



Service contract on EU policy on
forest products and deforestation

Fitness Check of the EU Timber
Regulation and the FLEGT
Regulation

Specific Contract under Framework
Contract ENV/F1/FRA/2019/0001

Final Report

Trinomics

Contract details

European Commission - DG Environment

Service contract on EU policy on forest products and deforestation

Specific Request Nr 9 under Framework Service Contract No ENV/F1/FRA/2019/0001

Economic analysis of environmental policies and analytical support in the context of Better Regulation

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Date

Rotterdam, 6 September 2021

Trinomics

Rotterdam, 6 September 2021

Client: European Commission - DG Environment

**Specific Request Nr 9 under Framework Service Contract No
ENV/F1/FRA/2019/0001**

Service contract on EU policy on forest products and deforestation

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Abstract

This report presents the findings of a '*Support study for a Fitness Check of the EUTR and FLEGT Regulation*' in accordance with the requirements of the Regulations. The study involved a detailed review and analysis of available literature and datasets. The study also gathered evidence and views from EU MSs, industry, NGOs, international export partners and other stakeholders on the functioning of the Regulations through: an Online Public Consultation, targeted stakeholder interviews and workshops (the latter held as sessions of the EUTR/FLEGT Expert Group and of the Multi-Stakeholder Platform on Protecting and Restoring the World's Forests, including the EUTR/FLEGT) This report summarises the evidence base and presents the consultants' conclusions. The analysis follows the Better Regulation structure under the five evaluation themes of effectiveness, efficiency, relevance, coherence and EU added value, and the 13 more detailed evaluation questions (and multiple sub-questions) under these themes. Conclusions are drawn about the overall performance of the EUTR and FLEGT Regulation, what progress has been made towards the objectives of the Regulations and whether they are still relevant for the current policies and priorities of the EU. Issues and challenges associated with implementation of the Regulations have also been captured to present a comprehensive set of lessons learned to inform the linked study: '*Support for the identification and analysis of options for additional EU regulatory and non-regulatory demand-side measures that could increase supply chain transparency and minimise the risk of deforestation and forest degradation associated with products and commodities placed on the EU market*'.

Executive summary

Introduction to the evaluation

This report presents the findings of a '*Support study for a Fitness Check of the EUTR and FLEGT Regulation*', which is Task 2 of the contract for DG Environment on a '*Service contract on EU policy on forest products and deforestation*'. The study was delivered by Ricardo, Wood, Trinomics, WUR, Tirsky and UNEP-WCMC.

The EU's policy to tackle the issue of illegal logging and associated trade was defined in the 2003 Forest Law Enforcement Governance and Trade (FLEGT) Action Plan (AP). The FLEGT AP led to two key pieces of legislation: (a) the FLEGT Regulation¹ and (b) the EU Timber Regulation or (EUTR)². The FLEGT Regulation was adopted as a supply side measure with an overarching objective to reduce illegal logging and associated trade in illegally harvested timber and products derived from such timber. The FLEGT Regulation aimed to ensure only legally produced timber is exported to the EU and through the negotiation and conclusion of Voluntary Partnership Agreements (VPAs) between the EU and timber-producing partner countries outside the EU. Imports of timber and timber products from non-EU countries with which the EU has concluded VPAs require a license issued by the partner country (FLEGT licence), that certifies that all timber and timber products covered by the VPA and exported to the EU have been legally produced. The EUTR was adopted as a demand side measure, also with an overarching objective to reduce illegal logging and associated trade in illegally harvested timber, but in this case by ensuring only legally harvested timber and timber products are placed on EU market. The EUTR prohibits the placing of illegally harvested timber and timber products on the EU market, either by importers or domestic producers. It requires EU 'operators' who place timber on the EU market for the first time to conduct due diligence (DD) to minimise the risk to a negligible level of placing illegally harvested timber, or timber products derived from such timber, on the EU market.

The Fitness Check of the EUTR and FLEGT Regulation evaluates the functioning of the Regulations to help assess whether the instruments are fit for purpose. The Fitness Check fulfils obligations set out in both Regulations regarding the requirement to report on implementation and functioning. Since the Regulations are complementary to each other by addressing the supply and demand sides of timber harvest and trade (and the period to review each Regulation was close to one another), and are key legal instruments of the FLEGT AP, their evaluation has been combined into a single Fitness Check. The results of the Fitness Check feed into the impact assessment study: '*Support for the identification and analysis of options for additional EU regulatory and non-regulatory demand-side measures that could increase supply chain transparency and minimise the risk of deforestation and forest degradation associated with products and commodities placed on the EU market*'.

Methodology

The evaluation process followed the European Commission's Better Regulation Guidelines (European Commission, 2017) and assessed the Regulations against five key evaluation criteria, elaborated through evaluation questions (EQ) set out in the Fitness Check Roadmap (European Commission, 2020b):

¹ Council Regulation (EC) No 2173/2005 of 20 December 2005

² Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010

- **Effectiveness:** To what extent do the effects induced by an intervention correspond with its objectives as they are outlined in the policy? i.e. which objectives of the EUTR and FLEGT Regulation have been achieved, and what factors have contributed to or hindered progress?
- **Efficiency:** How economically have the resources used been converted into effects? i.e. how do the inputs used for a certain activity compare to the outputs produced?
- **Relevance:** To what extent is an intervention relevant in respect to needs, problems and issues identified in target groups? Of particular importance for this Fitness Check is whether the focus of the Regulations on legality of timber still meets the ‘needs’ of the EU;
- **Coherence:** To what extent are the elements of the intervention logic complementary, mutually supportive and non-contradictory? The assessment of coherence also looks at how well different actions work together, and thus points to synergies as well as areas where there are potentially contradictory objectives or approaches that may cause inefficiency;
- **EU added-value:** This brings together the findings from all other evaluation criteria and focusses on the benefits and changes resulting from EU action that are additional to those that would have resulted from action at local, regional or national level otherwise.

The Fitness Check covered all elements of the EUTR and the FLEGT Regulation - the latter specifically focusing on both the VPA process and licencing. For both Regulations the Fitness Check covered the full period of implementation, since 2005 and 2010 for the FLEGT Regulation and EUTR respectively.

The evidence for the evaluation was gathered via a combination of desk-based research and engagement with stakeholders (as detailed in the published consultation strategy³) via a number of different routes:

- **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):** Published in all 23 EU official languages for 12 weeks on the Commission’s website (between 3 September 2020 and 26 November 2020). There were 175 responses to the OPC, alongside 29 attachments (mainly position papers) submitted;
- **Targeted stakeholder interviews:** 14 telephone interviews with 37 selected stakeholders to gather in-depth views from key stakeholders (Commission services, Member States’ (MS) Competent Authorities (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 stakeholders⁴.

³ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/11630-illegal-logging-evaluation-of-EU-rules-fitness-check-/public-consultation>

⁴ <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=47572>

There were a number of limitations and data gaps encountered during the evaluation and where possible appropriate actions was taken to limit their impact. The main limitations related to: (i) the lack of robust and comprehensive (both in terms of time series and geography) data around levels of illegal logging and illegally logged timber entering the EU and (ii) data around the costs of implementation for all stakeholders. This has limited the ability to fully appraise the effectiveness of the Regulations and to compare costs and benefits directly. Despite these limitations, the triangulation of different data sources has helped to elaborate the conclusions drawn from the evidence base, whilst maintaining a good degree of confidence in those conclusions and the lessons learned.

Key findings under each theme

The Fitness Check has produced a number of conclusions on the performance of the EUTR and FLEGT Regulation individually and in combination against each evaluation criteria. It has also produced a summary of issues and lessons learned.

Effectiveness

EUTR

The EUTR is an important step forward in tackling illegal logging and associated trade. However, a number of challenges have been identified which have somewhat limited progress towards its objectives. DD Systems should consist of: (i) Measures and procedures providing access to all relevant information, (ii) Procedures to collect and analyse relevant information and documents, and (iii) Foreseeing adequate and proportionate measures and procedures to mitigate risk of illegally harvested timber from entering the supply chain. DD as a mechanism is viewed positively by MS CAs, NGOs, industry and other stakeholders - indeed DD has the advantage to be able cover all types of operators and can be applied no matter the size or complexity of the operators activities including forest owners. Some important challenges have though been identified in both the details of the design of the due diligence system, but also in the way EUTR has been implemented in some Member States.

All MSs have established legislative frameworks to implement the EUTR and are using a risk-based approach to efficiently deploy resources available to operator checks. However, the level to which the national provisions provide for enforcement differs, creating a non-level playing field. MS risk based inspection plans have resulted in the verification of well-functioning due diligence systems covering the majority of the timber and wood products being placed on the EU market: Some CAs reported covering large proportion of timber imports in checks (up to 80%), suggesting that most of the timber entering the EU is either subject to sufficient DD, or operators are notified of any issues with their systems during checks.

The risk-based approach for checks has been viewed positively by CAs as it allows cost-effective enforcement, covering cases where issues are anticipated (e.g. imports from countries with high corruption problems). However, there is some evidence of operators perceiving there is variation in the stringency with which the EUTR is enforced across MSs (e.g. number of checks, level of penalties), with attempts observed to import timber which has likely been illegally harvested via some MSs with perceived weaker implementation and enforcement.

It is clear that the EUTR has achieved some success in terms of its impact on the levels of illegally logged timber and timber products placed on the EU market, but has not completely achieved its main objectives. There are positive and negative signals. From an implementation perspective, DD Systems cover the majority of timber placed on the EU market, awareness among operators is high, and transparency has significantly improved which in theory places pressure throughout the supply chain to ensure legality. However, it is a challenge for operators and CAs to verify the robustness of information collected under DD and the definition of negligible risk is deemed somewhat subjective. Difficulty proving 'non-negligible risk' in court has led to some hesitancy in bringing cases to prosecution.

The trade data also presents a mixed picture: intra-EU trade and trade with countries deemed 'lower risk' showed weaker growth over the period of implementation relative to imports as a whole but difference-in-difference analysis of trade data (which compares the EU to other countries) 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% (albeit based on a relatively small comparator control group). 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.

With respect to effects on illegal logging, drawing firm conclusions is even more problematic. Again the evidence is mixed. The EUTR legislation has directly 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. There is evidence that forest cover in some of the EU's key sources of imports has not declined (Russia) and has even increased (Ukraine), although attribution to the EUTR is complicated by concurrent changes in national legislation. Furthermore, for other exporters there appears to have been some diversion of trade (in particular amongst VPA partner countries) to China, undermining any potential impact in these exporting countries. For domestic producers, as noted above forest area trends are positive cannot easily be attributed to the EUTR.

Member State (MS) Competent Authorities (CAs) have provided substantial and productive support to operators, while the system of Monitoring Organisations (MOs) have not delivered the levels of support expected. MOs appear to have provided only a limited benefit to operators. Low uptake is generally reported in the literature, with a number of reasons cited including: confidentiality, costs and concern that MOs are obliged to notify CAs of significant or repeated failures by the operator to properly use its DD system.

MS CAs are engaged in a wide range of supporting activities with positive outcomes for the effectiveness of the EUTR (in particular co-operation across CAs and with other stakeholders to ensure effective implementation). CAs have been cooperating productively together through the EUTR/FLEGT working group and independently via regional groups, meetings, exchanges of information and joint inspections. Cooperation has also taken place between CAs and the European Anti-Fraud Office (OLAF) and Interpol to identify illegal imports. CAs have also proactively engaged in a number of other activities to support effective implementation. **In the majority of MS, cooperation between CAs and customs has effectively supported enforcement, however in isolated cases the relationship**

have posed a challenge. Co-operation between MSs CAs and customs and exchange of data is critical to efficient inspection planning and enforcement. Despite the lack of an obligation for exchange of information with customs, most CAs have effectively established a relationship where customs share data on regular intervals. However the effectiveness of a small number of CAs' checks has been compromised by the lack of formalised cooperation with customs. Without a complete set of basic data on all operators and the import of timber and timber products, a meaningful risk analysis is not possible.

FLEG Regulation

It is not possible to conclude with certainty whether the FLEG Regulation has had any significant, positive impact on the prevalence of illegal logging globally and/or on the level of illegally logged timber entering the EU to date.

