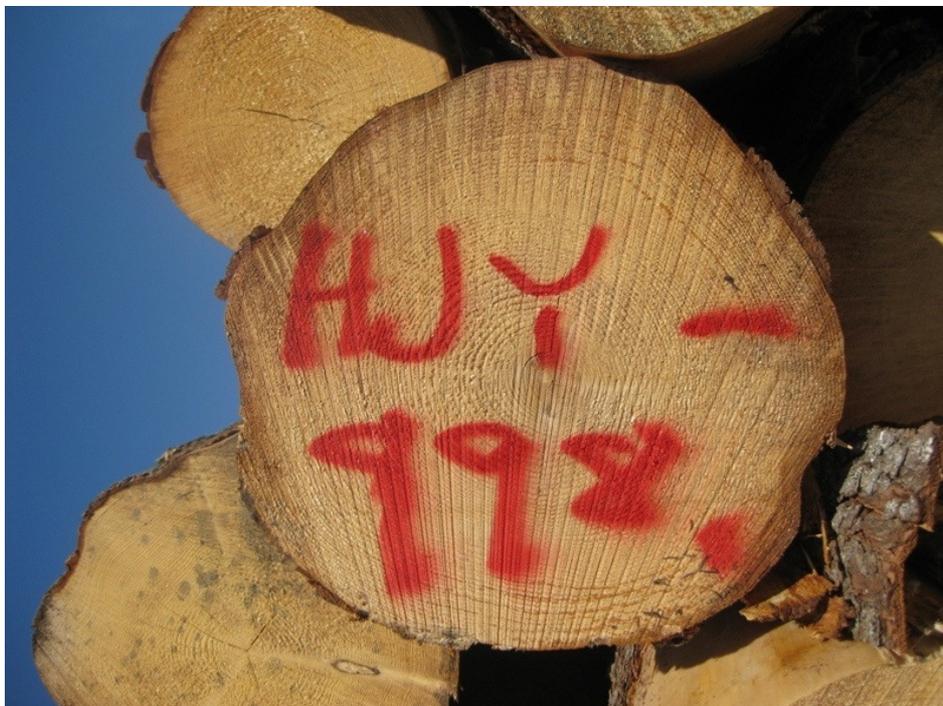
**Applicable legislation:** the legislation in force in the country of harvest covering the following matters:

- 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.

**Annex 9**      **Field visits**



*Checking the forest management plan and the timber transport on the filed  
Private forest owners, Hungary (6 April 2011)*



*Registration number of the truck that brought the timber to the sawmill  
Wood processing unit, Finland (24 May 2011)*



*Separation of different shipments before measurement*  
Wood processing unit, Finland (24 May 2011)



*Checking the processed shipment upon arrival*  
Timber importer, the Netherlands (27 May 2011)



*Prepared for customers*  
Timber importer, Belgium (27 May 2011)



*Record keeping from 2011 and 1906, still mainly based on paper documents*  
Timber importer, the Netherlands (27 May 2011)

Additional field visit was carried out at a timber importer in Germany (30 May 2011)