

EU & UK Timber Regulation (EU/UK TR)



All CPI Members dealing in paper or pulp have an existing legal obligation under EUTR to operate and document systems to comply with the legislation. From 1/1/21 onwards the EUTR requirement is replaced by a UKTR requirement.

Regulations are in force across the EU (from March 2013) to enforce a ban on the sale and subsequent onward sale of illegally harvested timber/timber products (including pulp and many paper products) by placing new obligations on those handling regulated materials. Timber (and timber derived products such as pulp & paper) made both inside and outside the EU are included within the scope of regulation. Compliance can be via a company operated system or through the services of an accredited Monitoring Organisation.

EUTR compliance seeks to ensure legal harvesting by imposing three key requirements:

- A ban on placing on the EU market timber or timber products from illegally harvested sources.
- Requiring those placing timber or timber products on the market "for the first time" to exercise due diligence to ensure the products are legally harvested.
- Requiring those subsequently dealing in obligated products to record who they purchase from and who they sell onto.
- An overview of the scheme and European Commission interpretation can be found at: <http://ec.europa.eu/environment/forests/timber-regulation.htm>

UK advice can be found at:

<https://www.gov.uk/guidance/eu-timber-regulation-guidance-for-business-and-industry>

Note that **recycled materials are exempted from EUTR obligation**, subject to proof they have been classed as waste at some stage.

How it works

EUTR divides those handling timber/timber products into two types, with different obligations placed on each group:

Operators - A requirement for those placing timber or timber products on the market for the first time to exercise and prove "due diligence" in complying with the Regulations. Operators must also retain records concerning their supply and risk mitigation procedures. If it is not possible to document that illegality is low risk, then the product cannot be placed on the market.

Traders – Defined as those who trade the products further down the supply chain - meaning after they have been placed on the EU market for the first time by an Operator. Traders have a greatly simplified requirement, limited to maintaining records of who they purchased products from and any trader they have sold them onto (but not including any final retail customer).

The system is designed to allow the Regulator to track products back through the supply chain to reach the Operator where the proof of legality/compliance can be assessed.

While attention is focussed on illegal logging outside the EU, all regulated timber/timber products are obligated irrespective of their origin; so material harvested within the EU is included within the scope of regulation.

Regulated materials include pulp, paper and wood fuels - a full copy of the EU Regulation (including a list of regulated products in the Annex (pulp & paper are at the very end)) can be found via:

<http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2010:295:SOM:EN:HTML>

While sustainability is critically important, proof of sustainability is not required for EUTR compliance. This can be a point of difference from independent certification schemes where the focus is on sustainability and not simple legality.

Implementation in the UK

Each Member State has nominated a competent authority to administer the system within its boundaries – in the UK this responsibility has been placed on the Office for Product Standards and Safety (OPPS) – part of BEIS operating on behalf of Defra.

UK administration of the scheme is 'robust and proportionate,' with 'dissuasive' penalties to ensure compliance. Full details of the UK enabling regulation together with a useful discussion of subsequent amendments can be found at:

<http://www.defra.gov.uk/consult/2012/12/27/timber-regs-2013/>

A copy of the Statutory Instrument (as amended) can be found at:

<http://www.legislation.gov.uk/ukxi/2018/1025/made>

Essentially the following are subject to penalty - potentially unlimited fines, two year's imprisonment and product seizures (though minor offences are capped at a maximum fine of £5,000):

- Placing illegally harvested timber on the EU market.
- Failing to apply due diligence when placing timber on the EU market.
- Failing to maintain a due diligence system.
- Failing to act on a remedial notice.
- Failing to comply with the requirements for traceability.
- Failing to maintain maintained proper records of transactions for 5 years.
- Obstructing an inspector.

Regulation is under criminal law meaning prosecutions will be more difficult to mount (having a higher burden of proof than prosecutions under civil law), but potential penalties are more severe. The limited number of prosecutions have focused on the lack of a due diligence system.

Regulation of the scheme entails random and targeted checks on operators, including on-site visits and the examination of records that must be retained for a minimum of five years.

Unlike in some Member States there is no central register of obligated companies, nor a requirement for registration with the regulator. The OPPS has a preference to work by persuasion, with prosecution only as a last resort for those flagrantly ignoring the rules. Their hierarchy of approach is:

- Education
- Informal Warning
- Enforcement Undertaking
- Compliance/Enforcement/ Stop Notice
- Formal Caution
- Fines
- Product Withdrawal/Seizure
- Court Action
- Publicity

Products regulated by EUTR (see the end of this note for a full list).

