



## Support for the development of Luxembourg's public procurement policy for timber

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## About Proforest

Proforest is an independent company working with natural resource management and specialising in practical approaches to sustainability.

Our work ranges from international policy development to the practical implementation of requirements on the ground, with a particular focus on turning policy into practice. Our extensive and up-to-date knowledge of the international context ensures that our work for individual companies and organisations is set within an appropriate framework. At the same time, we are able to bring a wealth of current practical experience to policy development processes and debates.

The Proforest team is international and multilingual and has a broad variety of backgrounds, ranging from industry to academia and NGOs. This allows us to work comfortably in many types of organisations, as well as in a range of cultures. We have in-house knowledge of more than 15 languages, including Mandarin, Malay, French, Spanish and Portuguese.

Proforest was set up in 2000. Our expertise covers all aspects of the natural resources sector, from forestry and agricultural commodities to conservation, supply chain management and responsible investment.

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## 1 Introduction

The National Forest Administration (NFA) started the initiative to draft a public procurement policy at government level together with NFA stakeholders and national certification bodies. In 2008, the basic elements of a system for implementation of a public procurement policy were drafted.

The idea behind the draft policy was to require certified timber to forgo the formulation and establishment of a new set of criteria for sustainable forest management. Concerning the specification of the subject matter it stated that all wood and wood products have to originate from forests with an independent third party certification. Only two sets of criteria were developed: one on the standard of sustainable forest management; the other on the certification systems and chain of custody. The criteria for the standard were about respecting national laws and international conventions, and cover three pillars of sustainable development. The criteria on certification systems and chain of custody were about participation, transparency, equitable decision making, traceability and independent accreditation of the certification organisation.

However, the process was halted as an assessment from the European Commission (EC) came to the conclusion that the draft policy does not comply with the EU procurement rules: it is not permissible to only request certified timber. The policy should also allow acceptance of other types of evidence, as long as it meets the Luxembourg Government's requirements.

Luxembourg now wishes to review the development of a public procurement policy for timber and has asked Proforest to carry out the process. Proforest has vast experience with development and implementation of public procurement policies on timber in EU Member States and is therefore ideally placed to support the Luxembourg Government.

## 2 Methodology

The purpose of this work was to review the proposed procurement policy of 2008 and propose a redraft of the policy. The review was focused on analysing different aspects related to the development and implementation of a public procurement policy. The main aspects under review were as follows:

- Description of the overall system (section 3.1)
- Recommendations on suitable selection and award criteria (section 3.2)
- Implementation including announcement and awareness raising, development of guidance, availability of support (section 3.3)

Detailed analysis of the above areas can be found in section 3.

Proforest's analysis was based on our experiences working with various EU Member States, and more importantly, running the Central Point of Expertise on Timber (CPET) of the UK government's advisory service on public procurement policy. The recommendations from the Standing Forestry Committee ad hoc Working Group IV on "Public procurement of wood and wood-based products" were also taken into account, in order to make sure that the policy will be consistent with other EU Member States as well as the EU Public Procurement Directive.

In order to ensure that the revised procurement policy has wide support from relevant agencies involved and other stakeholders, it is important to solicit their comments and feedbacks on the draft policy text. Stakeholders were given opportunities to provide comments on the drafted policy. Proforest took their comments into account when finalising the redrafted text. A list of consulted stakeholders can be found in Annex 2.

## 3 Findings

This section provides detailed analysis of the review of the policy of 2008, and proposes suggestions for the new policy for consideration.

### 3.1 Description of the overall system

#### 3.1.1 Field of application

In order to ensure that the procurement policy will be implemented by the required relevant authorities, it is essential to clearly describe which parts of the public body will be applicable. In the original proposed policy, it is mentioned that *‘The field of application should ideally include the whole adjudicators capacities of the public services and the organizations of public interest subjected to the authority, to the supervision or the supervisory powers of the State’*.

The text does not provide further detail on what ‘public services’ refer to, therefore in revising the policy it is important to have clarification on this. It is understood that the initial policy was intended to apply to all public bodies in both the central and local government departments. However, stakeholders commented that it would be difficult to get local governments to implement the policy as they have different priorities. Nevertheless, stakeholders also commented that some local construction projects are funded by central government hence they should be covered by the policy. Public Private Projects (PPP) should also be included in the field of application as they received funding from central government. It is suggested to rephrase as:

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**Box 1 Suggested text for the field of application**

Suggested text:

The public procurement policy applies to all public bodies in central government and all projects that receive funding from central government.

#### 3.1.2 Defining Purchase /Lease

The initial policy proposed that the application of the policy cover purchase and lease of products containing wood or wood fibres:

*‘The provisions would be applicable at the time of the purchase, the lease or the leasing of products containing wood, including the products containing wood fibres (paper, cardboard).’*

Stakeholders commented that it would be useful to include lease or hiring of products as the quantity could be enormous. However, it is worth re-considering whether to include lease of wood and paper products in the procurement policy. First of all, it is a ‘procurement’ policy so strictly speaking leasing or renting of products should not be included. Secondly, none of the current procurement policies in EU Member States apply to leasing of timber and paper products. In order to ensure that the revised Luxembourg policy will adopt a common approach as the other EU Member States, it is suggested to exclude leasing of timber and paper products in the procurement policy. It will also be difficult to implement in practice, as the products for leasing/hiring would have been already made, so it is very likely that the suppliers would not be able to provide any evidence. Nevertheless, the Luxembourg Government can encourage procurement

officers to ask for products from legal and sustainable sources when hiring products, though not a mandatory requirement.

### 3.1.3 Product scope of the policy

One of the important aspects of a public procurement policy is to define the product scope of the policy. Currently those EU Member States (Denmark, France, Germany, the Netherlands and UK) which have public procurement policies in place cover both timber and paper products in their policy scope, with the exception of Belgium. The Belgian procurement policy covers only timber products; paper products are covered in a separate policy. The initial proposed policy has a clear product scope that applies to both wood and paper products:

*‘The provisions would be applicable at the time of the purchase, the lease or the leasing of products containing wood, including the products containing wood fibres (paper, cardboard).’*

Nevertheless, it would be useful to clearly state that the policy will apply to **all** products containing wood and wood fibres. It would also be helpful to provide examples on less obvious timber products, e.g. scaffolding, hoardings used temporarily on construction sites, especially these products are often made of plywood and are potentially made of timber from high risk sources. It was commented that it may be challenging to ensure timber used in the performance of contracts also meet the government requirements. Scaffolding boards, for example, are normally reused and it will therefore be difficult to trace back to a sustainable source. It is important to note that much wood is used temporarily during construction in performance of a contract and in some cases are high risk products such as plywood hoardings with a tropical hardwood veneer.

Stakeholders also commented that it is important to carry out analysis of the concept of recycled wood and that the types of evidence required for recycled timber are well defined. A suggested definition of recycled materials can be found in Annex 1 (criteria 3.4.6). It is suggested that the Luxembourg Government discuss this draft definition with stakeholders in the next phase of policy development.

The Luxembourg Government can also consider adopting a progressive approach to implementation so that the initial focus is timber and paper products purchased rather than those used on performing a contract.

It would be useful to state that wood and timber products are the same and used interchangeably. These explanations can be included in the guidance or advice notes.

Examples of wood products: construction, furniture, MDF, plywood.

Examples of paper products: copying paper, stationery, tissue, notebooks.

It is also important to clarify whether wood fuel is covered in this policy, or if this is being covered by other EU directives.

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#### Box 2 Suggested text for the product scope

Suggested text:

The provisions would be applicable at the time of purchase of all wood and paper products, including products used on performance of contract such as scaffolding and hoardings.

### 3.1.4 Level of obligation

The level of obligation refers to whether the policy is mandatory or voluntary to implement. Currently those EU Member States (Belgium, France, Germany, the Netherlands and UK) who have policies in place require mandatory implementation by the central governments and agencies. Local governments and authorities are encouraged to adopt the policy, but it is not mandatory. The Danish government takes a different approach. Its procurement policy is voluntary for both the central and local governments. However, the purchase of furniture and paper are done through central government framework contracts and it is mandatory to follow the requirements of the procurement policy.

It is estimated that public procurement accounts for between 15% and 25% of all timber purchased in most EU Member States. An impact assessment of the UK Government's timber procurement policy carried out in 2010 by Efeca indicated that the public sector accounts for 20-40% of all sales (directly and indirectly through a contractor)<sup>1</sup>. The public sector remains the key timber consumer in the EU and hence it is important to maximise the leverage to stimulate the supply of legal and sustainable timber.

Luxembourg is a relatively small country, and so implementation is believed to be manageable. It would be ideal if the policy were mandatory for all public bodies in central and local governments. However, stakeholders commented that it is difficult to get local governments involved as they have different priorities. Nevertheless, it was recognised that some local construction projects are funded by central government so the procurement policy should apply. It is therefore suggested that the Luxembourg procurement policy is mandatory for central government departments, and projects that receive funding from central government. Local governments should be encouraged to follow. Similarly, the Luxembourg Government can take a progressive approach that the policy is mandatory for central government in the meantime, and extends to local governments in the future.

### 3.1.5 Timescale of policy application

The Luxembourg Government has to decide the timeframe for policy application. There are a number of things to consider:

- When the policy will become effective after the announcement of a revised policy
- If the policy will apply to all existing and new contracts/ projects
- If the policy will apply to all public services at the same time (i.e. will it apply to central government first, then gradually extend to cantons and communes)
- To what extent it is possible to incorporate new requirements for framework contracts that have a number of years of agreement
- Whether the implementation will be demonstrated in the form of an objective percentage (e.g. 50% by 2014)

The timescale of policy application will depend on the awareness and readiness of the market of forest certification, as this is one of the methods to demonstrate compliance with policy requirements. If the market is ready, then the policy can be introduced

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<sup>1</sup> Report can be downloaded at CPET website:  
<http://www.cpet.org.uk/files/Defra%20Timber%20Impacts%20of%20TPP%20Efeca%20Final%20Report.pdf>

relatively fast. However, at the same time, it is also important to allow time for the market (e.g. traders, manufacturers, processors) to adjust their current practices to be prepared to meet the new procurement policy requirements. For example, suppliers may need to get certified, or they may need to gather evidence to demonstrate that their products meet the Government's requirements. Comments suggested that companies in Luxembourg are not ready to provide FSC-certified products and most of the decision-makers both on the buying side and the supplier side are not informed enough on chain of custody.

The EU Timber Regulation, which shall apply by 3<sup>rd</sup> March 2013, will prohibit placing illegally harvested timber on the EU market and requires operators to carry out due diligence when placing timber products on the market. It is expected the new legislation will encourage the market to ensure legality and also sustainability in many cases and that it will help also in enforcing a public procurement policy for timber.

The Dutch Government currently takes the approach of setting a target for the implementation of policy. This can help monitor how well the policy is being implemented in practice. However, bear in mind that this will require regular reporting from all government agencies involved, which will have an implication on the resources needed to implement and monitor the policy.

The timescale of policy implementation should be based on the above consideration, and with discussion with stakeholders. A policy can be successfully implemented only if there is strong stakeholder support and readiness in the market. Given the fact that companies in Luxembourg are not ready to provide certified products (certification is one of the methods to demonstrate compliance), it is suggested that the Luxembourg Government should take a progressive approach to implementation. Announcement of the policy and awareness raising (see section 3.3 Implementation) are therefore important.