Low interest amongst EU importers and exporting countries hereunder slow progress implementing VPAs have critically limited achievement against these objectives. Since 2005, 15 countries (all tropical) have engaged formally in the VPA process, 7 have ratified agreements and one (Indonesia) has progressed to licencing. In 2018, the 15 VPA countries represented 9% of the total value of EU imports of timber and timber products, with FLEG licences (from Indonesia) covering 3%. With regard to high-risk countries, which are the original targets of the Regulation, VPAs still cover only 22% of all imports from these countries. Furthermore, many of the most important exporters to the EU which are not deemed low risk have never engaged in the VPA process. Hence the FLEG Regulation can only have a significant impact on a small proportion of imported timber and timber products to the EU.

There are several barriers which have prevented key export partners from engaging in the VPA process. Issues identified in the literature and confirmed through stakeholder engagement include: a perception that VPAs are designed solely for tropical countries, country selection led by a 'demand-driven' approach, and doubts around the purported benefits of greater EU market access, particularly given the rising importance of China as a player in the global timber market. For some large wood exporters a key concern is 'sovereignty' over forest resources or a feeling that they already had capacity to sufficiently manage forest resources or implement a VPA-like equivalent.

For VPA countries, there is mixed evidence that engagement in the process (prior to licencing) has led to any improvement in illegal logging. Significant and collaborative efforts and investment of resource on behalf of Commission services has been spent with partners in VPA countries. Many (e.g. Cameroon, CAR, Liberia) continue to be rated as 'high risk'; effects are not guaranteed until licencing has commenced, in many cases deforestation has continued apace with no sign of meaningful change and many have exhibited a marked shift in exports to China. But a handful of studies in the literature suggest there may have been an effect (e.g. (Cerutti P. O., et al., 2020)), which is also somewhat supported by feedback from some stakeholders.

Where exporting countries have engaged in the VPA process important benefits have been identified in terms of improvements in forest governance and of reforms and enforcement of forest law. For example, there is strong evidence of unprecedented stakeholder engagement with civil society in the VPA negotiation phase (e.g. in Republic of Congo and Cameroon). Furthermore, there is evidence of progress in the monitoring of illegal logging in the VPA countries. However again these impacts are limited by the number of countries that have engaged in the VPA process.

The VPA negotiation and implementation stages are long and complex and fraught with challenges (resulting in ‘FLEGT fatigue’). There are a number of reasons driving prolonged stages of negotiation and implementation including: the conditions for a TLAS set a high bar; weak governance, lack of institutional capacity and widespread corruption in partner countries; gaining agreement across multiple regions and stakeholders takes time and can lead to difficulties, and the potential reputational damage of withdrawing from negotiations once started. Perhaps the most critical driver is political will: a step change is often required and there will be stakeholders who lose out, so real political commitment is needed to drive progress.

Whilst there are challenges for progressing the negotiation and implementation stages, many issues also arise related to, outside of, the VPA process itself. There is often confusion around the status of countries implementing a VPA that have not yet reached licencing: in some cases operators are unsure how imports from these countries are treated under EUTR. Furthermore, even where a country is negotiating or implementing a VPA, the information made available to operators conducting DD may not necessarily be improved as expected.

Indonesia started issuing FLEGT licences in 2016 and evaluations of the system appear to show it is broadly working as intended. However, some issues have been identified - e.g. around processes for checking imports and enforcement through the judicial system - which create uncertainty around whether legality is fully ensured. Furthermore attributing any benefit from the Indonesian Timber Legality Assurance System (TLAS) is problematic given that Indonesia was already developing a system for licencing timber (the SVLK) prior to involvement in the FLEGT Regulation (although stakeholders believe the VPA process sped up and strengthened many areas of the Indonesian TLAS). Although the level of exports from Indonesia to the EU has risen in absolute terms and EU operators show a clear preference for FLEGT licenced timber, imports have risen less than overall imports to the EU.

Challenges remain even once FLEGT licensing has begun. From a process perspective, EU MS have successfully implemented systems to handle the receipt of FLEGT licences, and MS processes and systems are continuously updated and improved (e.g. FLEGIT). That said there are issues, the most prominent being mismatch of HS codes between Indonesian and EU systems, which require follow up and clarification by CAs. Such implementation challenges might grow should further VPA partners progress to licencing, although a great amount of learning can be drawn from the Indonesian experience. Furthermore, Indonesia’s experience has also highlighted that once in place, VPAs are still fragile to political will as is evidenced by the Indonesian trade ministry recently issued a regulation that would free wood product exporters from having to obtain licenses.

EUTR and FLEGT Regulation combined

In combination the EUTR and FLEGT Regulation may have had a positive effect on levels of illegal logging - though data are not very strong on this. There are more tangible signals that the Regulations together have been more successful in their aim to prohibit the placement of illegally logged timber on the EU market, but their overall performance is difficult to quantify with any certainty and it is clear that the general objectives of the two Regulations have not yet been fully met.

Efficiency

The Fitness Check has identified a number of benefits associated with the EUTR and FLEGT Regulation. However, the most important benefits cannot be quantified nor monetised, preventing a direct comparison between monetised benefits and costs.

The costs of implementing the EUTR are many times greater than those anticipated in the initial Impact Assessment, but around the same order of magnitude as those of the FLEGT Regulation. But while the FLEGT Regulation only covers 3% of the EU imports, the EUTR covers the rest. Cost data around the implementation and functioning of the EUTR in the literature is incomplete, and even more sparse for the FLEGT Regulation. EUTR places compliance costs on a range of actors. The most important cost is associated with the implementation and operation of DD Systems by EU based operators. Estimated aggregate implementation costs for EUTR are mEUR 722 pa (range mEUR 79 - 1,079 pa). These are much greater than those anticipated in the initial 2008 Impact Assessment. The FLEGT Regulation also places costs on a range of actors, but information around the costs of the FLEGT Regulation is much more limited. An aggregate estimate of costs of the FLEGT Regulation to 2020 is estimated at mEUR 574, covering importantly costs to Commission Services and EU MS, and also the operation of licencing in Indonesia from 2016.

There is no strong evidence of a disproportionate burden placed on SMEs by either the EUTR or FLEGT Regulation. Costs of compliance vary significantly across operators depending on a range of factors (e.g. number and location of suppliers), not simply volume of trade. Some insights are provided in the literature and by stakeholders which allude to the burden of compliance having been proportionately higher for SMEs. Larger companies seem to have been able to adapt better and more quickly to the new requirements than SMEs, which may be in a disadvantaged position due to their low economies of scale (widely reported in the literature and stakeholder opinion). There is evidence from stakeholders that some smaller operators may have switched to becoming traders rather than continuing to import, however the scale of this effect is unclear. However, the evidence for this conclusion is not strong and based predominantly on stakeholder opinion. There is no strong evidence that the FLEGT Regulation has had a disproportionate impact on SMEs in both exporting countries and EU MS, however on whom the costs actually fall is not predetermined and will depend on the detailed design of each individual TLAS.

Implementation costs for CAs are greater for the EUTR relative to the FLEGT Regulation. Costs also vary more significantly across MSs for the EUTR relative to the FLEGT Regulation. CAs commit a greater level of resource to implementing EUTR relative to the FLEGT Regulation, reflecting that: a) FLEGT licences only cover imports and for now are only issued by Indonesia (3% of EU import) whereas EUTR covers imports worldwide and EU domestic production, and b) risks around timber and timber products placed on the EU market under FLEGT licence is much lower. Human and financial resources invested by CAs in EUTR implementation varied greatly across MSs. This can be partly, but not wholly, explained by the difference in the size of the timber sector across MSs and relative import. This also reflects (and underlines) the variation in the effectiveness of implementation of EUTR across MSs. That said, the resources that are deployed appear to be being deployed efficiently using the risk-based approach to performing checks and the broader activities undertaken by CAs bring a range of positive outcomes which enhance the effectiveness of the EUTR.

Although the EUTR has not fully achieved its objective regarding limiting the placement of illegal timber and timber products on the EU market, it does appear to be cost-effective. Stakeholders report that the benefits of the EUTR outweigh the costs and the costs of the EUTR are small relative to overall value of trade covered and sector revenue.

The FLEGT Regulation does not appear to be cost-effective based on the costs and benefits delivered to date. The majority of OPC respondents do believe that the benefits of the FLEGT Regulation outweigh the costs. But the resources invested are high relative to the value of trade covered to date. Cost-effectiveness might improve should more VPA partners progress to licencing, and as the period of operation under TLAS' increases. Still it is uncertain whom will pay for the VPA licence schemes when up and running (i.e. where the costs will fall between: exporters, the EU, MS or importers). But at this stage it is problematic to conclude that the FLEGT Regulation has been cost-effective to date.

Suggested improvements have been made both in the literature and by stakeholders for both the EUTR and FLEGT Regulation. For EUTR, these focus on: centralised evidence gathering to inform risk assessment (e.g. timber source country overviews), development of uniform systems and enhanced information exchange. For the FLEGT Regulation, feasible improvements focus on licencing processes (e.g. e-licencing and work to reduce mismatching) however potential improvements to the VPA negotiation and implementing are limited in terms of their ability to speed up these stages.

Relevance

The priorities of the EU have changed since the adoption of the EUTR and FLEGT Regulation. Sustainability was a key issue at the time of adoption, and legality was considered a 'first-step' (interview with Commission services). Since implementation, prioritisation of the 'needs' of the EU has changed (which may have occurred in part due to implementation itself), challenging the relevance of the Regulations. The exclusive focus of the Regulations on legality (rather than sustainability) and timber (rather than a wider range of commodities) only partially contributes towards a concurrent policy goal of halting deforestation and forest degradation more broadly. The European Green Deal has also served to increase focus on sustainability.

There may be opportunities to broaden 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. The 2017 study into a possible revision of the product scope concluded that (with the exception of charcoal), the inclusion of all remaining furniture and wooden tools would yield gains in reducing the levels of illegally sourced timber and timber products being placed on the EU market. However, expanding the coverage of products also implies a regulatory burden and cost to the operators involved and at some point the costs may outweigh the gains in additionally preventing 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.

The policy mechanism underpinning the EUTR allows greater flexibility to respond to new and emerging challenges (e.g. changes in trade patterns and risk). In theory the general DD requirement placed on all EU based operators under the EUTR allows flexibility to adapt to changes in trade patterns

(e.g. rise in prominence of China as a trade partner) and risk (e.g. changes in concerns around illegal logging in a particular country). By contrast, the direct, one-to-one VPAs with exporting countries are inherently less flexible to such changes - i.e. in trade flows and risk.

Coherence

The EUTR is seen as being internally coherent, but a lack of clarity around key definitions and transposition into national legislation have posed critical challenges for implementation. A lack of clarity surrounds the definition of 'negligible risk' and the transposition of the DD requirements into national legislation has been challenging, making it difficult for MS CAs to pursue enforcement through the courts and reach successful prosecution. Current resources that provide useful information (e.g. EUTR country overviews) may not necessarily hold up in court as they are only guidance documents.

The FLEGT Regulation is also seen as internally coherent. Although the VPA minimum content is viewed as beneficial, the ability to then vary the content (in particular product scope) between VPAs creates additional complexity. Coherence is enhanced through the existence of the minimum content (i.e. TLAS, monitoring and evaluation frameworks, and commitments to improving transparency and forest governance, definition of legality aligned with EU definition - notably on the treatment of confiscated timber - and product scope) that VPAs must contain (including a). But the precise scope of VPAs is determined during negotiation, which creates additional complexity for CAs and operators.

There is strong evidence that FLEGT licences are reducing the costs of timber import for some operators. EU operators have a preference to import under FLEGT licences as costs are typically lower than compliance with EUTR DD. However, the availability of a FLEGT licence is one of a number of variables which operators take into account when considering sources of imports. This, coupled with the fact that Indonesia is the only licencing country, has limited the ability of operators to import under FLEGT licences and reduce the costs of compliance with DD requirements.