The definition of regulated timber products includes all common grades of pulp & paper as well as some bio-fuels:

- Pulp and paper of Chapters 47 and 48 of the Combined Nomenclature, with the exception of bamboo-based and recovered (waste and scrap) products
- 4401 Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms

(Code 4819 includes coverage of "Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibres; box files, letter trays, and similar articles, of paper or paperboard, of a kind used in offices, shops or the like").

A full copy of the Combined Nomenclature can be found via (C47 & 48 from pg 319 et seq):

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32010R0995>

Products listed under other codes are not regulated by EUTR.

It is quite feasible that a product could be regulated under EUTR until it is made into something else at which stage it is no longer regulated.

Commission Guidance note

The European Commission has published a guidance note not directly available on the web; for convenience a copy can be found at:

<https://thecpi.org.uk/library/PDF/Mfiles/MemberBriefings/CommissionGuidanceFeb16.pdf>

This Guidance carries no legal weight (as the underlying legislation remains unchanged) but will be used by Regulators.

A number of topics are addressed within this guidance, including:

- Definition of placing on the market
- Definition of negligible risk
- Clarification of 'complexity of the supply chain'
- Clarification of the requirement for documents showing timber's compliance with applicable legislation
- Clarification of product scope – packaging materials
- Clarification of product scope – waste & recovered materials
- The role of third-party verification in risk assessment and mitigation
- Regular evaluation of a due diligence system
- Composite products
- Treatment of agents
- Treatment of monitoring organisations

Requirements placed on Operators

Those placing timber or timber products on the EU market ('operators') **must have an appropriate due diligence system.**

Article 2 of the EU Regulation defines placing on the market as – 'the supply by any means, irrespective of the selling technique used, of timber or timber products for the first time on the internal market for distribution or use in the course of a commercial activity, whether in return for payment or free of charge. 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''

One of the issues addressed in the Guidance Note is the definition of an Operator.

The Guidance states:

Where timber is being harvested in the EU or imported into the EU for the first time in the course of a commercial activity, the following definitions of 'operator' apply:

(a) For timber harvested within the EU, the operator is the entity that distributes or uses the timber once it has been harvested.

(b)(i) For timber harvested outside the EU, the operator is the entity acting as the importer when the timber is cleared by EU customs authorities for free circulation within the EU. In the majority of cases, the importer can be identified as the named or numbered "Consignee" in Box 8 of the customs declaration

document (the Single Administrative Document). (b)(ii) For timber or timber products imported to the EU, the definition of 'operator' is independent of the ownership of the product, or other contractual arrangements.

All operators, whether EU- or non-EU based, must comply with the prohibition on placing illegally harvested timber on the market and the obligation to exercise due diligence.

Advice from the OPPS is that the organisation named in box A of Customs Form C88 is normally classed as the Operator.

Due Diligence Systems - Quoting from the UK Briefing Note, each diligence system needs to have the following elements:

- *Information about the supply of timber products, including description, species, country of harvest, quantity, name and address of supplier and trader and documents indicating compliance with the applicable legislation.*
- *Evaluation of the risk of placing illegally harvested timber and timber products on the market. Criteria which can be used to assess this risk include:*
 - *Assurance of compliance with applicable legislation, including certification schemes, third party verification.*
 - *Prevalence of illegal harvesting of specific tree species.*
 - *Prevalence of illegal logging in the country of harvest.*
 - *UN or EU sanctions on timber imports or exports.*
 - *Complexity of the supply chain.*
- *Unless the risk of illegality is negligible, takes steps to **mitigate this risk**; for example, additional information, third party verification. FSC/PEFC etc are not considered to be sufficient for compliance, but they are ways of minimising risk.*

Accordingly Operators are required to operate systems to comply with the above legal requirements and then assess (and document) the findings to ensure the risk of illegal timber entering the supply chain is minimised. However for continued production processes (such as pulp and paper production), it is not feasible to fully comply with the above requirements for technical reasons – this is even more difficult if the Operator is not the actual producer. The OPPS is aware of this issue and is prepared to accept an alternative approach as long as the principles of the scheme are respected and the risk of illegally harvested timber entering supply chains is risk assessed and minimised.

Requirements placed on Traders

The system is designed to be enforced on those first importing materials into the EU/harvesting within the EU – responsibility on those further down the supply chain is effectively limited to recording information on supply chain sales (both upstream and downstream) to allow tracking of materials by Regulators.

Article 2 defines 'trading' as; 'any natural or legal person who, in the course of a commercial activity, sells or buys on the internal market timber or timber products already placed on the internal market'

Information from Traders is limited to details of who the products were purchased from and who they have been sold onto.

