



# BRIEFING DOCUMENT FOR OPERATORS IMPORTING FSC CERTIFIED PRODUCTS AND/OR CONTROLLED WOOD MATERIAL INTO THE EUROPEAN UNION

January 17, 2014 (revised version)

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## Background

In March 2013 FSC published a detailed [Implementation Guide](#) for businesses that work with FSC certified products or materials and are considered “operators” in terms of the EU Timber Regulation (EUTR).

That guide explains the principles of a Due Diligence System (DDS), as required by the EU, and the role of FSC certification/Controlled Wood in risk assessment and risk mitigation. The guide details why and how FSC certification could be used to meet the requirements of the EUTR. It also explains that certification is not a “green lane”; but that certification can play an important role in meeting the obligations of the EUTR.

**Since then we learnt that both certificate holders and Competent Authorities of EU member states are uncertain about the exact role of FSC.**

With this Briefing Document we aim to clarify this. The basis for our explanation is [the Due Diligence Guidelines \(DDG\)](#) and [the Legal Source standard developed by NEPCon](#).

## Why NEPCon and its Guidelines?

Companies importing into the EU can choose to develop and maintain a DDS itself or work with a Monitoring Organisation for permanent support and control of their compliance with the EUTR.

To date, NEPCon and Conlegno are the only two organisations recognised by the European Commission as monitoring organisations. NEPCon is recognised for all EU Member States, while Conlegno is recognised for Italy only.



The NEPCon LegalSource standard and DDG form an important part of the Commission's recognition\*. Therefore we conclude, in agreement with NEPCon, that these two documents can be used to clarify the role of FSC certified material, including FSC Controlled Wood, in meeting EUTR requirements, also for companies that develop and maintain their own DDS.

*\* The recognition is a decision of the Commission only. However, it was obliged to consult the national competent authorities, who are verifying compliance with the EUTR in the member states. It is therefore unlikely that these authorities will disagree with the reasoning presented below.*

The LegalSource standard and DDG of NEPCon are public documents that can be used as guidance, irrespective of whether it contracts NEPCon as monitoring organisation.

**The LegalSource standard and DDG clearly recognise the FSC certification scheme as meeting the LegalSource and EUTR requirements for third party certification schemes as outlined in the Commission implementing Regulation (EU) No 607/2012 Art. 4.**

This recognition of FSC certification underlines the advantage of the FSC certification scheme to fulfil the requirements of the EUTR.

It should be underlined that importing certified material does not diminish the legal obligations of Operators to exercise due diligence – however purchasing FSC certified material can provide an efficient way to meet the requirements in the EUTR.

**Note: Certification does not mean that a DDS is not required. Rather, certification provides an efficient way to fulfil parts of the due diligence requirements of the EUTR**

Competent Authorities may still require an operator to justify why it is relying on FSC as a valid certification scheme to be used in a DDS. In the FSC Implementation Guide we have given advice on how to do this. However, reference to the NEPCon DDG is a valid alternative.

## Applying a DDS taking into account the NEPCon DDG

### Step One: Set up a DDS

Any organization that is an operator in terms of the EUTR must **set up a DDS**.

General requirements for a DDS according to NEPCon's DDG include the following:

- Establish a timber sourcing policy
- Establish a written procedure
- Define responsibilities and train staff
- Establish performance monitoring
- Define the scope of the DDS.



## Step Two: Implement the DDS

The **DDS must be implemented. The EUTR defines** three elements necessary for this: access to information; risk assessment; and risk mitigation.

### *Access to information:*

As the FSC Implementation Guide stipulates: information collection should include:

- 1a. Which **country/countries** the original timber is harvested from;
- 1b. What **species** the product contains – common names will suffice unless these lead to ambiguity, in which case the scientific names are needed;
- 1c. **Quantity** (expressed in volume, weight or number of units);
- 1d. Name and address of the **direct supplier** to the operator; and
- 1e. Name and address of the **trader** to whom the timber and timber products have been supplied

An operator has to make sure these five elements are taken care of.

*The sixth element of information collection, as the FSC Implementation Guide stated, is: “Documents or other information indicating compliance of those timber and timber products with the applicable legislation” should be included. However, as demonstrated below, valid and verified FSC claims are considered to be sufficient for this purpose.*

The FSC certification system does not provide information about country of harvest and species with the claims of the supplier, so this information must be collected in cooperation with the supplier. FSC Advice Note 40-004-10<sup>1</sup> provides assistance in collecting such information.

Currently, the EU does not have any import bans on timber. However, as this could change, it is advisable to verify this from time to time.

As a reminder: timber with a valid CITES<sup>2</sup> license does not require due diligence except for verification that the license is not false. Timber with a FLEGT license<sup>3</sup> does not require any verification because this is the duty of the customs of the EU country of import.

### *Risk assessment:*

The next step in the DDS process is to assess the risk that the material in question has been harvested, traded or exported in conflict with any relevant laws in the country of harvest.

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<sup>1</sup> In FSC CoC Directive on Chain of Custody Certification – via [FSC Website](#).

<sup>2</sup> *Convention on International Trade in Endangered Species of Wild Fauna and Flora*. Species that are identified by CITES as endangered may only be traded with a special CITES licence.

<sup>3</sup> At the time of writing, no country with a FLEGT agreement with the EU has been able yet to start the FLEGT licensing procedures. In 2014 Indonesia and/or Ghana may be the first ones to export FLEGT timber indeed.



The NEPCon DDG clearly outlines risk assessment questions to be evaluated in order for certification systems to be considered to meet the EUTR:

1. *Is the supplier and product covered by an active certification scheme<sup>4</sup>?*
2. *Does the certification scheme cover all applicable legislation as required by the EUTR?*
3. *Does the certification system provide access to information on the species and country of origin?*
4. *Is the product received accompanied by the required claims confirming its certification status?*

The NEPCon assessment of FSC, including CW, confirms compliance with the second question. As regards the third question: as already explained, FSC certificates do not come with that information automatically, an operator has to collect that himself, whereby the abovementioned Advice Note can be of help. As regards questions one and four: it is very important that the operator indeed checks the validity and correctness of the claims coming with the imported product/materials. This is quite important because it is a reality that false claims exist. The operator is normally aware of the procedures to investigate this.

The “Risk Identification checklist” of the DDG shows that, provided all steps above are taken and lead to positive results, the imported FSC certified materials/products concerned can be considered as “**low risk**”<sup>5</sup>. The related NEPCon LegalSource Standard Annex 5, contains requirements for recognised certification systems, and currently confirms,, FSC, including FSC Controlled Wood, as compliant.

**In summary: the NEPCon LegalSource system thus recognises FSC material as having a low (negligible) risk if it is verified that the FSC certificate is valid; the material in question is covered by the scope of the certificate; the correct claim is used; and that there is access to the required information (country of harvest and species).** Only after verification of all these items, can the operator answer the question related to appropriate certification claims (Question 9 in Table 4 of the NEPCon DDS) with a YES (= Low Risk) and conclude its risk verification for the certified products concerned.

#### *Risk mitigation*

Risk mitigation is necessary only if the risk assessment has NOT concluded the risk is negligible/low. Therefore in case of FSC certified or controlled material and products, duly verified as described above, risk mitigation is not necessary and the procedure is completed.

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<sup>4</sup> See the LegalSource standard Annex 5 for the LegalSource definition of credible certification systems.

<sup>5</sup> See Questions 6-9 in Table 4 of the DDG