However, there are a number of areas where coherence has been less than sufficient between the EUTR and FLEGT Regulation. In particular, product scope (and in some cases definition of legality) 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. The European Green Deal offers greater ambition than the EUTR and FLEGT Regulation through seeking to "minimise the risk of deforestation and forest degradation associated with commodity imports in the EU", as such encompassing a greater range of commodities currently under the scope of the Regulations. Similarly, the Farm to Fork and EU Biodiversity Strategy to 2030 exhibit greater ambition through aiming "to avoid or minimise the placing of products associated with deforestation or forest degradation on the EU market". The FLEGT Regulation is coherent with EU trade policies and actions by the EU, with VPAs supporting reforms that promote sustainable development, social and safety standards, indigenous peoples and local communities' rights, and sustainable forest management. 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 international action. EUTR and FLEGT Regulation are consistent with the objectives of CITES but differ in broadness of scope and

methodology for determining timber legality. Some minor issues have been identified regarding the coherence between the EUTR and certification schemes (e.g. FSC/PEFC), including the contribution of certified timber to DD under the EUTR, and more significant questions around transparency of and assurance of legality provided by private certification schemes.

EU Value added

There is strong evidence that the EUTR has enabled successful action beyond what would have been possible without EU action, in particular through enabling co-operation and learning across MS and ensuring wider policy coherence. Action at EU level has somewhat created a level playing field for operators although underlying flexibility and subsequent divergence at national level with respect to DD Systems and implementation have limited the ability of the EUTR to realise its full potential.

There is strong evidence that EU-level action through the FLEGT Regulation has provided added value above that possible at MS level. There have been clear benefits to co-ordinated action (enabling co-operation and learning across MS, ensuring coherence with wider policy) and there are substantial doubts as to whether equivalent action would be feasible at national level. However, challenges , such as the small coverage of licencing, have limited the ability to achieve its full potential value added.

Summary of issues and lessons learned

The Study to support the Fitness Check has found limited effect - and less than expected - of the EUTR and FLEGT Regulation on illegal logging globally and associated trade. A number of challenges have been identified related to the implementation of the EUTR and the FLEGT Regulation especially regarding the effectiveness and efficiency. Even though the effect of EUTR on combatting global illegal logging might have been limited, 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 logged timber.

The study has identified a number of lessons learned through the experience of the EUTR and FLEGT Regulation, as follows.

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 DD Systems and/or other demand-side measures (lessons learned from the EUTR):

- 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). There is an ongoing need for guidance and information for effective implementation, and more awareness raising among operators. 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 verify the information collected to ensure it is trustworthy and free from corruption;
- As the issue concerns trade, customs have an integral role to play, as does the data and information they hold. Close corporation between MSs CAs and with custom authorities is necessary for an effective and efficient enforcement of the EUTR. The role of customs could be strengthened and defined more precisely, also with a view to overcoming difficulties with building solid court cases;
- Clarity and interpretation of definitions at the core of DD ("applicable legislation", "adequate risk mitigation" and "negligible risk") can pose critical issues for enforcement. 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 need to be updated and made clearer regarding forest plants not being 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) is issuing FLEGT licences (out of 7 that have ratified a VPA with the EU), increased cooperation and the involvement of stakeholders with regard to combatting illegal logging and associated trade has increased in the countries involved in the VPA processes. A number of challenges has been identified in the Study to support the Fitness Check on the functioning of the FLEGT Regulation and its implementation:

- Several barriers related to the design and process for negotiating and implementing VPAs have kept the key trade partners from engaging in the VPA process, and some (e.g. 'perception of loss sovereignty', "VPAs are designed for/aimed for tropical countries") are likely to continue to prevent engagement in the future;
- VPA negotiations are long and complex, an issue compounded by capacity and resources limitations, weak governance, lack of political will and high risk of corruption in many partner countries. This limits the ability to achieve the objectives of the VPA in the near term;

- 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%);
- It has been challenging for EU importers to exercise DD on timber and timber products derived from VPA partner countries that have not reached FLEGT licensing yet, due to insufficient knowledge and available information regarding their VPA level of implementation;
- Once in implementation phase, 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 (as evidenced by the recent proposal by Indonesian authorities that would free wood product exporters from having to obtain licenses ensuring legality of exports).

The implementation of the FLEGT licensing scheme with Indonesia is progressing well and the majority of FLEGT licences received by FLEGT CAs (99%) are validated, 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.

Other lessons

More generally, it is important that a regulation is flexible enough to adapt to key external changes: e.g. changes in trade flows (e.g. China has become the biggest timber importer without any legality requirements), changes in risk profiles of different countries, changes in consumer preferences and technological advances (e.g. in data available around illegal logging, or methods to track timber through the supply chain). 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.

Finally, since the adoption of the FLEGT Regulation and the EUTR, the political prioritisation has shifted from combatting “illegal logging” to halting “deforestation and forest degradation” leading to the broader challenge of protecting the world’s forests and ensuring sustainable production and consumption.

1 Introduction

1.1 This report and progress to date

This report documents the progress achieved in delivering the project ‘service contract on EU policy on forest products and deforestation’ commissioned by DG Environment under the Framework Contract ENV/F1/FRA/2019/0001. This report is the draft final report on a ‘Support study for a Fitness Check of the EUTR and FLEGT Regulation’ and presents (as required in the Terms of Reference) the responses to all evaluation questions (EQ), taking into account the analysis of existing data and literature and the feedback collected through stakeholder consultation. The report integrates comments received from the Inter-Service Group (ISG), received before, during and after the meeting of the ISG on 22nd January 2021. Table 1-1 presents an overview of progress made to date since the Interim Report.

Table 1-1 Overview of progress to date

| State of play | Description |
|---------------|---|
| Key changes | Reflection on the balance of challenges facing the EUTR, between those associated with due diligence (DD) as a concept and implementation |
| | Further trade analysis - e.g. high risk products |
| | Bringing out more the achievements of the FLEGT Regulation, alongside the challenges faced |
| | Further detail on coherence with recent EU initiatives - Green Deal, 2019 Communication on deforestation, EU Biodiversity strategy |
| New additions | Evidence from all stakeholder engagement activities has been reflected in the analysis (OPC / interviews / workshops) |
| | Reflecting in further detail on the limitations of the analysis, and developing section 4.5 |
| | Further elaboration of the cost analysis based on data obtained from stakeholders |
| | Conclusions section has been drafted |
| | Executive sum and abstract have been drafted |

1.2 Contents of this report

This report presents the findings of a ‘*Support study for a Fitness Check of the EUTR and FLEGT Regulation*’, which is Task 2 of the contract for DG Environment on a ‘*Service contract on EU policy on forest products and deforestation*’. The project has been commissioned under the Framework Contract ENV/F1/FRA/2019/0001.

This report presents the results of the assessment against the evaluation questions, based on the literature review, analysis of relevant datasets and of stakeholder feedback provided through the Online Public Consultation (OPC), targeted interviews and workshops.

The report is structured as follows:

- Section 0 explains the purpose and scope of the support study for the Fitness Check;
- Section 2 provides background to FLEGT Regulation and EUTR and objectives of each. It also sets out the intervention logic for each regulation and sets out the baseline for the Fitness Check;
- Section 3 gives information on the current state of implementation of each regulation;

- Section 4 describes the methodology for the Fitness Check and the process followed;
- Section 5 provides answers to the evaluation questions based on the evidence gathered;
- Section 6 sets out conclusions of the Fitness Check.

1.3 Purpose of the study to support the Fitness Check

The support study for the Fitness Check of the European Union Timber Regulation (EUTR, Regulation (EU) No 995/2010) and the Forest Law Enforcement, Governance and Trade Regulation (FLEGT Regulation, Regulation (EC) No 2173/2005) evaluates the functioning of the Regulations to help assess whether the instruments are fit for purpose. In line with the Commission Better Regulation Guidelines and Toolbox⁵, the Fitness Check assesses the effectiveness, efficiency, coherence, relevance and EU added value of each regulation in contributing to the fight against illegal logging and related trade.

The Fitness Check fulfils the following obligations set out in the Regulations:

- Article 9 of the Regulation 2019/2010 replacing Article 9 of the FLEGT provides that “by December 2021 and every five years thereafter, the European 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”.
- Article 20(3) of the EUTR provides that by 3 December 2021 and every five years thereafter, the Commission shall review the functioning and effectiveness of the regulation.

Since the Regulations complement each other by addressing the supply and demand sides of timber trade and are key legal instruments of the FLEGT Action Plan adopted in 2003 to tackle illegal logging, their evaluation has been combined into a single Fitness Check. The justification for conducting a Fitness Check is further underlined given that the two Regulations have many common objectives (see Section 2.1.3), and as such it is also challenging to decouple the impacts of the FLEGT Regulation from the EUTR.

Additionally, the results of the Fitness Check study feed into the parallel impact assessment study: ‘Support for the identification and analysis of options for additional EU regulatory and non-regulatory demand-side measures that could increase supply chain transparency and minimise the risk of deforestation and forest degradation associated with products and commodities placed on the EU market’ and any other follow up action that might be taken as a result to the Fitness check findings.

1.4 Scope of the support study for the Fitness Check

The Fitness Check study builds on the findings of the evaluations of the EUTR and FLEGT Action Plan completed in 2016. The scope of the Fitness Check is described in Table 1-2.

Table 1-2 Scope of the Fitness Check

| Description |
|---|
| Legislative coverage |
| <ul style="list-style-type: none"> • 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; |

⁵ https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how/better-regulation-guidelines-and-toolbox_en

| Description |
|--|
| <ul style="list-style-type: none"> • 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; • 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); • 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; • Commission Implementing Regulation (EU) No 607/2012 of 6 July 2012 on the detailed rules concerning the DD (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; • 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. |
| Geographical coverage |
| <ul style="list-style-type: none"> • EUTR: Global coverage - EUTR provides for DD Systems (DD Systems) to be put in place by operators in EU-28⁶ and EEA countries placing timber and timber products on the EU market for the first time; • FLEGT Regulation: VPA countries, including non-VPA countries to capture reasons for non-engagement and relative performance of EUTR associated with imports from VPA and non-VPA countries. VPA countries to date are: <ul style="list-style-type: none"> ○ FLEGT licencing: Indonesia (since 15 November 2016); ○ Ratified VPAs: Cameroon, the Central African Republic, Ghana, Liberia, the Republic of the Congo and Vietnam; ○ Negotiations concluded and VPAs initialled: Honduras⁷ and Guyana; ○ Negotiations ongoing: Côte d'Ivoire, the Democratic Republic of the Congo, Gabon, Laos, Thailand, and Malaysia⁸. |
| Sectoral coverage |
| <ul style="list-style-type: none"> • EUTR: <ul style="list-style-type: none"> ○ Products: 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 (MSs), 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. |

⁶ For most of the period covered by this Fitness Check (2005 - 2019) the United Kingdom was a member of the European Union. In 2020, the United Kingdom was in a transition period following the withdrawal from the European Union at the start of that year. During the transition period, the United Kingdom had to comply with all EU rules and laws. For that reason, the scope of the study includes the United Kingdom across the full assessment period.

⁷ At the time of submission of this report, Honduras was close to ratifying its VPA.

⁸ Negotiations with Malaysia have stalled since 2014.

⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010R0995&from=EN>;

| Description |
|--|
| <ul style="list-style-type: none"> • FLEGT Regulation: <ul style="list-style-type: none"> ◦ Products: 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. While products to which FLEGT licensing scheme applies only in relation to VPA partner countries are listed in Annex of relevant VPAs and in Annex III of the FLEGT Regulation. Some VPA product scopes are broader and some are narrower relative to the product scope of the EUTR; ◦ Actors: EU FLEGT CAs, designated by MSs; EU customs; 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 supply chains, in particular: Forestry, Importing, Manufacturing, Construction, Wholesale and retail trade, Transport and logistics, Government and agencies • All sizes of businesses (i.e. micro, small, medium, and large) |
| <p>Temporal coverage</p> |
| <ul style="list-style-type: none"> • EUTR: 2010 to 2020 (EUTR entered in force in March 2013). • FLEGT Regulation: 2005 to 2020. |
| <p>Evaluation criteria applied</p> |
| <ul style="list-style-type: none"> • Effectiveness, efficiency, coherence, relevance and EU added value. |

2 Background to FLEGT Regulation and EUTR

2.1 Description of the FLEGT Regulation, EUTR and their objectives

2.1.1 FLEGT Regulation

Illegal logging is a pervasive problem of major international concern. It 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 provide. It contributes to tropical deforestation and forest degradation, which may be responsible for 7% to 14% of total CO₂ emissions from human activities; it threatens biodiversity and undermines sustainable forest management and has a negative impact on poverty reduction, sustainable and inclusive economic growth and sustainable development, including by undermining the commercial viability of operators who do act in accordance with applicable legislation (European Commission, 2016). It is important to note that there are several drivers of deforestation, with the main driver being the expansion of agriculture (estimated to have accounted for 73% of deforestation over 2000-2010 period), followed by mining, infrastructure development, urban expansion, logging, and land speculation (FAO, 2020). Hence although tackling illegal logging also contributes to tackling the broader issue of deforestation, the former is only one driver of latter.