Excluded from Regulation

To quote from the note, Article 2 states;

(a) "Timber and timber products means the timber and timber products as set out in the Annex, **with the exception of timber and timber products or components of such products manufactured from timber and 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"

The Annex to the EU Timber Regulation includes;

4415 Packing cases, boxes, crates, drums and similar packing, of wood; cable-drums of wood; pallets, box pallets and other load boards, of wood; pallet collars of wood (**Not packing material used exclusively as packing material to support, protect or carry another product placed on the market.**) Pulp and paper of Chapters 47 and 48 of the Combined Nomenclature, **with the exception of bamboo-based and recovered (waste and scrap) products**

This indicates that;

- Legally defined 'waste' used for recycling is excluded from EUTR.
- Packaging when used as packaging is excluded from EUTR (unlike packaging when sold to be used as packaging which is obligated).

Role of Certification Schemes. While certified or controlled wood does not automatically prove compliance with EUTR, it does provide an important starting point for the risk assessment **that is still required**; so if the material is independently certified and is from a low risk area the risk assessment will be

simple. Both FSC and PEFC have changed their systems to more closely aligned with the requirements of EUTR.

Due diligence in establishing the legal origin of timber and timber products (PAS 2021). This joint publication by BSI and WWF is a helpful tool in developing and assessing compliance systems. However, it could be argued that it does encourage 'traders' to go further than legally required for EUTR compliance in information requests from 'operators' that some may consider infringe on commercial confidentiality. A free copy can be downloaded from the BSI web-store.

Brexit. The UK has copied the EUTR legislation into domestic law, meaning the principles of the scheme will be unchanged beyond amendments so that any imports from the EU to the UK also become subject to due diligence checks and importers being classed as 'Operators'. (Also note that not all EU countries would be assessed as low risk for illegal harvesting, potentially further complicating imports from some Member States).

So, subject to any potential trade deal, it looks likely that materials transferring between the UK and the EU will be classed as entering their respective market for the first time and be subject to the more rigorous Operator requirements.

While more briefing is promised, a present a few more details are contained in the UK Border Operations Manual at pages 87 & 193.

<https://www.gov.uk/government/publications/the-border-operating-model>

"Imports of timber and timber products from the EU will be subject to new due diligence checks to ensure the goods have not been illegally harvested as set out in the UK Timber Regulation.

This represents a change from current regulations, whereby timber and timber products that have been placed on the EU internal market do not require due diligence checks when imported to GB.

The importing operator (i.e. the person placing the timber or timber products on the market for the first time) must exercise due diligence to ensure the goods have not been illegally harvested. This consists of gathering supply chain information on the timber from the EU exporter, assessing the risk of the timber having been illegally harvested and mitigating any identified risk accordingly. This will need to be undertaken before the timber can be placed on the GB market."

The Commission has also issued a preparedness note stating that from 1/1/21 onwards the UK will be outside

the scheme and (after a short period to allow for the use of material on the market before 31/12/20) any materials imported from the UK will be treated as from outside the EU and so require full Operator treatment (note also the different treatment for materials going to Northern Ireland – see also the Northern Ireland Protocol - <https://www.gov.uk/government/publications/moving-goods-under-the-northern-ireland-protocol>).

https://ec.europa.eu/environment/forests/pdf/Notice-to-stakeholders-brexil_illegal_logging_and_associated_trade_en.pdf

Products included in the scope of EUTR

Copied from;
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.

Timber and timber products as classified in the Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 (1), to which this Regulation applies;

- 4401 Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms
 - 4403 Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared
 - 4406 Railway or tramway sleepers (cross-ties) of wood
 - 4407 Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end-jointed, of a thickness exceeding 6 mm
 - 4408 Sheets for veneering (including those obtained by slicing laminated wood), for plywood or for other similar laminated wood and other wood, sawn lengthwise, sliced or peeled, whether or not planed, sanded, spliced or end-jointed, of a thickness not exceeding 6 mm
 - 4409 Wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, V-jointed, beaded, moulded, rounded or the like) along any of its edges, ends or faces, whether or not planed, sanded or end-jointed
 - 4410 Particle board, oriented strand board (OSB) and similar board (for example, waferboard) of wood or other ligneous materials, whether or not agglomerated with resins or other organic binding substances
 - 4411 Fibreboard of wood or other ligneous materials, whether or not bonded with resins or other organic substances
 - 4412 Plywood, veneered panels and similar laminated wood
 - 4413 00 00 Densified wood, in blocks, plates, strips or profile shapes
 - 4414 00 Wooden frames for paintings, photographs, mirrors or similar objects
 - 4415 Packing cases, boxes, crates, drums and similar packings, of wood; cable-drums of wood; pallets, box pallets and other load boards, of wood; pallet collars of wood
(Not packing material used exclusively as packing material to support, protect or carry another product placed on the market.)
 - 4416 00 00 Casks, barrels, vats, tubs and other cooper's products and parts thereof, of wood, including staves
 - 4418 Builders' joinery and carpentry of wood, including cellular wood panels, assembled flooring panels, shingles and shakes
 - Pulp and paper of Chapters 47 and 48 of the Combined Nomenclature, with the exception of bamboo-based and recovered (waste and scrap) products
 - 9403 30, 9403 40, 9403 50 00, 9403 60 and 9403 90 30 Wooden furniture
 - 9406 00 20 Prefabricated buildings
- (1) Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

