

PEFC contribution to the review of the EU Timber Regulation

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Introduction

PEFC, the Programme for the Endorsement of Forest Certification, is the world's leading forest certification system. More than 260 million hectares of forests are certified to PEFC's internationally recognized Sustainability Benchmarks, supplying more than 16,000 Chain of Custody certified companies with responsibly sourced timber and wood-based products. PEFC was founded by small- and family forest owners to demonstrate excellence in sustainable forest management.

With PEFC certification, of sustainable forest management and the supply chain, delivering legal products to the market, PEFC supports the European Commission's prohibition of placing illegally harvested timber on the market.

This paper is the first step in PEFC's review of the EU Timber Regulation (hereafter EUTR).

Summary

PEFC has aligned its systems, most notably the PEFC Chain of Custody Standard including the PEFC Due Diligence System (hereafter DDS), to meet and exceed the EUTR due diligence requirements. Through informing and training certificate holders and certification bodies, PEFC has ensured that certificate holders today are exercising due diligence based on the new PEFC DDS requirements.

With 85% of the more than 16,000 PEFC Chain of Custody certificate holders located in the EU, and PEFC National members in 23 EU Member States, PEFC has access to a wealth of experience and feedback on EUTR implementation and verification. Besides some general observations, two main issues were identified in the feedback on the verification of the EUTR:

- 1) Limited knowledge of Competent Authorities on PEFC certification
- 2) High variation in the acceptance of PEFC certification by Competent Authorities

Based on this feedback and its experience from the alignment of the standard with specific EUTR requirements, PEFC makes the following preliminary recommendations to the European Commission:

- To verify whether the scope of products covered by the EUTR should be broadened.
- To assess the necessity to differentiate between operators and traders.

- To provide in the long term a “green lane” status for EUTR-compatible third party certification.
- To provide in the short term a “negligible risk” status for EUTR-compatible third party certification.
- To support third party certification systems’ efforts to grow uptake of EUTR compatible tools in the industry.

Bringing PEFC in line with EUTR

PEFC Chain of Custody Standard alignment

In 2013 PEFC aligned its system with the EUTR by publishing the revised Chain of Custody Standard (PEFC ST 2002:2013). The PEFC Chain of Custody Standard has included a system for exercising due diligence since 2007. This system used the same basic elements as the DDS required in the EUTR: gathering of information, risk assessment and risk mitigation. During the 2012/2013 revision of PEFC Chain of Custody Standard, the PEFC DDS was fully aligned with EUTR requirements. Some of the main changes included:

- Aligning the definitions of ‘applicable legislation’ and ‘illegally harvested’ to meet EUTR definitions.
- Requiring certificate holders to have access to information on tree species and origin of harvest.
- Revising the criteria for risk assessment to fully meet EUTR Article 6 (prevalence of illegal harvesting of specific tree species, prevalence of armed conflict).
- Broadening the scope of the DDS to cover all the input materials covered by the Chain of Custody certificate (not just the uncertified/controlled element).

Appendix I to this document provides a detailed overview of how the PEFC system meets all relevant requirements from the legislative text, the implementing regulation and the guidance document.

Further, due to the global presence of PEFC, the Chain of Custody Standard includes several requirements where PEFC is over and above the EUTR requirements:

- a) No differentiation between products: The PEFC Chain of Custody and DDS is applied to **all** product types.
- b) No differentiation between operators and traders: The PEFC DDS needs to be applied by **all** PEFC Chain of Custody certificate holders.
- c) The PEFC DDS is applied worldwide: That ensures that due diligence is carried out at any point in the PEFC supply chain and anticipates the development of similar legislative frameworks like the EUTR in other parts of the world.

The decisions for a) and b) were made in an intensive stakeholder process after detailed analysis of worldwide material flows and several pilot projects in different countries. Notably the approval of c) was also agreed by PEFC’s stakeholder outside Europe who clearly recognized the advantage of a worldwide valid credible and strong DDS.