The EU's policy to tackle the issue of illegal logging and associated trade was defined in the Forest Law Enforcement Governance and Trade (FLEGT) Action Plan (AP)¹⁰. The FLEGT AP has led to two key pieces of legislation. The first is the adoption of the FLEGT Regulation (Council Regulation (EC) No 2173/2005 of 20 December 2005 and the Commission Implementing Regulation (EC) No 1024/2008 of 17 October 2008) - from this point referred to as 'FLEGT Regulation'.

The FLEGT Regulation has been adopted as a supply side measure, tackling illegal logging and focusing on changing forest law enforcement governance and trade in timber-supplying countries. The cornerstone for delivering the supply-side measures in timber producing countries has been the negotiation and establishment of Voluntary Partnership Agreements (VPAs) between the EU and timber-producing partner countries outside the EU.

Imports of timber from non-EU countries with which the EU has concluded VPAs require a license issued by the partner country (FLEGT licence), that certifies that all timber and timber products covered by the licence and exported to the EU have been legally produced. The negotiation of a VPA involves in-country stakeholder consultations across the public administration and private sector, i.e. companies involved in the forestry sector including loggers and traders, NGOs and government officials. The key aim of the stakeholder consultation is to promote transparency, inclusiveness, good governance and representativeness, and to build consensus on the definition of legal timber. The latter forms the basis of a Timber Legality Assurance System (TLAS), that defines the legal basis in the VPA country to control and enforce in order to verify and FLEGT license legal timber products. The TLAS is to be monitored by independent audit and monitoring. After ratification of the VPA, the TLAS must be implemented and must be jointly assessed before FLEGT licencing can become operational. Once operational, timber exports covered by a valid FLEGT-license from the VPA country will automatically be regarded as legal imports within the EU-27 and therefore will comply with the requirements of the EUTR.

¹⁰ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52003DC0251&from=EN>

In addition to negotiating VPAs with timber producing countries, in 2009 the EU established a FLEGT Regulation Bilateral Coordination Mechanism (BCM) with China, a major global processor and exporter of timber. Under the BCM, the EU and China collaborate to tackle illegal logging and associated trade, meet annually to exchange information, discuss policy objectives and establish annual work plans (all years 2012-2019). The BCM facilitates policy dialogue between the EU, China, Indonesia, and VPA-negotiating countries, and allows knowledge sharing based on the various experiences with the EUTR and the Chinese Timber Legality Verification System.

Once the EU and partner countries have ratified the VPA, a Joint Implementation Committee (JIC) is established to oversee the implementation of the VPA. The structure and functions of the JIC are defined in an annex to each individual VPA. JICs provide annual reports on the progress and functioning of the implementation of the VPA.

Guidelines to support Customs and FLEGT CAs in effectively carrying out their tasks in accordance with the FLEGT legislation were first published in 2014¹¹, and updated in 2020¹². Customs physical control of shipments with FLEGT license are based on risk analysis or on request by the CAs. This means that if a consignment is selected for control, the customs authorities will perform controls to ensure, among others, in cooperation with the CAs the legality of this specific import of harvested timber covered by FLEGT Regulation.

In 2015, the ECA evaluated the EU support to timber-producing countries under the FLEGT Action Plan¹³. In 2016, the Commission adopted a Staff Working Document (SWD(2016)276) (European Commission, 2016b) on the Evaluation of the EU FLEGT Regulation AP. In response, the General Secretariat of the Council concluded that the Commission, in cooperation with EU MS, should develop a *“detailed and coordinated work plan that reprioritises current areas of activities, gives clarity on objectives, establishes milestones to track progress, and facilitates monitoring, while avoiding duplication of efforts. The work plan should describe the roles and commitments of the Commission, EU delegations and MSs, and leave some room for flexibility”* (Council Conclusions, 2016). In response to these recommendations, the Commission and MSs published the FLEGT Regulation AP Implementation Work Plan 2018-2022 in September 2018 (European Commission, 2018). In addition to addressing the recommendations of the 2016 evaluation, the Work Plan also addresses the EU’s political commitments under the UN 2030 Agenda for Sustainable Development¹⁴ and the 2016 Paris Agreement under the United Nations Framework Convention on Climate Change¹⁵.

The Commission publishes Annual Synthesis Reports¹⁶ on the implementation of the FLEGT Regulation licensing scheme (available for the years 2016, 2017 and 2018), based on the national reports submitted by the MSs¹⁷. From 2019 onwards, in line with Regulation (EU) 2019/1010¹⁸, MSs 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 Regulation. This information will be made publicly

¹¹ [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)

¹² [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)

¹³ <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=33292>

¹⁴ https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E

¹⁵ https://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf

¹⁶ https://ec.europa.eu/environment/forests/FLEGT_Regulation_Regulation_Reports.htm

¹⁷ <https://op.europa.eu/en/publication-detail/-/publication/4417ef79-9714-11e9-9369-01aa75ed71a1>

¹⁸ <https://eur-lex.europa.eu/eli/reg/2019/1010/oj/eng>

available by the Commission as a Union-wide Overview starting with the 2019 reporting. On 23 January 2020, the Commission issued updated Customs and FLEGT Regulation Implementation Guidance¹⁹ (initially issued in 2014) to support EU MSs' Customs and FLEGT Regulation CAs in the implementation of the FLEGT Regulation/FLEGT Regulation licensing scheme and taking into account the experience to date with the implementation of the FLEGT licensing scheme with Indonesia.

2.1.2 EUTR

The second key piece of legislation under the FLEGT AP is the EUTR. The EUTR has been adopted as a demand side measure, focusing on preventing the placing of illegally harvested timber and timber products on the EU market (either by importers or domestic producers). It was adopted in 2010 and entered into force in 2013. The EUTR introduced obligations for operators²⁰ to mitigate the risk to a negligible level that timber and timber products placed on the EU market have been illegally harvested, and for traders²¹ to keep records of their suppliers and customers for timber and timber products already in the EU and EEA (Norway, Iceland and Liechtenstein)²² market. The following three obligations are established by the EUTR:

1. It prohibits the placing on the market of illegally harvested timber or timber products derived from such timber (Article 4);
2. It requires operators who place timber products on the EU market for the first time to exercise 'DD' (DD) so as not to derive their timber from illegal sources (Article 4 and 6);
3. It requires traders in timber and timber products, which have already been placed on the market, to keep records of their suppliers and customers (Article 5).

This product scope of the EUTR is summarised in Table 2-1. According to Article 3 of EUTR, timber and timber products covered by valid FLEGT licence, are considered compatible with the requirements of the EUTR (and the operator does not need to exercise further DD).

EUTR requires all MSs to designate one or more CAs, responsible for the implementation of the EUTR. According to Article 10 of the EUTR, the CAs shall carry out checks to verify if operators comply with the requirements set out in the EUTR Regulation.

EUTR allows for the provision of technical assistance (awareness-raising, training and capacity-building) to operators (importers) active on EU markets. Such technical assistance is often provided by the CA, and in some instances is channelled through sectoral organisations.

In 2016, the Commission published a report on the first review of the EUTR covering the period from March 2013 to March 2015 (European Commission, 2016) and has since published biennial reports on the implementation of the Regulation, based on bi-annual national reports submitted by EU MSs, Norway, Iceland and Lichtenstein (covering the periods March 2015-2017 and March 2017-2019) (European

¹⁹https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2020.020.01.0001.01.ENG&toc=OJ:C:2020:020:FULL

²⁰ Any natural or legal person that places timber or timber products on the market.

²¹ 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

²² 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>

Commission, 2018). From 2019, MSs have been reporting annually on the implementation of EUTR, in line with Regulation (EU) 2019/1010²³.

Table 2-1 Products covered by EUTR

| HS code | Description |
|---------|---|
| 4401 | Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms |
| 4403 | Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared |
| 4406 | Railway or tramway sleepers (cross-ties) of wood |
| 4407 | Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end-jointed, of a thickness exceeding 6 mm |
| 4408 | Sheets for veneering (including those obtained by slicing laminated wood), for plywood or for other similar laminated wood and other wood, sawn lengthwise, sliced or peeled, whether or not planed, sanded, spliced or end-jointed, of a thickness not exceeding 6 mm |
| 4409 | Wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, V-jointed, beaded, moulded, rounded or the like) along any of its edges, ends or faces, whether or not planed, sanded or end-jointed |
| 4410 | Particle board, oriented strand board (OSB) and similar board (for example, waferboard) of wood or other ligneous materials, whether or not agglomerated with resins or other organic binding substances |
| 4411 | Fibreboard of wood or other ligneous materials, whether or not bonded with resins or other organic substances |
| 4412 | Plywood, veneered panels and similar laminated wood |
| 4413 | Densified wood, in blocks, plates, strips or profile shapes |
| 4414 | Wooden frames for paintings, photographs, mirrors or similar objects |
| 4415 | Packing cases, boxes, crates, drums and similar packings, of wood; cable-drums of wood; pallets, box pallets and other load boards, of wood; pallet collars of wood ²⁴ |
| 4416 | Casks, barrels, vats, tubs and other coopers' products and parts thereof, of wood, including staves |
| 4418 | Builders' joinery and carpentry of wood, including cellular wood panels, assembled flooring panels, shingles and shakes |
| 47/48 | Pulp and paper of Chapters 47 and 48 of the Combined Nomenclature, with the exception of bamboo-based and recovered (waste and scrap) products |
| 9403 | Wooden furniture |
| 9406 | Prefabricated buildings |

The most recent version of the Guidance Document for the EU Timber Regulation²⁵ was adopted by the Commission on 12 February 2016. In addition, the Commission also adopted other guidance documents, including the implementation guidance on Customs and FLEGT Regulation²⁶, on the verification of legality in timber trade²⁷ for CITES-listed tree species imported into the EU and other guidance agreed

²³ <https://eur-lex.europa.eu/eli/reg/2019/1010/oj/eng>

²⁴ Not packing material used exclusively as packing material to support, protect or carry another product placed on the market.

²⁵ https://ec.europa.eu/environment/forests/pdf/eutr_guidance.zip

²⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020XC0121%2801%29>

²⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2018:376:TOC>

by the FLEGT Regulation/EUTR Expert Group, for example on: Recycled timber and timber products²⁸, Substantiated concerns²⁹, Risk mitigation measures³⁰, Consideration of prevalence of armed conflict and sanctions in DD Systems³¹, and DD³².

2.1.3 Objectives of EUTR and FLEGT Regulation

The impact assessments which supported the development of the FLEGT Regulation and EUTR analysed the possible policy options against a set of policy objectives:

- The impact assessment accompanying the FLEGT Regulation (European Commission, 2006) included only the high-level objective of the FLEGT Action Plan to “*reduce illegal logging and the associated trade in illegally harvested timber*” to be achieved “*by strengthening governance in affected wood-producing countries; and reinforcing these efforts with the incentives and legal framework offered by the EU market*”;
- The impact assessment accompanying the EUTR (European Commission, 2008) included a list of four ‘general’ and eight ‘specific’ objectives. Alongside the aim to ‘*support the international fight against illegal logging*’, the general objectives also included: ‘*addressing weaknesses entailed in the current framework..., reinforcing EU consumers' confidence in timber ... and improving forest governance and law enforcement in timber-producing countries*’.

The objectives in the impact assessments were used as a starting point for the development of the intervention logic and definition of a set of objectives for the purpose of the Fitness Check. In the process of reviewing the individual objectives of the FLEGT Regulation and EUTR it became apparent that both Regulations contribute to the same high-level, general objective: Reduce illegal logging and associated trade in illegally harvested timber globally.