### 3.2 Criteria for legality and sustainability

One of the tasks involved in this study is to propose suitable selection and award criteria, which are related to contract clauses and implementation of policy. Before this can be done, there is a need to define what the Luxembourg Government refers to as '*wood and wood products coming from sustainable managed forest*'. The Government has developed some criteria but further elaboration and revision are required. In this section, we will propose new criteria for legality and sustainability, by comparing the existing criteria used in the EU Member States. The first starting point is to examine the existing criteria, which consist of:

- Criteria for forest management (content of standard) – discussion in Section 3.2.2
- Criteria for certification schemes – discussion in Section 3.2.3

Before going into details of the analysis, it is worth explaining the key features of certification schemes. This is because many public procurement policies use certification schemes as a way to demonstrate compliance and will form the basis for our discussion throughout the report.

### 3.2.1 Key features of certification schemes

It is generally agreed that the main features of certification schemes<sup>2</sup> consist of the following three elements:

#### 1. Standard:

- **Content of the standard:** this sets out the requirements which must be met in the forest. There is no universally agreed set of detailed requirements defining sustainable forest management. However, there is general agreement that requirements need to address legal, technical, environmental and social issues.
- **Standard setting:** this is the process of developing a standard, including the decision making process and representation from different stakeholder groups. Standards are developed by standard-setting bodies.

**2. Certification process:** this is the process of establishing whether or not the standard has been met, usually carried out by a certification body or certifier.

**3. Accreditation:** this is the mechanism for ensuring that the organisations which undertake certification are competent and produce credible, consistent results. Accreditation is undertaken by an accreditation body.

In addition, if the scheme is going to be used as a basis for identifying **products** from certified forests and for making claims, then a mechanism for controlling this is also required. This includes:

- **Tracing:** a mechanism is required for tracing materials from the certified forest through each stage. This is usually referred to as chain of custody.
- **Product labelling and claims:** rules about making product labelling and claims, to ensure that claims made on certified products are clear and accurate.

### 3.2.2 Criteria for forest management (standard)

#### 3.2.2.1 Initial Luxembourg criteria

The initial criteria developed by the Luxembourg government in 2008 are shown in Box 1:

Box 3 Initial Luxembourg criteria of sustainable forest management, 2008

#### 1) Criteria of the sustainable forest management (standard)

- *the certification system of the forests must guarantee that forest management is based on principles and criteria (standard) defined by intergovernmental processes or by processes of the civil company recognized like equivalent, in order to guarantee:*
  - *that forest management is based on the 3 pillars of the sustainable development, namely the economic effectiveness, the environmental protection and the social protection;*
  - *that forest management respects the national laws and the international conventions.*

The initial criteria are very brief and do not provide detailed requirements on the content of standards. To summarise, they cover:

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<sup>2</sup> Reference document: The forest certification handbook, second edition 2005

- the processes in defining the standard (intergovernmental processes or national process consisted of local stakeholders<sup>3</sup>);
- the areas of sustainable development (economic effectiveness, the environmental protection and the social protection), and
- laws and conventions (respects the national laws and the international conventions)

They do not further elaborate what areas are covered in economic effectiveness, environmental protection and social protection. They also do not explicitly mention what laws and conventions should be respected.

In order to identify the gaps between the Luxembourg criteria and international criteria, it is useful to look into international principles and criteria defining sustainable forest management at the forest management unit level. Table 1 below shows that both Helsinki and ITTO criteria cover the following 7 areas:

- Legal framework
- Forest health and vitality
- Production function of forest resources
- Protective function of forest resources
- Biodiversity
- Extent of forest resources
- Social requirements

**Table 1 key headings of sustainable forest management in Helsinki and ITTO criteria.**

Common theme	Helsinki	ITTO
Legal framework	Criterion 1: Maintenance and appropriate enhancement of forest resources and their contribution to global carbon cycle.  Descriptive indicator: Existence of a legal / regulatory framework, and the extent to which it: provides an overall policy framework for conservation and sustainable management of forests	Criterion 1: Enabling conditions for sustainable forest management
Forest health and vitality	Criterion 2: Maintenance of forest ecosystem health and vitality	Criterion 3: Forest ecosystem health
Production function of forest resources	Criterion 3: Maintenance and encouragement of productive functions of forests (wood and nonwood);	Criterion 4: Forest production
Protective function of forest resources	Criterion 5: Maintenance and appropriate enhancement of protective functions in forest management (notably soil and water);	Criterion 6: Soil and water protection
Biodiversity conservation	Criterion 4: Maintenance, conservation and appropriate enhancement of biological diversity in forest ecosystems	Criterion 5: Biological diversity

<sup>3</sup> This is our interpretation of ‘civil company’: national working group to develop local standard that involves stakeholders.

Common theme	Helsinki	ITTO
Extent of forest resources	Criterion 1: Maintenance and appropriate enhancement of forest resources and their contribution to global carbon cycles	Criterion 2: Extent and condition of forests
Social requirements	Criterion 6: Maintenance of other socio-economic functions and conditions	Criterion 7: Economic, social and cultural aspects

The first area on legal framework can be considered as legality requirements, while the remaining 6 headings can be considered as sustainability requirements.

The above 7 points are the key headings of sustainable forest management which are also covered by the procurement policies of other EU Member States: namely Belgium, Denmark, the Netherlands, UK, which have developed sustainability criteria. Therefore, it is worth comparing the criteria with other EU Member States to identify any similarities and differences before proposing new criteria for Luxembourg Government. The comparison of legality requirements are showed in section 3.2.2.2, and sustainability requirements are showed in section 3.2.2.4.

### 3.2.2.2 Comparison of legality criteria in EU Member States’ public procurement policies

Legal framework can be further interpreted as containing the following requirements:

- Use right to the forest
- Payment of fees and taxes
- Compliance with relevant legislation
- Compliance with CITES

Table 2 below demonstrate the similarities and differences amongst the 4 EU Member States which have developed forest management criteria.

**Table 2 Comparison of criteria of legality of Belgium, Denmark, Netherlands, UK**

Common theme	Belgium	Denmark	The Netherlands	UK
Use right to the forest	1.1.1 The forest owner/manager holds the legal use rights to the forest.	1.1.1 The forest owner/manager holds legal use rights to the forest.	C 1.1 The forest manager holds legal use rights to the forest.	1.1.1 The forest owner/manager holds legal use rights to the forest.
Payment of fees and taxes	1.2 All relevant royalties and taxes are paid for.	1.1.2 All relevant royalties and taxes are paid.	C 1.2 The forest manager complies with all obligations to pay taxes and royalties.	1.1.2 All relevant royalties and taxes are paid.
Compliance with relevant legislation on <ul style="list-style-type: none"> <li>• Environment</li> <li>• Forest management</li> <li>• Labour and welfare</li> <li>• Health and safety</li> <li>• Third parties’</li> </ul>	1.4 Both the forest management organisation and any contractors comply with local, national and international legal requirements including those relevant to <ul style="list-style-type: none"> <li>• Environment</li> <li>• Forest</li> </ul>	1.1.3 There is compliance by both the forest management organisation and any contractors with local and national legal requirements including those relevant to: <ul style="list-style-type: none"> <li>• Forest management</li> </ul>	C 1.3. Legal and regulatory obligations that apply to the forest management unit, including international agreements, are fulfilled.  C 2.1 The legal status of the management of the forest management unit	1.1.3 There is compliance by both the forest management organisation and any contractors with local and national legal requirements including those relevant to: <ul style="list-style-type: none"> <li>• Forest management</li> </ul>

Common theme	Belgium	Denmark	The Netherlands	UK
tenure rights	<p>management</p> <ul style="list-style-type: none"> <li>• Labour and welfare</li> <li>• Health and safety</li> <li>• Third parties’ tenure rights</li> </ul>	<ul style="list-style-type: none"> <li>• Environment</li> <li>• Labour and welfare</li> <li>• Health &amp; safety</li> <li>• Other parties’ tenure and use rights</li> </ul>	<p>and claims of the local population, including indigenous peoples, in the property/tenure or use rights regarding the forest management unit or a portion thereof have been inventoried and are respected.</p> <p>C 3.1. The forest manager must take adequate health and safety measures, at least in compliance with relevant legislation and in accordance with ILO conventions, in order to protect the personnel, including contractors and their employees and, where appropriate, the local and indigenous population.</p> <p>C 3.2. Employees have the right to organise and negotiate wages and employment conditions, in accordance with national laws and the core conventions of the International Labour Organisation (ILO).</p>	<ul style="list-style-type: none"> <li>• Environment</li> <li>• Labour and welfare</li> <li>• Health &amp; safety.</li> <li>• Other parties’ tenure and use rights</li> </ul>
Compliance with CITES	1.3 Compliance with CITES is required.	1.1.4 There is compliance with the requirements of CITES.	C 1.3. Legal and regulatory obligations that apply to the forest management unit, including international agreements, are fulfilled.	1.1.4 There is compliance with the requirements of CITES.

### 3.2.2.3 Analysis of common legality criteria

The comparison demonstrates that there are many similarities amongst the 4 governments’ criteria. Particularly, the Danish and UK definitions on legality are identical. The Belgian criteria cover the same aspects as the UK and Denmark, though not using the exact wordings. The Dutch criteria also share a lot of common elements, such as use right to the forest and payment of fees. Nevertheless, there are some small differences such as they do not explicitly refer to compliance with environment and forestry legislation (indirectly covered through C1.3). On the other hand, requirements on health and safety

explicitly mention ILO convention, and tenure and user right of local people including indigenous peoples are explained in more detail.

It is also important to ensure that the new criteria are in line with the definition in the EU Timber Regulation (TR). Under the EU TR, ‘applicable legislation’ covers the following matters:

- Right to harvest timber within legally gazetted boundaries
- Payments for harvest rights and timber including duties related to timber harvesting
- Timber harvesting, including environmental and forest legislation including forest management and biodiversity conservation, where directly related to timber harvesting.
- Third parties’ legal rights concerning use and tenure that are affected by timber harvesting
- Trade and customs, in so far as the forest sector is concerned

When comparing the above EU TR definition, it is noted that these are broadly consistent with the 4 key aspects commonly shared amongst public procurement policies. Under the EU TR, the third parties’ legal rights is a separated bullet point, rather than as a sub-bullet point under compliance with relevant legislation. In addition, the EU TR explicitly requires compliance with trade and customs related to forest sector.

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**Box 4 Suggestion on legality criteria**

Therefore, it is suggested to combine the two sets of criteria to ensure that they will be in line with the EU TR and other public procurement policies. This includes elaborate CITES requirements to also cover general trade and customs legislation.

Please refer to Annex 1 for the suggested criteria for legality.

### **3.2.2.4 Comparison of sustainability criteria in EU Member States’ public procurement policies**

The other 6 headings identified in international criteria in table 1 are key components of sustainability aspects of forest management. When comparing the requirements of public procurement policies of Belgium, Denmark, the Netherlands and the UK, they all cover the common 6 key components:

- Forest health and vitality
- Productive function of forest resources
- Protective function of forest resources
- Biodiversity conservation
- Extent of forest resources
- Social aspects

Certainly, these 6 aspects can be further elaborated into a set of requirements, there are similarities and differences amongst different Member States. A detailed comparison is shown in table 3 below.

