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COMMISSION STAFF WORKING DOCUMENT

FITNESS CHECK

on Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (the EU Timber Regulation)

and on

Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community (FLEGT Regulation)

Accompanying the document

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010

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ABBREVIATIONS/GLOSSARY

<i>Term or acronym</i>	<i>Meaning or definition</i>
BCM	Bilateral Coordination Mechanism
CA	Competent Authority
CBD	Convention on Biological Diversity
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CoC	Chain of Custody
DD	Due Diligence
DDS	Due Diligence System
EC	European Commission
EUTR	EU Timber Regulation
FLEGT	Forest Law Enforcement Governance and Trade
FLEGT AP	The EU Forest Law Enforcement, Governance and Trade Action Plan
FTE	Full-Time Equivalent
IA	Impact assessment
JIC	Joint Implementation Committee
LIU	Licence Information Unit
MS	Member State(s)
MO	Monitoring Organisation
OPC	Online Public Consultation
SME	Small and Medium-sized Enterprises
SVLK	Sistem Verifikasi Legalitas Kayu - Indonesia's national Timber Legality Assurance System
TLAS	Timber Legality Assurance System
UNFCCC	United Nations Framework Convention on Climate Change
VPA	Voluntary Partnership Agreement

1. 1. INTRODUCTION

1.1 1.1 Purpose of the fitness check

The Fitness Check of the EU Timber Regulation (EUTR)¹ and the Forest Law Enforcement, Governance and Trade (FLEGT) Regulation² evaluates their functioning and effectiveness and helps to assess whether the instruments are still fit for their purpose of halting illegal logging and related trade and preventing illegally harvested timber and wood based products to be placed on the EU market by fulfilling obligations set out in both Regulations. Since the Regulations are complementary to each other by addressing respectively the supply (FLEGT Regulation) and demand (EUTR) sides of timber harvest and trade, and are key legal instruments of the FLEGT Action Plan (AP), their evaluation has been combined into a single Fitness Check.

1.2 1.2 Scope of the fitness check

The Fitness Check responds to the following obligations set out in:

- Article 9 of the FLEGT Regulation which provides that by December 2021 and every five years thereafter, the Commission shall, on the basis of information, in particular the information referred to in Article 8(1), and experience with the application of this Regulation, review the functioning and effectiveness of this Regulation. In doing so, it shall take into account the progress on implementation of the voluntary Partnership Agreements (VPA); the reports may accompanied, where appropriate, by proposals for improvement of the FLEGT licensing scheme.
- Article 20(3) of the EUTR which provides that by 3 December 2015 and every six years thereafter, the Commission shall, on the basis of reporting on and experience with the application of this Regulation, review the functioning and effectiveness of this Regulation, including in preventing illegally harvested timber or timber products derived from such timber being placed on the market. It shall in particular consider the administrative consequences for small and medium-sized enterprises and product coverage. The reports may be accompanied, if necessary, by appropriate legislative proposals.

In line with the above requirements and in compliance with the Commission Better Regulation Guidelines and Toolbox³, the Fitness Check assesses the effectiveness, efficiency, coherence, relevance and EU added value of both Regulations in contributing to the fight against illegal logging and related trade globally and internally in the EU.

The scope of the Fitness Check is described in Table 1-2.

Table 1-1 Scope of the Fitness Check

Description
Legislative coverage
<ul style="list-style-type: none">• FLEGT: Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT Regulation licensing scheme for imports of timber into the European Community;⁴ and the Commission Regulation (EC) No 1024/2008 of 17 October 2008⁵;

¹ Regulation (EU) No 995/2010 of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32010R0995>).

² Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a Forest Law Enforcement, Governance and Trade (FLEGT) licensing scheme for imports of timber into the European Community (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32005R2173>)

³ https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-Regulation-why-and-how/better-Regulation-guidelines-and-toolbox_en.

⁴ Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT Regulation licensing scheme for imports of timber into the European Community.

Description
<ul style="list-style-type: none"> • EUTR: Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (EUTR)⁶; • Commission Delegated Regulation (EU) No 363/2012 of 23 February 2012⁷; • Commission Implementing Regulation (EU) No 607/2012 of 6 July 2012⁸; and • Regulation (EU) 2019/1010 of the European Parliament and of the Council of 5 June 2019 on the alignment of reporting obligations⁹.
<p>Geographical coverage</p> <ul style="list-style-type: none"> • EUTR: Covering illegal logging globally. • FLEGT Regulation: VPA countries; FLEGT licencing: Indonesia (since 15 November 2016); Ratified VPAs: Cameroon, the Central African Republic, Ghana, Indonesia, Liberia, the Republic of the Congo and Vietnam; Negotiations concluded and VPAs initialled: Honduras and Guyana; Negotiations ongoing: Côte d'Ivoire, the Democratic Republic of the Congo, Gabon, Laos, Thailand, and Malaysia. <ul style="list-style-type: none"> ○ And non-VPA countries to capture reasons for non-engagement and relative performance of EUTR associated with imports from VPA and non-VPA countries.
<p>Sectoral coverage</p> <ul style="list-style-type: none"> • EUTR: <ul style="list-style-type: none"> ○ Product scope: Timber and timber products listed in the Annex to Regulation 995/2010. The Fitness Check also considers whether the EUTR captures all relevant products; ○ Actors: EUTR Competent Authorities (CAs) designated by Member States (MS), customs authorities, EU operators (those placing timber and timber products on the EU market for the first time in the course of a commercial activity – normally importers and forest owners), EU traders (those who buy or sell – for commercial purposes – timber or timber products already on the market), operators based legally outside the EU and EU monitoring organisations. • FLEGT Regulation: <ul style="list-style-type: none"> ○ Product scope: Timber and timber products to which the FLEGT licensing scheme applies irrespective of the partner country are listed in the Annex II of FLEGT Regulation. Some VPA product scopes are broader and some are narrower relative to the product scope of the EUTR; ○ Actors: EU FLEGT CAs, EU customs authorities; relevant entities in VPA countries involved in the timber legality assurance system (defined by the partner country), e.g. relevant government agencies, including Licensing Authorities, customs, market participants or third-party organisations involved in the whole supply chain – including allocation of logging rights, processing and transport to export. <p>The following points apply to both EUTR and FLEGT Regulation:</p> <ul style="list-style-type: none"> • All economic sectors involved in timber and timber product (and wood fibres) supply chains, in particular: Forestry, Import/export, Manufacturing, Wholesale and retail trade, Transport and logistics, Government and agencies

⁵ Commission Regulation (EC) No 1024/2008 of 17 October 2008 laying down detailed measures for the implementation of Council Regulation (EC) No 2173/2005 on the establishment of a licensing scheme for imports of timber into the European Community.

⁶ Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (EUTR).

⁷ Commission Delegated Regulation (EU) No 363/2012 of 23 February 2012 on the procedural rules for the recognition and withdrawal of recognition of monitoring organisations as provided for in Regulation (EU) No 995/2010 of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market.

⁸ Commission Implementing Regulation (EU) No 607/2012 of 6 July 2012 on the detailed rules concerning the due diligence (DD) system and the frequency and nature of the checks on monitoring organisations as provided for in Regulation (EU) No 995/2010 of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market.

⁹ Regulation (EU) 2019/1010 of the European Parliament and of the Council of 5 June 2019 on the alignment of reporting obligations in the field of legislation related to the environment, and amending Regulations (EC) No 166/2006 and (EU) No 995/2010 of the European Parliament and of the Council, Directives 2002/49/EC, 2004/35/EC, 2007/2/EC, 2009/147/EC and 2010/63/EU of the European Parliament and of the Council, Council Regulations (EC) No 338/97 and (EC) No 2173/2005, and Council Directive 86/278/EEC.

¹⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010R0995&from=EN>.

Description
<ul style="list-style-type: none"> All sizes of businesses (i.e. micro, small, medium, and large)
Temporal coverage
<ul style="list-style-type: none"> EUTR: 2010 to 2020 FLEGT Regulation: 2005 to 2020
Evaluation criteria applied
<ul style="list-style-type: none"> Effectiveness, efficiency, coherence, relevance and EU added value

2. 2. BACKGROUND TO THE INITIATIVE

2.1 2.1 Description of the initiative and its objectives

Illegal logging has been -and still is- a pervasive problem of major international concern. Even though agricultural expansion is now regarded as the main driver of deforestation^{11,12}, illegal logging and related trade still has a devastating impact on some of the world's most valuable remaining forests as well as on the people who live in them and who rely on the resources that forests provide¹³. The EU's policy to tackle the issues of illegal logging and associated trade was defined in FLEGT Action Plan (AP)¹⁴ and led to two key pieces of legislation, the FLEGT Regulation and the EUTR. The objective of the EUTR is to prevent illegally harvested timber and derived products from being placed on the EU market and it covers both domestically produced and imported timber. The objective of the FLEGT Regulation is to halt illegal logging in partner countries and ensure that only legal timber and products derived therefrom are exported to the EU.

The implementation of the two regulations should have made the fight against illegal logging a central objective of public and private forest governance in both producer and consumer countries. Clear objectives for the initiative were the implementation of applicable legislation, a significant number of countries should have improved their system of forest governance and its enforcement to halt illegal logging. Illegal logging should have shown clear signs of diminishing. More countries should have finalised the implementation of VPAs and established well-functioning licensing system, especially the main EU trade partners and illegal logging in these countries should have come to a halt.

2.1.1 2.1.1 EU Timber Regulation (EUTR)

The EUTR was adopted in 2010, entered into force in 2013 and applies in the EU and EEA (Norway, Iceland and Liechtenstein)¹⁵ market. It established the following obligations:

1. It prohibits the placing on the market of illegally harvested timber or timber products derived from such timber (Article 4).
2. It requires operators¹⁶ who place timber products on the EU market for the first time to exercise 'due diligence' (DD) so as not to derive their timber from illegal sources (Article 4 and 6).

¹¹ <http://www.fao.org/3/ca9825en/CA9825EN.pdf>.

¹² <https://iopscience.iop.org/article/10.1088/1748-9326/7/4/044009/pdf>.

¹³ UNEP and INTERPOL (2012). Green carbon, black trade.

¹⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52003DC0251&from=EN>.

¹⁵ Decision of the EEA Joint Committee No 75/2013 of 3 May 2013 amending Annex II (Technical Regulations, standards, available at: <https://www.efta.int/media/documents/legal-texts/eea/other-legal-documents/adopted-joint-committee-decisions/2013%20-%20English/075-2013.pdf>.

¹⁶ Any natural or legal person that places timber or timber products on the market for the first time. (include EU domestic forest owners).

3. It requires traders¹⁷ in timber and timber products, which have already been placed on the market, to keep records of their suppliers and customers (Article 5).

The product scope of the EUTR is contained in an annex to the Regulation and covers approximately 75%-90% of the value/volume of wood based products placed on the EU market¹⁸.

The EUTR requires all MS to designate one or more CAs, responsible for the implementation of the Regulation. According to Article 10, the CAs shall carry out checks following a risk-based inspection plan to verify if operators comply with the requirements as set out in the EUTR.

Since its entry into force, the operators have been obliged to perform DD and mitigate the risk of placing illegal timber and wood products on the EU market to a negligible level. First, the operators need to have access and organise all relevant information to determine whether the risk of illegal harvest of timber, according to the applicable legislation in the country of harvest, is negligible (step one). Then, by using the information as described in their own DD system for risk assessment, the operators have to analyse and evaluate the risk of illegally harvested timber entering in the supply chain - from harvest to placing on the EU market (step two). Finally, the operators have to take adequate and proportionate measures, as laid out in their DD system, in order to minimise the risk of illegality effectively to a negligible level, except where the risk identified has already been negligible in the first place. In case such minimisation of the risk is not possible, they have to refrain from placing this timber on the EU market and they may to choose a new supplier, country of harvest, species or take other comparable measures¹⁹ (step three).

The EUTR allows for the provision of technical and other assistance and guidance (awareness-raising, training and capacity-building) to operators. Such technical assistance is often provided by the CA, and in some instances is channelled through sectoral organisations. It also provides for "Monitoring Organisations" (MOs), recognised by the Commission (Art. 8). MOs, which can be public or private entities, may provide operators with operational DDS and verify their proper use, however the responsibility to ensure compliance with the EUTR requirements is always on the operator. Third part certification can be an additional element for risk mitigation, however it does not represent a proof of meeting DD requirement under EUTR.

In 2016, the Commission published a report on the first review of the EUTR covering the period from March 2013 to March 2015 and has since published biennial reports on the implementation of the Regulation, based on bi-annual national reports submitted by EU MS, Norway, Iceland and Lichtenstein (covering the periods March 2015-2017 and March 2017-2019)²⁰. From 2019 onwards, MS have been reporting annually on the implementation of EUTR, in line with Regulation (EU) 2019/1010²¹.

2.1.2 2.1.2 *The Forest Law Enforcement, Governance and Trade (FLEGT) Regulation*

The FLEGT Regulation entered into force in 2005 and provides for partnership agreements (VPAs) between the EU and timber producing countries. A VPA is thus, a bilateral trade

¹⁷ Any natural or legal person who, in the course of a commercial activity, sells or buys on the internal market timber or timber products already placed on the internal market.

¹⁸ https://www.thuenen.de/media/ti-themenfelder/Maerkte_Handel_Zertifizierung/Kontrolle_international_gehandelter_Hoelzer/90_Prozent_der_Holzimporte_werden_erfasst/Thuenen_Working_Paper_EUTR-MarketCoverage_ExecutiveSummary.pdf.

¹⁹ https://ec.europa.eu/environment/forests/pdf/28_02_2020_Guidance_on_Due_Diligence.pdf.

²⁰ European Commission. (2016). Evaluation of Regulation EU/995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (the EU Timber Regulation). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016SC0034> ;

European Commission. (2018). Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (the EU Timber Regulation),

Biennial report for the period March 2015. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018DC0668&from=EN>.

²¹ <https://eur-lex.europa.eu/eli/reg/2019/1010/oj/eng>.

agreement and -inter alia- contains a definition of what is considered legally produced timber in a partner country, commits the partner country to only export legally produced timber and timber products (covered in each VPA, domestically harvested and also imported) to the EU, and commits partner countries to set up a timber legality assurance systems (TLAS) to this end. Therefore, a VPA country with an operating system in place commits to export only timber and timber products covered by a FLEGT license. Timber products covered by a valid FLEGT licence are considered to comply with the requirements of the EUTR. Currently, after almost 15 years of engaging in VPA processes with 15 different countries, only one (Indonesia) has an operational TLAS in place and issues FLEGT licences (since November 2016).

Box 1: Indonesia's efforts to tackle illegal logging pre-dated the launch of the VPA process, as in 2003, Indonesia launched a multi-stakeholder process to design a timber legality assurance system (SVLK), the goal of which was to ensure that timber and timber products harvested, imported and processed in Indonesia originate from legal sources and that companies producing and processing timber products comply with relevant Indonesian laws and Regulations.

VPA negotiations between Indonesia and the EU began in 2007 and Indonesia became the first Asian country to ratify a VPA in 2014. The SVLK, a precursor to FLEGT licensing, became already operational in 2013, starting issuing V-Legal Documents. This was instrumental for the licencing to start and differentiates Indonesia from other VPA countries. Indonesia started issuing FLEGT licences on 15 November 2016. (see box 4 as well)

A FLEGT license is a shipment-based document of a standard format that is forgery-resistant, tamper-proof and verifiable, paper based or electronic, issued and validated by a partner country's licensing authority. Each FLEGT license has a unique number and contains, among others, all product HS codes and a description of goods, weight, units, species, and country of harvest. The EU operators that place timber and timber products on the market covered by a valid FLEGT licences are deemed to have exercised the EUTR due diligence.

The Commission published guidelines in 2014²² -and updated in 2020²³- to support Customs and FLEGT Competent Authorities (CAs) in effectively carrying out their tasks in accordance with the FLEGT legislation were first published. All FLEGT licenses have to be validated by the CA in the country of entrance and thereafter cleared by the customs authorities. In case of doubt as to the validity of a FLEGT licence, the CAs may ask the licensing authorities for additional verification and seek further clarification, as set out in each VPA. Furthermore, the FLEGT Regulation provides that CAs can decide on the need for further verification (physically inspection of the goods or inspection at the operators' premises) of shipments using a risk-based approach.

The Commission publishes Annual Synthesis Reports²⁴ on the implementation of the FLEGT Regulation licensing scheme with Indonesia (available for the years 2016, 2017 and 2018), based on the national reports submitted by the MS²⁵. In line with Regulation (EU) 2019/1010²⁶, aligning reporting obligations in the field of environmental legislation, MS are required to ensure a high level of transparency and make available the required information supporting their reporting to the Commission on the implementation of the FLEGT Regulation²⁷.

Since 2010, the EU has signed 15 VPAs.

²² [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XC1104\(01\)&from=FR](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XC1104(01)&from=FR).

²³ [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0121\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0121(01)&from=EN).

²⁴ https://ec.europa.eu/environment/forests/FLEGT_Regulation_Regulation_Reports.htm.

²⁵ <https://op.europa.eu/en/publication-detail/-/publication/4417ef79-9714-11e9-9369-01aa75ed71a1>.

²⁶ <https://eur-lex.europa.eu/eli/reg/2019/1010/oj/eng>.

²⁷ https://ec.europa.eu/environment/forests/FLEGT_Regulation_Reports.htm.

2.1.3 2.1.3 Intervention Logic

The intervention logic²⁸ focuses on the causality of the EUTR and FLEGT Regulation in delivering expected results and impacts.

The intervention logic starts from the **need** to prevent and combat illegal logging and related trade – and the **objectives** of both Regulations as explained in section 2.1. **Inputs** are then outlined from the European Commission (EC), EU MS, partner countries, economic operators and other stakeholders (in terms of financial and human resources). These undertake a range of **activities** – both the adoption of the EUTR and FLEGT Regulation and the actions of the EC, MS and duty holders that follow from implementation, including monitoring and enforcement.