Table 2-2 Objectives of the Regulations

| Type | Application | Objective |
|-------------|---------------------------|--|
| General | FLEGT Regulation and EUTR | <ul style="list-style-type: none"> • Halt illegal logging and associated trade in illegally harvested timber |
| Specific | FLEGT Regulation | <ul style="list-style-type: none"> • Ensure only legally harvested timber is exported by the VPA partner countries to the EU. |
| | EUTR | <ul style="list-style-type: none"> • Ensure only legally harvested timber and timber products are placed on EU market |
| Operational | EUTR | <ul style="list-style-type: none"> • Implement DD as risk mitigating measure against illegal timber and timber products entering the EU market • Enhance traceability down the supply chain to logging area |
| | FLEGT Regulation and EUTR | <ul style="list-style-type: none"> • Improve forest governance and law enforcement • Facilitate co-operation and information exchange between MSs and EC to ensure compliance and uniform implementation across the EU |

²⁸ <https://ec.europa.eu/environment/forests/pdf/Guidance%20-%20Recycled%20timber%20and%20timber%20products.pdf>

²⁹ <https://ec.europa.eu/environment/forests/pdf/Guidance%20-%20Substantiated%20concerns.pdf>

³⁰ <https://ec.europa.eu/environment/forests/pdf/Guidance%20-%20Risk%20mitigation%20measures.pdf>

³¹ https://ec.europa.eu/environment/forests/pdf/Guidance%20conflict%20timber_EG%20Agreed.pdf

³² https://ec.europa.eu/environment/forests/pdf/28_02_2020_Guidance_on_Due_Diligence.pdf

The FLEGT Regulation and EUTR also have their own additional, specific objectives, supported by a range of operational objectives, some of which are specific to the EUTR, some of which are shared. The operational objectives are objectives in themselves, but also contribute to the achievement of the specific and general objectives. Table 2-2 summarises the objectives of the Regulations for the purpose of the Fitness Check. Figure 2-1 maps in more detail the link from problem drivers, to problems, to objectives.

2.2 Intervention logic

The intervention logic frames the evaluation questions the study seeks to answer and defines the scope and depth of the analysis. The evaluation explores each of the steps in the intervention logic and, in particular, the movement from one step to the next e.g. how effectively and efficiently actions have been translated into results. It focuses on the causality of the EUTR and FLEGT Regulation in delivering expected results and impacts, it allows to check to what extent the legislation delivered what was expected. The intervention logic is presented in Figure 2-2 and Figure 2-3 below and covers both the EUTR and FLEGT Regulation showing the links and differences between the two. It is also broken down into individual pathways linking objectives, actions, outputs, and their impacts.

The intervention logic starts from the **needs** that the EUTR and FLEGT Regulation are intended to address and the **objectives** of both Regulations (outlined in Section 2.1.3). **Inputs** are then outlined from the EC, EU, MS authorities and economic operators and other stakeholders. These then undertake a range of **activities** - both the adoption of the EUTR and FLEGT Regulations and the actions on the Commission, MSs and duty holders that follow from implementation (see Sections 2.1.1 and 2.1.2).

Following through the **activities** should lead to a number of **outputs**. Under the FLEGT Regulation illegal logging should be brought to a halt in the VPA countries and the legality of all exports of timber and timber products covered by FLEGT licences should be ensured. Export to the EU without a valid FLEGT license should not be allowed and all EU custom entry points should be able to custom clear FLEGT licensed products. Implementation and enforcement of the FLEGT Regulation should be uniform across MSs, the latter through effective, proportionate and dissuasive measures. Under the EUTR, the legality of all timber and timber products placed on the internal market for the first time should be ensured: the placing on the EU market of illegally harvested timber or timber products derived from such timber is prohibited. All operators who place timber products on the EU market should put in place adequate and effective 'DD' procedures so as not to derive their timber from illegal sources, and operators must take appropriate action where non-negligible risk is identified (e.g. through shifting suppliers). 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 should be uniform across MSs, the latter through effective, proportionate and dissuasive measures.

If implementation of the EUTR and FLEGT Regulations is effective, this should lead to the following **expected outcomes**: halt of illegal logging in VPA countries and the domestic EU production; implemented and adequate DD by operators in EU; effective enforcement; increased co-operation between CAs, the EC and exporting country governments; improved supply chain transparency; all VPA countries reaching a state of having operational FLEGT licencing scheme and their export to be covered by valid FLEGT licence; and improved forest governance, management and law enforcement. In turn, these outcomes should result in the following positive **impacts**: reduction in illegal logging and

associated trade and law enforcement and governance in forest sector in timber producing countries, which in turn will contribute to reduction in deforestation and protection of the livelihoods of forest-dependent communities.

A number of **external factors** are relevant in relation to the intervention logic, i.e. factors outside of the influence of the intervention, which may still influence the delivery of the stated objectives. For the EUTR and FLEGT Regulation, the focus of external factors are developments in other policies and initiatives which could interact with and influence the outcomes of the EUTR and FLEGT Regulation and changes in international trade patterns. Multilateral initiatives (e.g. UNFCCC), unilateral action on the part of exporting countries, and developments in other areas of European policy could be such external factors.

Overlaid onto the intervention logic are the five criteria which form the basis for any evaluation undertaken in line with the Better Regulation Guidelines:

- Effectiveness: are the impacts (outputs and effects) envisaged by the objectives achieved? This effectively considers whether the objectives themselves have been achieved in practice.
- Efficiency: how do the outputs compare to the inputs? Have they been achieved in an efficient manner?
- Relevance: are the objectives of the EUTR and FLEGT Regulation still relevant for the needs in society and problems to address?
- Coherence: is the EUTR internally coherent? Is the FLEGT Regulation internally coherent? Does it complement or conflict with other existing policies and strategies as well as new ones?
- EU added value: how do outcomes (outputs and effects) compare with what would have been achieved in the absence of the EUTR and FLEGT Regulation?

The intervention logic has been used to develop the individual evaluation questions under each of the evaluation criteria; these are described in Section 4.2.

Figure 2-1 Mapping of drivers, to problems, to objectives

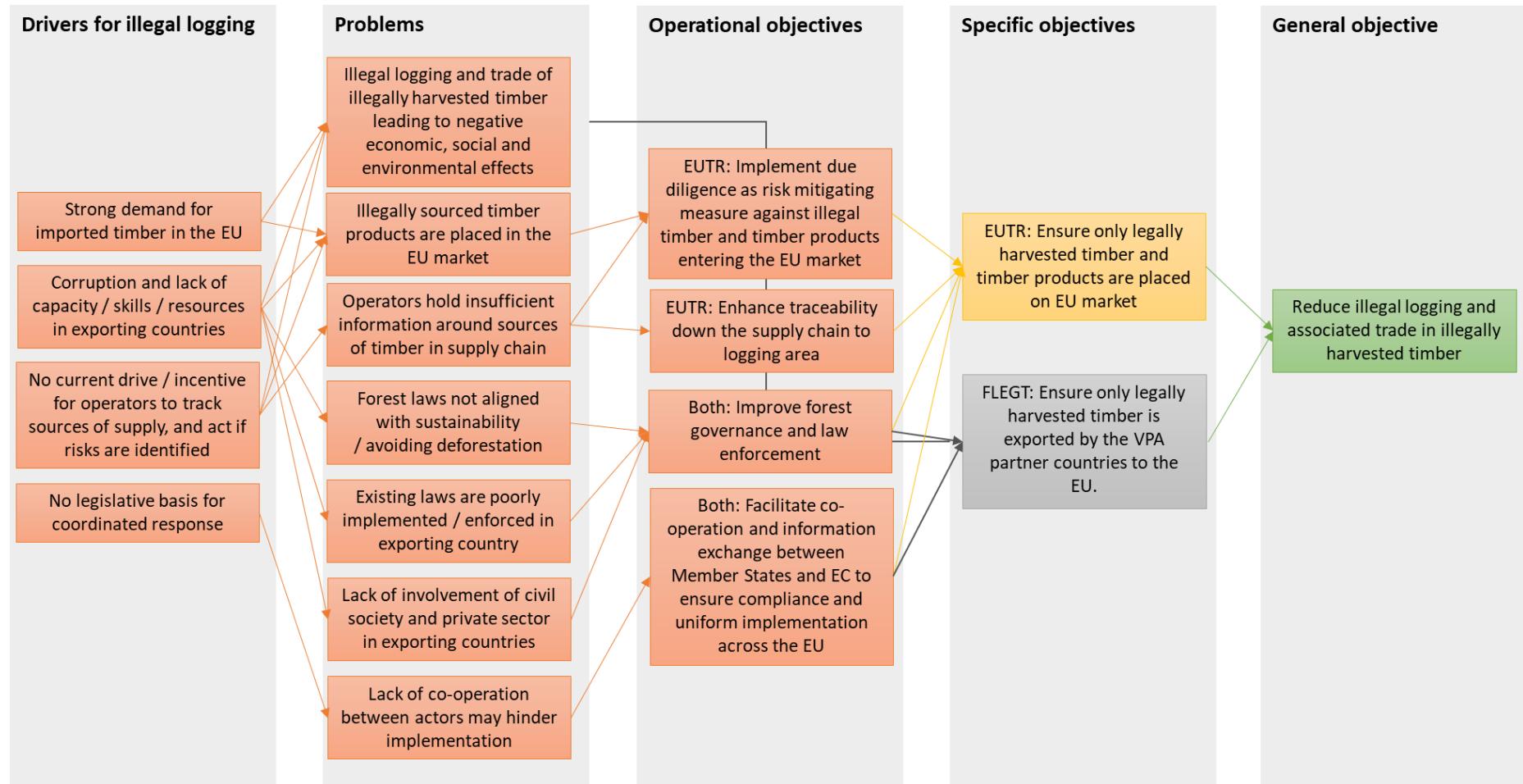


Figure 2-2 Intervention logic (Part 1)