**Table 3 Comparison of criteria of sustainability of Belgium, Denmark, Netherlands, UK**

Common theme	Belgium	Denmark	The Netherlands	UK
Forest health and vitality	<p>2.3.1 The forest management maintains or enhances the ecosystem health and vitality. It must therefore include requirements for management planning and ensure that risks and impacts of unwanted disturbances are minimized, including wildfires, airborne pollution, storm felling, invasive species, pests and diseases, in order to maintain the integrity of the forest.</p> <p>From legality:</p> <p>1.5 The forest management unit is protected by reasonable measures against all forms of illegal exploitation, illegal establishment of settlements, illegal land use, illegally initiated fires, and other illegal activities</p>	<p>1.2.5 The standard must seek to ensure that forest ecosystem health and vitality is maintained. In order to do this the standard must include requirements for:</p> <ul style="list-style-type: none"> <li>a. Management planning which aims to maintain or increase the health and vitality of forest ecosystems</li> <li>b. Management of natural processes, fires, pests and diseases.</li> <li>c. Adequate protection of the forest from unauthorised activities such as illegal logging, mining and encroachment.</li> </ul>	<p>P 5. The regulation function and quality, health, and vitality of the forest shall be maintained and where possible enhanced. To that end the system requires that:</p> <p>C 5.3. Important ecological cycles, including carbon and nutrient cycles, which occur in the forest management unit, are at least maintained.</p> <p>C 5.4. Avoidable damage to the ecosystem is prevented by application of the most suitable and available methods and techniques for logging and road construction under the prevailing conditions.</p> <p>C 5.5. Initiating of forest fires is only permitted if that is necessary for the achievement of the management goals of the forest management unit and adequate safety measures are taken.</p> <p>C 5.6. Forest management is geared towards preventing and controlling diseases and pests, in as much as they threaten the timber production.</p> <p>P 1. Relevant international, national, and regional/local legislation and regulations shall be respected. To that end the system requires that:</p> <p>C 1.4. The forest management unit is sufficiently protected against all forms of illegal exploitation, illegal establishment of settlements, illegal land</p>	<p>1.2.5 Management of the forest must ensure that forest ecosystem health and vitality is maintained. In order to achieve this, the definition of sustainable must include requirements for:</p> <ul style="list-style-type: none"> <li>a. Management planning which aims to maintain or increase the health and vitality of forest ecosystems</li> <li>b. Management of natural processes, fires, pests and diseases.</li> <li>c. Adequate protection of the forest from unauthorised activities such as illegal logging, mining and encroachment.</li> </ul>

Common theme	Belgium	Denmark	The Netherlands	UK
			use, illegally initiated fires, and other illegal activities.	
Production function of forest resources	2.1 The forest management ensures the production and maintenance of a wide range of ecosystem goods and services. It recognizes the importance of maintaining and improving an ample and valuable supply of primary forest products while ensuring that production and harvesting are sustainable and do not compromise the management options of future generations nor the ecological and socio-economic functions of the forest.	1.2.4 The standard must seek to ensure that productivity of the forest is maintained. In order to do this the standard must include requirements for: <ul style="list-style-type: none"> <li>a. Management planning and implementation of management activities to avoid significant negative impacts on forest productivity.</li> <li>b. Monitoring which is adequate to check compliance with all requirements, together with review and feedback into planning.</li> <li>c. Operations and operational procedures which minimise impacts on the range of forest resources and services.</li> <li>d. Adequate training of all personnel, both employees and contractors.</li> <li>e. Harvest levels that do not exceed the long-term production capacity of the forest, based on adequate inventory and growth and yield data.</li> </ul>	P 6. The production capacity of timber and relevant non-timber forest products shall be maintained. To that end the system requires that: <ul style="list-style-type: none"> <li>C 6.1. The production capacity of each forest type of the forest management unit as a whole is maintained.</li> <li>P 8. Sustainable forest management shall be realised through a management system. To that end the system requires that:                             <ul style="list-style-type: none"> <li>C 8.1. Forest management aims to achieve the goals formulated in the forest management plan and comprises the cycle of inventory and analysis, planning, implementation, monitoring, evaluation, and improvement.</li> <li>C 8.6. Forests are managed by professional staff and forest workers. Adequate periodic training secures the level of skills, including knowledge of relevant laws and treaties.</li> </ul> </li> </ul>	1.2.4 Management of the forest must ensure that productivity of the forest is maintained. In order to achieve this, the definition of sustainable must include requirements for: <ul style="list-style-type: none"> <li>a. Management planning and implementation of management activities to avoid significant negative impacts on forest productivity.</li> <li>b. Monitoring which is adequate to check compliance with all requirements, together with review and feedback into planning</li> <li>c. Operations and operational procedures which minimise impacts on the range of forest resources and services.</li> <li>d. Adequate training of all personnel, both employees and contractors.</li> <li>e. Harvest levels that do not exceed the long-term production capacity of the forest, based on adequate inventory and growth and yield data.</li> </ul>
Protective function of forest resources	2.2.1 The forest management maintains or enhances the soil and (natural) hydrological conditions as well as other ecosystem characteristics, and provides benefits to agriculture and rural	1.2.3 The standard must ensure that harm to ecosystems is minimised. In order to do this the standard must include requirements for: <ul style="list-style-type: none"> <li>a. Appropriate assessment of impacts and planning to</li> </ul>	P 5. The regulation function and quality, health, and vitality of the forest shall be maintained and where possible enhanced. To that end the system requires that: <ul style="list-style-type: none"> <li>C 5.1. The soil quality of the</li> </ul>	1.2.3 Management of the forest must ensure that harm to ecosystems is minimised. In order to do this the definition of sustainable must include requirements for: <ul style="list-style-type: none"> <li>a. Appropriate</li> </ul>

Common theme	Belgium	Denmark	The Netherlands	UK
	<p>livelihoods.</p> <p>It must ensure that harm to ecosystems is minimized. In order to do this, requirements for appropriate assessment of impacts and planning to minimize impacts, must be included. The most suitable and available methods and techniques for logging and road construction are applied.</p> <p>2.2.2 The use of chemicals is only permitted, if relevant laws allow for its application and no sustainable alternatives, including appropriate silvicultural alternatives and other biological measures, are available.</p>	<p>minimise impacts;</p> <p>b. Protection of soil, water and biodiversity;</p> <p>c. Controlled and appropriate use of chemicals and use of Integrated Pest Management wherever possible.</p> <p>d. Proper disposal of wastes to minimise any negative impacts.</p>	<p>forest management unit is maintained and, where necessary, improved, whereby special attention is given to shores, riverbanks, erosion-prone parts and slopes.</p> <p>C 5.2. The water balance and quality of both groundwater and surface water in the forest management unit, as well as downstream (outside of the forest management unit), are maintained and, where necessary, improved.</p> <p>C 5.7. The use of chemicals is only permitted if maximum use of ecological processes and sustainable alternatives proves insufficient. The use of class 1A and 1B pesticides, as drafted by the World Health Organisation, and of chlorinated hydrocarbons is not Permitted.</p> <p>C 5.8. Non-organic waste and litter are avoided, collected, stored in the designated places and removed in an environmentally responsible manner.</p>	<p>assessment of impacts and planning to minimise impacts;</p> <p>b. Protection of soil, water and biodiversity;</p> <p>c. Controlled and appropriate use of chemicals and use of Integrated Pest Management wherever possible.</p> <p>d. Proper disposal of wastes to minimise any negative impacts.</p>
Biodiversity conservation	<p>2.4 The forest management ensures the conservation or enhancement of biological diversity at ecosystem (landscape), species and genetic levels. Such conservation, including the protection of landscapes and areas with fragile ecosystems and the protection of rare, threatened and endangered species, ensures that diversity of life</p>	<p>1.2.6 The standard must seek to ensure that biodiversity is maintained. In order to do this the standard must include requirements for:</p> <p>a. Implementation of safeguards to protect rare, threatened and endangered species.</p> <p>b. The conservation/set-aside of key ecosystems or habitats in their natural</p>	<p>P 4. Biodiversity shall be maintained and where possible enhanced. To that end the system requires that:</p> <p>C 4.1. Objects of high ecological value and representative areas of forest types that occur within the forest management unit are identified, inventoried and protected.</p>	<p>1.2.6 Management of the forest must ensure that biodiversity is maintained. In order to achieve this, the definition of sustainable must include requirements for:</p> <p>a. Implementation of safeguards to protect rare, threatened and endangered species.</p> <p>b. The conservation/set-aside of key</p>

Common theme	Belgium	Denmark	The Netherlands	UK
	<p>is maintained. In order to do this, following requirements must be included:</p> <ul style="list-style-type: none"> <li>- the conservation / set-aside of key ecosystems or habitats in their natural state</li> <li>- implementation of safeguards to protect rare, threatened and endangered species the protection of features and species of outstanding or exceptional value.</li> </ul> <p>2.3.3 The use of genetically modified organisms is not allowed.</p>	<p>state.</p> <p>c. The protection of features and species of outstanding or exceptional value.</p>	<p>C 4.2. Protected and endangered plant and animal species are not exploited for commercial purposes. (C 13.2) Where necessary, measures have been taken for their protection and, where relevant, increase of their population.</p> <p>C 4.7. Genetically modified organisms are not used.</p>	<p>ecosystems or habitats in their natural state.</p> <p>c. The protection of features and species of outstanding or exceptional value.</p>
Extent of forest resources	<p>2.5.1 The forest management recognizes the importance of adequate forest cover and stocking to support the social, economic and environmental dimensions of forestry, to reduce deforestation, and to restore and rehabilitate degraded forest landscapes. The existence and extent of specific forest types are important as a basis for conservation efforts.</p> <p>2.5.2 Plantation forests are managed in a sustainable way and shall not be established through the conversion of natural forest after 2002<sup>4</sup></p>	<p>1.2.7 The standard must seek to ensure that the extent of the forest resource is maintained. In order to do this the standard should include requirements for:</p> <p>a. Forest management planning should aim to maintain or increase forest and other wooded area, and enhance the quality of the economic, ecological, cultural and social values of forest resources, including soil and water.</p> <p>b. Forest management practices should safeguard the quantity and quality of the forest resources in the medium and long term by balancing harvest and</p>	<p>P 4. Biodiversity shall be maintained and where possible enhanced. To that end the system requires that:</p> <p>C 4.3. Conversion of forests in the FMU to other types of land use, including timber plantations, shall not occur unless in justified exceptional circumstances.</p> <p>C 4.5. Plantations shall not be established through the conversion of natural forests after 1997.</p>	<p>2.7 The certification scheme must include measures which limit and clearly describe and justify the circumstances in which certification may be awarded to a forest, the character of which has been subject to planned and systematic transformation in a concentrated period of time with the consequence of significantly reducing the forest's biodiversity and/or health and vitality of the forest ecosystem; for example, the conversion of natural forest or forest with many of the characteristics of natural forest to industrial forest plantation.</p>

<sup>4</sup> At its sixth meeting in 2002 the Conference of the Parties (COP) adopted the expanded programme of work on forest biological diversity ([decision VI/22](#), paragraph 10, annex).