Following through the **activities** leads to a number of expected **outputs**. Under the EUTR, the legality of all timber and timber products placed on the internal market for the first time should be ensured. All operators who place timber products on the EU market should put in place adequate and effective DD procedures so as not to source illegally harvested timber, and must take appropriate action that allow the identification of non-negligible risk. Traders in timber and timber products, which have already been placed on the market, should keep records of their suppliers and customers. Implementation and enforcement based on inspections of operators should ensure a level playing field for actors across MS and in the EEA through effective, proportionate and dissuasive measures.

Under the FLEGT Regulation, all timber and wood products from the partner countries – and covered by a VPA with an operational FLEGT licensing system – placed on the EU market must be covered by valid FLEGT licences. Implementation and enforcement based on customs boarder inspections of the validity of the FLEGT licenses should be uniform across MS including through effective, proportionate and dissuasive penalties.

If the implementation of the EUTR and FLEGT Regulations is effective, this should lead to the following key **expected outcomes**: adequate DD exercised by operators; legal products being imported, all VPA countries reaching a state of having operational FLEGT licencing scheme with valid FLEGT-licenses; effective enforcement of DD and verification of FLEGT licenses; increased cooperation between CAs, customs, the EU and exporting country governments; improved supply chain transparency; and improved forest governance, management and law enforcement. In turn, these outcomes should result in the following positive **impacts**: reduction of illegal logging and associated trade internationally and more sustainable forest management in timber producing countries.

A number of **external factors** are relevant in relation to the intervention logic. For both Regulations, those are developments in other policies, initiatives or economic developments which could interact with and influence the outcomes of the EUTR and FLEGT Regulation and changes in international trade patterns. Possible examples are multilateral initiatives (e.g. the Convention on Biological Diversity – CBD, the United Nations Framework Convention on Climate Change – UNFCCC etc.), unilateral action on the part of exporting countries, and developments in other areas of European policy, a shift in the demand for hard wood from the European to the Asian market, a worldwide increasing meat consumption and by consequence growing demand for feed such as soy and corn, and fines/criminal sanctions for environmental crime being much lower than e.g. for drug or human trafficking.

2.2 **2.2 Baseline**

2.2.1 2.2.1 Introduction

To evaluate the functioning and impacts of the FLEGT Regulation and EUTR, a counterfactual scenario (the ‘baseline’) has been developed. This is the hypothetical scenario in which the Regulations would not have been implemented. The baseline provides a point of comparison to

²⁸ Figures with Intervention logic are in Annex 5.

determine the actual impact of the Regulations, through comparison to the current observed situation. In practice, there may have been developments and progress towards the objectives of the Regulations in their absence, but it is critical to try and distinguish this from additional progress which can be attributed to the implementation of the Regulations themselves.

For this Fitness Check two separate baselines have been established (one for each Regulation) rather than a single common baseline. This has been done because of the different start dates of the two regulations and to facilitate (as far as possible) the separate assessment of the EUTR and FLEGT Regulation, in order to understand what has worked well and what not so well for each Regulation. This approach has been adopted to maximise the lessons that can be learned from the implementation of two different policy mechanisms. Although two separate baselines have been established, it is also important to consider the interaction between the Regulations and their combined effect on the achievement of their complementary objectives to stop illegal logging. The aggregate effects are therefore also considered, in particular when drawing together overall conclusions.

Key distinctions between the baselines are: (a) the start date (2005 for the FLEGT Regulation and 2010 for the EUTR) and (b) that given the FLEGT Regulation was implemented before the EUTR, the former forms part of the baseline for the latter. In addition, given the need to adopt a case study approach in specific areas of the analysis (see Section 4.4.3), the baselines also differ due to the differences in the countries chosen for the specific case studies. However it is important to note that although it is possible to split out EUTR effects (in non-VPA countries the FLEGT Regulation can reliably be assumed to have no effect), splitting the effects of the FLEGT Regulation from the EUTR is more problematic: in VPA countries, both EUTR and the FLEGT Regulation will have an effect. For FLEGT licencing countries, the effects of the FLEGT Regulation should be more clearly identified, given the way the two Regulations work together. This is considered when drawing conclusions from the analysis.

The baselines include qualitative and quantitative elements to describe the situation at the time the legislation was proposed and adopted, and subsequently how a scenario in the absence of the Regulations would have developed over the appraisal period.

The starting points for defining the baselines were the Impact Assessments (IA) accompanying the proposal for the adoption of the FLEGT Regulation²⁹ and EUTR³⁰. The IAs set quantitative baselines for levels of illegal logging and levels of illegal timber placed on the internal market against which impacts were assessed. These were based on levels at the time the Regulations were introduced and were not assumed to change over the appraisal period. These levels are presented alongside wider evidence in Section 2.2.2 below.

2.2.2 2.2.2 Overview of the situation prior to adoption

Due to its clandestine nature, accurate data about the levels of illegal logging and associated trade and respective trends are difficult to come by. Activity data are often based on estimates using secondary information sources. A World Bank review³¹ of its global forest policy suggested that in many countries illegal logging was at least similar in size to legal production. It also noted that between USD 10-15 billion of forest resources were being lost from public lands each year. Indeed, at the time the FLEGT Regulation IA³² was developed, there was no single information source which consistently tracked illegal logging across countries or over time, but in general it was estimated that 30-50% and in some regions up to 90% of all harvesting in the most forest rich countries could be related to illegal logging.

It is problematic to compare directly between rates reported for different countries and years given the variation in authorship, no clear definition of illegal logging and methodology. However, it is clear that illegal logging was prevalent in many countries, driven by a number of

²⁹ https://ec.europa.eu/smart-Regulation/impact/ia_carried_out/docs/ia_2004/sec_2004_0977_en.pdf.

³⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008SC2615&from=EN>.

³¹ World Bank. (1999). *Sustaining Forests - A Development Strategy*. Washington: The World Bank. Retrieved from <http://documents1.worldbank.org/curated/en/424531468781760578/pdf/297040v-1.pdf>.

³² https://ec.europa.eu/smart-Regulation/impact/ia_carried_out/docs/ia_2004/sec_2004_0977_en.pdf.

underlying forces, including: lack of institutional capacity, weak rule of law, corruption, governance failure and strong international demand for timber.

At the time the FLEGT Regulation was introduced in 2005, there was no other EU policy directly targeting illegal logging.

Table 2-1 Baselines for the Fitness Check

	FLEGT Regulation (with a specific focus on case study countries that subsequently engaged in the VPA process)	EUTR (with a specific focus on non-VPA case study countries to isolate the impacts of the EUTR)
Starting point	<p>When FLEGT Regulation was adopted (2005), levels of illegal logging and the risk of illegal timber on the EU market were substantial issues.</p> <p>The 1999 World Bank review of its global forest policy suggested that in many countries illegal logging was at least similar in size to legal production. It also noted that between USD 10-15 billion of forest resources were being lost from public lands each year.</p> <p>The IA in support to the FLEGT Regulation estimated that 30-50% and in some regions up to 90% of all harvesting in the most forest rich countries could be related to illegal logging.</p>	<p>When the EUTR was adopted (2010), the issues of illegal logging and the risk of illegal timber on the EU market remained substantial. There was no particular impact of the FLEGT Regulation, given that few countries at that point had signed VPAs, and none had progressed to licencing). In the absence of data, it is not possible to conclude that levels of illegal logging or illegal timber placed on the EU market in 2010 were substantially different to levels in 2005 (at the start of the FLEGT Regulation baseline).</p>
Expected development of pressures and impacts in the absence of legislation	<ul style="list-style-type: none"> From 2010 onwards, several further policies and initiatives were introduced, both multilateral and unilateral and in both importing and exporting countries. There is potential for these actions to have had an impact on the volume and trends of illegal logging. However, it is not possible to define the scale of these impacts in the absence of the FLEGT Regulation. The growing market power of China and EU consumer preference for processed products could have influenced risk, in particular of illegal timber entering the EU, whereas improvements in technology could have served to reduce the risk of illegal timber entering the EU. However given data limitations, it is difficult to define changes with any certainty. It is assumed that MS would not have introduced unilateral action to reduce illegal logging or illegal timber on domestic markets through trade regulations since trade is EU competence and the market weight of single countries would have been limited. No FLEGT licenses were issued until late 2016. The potential interaction between the EUTR and the FLEGT Regulation depends on the impact of the overall VPA processes, which is explored through this Fitness Check. 	
	FLEGT Regulation	EUTR
Summary	From 2005, the risk of illegal logging and illegal timber entering the EU market is considered to have been substantial. Without any FLEGT license the situation is assumed to be unchanged ³³	From 2010, the risk of illegal logging and illegal timber entering the EU market would likely have remained unchanged. This could potentially have sustained at similar levels

³³ AF & PA. (2004). American Forest & Paper Association from: Seneca Creek Associates and Wood Resources International, 2004, "Illegal" Logging and Global Wood Markets: The Competitive Impacts on the US Wood Products Industry.". American Forest & Paper Association. The Forestry Commission of Ghana. (2003). Keynote Address by Hon. Prof. Dominic K. Fobi—Minister for Lands & Forestry. Retrieved from www.fcghana.com/news/ministers_speech_afleg.htm

Tacconi, L.; Obidzinski, K.; and Agung, F (2004). Learning Lessons to Promote Certification and Control Illegal Logging in Indonesia Report for the WWF/TNC Alliance to Promote Forest Certification and Combat Illegal Logging in Indonesia. Centre for International Forestry Research.

	(e.g. illegal logging as a percentage of overall production of VPA countries: Indonesia 60-83%, Cameroon 50-65%, Ghana 30-50%) ³⁴	reported at that time (e.g. illegal logging as a percentage of overall production in non-VPA countries: Russia 15-60%, China 30-50%, Brazil 15-37%) ³⁵
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3. IMPLEMENTATION AND STATE OF PLAY

This section presents a summary of the status of implementation of the FLEGT Regulation and EUTR based on the MS reports on the implementation of both Regulations. The information on the current status of illegal logging is presented in Section 5.1 where the effectiveness of the Regulations is assessed.

3.1 EUTR

Implementation of the EUTR in EU MS and the European Economic Area (Norway, Iceland and Lichtenstein) involved establishing national legal frameworks for the application of the EUTR and the designation of CA to check the implementation by operators, enforcing the Regulation by issuing notices of remedial actions and applying sanctions and/or penalties in case of infringements. This section is based on the most recent reporting on the implementation of the EUTR. It draws on the European Commission reports on the state of EUTR implementation, namely the EUTR Review 2015³⁶ and biennial³⁷ and annual³⁸ reports. These are in turn informed by underlying analysis of the biannual and annual reports³⁹ by the MS on EUTR application⁴⁰.

3.1.1 *Designation of Competent Authorities*

All EU MS and EEA countries have designated CAs to implement and enforce the EUTR Regulation. In 18 MS, national CAs have the sole responsibility for checking operators, while this is the case in 11 MS for domestic timber. In 10 MS the responsibility for checking domestic

World Bank and WWF. (2002). Forest Law Assessment in Selected African Countries. Retrieved from www.illegal-logging.info/papers/WWFWorldBankForestLawAssessment.pdf.

³⁴ AF & PA. (2004). American Forest & Paper Association from: Seneca Creek Associates and Wood Resources International, 2004, "Illegal" Logging and Global Wood Markets: The Competitive Impacts on the US Wood Products Industry." American Forest & Paper Association. The Forestry Commission of Ghana. (2003). Keynote Address by Hon. Prof. Dominic K. Fobi—Minister for Lands & Forestry. Retrieved from www.fcghana.com/news/ministers_speech_afleg.htm

Tacconi, L.; Obidzinski, K.; and Agung, F (2004). Learning Lessons to Promote Certification and Control Illegal Logging in Indonesia Report for the WWF/TNC Alliance to Promote Forest Certification and Combat Illegal Logging in Indonesia. Centre for International Forestry Research.

World Bank and WWF. (2002). Forest Law Assessment in Selected African Countries. Retrieved from www.illegal-logging.info/papers/WWFWorldBankForestLawAssessment.pdf.

³⁵ AF & PA. (2004). American Forest & Paper Association from: Seneca Creek Associates and Wood Resources International, 2004, "Illegal" Logging and Global Wood Markets: The Competitive Impacts on the US Wood Products Industry." American Forest & Paper Association. The Forestry Commission of Ghana. (2003). Keynote Address by Hon. Prof. Dominic K. Fobi—Minister for Lands & Forestry. Retrieved from www.fcghana.com/news/ministers_speech_afleg.htm

ICUN. (2005). The Beginning of the ENA FLEG Process in Russia: Civil Society Insights.

USDA Foreign Agricultural Service. (2003). People's Republic of China Solid Wood Products Annual 2003. Retrieved from www.fas.usda.gov/gainfiles/200308/145985736.pdf

IMAZON. (2005). Human Pressure in the Brazilian Amazon. IMAZON (Amazon Institute of People and the Environment). Retrieved from www.imazon.org.br/especiais/especiais.asp?id=318.

³⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016DC0074>.

³⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018DC0668&from=EN>;

https://eur-lex.europa.eu/resource.html?uri=cellar:96d6591a-0495-11eb-a511-01aa75ed71a1.0010.02/DOC_1&format=PDF.

³⁸ https://ec.europa.eu/environment/forests/pdf/30092020_EUTR_Overview%202019.pdf.

³⁹ As of January 2020, MS are required to report to the Commission annually.

⁴⁰ UNEP-WCMC. (2018). Background analysis of the 2015-2017 national biennial reports on the implementation of the European Union's Timber Regulation (Regulation EU No 995/2010). Retrieved from <https://ec.europa.eu/environment/forests/pdf/WCMC%20EUTR%20analysis%202017.pdf>

UNEP-WCMC. (2020). EUTR Analysis 2019: Background analysis of the 2017-2019 national biennial reports on the implementation of the European Union's Timber Regulation (Regulation EU No 995/2010). Retrieved from <https://ec.europa.eu/environment/forests/pdf/EUTR%20Analysis%202017-2019.pdf>

UNEP-WCMC. (2020). Key Obligations and Practical Aspects of the Application of the EUTR - 2019. Retrieved from

https://ec.europa.eu/environment/forests/pdf/30092020_EUTR%20MS%20Key%20obligations%20and%20practical%20aspects%20of%20implementation%20and%20enforcement%202019.pdf.

timber operators has been partly or fully delegated to regional CAs, while this is the case in 7 MS for imported timber.

The human and financial resources available to CAs varied substantially across MS (2017-2019 Biennial Report). Resources dedicated to control imported and domestic timber were typically reported together. Combined human resources ranged from 0.125 Full-Time Equivalent (FTE) staff in Luxembourg, to as many as 601 FTE staff in Italy – however the latter most likely include customs, police and support staff. Most of the MS, including major timber importers, have less than 10 FTE available for implementation and enforcement of EUTR. For instance, Belgium, Denmark, Finland, Ireland, Malta and the Netherlands have between 2 to 3 FTE each. It is important to note that it is difficult to compare between countries based on the data collected through the Biennial Reports due to varying levels of detail provided by MS. However, it seems that some countries devote very limited resources to the implementation and enforcement of the EUTR considering the number of operators and volume of import.

3.1.2 3.1.2 Checks on operators, traders and substantiated concerns

Between 2017 and 2019, MS carried out 3,976 checks on importing operators and 17,280 checks on domestic operators.⁴¹ The number of checks reflects the differences in MS' import and domestic production – number of operators and forest owners. The number of small forest owners is high in some MS where the EUTR has been reported as part of the national forest inspections. This is one of the reasons for the high inspection numbers. The number of checks seems to have stayed broadly constant in the reporting periods. The actual number of operators identified by MS, or lack of identification in some cases, may be a challenge in terms of a risk-based approach of the inspection planning and statistics on percentages of coverage by checks.

Table 3-1 Numbers of checks on operators, traders and substantiated concerns (SCs)

(from published Biennial and Annual reports⁴²)

		2015 – 17**	2017 - 19	2019***
Checks on operators	Total	20,500	21,256	9,300
	Domestic	17,700	17,280	7,916
	Importers	2,800	3,976	1,384
Substantiated concerns⁴³ - operators	# MS receiving SCs	14	18	17
	Operators identified	80	289	261
	Operators checked	69	282	*
	Enforcement actions	33	73	*
Checks on traders	Total	2,418	2,333	2,055
Substantiated concerns - traders	# MS receiving SCs	7	3	*
	Traders identified	64	188	*
	Traders checked	63	188	*
	Enforcement actions	16	165	*

⁴¹ UNEP-WCMC. (2020). EUTR Analysis 2019: Background analysis of the 2017-2019 national biennial reports on the implementation of the European Union's Timber Regulation (Regulation EU No 995/2010).. Retrieved from <https://ec.europa.eu/environment/forests/pdf/EUTR%20Analysis%202017-2019.pdf>.

⁴² https://ec.europa.eu/environment/forests/timber_regulation.htm.

⁴³ In the EUTR, substantiated concerns are mentioned as follows: “Checks may be conducted when a competent authority is in possession of relevant information, including on the basis of substantiated concerns provided by third parties, concerning compliance by an operator with this Regulation.”

Notes: *No data reported in published reports; ** the reporting period goes from March to March of the respective years; ***2019 data represents one year of implementation, relative to two years from the biennial reports

Between 2017 and 2019, in absolute numbers, the highest number of checks on domestic operators were performed in Lithuania (6,824), Italy (4,076), Romania (1,823) and Austria (894). With respect to operators that import timber from outside the EU, Italy (1,838), Germany (452), Spain (268) and Romania (161) carried out most checks. Combining these figures with estimates on the actual number of operators importing timber indicates that there is a wide variation in the coverage of operators checked across MS.

For traders, the number of checks performed varies between MS, though it was broadly constant between the 2015-17 and 2017-19 periods, but has seen an increase in 2019 (comparing yearly data for 2019 to annual average data for preceding periods).