Follow-up for correct implementation

Before and after the EUTR came into force and PEFC's publication of the revised PEFC Chain of Custody Standard on 24th May 2013, PEFC International and its national member organisations actively provided outreach to support the implementation of the EUTR and the revised PEFC Standard by certificate holders. Our outreach included:

- Information briefs to support certificate holders and certification bodies to anticipate and understand the new requirements.
- Regular webinars for both certification bodies and certificate holders to inform on the proposed changes and final version of the Standard.
- Training for hundreds of auditors (direct and indirect) specifically on the PEFC DDS and other key changes to the Standard.
- Additional guidance was published in June 2014, as after having assessed the practical experience and feedback on the revised Standard, PEFC International recognized that further explanation and guidance could benefit certificate holders.

Application and verification of PEFC DDS

As of today, more than 16,000 companies, covered by over 10,500 certificates (85% located in the EU), operate a PEFC Chain of Custody and are exercising due diligence based on the PEFC DDS. All these companies are therefore using due diligence procedures aligned with the requirements of EUTR. PEFC also observes that companies predominantly Asia-based, are starting to use the PEFC Chain of Custody specifically for the purpose of the PEFC DDS in order to demonstrate that they have exercised due diligence compatible with EUTR requirements. These companies have an important role in supplying the EU market with wood products that have a negligible risk of originating from illegal harvesting.

Since the publication date of the revised Standard, PEFC has received feedback on the implementation of the PEFC DDS from many stakeholders, including foremost certification bodies (verifying the correct implementation of the standard including the DDS requirements), as well as certificate holders and our National members. Based on this feedback we have a good view on the difficulties encountered by PEFC Chain of Custody certificate holders when implementing the new PEFC DDS (and EUTR) requirements. :

- Slow implementation. We learned that many companies being faced with due diligence requirements needed substantial time to implement the elements in their daily practice.
- Access to information. One remaining challenge is getting access to the information on tree species and origin. On the one hand because supply chain can be complex, and on the other hand because not all suppliers are willing to share this information with their customer. This is most commonly experienced in business transactions between (powerful) high volume suppliers and small volume customers.
- Administration. Arranging the access to information is a cause for additional administrative efforts as it involves revising contracts, signing self-declarations, etc. This mostly affects companies with a high number of different suppliers and/or customers.

Despite these and other smaller challenges we see a good overall uptake and implementation of the revised Standard and its DDS. Certification bodies checking the correct implementation of the Standard at annual intervals provide PEFC with unique feedback on the situation and confirm there are no negative influences on the development of PEFC certification.

Observations on acceptance of PEFC by Competent Authorities

Since the EUTR came into force in 2013, Competent Authorities of various EU Member States have started the verification of the EUTR implementation by operators. Many of these operators are PEFC Chain of Custody certificate holders. These certificate holders and the certification bodies have provided feedback on their experiences of interacting with the Competent Authorities. This gives PEFC an overview of how Competent Authorities differ in their progress on EUTR verification on the ground and the way that different Competent Authorities deal with the PEFC certification of operators:

- Knowledge on the PEFC system: The level of knowledge on the PEFC system (and certification in general), especially the DDS, varies significantly between Competent Authorities, but is generally limited. This directly affects the recognition or acceptance of PEFC certification as a proof of negligible risk, or assurance of legal origin.
- Acceptance of PEFC: The level of acceptance of PEFC as proof of negligible risk differs highly between Competent Authorities. It ranges between unofficial statements on the acceptance of PEFC certification, to not accepting PEFC as a proof of negligible risk in the risk assessment. This creates confusion for certificate holders, especially those operating in more than one EU Member State.

More general observations on the verification of EUTR compliance by Competent Authorities include:

- Progress on national implementation: Not all EU Member States have started the on-the-ground verification of EUTR compliance.
- Resources: It appears that resources dedicated to EUTR verification are too limited both in terms of manpower and competencies.
- Focus on imports: The verification of EUTR compliance appears to focus on imports from outside the EU region whereas the EUTR also applies to timber harvested within the EU region.

Preliminary Recommendations

Based on PEFC's experience and unique position interacting and influencing so many actors implicated by EUTR requirements, PEFC has the following preliminary recommendations to the European Commission.

