

DISCLAIMER

This guidance document has been developed in the context of the Commission Expert Group on the EU Timber Regulation and the Forest Law Enforcement, Governance and Trade (FLEGT) Regulation. It has not yet been officially adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Member States' Competent Authorities and the European Commission Service responsible for these pieces of legislation, and may not be, in any circumstances, regarded as stating an official position of the European Commission.

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5b. Clarification of the product scope - exception to the definition of "timber and timber products" under Article 2(a) of the EUTR and its application

Relevant legislation:

EUTR

Recital (11)

Bearing in mind that the use of recycled timber and timber products should be encouraged, and that including such products in the scope of this Regulation would place a disproportionate burden on operators, used timber and timber products that have completed their life cycle, and would otherwise be disposed of as waste, should be excluded from the scope of this Regulation.

Article 2

(a) 'timber and timber products ' means timber and timber products set out in the Annex, with the exception of timber products or components of such products manufactured from timber or 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 on waste⁸.

Directive 2008/98/EC Article 3(1)

' waste ' means any substance or object which the holder discards or intends or is required to discard'

This exemption applies to:

- Timber products of a kind covered by the Annex, produced from material that has completed its lifecycle and would otherwise have been disposed of as waste (e.g. recycled paper, timber retrieved from dismantled buildings, or products made from waste wood).

This exemption **does not** apply to:

- By-products of a manufacturing process that involves material which has *not* completed its lifecycle and would otherwise have been discarded.

1. Obligation to carry out checks

According to Article 10 of the EUTR, the Competent Authorities have the obligation to carry out checks to verify if operators comply with the requirements set out in Articles 4 (prohibition of placing on the market) and 6 (due diligence). In order to fulfil these obligations, the Competent Authorities must first apply the definition and its exception provided for in Article 2(a).

Therefore:

Unless otherwise demonstrated by the operator, it is generally assumed that the timber and timber products covered by the Annex to the EUTR, do not fall under the exception of Article 2 (a) and the operator should have exercised due diligence when placing those products on the market. In the context of checks Competent Authorities should therefore satisfy themselves that the operator has adequately demonstrated that any product falls under the exception of Article 2 (a).

2. Demonstrating that timber and timber products fall under exception in Article 2(a)

Having in mind that the EUTR provided for the exception in order to avoid placing disproportionate burden on operators, the obligation to exercise due diligence should not apply to operators placing on the market timber or timber products or components of such products manufactured from timber or timber products that have completed their lifecycle and would otherwise be disposed of as waste. However, operators should be able to demonstrate that the timber and products concerned fall under the exception.

Therefore:

The operator is to document that timber and/or timber products or components of such products have been made from materials that have completed their lifecycle and would otherwise be disposed of as waste, which are being placed on the market for the first time. Evidence that may be used to that end: official documentation provided by competent national authorities, certification (certified recycled material), confirmation from the supplier supported by photos from the factory showing all the sorted “waste”, business activity of the operator, documentation/license to handle waste, system and/or organization in place for collecting “waste” or if they have any other documentation stating it is waste or recovered e.g. a technical dossier of the manufacturer or a test report from a recognized body, where the recycled content percentage by weight is stated..

Scenarios

Will furniture made of “by-products” from another production be covered by/subject to the Regulation?

Yes.

“By-products” from another production are not waste but are to be regarded as a raw material in the production. Material in a regulated timber product is not recycled material if the material is the by-product of a manufacturing process.

Example: Sawdust or off-cuts from sawn timber used to make particle board or medium density fibreboard.

Scenarios similar to this are already in the guidance and make it clear that these are subject to the Regulation.

Will plywood made with a core of ‘recycled’ material and a front and a back facing made of new veneer be covered by/subject to the Regulation?

Yes.

It depends whether the plywood sheets are imported as sheets. If so they fall completely under the regulation. If the waste material is imported and the sheets are manufactured in the EU, then the waste is not covered by the Regulation.

If the operator makes a plausible claim that the material used in the core falls under the definition of waste or is recycled, then the operator needs to have a due diligence system in place only for the veneer used on the front and back.

What about film-faced plywood made with a core of ‘recycled’ material?

The operator must produce plausible evidence that the material used in the core falls under the definition of waste or is recycled and a declaration of the composition of the film-facing, e.g. melamine. Any paper-based/wood fibre laminates used in the facing, have to be included in the due diligence system.

How to document timber purchased directly from a demolition contractor of old fishing vessels to be reused/processed in the EU?

Evidence may include documentation of the exporter’s activities, license to handle waste, photos of such vessels, documentation of supply, and source of supply.

Will furniture made from timber recovered from demolition of houses be subject to the Regulation?

No. However if any parts are made of new material like backboards and floorboards, these are covered under the EUTR.

The material in these products has completed its lifecycle and would otherwise have been disposed of as waste. Evidence may include documentation of exporter's activities, license to handle waste, photos, documentation of supply, and source of supply.