The number of substantiated concerns regarding operators has increased over the implementation period. The vast majority of those identified are checked, with enforcement actions following in a not insignificant number of cases. The same appears to be true regarding substantiated concerns of traders.

3.1.3 3.1.3 Penalties and infringement cases

Provisions for penalties

Countries are required to have provisions for penalties that are ‘effective, dissuasive and proportionate’. All reporting countries have included penalties for EUTR offenders in national legislation, however the types of penalty and maximum levels vary across MS: administrative fines and seizures can be imposed by 23 MS, criminal fines by 16, imprisonment by 17, suspension of trade by 15 and other types of penalties by 11. Details on the fines applicable to infringements of the EUTR provided by 27 MS highlighted potential fines ranged from EUR 50 to an unlimited amount.

Except for Italy, all CAs have the authority to issue notices of remedial action, whereby an operator is notified of shortcomings in their DD process and is required to follow up.

Nearly all CAs (except Croatia, Poland, France and the UK) can impose Immediate Interim Measures, such as the temporary seizure of timber. The grounds for such measures differ across the MS⁴⁴. As for other regulations, the individual MS fear being regarded as more strict in the enforcement than other MS.

Infringement cases and enforcement actions

For the period 2017-2019, 26 MS reported a total of 2,273 infringements of the EUTR by operators⁴⁵. Only Croatia and Greece reported no infringements based on their checks. A summary of the data presented in published reports is found in Table 3-4. The total number of infringements appears to decrease slightly in the 2019 annual period (comparing annual averages over the preceding period).

Table 3-2 Numbers of infringements, enforcement actions and court cases

(from published Biennial and Annual reports)

		2015 – 16	2017 - 18	2019
Infringements	Total	*	2,273	904

⁴⁴ UNEP-WCMC. (2020). EUTR Analysis 2019: Background analysis of the 2017-2019 national biennial reports on the implementation of the European Union’s Timber Regulation (Regulation EU No 995/2010). Retrieved from <https://ec.europa.eu/environment/forests/pdf/EUTR%20Analysis%202017-2019.pdf>.

⁴⁵ Ibid.

	Domestic	*	1,552	410
	Imported	*	700	494
Enforcement actions	Total	*	2,450	762
	Domestic	2,299	1,665	319
	Imported	955	762	443
Court cases		25**	13***	*

Notes: *No data reported; **court cases reported; ***court cases concluded

Most infringements (1,552) were related to domestic timber, while 700 infringements were reported for importers (and 21 to unspecified timber). However, note that the number of check on domestic operators was significantly higher than on importers (see table 3-3 above), although the number of EU foresters placing timber on the market is estimated to 3-4 million while the number of importer are 140.000. The most common infringement related to domestic timber was the placement of illegally harvested timber on the market (1,228), whereas for imported timber the majority of infringements involved a breach of DD requirements (390). The main countries from which the illegal timber originated, where this data was provided, were China, Ukraine, Russia, Myanmar, Albania and Malaysia, as well as in some isolated cases Egypt, Tunisia, Singapore and the United Arab Emirates. The latter may suggest re-export of timber as these countries are not generally producers of timber.

Comparing between Table 3-3 and Table 3-4, it is clear that the level of infringements identified (per typical check) is far higher for importing operators than for domestic operators.

In response, 2,450 enforcement actions were taken, the majority (1,665) applied to domestic timber. The level of enforcement actions appears to have fallen significantly in 2019 (again comparing annual averages). For domestic timber, a range of penalty types was applied, the most common being 488 administrative fines, 231 notices of remedial action, and 911 'other penalties'. For imported timber, likewise a range of types of penalty was deployed by CAs, the most common again being remedial action (412) and administrative fines (272). Thirteen court cases concluded during the period.

Between 2017 and 2019, enforcement actions on traders were taken in seven countries (Austria, Germany, Hungary, Italy, Poland, Romania and Spain). Of these more than 90% of enforcement actions were taken in Hungary based on breached national legislation. In the majority of cases, a notice of remedial action was sent, followed by administrative fines.

3.2 FLEGT Regulation

To date, VPAs have been signed with Ghana (2009⁴⁶), the Republic of the Congo (2010⁴⁷), Cameroon (2010⁴⁸), the Central African Republic (2011⁴⁹), Liberia (2011⁵⁰), Indonesia (2014⁵¹), Vietnam (2018⁵²) and Honduras (2021). Indonesia is the first and only country to date that has an operational licensing system and which issues FLEGT licences (starting from 15 November 2016). At the time of writing this report, the EU has concluded negotiations and initialled a VPA with Guyana, while negotiations were ongoing with Côte d'Ivoire, the Democratic Republic of the Congo, Gabon, Laos, Malaysia and Thailand. It is important to note however that although the Democratic Republic of the Congo, Gabon and Malaysia are identified as countries in negotiation, these processes have been on hold for more than five years.

46 [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22010A0319\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22010A0319(01)).

47 [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22011A0406\(03\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22011A0406(03)).

48 [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22011A0406\(02\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22011A0406(02)).

49 [https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1587384460484&uri=CELEX:22012A0719\(02\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1587384460484&uri=CELEX:22012A0719(02)).

50 [https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1587384568183&uri=CELEX:22012A0719\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1587384568183&uri=CELEX:22012A0719(01)).

51 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.150.01.0252.01.ENG.

52 [https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1587384877592&uri=CELEX:22019A0605\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1587384877592&uri=CELEX:22019A0605(01)).

When an operator imports products covered by a FLEGT license there is no requirement to carry out DD under the EUTR. The operator only have to keep the license for five years as documentation for the import. The FLEGT Regulation requires MS to designate CA or CAs and to adopt effective, proportionate and dissuasive penalties to enforce the Regulation in accordance with national legislation. The national reports provide an overview of the status of national implementation, and are a means of assessing the level of consistency achieved across MS.

The summary below is based on the three synthesis reports on the implementation of the FLEGT Regulation published by the European Commission and covering the period 2016-2019⁵³.

3.2.1 3.2.1 Designation of Competent Authorities

All MS have designated a CA or CAs to enforce the FLEGT Regulation. MS have either appointed customs authorities as, or part of, CAs (11 MS) or designated separate authorities (17 MS). Where customs and CAs are separate, MS have put in place arrangements (e.g. agreements or a Memorandum of Understanding) between CAs and customs, to ensure that they can effectively cooperate on the implementation of the FLEGT Regulation.

3.2.2 3.2.2 FLEGT Licences and shipments received

Indonesia started issuing FLEGT licenses on 15 November 2016 for each shipment of products covered by the VPA. (During 2016-2019 FLEGT CAs received more than 94000 FLEGT licences from Indonesia and the majority of them (99%) were validated. The number of FLEGT licences reported as cleared by customs was much lower (Figure 3-1), which may be due to the fact that the shipments covered by these FLEGT licenses were issued to importers in the EU that ended up not purchasing the products, or were deviated to non-EU destinations.

Figure 3-1 Number of FLEGT licenses received and validated by FLEGT CAs, and cleared by customs over the period 2016-2019 (all FLEGT licences come from Indonesia, the only country currently issuing FLEGT licences). Information is based on MS reports (for those MS that submitted reports).



Source: Own compilation based on European Commission FLEGT Regulation licensing scheme annual synthesis reports (2018-2020)

⁵³ https://ec.europa.eu/environment/forests/pdf/FLEGT_Work_Plan_2018_2022.pdf;
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019DC0249&from=EN>;
https://eur-lex.europa.eu/resource.html?uri=cellar:784f3dc6-c2a6-11ea-b3a4-01aa75ed71a1.0018.02/DOC_1&format=PDF;
https://ec.europa.eu/environment/forests/pdf/19102020_FLEGT%20Overview%202019.pdf.

In 2019, the largest number of licenses was received by the Netherlands (8,048), United Kingdom (5,790), Germany (5,460), France (3,362), and Belgium (3,088).

Quantities imported

MS report on the quantities of timber and timber products as defined on the FLEGT licences received and validated by the CAs, and those actually imported (i.e. quantities cleared by customs). The data from the Annual Synthesis Reports is presented in Table 3-3.

Table 3-3 Quantities imported (million kg)

	2016	2017	2018	2019
Reported on validated FLEGT licences	13.6*	658	694	684
Cleared for import by EU customs	*	449	2,993**	624

*Note: *2016 Annual Synthesis Report does not include quantity cleared by customs. It also reports the imports of 'FLEGT-licenced timber', rather than quantity listed on the FLEGT licences; 2016 data is for period 15 November to 31 December 2016*

*** 2,470 million kg of furniture for bedroom use (HS 9403.50) was reported by the United Kingdom's customs. This was two orders of magnitude greater than the quantity for the same HS code reported on FLEGT licences validated by the Competent Authority. These figures were queried with the United Kingdom but no clarification was provided.*

Overall, there was an increase in the quantities reported on validated FLEGT licences from the start of licensing in 2016 till 2018, with a slight decrease in 2019. There is a wide margin between the quantities reported as validated through FLEGT licences and quantities reported as cleared for import by customs. Reasons for the discrepancy is due to: license issued but products never exported to the EU, variable quality of national datasets submitted, reclassification of goods by customs to non-FLEGT HS codes, year-end trade where licences had been received but not yet cleared, or reporting of quantities in units of measure other than weight.

Additional verification checks of licences and shipments

CAs decide on the need for further verification of shipments using a risk-based approach (Article 5(4) of FLEGT Regulation). Not all MS have provisions in place to undertake additional verification of either FLEGT licences or physical verification of FLEGT-licenced shipments. Although the number of additional physical checks increased from 2017 to 2018, the number of checks fell significantly in 2019 (even though there was no concurrent reduction in the number of FLEGT licences received).

3.2.3 Penalties and infringement cases

Article 5(8) of the FLEGT Regulation states that "each MS shall determine the penalties to be imposed where the provisions of this Regulation are infringed; such penalties shall be effective, proportionate and dissuasive". As of 2019, various types of penalties have been established by the MS, including administrative fines (18 MS), criminal fines (15 MS), imprisonment (19 MS), suspension of authority to trade (9 MS), seizure (22 MS), notices (9 MS) and warning letters (5 MS). In line with Article 5(7) of the FLEGT Regulation, the CAs may suspend the release of, or detain, timber products where they have reason to believe that the FLEGT licence may not be valid. In 2018, 24 MS reported that their national legislation allowed for seizing and disposing of timber products found in breach of the Regulation.

Infringement cases

The Annual Synthesis Report also captures information on instances where penalties are applied and/or licences have been rejected. Across the implementation period, these have been applied infrequently:

- In 2016, no MS applied Article 6(1) of the FLEGT Regulation or issued any penalties being this was the first year of licensing (from 16 November).

- In 2017, 107 FLEGT licences were not approved across 11 MS (around 60% of the rejected licenses were in Italy). Two MS reported applying Article 6(1) to four cases, all of which resulted in administrative penalties. One MS reported applying Article 6(2) due to an alleged forged licence.
- In 2018, twelve MS rejected a total of 66 FLEGT licences, with the largest number of rejected licenses reported by France (20 licences). Article 6(1) was applied by two MS (Bulgaria and Spain) and while the number of licenses rejected is not available, it concerned 29,130 kg of timber products. In 2018, in line with the requirements of Article 6(2), two MS (Bulgaria and the Netherlands) informed the Commission that the provisions of the FLEGT Regulation were being, or had been, circumvented. One case concerned a forged license, and another a shipment of endangered tree species without a CITES permit.
- In 2019, three MS reported application of Article 6(2), 56 FLEGT licences were rejected and Article 6(1) was applied by two MS.

Based on the available data for the years 2017 - 2019 there were more than 25 000 licences received per year, with a proportion of reported licence issues below 1%.

4. 4. METHODOLOGY

The evaluation process has followed the European Commission's Better Regulation Guidelines⁵⁴ and assessed the Regulations against five key evaluation criteria, elaborated through evaluation questions (EQ) set out in the Fitness Check Roadmap⁵⁵.

4.1 4.1 Evaluation questions

The evaluation questions that guided the assessment of the evaluation criteria are listed below.

4.1.1 4.1.1 Effectiveness

- To what extent have the objectives been met?
- What factors have contributed to or hindered their achievement?
- What have been the (quantitative and qualitative) effects of the intervention?
- What have been the unintended/unexpected effects of the intervention, including on trade?

4.1.2 4.1.2 Efficiency

- To what extent has the intervention been cost-effective?
- How proportionate were the costs of the intervention borne by different stakeholder groups taking into account the distribution of the associated benefits?
- Are there opportunities to simplify the legislation or reduce unnecessary regulatory costs without undermining the intended objectives of the intervention?
- If there are significant differences in costs (or benefits) between Member States, what is causing them? How do these differences link to the intervention?

4.1.3 4.1.3 Coherence

- To what extent are the two Regulations consistent and coherent internally and between themselves?

⁵⁴ https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-Regulation-why-and-how/better-Regulation-guidelines-and-toolbox_en.

⁵⁵ <https://ec.europa.eu/info/law/better-Regulation/have-your-say/initiatives/11630-Illegal-logging-evaluation-of-EU-rules-fitness-check->

- To what extent is the initiative coherent with other EU environmental policy objectives, in particular biodiversity?
- To what extent is the initiative coherent with wider EU policy, including customs, trade and climate?

4.1.4 4.1.4 Relevance

- To what extent is the intervention/initiative still relevant?
- To what extent have the (original) objectives of the intervention (still) correspond to the needs within the EU?
- Has the initiative been flexible enough to respond to new issues?

4.1.5 4.1.5 EU Added Value

- What is the European added value of the initiative/intervention compared to what could have been achieved by Member States at national and/or regional levels in its absence?
- To what extent does the initiative comply with the principles of subsidiarity and proportionality?

4.2 4.2 Process

The evidence for the evaluation was gathered via a combination of desk-based research and engagement with stakeholders via a number of different routes with support of an external contractor⁵⁶:

- **Desk research:** Extensive literature review has been conducted involving an in-depth review of a range of sources, including: current work being undertaken by project partners; reports and other evidence signposted by the Commission; official documents published by the Commission; reports from previous pan-European and national level studies; scientific articles; position papers; meeting proceedings and legal texts. In total over 460 literature and data sources have been reviewed. Desk research also involved collection and analysis of quantitative data, namely reviewing what data is available around illegal logging from various sources, and also analysis of deforestation data from FAO and trade data (EU Comext);
- **Online Public Consultation (OPC):** Launched in all official EU languages on the Commission’s website on 3 September 2020 and open for 12 weeks, concluding on 26 November 2020. There were 175 responses to the OPC, alongside 29 attachments;
- **Targeted stakeholder interviews:** 11 telephone interviews to gather more in-depth views from selected key stakeholders (Commission services, MS CAs, businesses, NGOs, non-EU country governments);
- **Stakeholder meetings:** Two stakeholder workshops were held, both as virtual events. The first in September 2020 comprised part of a EUTR/FLEGT Regulation Expert Group meeting where several in-depth questions were discussed with the MS CAs. The second in December 2020 coincided with the ‘Multi-Stakeholder Platform on Protecting and Restoring the World’s Forests, including the EUTR and FLEGT Regulation’ and discussed a targeted set of questions with a broader range of stakeholders.

⁵⁶ Support the study for a Fitness Check of the EUTR and FLEGT Regulation, 2021, [ongoing study in support to the Fitness check, to be published with adoption of the Fitness check – the latest draft submitted as part of the RSB package].

A stakeholder synopsis report with more detailed assessment of the above consultation activities is provided in Annex 2 and Annex 3.

4.3 4.3 Challenges and the robustness of findings

There were a number of challenges and data gaps encountered during the evaluation and where appropriate action was taken to limit their impact. The main limitations are related to: (i) the lack of robust and comprehensive (both in terms of time series and geography) data regarding levels of illegal logging and illegally logged timber being out on the EU market and (ii) data concerning the costs of implementation for all stakeholders. This has limited the ability to fully appraise the effectiveness and efficiency of the Regulations and to compare costs and benefits directly. As comprehensive data are not available due to the character of the initiative, case studies have been carried out to support the assessment.

Despite these limitations, the triangulation of different data sources has helped to elaborate the conclusions drawn from the evidence base for each evaluation criterion. When triangulating, a key step has been to consider the strength, reliability and robustness of different sources available. As regards stakeholders opinions, the number of stakeholders, their background and consensus (or not) across the different stakeholders groups was considered. Despite the identified limitations, the triangulation thus allows to achieve a good degree of confidence in conclusions. (For more see Annex 3)

5. 5. ANALYSIS AND ANSWERS TO THE EVALUATION QUESTIONS

Section 4.1 provides a list of questions that guided the evaluation of the EUTR and FLEGT. As answers to some of these questions inevitably overlap, to avoid repetitions the below section provides answers rather by criteria than by the individual questions.

5.1 5.1 Effectiveness

EUTR

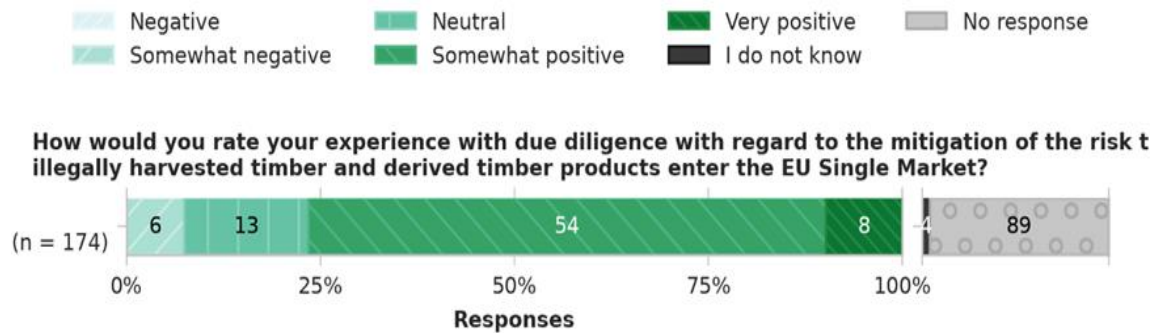
There is mixed evidence regarding the impact of the EUTR on illegal logging (in the EU and in third countries) and the placing of illegally harvested timber to the EU market, with both positive and negative signals.

