



UNDERSTANDING REGULATION (EU) 995/2010 OF THE EUROPEAN UNION AND OF THE COUNCIL

**A DISCUSSION PAPER ON THE IMPACTS, OPPORTUNITIES AND CHALLENGES ARISING FROM THE EUROPEAN
UNION TIMBER REGULATION**

MAY 2012

AUTHOR

Tobin Gordon

Global Product Manager, Forestry Chain of Custody, SGS

SGS

ABSTRACT

The purpose of this document is to provide an introduction to European Union Regulation 995/2010, and to promote a greater understanding of the articles in the regulation that relate to operators and traders. The document is designed to provide information that can be used to identify and support best practice for the development of internal systems and procedures that meet the requirements of the regulation.

CONTENTS

I. EXECUTIVE SUMMARY.....	2
II. INTRODUCTION TO THE REGULATION.....	3
III. ARTICLES OF THE REGULATION.....	4
IV. MANAGING COMPLIANCE.....	8
V. CONCLUSION.....	9
VI. HOW SGS CAN HELP YOUR ORGANISATION COMPLY WITH THE EUROPEAN UNION TIMBER REGULATION.....	10

EU TIMBER REGULATION EFFECTIVE DATES

The regulation was published in October 2010
and passes into law March 3, 2013.

I. EXECUTIVE SUMMARY

The European Union has recognised that the trade in illegal timber and timber products is a grave problem of international concern, as it contributes to deforestation, global CO₂ emissions and loss of biodiversity. Additionally, it undermines attempts at moving towards more sustainable forest management practices and good forestry governance.

Regulation 995/2010 is a law that addresses the issue of illegal logging and the associated trade in timber products and it will apply across all 27 European Union member states from March 3, 2013. The regulation lays down the legal obligations for individuals and organisations that place timber and timber products on the European market.

The core objective is to prohibit all timber products that have been illegally harvested from being placed on the market. This includes obligations to implement a due diligence system that can be used to gather information about the origin of the product being supplied, assessments of the risk of that product originating from an illegal source, and mitigation of the risk of illegally harvested timber from entering the supply chain.

This White Paper provides a technical analysis of the impacts, opportunities and challenges arising from the articles in the regulation. Specifically, those that apply to operators and traders and are intended to facilitate the development of due diligence systems. The primary objective is to identify mechanisms for best practice; it is not designed to provide a full analysis of each clause and article within the regulation.



II. INTRODUCTION TO THE REGULATION

THE ISSUE OF ILLEGALLY HARVESTED TIMBER

Regulation (EU) 995/2010 of the European Union and of the Council is a European Union regulation that has been ratified by all 27 European Union member states to address the issue of illegally harvested timber and timber products being supplied and traded on the European market. The regulation applies to the placement of both imported products and those that are grown and supplied from within the European Union.

The regulation comprises a preamble that sets out the history, objectives, development of, and stakeholders to the regulation, and it defines the specific articles, which form the actual legislative requirements. It also sets out the obligations for stakeholders such as operators, traders, monitoring organisations and competent authorities. The process for policing and raising penalties for those that are found to be in breach of the regulation's requirements are outlined. In addition to the regulatory requirements, it also includes an

appendix that lists the products that are specifically covered by the regulation.

This regulation has not been developed in isolation, it is the most recent in a series of regulatory instruments that have entered into European law to restrict, control or prevent illegally harvested timber products from being placed on the European market.

To understand how the European Union has come to this position, it is useful to consider some of the other regulatory instruments that have been adopted in Europe since the 1990s. It is important to understand there is a series of laws that apply across Europe and that Regulation 995/2010 is an element in an ongoing process.

Previous regulations include:

- Council Regulation 338/97 (December 9, 1996) on the protection of wild species of flora and fauna. This is the EU Regulation that applies the Convention on International Trade in Endangered Species (CITES) in European Law. It sets out the requirements for trade within the EU

and with countries outside the EU for species of flora and fauna included in this Regulation

- Decision No 1600/2002/EC of the European Parliament (July, 2002). This process identifies priority action to combat the trade in illegally harvested timber and timber products
- Commission Communication of May 21, 2003 on Forest Law Enforcement Governance and Trade (FLEGT). This is a European Union action plan to tackle the problem of illegal logging and associated trade through the promotion of legal forest governance in harvesting countries
- European Union Regulation 2173/2005 (December 20, 2005) on Voluntary Partnership Agreements (VPAs). This regulation sets out the legally binding obligations to implement a FLEGT Licensing Scheme

Note: In addition to these regulations, there is also a series of implementing regulations, which bring specific regulations into law. Enforcement regulations set out the mechanisms for policing regulations.