Common theme	Belgium	Denmark	The Netherlands	UK
		<p>growth rates, and by preferring techniques that minimise direct or indirect damage to forest, soil or water resources.</p> <p>c. More detailed requirements regarding operations that affect the extent and composition of forest resources in the short term should be laid down, either in nationally or locally developed standards, or in broader framework standards addressing the issue, e.g. standards regulating opportunities for the conversion of forest areas.</p>		
Social requirements	<p>2.6 The forest management is based on a highly developed social dialogue and ensures that the socio-economic function of the forest resources is maintained or enhanced.</p> <p>2.6.1 Property and land tenure rights as well as legal, customary and traditional rights related to forest land and the utilization of forest resources are clarified, recognized and respected.</p> <p>2.6.2 Appropriate mechanisms for resolving disputes between timber production operators logging in the forests and local people are laid down.</p> <p>2.6.3 Forest management planning should respect the multiple functions of forests to society and shall therefore contribute to the development of the local community.</p> <p>2.6.4 Employees are able to</p>	<p>1.2.8 The standard must seek to ensure that the socio-economic function of the forest resource is maintained. In order to do this the standard should include requirements for:</p> <p>a. Property and land tenure rights as well as legal, customary and traditional rights related to forest land and the utilisation of forest resources should be clarified, recognised and respected.</p> <p>b. Appropriate mechanisms for resolving disputes between timber production operators logging in the forests and local people should be laid down.</p> <p>c. Working conditions should be safe, and guidance and training in safe working practises should be provided.</p> <p>d. Employees must be able to organise freely and negotiate wages in</p>	<p>P 2. The interests of directly and indirectly involved stakeholders shall be taken into account. To that end the system requires that:</p> <p>C 2.1. The legal status of the management of the forest management unit and claims of the local population, including indigenous peoples, in the property/tenure or use rights regarding the forest management unit or a portion thereof have been inventoried and are respected.</p> <p>C 2.2. Effective communication with and consultation and participation of stakeholders take place regarding the management of the forests.</p> <p>C 2.3. The local population and indigenous peoples have a say in forest management on the basis of free and informed</p>	<p>1.2.7 Management of the forest must have full regard for:</p> <p>Identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;</p> <p>1.2.8 Mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and</p> <p>1.2.9 Safeguarding the basic labour rights and health and safety of forest workers.</p>

Common theme	Belgium	Denmark	The Netherlands	UK
	<p>organize freely and negotiate wages and employment conditions in accordance with the core conventions of the International Labour Organization</p> <p>2.6.5 Working conditions are safe, and guidance and training in safe working practices should be provided.</p> <p>2.6.6 The forest management must include requirements to minimize social impacts.</p> <p>2.6.7 The forest management involves effective participation of interested parties, such as local communities, forest owners, NGOs and local people .</p>	<p>accordance with the core conventions of the International Labour Organisation (ILO).</p>	<p>consent, and hold the right to grant or withhold permission and, if relevant, receive compensation where their property/use rights are at stake.</p> <p>C 2.4. The forest management plan and accompanying maps, relevant monitoring results and information about the forest management measures to be applied are publicly available, except for strictly confidential business information.</p> <p>C 2.5. Adequate mechanisms are in place for resolving disputes regarding forest management, property/usage rights, work conditions, or social services.</p> <p>C 2.6. Objects of cultural and traditional economic value are identified and inventoried in consultation with the stakeholders and are respected.</p> <p>P 3. Safety, health, and labour conditions shall be sufficiently safeguarded and where relevant enhanced. To that end the system requires that:</p> <p>C 3.1. The forest manager must take adequate health and safety measures, at least in compliance with relevant legislation and in accordance with ILO conventions, in order to protect the personnel, including contractors and their employees and, where appropriate, the local and indigenous</p>	

Common theme	Belgium	Denmark	The Netherlands	UK
			<p>population.</p> <p>C 3.2. Employees have the right to organise and negotiate wages and employment conditions, in accordance with national laws and the core conventions of the International Labour Organisation (ILO).</p>	

### 3.2.2.5 Analysis of common sustainability criteria

There are many similarities but also differences when comparing the criteria from the 4 Member States’ public procurement policies. In general, they share the 6 common headings but differ in details.

First of all, the UK and Danish governments share a lot of common criteria. The criteria on the following aspects are identical:

- Forest health and vitality
- Productive function of forest resources
- Protective function of forest resources
- Biodiversity conservation

The criteria on social aspects between the Danish and the UK governments are very similar; they both cover 1) mechanism for resolving grievances; 2) legal, customary and traditional tenure and use rights are respected. The difference is that the UK Government includes a general requirement on safeguarding the labour rights and health and safety of forest workers, while the Danish Government further elaborates this requirement into two separate requirements: 3) working conditions should be safe and 4) labour rights (e.g. employees must be able to organise freely and negotiate wages).

The only major difference between the Danish and UK governments’ criteria is on the extent of forest resources. In this aspect, the UK Government specifically refers to certification schemes to include measures that limit the circumstances in which certification may be awarded to a forest, to ensure that the extent of forest resources are maintained. However, it can be argued that the extent of forest resources is implicitly covered by the criteria in forest health and vitality. On the other hand, the Danish Government has more detailed requirements, including forest management planning that aims to maintain or increase forest area, forest management practices that safeguard the quantity and quality of forest resources in the medium and long terms.

The Dutch Government contains far more criteria than the other 3 governments. Under forest health and vitality, it explicitly mentions the circumstances when fire is allowed to be used, and ecological cycles should be maintained. Under biodiversity conservation, the Dutch Government also specifically requires that genetically modified organisms are not used.

In many cases, the Dutch criteria are more elaborative and prescriptive than the other governments’ criteria. For example, the Danish and the UK government require

'protection of soil, water and biodiversity', while the Dutch government explicitly requires that soil quality is maintained and improved, and water balance and quality of groundwater and surface water is maintained.

One of the major differences of the Dutch criteria is that they contain more detailed social aspects. Apart from the 3 common requirements that are shared with other governments' criteria, the Dutch Government contains other requirements including that cultural and traditional economic values are identified and respected, and there is consultation and participation of stakeholders regarding the management of forests. It is, however, Proforest's understanding that, unlike the other member states criteria, not all the Dutch criteria listed have to be met when assessing certification schemes.

On many aspects, the Belgian criteria contain less detailed requirements compared to the Dutch and the Danish/UK criteria. Belgian criteria contain the same requirements as the UK and the Danish governments on forest health and vitality, though they do not use the exact wordings, and the requirement on control of illegal activities is actually included as a criterion in legality. On the productive function of forest, the requirements are brief, talking about focusing on sustainable production and harvesting, but do not provide further details. Belgian criteria cover most of the requirements under protective function of forest, except proper disposal of waste. The Belgian Government also contain the same requirements as the UK and Danish governments on biodiversity conservation. It further prohibits the use of GM. On social aspects, the Belgian criteria include more requirements than the Danish and UK governments. The Belgian Government contain the same 4 requirements as the Danish Government, however, it further requires that forest management 1) contributes to the development of local community; 2) includes requirements to minimise social impacts; 3) involves effective participation from interested parties.

### 3.2.2.6 FLEGT-licensed timber

The acceptability of FLEGT-licensed timber in public procurement policies varies depending on the minimum requirements. The minimum requirements for both the German<sup>5</sup> and Belgian procurement policies are for sustainable timber, hence FLEGT, which is regarded as legal only, is not considered under the current policies. The UK and the French<sup>6</sup> policies have specific reference to FLEGT. The UK government has formally announced that FLEGT-licensed sources will be accepted as equivalent of sustainable until 2015 and it is argued that the FLEGT process represents a different way of ensuring sustainability, applying at a national level as opposed to on a forest management unit level. The French government also accepts a legality licence including FLEGT as proof of legality. Though the Dutch government does not have any explicit references to FLEGT-licences in its current policy, it also accepts FLEGT-licensed timber as meeting its legality requirements. The new revised guidelines for the Danish procurement policy mentioned that FLEGT-licensed timber will be accepted as verifying legal timber.

It is generally believed that FLEGT licences are stand-alone tools and thus have to be differentiated from those means directly addressing sustainability at a forest management unit level, e.g. certification. It is important that the Member States provide incentives for joining the FLEGT process and this can be done through public procurement policies. It is

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<sup>5</sup> Note that the German Government criteria are for internal use only and are not publicly available.

<sup>6</sup> Note that the French Government has not developed criteria for legality and sustainability, it relies on certification schemes to deliver its requirements.

therefore suggested that the Luxembourg Government also explicitly accept FLEGT-licensed timber as meeting the government requirements.

### 3.2.2.7 Suggested forest management criteria for Luxembourg Government

There are a number of points to consider when proposing new forest management (legality and sustainability) criteria for the Luxembourg Government. These include:

- Harmonisation of criteria with other EU Member States
- How the criteria will be used
- Alternative evidence
- Social criteria

**Harmonisation of criteria of other EU Member States:** The recommendations of the Standing Forestry Committee Ad Hoc Working Group IV on Public Procurement of Wood and Wood-based Products<sup>7</sup> encourages the Member States *'to work towards the use of the same sustainability criteria regardless of the end-use of wood, including as biomass for energy. This means that all forest-related policies in the EU – such as Green Public Procurement (GPP), Renewable Energy (RES), FLEGT – should base their sustainability on a commonly accepted definition of and criteria for sustainable forest management and also legality requirements.'* No overall 'EU criteria' currently exists, so in order to be consistent with other EU Member States, it is recommended to make use of their existing legality and sustainability criteria. The Luxembourg Government can directly adopt existing criteria from Member States, or choose criteria that are important to Luxembourg from several Member States. Stakeholders commented that banning the use of genetically modified organisms (GMOs) is important in Luxembourg hence this criterion should be added. Proforest will, however, recommend that existing criteria are referred to without alterations, as it will enable the shared use of resources as outlined in the following.

**Social criteria:** Different Member States have different interpretation related to the possibility of including social criteria within the EU Directives on public procurement of timber products. The UK Government previously omitted social criteria because of the understanding that public sector contracting authorities can only specify criteria that are directly linked to the goods, works or services being purchased. Therefore, the UK Government's definition of sustainable timber was limited to the production process, and included only those environmental elements considered relevant to the production of the timber. However, this was changed in 2010 and the UK Government's current requirements include social criteria which are referred to at the contract performance stage, but not included in specification text.

Nevertheless, there is still ongoing debate on whether, and to what extent social criteria can be included in public procurement policies. The Ad Hoc Working Group recommended to the European Commission (EC) to clarify the concerns about *'social criteria in wood-procurement policies with an appropriate legal analysis pertaining to sustainability criteria, including criteria relating to social aspects of sustainable forest management.'*

The analysis in section 3.2.1.5 shows that both the UK and the Danish governments share more or less the following 3 aspects on social criteria:

- Respect of legal, customary and traditional tenure and use rights
- Mechanism for resolving grievances

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<sup>7</sup> Report can be downloaded at: [http://ec.europa.eu/agriculture/fore/publi/wg4-112010\\_en.pdf](http://ec.europa.eu/agriculture/fore/publi/wg4-112010_en.pdf)

- Safeguarding labour rights and health and safety of forest workers

The Dutch criteria have far more details and apart from the above criteria, the Dutch Government also include criteria on participation and consultation of stakeholders in forest management.

Since it is not entirely clear to what extent social criteria can be included in public procurement, it is suggested to be cautious in including such criteria, and ensure that they are covered in a way that complies with EU procurement rules.

**How the criteria will be used:** Another important consideration is how the criteria will be used. Both the Dutch and the UK governments carry out desk-based assessments of forest certification schemes based on their criteria. Results are published at the TPAC and CPET websites<sup>8</sup> respectively. The Dutch and the UK take a different approach in assessing schemes. The UK only assess FSC and PEFC international standards, while the Netherlands assess national PEFC standards in countries where are relevant to the Dutch markets.

The Belgian Government also undertook assessment of FSC and PEFC in 2010. The results show that both FSC and PEFC are adequate to meet Belgian Government criteria on legality and sustainability.

It should be noted that the Danish criteria still remain in the draft version. In May 2010, the Danish Government issued revised guidelines for the implementation of policy that accept PEFC and FSC certified products. So even though the Danish Government has developed forest management criteria, in reality, the Danish criteria have never been used to assess forest certification schemes.

The Luxembourg Government needs to consider how they are going to use the criteria. If the purpose is to evaluate forest certification schemes based on the new criteria, then it would be useful to use similar criteria in other EU Member States. The Belgian, Dutch and the UK governments have already carried out assessment of schemes, so the Luxembourg Government can refer to their assessment results, if there is limited resource to carry out their own assessment.