The EUTR has shown results in terms of an improved situation in third countries, including countries that have chosen not to engage in VPA processes, as amongst them main EU trade partners (e.g. Brazil, Russia, and Ukraine) that have taken steps to strengthen their governance systems and reduce illegal logging to meet the requirements of the EUTR.

According to the EUTR Article 10, MS CAs shall develop a risk-based inspection plan for the enforcement of the regulation. In MS where the CAs have had no access to national customs data due to lack of cooperation and exchange of information between the CAs and customs authorities, implementation of Article 10 has been a challenge and has limited the effectiveness of inspections on importers. This is especially problematic regarding import from high risk countries and big import volume. The lack of cooperation between national authorities and, as follows, between MS could have been minimised through the regulatory design. Other risk parameters than those from customs data and used by the authorities are e.g. wood species, corruption and low governance in the forest sector and the value of the commodities. Regarding these risk parameters and others the CAs have exchanged knowledge and risk data and cooperated to improve the effectiveness of the inspections. This might be one of the reasons why the EUTR is seen by stakeholders as a step forward in tackling illegal logging and associated trade. The OPC gathered feedback on the positive consequences of the EUTR where 60% of the respondents (n=165) across the different stakeholder groups considered that the EUTR had at least moderate to very significant influence on increased reforms in timber-producing countries

aiming to achieve a higher level of transparency. 72% (n=165) considered that the EUTR at least moderately encouraged investments in clean and transparent supply chains. A total of 40% of the respondents (n=167) to the OPC⁵⁷ consider that the EUTR has had either a significant or a very significant impact in reducing the amount of illegally harvested and traded timber products placed on the EU market and in addition 53% of the respondents (n=167) consider it had a moderate or slight impact.

Figure 5-1: Feedback to the OPC regarding the contribution of the due diligence obligation in preventing the placement of illegally harvested timber and derived products in the EU Single Market (source: OPC survey)



A majority of respondents think that EUTR had at least a moderate effect on reducing illegal logging.

The trade data presents a mixed picture. A difference in difference analysis of trade data was performed⁵⁸ to estimate the impacts of the EUTR on imports of illegally harvested timber to the EU. It builds on import statistics comparing products from ‘low’ and ‘high’ risk countries, and changes before and after the entry into force of the EUTR. Two different control groups are used to compare actual trends: A group of comparable countries who do not have in place a legality control system, and the products that are not covered by the EUTR but belong to the same HS groups of the EUTR scope. The analysis tentatively concluded that the EUTR may have led to a reduction in imports of illegally harvested timber imports to the EU of between 12-29%.

That said, imports from countries where issues were specifically identified (Ukraine and Myanmar) continued and actually grew, and China has become a prominent player in the timber industry, elongating (and therefore complicating the collection of information around) supply chains. With respect to ‘domestic’, EU-based producers of timber, in countries where there is greater risk of illegal logging (Romania and Bulgaria), there appears to have been an improvement in forest area, but the added value of the EUTR above that delivered by existing legislation is questionable.

When looking into the factors that influence effectiveness of the EUTR, the MS CAs provided the following insights during the consultation process⁵⁹:

- Current provisions of the EUTR are not sufficient to ensure operators and CAs can effectively assess risks.
- Successful prosecutions are needed to demonstrate enforcement of EUTR, but only the strongest cases may be taken to police or discussed with prosecutors.
- Weak enforcement capacity and lack of resources.
- Demands from prosecutors may also be hard for CAs to meet.
- Clear breach of EUTR is difficult to prove in court.
- DDS obligation is complex and time-consuming, especially for those not specialized in wood products.

⁵⁷ The Online Public Consultation (OPC) findings and participating stakeholders are presented in detail in Annex 2.

⁵⁸ The full analysis can be consulted in Annex C (difference-in-difference analysis) of the ‘Support study for a Fitness Check of the EUTR and FLEGT Regulation’

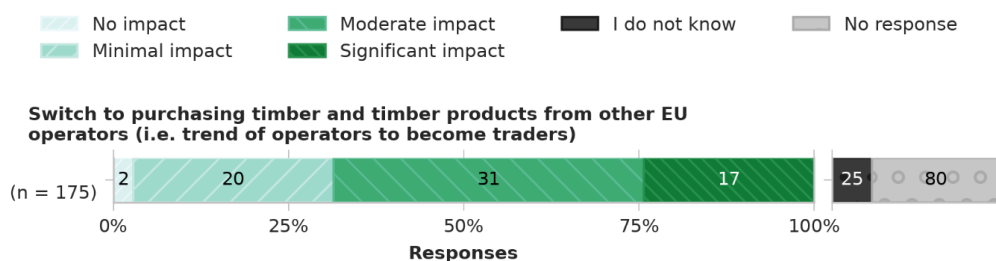
⁵⁹ <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=47622>.

- Often hard to find detailed information on the origin of timber (source countries, exporter, concession).
- Term ‘negligible risk’ is subjective – operators can have a different view to CAs.
- Difficult for economic operators to take sufficient action when there is a ‘large’ (not negligible) risk.
- Operators prefer to collect more documents from existing suppliers to their DD instead of finding new suppliers with negligible risk products.

Requirements of improved transparency and information to fulfil the DD obligations have put pressure on all actors along the supply chains including a number of challenges e.g. corruption which have held back progress towards the main goal to halt illegal logging. Critical challenges have also been identified in both the practical functioning of the DD requirements, and lack of adequate implementation of DD.

The EUTR – in particular in the eyes of most respondents with an opinion - is considered to have achieved some level of success through the application of DD to the majority of timber and timber products placed on the EU market. Nevertheless, the application of DD has not been universal and there has been no significant effect on the volume of timber from known high-risk sources, which continue to be placed on the EU market. Especially smaller operators face a number of challenges to putting DDS in place. One is limited awareness and understanding of the obligations. In a targeted interview, several EUTR CAs commented that DD requirements are too complex and resource-intensive for SMEs, leading to improper implementation of DDS. The most critical issue for operators is the ability to verify the robustness of information obtained and this may lead SMEs to change from being importers to start sourcing from within the EU.

Figure 5-2: Feedback to the OPC regarding potential changes in their operations to comply with EUTR (source: OPC survey)



Consultation of stakeholders and results of the literature review as referred to above suggest that the use of the concept of ‘negligible risk’ in the DD provisions of the EUTR has been a further challenge for the implementation and enforcement (discussed in more detail in section 5.3 Coherence). The term is subjective, which influences the gathering and interpretation of information that is provided to prove that a risk is ‘negligible’ for operators, CAs and the courts. This issue is compounded by the relatively short history of DD as a concept in the legal system of many MS. In consequence, the difficulty of challenging inadequate DD in court has led to some hesitations in bringing cases to court, as also reported in section 3.

While all MS have established legislative frameworks to implement the EUTR⁶⁰, the level to which the national provisions provide for enforcement differs. One reason is that the human and financial resources available to CAs vary substantially across MS⁶¹. Resources dedicated to imported and domestic timber were typically reported together. As also discussed in section 3.3.1, combined human resources ranged from 0.125 Full-Time Equivalent (FTE) staff in Luxembourg, to as many as 601 FTE staff in Italy – however the latter may also include police, customs personal or other supporting staff (note that the size of the MS or volume of trade did not

⁶⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018DC0668&from=EN>, Biennial report for the period March 2015 - February 2017 (15.10.2018).

⁶¹ European Commission. (2018, 06 19). Summary record of the 19th FLEGT/EUTR Expert Group Meeting. Retrieved from <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=32789>.

determine the allocated FTE). Another reason is that – as in the case of most EU legislation - the establishment and definition of sanctions (see section 3.3.3.) is left to EU MS and operators clearly see a variation in the stringency with which the EUTR is enforced across MS, which may lead to observed attempts to import timber from high risk sources via specific MS.

Overall, a significant proportion of the checks resulted in penalties: between 10% and 50% of the checks in most countries in 2017-2018. In Austria and Belgium all checks on importing operators resulted in penalties and in Hungary this was the case for both importing and domestic operators. This may indicate good application of the risk-based criteria but may also show a very high level of non-compliance in some countries, therefore suggesting that DD has not been effectively implemented by operators. There are also important differences of understanding and interpretation in different MS and conditions in the implementation of the regulation.

Lack of exchange of data between MS CAs and national customs has also hampered implementation and enforcement in some MS. The effectiveness of some CAs' checks has been compromised by the lack of formalised cooperation with customs. In some cases, in the absence of specific enabling provisions, customs refuse sharing customs data with their national CAs (27th FLEGT/EURT expert Group meeting 19. February 2020). Without a complete set of basic data on all operators and their related import of timber and wood products, an effective and efficient risk analysis is not possible and inspections are highly complicated.

With regards to the product scope, there should be a good balance between covering enough timber and timber products to have an effect on the total volume of wood products and not affecting the efficiency of monitoring and enforcement of operators' obligations (see also discussion in section 5.4 Relevance). The Annex of the EUTR - listing timber and timber products covered by the Regulation - has been criticized for not covering certain product types, particularly printed material, packaging and some furniture items⁶². As such, significant volumes of such products continue to be imported to the EU, meaning illegally harvested timber is prevalent in the internal market, including in the form of books, magazines and newspapers (Levashova, 2012)⁶³, (WWF, 2016)⁶⁴. According to recent consultation by the Commission⁶⁵ and a report by COWI (Cowi A/S, Indufor and Milieu, 2019)⁶⁶, many stakeholders did not consider the product scope of the EUTR as optimal, and felt that more timber products should be included (European Commission, 2017). Recent research estimates that 92% of the total amount of Round Wood Equivalents (RWE) are covered by the EUTR⁶⁷.

Monitoring Organisations (MOs) have not functioned as expected at the time of adoption of the EUTR. MOs appear to have been used by operators to a limited extent for a number of reasons, including concerns by operators of being exposed if in breach with EUTR, due to the fact that MOs are obliged to notify CAs of significant or repeated failures by the operator as well as the cost of their service. There were also several cases where compliance with the EUTR was problematic even while using MOs services. One issue highlighted by operators in regard to MOs is that they are often hired as consultants by operators as a way to tackle the 'complexity of complying with the legislation' (UNEP-WCMC, 2019). This can be seen as a potential conflict of interest, as MOs may already be involved in the timber trade and can apply insider knowledge to steer risk assessments and inspection outcomes⁶⁸.

In addition, the recognition process can be slow, heavy and resources-intensive for both the EC and applicants, while the regulation shows limited flexibility to respond in cases of problem and challenges.

⁶² IEEP (2020). An EU Green Deal for trade policy: Aligning trade with climate and sustainable development objectives.

⁶³ <https://onlinelibrary.wiley.com/doi/full/10.1111/j.1467-9388.2011.00725.x>.

⁶⁴ http://awsassets.panda.org/downloads/wwf_position_paper_eutr_product_scope.pdf.

⁶⁵ https://ec.europa.eu/info/consultations/public-consultation-product-scope-eu-timber-regulation_en.

⁶⁶ Cowi A/S, Indufor and Milieu. (2019). Impact Assessment study for the revision of the product scope of the EU timber regulation.

⁶⁷ <https://www.econstor.eu/bitstream/10419/117298/1/834452723.pdf>.

⁶⁸ Leipold, S. (2016). How to move companies to source responsibly? German implementation of the European Timber Regulation between persuasion and coercion. *Forest Policy and Economics*, 41-5.

However, the EUTR legislation has inspired the development of legislation in other non-EU countries (e.g. Australia, South Korea, Japan and China amended their Forest Law in 2019 to include a ban on buying, processing and transporting of illegal timber⁶⁹), although any subsequent impact relies on the effectiveness of these policies. That said, there are continuing reports of significant illegal activity in some of the EU's key sources of imports such as Brazil, Russia, Ukraine, Myanmar or a number of African countries.

Box 2: The examples of Myanmar and Ukraine

Myanmar represents a complex challenge to EUTR implementation, with a unique structure of forest management and governance. Considering the combination of a high level of corruption, in particular in the context of forestry, the exclusive forest ownership by the State and management by the State-owned enterprise MTE of all natural forests, and the high value of teak grown in the wild, Myanmar remains a high risk country of harvest. In 2015, Myanmar's export of EUTR-regulated products totalled 684.2 million kg, of which 0.63% was exported to the EU-28⁷⁰. The FLEGT-EUTR Expert Group - since its meeting on 20 September 2017 - upholds its opinion that for timber from Myanmar the risk of illegal harvest is non-negligible and as long as no negligible risk assessment can be confirmed, operators should refrain from putting teak from Myanmar on the EU market^{71,72,73}. Nonetheless, the import from Myanmar has more than doubled since 2014⁷⁴ - despite a country overview⁷⁵ describing Myanmar's problems, the Country conclusion⁷⁶ from the Expert Group stating that negligible risk is almost impossible to reach and court cases in several MS against operators importing teak from Myanmar.

Ukraine is a main exporter to the EU, exporting EUTR covered products worth of 10.16 bn Euro in 2019. Still, its forest sector is a challenge for EU operators due to the high risk of illegal logging, corruption and conflict of interest between the State Forest Resources Agency and the forest inspection system. On 9 December 2020, the FLEGT-EUTR Expert Group adopted the country conclusion on Ukraine⁷⁷ stating a very high risk for import from Ukraine to be in breach with applicable legislation and that risk mitigating is highly problematic. In the Association Agreement between Ukraine and the EU (27 June 2014⁷⁸) it was agreed (Article 294) that *"In order to promote the sustainable management of forest resources, Parties commit to work together to improve forest law enforcement and governance and promote trade in legal and sustainable forest products."* In the following Trade and Sustainable Development (TSD) Sub-Committee, dedicated to the implementation of the TSD Chapter of the Ukraine, both parties agreed that a system for a robust forest control and inspection body/ies should be independent from the State Forest Resources Agency and wood harvesting activities and that it should be referred to the Ministry for Environmental Protection and Natural Resources⁷⁹. The EUTR, in combination with the TSD meetings, seems to be moving Ukraine in the direction of improved forest management and legality.

One area where stakeholders consider that the EUTR has led to a positive change is in transparency and the availability of information and documentation on timber supply chains (in particular regarding species and origin). This has put pressure on the supply chains to ensure legality of the raw materials of wood based products being placed on the EU market. Several

⁶⁹ LawinfoChina. (2019). Retrieved from

<http://lawinfochina.com/display.aspx?id=31900&lib=law&SearchKeyword=&SearchCKeyword=>

Lawson, S., & MacFaul, L. (2010). *Illegal logging and related trade: indicators of the global response*. London, UK: Chatham House.

⁷⁰ https://ec.europa.eu/environment/forests/pdf/Country_overview_Myanmar_25_10_2018.pdf.

⁷¹ <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=39219&no=13>.

⁷² <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=32789>.

⁷³ <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=34250>.

⁷⁴ <https://app.powerbi.com/view?r=eyJrIjoiYzQ2N2U5MWEtMjE3MS00NzBILTg0M2EtYTljM2FOTQ0ZWExIiwidCI6IjMjYWFjODU4LWQxZjQ2NDhhZi04NmY2LTQ4NjE5NmQ1OTY5ZCIsImMiOiJh9>.

⁷⁵ https://ec.europa.eu/environment/forests/pdf/Country_overview_Myanmar_25_10_2018.pdf.

⁷⁶ <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=47575>.

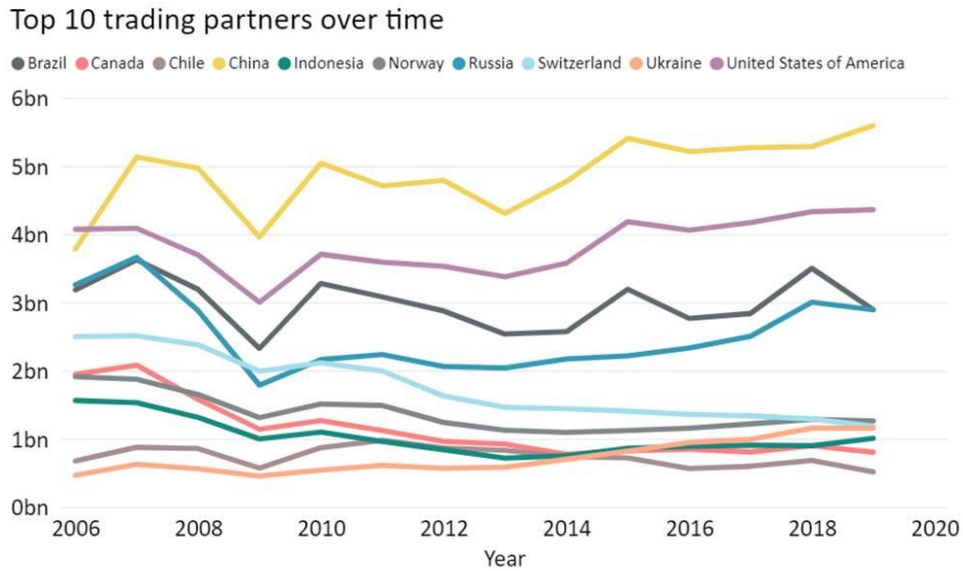
⁷⁷ <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeeting&meetingId=23097>.

⁷⁸ [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A0529\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A0529(01)&from=EN).

⁷⁹ https://trade.ec.europa.eu/doclib/docs/2020/october/tradoc_159004.pdf.

organisations provided further detail in position papers, stating that the EUTR contributed to increased supply chain transparency and the availability of documents from suppliers but key issues remained (see also section 5.2).