III. ARTICLES OF THE REGULATION

There are a number of articles in the regulation that apply to operators and traders. This paper defines the requirements of each article and explains the meaning and intent behind them. To understand how the obligations that are defined in the regulation apply, it is necessary to understand the terminology used, as it has specific meanings and definitions.

TERMINOLOGY USED IN THE REGULATION

Timber and Timber Products

'Timber and Timber Products' refers to a list of products covered by the Regulation included as an appendix to the Regulation. The nomenclature is covered by Council Regulation (EEC) No 2658/87.

Placing on the Market

'Placing on the Market' means the supply by any means, of timber or timber products for the first time for

distribution or use in the course of a commercial activity, whether in return for payment or free of charge.

Note: This includes timber that originates from outside the European Union and timber that is supplied from European Union member states.

Operator

'Operator' is any natural or legal person that places timber or timber products on the market for the first time.

Trader

'Trader' means any natural or legal person who, in the course of a commercial activity, sells or buys timber products already placed on the market.

Country of Harvest

'Country of Harvest' means the country or territory where the timber or the timber embedded in the timber products was harvested.

Legally Harvested

'Legally Harvested' means harvested in accordance with the applicable legislation in the country of harvest.

Illegally Harvested

'Illegally Harvested' means harvested in contravention of the applicable legislation in the country of harvest.

Applicable Legislation

'Applicable Legislation' means the legislation in force in the country of harvest covering:

- Rights to harvest timber within legal boundaries
- Payments for harvest rights, including duties related to timber harvesting
- Timber harvesting legislation, including environmental and forest legislation, forest management and biodiversity conservation legislation that is directly related to timber harvesting

- Third parties' legal rights concerning land use and tenure that are affected by timber harvesting
- Trade and customs, in so far as the forest sector is concerned

Monitoring Organisation

'Monitoring Organisation' is an organisation or individual that is legally established in the European Union that develops and makes available a due diligence system that can be used by operators to fulfil the obligations of the regulation.

Competent Authority

'Competent Authority' is an organisation appointed by a member state that is responsible for the application of the regulation.

Timber and Timber Products

'Due Diligence System' is a set of procedures or measures for gathering information about the origin of the timber or timber product. This information is then used for assessing the risk of that timber originating from an illegal source. It also includes a process for mitigating the risk of placing illegally harvested timber products on the European market.

FLEGT AND CITES

FLEGT – Forest Law Enforcement Governances and Trade

Timber products that originate from European Regulation 2173/2005 (FLEGT) partner countries and comply with the requirements of that regulation shall be considered to be legally harvested.

CITES – Convention on International Trade in Endangered Species

Timber species listed in Annex A, B or C to European Regulation 338/97 (CITES) and comply with the requirements of that regulation shall be considered to be legally harvested.



ARTICLE 4 - OBLIGATIONS OF OPERATORS

Operators are expected to follow a series of requirements and implement them in order to be compliant with, and meet the objectives of the regulation. The primary obligation is the prohibition of placing illegally harvested timber and timber products on the market. However, the regulation also includes an obligation that requires operators to implement a due diligence system to prevent illegally harvested timber from being placed on the market.

Operators are expected to regularly evaluate their due diligence system. The regulation does not specify the frequency or the processes for evaluation of a due diligence system. As this article represents an element of a European law, operators are expected to ensure that the due diligence system they implement is adequate and effective in meeting the requirements of that law.

Furthermore, if that system is not adequate and they supply illegal timber either intentionally or unintentionally, they will be liable for the penalties set out in the regulation covering non-compliance or supply of illegal timber. The requirements for due diligence systems are more clearly defined in the regulation and are detailed below.