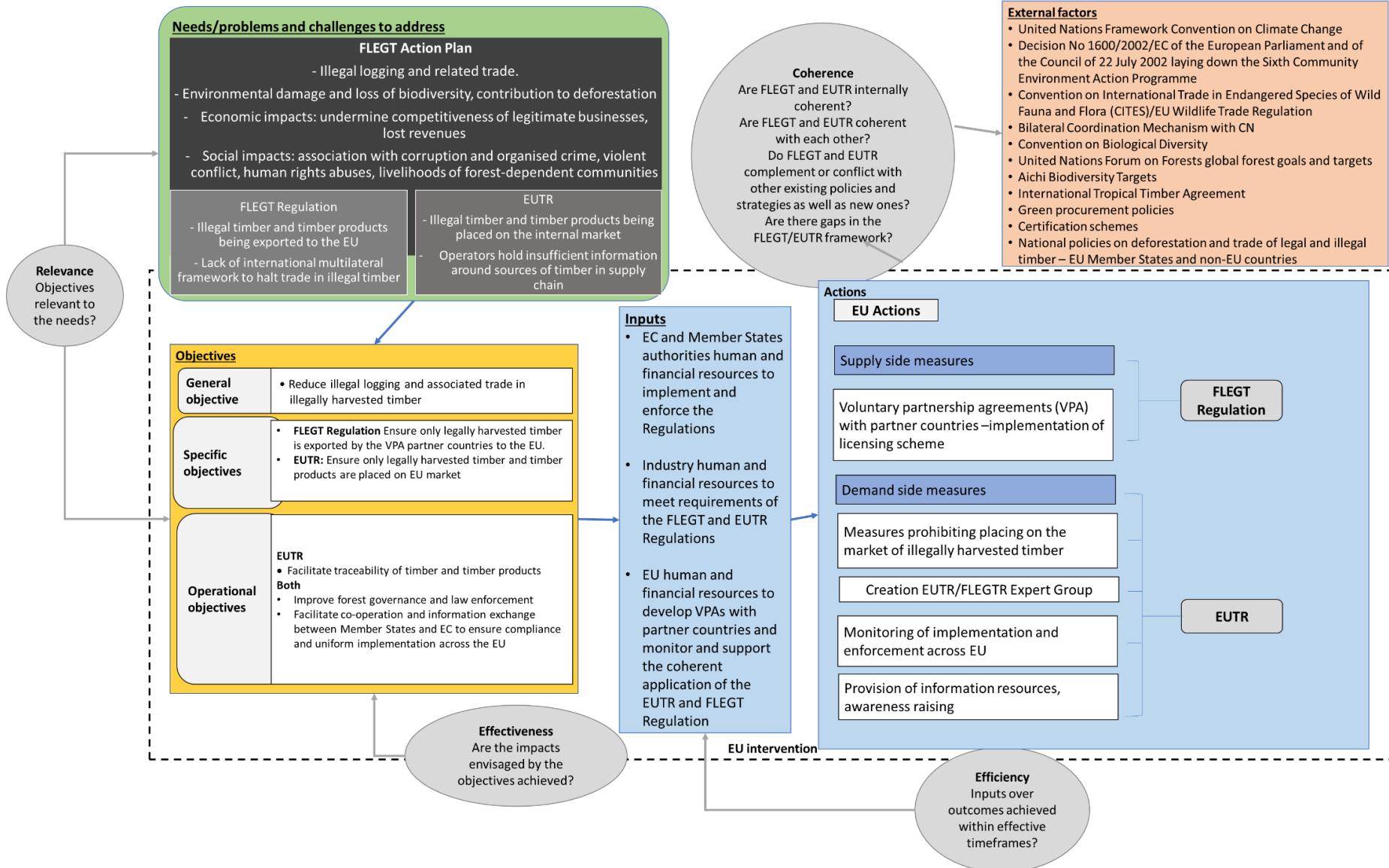
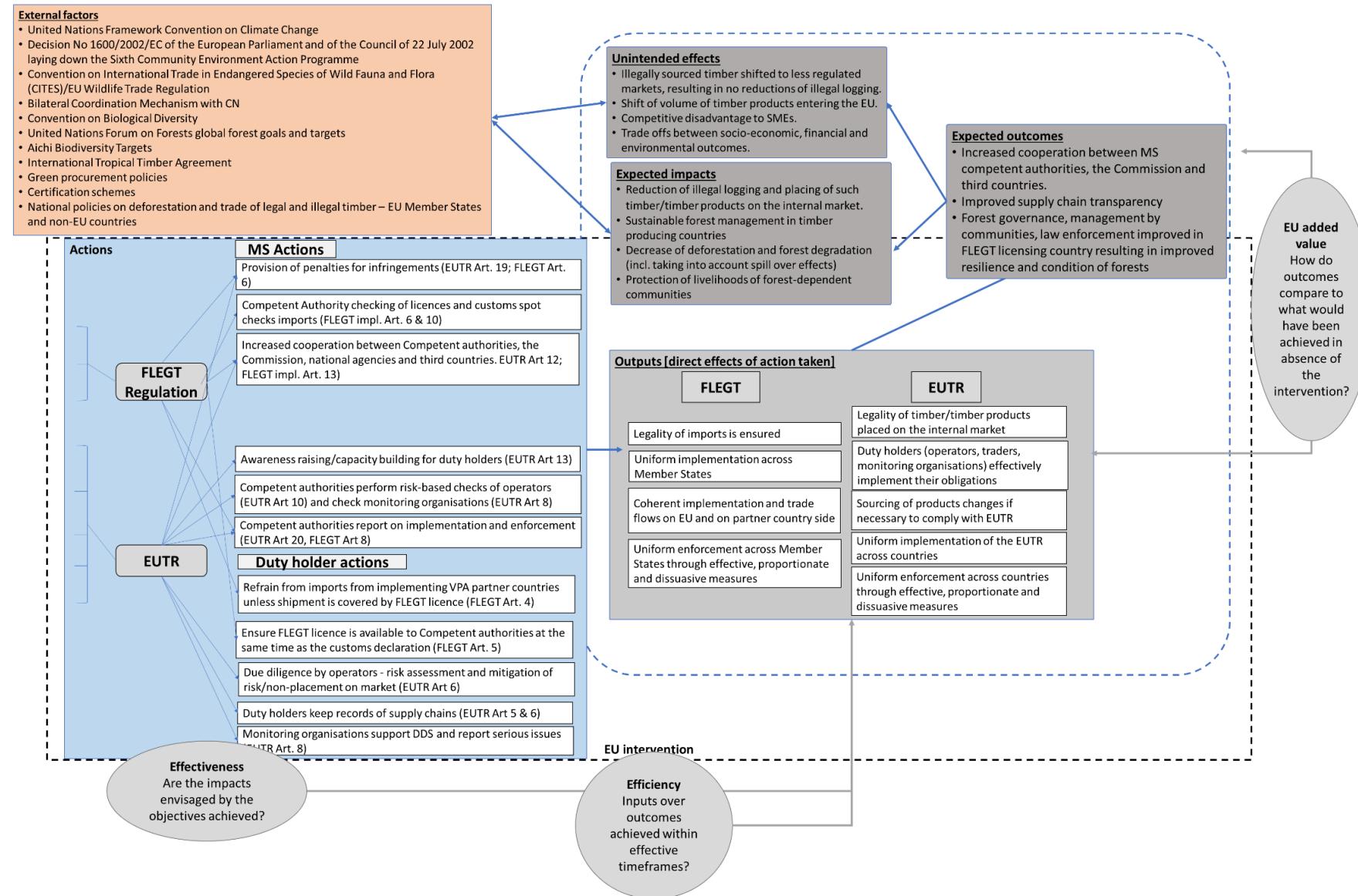


Figure 2-3 - Intervention logic (Part 2)



2.3 Baseline ('without policy' scenario)

2.3.1 Introduction

To evaluate the functioning and impacts of the FLEGT Regulation and EUTR, a counterfactual (the 'baseline') has been developed. This depicts a hypothetical scenario in which the Regulations were not implemented. The baseline provides a point of comparison to 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 study two separate baselines have been established (one for each Regulation) rather than a single common baseline. This has been done to facilitate (as far as possible) the assessment of the EUTR and FLEGT Regulation in isolation, in order to understand what has worked well and what not so well for each Regulation separately. This approach has been adopted to maximise the lessons that can be learnt around the two different policy mechanisms for the linked Impact Assessment. Although two separate baselines have been established, given this is a Fitness Check study it is also important to consider the interaction between the Regulations and their combined effect on the achievement of their complementary objectives. The aggregate effects are therefore also considered, in particular when drawing together overall conclusions.

Many of the problem drivers and objectives are common and hence many of the considerations and resulting elements of the baselines are also common. That said, key distinctions between the baselines are: (a) the start date (for the FLEGT Regulation this is 2005 and for EUTR its 2010) and (b) that given the FLEGT Regulation was adopted 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 4.3.3), the baselines are also distinguished by the specific case study countries considered. 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, the EUTR will also have an impact as operators importing from these countries still need to perform DD. For FLEGT licencing countries, the effects of FLEGT Regulation can be more clearly identified given the way the two Regulations combine together. This is considered when drawing conclusions from the analysis.

The baselines include qualitative and quantitative elements in a pragmatic approach to support the description of 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 Regulation (European Commission, 2004) and EUTR (European Commission, 2008). The IAs defined 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 2.3.2 below.

2.3.2 Overview of the situation prior to adoption

Developments to 2005 (introduction of the FLEGT Regulation)

Both Regulations were introduced as part of the implementation of the FLEGT AP with the key objective of **addressing illegal logging and associated trade** and **reducing the volume of illegal timber placed on the internal market**. Due to its clandestine nature, accurate data (in particular at the point the FLEGT Regulation was introduced) about the levels of illegal logging and the trend before 2005 are difficult to come by. Activity data is often based on estimates using secondary information sources. A World Bank review (World Bank, 1999) 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 IA (European Commission, 2004) was developed, there was no single information source which consistently tracked illegal logging across countries nor over time. Estimates of illegal logging for individual countries or regions were available from specific reports, as presented in Table 2-3.

Table 2-3 Estimates of illegal logging for select countries

| Country | Estimate of illegal logging | Sources |
|--------------------------------------|--|---|
| VPA countries | | |
| Indonesia | 60% of production 83% of production | AF & PA (2004) (AF & PA, 2004) CIFOR (2004) (L. Tacconi, 2004) |
| Cameroon | 50-65% of production | (World Bank and WWF, 2002) |
| Malaysia | 5% of production 70% of log imports | AF & PA (2004) |
| Ghana | 30% of production 50% of production | AF & PA (2004) (The Forestry Commission of Ghana, 2003) |
| Gabon | 30% of production | AF & PA (2004) |
| Liberia | 30% of production 100% of production | AF & PA (2004) National Transitional Government of Liberia (NTGL) (2005) ³³ |
| Other key exporters to the EU | | |
| Russia | 15-20% of production 20-60% of production | AF & PA (2004) (ICUN, 2005) |
| China | 30% of production 50% of production | AF & PA (2004) (USDA Foreign Agricultural Service, 2003) |
| Brazil | 15% of production 37% of production | AF & PA (2004) (IMAZON, 2005) |

It is problematic to compare directly between rates reported for different countries and years given the variation in authorship and methodology. However, it is clear that illegal logging was prevalent in many countries, driven by a number of underlying forces, including: lack of institutional capacity, weak rule of law, corruption, failings of governance and strong international demand for timber.

³³ All logging concessions in Liberia were cancelled in Feb 2006 following a report by the Forest Concession Review Committee—Phase 3, 31 May 2005, which had found that no individual concession holder was able to demonstrate a sufficient level of legal compliance.

At the time the FLEGT Regulation was introduced in 2005, there was no other EU policy directly targeting illegal logging (although the European Community did have an overall policy objective in the forest sector, which was to achieve sustainable forest management (European Commission, 2004)).

Several other non-EU led relevant policies and initiatives were in place, including: the International Tropical Timber Agreement (ITTA) (1983, as revised in 2006) under which operates the 1986 International Tropical Timber Organization (ITTO) which aims to promote the expansion and diversification of international trade in tropical timber from sustainably managed and legally harvested forests and the sustainable management of tropical timber producing forests³⁴; the G8 Action Programme on Forests which led to commitments in 2005 (Chatham House, 2005) to facilitate legal timber production; the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) implemented in the EU through the EU Wildlife Trade Regulations (EUVTR); the Convention on Biological Diversity (CBD) that addresses forest biological diversity and genetic resources and entered into force in 1993 (Le Danff, 2000); and activities under the Africa Forest Law Enforcement and Governance (AFLEG) and the East Asia Forest Law Enforcement and Governance (EA FLEG) processes. There were also a range of public procurement policies at MS level applicable to timber products that preceded the FLEGT Regulation and EUTR. Germany, the United Kingdom, Denmark, France and the Netherlands, had all introduced policies relating to the public procurement of timber before the establishment of the FLEGT Regulation in 2005 (Chatham House, 2004) (UNECE, 2004) (see Appendix K for more details).

In addition, forest certification systems, such as the Forest Stewardship Council (FSC) system established in 1993, and the Programme for the Endorsement of Forest Certification (PEFC) formed in 1999 (both focusing on sustainable forest management and not legality) were in place prior to 2005 and increased their coverage of forest resources. However, several concerns have been raised around certification schemes (e.g. forthcoming European Commission study - yet unpublished) which challenge their potential impacts, and hence their interaction with the EUTR and FLEGT Regulation. In particular, as the schemes have expanded, various risks around the integrity of such systems have grown and are susceptible to fraud committed by companies who wish to cheat certification systems (i.e. through companies selling greater volumes of certified timber than volumes purchased) (see EQ12 for further discussion).