Products not included in the scope of EUTR

- 4202 Trunks, suitcases, vanity cases, executive-cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; travelling-bags, insulated food or beverages bags, toilet bags, rucksacks, handbags, shopping-bags, wallets, purses, map-cases, cigarette-cases, tobacco-pouches, tool bags, sports bags, bottle-cases, jewellery boxes, powder boxes, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanised fibre or of paperboard, or wholly or mainly covered with such materials or with paper
- 4417 Tools, tool bodies, tool handles, broom or brush bodies and handles, of wood; boot or shoe lasts and trees, of wood

- 4419 00 Tableware and kitchenware, of wood
- 4420 Wood marquetry and inlaid wood; caskets and cases for jewellery or cutlery, and similar articles, of wood; statuettes and other ornaments of wood; wooden articles of furniture not falling in Chapter 94
- 4421 Other articles of wood; clothes hangers (includes garden trellis and toilet seats)
- 45 CORK AND ARTICLES OF CORK
- 46 MANUFACTURES OF STRAW, OF ESPARTO OR OF OTHER PLAITING MATERIALS; BASKETWARE AND WICKERWORK
- 49 PRINTED BOOKS, NEWSPAPERS, PICTURES AND OTHER PRODUCTS OF THE PRINTING INDUSTRY; MANUSCRIPTS, TYPESCRIPTS AND PLANS
- 64 FOOTWEAR, GAITERS AND THE LIKE; PARTS OF SUCH ARTICLES
- 65 HEADGEAR AND PARTS THEREOF
- 66 UMBRELLAS, SUN UMBRELLAS, WALKING STICKS, SEAT-STICKS, WHIPS, RIDING-CROPS AND PARTS THEREOF
- 82 TOOLS, IMPLEMENTS, CUTLERY, SPOONS AND FORKS, OF BASE METAL; PARTS THEREOF OF BASE METAL
- 85 ELECTRICAL MACHINERY AND EQUIPMENT AND PARTS THEREOF; SOUND RECORDERS AND REPRODUCERS, TELEVISION IMAGE AND SOUND RECORDERS AND REPRODUCERS, AND PARTS AND ACCESSORIES OF SUCH ARTICLES
- 87 VEHICLES OTHER THAN RAILWAY OR TRAMWAY ROLLING STOCK, AND PARTS AND ACCESSORIES THEREOF
- 90 OPTICAL, PHOTOGRAPHIC, CINEMATOGRAPHIC, MEASURING, CHECKING, PRECISION, MEDICAL OR SURGICAL INSTRUMENTS AND APPARATUS; PARTS AND ACCESSORIES THEREOF
- 91 CLOCKS AND WATCHES AND PARTS THEREOF
- 92 MUSICAL INSTRUMENTS; PARTS AND ACCESSORIES OF SUCH ARTICLES
- 9401 Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof
- 9402 Medical, surgical, dental or veterinary furniture (for example, operating tables, examination tables, hospital beds with mechanical fittings, dentists' chairs); barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements; parts of the foregoing articles:
- 9404 Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered
- 9405 Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:
- 95 TOYS, GAMES AND SPORTS REQUISITES; PARTS AND ACCESSORIES THEREOF
- 96 MISCELLANEOUS MANUFACTURED ARTICLES:
- 9603 Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand operated mechanical floor sweepers, not motorised, mops and feather dusters; prepared knots and tufts for broom or brush making; paint pads and rollers; squeegees (other than roller squeegees)
- 9606 Buttons
- 9608 Pens
- 9609 Pencils (other than pencils of heading 9608), crayons, pencil leads, pastels, drawing charcoals, writing or drawing chalks and tailors' chalks
- 9614 00 Smoking pipes (including pipe bowls) and cigar or cigarette holders, and parts thereof
- 9619 00 Sanitary towels (pads) and tampons, napkins and napkin liners for babies, and similar articles, of any material
- 97 WORKS OF ART, COLLECTORS' PIECES AND ANTIQUES