If the Luxembourg Government is going to take the same approach as the Danish and French governments<sup>9</sup> to rely on certification schemes to meet their requirements, then it is equally important to ensure that the criteria contain key important requirements but are not too prescriptive. If the criteria are too specific, there is a danger that some national schemes are not be able to meet such requirements.

**Alternative evidence:** The requirements of the EU procurement rules imply that it is acceptable to use forest certification schemes as an appropriate means to demonstrate compliance with the environmental and social criteria laid down in technical specifications. However, EU Member States are required to also accept alternative evidence. Alternative evidence of the legality and sustainability criteria being met should be required in all cases where the product is not certified by an accepted scheme.

Both the UK and the Dutch governments called this alternative evidence (non-certification schemes) Category B evidence. Both governments have developed guidance/manual to assist the assessment of Category B evidence. The guidance for alternative evidence

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<sup>8</sup> TPAC website: <http://www.tpac.smk.nl/>; CPET website: <http://www.cpet.org.uk>

<sup>9</sup> Note that the French Government has not developed criteria to assess certification schemes. It relies on the verification of certification schemes to demonstrate compliance.

clarifies how the level of robustness of the evidence and the level of risk of the wood being from illegal and unsustainable sources reflects the level of verification required. The higher the risk of the wood being from an illegal and unsustainable source, the more independent verification is required.

In the Netherlands, TPAC can provide advice but it is the procurement officers' responsibilities to accept Category B evidence. Similarly, in the UK, it is the procurement officers and suppliers to assess Category B evidence and CPET can be contacted for advice. Since the criteria for assessing forest certification schemes and alternative evidence are the same, it is important to consider how the criteria are going to be implemented in practice for alternative evidence. In other words, it cannot be too specific/exact/precise as it may be too difficult or impossible for procurement officers/suppliers to assess alternative evidence.

It was commented that it is important to get expert advice to assess the conformity of any evidence other than certification schemes. The Luxembourg Government will need to consider who and how this will implement in practice.

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**Box 5 Suggestion for sustainability criteria**

Suggestion:

To conclude, it is important to ensure that the new criteria cover the 6 common aspects, cover key/important requirements but are not too prescriptive/specific on the approach/methods taken in achieving the purposes.

The Luxembourg Government does not need to use exact wordings from the existing criteria from other EU Member States, though it is recommended. It is essential to cover the same principles and requirements. Stakeholder consultation on the suggested criteria is necessary.

Our recommendation is to adopt the UK criteria on sustainability, as they cover the 6 common aspects but at the same time not too specific. It is also suggested to include prohibition of use of genetically modified organisms (GMOs) as this is important in Luxembourg.

Please refer to Annex 1 for the suggested sustainability criteria.

### 3.2.3 Criteria for certification schemes

#### 3.2.3.1 Initial Luxembourg criteria on certification systems and chain of custody

The initial criteria for certification schemes developed by the Luxembourg Government in 2008 are shown in Box 5:

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**Box 6 Initial Luxembourg criteria of certification systems and chain of custody, 2008**

*2) criteria of the certification systems and of the chain of custody*

- *the certification systems and the chain of custody must respect international or equivalent standards to guarantee, according to established procedures:*
  - *the right to participation of all the concerned parties;*
  - *the transparency for the concerned parties and the public;*

- *the equitable decision-making and the fair recourse;*
- *the traceability of the products certified by a chain of custody;*
- *the absence of illegal wood in the certified products;*
- *the independent accreditation of the certification organizations.”*

The first point of reference is to compare the Initial Luxembourg certification criteria with key features of certification schemes (Table 4) to identify the gaps.

**Table 4 Comparison of the Luxembourg criteria against the main features of certification schemes**

Main features	Luxembourgish criteria	Comment
Standard	<i>the absence of illegal wood in the certified products;</i>	This criterion is one of the requirements in content of standards for legality, should be included in the criteria for forest management (see section 3.2.1)
Standard setting process	<i>the right to participation of all the concerned parties;</i>  <i>the equitable decision-making and the fair recourse</i>  <i>the transparency for the concerned parties and the public;</i>	It is suggested to elaborate more on the right to participation, equitable decision-making and transparency for concerned parties and the public
Certification	<i>the transparency for the concerned parties and the public;</i>	It is suggested to elaborate more on what ‘transparency’ means in certification process. Does it refer to publicly available documents? Or does it refer to stakeholder consultation during certification audit?
Accreditation	<i>the independent accreditation of the certification organizations</i>	It is suggested to elaborate on the independent accreditation. What international standard/guide does the accreditation refer to?
Chain of Custody	<i>the traceability of the products certified by a chain of custody;</i>	It is suggested to elaborate on traceability

While the initial Luxembourg criteria include some of the main features of certification schemes, they are too brief and do not cover all the important aspects. Therefore, further elaboration on each of the key features is required.

### 3.2.3.2 Comparison of criteria on certification schemes in EU Member States’ public procurement policies

Public procurement policies of Belgium, Denmark, the Netherlands and the UK have developed criteria related to the main features of certification scheme for the purpose of assessing their credibility. It would be useful to make a comparison to identify if there any common criteria. Table 5 below shows the comparison.

**Table 5 Comparison of the criteria for certification schemes in public procurement policies**

Main features	Belgian	Denmark	Netherlands	UK
Standard setting process	<p>2.8 The forest certification scheme is participatory in nature and should be acceptable to a large number of stakeholders, including local communities and environmental NGOs;</p> <p>The active participation of forest managers/owners must be secured.</p> <p>2.9 The standard-setting and decision-making process adopted ensures: general agreement, characterized by the absence of sustained opposition to substantial issues by any important part of the concerned interests and by a process that involves seeking to take into account the views of all parties concerned (including economic, environmental and social parties) and to reconcile any conflicting arguments. Decisions are made, if possible, by consensus.</p> <p>No decision can be made in the absence of agreement from the majority of an economic, environmental or social interest category and no single interest can dominate the process.</p> <p>2.10 The forest certification scheme must be completely transparent for both stakeholders and the public.</p> <p>2.11 The forest certification scheme must guarantee that forest management is based on internationally</p>	<p>1.3.1 The standard-setting process must be consistent with the requirements of <i>ISO Guide 59: Code of Good Practice for Standardisation</i> or the <i>ISEAL Code of Good Practice for Setting Social and Environmental Standards</i> or equivalent.</p> <p>1.3.2 Within the overall framework set out in section 1.2, sustainability standards must be developed or adapted nationally or locally in a transparent and consultative process, which encourage participation of, and is open and accessible to all affected parties, including economic, environmental and social stakeholder groups.</p> <p>1.3.3 Standards must be determined either in consensus or through a majority voting process which prevents major interest categories (representing economic, social and environmental stakeholders) from being overruled.</p> <p>1.3.4 Formal approval of standards should be based on evidence of consensus or majority voting.</p> <p>1.3.5 Standards should be publicly available.</p>	<p>P 1. The process of standard development and the standard itself shall fulfil the requirements as established by international umbrella organisations (such as ISO and ISEAL). To that end the system requires that:</p> <p>C 1.1. The development process of the standard fulfils the requirements established in the ISEAL ‘Code of Good Practice for Setting Social and Environmental Standards’, the ISO Guide 59 ‘Code of Good Practice for Standardisation’ or equivalent requirements. The development process and application of the standard at least fulfil the following criteria: 1.2. through 1.10.; 2.1. and 2.2.; 3.3. through 3.6. of this assessment table.</p> <p>C 1.2. The standard development body comprises the relevant interested groups that serve the economic, social and environmental interests without undue dominance of one interest.</p> <p>C1.3 Decisions of the standard development body are made, if possible, by consensus. If consensus is not reached, qualified majority voting applies.</p> <p>C 1.4. The development of the standard takes place with input of the relevant stakeholders. Potential limitations for certain</p>	<p>1.3.1 The standard-setting process must be consistent with the requirements of <i>ISO Guide 59: Code of Good Practice for Standardisation</i> or the <i>ISEAL Code of Good Practice for Setting Social and Environmental Standards</i> or equivalent</p> <p>1.3.2 The standard-setting process must seek to ensure balanced representation and input from the economic, environmental and social interest categories.</p> <p>1.3.3 The standard-setting and decision-making process adopted must seek to ensure:</p> <ul style="list-style-type: none"> <li>• No single interest can dominate the process;</li> <li>• No decision can be made in the absence of agreement from the majority of an interest category</li> </ul>

Main features	Belgian	Denmark	Netherlands	UK
	<p>accepted standards, and respects all relevant national and local laws.</p> <p>2.12 The standard and the procedures for establishing compliance are sufficiently flexible to be applied under changing local conditions and to forest management units of any size, either as a part of a group or regional association or otherwise.</p>		<p>groups such as indigenous peoples and small forest owners to contribute directly are taken into account.</p> <p>C 1.5. The standard development procedure provides for public input during a reasonable period of time.</p> <p>C 1.6. With the development of the standard, the standard setting organisation takes into account any comments submitted in writing and communicated verbally. The organisation maintains reports of the development process of the standard including the received input and how it is dealt with. A summary of it is published and is freely available.</p> <p>C 1.7. The standard setting organisation publishes the standard as soon as it has been established.</p> <p>C 1.8. A national standard which is part of an international certification system with a generic standard or which is based on a generic standard of an umbrella organisation, must refer to the relevant generic standard and be accepted by the relevant international system or organisation.</p>	
Certification	3.1 Certification is undertaken by a body whose organisation, systems and procedures	2.1 Certification must be undertaken by a body whose organisation, systems and procedures	P 4. Certification bodies shall be independent and shall be competent to assess sustainable forest	2.1 Certification must be undertaken by a body whose organisation, systems and procedures

Main features	Belgian	Denmark	Netherlands	UK
	conform to applicable ISO guidance <sup>10</sup> , or publicly available equivalent.	conform to applicable ISO guidance, or publicly available equivalent.	management and the chain of custody system. To that end the system requires that:	conform to applicable ISO guidance, or publicly available equivalent.
	3.2 Certification is undertaken by a body which is accredited to evaluate against forest management standards.	2.2 Certification is undertaken by a body which is accredited to evaluate against forest management standards.	C 4.1. The certification bodies are accredited on the basis of the requirements and guidelines in ISO 170211 ‘Conformity Assessment - Requirements for Bodies Providing Audit and Certification of Management Systems’ and/or ISO Guide 65 (EN 45011) ‘General Requirements for Bodies Operating Product Certification Systems’ and preferably on the basis of specific supplemental requirements for performance of conformity assessments according to the standards for sustainable forest management and the chain of custody.	2.2 Certification is undertaken by a body which is accredited to evaluate against forest management standards
	3.3 The certification audit must include sufficient consultation with external stakeholders to ensure that all relevant issues are identified relating to compliance with the requirements of the standard.	2.3 The requirements for certification audits must include assessment of systems and documentation together with verification of outcomes in the forest adequate to ensure that both system and performance requirements in the standard are being met.	C 4.2. The certification contains an assessment of system documents, site visits, and sufficient consultation of external stakeholders.	2.3 The requirements for certification audits must include assessment of systems and documentation together with verification of outcomes in the forest adequate to ensure that both system and performance requirements in the standard are being met.
	3.4 The requirements for certification audits must include assessment of systems and documentation together with field visits.	2.4 The certification audit must include sufficient consultation with external stakeholders to ensure that all relevant issues are identified relating to compliance with the requirements of the standard.	C 4.3. In case of group or regional certification an adequate sample of group members must be audited.	2.4 The certification audit must include sufficient consultation with external stakeholders to ensure that all relevant issues are identified relating to compliance with the requirements of the standard
	3.5 The certification process is transparent and a summary of the results of the certification audit (excluding confidential information) must be publicly available to interested parties.	2.5 A summary of the results of the certification audit (excluding confidential information) must be publicly available to interested parties.	C 4.4. The certification agency makes the following items public in addition to the requirements in ISO 17021 and ISO Guide 65: a. summaries of assessment	2.5 A summary of the results of the certification audit (excluding confidential information) must be publicly available to interested parties
	3.6 There is an accessible, functioning and free-of-charge mechanism for dealing with complaints and disputes which is open to any interested party.	2.6 There is an accessible and functioning mechanism for dealing with complaints and disputes which is open to any interested party.		2.6 There is an accessible and functioning mechanism for dealing with complaints and disputes which is open to any interested party.
	3.7 The forest certification scheme must take account of each region’s diversity and specificity and must not discriminate against certain forest type, groups			