ARTICLE 5 – OBLIGATIONS FOR TRACEABILITY

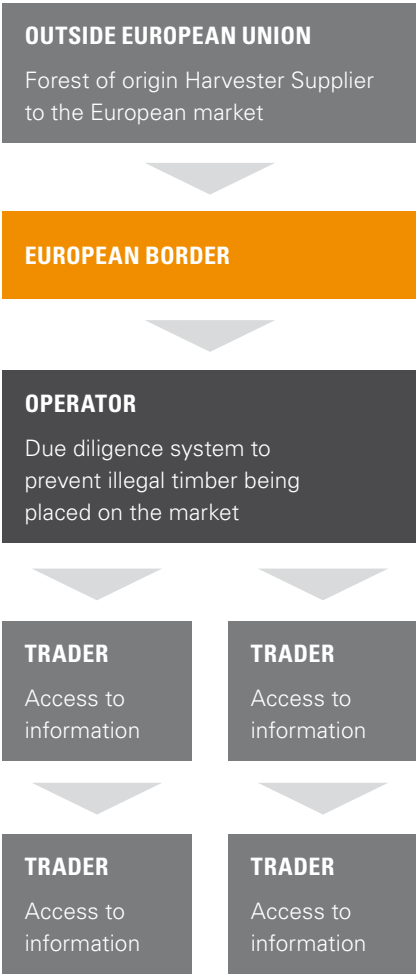
The Regulation also sets out a series of requirements that traders are expected to comply with, these requirements place a lesser burden on traders, who are simply required to be able to:

- Identify the operators or the traders who have supplied the timber and timber products
- Identify the traders to which they have supplied timber and timber products

Traders must keep information about the purchase and sales of timber products for at least five years and must

provide that information to competent authorities if requested. This five year time frame is in line with requirements for record retention times for tax records and is not expected to have an additional or negative impact on traders.

POINTS IN THE SUPPLY CHAIN



ARTICLE 6 – DUE DILIGENCE SYSTEMS

The two options
The regulation requires operators to implement a due diligence system and has two options for meeting this obligation. Operators can use a due diligence system that has been developed and made available by a monitoring organisation or they can develop their own due diligence system.

If an operator uses a due diligence system developed by a monitoring organisation, they are expected to fulfil any obligations that the monitoring organisation sets out as requirements for compliance. The monitoring organisation provides a set of procedures and measures for analysing and identifying the risk of a particular product originating from an illegal source.

The due diligence system remains the property of the monitoring organisation. However, liability for making correct and appropriate risk judgements remains with the operator. The monitoring organisation has an obligation to regularly evaluate the correct use of its due diligence system by operators. They have a duty to ensure that the due diligence systems they develop and make available are robust and can be used to effectively identify risk levels.

Alternatively, an operator may decide to develop their own due diligence system. In this case, the operator defines the measures and procedures they follow in order to analyse and assess the risk of timber products being illegally harvested. The operator takes full liability for the due diligence system they use. It is important to understand that operators may use the services of consultants with detailed technical knowledge of the regulation and experience working with timber supply chains to develop their due diligence systems. A due diligence system must contain three key elements:

- Information - about the origin of the timber products being placed on the market
- Risk assessment - to judge whether the product originates from a legal source
- Risk mitigation - of illegally harvested products being placed on the market

ACCESS TO INFORMATION

Operators are expected to have a system that provides information about the timber or timber products. As a minimum the operator must be able to identify the following:

- A unique identification or description of the product being placed on the market
- The trade name for the product along with the scientific and common species name for this timber, where this information is available
- The country of harvest, including the sub national region of harvest and the concession of harvest
- The quantity (volume, weight, and number of items) placed on the market
- The name and address of the organisation that supplied the timber or timber product
- The name and address of the customer that purchased the timber or timber product

- Any documentation indicating compliance with applicable legislation in the country of origin

RISK ASSESSMENT

Risk assessment is a process to evaluate the risk of illegal timber products being placed on the market. It includes an ongoing analysis of all available information to enable the operator to make a risk judgement.

Operators are obliged to have a system of measures and procedures that enable them to analyse and evaluate the risk of illegal timber being placed on the market. To conduct a risk assessment the operator is expected to use the information it holds on the country and forest of origin to assess if the timber or timber product complies with the applicable legislation in the country.

The complexity of the supply chain back to the forest of origin forms a critical element in the evaluation of the risk assessment. More complex supply chains may lead the operator to a higher risk judgement, as there is a greater potential for loss of product integrity and visible linkages with the origin of the timber. It may be possible to manage this risk level through product traceability systems such as chain of custody certification or third party verification systems.

