



Two years of the EU Timber Regulation – FSC’s evaluation and proposals for improvement

March 2015

The European Commission has started an evaluation of the European Union Timber Regulation (EUTR), which entered into force on 3 March 2013. It will present its report to the European Parliament and Council of Ministers by December 2015. FSC welcomes this opportunity to comment on the practical application of the Regulation so far, particularly in relation to the placing of FSC-certified wood and products on the EU market.

Summary: Key feedback for the EUTR review

In this document, FSC International presents its evaluation of the implementation of the EUTR so far, and its proposals for improvement. Responsibility for the content rests with FSC International, but it also captures feedback from many FSC members and stakeholders, including large global environmental organizations, major wood processing and retailing companies, and national FSC offices. We are keen to see our proposals appear in the further discussions on the future of the EUTR.

Our key messages for the EUTR review are:

- Unqualified support from FSC for the objectives of the EUTR.
- The FSC system has been evaluated and adapted to better comply with the specific requirements of the EUTR, and FSC has taken action to inform and mobilize its stakeholders to engage in compliance.
- An extension of the scope of product categories is needed.
- An end to poor enforcement or non-enforcement in a number of EU Member States is urgent.
- An improved and harmonized performance of competent authorities (CAs) across the EU is essential for constructive cooperation of the business sector.
- FSC calls for more, EU-wide consensus and clarity about, and recognition of, the role and value of FSC certification as part of the due diligence system (DDS) required by the EUTR, and offers its cooperation in clarifying its system and in sorting out the specifics of such recognition.

FSC’s engagement for legal and sustainable forest management

FSC, its members, certificate holders, and license-holders such as retailers, support the EUTR, as well as legislation in other countries (US, Australia) that aims to contribute to the fight against illegal logging and the illegal timber trade. We regard such practices as undermining sustainable development in timber-producing countries. In particular they are a chal-



lenge to bona fide foresters who want to manage their forests in an environmentally and socially responsible manner, as well as for forest-based industries aiming to source from such foresters.

On the other hand, FSC counts on the EU to ensure that the enforcement of the EUTR does not complicate the promotion of credible and effective schemes focusing on sustainable forest management (SFM), in particular the FSC scheme, which is widely recognized as the best-performing certification scheme amongst diverse social, environmental and economic stakeholders and procuring authorities across the globe. This expectation is based on the FLEGT Action Plan, of which the EUTR is an implementing tool, which places legality “*in the context of the overall efforts of the European Community to achieve **sustainable forest management**, both within and outside the EU.*” (FLEGT Action Plan, emphasis added) The link between legality and SFM is also made in the EUTR, which includes in its motivation the statement that illegal logging “*undermines sustainable forest management.*” (EUTR Recital 3)

Legality of harvesting has been the first principle of the *FSC Principles and Criteria for Sustainable Forest Management* since FSC’s founding (1994). It is integrated into National FSC Forest Stewardship Standards, which include specific indicators for compliance with this principle, and accredited FSC certification bodies evaluate the compliance of forest management units (FMUs) on (at least) an annual basis. Furthermore, FSC has rules and practices for systematic stakeholder engagement which also allow interested parties to raise complaints about alleged practices against the principles and criteria. In practice, as far as we know, complaints against foresters about violations of certificate requirements seldom or never concern illegal harvesting practices.

FSC’s concern about legality goes beyond the products that come with an FSC claim. Its *Policy for Association* requires all members and certificate holders to prevent any involvement with illegal harvesting and trade of illegal wood products, in addition to five other requirements. If a certificate holder violates this policy, FSC can decide to withdraw its FSC certificate(s) and, where applicable, membership of the organization. A recent example of such a measure was the disassociation, announced on 12 February 2015, of the Danish company DLH, as FSC considered it proven that the company had traded (non-certified) illegal timber from Liberia.¹

The scope of the EUTR

According to FSC stakeholders, the scope in terms of products, as defined in the Annex of the EUTR, has illogical limitations. Most clearly this concerns printed media and seats, covered in chapters 49 and 9401 respectively of the *Combined Nomenclatura*.

Exemption of printed media is an incentive to print books and magazines outside the EU. As imports of printed media amount to €3 billion per year, and it is hard to understand why it should remain outside the scope of the EUTR. The exclusion of seats is another decision that

¹ For more information, see: <https://ic.fsc.org/newsroom.9.1065.htm>

is difficult to understand. We see no reason to separate seats from tables, beds or other furniture. The exemption is impossible to explain, either to the EU public and policy makers, or to the furniture industry outside the EU.