<sup>10</sup> such as ISO 17021:2006 ‘Conformity Assessment - Requirements for Bodies Providing Audit and Certification of Management Systems’ and/or ISO Guide 65 ‘General Requirements for Bodies Operating Product Certification Systems’

Main features	Belgian	Denmark	Netherlands	UK
	of forest owners, countries or regions.		reports b. a list of the granted certificates	
Accreditation	<p>4.1 Accreditation must be undertaken by a competent and independent national or international body whose organization, systems and procedures are consistent with ISO 17011:2004 <i>Conformity assessment -- General requirements for accreditation bodies accrediting conformity assessment bodies</i> or equivalent</p> <p>The procedures must be transparent and available to the public</p>	<p>3.1 Accreditation must be undertaken by a national (e.g. DANAK) or international body whose organisation, systems and procedures are consistent with ISO 17011:2004 <i>Conformity assessment -- General requirements for accreditation bodies accrediting conformity assessment bodies</i> or equivalent.</p>	<p>P 5. The accreditation agencies that grant the accreditations for certification of sustainable forest management and/or the chain of custody shall be competent and independent, national or international organisations that are preferably member of the IAF. To that end the system requires that:</p> <p>C 5.1. Accreditation must be granted by a national or international organisation that fulfils requirements as included in ISO 17011 ‘General Requirements for Assessment and Accreditation of Certification Bodies’.</p> <p>C 5.2. The accreditation body takes part in a peer review process with sister organisations, preferably within the framework of the IAF.</p>	<p>3.1 Accreditation must be undertaken by a national or international body whose organisation, systems and procedures are consistent with ISO 17011:2004 <i>Conformity assessment -- General requirements for accreditation bodies accrediting conformity assessment bodies</i> or equivalent.</p>
Chain of custody	<p>5.1 The forest certification scheme must guarantee the existence of a Chain of Custody (CoC) which provides a link between the certified material in the product or product line and certified forests.</p> <p>5.2 Assessment of chain of custody must be undertaken by a certification body operating in accordance with ISO Guide 65 <i>General Requirements for Bodies Operating Product Certification Systems</i> or</p>	<p>4.1 Assessment of chain of custody must be undertaken by a certification body operating in accordance with ISO Guide 65 or equivalent and accredited by an accreditation body operating in accordance with ISO 17011 or equivalent.</p> <p>4.2 The scheme must define requirements for chain of custody which provides a link between the certified material in the product or product line and</p>	<p>P 1. A Chain of Custody (CoC) must be in place from the forest unit of origin to the final point of sale, which provides a link between the certified material in the product or product line and certified forest units. To that end the system requires that:</p> <p>C 1.1 Each individual organisation in the CoC possesses an operational CoC system.</p> <p>C 1.2 The management system of each</p>	<p>4.1 Assessment of chain of custody must be undertaken by a certification body operating in accordance with ISO Guide 65 or equivalent and accredited by an accreditation body operating in accordance with ISO 17011 or equivalent</p> <p>4.2 There must be a certified chain of custody in place from the forest of origin to the final certified product which provides a link between the certified</p>

Main features	Belgian	Denmark	Netherlands	UK
	<p>equivalent and accredited by an accreditation body operating in accordance with ISO 17011:2004 <i>Conformity assessment -- General requirements for accreditation bodies accrediting conformity assessment bodies</i> or equivalent.</p> <p>5.3 If Group certification of the CoC is allowed, the standard must require that the group as whole must comply with the same requirements which are posed on individual companies. To that end the system requires:</p> <p>(1) A group has a juridical entity, which is responsible for the group as a whole.</p> <p>(2) The group has a management system that provides sufficient guarantees that (3) will be met.</p> <p>(3) The group operates according to the principle that ‘Relevant international, national, and regional/local legislation and regulations shall be respected’. In addition, each member of the group complies with these requirements inasmuch as they apply to its operations.</p> <p>(4) The group leader has a registration system in place including:</p> <p>a. names and addresses of the group members</p> <p>b. declarations of</p>	<p>certified forests.</p> <p>4.3 If mixing of certified and uncertified material in a product or product line is allowed, the uncertified material must be covered by a verifiable system which is designed to ensure that it is from legal sources.</p> <p>4.4 If mixing of certified and uncertified material in a product or product line is allowed (and requirements for sustainability are to be fulfilled), then there must be a system in place ensuring that either:</p> <ul style="list-style-type: none"> <li>• The percentage of material in the product or product line from a certified forest is reported and constitutes in average at least 70% (percentage based claim) or;</li> <li>• The proportion of product sold as certified is equivalent to the proportion of certified raw material entering the process (mass balance claim).</li> </ul> <p>4.6 If recycled material is used there must be a verifiable system in place which is designed to ensure that recycled material is from the following categories:</p> <ul style="list-style-type: none"> <li>• Pre-consumer recycled wood and wood fibre or industrial by-products but excluding sawmill co products</li> <li>• Post-consumer recycled wood and wood fibre</li> <li>• Drift wood</li> </ul>	<p>organisation in the CoC provides sufficient guarantees that the requirements of the CoC standard are being met</p> <p>C 1.3 Each individual organisation in the CoC registers quantities and the names and certificate numbers of the organisations from which it purchases timber and to which it sells timber.</p> <p>C 1.4 If the system allows for mixing of SFM-certified and non-SFM-certified material, the non- SFM certified material is covered by a verifiable system to ensure that it is from non-disputed, at least legal sources. This applies to new-, including pre-consumer recycled material, and post-consumer recycled material.</p> <p>C1.5 SFM-certified timber, including timber products, timber from other verified legal sources and timber from non-verified (legal) sources are administratively separated. Timber from non-verified (legal) sources is also physically separated from the other two sources.</p> <p>C1.6 If the system allows for mixing of SFM-certified and non-SFM-certified material, (one of) the following approaches shall be used:</p> <ul style="list-style-type: none"> <li>• mass balance claim: the proportion of the product sold as SFM certified is equal to the proportion of SFM certified material</li> </ul>	<p>material in the product or product line and certified forests.</p> <p>4.3 If mixing of certified and uncertified material in a product or product line is allowed, the uncertified material must be covered by a verifiable system which is designed to ensure that it is from legal sources</p> <p>4.4 If mixing of certified and uncertified material in a product or product line is allowed and the proportion of uncertified material can exceed 30%, then the uncertified material must be covered by a verifiable system which ensures that it is from sustainable forest sources where the requirements for sustainability set out in criteria 1.2.3 – 1.2.6 above are being met</p> <p>4.6 If recycled material is used there must be a verifiable system in place which is designed to ensure that recycled material is from the following categories:</p> <ul style="list-style-type: none"> <li>• Pre-consumer recycled wood and wood fibre or industrial by-products but excluding sawmill co-products unless certified</li> <li>• Post-consumer recycled wood and wood fibre</li> <li>• Drift wood</li> </ul>

Main features	Belgian	Denmark	Netherlands	UK
	<p>each member to comply with the certification requirements of the CoC.</p> <p>5.4 If mixing of certified and uncertified wood material in a product or product line is allowed, the uncertified material must be covered by a verifiable system which is designed to ensure that it is from legal sources.</p> <p>5.5.1 If mixing of certified and uncertified material in a product or product line is allowed (and requirements for sustainability are to be fulfilled), then there must be a system in place ensuring that either:</p> <p>5.5.2 The percentage of material in the product or product line from a certified forest is reported and constitutes in average at least 70% (percentage based claim) or;</p> <p>5.5.3 The proportion of product sold as certified is equivalent to the proportion of certified raw material entering the process (mass balance claim).</p> <p>5.6 If recycled material is used there must be a verifiable system in place which is designed to ensure that recycled material is from the following categories:</p> <ul style="list-style-type: none"> <li>• Pre-consumer recycled wood and wood fibre or industrial by-products but</li> </ul>		<p>entering a process;</p> <ul style="list-style-type: none"> <li>• percentage based claim: the percentage of SFM certified material in a product or product line is reported</li> </ul> <p>Also C 4.1 on ISO guide.</p>	

Main features	Belgian	Denmark	Netherlands	UK
	<p>excluding sawmill co-products</p> <ul style="list-style-type: none"> <li>• Post-consumer recycled wood and wood fibre</li> <li>• Drift wood</li> </ul>			
Labelling	<p>5.9 There is a clearly defined mechanism for controlling all claims made about the certified nature of products which ensures that claims are clear and accurate and that action is taken to prevent any false or misleading claims</p> <p>5.7 Logos and labels that belong to the certification system and occur on products and documents shall have an unambiguous meaning and shall be applied in accordance with the rules established by the certification system</p>	<p>4.5 There is a clearly defined mechanism for controlling all claims made about the certified nature of products which ensures that claims are clear and accurate and that action is taken to prevent any false or misleading claims.</p>	<p>C 3.1. The system manager employs rules for the use of logos and labels and for supervision of compliance. The rules comprise at least:</p> <ol style="list-style-type: none"> <li>specification of the logos and labels</li> <li>unambiguous description of the claim that the logos and labels represent, including the requirement to communicate the actual or minimum percentages of SFM certified- and postconsumer recycled material included in the product or product line</li> <li>rights to use logos and labels</li> <li>instructions regarding the use of logos and labels and the informative text they show.</li> </ol> <p>C 3.3 There is a clearly defined mechanism for controlling all claims made about the certified nature of products, which ensures that claims are clear and accurate and that action is taken to prevent any false or misleading claims.</p>	<p>4.5 There is a clearly defined mechanism for controlling all claims made about the certified nature of products which ensures that claims are clear and accurate and that action is taken to prevent any false or misleading claims.</p>

### 3.2.3.3 Analysis of criteria for certification schemes

The comparison table shows that there are a lot of common elements amongst the different procurement policies on the main features of certification schemes.

First of all, on **standard-setting**, the Belgian, Danish, Dutch and the UK governments share a lot of common elements: standards must be developed in a consultative process; decision making process strives for consensus. The Danish, Dutch and the UK governments

also require that a standard-setting process must be consistent with ISO Guide 59 or ISEAL Code of Good Practice for Setting Social and Environmental Standards.

The Danish and Dutch governments further require public availability of standards; while the Belgian requires that the certification scheme 'must be *completely transparent*'. The Dutch criteria also contain how comments are dealt with.

**Certification:** Similarly, there are several common criteria amongst the different policies. The Danish and the UK criteria are identical: 1) certification bodies are required to comply with the relevant ISO Guide; 2) certification is carried out by an organisation which is accredited to evaluate against forest management standards; 3) certification involves assessment of documentation and system and verification in the field; 4) certification audits must include consultation; 5) summary of certification results are publicly available; 6) mechanism for dealing complaints. The Belgian and the Dutch criteria also cover these 6 requirements, though not using the exact wordings. The Dutch Government does not explicitly require complaints mechanism, though this is implicitly covered by ISO 17021. Both the Belgian and the Dutch government also include an additional requirement on group certification.