Chain of custody certification and third party verification schemes play an important role in risk assessment and can be used to support a risk judgement. However, chain of custody certification or third party verification does not provide evidence of legality on its own. The regulation does not remove obligations from operators that place certified or third party verified products on the market.



Products that originate from the Forest Stewardship Council (FSC) or the Programme for the Endorsement of Forest Certification (PEFC) and are supplied to operators from companies with chain of custody certification may be considered to be low risk. It is critical that the product being supplied is covered by the scope of the chain of custody certificate. In addition, products supplied by companies that have undergone third party verification may be considered to be low risk, if the third party verification includes verification of legality at the forest of origin. However, chain of custody or third party verification does not remove the obligation to conduct a risk assessment.

Products that are covered by either FLEGT licensing agreements or CITES are considered to be legally harvested.

Risk assessment procedures shall take account of:

- Assurance of compliance with all applicable legislation. This may include certification or other third party verification schemes which cover compliance with applicable legislation
- Prevalence of illegal harvesting of the specific tree species
- Prevalence of illegal harvesting in the country of harvest and/or sub-national region where the timber was harvested, including consideration of the prevalence of armed conflict
- Sanctions imposed by the UN Security Council or the Council of the European Union on timber imports or exports against the country of origin
- The complexity of the supply chain of timber and timber products

RISK MITIGATION

Operators are required to have procedures or measures that are adequate and proportionate to effectively mitigate the risk of illegal timber being placed on the market. Risk mitigation procedures are not

required where the risk of placing illegally harvested timber on the market is negligible. However, in all other cases operators must implement risk mitigation procedures, which consist of a set of measures to reduce the risk of placing illegally harvested timber on the market.

ARTICLE 7 - COMPETENT AUTHORITIES

Competent authorities are responsible for the application of the regulation at the national level. Individual Member States appoint competent authorities. The regulation specifies a deadline of June 3, 2011 for competent authorities to be designated. However, this deadline was passed without competent authorities being designated in all members States. The European Commission will make the list of competent authorities publicly available, prior to the date that the regulation passes into law.

ARTICLE 8 – MONITORING ORGANISATIONS

A monitoring organisation has primary responsibility for the development of due diligence systems to assess and mitigate the risk of illegal timber being placed on the market. It shall maintain, grant rights to use and regularly evaluate its due diligence system, and it shall take appropriate action in the event that an operator fails to correctly use its due diligence system.

Any organisation may apply to become a monitoring organisation if it is legally established in the European Union, it has appropriate expertise and capacity to exercise its functions, and it avoids any conflict of interest.

ARTICLE 10 – CHECKS ON OPERATORS

The Regulation specifies that checks on operators are conducted by competent authorities. This is to verify that operators comply with the requirements set out in articles 4 and 6. Competent

authorities establish their own risk judgements for timber products and conduct checks according to a defined risk based plan. Checks may also be conducted when a competent authority is in possession of relevant information, including substantiated concerns provided or raised by third parties, concerning compliance by an operator with the regulation.

These checks may include, among other things:

- An examination of the due diligence system, including risk assessment and risk mitigation procedures
- An examination of documentation and records that demonstrate the proper functioning of the due diligence system and procedures
- Spot checks, including field audits

Operators have an obligation to offer all assistance necessary to facilitate the performance of the checks and must provide access to premises and the presentation of documentation or records where these are requested.