The European Commission should:

- Verify whether the scope of the EUTR should be extended to include a broader range of wood based products. This would reduce confusion and not increase complexity significantly
- Check the need to maintain the differentiation between operators and traders given today's reality of complex supply chains. This would strengthen the implementation of the EUTR and reduce confusion. It would improve the availability of information in complex supply chains (e.g. material making multiple entries into the EU) and for traders that have customers at the end of the supply chain (e.g. retailers, DIY) that require the information on origin and tree species as well.
- Acknowledge the value that third party certification systems, compatible* with the EUTR (due diligence) requirements, contribute to Commission objectives and in demonstrating EUTR compliance. To this end the Commission should enable a harmonized recognition and acceptance of EUTR compatible certification systems through:

- Establishing a “green lane” for EUTR compatible third party certification in the long-term.
- Providing a formal status for EUTR compatible third party certification as proof of “negligible risk” in the short-term.
- Establish additional means to support third party certification systems to expand uptake of EUTR compatible tools and to continue enhancing the competency of the industry to meet the requirements.

* Appendix I to this document provides a detailed overview how the PEFC system meets all relevant requirements from the legislative text, the implementing regulation and the guidance document for the EUTR.

APPENDIX 1 - PEFC meets EUTR

Basic functions of the PEFC System

PEFC is an international umbrella system for the recognition of national forest certification systems. PEFC sets international standards that form a benchmark for the national system development and content, (e.g. rules for standard setting, forest management criteria, group certification arrangements and certification and accreditation procedures). National systems that comply with the PEFC benchmark are 'endorsed' by PEFC. Compliance with the benchmark is verified through an independent expert assessment and the results are published on the PEFC website.

PEFC certification consists of three processes that are strictly independent:

Standard Setting

Standards for sustainable forest management are developed at national level following PEFC's benchmarks for standard setting. We require that national standards are developed by a multi-stakeholder working group with balanced representation and include a national public consultation. One key element in all national standards is that they require the forest owner/manager's compliance with relevant national legislation. Very often, national governments themselves participate in the process of defining national criteria for forest management.

Conformity Assessment

Verification of compliance with the PEFC standards is carried out by independent third-party certification bodies (CBs). The CBs follow the applicable ISO standards and procedures.

Two types of certification exist:

- 1) Forest Management Certification is the verification of the forest management (unit) to check for compliance with the applicable national forest management standard, including the requirements on compliance with the relevant national legislation.
- 2) Chain of Custody Certification is the verification of the supply chain of PEFC certified material after it has been harvested. It provides a trace for material originating in PEFC certified forests and the integral PEFC Due Diligence System (PEFC DDS) avoids that any other material originates in controversial sources.

Accreditation

Accreditation is the process of ensuring that certification bodies work impartial and competently. This is verified by accreditation bodies. CBs carrying out PEFC conformity assessments need to have a valid accreditation issued by a member of the International Accreditation Forum (IAF). PEFC is the only global forest certification system making use of these EU recognised accreditation organisations.

Detailed assessment of PEFC against EUTR requirements

The following sections describe in detail how the PEFC system fully meets all relevant elements of the EUTR. An assessment is presented against requirements of Regulation No. 995/2010 (Articles 4, 5 and 6), the Commission Implementing Regulation No. 607/2012 (Article) and some specific guidance from the Guidance Document for the EU Timber Regulation.

Regulation No. 995/2010

The table below lists the applicable articles and clauses of the Regulation and presents the specific reference to the PEFC requirements that ensure that material from a PEFC Chain of Custody complies with the EUTR requirements. All references relate to *PEFC ST 2002:2013, Chain of Custody of Forest Based Products – Requirements*.