**Accreditation:** All governments require that accreditation must be carried out by an organisation that meets ISO Guide 17011. The Belgian Government requires that the procedures must be transparent and publicly available, while the Dutch Government includes an additional requirement on peer review process.

**Chain of Custody:** The Belgian, Danish and the UK policies share 4 identical criteria: 1) compliance with ISO Guide 65; 2) for mixed products, the uncertified material must be from legal sources; 3) for mixed products, the threshold for certified material is 70%; 4) defined categories of recycled materials. They both further cover one further aspect that uses different wordings: 5) chain of custody in place from the forest to the final products. In addition, the Belgian Government set requirements for group certification.

The Dutch government share more or less the above requirements, with the exception that there is no minimum threshold for the percentage of certified material in mixed products, and that no defined categories of recycled materials are provided.

**Labelling:** All governments require that there is a defined mechanism for controlling all claims made about the certified nature of products to ensure that the claims are clear and accurate. The Dutch Government includes further specific rules on labelling such as specifications on the labels and logos.

### **3.2.3.4 Suggested certification schemes criteria for Luxembourg Government**

The analysis in 3.2.3.3 indicates that there are several shared criteria on certification schemes amongst the EU Member States' public procurement policies, particularly on certification, accreditation and labelling requirements. There are slight differences in standard setting and chain of custody criteria, however, in broad terms they share many common features. Therefore, it is suggested to make use of existing criteria from the EU Member States rather than developing new criteria. When choosing the criteria, it is important to ensure that core requirements are covered to ensure credibility of certification schemes; at the same time, it is crucial not to be too prescriptive and to avoid focusing on the small details. The selected criteria should also be consulted with relevant stakeholders.

**Box 7 Suggested criteria on certification schemes and chain of custody**

**Suggested criteria on certification schemes and chain of custody**

It is suggested to make use of existing criteria on certification schemes and chain of custody, as the comparison shows that there are many common key elements shared amongst the EU Member States. Similarly, it is important to make sure that core requirements are included, but not to be very prescriptive.

Based on the fact that the UK criteria contain key elements of certification schemes but are not too prescriptive, it is suggested to adopt the UK criteria. Please refer to Annex 1 for suggested criteria on certification schemes and chain of custody

### **3.3 Implementation**

#### **3.3.1 Development of the policy and operation**

Following the current report and the consultation process it is expected that Luxembourg will have a robust policy in place clearly defining the requirement, criteria for legality and sustainability and to what and who it applies.

It is advised that a periodic evaluation of the policy and its implementation is undertaken by a committee of stakeholders and government officials.

Luxembourg is a multi-language country so it is important to translate the policy into three official languages. It is equally essential to ensure that the translated versions are consistent and retain the same meaning so that it is clear what the requirements are, who needs to follow the policy and what products are covered.

#### **3.3.2 Announcement and awareness raising of the policy**

There is no point in having a timber procurement policy if the ones who have to implement and ensure compliance with the policy do not know about the policy. It is therefore important that actions to inform and raise awareness of the policy are undertaken. Awareness raising should also be undertaken to inform suppliers and contractors to the public sector.

#### **3.3.3 Development of guidance**

Guidance should be developed to clarify for example the policy application and implementation. Guidance should list:

- Potential exemptions related to for example packaging, print and coppice material.
- Clarify actions to take if in the odd case sustainability cannot be ensured.
- Advise buyers to not specify species, but 'fit for purpose' or allow for equivalent to allow suppliers room to find sustainable product.
- Clarify acceptance of recycled material and products in relation to the policy.

Support documents should include

- Model specification text and model contract clauses for officials to copy-paste. Drafts are provided in Annex 3.

- Model Invitation to Tender Letter to ensure that attention is drawn to the requirement early.
- Guidance on Certification schemes and how to ensure that a product is certified.
- Guidance on accepting alternative/ Category B evidence
- Guidance on specific product groups (paper, furniture, wood fuel etc) or contracts (Construction, Facilities management, Framework contracts etc)

### **3.3.4 Availability of guidance and support**

The guidance should be made available via a website where all documents are made available. It is further advised that technical support is made available via a phone number or email where advice on implementation and evidence of compliance especially category B/ alternative evidence cases can be obtained.

A committee of technical experts can be listed to be consulted on evidence provided where needed.

It is further recommended that training sessions are undertaken initially for key staff, contractors and suppliers and later on a regular basis depending on the need identified.

### **3.3.5 Monitoring the implementation of the policy**

It is important to implement a level of monitoring of the implementation of the policy. It is not advised that reporting for all purchases is necessarily required. However it is important to undertake some checks to ensure that the policy is implemented by the public bodies and that the public bodies request and check evidence of compliance.

## **3.4 Redraft a full text of policy**

Based on the discussion in section 3, a draft version of the revised policy is produced. This was discussed with relevant stakeholders. Please see annex 1.

## **3.5 Discussion with relevant agencies and stakeholders**

In order to ensure that the revised procurement policy has wide support from relevant agencies involved and other stakeholders, it is important to solicit their comments and feedbacks on the draft policy text.

A stakeholder consultation meeting was organised on 16<sup>th</sup> February 2012 where the draft report was presented. Proforest incorporated comments and feedbacks before finalising the policy text and updated the current report's conclusions and recommendations. A list of stakeholders can be found in Annex 2

## 4 Conclusions and recommendations

### 4.1 Description of the overall system

The analysis shows that it is essential to set out what products are covered, which public bodies are applicable in the procurement policy, and whether the policy is mandatory for all or for some public bodies. The timescale of implementing the policy depends on the readiness of the market to meet the requirements.

It is suggested that the public procurement policy will cover all timber and paper products, including products used in the performance of contracts. Realising the difficulties in getting local governments involved, it is recommended that the policy is mandatory for all public bodies in central government, and projects that receive funding from central government. Local governments are encouraged to adopt the policy.

Moreover, it is suggested that the Luxembourg Government take a progressive approach to require local governments comply with the procurement policy, when there is a strong uptake of implementation amongst central government departments and their suppliers and contractors.

### 4.2 Public procurement criteria

#### 4.2.1 Criteria for legality and sustainability

Our analysis shows that there are a lot of common elements shared amongst the 4 Member States on the criteria for legality and sustainability. It is important to ensure that the new criteria cover the common aspects of legality and sustainability, at the same time are in line with the EU Timber Regulation and also cover key/important requirements but are not too prescriptive/specific. By adopting existing criteria, the Luxembourg Government will contribute to harmonisation of public procurement policies in EU Member States. Furthermore, the Luxembourg Government can also make use of existing assessments which have already carried out by Member States.

For legality criteria, the Danish and UK governments have identical definitions, while the aspects covered by the Belgian government are the same as the UK and Denmark, though not using the exact wordings. The Dutch criteria are more detailed, though they share the same aspects of legality. The definition of legality of procurement policies is also consistent with the definition under the EU Timber Regulation, with differences such as the EU TR explicitly requires compliance with trade and customs.

Therefore, it is suggested to adopt the Danish/UK criteria on legality and make changes so as to reflect the requirements under the EU TR. This includes elaborate CITES requirements to also cover general trade and customs legislation.

As for the sustainability definition, the Danish and UK governments share a lot of identical criteria. The Belgian criteria contain less detailed requirements compared to the Dutch, the Danish and the UK governments, though some of the criteria are identical to the Danish/UK definition. The Dutch Government contain far more criteria than the other 3 governments, and in many cases, the Dutch criteria are more elaborative and prescriptive. It can be argued that the UK/Danish criteria contain the right level of details as they are neither too specific nor too few.

Therefore, it is recommended to use the UK Government criteria on sustainability, and add a new criterion (2.6 on Annex 1) on prohibition of GMO as the stakeholders feel strongly that this should be included. Suggested criteria on legality and sustainability can be found in Annex 1.

### **4.2.2 Criteria for certification schemes**

Since forest certification is one of the methods to demonstrate compliance with procurement policies, it is necessary to develop criteria for assessing certification schemes on standard-setting processes, certification, accreditation and chain of custody requirements.

Our analysis indicates that there are several shared criteria on certification schemes amongst the EU Member States' public procurement policies, particularly on certification, accreditation and labelling requirements. There are slight differences in standard setting and chain of custody criteria; however, in broad terms they share many common features. Therefore, it is suggested to make use of existing criteria from the EU Member States rather than developing new criteria. Amongst the Member States' criteria, the UK Government contain core requirements of certification schemes, but not too detailed or prescriptive. Therefore, it is suggested to adopt the UK Government criteria for certification schemes. Please refer to Annex 1 for detailed criteria.

## **4.3 Implementation**

There are a number of key aspects to include for the successful implementation of a procurement policy. Formal announcement of the policy to the public bodies in all central government departments is essential, Procurement staff in government departments also have to inform their suppliers and contractors on the timescale for implementation of the public procurement policy. Development of guidance documents are essential, this helps both the procurement staff and suppliers to implement the policy in practice. Guidance should be publicly available via a website, and if there are resources available, a committee of experts can be set up to answers any outstanding issues or questions related to implementation of the policy, e.g. assessing alternative evidence.

## Appendix 1

### Suggested text of Luxembourg public procurement policy on timber

The Luxembourg Government procurement policy for timber is to purchase all wood and wood products from legal and sustainable sources, or FLEGT-licensed timber or equivalent.

The public procurement policy applies to all public bodies in central governments and projects that receive funding from central government. Local governments are encouraged to adopt the procurement policy.

The provisions would be applicable at the time of purchase of all wood and paper products, including products used on performance of contract such as scaffolding and hoardings.

### Suggested criteria for forest management

#### 1. Legality:

1.1 The forest owner/manager holds legal use rights to the forest.

1.2 All relevant royalties and taxes are paid.

1.3 There is compliance by both the forest management organisation and any contractors with local and national legal requirements including those relevant to:

- Forest management
- Environment
- Labour and welfare
- Health & safety.
- Other parties' tenure and use rights

1.4 There is compliance with trade and customs requirements, including CITES requirements.

#### 2. Sustainability:

2.1 Management of the forest must ensure that forest ecosystem health and vitality is maintained. In order to achieve this, the definition of sustainable must include requirements for:

- a. Management planning which aims to maintain or increase the health and vitality of forest ecosystems.
- b. Management of natural processes, fires, pests and diseases.
- c. Adequate protection of the forest from unauthorised activities such as illegal logging, mining and encroachment.

2.2 Management of the forest must ensure that productivity of the forest is maintained. In order to achieve this, the definition of sustainable must include requirements for:

- a. Management planning and implementation of management activities to avoid significant negative impacts on forest productivity.

- b. Monitoring which is adequate to check compliance with all requirements, together with review and feedback into planning.
- c. Operations and operational procedures which minimise impacts on the range of forest resources and services.
- d. Adequate training of all personnel, both employees and contractors.
- e. Harvest levels that do not exceed the long-term production capacity of the forest, based on adequate inventory and growth and yield data.

2.3 Management of the forest must ensure that harm to ecosystems is minimised. In order to do this the definition of sustainable must include requirements for:

- a. Appropriate assessment of impacts and planning to minimise impacts;
- b. Protection of soil, water and biodiversity;
- c. Controlled and appropriate use of chemicals and use of Integrated Pest Management wherever possible.
- d. Proper disposal of wastes to minimise any negative impacts.