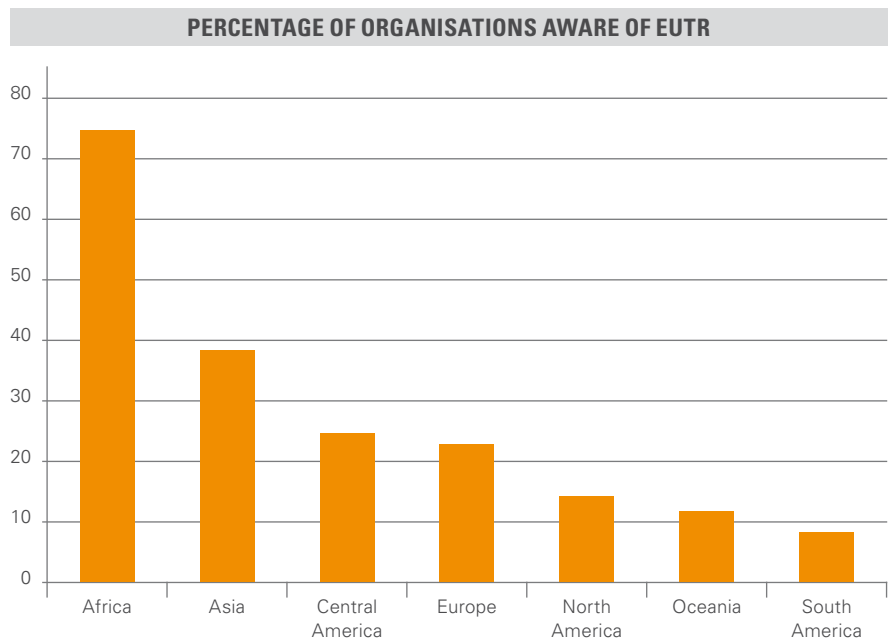
Where shortcomings or non-compliance with the regulation is detected, a competent authority may issue a notice of remedial actions to be taken by the operator. Additionally and depending on the nature of the shortcomings detected, member states may take immediate interim measures, including:

- Seizure of timber and timber products
- Prohibition of marketing of timber and timber products

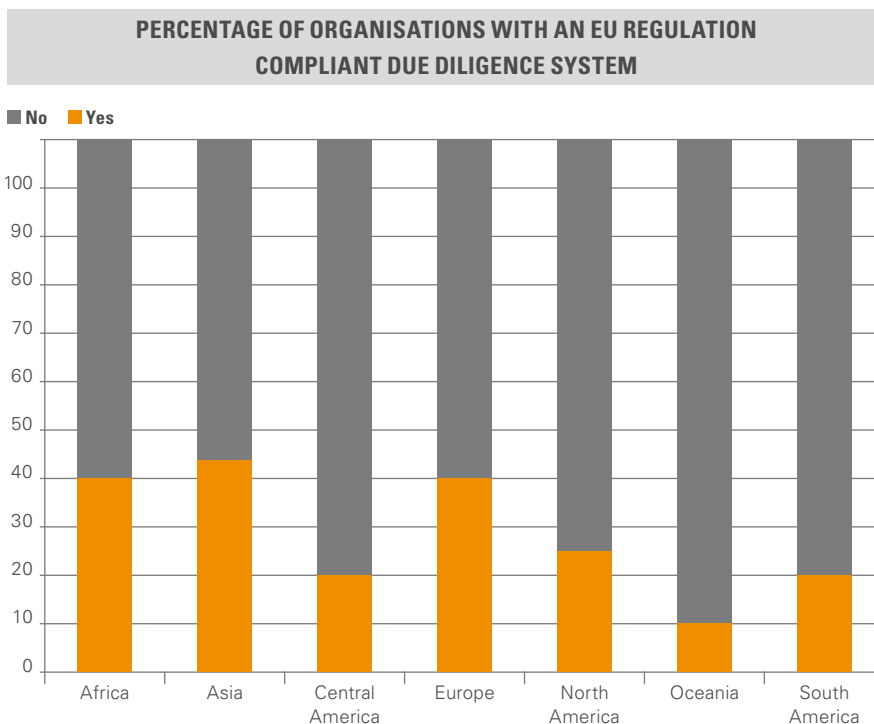
IV. MANAGING COMPLIANCE

The regulation is a law that applies to all organisations in the supply chain for timber products and as such, it applies at an individual level. An organisation shall manage compliance with the regulation by either choosing to use a due diligence system that has been developed by a monitoring organisation or to develop their own system.

Recent survey data suggests that there is currently a low level of awareness of the requirements for compliance with the regulation. When questioned whether 'do you consider yourself informed about the European Timber Regulation?' the highest percentage of awareness appears to be centred on organisations based in Africa, with awareness within Europe running at 23%. (See the chart to the right.)