Beyond printed media and seats, several FSC stakeholders would like to see further extensions of the scope, for example, to include musical instruments and/or packaging material. It was also suggested that the logic of the Annex be reversed, so that it lists exempted products rather than included ones.

An assessment of EUTR implementation

Commission information shows that at least seven EU countries have not started inspections, and that some others have started only recently. Most of the seven that have not started can be considered as important import/transit countries for timber, including timber from countries with high risk of illegality². This is the most visible level of weakness in current implementation.

As regards the countries where enforcement has started, the following list presents an overview of the experience of a number of operators that are FSC members and/or certificate holders:

- *Insufficient expertise of inspectors.* The impression is that inspectors were often not well-trained: forest product supply chains are a completely different issue from food safety. This insufficient expertise has led to focus on documentation and formalities rather than efficiency and result-oriented approaches.
- *Different interpretations of the EUTR requirements between CAs from different countries or even between individual inspectors within one country.* This relates to different elements, such as:
 - o *“measures and procedures providing access to [...] information.”* (EUTR 6.1.a)
Some inspectors insist that an operator needs to have full sets of documents related to any shipments, rather than having an efficient system in place to check the legal performance of the providers at regular intervals. Some inspectors seem to ignore the flexibility and proportionality built into DDS requirements and go for a maximalist, bureaucratic interpretation.
 - o Confusion and different approaches about what *“negligible risk”* in the EUTR means in relation to the ‘low risk’ that certification and verification schemes usually apply.
 - o The application of certification – see separate section below.
- *Lack of transparency.* It appears that several operators have not received evaluation reports of inspections of their DDS. We regard this as unacceptable. An operator should be fully informed, in a timely manner, about how the CA regards its performance.

The appreciation of FSC certification by competent authorities in practice

² See the European Commission scoreboard. The information about the seven non-complying countries comes from the 17/2/15 version. In October 2014, 10 countries had not started. See: http://ec.europa.eu/environment/forests/timber_regulation.htm



In the past two years, FSC has had many contacts with operators and their suppliers regarding FSC-certified materials. We have learnt that there is frustration about the limited understanding of CAs about how certification schemes work, the under-appreciation of FSC certification as a reliable tool to mitigate risk, and the lack of clear guidance about what else is required to assess and mitigate risk.

Obviously, the risk level of the country of harvest, the species used and the complexity of the supply chain are legitimate reasons for specific levels of vigilance, but even that seems not to be required in a consistent way. Operators who import materials via different Member States may be confronted with different approaches, even if the country of harvest, species and the complexity of the supply chain are identical. This inconsistency in approach is not acceptable.

The way CAs interpret the role of FSC certification in EUTR compliance is problematic. It has raised doubts in the business sector as to whether FSC certification can be relied on as proof of legal sourcing, which is the first and very important building block for sustainable sourcing. This can become particularly problematic for operations in those countries with a high risk of illegal practices, where certification matters most.

In practice, when timber does not originate from a low risk country, instead of inspectors simply conducting sample checks of the quality of FSC's risk assessment, operators have been asked to duplicate efforts and conduct a full, separate risk assessment. At the same time, inspectors have been rather vague on what the additional efforts should include, besides verifying the value of the FSC certification itself.

In one country at least, even audit reports of FSC-certified FMUs were not regarded as sufficient evidence, and inspectors insisted on seeing logging licenses. This is incomprehensible firstly because logging licenses are not sufficient evidence of legal harvesting and trade as the EUTR defines it, and secondly, because FSC's annual audit reports summarize a certificate holder's compliance with a range of legal requirements which go beyond the scope of the EUTR, and are published by an independent third party certification body.

Possibly, at least some of these problems result from a too narrow interpretation of Article 6b of the EUTR, on risk assessment. This lists five criteria for risk assessment, but mentions certification as tool in relation only to the first criterion, on "*compliance with applicable legislation*" (EUTR 6b). It is however hard to understand why FSC certification would not be relevant for the other four criteria, which are:

2. *prevalence of illegal harvesting of specific tree species*
3. *prevalence of illegal harvesting or practices in the country of harvest and/or sub-national region where the timber was harvested, including consideration of the prevalence of armed conflict*
4. *sanctions imposed by the UN Security Council or the Council of the European Union on timber imports or exports*
5. *complexity of the supply chain of timber and timber products.*