Figure 5-3 Development of value of EU28 imports of EUTR-regulated wood-based products the top 10 exporting countries (Source: EuroStat ComExt)

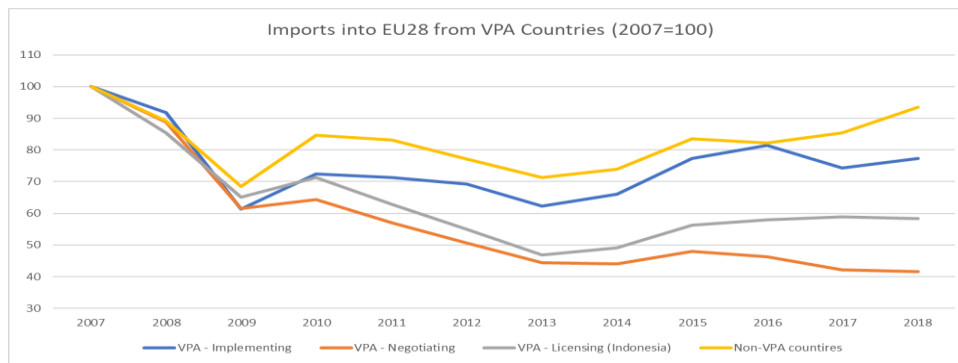


FLEGT Regulation

The objectives of the FLEGT Regulation have been met to a limited extent. More than 15 years after the entry into force of the FLEGT Regulation, the EU has signed or is in the process of negotiations for a VPA with 15 countries in total (see section 3.1), with only one of them (Indonesia) being among the top 10 EU trading partners. Out of the 8 countries that have signed a VPA, currently only Indonesia has an operating FLEGT licensing system in place, verifying the legality of timber and timber products exported to the EU. Furthermore, only a relatively small part of the EU wood-based product imports originates from VPA countries (9% of total import value), while the part of EU imports from Indonesia is even smaller (3%). Therefore, it can be concluded that the VPAs have only had a limited impact on preventing illegal timber from being placed on the EU market, and/or reducing illegal logging globally. There is some evidence (stakeholders, selected reports) of a reduction in illegal logging activities in countries engaged in VPAs in some cases, however this is predominantly based on stakeholders’ views.

Figure 5-4 Development of value of EU28 imports of EUTR-regulated wood-based products from different country categories⁸⁰ compared to 2007 (Data series indexed to 2007=100) (source: Eurostat)

⁸⁰ Non-VPA countries include also Russia, Ukraine, Brazil, US and China.



A number of factors have prevented VPAs from having the intended effect with regard to the full implementation of the FLEGT Regulation. Negotiating, concluding and implementing VPAs proved to be a long and complex process. Such processes are fraught with challenges in many partner countries such as the required high standards of a TLAS (weak overall governance, lack of institutional capacity, absence of political willingness, often widespread corruption), difficulties in gaining agreement from multiple regions in partner countries, insufficiently effective measures and weak law enforcement (resulting in illegalities throughout the supply chain and sustained illegal logging activities⁸¹). It might even add to the hampered delivery that while the export of timber from the VPA countries has shifted from the EU to China the EU continues to finance domestic stakeholder activities as long as the VPA process is still ongoing. It should be noted that most of the VPA countries continue to be considered as presenting a high risk and in many cases deforestation has continued apace with no sign of meaningful decrease.

Many important exporters to the EU, which are considered to be high-risk countries regarding illegal logging, have never shown interest in engaging in the VPA process, e.g. Russia, Ukraine and Brazil. The desk research and consultation of stakeholders suggest that there are several aspects that may have held back key export countries from engaging in the VPA process such as: a perception that VPAs are designed solely for developing tropical countries, a ‘demand-driven’ approach for the selection of partner countries, doubts about the economic benefits of VPAs in terms of greater EU market access, and the potential reputational damage of withdrawing from negotiations once started. The example of Thailand illustrates further the risk of incentives of third countries to enter into VPA negotiations (Box 3).

Box 3: The example of Thailand

Thailand exports only 3% of its wood and wood products to the EU – and the full amount of Thai exports from those categories are about 1% of Thai’s global exports for all services and products.

As in the case of Thailand often the VPAs are therefore trade treaties whose relevance, in economic terms, is negligible for both the EU and the partner country. In these conditions, there is little incentive for partner countries to give in to EU demands for stricter legality controls, governance and protection of forests. At the same time the EU accompanies the VPA negotiations and the implementation processes with cooperation funds. Those funds may be and in some cases most likely are the main motivation for partner countries to engage in the processes and keeping them running.

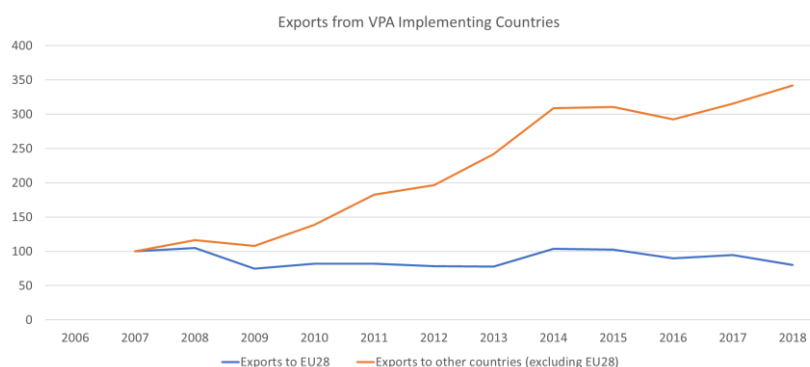
There is often confusion about the status of VPA countries that are in the stage of implementation, but have no operational FLEGT licencing system. This creates uncertainty how imports from these countries are treated under the EUTR. Furthermore, even when a country has concluded a VPA with the EU, but has not yet moved to an operational TLAS, the quality of information made available to operators as a basis for conducting DD may not necessarily be as

⁸¹ As presented in Annex A regarding the illegal logging activities in individual countries.

good as one could expect from a partner country that has been through the arduous negotiation process. Conflicting information on timber legality risks and progress under the VPA might make it difficult for operators to interpret the information and documentation provided, when performing their DD obligation⁸². Operators and CAs need to understand the VPA in the individual country of harvest, what parts of the VPA have been implemented and what is still under development. MS CAs are of the view that sometimes acquiring information from countries that negotiate or implement VPAs, but have not yet started to issue FLEGT licenses, is more difficult than acquiring it for non-VPA countries. Regarding the process of putting VPAs in place, they noted that VPAs help with gaining an overview of legislation to be used in the DD but the listing of criteria and indicators often makes it even more difficult⁸³, and although it involves governments and civil society, it does not necessarily lower the risks. It is furthermore unclear how timber from VPA countries in advanced pre-licencing state should be dealt with⁸⁴.

On the other side, a decrease in overall trade volumes for the VPA countries after the EUTR came into force, indicates that the stricter legality requirements could have been a factor.

Figure 5-5 Development of export value from VPA-signatory countries - to the EU and all other countries (2007=100) (source: Eurostat ext_go_detail, Comtrade)



Indonesia started to issue FLEGT licences in 2016 and many elements of the system have been implemented successfully. The processes for the issuance of licences are reported to be operating as intended in the VPA. From a process perspective, many elements of licencing have been implemented successfully both by Indonesia and EU MS, and processes and systems are continuously updated and improved. The level of exports from Indonesia to the EU has risen since licencing commenced (although less so than overall imports to the EU). Remaining challenges are addressed as they arise.

Additional implementation challenges might be expected should further VPA partners progress to licencing, although a great amount of learning can be drawn from the Indonesian experience. Issues like “typos” in licenses, and mismatching information between the licence and customs documents have been experienced and efforts have been taken from both the EU and Indonesian side to resolve them. Nevertheless, experience with Indonesia has also highlighted that even when fully operational, VPAs are still fragile to political will (see Box 4).

Box 4: the example of Indonesia

On 3 March 2020, the Indonesian Ministry of Economic Affairs announced a number of measures as a Covid-19 trade stimulus strategy. These measures included – *inter alia* – Regulation 15/2020 of the Ministry of Trade, which provided for the lifting of the obligation of so-called V-Legal documents (i.e. the export license attesting legality) as part of the

⁸² <https://ec.europa.eu/transparency/expertgroupsregister/screen/meetings/consult?lang=en&meetingId=19770&fromExpertGroups=tre>
⁸³ https://eur-lex.europa.eu/resource.html?uri=cellar:b2424ac4-7ea6-11e8-ac6a-01aa75ed71a1.0001.02/DOC_2&format=PDF.
⁸⁴ <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=47622>.

requirements for the export of forestry products, unless required by the exporter. This measure was going to enter into force on 27 May 2020.

This decree was going to change the system of TLAS, as agreed and laid down in the VPA, as it would no longer cover all exported timber products, as stipulated in Article 10(1) of the VPA and thus would generate a general risk that illegal timber and timber products are exported from Indonesia. Furthermore, this decree was adopted without prior consultation of the EU. Therefore, it would constitute a breach of Indonesia's commitments entered into under the VPA.

The decree was eventually revoked by the Indonesian government, following intense diplomatic actions by the EU, while preparing for the suspension of the VPA at the same time, which, had it been necessary, would not have been possible to be enacted in time to avoid potentially illegal timber covered by FLEGT licences being placed on the EU market, given the heavy administrative procedure.

There is evidence of VPA partner countries taking steps in the right direction and putting in place the foundations for improvements in the future, i.e. concerning governance, civil society participation, clarifications around existing definitions and legislation. The SILK database for Indonesia shows that from 2013 there was improvement in operator compliance as expected in advance of FLEGT licensing. Despite the overall effect of the licensing system in preventing illegal timber entering the EU, the effect of the FLEGT regulation has been limited, with only one country issuing FLEGT licences and no evidence that the VPAs have contributed to reduced illegal logging.

Furthermore, illegal timber trade has remained persistent at a global level since the FLEGT Regulation was initiated in terms of geographic location (Russia, Brazil, Indonesia and Malaysia), driven by high profits and forest conversion. Despite reductions in the production and import shares of illegal wood products in some major producer and consumer countries⁸⁵, illegal logging and timber trade at the global level remains persistent. Timber from illegal forest conversion for commercial agriculture has become an increasingly large proportion of global illegal logging and related timber trade, whereas the role of traditional, large scale logging has diminished. There is also a continuing perception that nearly a third of timber from the 15 VPA countries is illegal⁸².

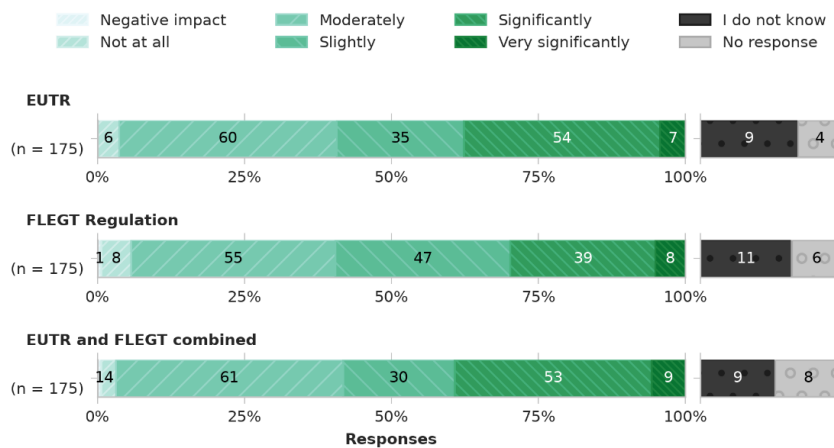
The main problem drivers in many partner countries are weak governance, absence of political will and lack of economic incentives, as explained under section 1. The VPA processes as designed by the EU provide funding to establish participatory forest governance processes, but do not address the economic drivers of illegal logging in the forest sector, nor the underlying corruption in the administrations and at the political levels that are benefitting from illegal logging. These factors prevented VPA processes from creating the expected improved transparency in all financial transactions related to the forest industry, the processing industries directly linked to it and the export volumes of goods sourced from forests. A common challenge in VPA processes beyond the EU's reach has also been frequent change in governments (in some cases even from a democracy to a non-democratic regime), where often almost all previous effort is lost.

Effectiveness of EUTR and FLEGT Regulation

While there are tangible signals that both Regulations together have been moderately successful in their aim to prohibit the placement of illegally logged timber on the EU market, it is difficult to conclude (based on the data available) that they have had a significant effect on illegal logging globally. Usually, overall performance is difficult to quantify with certainty, but it is clear that this objective has not been achieved.

Figure 5-6: Feedback to the OPC regarding the impact of the implementation of the EUTR and FLEGT Regulation to reducing illegal logging and associated trade (source: OPC survey)

⁸⁵ Kleinschmit, D., Mansourian, S., Wildburger, C., & Purrett, A. (2016). Illegal Logging and Related Timber Trade - Dimensions, Drivers, Impacts and Responses: A Global Scientific Rapid Response Assessment Report. IUFRO.



The main driving factors that affect the effectiveness of both Regulations are

- i) the design of the regulations (including the wording “negligible risk”, lack of enforcement powers, lack of awareness and the possibilities for operators to circumvent the rules);
- ii) different levels and efforts of implementation by MS;
- iii) lack of political will or prioritisation in third countries; as well as
- iv) other external factors e.g. changes in world trade.

With regard to the EUTR, one can point to the difficulties in prosecution and conviction of contravening operators, due to mentioned gaps in effectiveness. This has meant that operators that are sourcing and placing on the EU market products with the risk of having been harvested illegally have not always been facing legal consequences for contravening the EUTR. The EUTR's DD requirement was not formulated clearly enough to be fully understood by operators nor the courts, or to facilitate the prosecution and conviction of operators for failing to mitigate the risk to a “negligible” level. The varying levels of governance in specific exporting countries and regions add to the complexity and make the enforcement of the Regulation in EU MS difficult. It has been additionally hampered by the absence of data sharing between customs and CAs for inspection purposes and lack of enforcement capacity to prevent sales if the CA finds the risk of illegality has not been mitigated to a negligible level.

For the FLEGT Regulation, the effectiveness of its main instrument, the VPAs, has suffered from a high focus on process (strengthening governance elements such as stakeholders’ participation, etc.) to the detriment of the main objective: stopping illegal logging and associated trade. This may have led to disincentives for VPA countries to bring the preparatory processes to an end, since they continue to receive the EU economic support for activities while at the same time selling the majority of their timber to less discerning markets, such as China.

5.2 5.2 Efficiency

Costs of EUTR

The EUTR brings compliance costs for operators linked to the establishment and operation of the DDS.

Costs are only significant for operators importing timber and timber products from third countries known for the risk of illegal logging. Domestic operators are forest owners and contractors who are already obliged to comply with applicable national laws for harvest operations and therefore compliance with the EUTR does not add significant, if any costs for them. The claims by some

stakeholders that EUTR costs for forest owners are non-zero have not been substantiated in relation to EUTR obligations and may be related to national laws going beyond the obligations in EUTR.

The magnitude of costs for importing operators depends on a range of factors, including the existence of previous responsible sourcing policies, country of harvest, number of products and suppliers, the length (and complexity) of supply chains, availability of existing supplier information, etc. The larger the number of products or suppliers, the higher the costs. Indeed, the size of the operator may be correlated with the number of products or suppliers, but importantly it is the latter factor which will drive the costs. Furthermore, the more complex or longer supply chains are and the lower the level of information available initially is, the higher costs will normally be.

Four available EUTR cost surveys have been used to estimate costs for importing operators. While generally operators recognised that EUTR had created additional obligations, burden and bureaucracy, the surveys also show that a significant proportion of respondents (53% (n=15) in the case of GTF survey in 2015⁸⁶, 36% (n=84) in case of WCMC in 2019⁸⁷) suggested that EUTR implied no additional costs. The main reasons given are that some operators had already established responsible sourcing policies before EUTR adoption, and therefore the additional costs brought by the adoption of the EUTR were not significant.

For those importing operators incurring additional costs as a result of the EUTR, the answers of a sample of operators engaged in the 2016 evaluation (European Commission, 2016) suggested that costs had been manageable. The four available cost surveys report comparable estimates of annual costs per operator, which range from thousands of EUR to more typically tenths of thousands of EUR and in case of some larger companies, hundreds of thousands of EUR.

Feedback from EUTR monitoring organisations gathered through a previous study⁸⁸ confirmed large variations in costs, but within the same order of magnitude as estimated in the existing surveys. Importantly, the majority of SMEs use existing staff to operate the DDS, which points in the direction of manageable costs.

The available information is therefore complex to interpret. Key elements of uncertainty are summarised below:

- All surveys rely on samples of small size, e.g. between 3 and 84 respondents. The latest source (Norman, 2021) does not clearly state the number of respondents to the question of costs.
- In most sources, it was difficult for respondents to directly attribute costs to the EUTR specifically. It is possible that the cost ranges provided cover other elements of legal and environmental compliance, wider than the EUTR.
- Samples may not be representative. Participation in the surveys is driven by incentives to participate, which in this case relate to size of costs – i.e. those facing higher DD costs have a greater incentive to participate to raise awareness of this issue. For example, in the WCMC 2019 survey, responses were received from only 122 out of at least 2509 operators contacted, and 10 out of 85 trade associations.
- It is unlikely that the samples appropriately represent the profile of the industry more broadly, in particular the split between large companies and SMEs. In theory, it could be expected that SMEs have fewer separate sources of raw material and/or less complex supply chains, and thus potentially smaller costs. Noting that only 4-5% of importers are large (Eurostat data), differences in costs by size would affect the overall figures.

⁸⁶ <https://www.gtf-info.com/wp-content/uploads/2016/07/gtf-supplier-and-consumer-due-diligence-analysis.pdf>.

⁸⁷ Insights from the implementation of the EUTR by operators, UNEP-WCMC technical report, August 2019.