When organisations that responded to the survey were questioned about whether they 'have a due diligence system to comply with the requirements of the EU import / trade regulations?' less than 45% of total global responders indicated they have due diligence systems that comply. (See the chart below)



The key issues raised by this data are the challenges to European member states to address the lack of awareness by individual companies. Member states, Certification Schemes, NGOs, and other parties are working to provide adequate information to the industry. The responsibility lies with the individual company to understand how the regulation applies to them, but it is important to understand member states have a duty to provide technical information and guidance to stakeholders and that companies can approach competent authorities in their own countries for further information on compliance.

SGS supports organisations in the development of due diligence systems. Please contact forestry-certification@sgs.com.

V. CONCLUSION

The European Union Timber Regulation sets out the requirements that will pass into European law, to prohibit the supply of illegal timber products in the European Union. It is designed to achieve that by requiring organisations, that place timber products on the European market, to exercise due diligence in their purchasing, and to assess the risk of a specific timber product originating from an illegal source. The regulation is clear in that it places the liability for the assessment of risk with the individual that places the product on the market. Furthermore, it provides European Union member states with a mandate to implement the necessary processes to restrict the supply of illegal timber and to impose penalties on those that do not take appropriate action to prevent the supply of illegal timber.

The primary focus of the regulation is towards those organisations that are responsible for placing timber products on the market for the first time. This includes organisations that supply timber that originates from inside the European Union. If you are not responsible for first placement of timber products on the market but are involved with the supply of timber products, you need to fulfil the obligations for traders, which involves providing access to information, where required. If you are responsible for first placement of timber to the market, you need to develop and implement a due diligence system.

The supply of timber products to the market will be checked by competent authorities. These are organisations appointed by member states to verify whether the timber products placed on the market originate from legal sources.

The regulation passes into law on March 3, 2013.

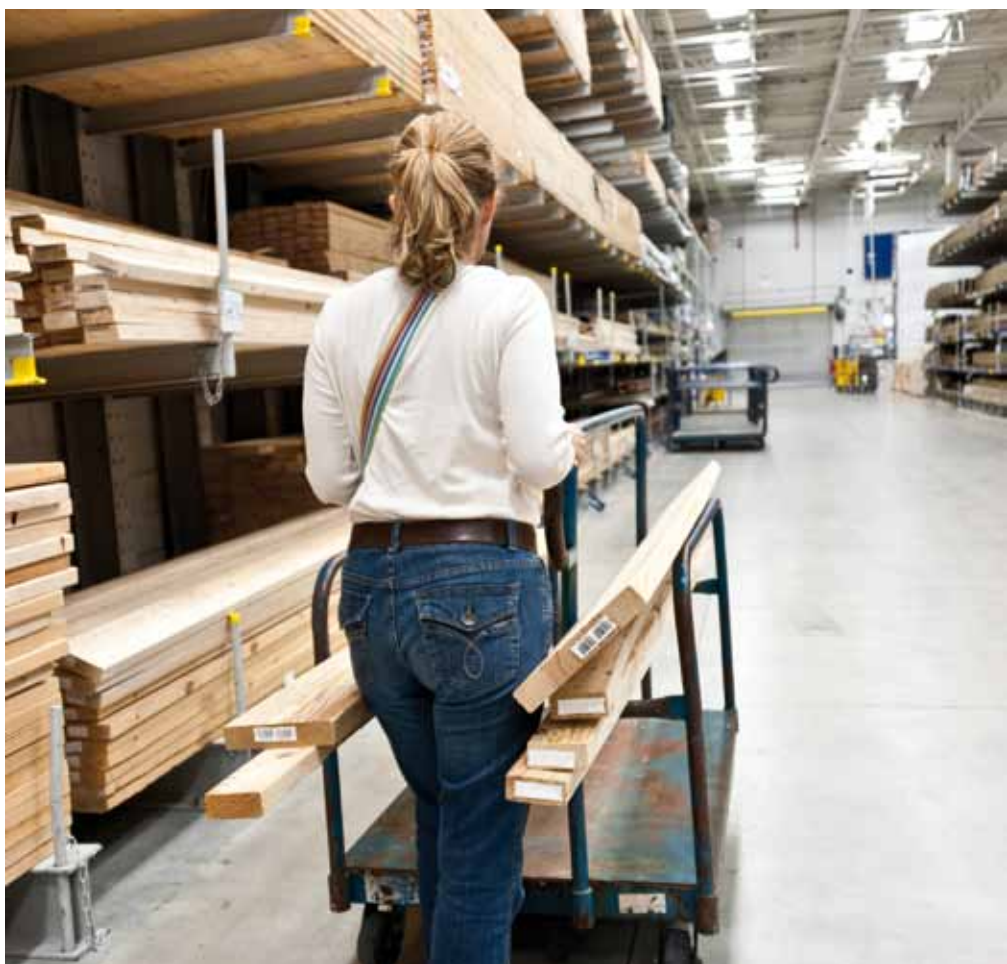
VI. HOW SGS CAN HELP YOUR ORGANISATION COMPLY WITH THE EUROPEAN UNION TIMBER REGULATION