Specifically, we suggest that:



ad. 2: If “*compliance with applicable legislation*” is assured through auditing by a certification body, and laid down in public reports, why is research on the second criterion still relevant?

ad. 3: If “*compliance with applicable legislation*”, is assured through auditing by a certification body, and laid down in public reports, why is research on the third criterion still relevant?

ad. 4: Measures taken in 2013 include compliance by FSC chain of custody (CoC) certificate holders with trade and customs laws in relation to exports of wood/products with an FSC claim. Where applicable, this includes national compliance with international bans (not a current issue in the EU). The forthcoming revision of the FSC CoC Standard will also make it explicit that import bans, where they exist, are covered, which may become relevant to the EU in future. FSC’s rules on controlled wood (CW) also explicitly refer to UN bans.

ad. 5: Why would FSC certification not be relevant in assessing the risk of “*the complexity of the supply chain of timber and timber products*”? In fact, what better system exists for linking legality of sourcing with the end product in a complex supply chain – starting from multiple forest concessions, sometimes in more than one country, and passing through several stages of trade and processing – than FSC’s chain of custody verification scheme?

FSC is eager to increase awareness and understanding amongst CAs on how our system can be an effective tool for EUTR compliance.

Why is FSC a reliable risk assessment and risk management tool for EUTR?

FSC respects that the current EUTR does not provide a green lane for certification and legality verification schemes. It also recognizes that not all schemes are of the same quality. It welcomes *Implementing Regulation 607/2012*, which presents quality checks for such schemes. While these checks are offered for companies that have to comply with due diligence requirements, FSC encourages its use by CAs as well.

In support of the EUTR, FSC has taken measures to ensure its requirements are aligned with this regulation, as well as with similar US and Australian laws where appropriate. This was done by:

- further elaborating its definition of legality
- incorporating trade and customs laws into FSC’s CoC and CW requirements
- ensuring that where the FSC definition of ‘reclaimed material’ is not in line with the concept of ‘waste’ in the EUTR, due diligence is applied.

In a separate decision FSC issued an advice note which obliged certificate holders to cooperate in collecting, on requests from clients, information about origin, species and legality. More information can be found on the FSC webpage: <https://ic.fsc.org/ensuring-compliance.493.htm>

The FSC certification scheme includes requirements of legal harvesting for certified foresters. Third parties, so-called FSC accredited certification bodies, audit the performance of such foresters against these and other requirements. The FSC definition of legal harvesting covers all



elements of the EUTR definition. Public summaries of the audit reports are available. Certification bodies have a duty to act on violation of the requirements, which can eventually lead to suspension or withdrawal of certificates. Complaints procedures allow stakeholders to alert certification bodies and eventually the overseeing international accreditation body, as well as FSC International, about (perceived) violations.

Trading and processing materials from FSC-certified forests is regulated by the FSC CoC standards and directives. Materials entering the EU with an FSC certificate have been checked all along the supply chain, starting from the forest, resulting in low risk that non-certified materials have entered the chain. The CoC standard also requires compliance with trade and customs laws.

FSC allows other materials to be mixed with FSC-certified wood under strict conditions. When it is claimed that these other materials are of recycled origin, this needs to be checked. A certain amount of non-certified virgin material – so-called ‘controlled wood’ (CW) – can be added to final FSC-labelled products. This CW also has to be checked on compliance with obligations about legal origin, amongst other things. These obligations also cover the EUTR scope of legality. Certification bodies control the application of CW assessments by companies, and within the next two years, all countries where CW originates will have gone through regularly updated national risk assessments implemented by FSC itself.

The need for improvements at the EU and the national levels

The EUTR should become effective in preventing the use of illegally harvested timber and derived products in the EU and therewith reduce the attractiveness of illegal harvesting in exporting countries. And, in keeping with the FLEGT Action Programme’s wider purpose of promoting SFM, it should implicitly support the work of an effective forest certification scheme such as FSC.

We therefore propose the following improvements:

- Extension of the scope of the EUTR to further product groups, with as a minimum the inclusion of printed media and seats.
- Legal action against Member States that do not enforce the EUTR on the ground.
- A reinforced, transparent and harmonized approach by CAs in all Member States.
- Clarification and better recognition of the role of certification in the implementation of the EUTR.

For the last two elements we have specific proposals (see below) and an offer of assistance.

A reinforced, transparent and harmonized approach by CAs in all Member States.