⁸⁸ Cowi A/S, Indufor and Milieu, 2019. Impact Assessment Study for the Revision of the Product Scope of the EU Timber Regulation. <https://op.europa.eu/en/publication-detail/-/publication/fd26ad03-9895-11e9-b2f2-01aa75ed71a1/language-en>.

- Costs of importers may differ based on the origin of imports, i.e. importers with imports originating from high-risk countries could face higher costs of DD System. It is not clear from the studies from where the respondents sourced their imported products. However, extending the logic that those with higher costs are more likely to participate, there is a risk that the samples are over-represented by those with more challenging DD associated with importing from higher risk countries. Based on Eurostat data, about 41% of EU timber imports (Comext data) come from high-risk countries (as defined according to ILAT scores⁸⁹).

Table 5-1 Table summarises the findings of the four cost surveys used

Source	Range of costs	Size of sample	Size of operators	Commentary
Norman, 2021	EUR 10,000 – 35,000 (best 15,000)	72 (the study notes that some companies chose not to answer questions related to compliance budgets or costs at all. It is unclear how many operators out of the 72 responded to the question on costs)	39% large / 61% SMEs	Small sample. Problem of attribution: it is reported that only 20 out of the 72 respondents reported a specific company budget for compliance to EUTR. The report also states that half of surveyed operators had developed a timber sourcing policy.
WCMC, 2019	EUR 0 – 571,000 (excluding an outlier of EUR 8m) (best EUR 38,500)	16 reported costs in EUR, out of 84 reporting on costs (out of total sample in the survey of 122)	72 respondents indicated size: approx. 57% SMEs	Small sample. The report indicates that 58% of respondents noted that EUTR resulted in a cost to the company, 36% indicated that it resulted in no additional or in negligible costs, and 6% did not know. A number of those who reported no or negligible costs explained that they already had due diligence systems in place.
COM, 2016 (Evaluation)	EUR 5,000 – 90,000 to set up the DDS and 10,000 – 50,000 to maintain the DDS	5 respondents on setting up DDS and 3 respondents on maintaining the DDS	n/a	Small sample. Problem of attribution: most companies were unable to respond to the question on costs. According to the private sector survey (Annex 7), 47% of the sample of 20 companies interviewed mentioned that they had incurred additional costs for developing and/or operating their DDS. 82% of respondents felt that the EUTR has created additional obligations and burdens for business in the EU particularly on setting up a DDS, whereas 13% disagreed (5% had no opinion). The views were aligned across the stakeholder groups but the result indicates that the implications are less burdensome on large companies than on SMEs. 83% of the respondents said the EUTR has created additional obligations and burdens for business in the EU particularly on maintaining a DDS, whereas 12% disagreed (5% had no opinion). These views were also aligned across the stakeholder groups.
GTF, 2015	EUR 1,000 – 70,000 (best EUR 26,637)	15 reported on costs (out of 72)	100% SMEs	Small sample. Problem of attribution: When asked to quantify costs of compliance with legislation, many companies were unable to reply. Many of the companies

⁸⁹ <https://www.forest-trends.org/wp-content/uploads/2020/02/ILAT-Risk-Project-Methodology.pdf>.

Source	Range of costs	Size of sample	Size of operators	Commentary
				interviewed combined the cost of legal and environmental compliance.

Based on the reporting by MS under EUTR, there are 142 825 importing operators in the EU (2019) under the scope of the EUTR requirements of DD (WCMC 2019). This figure is not appropriate to calculate recurrent annual costs, because it includes companies which import only occasionally or less frequently than once a year.

The costs are estimated as a range to take into account the uncertainties in the data. Based on this information, a number of assumptions have been made:

- The best estimate of annual recurrent costs of DD of the latest study (EUR 15000 per operator and per year from Norman, 2021) is taken as the upper estimate for the range given the bias of the sample towards large companies.
- The central cost value of the range is estimated in EUR 10000 per operator and per year, in the lower range of the available surveys.
- The lower estimate is estimated in EUR 1000 per operator per year from GTF 2015.
- The unitary costs per operator are applied to half of the number of importing operators (71 412) to take into account the proportion of operators indicating no significant costs, the uncertainties as regards the attribution of costs to EUTR due to existing sourcing policies at the level of companies and to compensate for the fact that part of the 142 825 are importing sporadically or in frequencies lower than annual.

On the basis of these assumptions, **the overall annual EUTR costs for importing operators has been estimated in mEUR 714, with a range between mEUR 71 (low estimate) and mEUR 1071 (high estimate).**

The above costs need to be seen in the light of the total import value of products under the scope of EUTR, which was bEUR 24.5 on average between 2015-2019 giving a range of estimated costs between 0.29% and 4.3% of the import value before customs and taxes. The estimate most likely illustrates the differences - to a certain degree - in costs between importing operators.

For the sake of comparison, a 2016 study⁹⁰ on the cumulative cost of specific EU legislation on EU forest-based industries, based on a different methodological approach to cost calculation, concludes that the cost for the overall woodworking sector of only EU forest legislation (basically the EUTR) was estimated 0.2% of the added value generated in the sector, which would correspond⁹¹ to around EUR 300 million, within the range estimated above.

Traders are only required by EUTR to keep a record of their suppliers and customers. This requirement is, however, estimated to only involve negligible costs, as such information can be expected to be part of normal business operation (e.g. storage of supplier invoices containing the required information). There are no estimates on the number of traders (including retailers) dealing in timber and derived products thereof.

For MS there has been costs associated in establishing an inspection system for operators that place imported products on the market, while MS already having forest inspection systems for domestic production in place normally have used those existing systems. Combined human resources estimates ranged from as few as 0.125 full-time equivalent staff (Luxembourg) to as many as 601 full-time equivalent staff (Italy). Additional results from the online public consultation showed that only a small number of respondents have attributed high costs to the implementation of the EUTR for authorities, with only 31 (18%) respondents (not only public

⁹⁰ European Commission (2016). An assessment of the cumulative cost impacts of specified EU legislation and policies on the EU forest-based industries. <https://op.europa.eu/en/publication-detail/-/publication/0271b2a0-40b7-11ea-9099-01aa75ed71a1/language-en>.

⁹¹ Using a total gross value added of EUR 139 billion (https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Wood_products_-_production_and_trade#Wood_based_industries).

authorities) agreeing that the costs were high for authorities. Overall, 6 respondents from public authorities agreed, 13 disagreed, 3 did not know and 1 was neutral.

Costs of FLEGT Regulation

When estimating the costs regarding FLEGT Regulation, it is necessary to split the costs into “development” and “functioning”. With regard to the “development” costs, these needs to be seen in the broader frame of the FLEGT Action Plan and originate primarily from EU and MS funded projects and programmes. The FLEGT evaluation found that the total investments under the FLEGT AP for the period 2003-2014 across activities made by the EU, its MS and other sources (including producer country governments, civil society and the private sector) amount to an estimated total of EUR 935 million (European Commission, 2016). However, only a proportion of this was spent on VPA signed and negotiating countries: EUR 346 million by the Commission and EU MS and EUR 38 million from other sources. The evaluation also found that the cost of the VPA process in terms of time was substantial, with most stakeholders recognising that this was a consequence of its complex and comprehensive nature.

Drawing together data on cost of the “functioning” is difficult as experience is limited to the cost estimate for Indonesia as the only “fully functioning” FLEGT country, representing only 3% of the EU import of timber products. The case study on the costs of VPA for Indonesia from the 2016 evaluation of the FLEGT Action Plan provides estimated costs for the “development” of the VPA in Indonesia.

- Contribution from the European Commission: EUR 20 million
- Contribution from the UK (as part of their Multi-stakeholder Forestry Programme): between EUR 18.8 million (low estimate) and EUR 60 million (high estimate)
- Contribution from government of Indonesia: EUR 20 million

The total contributions for the VPA in Indonesia thus range between EUR 58.8 million and EUR 100 million.

The “functioning” of the system generates additional costs on an annual bases as follows:

- Annual audits and certification in Indonesia: EUR 5,0 million
- Annual support to SMEs and family holdings: unknown
- SILK administration: EUR 1,2 million
- Issuing of licenses: EUR 1,7 million
- EU customs license clearance (administration exclusive): EUR 0,7 million
- Operators handling of licenses: EUR 2,8 million
- EU COM FLEGT support (IT/Staff): 0,1 EUR million

This means approximately EUR 11,5 million of yearly ‘functioning’ related costs, excluding the costs related to support to SMEs and family holdings.

Comparing the total costs with volumes of imports cleared by customs between 2016 and 2019, during which the licensing system was operational, provides a relative cost between EUR 29 and 49 per tonne of import or on average EUR 83 issuing a license, EUR 22 for MS handling a license and EUR 80 for the operator per licence. When comparing the overall costs over the period with the outcome of this process, this results in a cost of about EUR 336-338 per tonne of import.

There is evidence that FLEGT licences are reducing the costs of timber import for those EU operators mainly or fully sourcing their products from Indonesia, as they do not need to exercise DD under the EUTR.

The FLEGT/VPA system makes it necessary for the VPA countries to develop and implement a licencing scheme, undertake inland and border inspections, certify forests and plantations, as well as control and verify transports and traders, warehouses and processing industry, which leads to

complex enforcement systems with high administrative costs that exceed the capacities of some partner countries. There is limited potential to reduce the costs of the VPA system. Considering that timber and derived products followed by FLEGT-licenses cover only 3% of timber imports into the EU, the costs and administrative burdens seem immense – and this not only for the EU MS.

Benefits

Section 5.1 on Effectiveness looks at the achievement of objectives of the Regulations and points to a mixed evidence regarding the impact of the EUTR on illegal logging (in the EU and in third countries) and the placing of illegally harvested timber to the EU market. A review of the literature has identified benefits attributed to the EUTR and FLEGT. However, the precise impacts cannot be quantified, limiting the potential for direct comparison between the costs and benefits.

Both Regulations though seem to have contributed to increased awareness of the issue of illegal logging and associated trade in many timber producing countries while the VPA processes under the FLEGT Regulation also seems to have contributed to enhanced stakeholder participation and improved forest governance in VPA partner countries.

Benefits of EUTR

As indicated in section 5.1, one of the key benefits of the EUTR (both in terms of significance and strength of evidence) has been its impact on transparency of supply chains: operators must follow the supply from the harvest sites, if risks have been identified by their DD. The greater availability and flow of information subsequently allows the application of pressure down the supply chain to the original source to ensure logging is legal. This benefit is widely cited in both the literature⁹² and by stakeholders.

Through the EUTR, MS have helped to increase awareness of the problem of illegal logging through campaigning and educating operators (European Commission, 2020). Likewise the European Commission has published materials to raise awareness of timber legality issues and support CAs and operators in their risk assessment (e.g. EUTR country overviews and briefing notes). A literature review and results of the stakeholders' consultation also point to the creation of a level playing field for the EU operators and a better understanding of their supply chains (OPC and interviews with CAs and NGOs).

For the EUTR, the compliance costs are low in comparison to its benefits which – while difficult to monetise – can be considered to justify the costs. Therefore, using the EUTR (or indeed a new system based on enhanced DD), covering, as it does, all countries, would be more cost-efficient, and would avoid the considerable investment needed in certain elements of the VPA processes that contribute to a significant administrative and financial burden. The EUTR has helped improve the forest sector in different ways by the constant pressure for legality in the sector. The market has adapted to the situation differently in varying regions and countries. One example is the preparation and certification of the Russian Federation Western Forest areas in corporation between WWF (Russia), FSC and state forest agencies; another is the development of Bolsa Verde do Rio de Janeiro (BVRio) using Artificial Intelligence to cross-check Brazilian operators for potential breaches of applicable national legislation and to the TSD negotiations based on the Association Agreements to ensure improved forest management, transparency, forest inventory and improved law enforcement.

The US Lacey Act and national legislations being developed in Australia, South Korea, Japan, New Zealand and Switzerland show that the EU does not stand alone and that the EUTR has been an inspiration for other countries to fight illegal logging. However, keeping the issue of illegal

⁹² Patel. (2019). *Illegal Timber Trade: Analysing the Effectiveness of European Union Timber Regulation (EUTR) in the UK.*

logging and deforestation on the global political agenda could be achieved with a new system that addresses the gaps of the current system in a cost-efficient way.

Drawing robust conclusions regarding the impact of EUTR on volumes of illegally logged timber entering the EU is challenging given that the data available presents a mixed picture. Drawing firm conclusions with respect to impact on illegal logging in exporting countries is even more problematic.

Benefits of FLEGT Regulation

The most significant and most widely cited benefit of the introduction of VPAs and the associated policy dialogue is the improvement in governance and legal reform that flow from this process, capacity building, as well as increased engagement of stakeholders and civil society. The importance of these benefits are flagged in both the literature and across the stakeholder engagement activities.

With regards to the impacts of the FLEGT Regulation on illegal logging and illegal timber imported to the EU, it is not possible to conclude that the FLEGT Regulation has had a positive impact on illegal logging in the VPA countries and/or on the level of illegally logged timber entering the EU. There is some evidence that once the FLEGT licencing starts, exporters experience a benefit. But overall the benefit to Indonesian exporters has been limited to date. The trade data shows that Indonesian exports to the EU increased by only 3.6% from 2015-18 (relative to a 10% growth in all imports) and by only 0.4% between 2016-18 (relative to a 12% growth in all imports). Therefore, its benefits may not seem to justify its costs.

In addition the two Regulations seems to have little if any clear synergies or ways of benefitting from each other. Regarding FLEGT and EU domestic production this is quite obviously. Regarding inspections at operators importing from third countries, products covered by a FLEGT licence will be validated at the boarder during the custom procedure by Custom/CAs. Non-FLEGT products will be inspected indirectly by the CAs checking the functioning of the DD system at the operator's premises and most often after placing on the market of the products. EUTR require that the operator carry out DD before the purchase and placing on the market. FLEGT require the importer has the license at the point of custom procedure takes place. Though for products covered by a FLEGT license there would only be a need for a limited number of spot checks at the operators to ensure the procedures has been followed and nothing has been hampered with.

5.3 5.3 Coherence

EUTR

The EUTR is seen as being internally coherent by stakeholders, but a lack of clarity regarding key definitions and implementation in national legislation have posed critical challenges for implementation in coherence with Article 19 (2) 2: "The penalties provided for must be effective, proportionate and dissuasive".

As also mentioned in section 5.1 Effectiveness, stakeholders have commented in EUTR/FLEGT Regulation Expert Meetings that the definition of 'negligible' is unclear, resulting in diverging views on 'negligible risk' and potentially impacting its application in national legislation. This could result in DD systems assessing similar timber products at different risk levels, ultimately undermining the functioning of the regulation. Multiple stakeholders throughout the roadmap feedback noted that further guidance is required to clearly define what constitutes 'good' DDS.

The enforcement of the EUTR by national law varies considerably regarding domestic forest owners. MS with large domestic markets for timber often enforce larger fines and strict criminal prosecutions for infringements. In contrast, countries with smaller domestic production and larger share of imports are early movers of EUTR implementation, but with softer, more collaborative

measures applied to traders and operators⁹³. This is further emphasised by the large disparity in the inclusion of criminal sanctions and maximum fines by MS for EUTR infringements, creating an uneven playing field within the internal market⁹⁴. (See also section 3 of this impact assessment.)

MS have encountered difficulties and delays in transposing the EUTR DD requirements into national law, as the concept is not always easily interpreted into the various legal approaches of MS. In addition, the delays in the adoption of the relevant legislation to enforce the EUTR in some MS has led to often sporadic checks on operators and monitoring organisations⁹⁵.

Some issues have been identified between the Regulation and certification schemes (e.g. FSC/PEFC), including the misuse of certification and questions around transparency and chain of custody. The current CoC systems seem to only work for companies not committing deliberate fraud. Concerns about the integrity of CoC systems are mounting, and therefore discussions over this gap have intensified in recent years. In addition, the lack of independent audits, considered to be key in ensuring the robustness of the certification, was found to be a key weakness of the private certification schemes^{96,97}. A specific study commissioned by the Commission⁹⁸ confirms these findings.

FLEGT Regulation

The FLEGT Regulation is also seen as internally coherent by stakeholders, with the main previous evaluation of FLEGT Regulation reporting positively on the internal coherence of its provisions⁹⁹. This view was corroborated in the online public consultation, with 53% (n=61) of respondents stating that there were no coherence issues, while the other did not outline instances of such issues. Despite the positive overall assessment of the FLEGT Regulation and the common provisions of VPAs, some issues exist with regards to the coherence of the FLEGT Regulation and the implementation of the VPAs.

Although the VPA minimum content (including a definition of legality aligned with EU definition and product scope) is viewed as beneficial, the ability to then vary the content (in particular product scope) between VPAs creates additional complexity for CAs, customs and operators. Due to the large discrepancies between the situations in VPA partner countries and the context needed to start issuing licenses, issues take time to solve, and there is a need for engaging CAs at the development and implementation stages of VPAs, in order to resolve any issues of divergence between the instruments ex ante (stakeholder interviews with NGOs).

The availability of FLEGT licenced timber products from only one country, is one of a number of variables which operators take into account when considering sources of imports. This has limited the ability of operators to take advantage of FLEGT licences and has restricted those able to reduce their EUTR compliance costs.

Coherence between EUTR and FLEGT Regulation

The Regulations are complementary to each other by addressing the supply and demand sides of timber harvest and trade, and are key legal instruments of the FLEGT Action Plan (AP).

The EUTR and the FLEGT Regulation are seen as coherent with each other by stakeholders, their scope and objectives are aligned (European Commission, 2016; EIA). This was confirmed by CAs in stakeholder interviews, as well as in the online public consultation conducted as part of

⁹³ A political economy of the European Union's timber regulation: Which member states would, should or could support and implement EU rules on the import of illegal wood? – ScienceDirect.

⁹⁴ [wwf_eutr_implementation_eu_synthesis_report_2019.pdf](https://www.panda.org/wwf_eutr_implementation_eu_synthesis_report_2019.pdf) (panda.org).