Developments between the adoption of the FLEGT Regulation and prior to EUTR (2005 to 2010)

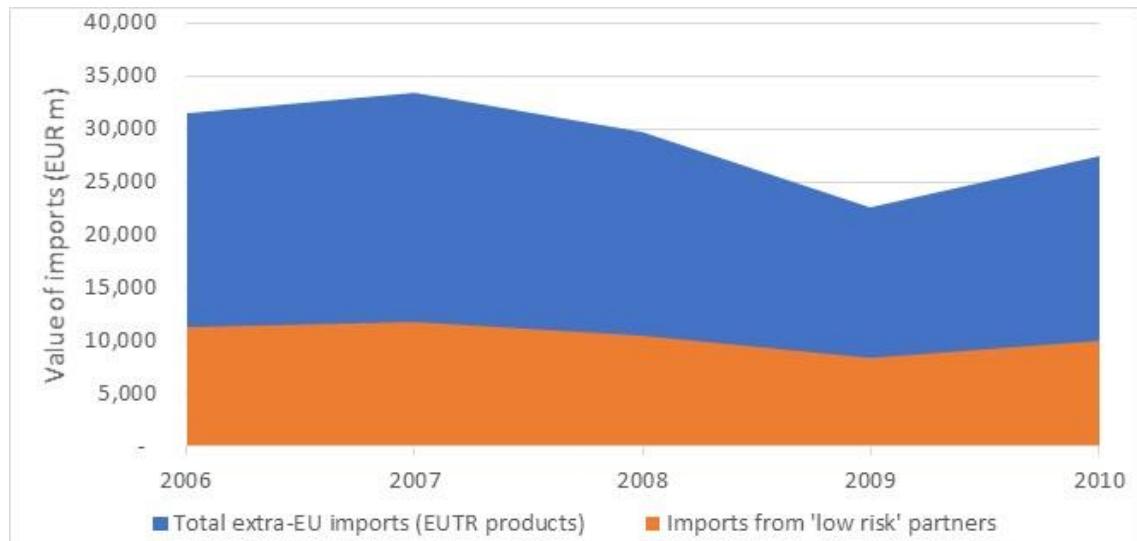
No consistent source is available that tracks levels of illegal logging over a continuous time period for different countries. Hence it is not possible to specify how illegal logging changed in the interim period following the introduction of FLEGT Regulation, but prior to EUTR. There is also no definitive data source which provides levels of illegal timber and timber products placed on the EU market. Using the ILAT risk scores (Forest Trends, n.d.), in the period before EUTR was adopted the proportion of extra EU imports of EUTR products from 'low risk' partners was fairly consistent (see Figure 2-4, remaining in a 35-37% range from 2006-10, suggesting the risk of illegal timber and timber products entering the EU was high and remained high prior to adoption of the EUTR).

The wider policy environment continued to develop over the 2005-2010 period. Given that the FLEGT Regulation preceded EUTR, the FLEGT Regulation forms part of the EU baseline (it was also included

³⁴[https://www.itto.int/about_itto/#:~:text=The%20International%20Tropical%20Timber%20Organization%20\(ITTO\)%20is%20an%20intergovernmental%20organization,managed%20and%20legally%20harvested%20forests.](https://www.itto.int/about_itto/#:~:text=The%20International%20Tropical%20Timber%20Organization%20(ITTO)%20is%20an%20intergovernmental%20organization,managed%20and%20legally%20harvested%20forests.)

in the baseline adopted for the EUTR IA). This potentially poses a problem for the analysis in that the effects of the EUTR cannot be assessed in the absence of the FLEGT Regulation. However, this point reaffirms the logic of undertaking a Fitness Check of both Regulations together and the study has sought to mitigate this through methodology design: specifically using case studies of non-VPA countries to isolate any impact of the EUTR alone. Furthermore, any potential overlap will depend on the effectiveness of the FLEGT Regulation: until 2010 the impacts would have been limited as although some countries had commenced negotiations (e.g. Indonesia, Ghana, Cameroon all entered negotiations in 2007), fewer had signed VPAs and none had progressed to the stage of issuing licences.

Figure 2-4 Trend in imports of products covered by the EUTR (Value) prior to adoption



Source: ComExt

Table 2-4 Summary of key policy developments 2005 - 2010

| Policy or initiative | Discussion of impact on problem drivers |
|--|---|
| United Nations Forum on Forests (UNFF) adopted the Non-legally Binding Instrument on All Types of Forests in December 2007 | Impact likely to be limited given measure is voluntary |
| Further amendments made to EUWTR to implement CITES in the EU in 2006 and 2008 | Total impact potentially limited as covers a sub-set of timber materials and products |
| The US Lacey Act amended in 2008 to include plants and plant products | Could have impacted illegal logging in exporters to US. This could also have impacted the EU through increased channelling of illegally logged timber to the EU prior to adoption of the EUTR. |
| Further activities under the FLEGT Action Plan, including: The European Neighbourhood and Partnership instrument east countries forest Law Enforcement and Governance Program (ENPI FLEG) 2008-12 | Aimed to improve forest law enforcement and governance in 7 countries, but subsequent impact on illegal logging is unclear |
| The Strategic Plan for Biodiversity 2011-2020 and the Aichi Biodiversity Targets | Target 5 includes at least halving the rate of loss of all natural habitats (including forests) by 2020. Target 7 states that by 2020, areas under forestry were to be managed sustainably. Impact on illegal logging is unclear. |

| Policy or initiative | Discussion of impact on problem drivers |
|---|---|
| More MSs introduced public procurement policies aiming to procure timber from legal and sustainable sources | Belgium, Cyprus, Lithuania, Latvia, Spain, Finland and Italy all introduced initiatives in this period. Overall impact is likely to be small given public consumption is only a sub-set of overall consumption. |
| Forest area covered by certification systems continued to grow | Schemes aim to reduce illegal logging, but their impacts could have been somewhat limited by issues identified (Conniff, 2018) (European Commission, forthcoming study on certification) |

More broadly, aside from the FLEGT Regulation, at the point the EUTR was introduced there still was no overall Union legislation dealing with the import and marketing of illegally produced timber products. There were however several other developments in related policy and initiatives over this period. These are summarised in Table 2-4 alongside a discussion of how they could have influenced the problem drivers over this period. Considering the nature of these policies and initiatives, in most cases there are reasons to suggest the impact on the problem drivers could be limited. In the absence of a robust and consistent data set on illegal logging and stronger data on the effects of relevant initiatives, it is not possible to conclude that the extent of illegal logging would have changed significantly since the 2005 level.

2.3.3 *Expected development of pressures and impacts without legislation*

The baselines also need to consider how the problem drivers may have developed in the absence of the Regulations. Over the appraisal period, a number of other influences (i.e. aside from the Regulations themselves) emerged. These are summarised in Table 2-5, alongside a summary of their expected impact on illegal logging and illegal timber entering the EU market. Further discussion of these pressures outside the EUTR and FLEGT Regulation are presented in Appendix K.

An important consideration in setting the baseline is whether MSs would have unilaterally taken action. Action at MS level in the absence of the Regulations is assumed unlikely. Views of MSs (European Commission, 2008) were surveyed as part of the development of the FLEGT Action Plan and identified that although there were potential options to address illegal logging through national legislation in theory, in practice it would be very difficult for individual MSs to establish a link between an alleged illegal activity and a specific piece or shipment of timber. No MSs were noted as planning unilateral action at the time of implementation of the Regulations. In the absence of strong evidence to suggest otherwise, it is considered fair to assume that no MS would have unilaterally brought forward legislation in the absence of the Regulations.

2.3.4 *Baselines for the Fitness Check study*

It is not possible to define fully quantitative baselines against which to assess the FLEGT Regulation and the EUTR given the limitations in the data available regarding illegal logging and illegal timber in the EU. As such, qualitative narratives have been developed in each case (drawing on quantitative data where possible) to define a clear reference point for the analysis. As noted, given the FLEGT Regulation and EUTR have overlapping objectives and drivers, some components of the baseline are common across each. In the absence of policy action (i.e. the FLEGT Regulation), the assumptions defining the baselines for FLEGT Regulation and the EUTR for the Fitness Check study are set out in

Table 2-6.

Table 2-5 Summary of key pressures and impacts without legislation over the appraisal period

| Type of influence | Sub-type of influence | Discussion of impact on problem drivers |
|------------------------------|---|--|
| Policy and other initiatives | Introduction (and continued operation) of multilateral policies and initiatives , including: United Nations Forest Instrument (UNFI); Extractive Industries Transparency Initiative; and further activities under ENPI FLEG and EA FLEG. | Impacts could be important for specific countries or regions (e.g. China BCM, specific UNFI pilots in Ghana, Liberia and Gabon, only 4 VPA countries (Liberia, Republic of Congo, Guyana and Democratic Republic of Congo) include forestry in EITI reporting. Most actions targeted improvements in governance and knowledge sharing, rather than illegal logging directly. |
| | Introduction of unilateral demand-side action to ensure legality of imports (e.g. in US, Australia, Japan and South Korea) | Initiatives could have impacted illegal logging in exporters to these countries. However, interactions somewhat limited by the date of implementation (e.g. Korea in 2018) and nature of the initiatives (compliance with Japanese legislation is voluntary). |
| | Unilateral supply-side policies to tackle illegal logging, including: Efforts since 2001 in Indonesia to eliminate illegal logging, e.g. through SVLK; temporary export bans from Ukraine in 2015; and logging bans in 2016 in Myanmar. | All could have had an important impacts at country level. |
| | The continued impact of sustainable forest management practices which have been introduced prior to the implementation of the EUTR. | Sustainable forest management practices, under the ITTO definition could lead to a reduction in illegal logging levels. The implementation of these practices has been a long-term aim (European Commission, 2004), and there is expected benefit from practices introduced both within and outside the EU. |
| | 11 more MS ³⁵ introduced public procurement policies covering timber products in or after 2010 | Although most included legality as a criterion and applied to a broad product range, overall impact is likely to be small given public consumption is only a sub-set of overall consumption. |
| | Forest area covered by certification systems (e.g. FSC and PEFC) continued to grow | Schemes aim to reduce illegal logging, but their impacts could have been undermined by issues identified (Conniff, 2018) (European Commission, forthcoming study on certification) |
| | Increased awareness of Corporate Social Responsibility (CSR) and Environmental Social Governance (ESG) : large consumer goods companies, | Although large private sector entities have called for legislators to toughen rules, many corporate commitments are not on track hence impacts on illegal logging and illegal timber in the EU are perhaps not as significant as originally |

³⁵ Austria, Czechia, Malta, Slovenia, Sweden, Bulgaria, Ireland, Luxembourg, Croatia, Slovakia, Poland

| Type of influence | Sub-type of influence | Discussion of impact on problem drivers |
|-----------------------------|--|--|
| | retailers and banks have been working to improve procurement efficiency and enhance environmental and social impacts. | pledged. Also many large EU companies and banks have been accused of financing illegal logging (Mongabay, 2017). |
| Socio-economic developments | Changing demand and product preferences: Total EU consumption of timber and timber products remained relatively constant from 2007-19 (ITTO data). Sub-trends emerged, such as substitution away from tropical timber products (CBI, 2017) and increasing consumption of processed products (e.g. MDF) (Grand View Research, 2020) Consumers have become increasingly aware of sustainability issues (FSC, 2014) | Impact on illegal logging is not clear. Shift away from tropical sources does not necessarily imply a reduction in legality, and shift to more processed products could increase risk as it is more difficult to track sources through supply chains. Uncertain how greater awareness of sustainability has translated into changes in consumption, in particular given issues highlighted with certification schemes (Conniff, 2018). |
| | Growing role of China: China is now the largest importer of industrial logs and the second largest importer of forest products in the world (FAO, 2020) This feeds a wood manufacturing sector processed and exports globally (Global Witness, 2019): China was the EU's top trading partner in timber and timber products between 2006 and 2018. Until 2019, China did not have dedicated legislation in place prohibiting the import of illegal timber products (Chinese Academy of Forestry, 2019) and the new Regulation appears to predominantly focus on use of domestic forests (Mongabay, 2020) | Between 2007 and 2018, 38% of China's timber product imports were from countries deemed to have 'high' or 'highest' risk of poor forest governance and associated links to illegal logging; that said, this represents a significant decrease since 2007 when the proportion was over two thirds (EU FLEGT Facility, 2018)). This elongation of supply chains coupled with lack of Chinese legislation governing imports could have led to a higher volume of illegal timber entering the EU over this period. |
| | Technological developments: Technologies have been developed and harnessed for a range of uses, e.g. timber tracing, labelling and live checking at critical supply chain points (ITTO, 2012) | Despite developments, adoption of traceability systems by MSs and high-risk producer countries is uncertain, hence it is difficult to conclude whether there was an impact on illegal logging or illegal timber in the EU. |
| | Impacts of COVID-19: in timber producing countries there are indications of an increase in illegal logging activities since the start of the pandemic (WWF, 2020), (Fair, 2020), due to reduced monitoring by enforcement authorities and social upheaval (ORBITAS, 2020). | Pandemic could have increased levels of illegal logging and risk that illegal timber is imported in the EU, but only at the very end of the appraisal period (and as such is unlikely to show in data) |