Reference to Regulation No. 995/2010	Reference to PEFC ST 2002:2013
Article 4 – Obligations of operators	
1. The placing on the market of illegally harvested timber or timber products derived from such timber shall be prohibited.	5.6.2 No placement on the market
2. Operators shall exercise due diligence when placing timber or timber products on the market. To that end, they shall use a framework of procedures and measures, hereinafter referred to as a 'due diligence system', as set out in Article 6.	5.5.1 The organisation shall operate a Due Diligence System
3. Each operator shall maintain and regularly evaluate the due diligence system which it uses, except where the operator makes use of a due diligence system established by a monitoring organisation referred to in Article 8. Existing supervision systems under national legislation and any voluntary chain of custody mechanism which fulfil the requirements of this Regulation may be used as a basis for the due diligence system	5.5.1 The organisation shall operate a Due Diligence System 8.3.1 Written procedures for the due diligence system 8.6.1 Annual internal audits
Article 5 – Obligation of traceability	
Traders shall, throughout the supply chain, be able to identify:	4.1.2 (b) Identification of the supplier
(a) the operators or the traders who have supplied the timber and timber products; and	
(b) where applicable, the traders to whom they have supplied timber and timber products.	7.1.3 (a) Identification of the customer
Traders shall keep the information referred to in the first paragraph for at least five years and shall provide that information to competent authorities if they so request.	8.4 Record keeping 8.4.2 Minimum period of five years
Article 6 – Due diligence systems	
(a) measures and procedures providing access to the following information concerning the operator's supply of timber or timber products	4.1.2 & 7.1.3 for general supply information, including PEFC claim and certificates indicating compliance with applicable

<p>placed on the market:</p> <ul style="list-style-type: none"> — description, including the trade name and type of product as well as the common name of tree species and, where applicable, its full scientific name, — country of harvest, and where applicable: <ul style="list-style-type: none"> (i) sub-national region where the timber was harvested; and (ii) concession of harvest, — quantity (expressed in volume, weight or number of units), — name and address of the supplier to the operator, — name and address of the trader to whom the timber and timber products have been supplied, — documents or other information indicating compliance of those timber and timber products with the applicable legislation; 	<p>legislation</p> <p>5.2.1 & 5.3 for specific information on country of harvest, tree species, (additional) documentation indicating compliance with applicable legislation (for material without PEFC claim).</p>
<p>(b) risk assessment procedures enabling the operator to analyse and evaluate the risk of illegally harvested timber or timber products derived from such timber being placed on the market.</p> <p>Such procedures shall take into account the information set out in point (a) as well as relevant risk assessment criteria, including:</p>	<p>5.3.5 Risk Assessment</p> <p>5.4 Substantiated comments or complaints</p> <p>Material delivered with a PEFC Claim is exempt from the risk assessment in the PEFC DDS, unless substantiated concerns apply.</p> <p>However, the PEFC Chain of Custody standard has requirements ensuring material delivered with PEFC claim meets the EUTR risk assessment.</p>
<ul style="list-style-type: none"> — assurance of compliance with applicable legislation, which may include certification or other third-party verified schemes which cover compliance with applicable legislation, 	<p><i>Material delivered with PEFC claim:</i></p> <p>Chapter 4: verification of PEFC claims and suppliers certified status</p> <p><i>Material delivered without PEFC claim:</i></p> <p>5.3.5, table 1 & 2</p>
<ul style="list-style-type: none"> — prevalence of illegal harvesting of specific tree species, 	<p><i>Material delivered with PEFC claim:</i></p> <p>Chapter 4: verification of PEFC claims and suppliers certified status</p>

	<p><i>Material delivered without PEFC claim:</i></p> <p>5.3.5, table 2</p>
<p>— 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,</p>	<p><i>Material delivered with PEFC claim:</i></p> <p>5.1.7 conflict timber</p> <p><i>Material delivered without PEFC claim:</i></p> <p>5.3.5, table 2</p>
<p>— sanctions imposed by the UN Security Council or the Council of the European Union on timber imports or exports,</p>	<p><i>Material delivered with PEFC claim:</i></p> <p>5.1.6 sanctions</p> <p><i>Material delivered without PEFC claim:</i></p> <p>5.1.6 sanctions</p>
<p>— complexity of the supply chain of timber and timber products.</p>	<p><i>Material delivered with PEFC claim:</i></p> <p><i>Material delivered without PEFC claim:</i></p> <p>5.3.5, table 3</p>
<p>(c) except where the risk identified in course of the risk assessment procedures referred to in point (b) is negligible, risk mitigation procedures which consist of a set of measures and procedures that are adequate and proportionate to minimise effectively that risk and which may include requiring additional information or documents and/or requiring third party verification.</p>	<p>5.5 Management of significant risk supplies</p>

Commission Implementing Regulation No. 607/2012

The Implementing Regulation Article 4 sets four criteria that need to be fulfilled in order to take third-party verified schemes into account in the risk assessment and risk mitigation. The PEFC system complies with all four criteria.