For three reasons, it is very important that the CAs create a level playing field across the EU:

- Fair competition between companies active in different Member States.
- Consistency towards companies that operate in more than one Member State.
- Clarity for suppliers outside the EU about what is expected from them (e.g. contributing to DDSs of their clients), irrespective of which Member State they supply.



We propose that the EC and the FLEGT Committee agree on a **Guidance Document** addressing the CAs, which includes at least the following elements:

- Public registers of operators in all countries (following the example of Germany) – possibly complemented with an international register managed by the Commission.
- Minimum requirements for the expertise of inspectors, including an understanding of supply chains and certification in the forestry sector.
- Rules about communication with operators, including submission of final reports.
- Minimum achievement levels in terms of inspections related to the number of operators in the country.
- A shared interpretation across the EU of what is meant by “*negligible risk*” in the EUTR, with no artificial or vague distinctions between negligible risk and ‘low risk’, in particular FSC’s definition and application of low risk.
- A common approach in terms of requirements for the three dimensions of the DDS, with in particular:
 - o coordinated and publicly available (dynamic) assessments of risk levels for all relevant countries in the world
 - o coordinated and publicly available (dynamic) interpretations of what are considered sensitive species [CITES or more?]
 - o clarity on what is meant by “*having access to information*” in the EUTR DDS
 - o valuation of certification.

With respect to the last point, FSC calls for appreciation of the robustness of its system for reducing the risk that illegal wood is part of certified imports or domestic harvesting to “*negligible*” risk in EUTR terms, or low risk in FSC terms. In particular, FSC pleads for non-ambivalent guidance clarifying the conditions under which FSC certificates are sufficient as risk assessment and risk mitigation.

With regards to these conditions we propose the following:

- The “*access to information*” requirement remains for FSC-certified materials, including information on country of harvest and the specific species involved. But with regards to the last element: “*documents or other information indicating compliance of those timber and timber products with the applicable legislation*” (EUTR Article 6.1.a last indent), an FSC certificate from the supplier to the operator is sufficient evidence for low risk countries, and for high risk countries that the audit reports of the relevant FMU(s), and/or CW verification documentation, in addition to the FSC certificate, should suffice.
- Regarding the risk assessment procedure, a valid FSC certificate from the supplier will do for low risk countries. The operator has to show how they regularly control the validity of FSC certificates with shipments. In case of medium and high risk countries and/or complex supply chains, the operator shows how they use FSC tools to control the reliability of specific supply chain(s), how they verify information about the performance of the FSC-certified FMUs or FSC CW in the country of harvest.
- Regarding risk mitigation, in principle FSC certification should be sufficient to mitigate risk. However, when the material comes from high risk countries and/or the supply chain is



complex, the operator may be asked to show that they have taken relevant steps as mentioned above to check the reliability of the certificate.

Above we have focused on FSC specifically. We have confidence in our own scheme and we do not speak for other schemes that may not perform the same way as FSC with regard to legality. We urge the EC and Member States not to refrain from action to ensure a just treatment of FSC certification just because there are other schemes that may be less reliable, and to seek a tailor-made solution. The wider objective of promoting SFM, in particular in countries where it matters most, should be taken into account.

FSC's offer of support

FSC supports the EUTR and wants to see it work properly. FSC would be pleased to cooperate with the Commission and the FLEGT Committee on the elaboration of the guidance mentioned above. In particular when it comes to guidance about the value of certification, we think our role is essential, first of all to ensure full understanding of our scheme, but also to pick up issues where we may have to further adapt our scheme and/or advise our certificate holders about specific action to take.

Why should the Commission and Member States work specifically with FSC? The answer lies in the relevance of the FSC scheme in the countries which we can regard as medium or high risk for illegal logging. In the world outside the EU, in Australia, Canada, the European Free Trade Association, Japan, New Zealand, and the USA:

- 94 million hectares of forest are certified, more than 80% with an FSC certificate
- 9500 forest industries are certified, more than 91% with an FSC certificate.

Moreover, as mentioned above, FSC is developing risk assessments for countries where material used as FSC CW is harvested, a unique exercise in which legality is an important part.³

Our standards have been amended to comply with all requirements of the EUTR, and the revisions of the CW and CoC standards will further reinforce that.

Our membership includes the biggest importers of wood in Europe, and national and international environmental organizations with large constituencies.

Our national offices and our members are also keen to assist CAs in better understanding timber supply chains in general and the FSC scheme in particular, a process that has already started, most notably in Germany.

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³ For details on the development of this exercise, see <https://ic.fsc.org/national-risk-assessments.310.htm>