Our package of services is designed and tailored to suit your specific requirements. Each of the services we have developed can be used either alone or combined with other services to facilitate compliance with the regulation.

We support your organisation in the development and ongoing evaluation of a due diligence system. We also assess the due diligence systems provided by monitoring organisations.

SGS is developing a generic chain of custody traceability system to enable organisations in the supply chain to meet the requirements for information access. This system will provide product visibility and traceability throughout the supply chain. We have also developed an online tool to enable operators and traders to track shipments of timber products.

SGS delivers specific one-to-one training for organisations, enabling them to understand the impacts of the Regulation. We also support our customers through the development of management systems to support them in meeting obligations.



ABOUT THE AUTHOR

Tobin Gordon

Global Product Manager, Forestry Chain of Custody, SGS

Tobin Gordon has worked in the forestry and timber industries since 1989 and has held positions related to the commercial management of forests and the supply of timber products. He has been directly involved with the delivery and management of chain of custody certification systems for forest products since 2000. He is currently employed with SGS as Global Product Manager for Forestry Chain of Custody and holds a B.Sc in Forestry and Timber Technology.

ABOUT SGS

SGS is the world's leading forest management certification body with more than 4,000 Chain of Custody certificates worldwide. SGS is also a global certification body that certifies wood from forest to market against the most recognised forestry standards.

With Chain of Custody certification from SGS, anyone, anywhere in the supply chain can determine the origins of timber products. It proves your products originate from certified, well-managed forests or from other controlled wood sources.

SGS is recognised as the global benchmark for quality and integrity. We employ over 70 000 people and operate a network of more than 1 350 offices and laboratories around the world. We are constantly looking beyond customers' and society's expectations in order to deliver market leading services wherever they are needed. Partnering with SGS opens the door to better performing processes, increasingly skilful talent, consistent and compliant supply chains and more sustainable customer relationships delivering profitable competitive advantage.

We have a history of undertaking and successfully executing large-scale, complex international projects. With a presence in every single region around the globe, our people speak the language and understand the culture of the local market and operate globally in a consistent, reliable and effective manner.

FOR MORE INFORMATION, VISIT

WWW.SGS.COM/ OR CONTACT

FORESTRY-CERTIFICATION@SGS.COM

COPYRIGHT NOTICE

The information contained in this document represents the current view of SGS SA on the issues discussed as of the date of publication. Because SGS must respond to changing market conditions, it should not be interpreted to be a commitment on the part of SGS, and SGS cannot guarantee the accuracy of any information presented after the date of publication.

This White Paper is for informational purposes only. SGS makes no warranties, express, implied or statutory, as to the information in this document.

Complying with all applicable copyright laws is the responsibility of the user. Without limiting the rights under copyright, no part of this document may be reproduced, stored in or introduced into a retrieval system, or transmitted in any form or by any means (electronic, mechanical, photocopying, recording, or otherwise), or for any purpose, without the express written permission of SGS.

SGS may have patents, patent applications, trademarks, copyrights, or other intellectual property rights covering subject matter in this document. Except as expressly provided in any written license agreement from SGS, the furnishing of this document does not give you any license to these patents, trademarks, copyrights, or other intellectual property.

ANY REPRODUCTION, ADAPTATION OR TRANSLATION OF THIS DOCUMENT WITHOUT PRIOR WRITTEN PERMISSION IS PROHIBITED, EXCEPT AS ALLOWED UNDER THE COPYRIGHT LAWS. © SGS Group Management SA – 2012 – All rights reserved - SGS is a registered trademark of SGS Group Management SA

WWW.SGS.COM

WHEN YOU NEED TO BE SURE

SGS