

PAS 2021:2012

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

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Foreword

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- Forestry Commission
- Furniture Industry Research Association
- Independent International Organization for Certification
- PEFC UK
- Proforest
- Timber Trade Federation
- Travis Perkins
- Wood Panel Industries Federation
- WWF International Global Forest Trade Network (GFTN)
- WWF-UK Global Forest Trade Network (GFTN)

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

Relationship with other publications

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

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

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

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

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

Use of this document

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

Presentational conventions

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

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

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

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

Contractual and legal considerations

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

Compliance with a PAS cannot confer immunity from legal obligations.

Particular attention is drawn to the following regulations:

- Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market [1].
- Commission Implementing Regulation (EU) No 607/2012 of 6 July 2012 on the detailed rules concerning the due diligence system and the frequency and nature of the checks on monitoring organizations as provided for in the Regulation (EU) No 995/2012 of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market [2].

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



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Introduction

The context

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

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

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

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

The Regulation

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

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

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

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

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

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

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

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

The Regulation has the following purpose:

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

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

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

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

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

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

This guide

This guide aims to help organizations to:

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

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

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

1 Scope

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

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

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

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

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

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

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

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

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