⁹⁵ https://ec.europa.eu/environment/forests/eutr_report.htm.

⁹⁶ WWF, 2015 Profitability and Sustainability in Responsible Forestry Economic impacts of FSC certification on forest operators.

⁹⁷ <https://fsc-watch.com/2020/07/02/ikeas-ukrainian-illegal-timber-problem-that-fsc-didnt-notice/>; <https://fsc-watch.com/2018/10/18/new-documentary-slams-fsc-the-eco-label-could-not-slow-down-the-forest-industry/>; <https://e360.yale.edu/features/greenwashed-timber-how-sustainable-forest-certification-has-failed>.

⁹⁸ Study on Certification and Verification Schemes in the Forest Sector and for Wood-based Products; Preferred by Nature; 2021 [ongoing study to be published in the next weeks, before the adoption of the IA].

⁹⁹ FLEGT Eval Consultant Report Annex 7.pdf (europa.eu).

this Fitness Check. Stakeholders reported few challenges relating to a lack of coherence between the obligations under the FLEGT Regulation and the EUTR, with 23% (n=146) stating it was not a challenge at all. However, there are areas where coherence has not been sufficient between the EUTR and FLEGT Regulation. In particular, the product scope varies between the EUTR and the VPAs, creating complexity around the requirements applying to different imports and from different source countries.

Both the EUTR and FLEGT Regulation appear broadly coherent with wider EU policy although it can be questioned if they are still coherent with the political ambition as expressed in the European Green Deal and related initiative. The increase in ambition around climate action and biodiversity poses a challenge for the relevance of the EUTR and FLEGT Regulation with its focus on legality, although the detail of what this means for the timber and timber product sector, in the EU and globally, is yet to be determined. The FLEGT Regulation as such remains coherent with EU trade policies and actions by the EU, supporting reforms that may contribute to promoting sustainable development, social and safety standards, communities' rights, and respect for the environment. Stakeholder consultations did not raise any substantive issues surrounding the coherence of EUTR or the FLEGT Regulation with EU environmental policy.

Both the EUTR and FLEGT Regulation appear broadly coherent with the international regulatory framework such as CITES, CBD etc. The regulatory scope of EUTR and FLEGT partially overlaps with the objectives of CITES but differs in the broadness of scope and methodology for determining legality.

5.4 5.4 Relevance

Since the adoption of the EU FLEGT Action Plan and the subsequent adoption of the EUTR and FLEGT Regulation, the priorities of the EU have become more ambitious, moving from “legality” to “sustainability”. Sustainability was already a key issue at the time of the adoption of the EU FLEGT Action Plan in 2003, but at the time legality was considered a necessary ‘first-step’. This was a reflection of broader policy developments, but might also have been influenced in part by issues arising around the implementation of the instruments themselves, which appear to challenge the continued relevance of the Regulations. The exclusive focus of the Regulations on legality (rather than sustainability) and timber (rather than a wider range of commodities) means that both instruments only partially contribute to the achievement the explicit EU policy goal of halting deforestation and forest degradation more broadly.

The product list covered by the EUTR excludes various secondary or processed timber products such as some types of furniture, musical instruments, charcoal, coffins and various paper products^{100,101}. In terms of value, books are the most valuable item imported by the EU-27 not covered by EUTR, followed by other types of printed matter, chairs, charcoal, tables and kitchenware. There may be opportunities in broadening the scope of the products covered by the EUTR to increase its effectiveness, but there is uncertainty around whether the benefits of doing so outweigh the costs, as long as the substantive focus is not changed from legality to sustainability. The European Commission Impact Assessment in 2017 on the revision of the product scope of the EUTR concluded that (with the exception of charcoal), the inclusion of all remaining furniture and wooden tools would yield gains in covering additional illegally-sourced timber. However, expanding the coverage of products also implies additional regulatory burden and cost to the operators involved and at some point the costs may outweigh the gains in additionally prevented illegal timber trade. The OPC revealed general support for an expansion of the EUTR product scope, but with support differing for specific categories. Consensus emerged across various stakeholders on the need to include charcoal and remaining furniture categories. The inclusion of printed media is more contentious, with printers generally calling for expansion, but representatives of publishing houses being against.

¹⁰⁰ Probos. (2014). Import of secondary timber products by the EU-28: the Netherlands in focus. Wageningen, The Netherlands.

¹⁰¹ Masiero, M., Pettenella, D., & Cerutti, P. O. (2015). Legality Constraints: The Emergence of a Dual Market for Tropical Timber Products? *Forests*, 3452-348.

The EUTR as EU legislation allows flexibility in responding to new and emerging challenges. The due diligence requirement placed on all EU based operators allows the Regulation to be flexible to changes in trade patterns (e.g. rise in prominence of China as a trade partner). The FLEGT Regulation and its licensing system, which are implemented through direct, bilateral VPAs with exporting countries are more challenging to be used for reacting in a flexible way to such changes. As demonstrated by the results of the studies and public consultation, there has been no discernible advance of VPA partner countries over other producer countries in reducing the level of illegal logging, with the notable exception of Indonesia, where the VPA process was embedded in a comprehensive national reform process.

5.5 5.5 EU Added Value

There is evidence that the EUTR has delivered beyond what would have happened without EU action, in particular through: enabling cooperation and learning across MS and ensuring wider policy coherence. Action at EU level has created a level playing field for operators although the variety and divergence in enforcement at national level with respect to both the prohibition and due diligence systems have limited the ability of the EUTR to realise its full potential.

There is also evidence that EU-level action through the FLEGT Regulation can provide added value above what would have been possible at MS level. However, challenges have limited the ability to achieve its full potential value added (namely that only one country has progressed to licencing).

6. 6. CONCLUSIONS

6.1 6.1 Findings

Effectiveness:

EUTR

There is no clear data based evidence that the EUTR as a single instrument has significantly lowered the volume of illegal logging globally and therefore no clear conclusion can be drawn on the effect of EUTR on illegal logging compared to the baseline. It can only be inferred that if the majority of imported wood products is being imported in accordance with the DD requirements established under the EUR the volume of illegal wood products on the EU market must have decreased while changes in the world trade since 2010 might have resulted in illegal timber entering other markets.

The requirements of improved transparency and information gathering to fulfil the DD obligations on evidence of the place of harvest and no breached of applicable legislation have put pressure on all actors along the supply chains. In addition to this, a number of implementation and enforcement challenges have been identified regarding the functioning and effectiveness of the due diligence system, in particular the way the EUTR has been enforced in MS.

DDSs are being applied to cover the majority of timber, timber- and wood based products placed on the EU market. Such systems are mainly applied by larger operators. Smaller operators are less inclined to implement them, not least because they face a number of challenges in developing and implementing DDSs, including limited awareness and understanding of their obligations. The most critical issue for operators is the ability to verify the robustness of information obtained. Therefore, the effect of DD is regarded as having low impact on the legality of timber being placed on the market by the majority of SMEs.

The use of the concept of ‘negligible risk’ in the DD provisions of the EUTR has further complicated implementation and enforcement. The term is subjective, which makes it more difficult to select which information to gather and complicates the determination of wherever a risk is ‘negligible’ for operators, CAs and the courts. This issue is compounded by the relatively

short history of DD as a concept in the legal systems of many MS. Difficulty proving ‘non-negligible risk’ in court has also led to some hesitations in bringing cases to court.

All MS have established legislative frameworks to implement the EUTR, though the level to which the national provisions provide for enforcement differs. This is mainly due to the fact that the establishment and definition of sanctions is within the powers of EU MS. Evidence exists that operators clearly see a variation in the stringency with which the EUTR is enforced across MS (e.g. number of checks, level of penalties), which leads to attempts observed to import riskier timber via specific MS. There are also important differences of understanding and interpretation in different MS which condition their implementation of the regulation.

The effectiveness of some CAs’ checks has been hampered by the lack of formalised cooperation with customs. Without a complete set of basic data on all operators and the import of timber and wood products, an effective and efficient risk analysis is not possible.

In MS where the CAs have access to customs data, risk-based inspection plans and efficient inspections can be expected. This, combined with the systematic approach of DD, generally makes inspections efficient and is one of the reasons of why the majority of the volume imported into the EU has been subject to DD risk mitigation. Since all MS lack the power to redraw or halt marketing of products already placed on the market even without clear evidence of inadequate DD and verifiable determined negligible risk, the market powers keep traders and retailers to source from questionable operators if the price is low enough. This may drive operators to continue sourcing wood based products from high-risk countries like Myanmar, Belarus and Ukraine.

MOs have not functioned as the support mechanism for operators they were intended as. They appear to have been of only very limited benefit, if any, for a number of reasons. These include the operators’ fear of being exposed if in breach with EUTR, the fact that MOs are obliged to notify CAs of significant or repeated failures by the operator as well as the cost of their services. There were also several cases where compliance with the EUTR was problematic even while using MOs services. Another major issue is that the uptake of the services of the organisations recognised as MOs was very limited, and even in these limited cases they were often contracted as consultants, not as recognised MOs. In addition, the recognition process is heavy and resources-intensive for both authorities and applicants, while the system shows limited flexibility to respond in cases of challenges.

The EUTR - even if hampered by a number of design elements and enforcement weaknesses - shows promising results in terms of both effectiveness and efficiency, given that it covers the whole world, and at the same time has equipped the EU with a basis to work closely together with other consumer countries to address the problem of leakage. The EUTR legislation has also inspired the development of demand-side legislation in other non-EU countries (e.g. Australia, South Korea and Japan) although any subsequent impact relies on the effectiveness of these policies. The US extended an existing legislation (Lacey Act) to cover similar situations as the ones addressed by the EUTR. That said, there are continuing reports of significant illegal activity in some of the EU’s key sources of imports such as Russia and Ukraine, but data limitations, again, make firm conclusions difficult.

The trade data also presents mixed signals. Intra-EU trade (lower risk generally than extra-EU imports) grew less over the period of implementation relative to imports as a whole, as did imports from ‘lower risk’ countries. Furthermore, there was an absence of significant changes in trade patterns towards more transparent countries. However, difference-in-difference analysis of trade data (which can more completely control for broader market influences) tentatively concluded that the EUTR has led to a reduction in imports of illegally harvested timber logging imports to the EU of between 12-29% (albeit based on a relatively small comparator control group). Analysis of trade data analysis does not show variance in risk and shifts within countries. That said, looking specifically at imports from countries where issues were specifically identified over the implementation period (Ukraine and Myanmar) continued and actually grew in the case of the latter. China has also become a prominent player in the timber industry – both as a global importer and an exporter to the EU (the elongation of supply chains could signal a greater

challenge for operators to obtain robust or sufficient information to fulfil DD requirements). Most stakeholders consider that the EUTR has led to a positive change in transparency and the availability of information and documentation around timber supply chains (in particular regarding species and origin) and as such has put pressure on the supply chains to ensure legality of the wood based products being exported to the EU.

FLEGT Regulation

For the FLEGT Regulation, a number of challenges have been identified. While, VPAs have led to positive results in terms of improved forest governance and of enhanced stakeholders' participation, the progress in the negotiation and implementation of VPAs, being the instruments for the application of the EU licensing system, has been very slow and there is no clear evidence of its impact in terms of stopping illegal timber from being placed on the EU market, and/or reducing illegal logging globally.

After more than 15 years of engaging in VPA processes with partner countries, only one country out of the 15 partner countries engaged in a VPA process, has an operating licensing system in place. Furthermore, only one country among the top 10 EU trading partners is engaged in a VPA process. In 2018, the timber products covered by FLEGT licences accounted for only 3% of EU imports of timber. All 15 VPA countries together, including 14 with no operating system, represented only 9% of the total value of EU imports of timber. The limited number of countries engaged in the process has curtailed the ability of the FLEGT Regulation to fully achieve its objectives, in particular with regard to the volume of trade in timber and derived products they cover.

Many important exporters to the EU considered as high risk countries have never shown interest in engaging in the VPA process, e.g. Russia, Ukraine and Brazil. There are several aspects that may have held back key export countries from engaging in the VPA process such as a perception that VPAs are designed solely for developing tropical countries, a 'demand-driven' approach for the selection of partner countries, doubts about the economic benefits of VPAs in terms of greater EU market access and the potential reputational damage of withdrawing from negotiations once started.

VPA processes are long, complex and fraught with challenges. There are a number of factors driving prolonged negotiations and implementation processes including the conditions for a TLAS set a high bar, weak governance systems, lack of institutional capacity and political willingness and widespread corruption in many partner countries and difficulties in gaining agreement from multiple regions in partner countries. Perhaps the most critical driver is political will to integrate the VPA process into a reform process at the domestic level: a step change is often required and there will be stakeholders who lose out, so leadership is needed to drive progress.

Whilst there are challenges for the negotiation and implementation processes, many issues also arise during, but outside of, the process. There is often confusion among operators and traders that are subject to the obligations of the EUTR about the status of countries implementing a VPA that have not yet reached licencing: there is uncertainty how imports from these countries are to be treated under EUTR. Furthermore, even where a country has concluded a VPA, the quality of the information made available to operators conducting DD may not necessarily be at the expected level that would be expected after the investment in the long process would lead to expected.

Indonesia started to issue FLEGT licences in 2016 and the system has been implemented successfully. From a process perspective, many elements of licencing have been implemented successfully by EU MS, and processes and systems are continuously updated and improved. Additional implementation challenges might be expected should further VPA partners progress to licencing, although a great amount of learning can be drawn from the Indonesian experience. Processes in Indonesia to issue licences are reported as operating as intended in the VPA. Issues have been identified and plans put in place to resolve them on an ongoing basis. Nevertheless,

Indonesia's experience has also highlighted that once in place, VPAs are still exposed to policy and political changes in the partner country.

The nature of illegal activities makes it difficult to conclude with certainty that the FLEGT Regulation has significantly reduced illegal logging globally and/or the level of illegally logged timber entering the EU, even though the OPC shows that 88% (n=169, Figure 5-5) of stakeholders think that the FLEGT Regulation had an effect on reducing illegal logging. The level of exports from Indonesia to the EU has risen since licencing commenced (although less so than overall imports to the EU). For VPA countries, there is only limited evidence that engagement in the process (prior to licencing) has led to any decrease in illegal logging. Interviewees in Ghana, Indonesia and Cameroon¹⁰² claim that there has been some progress as regards production forests having a management plan. Still, most VPA countries continue to be rated as 'high risk' and in many cases deforestation has continued apace with no sign of meaningful change. That said, there is evidence of VPA partners taking steps in the right direction and putting in place improvements, such as improvements in governance, enhanced civil society participation, clarifications around existing definitions and legislation. With respect to the prevention of illegal timber entering the EU, the impact of the FLEGT Regulation has been limited, with only one country issuing FLEGT licences.

There are tangible signs (based on the data available) that the two Regulations together have had some impact on the aim to prohibit the placement of illegally logged timber on the EU market, but their overall performance is difficult to quantify with any certainty. It is clear however that this objective has not been fully achieved. Nonetheless, it is difficult to conclude to what extent the EUTR and FLEGT Regulation together have had a significant effect on levels of illegal logging globally.

Efficiency:

Costs associated with the implementation of the EUTR

Based on the reporting by MS under EUTR, there are 142 825 importing operators in the EU under the scope of the EUTR requirements of DD (WCMC 2019). Based on the available information on the percentage of operators indicating no significant costs and the uncertainties as regards reported costs, **the overall annual EUTR costs for importing operators has been estimated in mEUR 714, with a range between mEUR 71 (low estimate) and mEUR 1071 (high estimate)**. This is based on applying a best estimate of EUR 10 000 per operator (EUR 1 000 low estimate and EUR 15 000 high estimate) to half of the total number of estimated importing operators (71 412).

The implementation of the EUTR varied greatly across the MS, when looking at both the human and financial resources available to CAs. Resources made available for monitoring, inspection and enforcement of measures regarding domestic and imported timber varied as well due to the differences among MS with regard to the importance of domestic timber production, processing industry and level of imports. Combined human resources ranged from as few as 0.125 full-time equivalent staff (Luxembourg) to as many as 601 full-time equivalent staff (Italy). The majority of MS has between 1 and 10 FTE deployed for inspection of importing operators and with that they appear to have been able to cover the majority of the import value. Additional results from the OPC showed that only a small number of respondents have attributed high costs to the implementation of the EUTR for authorities, with only 31 (18%) respondents (not only public authorities) agreeing that the costs were high for authorities. Overall, 6 respondents from public authorities agreed, 13 disagreed, 3 did not know and 1 was neutral.

Despite more than 2.300 inspections since 2013, only a limited number of cases has been brought to court. At first sight this seems to be in contradiction with the stakeholder consultations and

¹⁰² Cerutti PO, Goetghebuer T, Leszczynska N, Newbery J, Breynne J, Dermawan A, Mauquoy C, Tabi PP, Tsanga R, Der Ploeg, LV and Wathelet J-M. 2020. Collecting Evidence of FLEGT-VPA Impacts for Improved FLEGT Communication. Synthesis report. Bogor, Indonesia: CIFOR. https://vpa-library.cifor.org/assets/publications/Synthesis_FLEGT_VPA_impacts.pdf.

OPC claiming that the terms “Due Diligence”, “negligible risk” and “verification of documentation” are challenges for operators especially SMEs. However it may confirm that CAs limit the cases that they bring to court, based on the experience that the enforcement of EUTR and the due DD including the terms just mentioned is challenging and meets with reluctance of prosecutors and courts.

Costs associated with the implementation of the FLEGT Regulation

The cost of fully implementing the instruments central for the FLEGT Regulation should be divided into two categories, “development” and “functioning”.

The total investments by the EU and MS in the preparation, negotiation and implementation of FLEGT VPAs since 2004 is estimated at EUR 1.5 billion shared between the EU and MS. In addition to this the VPA partner countries are considered to have invested on their side at the national level, though the level has been proven difficult to quantify as this was partly in the kind i.e. time and effort invested by authorities and stakeholders.