(a) they have established and made available for third-party use a publicly available system of requirements, which system shall at the least include all relevant requirements of the applicable legislation;

- ✓ The PEFC endorsed national forest management standards require compliance with national legislation relevant to forest management. In countries with FLEGT VPA's this relevant legislation is defined by the VPA agreement.
- ✓ PEFC's international and national standards are publicly available to interested parties and users (see www.pefc.org)

(b) they specify that appropriate checks, including field-visits, are made by a third party at regular intervals no longer than 12 months to verify that the applicable legislation is complied with;

- ✓ Accredited certification bodies carry out on-site forest management certification audits to verify the forest manager's compliance with all the requirements in the national forest management standard including the applicable legislation.
- ✓ PEFC Forest Management certificates are issued after an extensive initial audit and valid from three to a maximum of five years. After that a re-certification audit is required to renew the certificate. Between the initial and re-certification audit, PEFC requires an annual surveillance audit. The time period between audits is a maximum 12 months.

(c) they include means, verified by a third party, to trace timber harvested in accordance with applicable legislation, and timber products derived from such timber, at any point in the supply chain before such timber or timber products are placed on the market;

- ✓ PEFC Chain of Custody certification ensures that materials originating in PEFC certified forests can be identified at any point in the PEFC supply chain. Certificate holders are required to separate non-certified from PEFC certified material, or in case of mixing, to clearly communicate the percentage of PEFC certified material in the product. Any company without a PEFC Chain of Custody certificate cannot make a PEFC claim and the material they sell will lose its certified status.
- ✓ Verification of the Chain of Custody certification is carried out annually by accredited third party certification bodies.

(d) they include controls, verified by a third party, to ensure that timber or timber products of unknown origin, or timber or timber products which have not been harvested in accordance with applicable legislation, do not enter the supply chain.

- ✓ The PEFC Chain of Custody Standard includes the PEFC DDS. Certificate holders need to implement the PEFC DDS for all material that they process in their Chain of Custody (except CITES material and material meeting the definition of recycled material). The PEFC DDS includes risk assessment and risk mitigation steps and allows only negligible risk material to be processed. Further, material known or suspected to come from illegal harvesting cannot be placed on the market.

Guidance document for the EU Timber Regulation

The guidance document on the EUTR presents four questions for operators to assess the credibility of a third party verified scheme.

(1) Are all the requirements in Article 4 of the Commission implementing Regulation (EU) No 607/2012 fulfilled?

- ✓ Yes, this is demonstrated in the section above on Article 4 of the Implementing Regulation.

(2) Is the certification or other third party verified schemes compliant with international or European standards (e.g. the relevant ISO-guides, ISEAL Codes)?

- ✓ Yes, PEFC is the only international forest certification system complying with ISO standards. The figure below illustrates how every step in the certification process is following ISO standards.

(3) Are there substantiated reports about possible shortcomings or problems of the third party verified schemes in the specific countries from which the timber or timber products are imported?

- ✓ The PEFC Chain of Custody Standard requires certificate holders to investigate substantiated comments or complaints from third parties. (PEFC ST 2002:2013, 5.4.1 & 5.4.2)

(4) Are the third parties that are making the checks and verifications referred to in Article 4 (b)(c) and (d) of the Commission implementing Regulation (EU) No 607/2012 independent accredited organisations?

- ✓ Yes, the certification bodies carrying out the verification of PEFC certificate holders are independent organisations. They can have no part in the decision making on standard setting. Their impartiality is further ensured through their compliance with ISO standards (ISO 17021 or ISO 17065), which is verified by independent accreditation bodies.
- ✓ PEFC requires that accreditation bodies are members of the International Accreditation Forum. This ensures that they carry out the verification of the certification body according to ISO standards (ISO 17011) and they engage in peer review with other accreditation bodies.