2.4 Management of the forest must ensure that biodiversity is maintained. In order to achieve this, the definition of sustainable must include requirements for:

- a. Implementation of safeguards to protect rare, threatened and endangered species.
- b. The conservation/set-aside of key ecosystems or habitats in their natural state.
- c. The protection of features and species of outstanding or exceptional value.

2.5 Management of the forest must have full regard for:

- a. Identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;
- b. Mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and
- c. Safeguarding the basic labour rights and health and safety of forest workers.

2.6 Management of the forest must not use genetically modified organisms (GMOs)

## **Suggested criteria for certification schemes and chain of custody**

Note these criteria are used to assess the credibility of certification schemes.

### **3.1 Standard-setting process**

3.1.1 The standard-setting process must be consistent with the requirements of *ISO Guide 59: Code of Good Practice for Standardisation* or the *ISEAL Code of Good Practice for Setting Social and Environmental Standards* or equivalent

3.1.2 The standard-setting process must seek to ensure balanced representation and input from the economic, environmental and social interest categories.

3.1.3 The standard-setting and decision-making process adopted must seek to ensure:

- No single interest can dominate the process;
- No decision can be made in the absence of agreement from the majority of an interest category

### **3.2 Certification**

3.2.1 Certification must be undertaken by a body whose organisation, systems and procedures conform to applicable ISO guidance, or publicly available equivalent.

3.2.2 Certification is undertaken by a body which is accredited to evaluate against forest management standards

3.2.3 The requirements for certification audits must include assessment of systems and documentation together with verification of outcomes in the forest adequate to ensure that both system and performance requirements in the standard are being met.

3.2.4 The certification audit must include sufficient consultation with external stakeholders to ensure that all relevant issues are identified relating to compliance with the requirements of the standard

3.2.5 A summary of the results of the certification audit (excluding confidential information) must be publicly available to interested parties

3.2.6 There is an accessible and functioning mechanism for dealing with complaints and disputes which is open to any interested party.

### **3.3 Accreditation**

3.3.1 Accreditation must be undertaken by a national or international body whose organisation, systems and procedures are consistent with ISO 17011:2004 Conformity assessment -- General requirements for accreditation bodies accrediting conformity assessment bodies or equivalent.

### **3.4 Chain of custody and labelling**

3.4.1 Assessment of chain of custody must be undertaken by a certification body operating in accordance with ISO Guide 65 or equivalent and accredited by an accreditation body operating in accordance with ISO 17011 or equivalent

3.4.2 There must be a certified chain of custody in place from the forest of origin to the final certified product which provides a link between the certified material in the product or product line and certified forests.

3.4.3 If mixing of certified and uncertified material in a product or product line is allowed, the uncertified material must be covered by a verifiable system which is designed to ensure that it is from legal sources

3.4.4 If mixing of certified and uncertified material in a product or product line is allowed and the proportion of uncertified material can exceed 30%, then the uncertified material must be covered by a verifiable system which ensures that it is from sustainable forest sources where the requirements for sustainability set out in criteria 2.1 – 2.6 above are being met

3.4.5 There is a clearly defined mechanism for controlling all claims made about the certified nature of products which ensures that claims are clear and accurate and that action is taken to prevent any false or misleading claims.

3.4.6 If recycled material is used there must be a verifiable system in place which is designed to ensure that recycled material is from the following categories:

- Pre-consumer recycled wood and wood fibre or industrial by-products but excluding sawmill co-products unless certified
- Post-consumer recycled wood and wood fibre
- Drift wood

## Appendix 2

### Stakeholders who participated in the meeting and/or provided comments

Organisation	Name
Administration de la Nature et des Forêts	Jean-Jacques Erasmy
Administration de la Nature et des Forêts	Frank Wolter
Administration de la Nature et des Forêts	Frank Wolff
Administration de la Nature et des Forêts	Carole Sinner
Association des forestiers luxembourgeois	Frank Adam
Chambre d'Agriculture	Jemp Schmitz
CRP Henri Tudor-CRTE	Aya Takagi
EFOR	Pierre Kalmes
Fédération St Hubert des Chasseurs du Grand-Duché de Luxembourg	Gaby Poeckes
FSC-Luxembourg	Pit Mischo
FSC-Luxembourg	François Kuborn
FSC-Luxembourg	Valérie Schiel
Groupement des Sylviculteurs	Hubert De Schorlemer
Groupement des Sylviculteurs	Henri Wurth
Groupement des Sylviculteurs	Elisabeth Freymann
Groupement des Sylviculteurs	Georges Glesener
Luxplan S.A	Dan Nicolas
Ministère de l'Environnement	Claude Origer
Mouvement écologique	Jacques Pir
PEFC-Luxembourg	Jos Crochet
Administration des Bâtiments Publics	Marc Turpel
Administration des Bâtiments Publics	Martine Schmitt
Administration des Bâtiments Publics	Carlo Reckel
Orang Utan Help Luxembourg a.s.b.l.	Béatrice Casagrande
DECKER, LAMMAR & ASSOCIES S.A	Edmond Decker

## Appendix 3

### Draft model specification text

#### Requirements for Timber

1.1 All Timber and wood-derived products for supply or use in performance of the contract must be independently verifiable and either:

1.1.1 from a Legal and Sustainable source; or

1.1.2 from a FLEGT-licensed or equivalent source;

#### 2. Requirements to Evidence of Compliance

2.1 Management of the forest or plantation shall be audited at intervals confirming ongoing good forest management and by organisations with appropriate forest management experience that are independent of the organisation that holds timber harvest and/or management rights for that forest.

2.2. The Contracting Authority will accept evidence from any of the following three categories:

2.2.1 Category A evidence: Certification under a scheme recognised by the Luxembourgish government as meeting the criteria set out in the document entitled "Luxembourg Government Timber Procurement Policy: Criteria for Evaluating Certification Schemes" The edition current on the day the contract is awarded shall apply. A list of assessed certification schemes that currently meet the government's requirements can be found on XXX website. Acceptable schemes must ensure that at least 70% (by volume or weight) is from a Legal and Sustainable source with the balance from a legal source.

2.2.2. Category B evidence: Documentary evidence, other than Category A evidence and FLEGT evidence, that provides assurance that the source is sustainable. In this context "sustainable" is defined in the document entitled "Luxembourg Government Timber Procurement Policy: Framework for Evaluating Category B evidence" (available from the Contracting Authority on request and on XXX website). The edition current on the day the contract is awarded shall apply. Such Category B evidence may include, for example, independent audits and declarations by the contractor or his contractors. Where Category B evidence is to be relied on, the contractor is required to notify the Contracting Authority of the source or sources of all virgin Timber and wood-derived products supplied. Source in this context means the forest or plantation where the trees were grown and all subsequent places of delivery through the supply chain prior to receipt of the Timber or wood-derived product by the Contracting Authority. The contractor shall separately identify virgin Timber and wood-derived products supplied from forests and plantations that are claimed to be subject to sustainable timber production and shall submit to the Contracting Authority documentation in respect of such wood to confirm that the criteria for sustainable timber production set out in this specification have been met. If mixing is unavoidable within the supply chain then sources can still be accepted provided that there are adequate controls in place and at least 70% (by volume or weight)

is from a Legal and Sustainable source with the balance from a legal source.

2.2.3 FLEGT evidence, from either or both of the following categories:

- Evidence of Timber and wood-derived products being exported from a timber-producing country that has signed a bilateral Forest Law Enforcement, Governance and Trade (FLEGT) Voluntary Partnership Agreement (VPA) with the European Union and which have been licensed for export by the producing country's government. This may also include Timber and wood-derived products that have been independently verified as meeting all the producing country's requirements for a FLEGT licence, where a VPA has been entered into but the FLEGT licensing system is not fully operational.
- Equivalent evidence from a country that has not entered into a VPA which demonstrates that all of the requirements equivalent to FLEGT-licensed timber have been met.

## Draft Model Contract Condition - Timber and wood-derived products

*Please note that terms in square brackets will need to be defined according to the relevant contract in which the model contract condition is used.*

### 1. Requirements for Timber

1.1. All Timber and wood-derived products supplied or used by [the Contractor] in performance of [the Contract] (including all Timber and wood-derived products supplied or used by sub-contractors) shall comply with [the Contract Specification].

1.2. In addition to the requirements of clause 1.1 above, all Timber and wood-derived products supplied or used by [the Contractor] in performance of [the Contract] (including all Timber and wood-derived products supplied or used by sub-contractors) shall originate from a forest source where management of the forest has full regard for:

- Identification, documentation and respect of legal, customary and traditional tenure and use rights related to the forest;
- Mechanisms for resolving grievances and disputes including those relating to tenure and use rights, to forest management practices and to work conditions; and
- Safeguarding the basic labour rights and health and safety of forest workers.

### 2. Requirements to Evidence of Compliance

2.1 If requested by [the Contracting Authority], and not already provided at the tender evaluation stage, [the Contractor] shall provide to [the Contracting Authority] evidence that the Timber and wood-derived products supplied or used in the performance of [the Contract] complies with the requirements of [the Contract Specification]. If requested by [the Contracting Authority] [the Contractor] shall provide to [the Contracting Authority] evidence that the Timber and wood-derived products supplied or used in the performance of [the Contract] complies with the requirements of the social criteria defined in section 1.2 above.

2.2 [The Contracting Authority] reserves the right at any time during the execution of [the Contract] and for a period of 6 years from final delivery under [the Contract] to require [the Contractor] to produce the evidence required for [the Contracting Authority's] inspection within 14 days of [the Contracting Authority's] written request.

2.3 [The Contractor] shall maintain records of all Timber and wood derived products delivered to and accepted by [the Contracting Authority]. Such information shall be made available to [the Contracting Authority] if requested, for a period of 6 years from final delivery under [the Contract].

### 3. Independent Verification

3.1. [The Contracting Authority] reserves the right to decide whether the evidence submitted to it demonstrates legality and sustainability, or FLEGT-licence or equivalent, and is adequate to satisfy [the Contracting Authority] that the Timber and wood-derived

product complies with [the Contract Specification]. [The Contracting Authority] reserves the right to decide whether the evidence submitted to it is adequate to satisfy [the Contracting Authority] that the Timber and wood-derived products complies with the requirements of the social criteria defined in section 1.2 above. In the event that [the Contracting Authority] is not satisfied, [the Contractor] shall commission and meet the costs of an "independent verification" and resulting report that will (a) verify the forest source of the timber or wood and (b) assess whether the source meets the relevant criteria.

3.2 In [this Contract], "Independent Verification" means that an evaluation is undertaken and reported by an individual or body whose organisation, systems and procedures conform to *ISO Guide 65:1996 (EN 45011:1998) General requirements for bodies operating product certification systems* or equivalent, and who is accredited to audit against forest management standards by a body whose organisation, systems and procedures conform to *ISO 17011: 2004 General Requirements for Providing Assessment and Accreditation of Conformity Assessment Bodies* or equivalent.

#### 4. [Contracting Authority's] Right to Reject Timber

4.1 [The Contracting Authority] reserves the right to reject any Timber and wood-derived products that do not comply with [the Contract Specification]. [The Contracting Authority] reserves the right to reject any Timber and wood-derived products that do not comply with the requirements of the social criteria defined in section 1.2 above. Where the [Contracting Authority] exercises its right to reject any Timber and wood-derived products, [the Contractor] shall supply alternative Timber and wood-derived products, which do so comply, at no additional cost to [the Contracting Authority] and without causing delay to [the Contract] completion period.

Signed.....  
Name in Capitals (as in tender).....

For and on behalf of .....Date.....

## Support for the development of Luxembourg's public procurement policy for timber