The other relevant part of the costs relates to the functioning of an operational licensing system. Here, one could only take the costs related issuing FLEGT licenses from Indonesia as a basis including the estimated annual costs for EU Customs and CAs. The total costs for Indonesia, MS customs and importing operators in handling the approximately 35.000 licenses per year are in total EUR 11,5 million including the support and costs for certification of forest areas in Indonesia. This means that the cost per license issued was approximately EUR 330.

On the EU side, costs were mainly linked to problems with the validation of licenses. In 2019, FLEGT Regulation licenses were validated within three days of receipt in 69.7% of cases. 676 FLEGT Regulation licenses out of 33 302 received were subject to checks beyond the basic verification of the license (including, for instance, contacting the Indonesian license information unit for clarification) by 19 MS (European Commission, 2020). CAs of EU MS commonly report challenges with regards to FLEGT Regulation licenses. Mismatches between the Harmonized System (HS) codes contained in the FLEGT licence and the HS codes contained in the EU customs declaration represent the majority of issues identified. Indeed, in 80% of licenses where customs validation found irregularities, the problem was due to a mismatch between HS codes by exporting authorities and EU customs authorities¹⁰³. One third (33%, n=155) of the respondents to an open public consultation question on the FLEGT Regulation (question 7) thought that the different interpretation of HS codes between the EU and partner countries was a significant or a very significant challenge. This issue was also raised during the interview conducted with FLEGT CAs. Each time a license causes actions to be taken additional costs are to be added to the functioning of the licenses system.

Benefits of EUTR

Drawing robust conclusions regarding the impact of EUTR on volumes of illegally logged timber entering the EU is challenging given the data available. The available evidence presents a mixed picture. Drawing firm conclusions with respect to impact on illegal logging in exporting countries is even more problematic. One of the key identified benefits is impact on transparency of supply chains. The greater availability and flow of information subsequently allows the application of pressure down the supply chain to the original source to ensure logging is legal. The EUTR has helped to increase awareness of the problem of illegal logging.

All in all, it seems that the EUTR is efficient for the majority of MS CAs (for those sharing data with customs) and for larger operators (having the benefit of scale) as well.

Benefits of FLEGT

The most significant and most widely cited benefit of the introduction of VPAs and the associated policy dialogue is the improvements in governance and legal reform that flow from this process,

¹⁰³ EU FLEGT Facility. (2019). EU-Indonesia FLEGT Voluntary Partnership Agreement. Retrieved from <https://ec.europa.eu/environment/forests/pdf/Indonesia.pdf>.

as well as increased engagement of stakeholders and civil society and capacity building. As regards the impacts of the FLEGT Regulation on illegal logging and illegal timber imported to the EU, it is not possible to conclude that the FLEGT Regulation has had a positive impact on illegal logging in the VPA countries and/or on the level of illegally logged timber entering the EU. Therefore, the FLEGT Regulation cannot be deemed efficient.

Relevance:

The political priorities of the EU have developed since the adoption of the EU FLEGT Action Plan and the subsequent implementation of the EUTR and FLEGT Regulation. Sustainability was already a key issue at the time of the adoption of the EU FLEGT Action Plan in 2003, but at the time, legality was considered a necessary ‘first-step’. The further development of priorities was mainly caused by the worrying trends of deforestation and forest degradations, but might also have been influenced by issues arising in the implementation of the instruments themselves, which appeared to challenge the continued full relevance of the Regulations in addressing the underlying policy objective. The exclusive focus of the Regulations on one aspect of the issue, namely legality of harvest (rather than effect of harvesting and production on rates of deforestation and forest degradation) and only a limited range of products i.e. those based on wood (rather than a wider range of commodities), means that both instruments only partially contribute to the achievement of the explicit EU policy goal of effective contribution to halting deforestation and forest degradation at global level.

There may be opportunities in broadening the scope of the products covered by the EUTR to increase its effectiveness, but there is uncertainty around whether the benefits of doing so outweigh the costs, as long as the substantive focus is not changed to go beyond legality. The European Commission Impact Assessment in 2017 into for the revision of the product scope of the EUTR from 2017 concluded that (with the exception of charcoal), the inclusion of all remaining furniture and wooden tools would yield gains in covering additional illegally-sourced timber. However, expanding the coverage of products also implies additional regulatory burden and cost to the operators involved and at some point the costs may outweigh the gains in additionally prevented illegal timber trade. The OPC revealed general support for an expansion of the EUTR product scope, but with support differing for specific categories. Consensus emerged across various stakeholders on the need to include charcoal and remaining furniture categories. The inclusion of printed media is more contentious, with printers generally calling for expansion, but representatives of publishing houses being opposed to it against.

The EUTR as EU legislation has flexibility to respond to new and emerging challenges than the FLEGT Regulation. The due diligence requirement placed on all EU based operators allows the Regulation to be flexible to changes in trade patterns (e.g. rise in prominence of China as a trade partner). The licensing system established by the FLEGT Regulation, based on the direct, one-to-one VPAs with exporting countries, is inherently not an instrument that allows for a flexible reaction as flexibly to such changes, as such adaptation would also be subject to further negotiations with partner countries.

Coherence:

The EUTR is seen as being internally coherent, but a lack of clarity regarding key definitions and concepts and their interpretation and implementation in national legislation have posed critical challenges for implementation. There are serious issues around the definition of ‘negligible risk’, the transposition of DD requirements into national legislation and their understanding and interpretation by prosecutors and courts has been challenging, making it difficult for MS CAs to successfully pursue enforcement, prosecution and ultimately sentencing by the courts .

The FLEGT Regulation is also seen as internally coherent. Although the minimum product scope mandated by the Regulation is viewed as beneficial, the ability to then vary the content (in particular product scope) between VPAs is seen - once more licensing systems are operational - as having the potential to create additional complexity. Coherence is also enhanced through the

existence of the minimum elements that all VPAs must contain (including a definition of legality aligned with EU definition and product scope). But the precise scope of VPAs is determined during negotiation, which may in turn has the potential to create additional complexity for EU MS CAs, customs authorities and EU operators.

There are areas where coherence has not been sufficient between the EUTR and FLEGT Regulation. In particular, product scope varies between the EUTR and the VPAs, which may create complexity around the requirements applying to different imports and from different source countries, once more licensing systems become operational.

There is strong evidence that FLEGT licences are reducing the costs of timber import for EU operators. Some EU operators would have a preference to import under FLEGT licences as costs are typically lower than those of compliance with EUTR DD. However, the limited availability of a FLEGT licenced timber and derived products is one of a number of variables which operators take into account when considering sources of imports. This has limited the ability of operators to take advantage of FLEGT licences and has restricted those able to reduce their EUTR compliance costs.

Both the EUTR and FLEGT Regulation appear broadly coherent with wider EU policy although it can be asked if they are still fully coherent with the political ambition as expressed in the European Green Deal and related initiatives. The increased ambition around climate action and fight against biodiversity loss poses a challenge for the relevance of the EUTR and FLEGT Regulation. The FLEGT Regulation as such remains coherent with EU trade policies and actions by the EU, supporting reforms that may contribute to promoting sustainable development, social and safety standards, communities' rights, and respect for the environment. Stakeholder consultations did not raise any substantive issues surrounding the coherence of EUTR or the FLEGT Regulation with EU environmental policy.

Both the EUTR and FLEGT Regulation appear broadly coherent with the international regulatory framework such as CITES, CBD etc. The regulatory scope of EUTR and FLEGT partially overlaps with the objectives of CITES but differs in the broadness of scope and methodology for determining legality. Some issues have been identified between the Regulations and certification schemes (e.g. FSC/PEFC), including the misuse of certification and questions around transparency and chain of custody. The EC have commissioned a study to add greater clarity around these issues.

Value added:

There is evidence that the EUTR delivered beyond what would have happened without EU action, in particular through enabling cooperation and learning across MS and ensuring wider policy coherence. Action at EU level has created a level playing field for operators although the variety and divergence in enforcement at national level with respect to both the prohibition and due diligence systems have limited the ability of the EUTR to realise its full potential.

There is evidence –based on the successful implementation of the VPA with Indonesia - that EU-level action through the implementation of the FLEGT Regulation can provide added value above what would have been possible at MS level. However, challenges have limited the ability to achieve its full potential value added (namely that only one country has progressed to licencing).

6.2 6.2 Lessons learnt

The Fitness Check has found limited evidence on the effect of the EUTR and, in particular, FLEGT Regulation on global illegal logging and associated trade. A number of challenges have been identified related to the implementation of the EUTR and, especially the FLEGT Regulation regarding their effectiveness and efficiency. Nevertheless, awareness of the problem has increased and internationally the fight against illegal logging has gained support, resulting in other countries adopting laws against the trade of illegally harvested timber.

EUTR

- A system based on DD such as the EUTR, if improved and adapted to the new political context, could be fit for purpose.
- The requirements operators have to meet under the EUTR need to be made clearer and easier to enforce hereunder in national courts to ensure compliance and an equal playfield.
- Similarly, non-compliance also needs to be more clearly defined, so that operators and traders know when they are at high risk of being in non-compliance.
- Additional elements such as a self-declaration submitted by the operators placing products on the EU market could help CAs in case of non-compliance, particularly in building solid court cases - one of the vital elements missing in the EUTR.
- Sourcing risky products must come at a high economic cost for operators and their customers, and repeated offences must lead to increasingly high fines or severer administrative procedures.
- The DDS can be improved, inter alia through a better defined role for customs authorities and a clearer interplay between the latter and CAs.
- The DD requirement can be implemented regardless of the size and activities carried out by the operator – from forest owners to international corporations.
- DD seems to place a greater burden on those sourcing from high-risk countries and dealing with more processed products/products using multiple raw material inputs and complex supply chains, particularly, when SMEs are concerned.
- Regarding the design and application of DDS:
 - There is limited understanding of the concept of DD. It still represents challenges in MS legal systems, in particular definitions at the core of DD (in EUTR's case 'negligible risk' and 'adequate' risk mitigation). Additional tools, beyond DD as described in EUTR, might be necessary to overcome these difficulties.
 - Even where DD is well understood, there are substantial challenges to fully validating the information collected to ensure it is trustworthy and free from corruption.
 - Close cooperation between CAs and customs authorities is necessary. The role of customs could be strengthened and defined more precisely, also with a view to overcoming difficulties with building solid court cases.
 - Improved information and guidance on DD is still necessary for operators and authorities, including prosecutors and courts across the EU.
 - More precise description of the obligations of traders and the related actions by CAs is necessary to avoid possible loopholes in the system.
 - The product scope needs to be updated and made clearer regarding forest plants other than wood/timber and the inclusion of recycled and reused wood fibres.
 - Monitoring organisations have not functioned as expected.

FLEGT Regulation

- Even though the effect of the FLEGT Regulation on combatting illegal logging and associated trade can be perceived as rather limited, since only one country (Indonesia) has an operating system and is issuing FLEGT licences, cooperation and the involvement of stakeholders with regard to combatting illegal logging and associated trade has increased. A number of challenges have been identified in the Fitness Check on the functioning of the FLEGT Regulation and its implementation:
 - The design and process for negotiating and implementing VPAs have kept key trading partners from engaging in VPA processes.
 - VPA negotiation and implementation are long and complex, an issue compounded by capacity and resource limitations, weak governance and high risk of corruption in many partner countries and lead to a negotiated framework that is challenging to change and/ or develop further. This limits the ability to achieve the objective of the FLEGT Regulation – in the short and medium term.

- o Up to present, only 1 out of 15 VPA countries – meaning those engaged in VPA process and either having ratified a VPA or being in the phase of negotiations - has managed to establish an operational TLAS and issue FLEGT license, covering only a fraction of relevant trade (3%).
 - o In case of VPA partner countries without an operational FLEGT licensing system (including those with ratified VPAs), it has been challenging for EU importers to exercise DD, often more than in case of other countries, indicating a transparency challenge, hampering also EUTR implementation.
 - o Even when a licensing system becomes operational, the legal system in the partner country continues to be subject to political and policy changes. The tools at the EU disposal to react are limited, especially in cases where a swift reaction is needed.
- The implementation of the FLEGT licensing scheme with Indonesia has worked well, although there have been some challenges. However, that can be attributed to the fact that the Indonesian SVLK is fully integrated in a wider reform of the national forest governance system and not seen as an “add-on” only inspired by trade concerns.
 - There are a number of challenges regarding the FLEGT Regulation. While the EU system itself would be an efficient tool to lower the compliance costs for EU operators, the main instrument for its operationalisation i.e. the VPAs has not delivered. VPAs are complex and legally binding trade treaties concluded for a single commodity and derived products, covering also labour, social and human rights dimensions. This means the negotiations are detailed and complex, usually taking years to finalize and implement — far from the quick and flexible tool they were expected to become. Additionally, the EU lacks the leverage of its full economic weight and the advantage that it enjoys when it negotiates broad Free Trade Agreements.
 - The EUTR offers flexibility in the enforcement system to adapt to key changes: e.g. trade flows and export/import risk profiles of different countries, change in popularity of different products and wood species, and adoption of technological advances that can help better identify risk or aid implementation. The FLEGT Regulation, however, offers less flexibility due to the nature of the system of VPAs an international agreements between the parties.
 - If the EUTR were to be repealed without a system to replace it, the risk of illegal timber entering the EU market would considerably increase. However, by covering a wider commodity range in a new legislation, this issue could be addressed while also covering important elements of sustainability. In contrast, if the FLEGT Regulation were to be repealed, it would free considerable resources - not only financial but also human - currently dedicated to negotiating VPAs or monitoring their implementation. Those could be used in the context of a different, new approach that addresses the issue more effectively and more efficiently. The availability of these resources is particularly important now that the EU has to collaborate with other countries to halt deforestation.

Annex 1

ANNEX 1: PROCEDURAL INFORMATION

Figure 1: Changes introduced to the Fitness Check

RSB meeting comments	Reflection in text
The report does not sufficiently identify the benefits of both Regulations in view of their high costs and their limited effectiveness to date.	The report now further explains the benefits in section 5.1 and 5.2: improved governance systems in third countries; improved forest management, forest inventory and law enforcement; improved transparency and more information available; increased pressure on all actors along the supply chains; increased awareness of the issue; enhanced stakeholder participation; inspiring other countries to fight illegal logging.
The report does not draw clear conclusions on whether the Regulations are ‘fit for purpose’. It lacks clear take-aways for future decision-making.	The Fitness Check has found limited evidence on the effect of the EUTR and, in particular, FLEGT Regulation on global illegal logging and associated trade. Challenges related to the implementation of the EUTR and, especially the FLEGT Regulation regarding their effectiveness and efficiency that have been identified are listed in 6.2. under Lessons Learnt.

On top of the above listed main recommendations of the RSB, the amended SWD also addresses the more detailed set of comments made by the RSB in Section C - What to improve - of its opinion in the relevant sections of the impact assessment:

The report should better explain the main driving factors behind the limited effectiveness of the Regulations. It should explain the relative importance of each of these factors and indicate to what extent they are within EU control (e.g. regulatory design and implementation failures).	The main problems are listed in section 5.1; for the EUTR, those are a lack of cooperation and information exchange between CAs and customs authorities as well as the application of DD; for the FLEGT Regulation, they are weak governance in partner countries, absence of political will and lack of economic incentives (see also Box 3) as well as corruption.
The report should bring out the ‘fitness check’ angle of the evaluation more clearly and better indicate what links exist between the two Regulations in terms of synergies, complementarities, overlaps or streamlining potential (e.g. for monitoring or enforcement).	The report explains that few synergies exist; e.g. costs for operators under the EUTR decrease if they can find and source FLEGT-licensed timber (5.1).

<p>The report should better demonstrate the different types of benefits that both Regulations intendedly or unintendedly produced. The report should explore (qualitatively if quantified evidence is not available) to what extent illegal logging has been reduced because of benefits such as increased awareness and better forest governance in wood-producing countries. The report should explain better whether the benefits outweigh the costs of the Regulations. It should indicate what the potential is for reducing the high compliance and operating costs of the Regulations.</p>	<p>The different types of benefits are now described in more detail in 5.1 and 5.2. Their roles in reducing illegal logging through raising awareness, enhanced stakeholder participation and improved governance is described in 5.2. The report clarifies that the benefits outweigh the costs of the EUTR but not of the FLEGT Regulation (5.2). Also, the potential for cost reduction is now described in greater detail: in case of the EUTR, a revised DD system and better cooperation between authorities would be more cost-efficient (6.2); as for the FLEGT Regulation, DD costs could decrease if more countries had an operational licencing system, however, this improvement would be outweighed by development costs which would remain disproportionately high (5.2).</p>
<p>In view of possible unintended consequences such as ‘leakage’, the report should indicate whether complementary measures might be necessary to fight deforestation worldwide based on the evaluation findings.</p>	<p>The report identifies possible complementary measures on the basis of the EUTR’s DDS. The problem of leakage can be addressed by working closely together with other consumer countries (6.1).</p>
<p>The conclusions should make a more critical, evidence-based judgement of how the Regulations have performed. They should clarify to what extent they remain relevant and draw clearer lessons for policy-makers.</p>	<p>Section 6.2 on lessons learnt was revised with several additions that clearly list lessons for policy-makers. The EUTR remains relevant and the DDS has proven to be promising in terms of both effectiveness and efficiency. Whereas the FLEGT Regulation should be repealed due to its key instrument, the VPAs, having had very limited impact on illegal logging and the connected trade, entirely outweighed by its immense procedural costs as detailed in 5.1, 5.2 as well as 6.2.</p>
<p>The report should dedicate more attention to the issue of data limitations and draw lessons for future data-collection as a way to facilitate better measurement of the degree of future success of both Regulations.</p>	<p>The issue of data limitations is addressed in 5.2</p>