Table 2-6 Baselines for the Fitness Check study

| | 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>At the point the FLEGT Regulation was implemented (2005), levels of illegal logging and the risk of illegal timber in the EU were substantial issues (as presented in Table 2-3 and Figure 2-4 above)</p> | <p>At the point of the EUTR's adoption (2010), the issues of illegal logging and the risk of illegal timber in the EU persisted and remained substantial, even following the introduction of the FLEGT Regulation (in particular 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 | <p>In the first five years of operation, some relevant policies and initiatives were introduced. Although these could have somewhat influenced key drivers of illegal logging (e.g. actions to improve forest governance under the FLEGT Regulation AP, such as ENPI FLEG), it cannot be concluded with confidence that they would have significantly reduced illegal logging and/or levels of illegal timber in the EU in the absence of FLEGT Regulation</p> | <p>From 2010, more countries engaged in the FLEGT Regulation process as donors, negotiations developed and progress was made towards licencing. Given that the FLEGT Regulation preceded the EUTR, the impacts of the FLEGT Regulation form part of the EUTR baseline. Since no FLEGT licenses were issued until late 2016 potential interaction with the EUTR will depend on the effectiveness of the development in the VPA processes, which is to be explored through this Fitness Check.</p> |

| | 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) |
|---------|---|---|
| Summary | <p>From 2005, the risk of illegal logging and illegal timber entering the EU market would have persisted and likely remained substantial as no other policy at international, national or local level, either in the EU or exporting countries would drive reform. This could potentially have sustained at similar levels reported at that time (e.g. illegal logging as a percentage of overall production: Cameroon 50-65%, Ghana 30-50%). For Indonesia, levels of illegal logging are likely to decline relative to levels reported at the start of the period due to the development of the SVLK (although this would likely be implemented later, with narrower coverage and less robust systems).</p> | <p>From 2010, the risk of illegal logging and illegal timber entering the EU market would have persisted and likely remained substantial. This could potentially have sustained at similar levels reported at that time (e.g. illegal logging as a percentage of overall production: Russia 15-60%, China 30-50%, Brazil 15-37%).</p> <p>Within the EU, the implementation of sustainable forest management practices would likely already achieve significant progress towards reducing illegal logging and the placement of illegally logged timber from EU sources on the internal market.</p> |

3 Implementation state of play

This section presents a summary of the current status of implementation of the FLEGT Regulation and EUTR based on the MSs' reports on the implementation of both Regulations. Further detail of the implementation of the FLEGT Regulation and EUTR can be found in Annexes D and E, respectively. 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 FLEGT Regulation - VPAs

To date, VPAs have been signed with Ghana (2010³⁶), the Republic of Congo (2011)³⁷, Cameroon (2011³⁸), the Central African Republic (2012³⁹), Liberia (2012⁴⁰), Indonesia (2014⁴¹) and Vietnam (2018⁴²) (Honduras 23 February 2021). Indonesia is the first and only country to date that issues FLEGT licences (started on 15 November 2016). At the time of writing this report, the EU has concluded negotiations and initialled VPAs with Honduras and Guyana, with the VPA of Honduras being close to ratification. VPA negotiations were ongoing between the EU and Côte d'Ivoire, the Democratic Republic of the Congo, Gabon, Laos, Malaysia and Thailand. It is important to note that although the DRC, Gabon and Malaysia are identified as countries in negotiation, these processes have been stalled for more than five years. If the negotiations were to restart in these three countries, it could require them to start again from the beginning as many of the stakeholders (on both sides) that participated in the first negotiations may no longer be in post. Table 3-1 and

³⁶ [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))

³⁷ [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))

³⁸ [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))

³⁹ [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))

⁴⁰ [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))

⁴¹ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_2014.150.01.0252.01.ENG

⁴² [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))

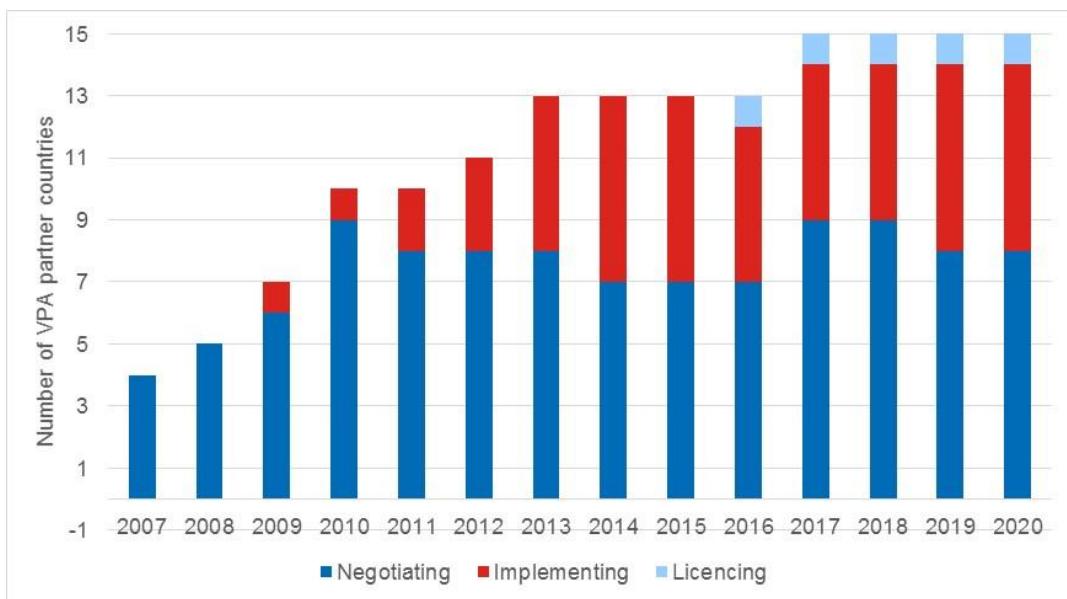
Figure 3-1 provides an overview of the current timeline for the implementation of VPA's in partner countries. Alongside the overarching progress, evidence is also available regarding the status of the key processes which need to be put in place to fulfil the VPA: 9 VPA partners have brought forward legislation to support the implementation of the VPA (although in 3 this is limited to clarifications of the scope of legality only), and in two countries (Indonesia and Vietnam) an acceptable TLAS has been developed (note TLAS has also been developed in Malaysia that are not currently accepted as consistent with the VPA).

Table 3-1 VPA Implementation Timeline

| Country | Start of Negotiations | VPA Agreed | VPA Signed | VPA Ratified | VPA Entered into Force | FLEGT Licensing | TLAS | Legislation | Comment |
|--------------------------|-----------------------|------------|------------|--------------|------------------------|-----------------|------|-------------|--|
| Cameroon | 2007 | 2010 | 2010 | 2011 | 2011 | - | - | ✓* | TLAS development in progress. Undertaking second attempt to develop IT system that is accepted by EU. Also disagreement with EU around process for confiscated timber. |
| Central African Republic | 2009 | 2010 | 2011 | 2012 | 2012 | - | - | ✓* | TLAS in progress. |
| Republic of Congo | 2008 | 2009 | 2010 | 2013 | 2013 | - | - | ✓* | TLAS in progress, capacity constraints noted. |
| Côte d'Ivoire | 2013 | - | - | - | - | - | x | - | Negotiations in progress. |
| DRC | 2010 | - | - | - | - | - | x | ✓ | Negotiations stalled for >5 years. |
| Gabon | 2010 | - | - | - | - | - | x | - | Negotiations stalled for >5 years. |
| Guyana | 2012 | 2018 | - | - | - | - | x | ✓ | Negotiations in progress. |
| Ghana | 2007 | 2008 | 2009 | 2009 | 2009 | - | - | ✓ | TLAS in progress. Now on third attempt to implement TLAS. |
| Honduras | 2013 | 2018 | 2021 | - | - | - | x | - | Progressing to ratification |
| Indonesia | 2007 | 2011 | 2013 | 2014 | 2014 | 2016 | ✓ | ✓ | |
| Laos | 2017 | - | - | - | - | - | x | - | Negotiations in progress. |
| Liberia | 2009 | 2011 | 2011 | 2013 | 2013 | - | - | - | TLAS in progress |
| Malaysia | 2007 | - | - | - | - | - | x | x | Negotiations on hold. |
| Thailand | 2017 | - | - | - | - | - | x | ✓ | Negotiations in progress. |
| Vietnam | 2010 | 2017 | 2018 | 2019 | 2019 | - | ✓ | ✓ | |

Notes: * Clarification of scope of legality only

Figure 3-1 Timeline of VPA Implementation Progress 2007 - 2021 (number of partner countries with each status in each year)



3.2 FLEGT Regulation - Licencing

Implementation of the FLEGT Regulation by EU MSs involves: designation of a CA or CAs to: implement and enforce the Regulation; validate FLEGT licenses; keep a record of licences and customs declarations; determine the need for further checks on shipments; and determine and apply penalties in case the Regulation is infringed. This section summarises the latest status of implementation of the FLEGT Regulation based on the three synthesis reports on the implementation of the FLEGT Regulation published by the European Commission and covering the period 2016-2019 (European Commission, 2018) (European Commission, 2019) (European Commission, 2020) (European Commission, 2020b). All data in this section is extracted from relevant sections of these reports.

3.2.1 Designation of CAs (Article 7(1))

All MSs have designated a CA or CAs to enforce the FLEGT Regulation and all MSs (except one) have informed the European Commission of the relevant legislative acts. MSs have either appointed customs authorities as, or part of, CAs (11 MSs) or designated separate authorities (17 MSs). Where customs and CAs are separate, MSs 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 Licences and shipments received

Number of licenses received, verified and cleared

The number of FLEGT Regulation licenses received and verified in Europe between 2016-2019 is shown in Figure 3-2. As Indonesia is the only country that has progressed to issuing licences, all licenses during this period originated from Indonesia.

Figure 3-2 Number of FLEGT licenses received and validated by EU MSs, and cleared by customs over the period 2016-2019



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

Note: The reporting in 2016 concerns the period between 15 November and 31 December 2016.

The number of MSs receiving FLEGT licences has increased each year since licensing started: in 2016, licenses were received by 16 MSs⁴³, in 2017 by 26 and in 2018 by 27. In 2019, this fell again to 26 (Romania did not receive any licences and Latvia did not report). In 2019, the largest number of licences was received by the Netherlands (8,048), United Kingdom (5,790), Germany (5,460), France (3,362), and Belgium (3,088).

In 2016 all licenses were validated (i.e. document checks by the CA and customs), while in 2017, 2018 and 2019 this was slightly less at 99% in all years. The number of licences cleared by customs was lower, at 99%, 73% and 78% in 2017, 2018 and 2019 respectively. There are a number of reasons why the volume of licences cleared by customs can differ to those received, including: self-declarations, year-end trade, and licences not being presented to customs (set out in detail in the Annual Synthesis Reports).

Quantities imported

MSs 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 3-2.

Table 3-2 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-licensed timber', rather than quantity listed on FLEGT licence; 2016 data is for period 15 November to 31 December 2016

⁴³ It should be noted that the reporting in 2016 concerns the period between 15 November and 31 December 2016.

Overall, there was an increase in the quantities reported on FLEGT Regulation validated licenses since the start of licensing in 2016⁴³ to 2018, with a slight fall to 2019. There can be a wide margin between the quantities reported in validated FLEGT licences and quantities reported as cleared for import by customs. For example, in 2018 over 2,993 million kg of FLEGT Regulation-licensed timber and timber products were reported as cleared for import by EU customs, while only 694 million kg were reported on validated FLEGT Regulation licenses. There are a range of reasons why these quantities differ (many of which are common with those that drive variation in number of licences received by CAs and those cleared by customs), including: the limited coverage 1.5 months in the 2016 report, 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. These are discussed in further detail in the Annual Synthesis Reports.

Additional verification checks of licences and shipments (Article 5(4))

According to Article 5(4) of the FLEGT Regulation, the CAs shall decide on the need for further verification of shipments using a risk-based approach. Provisions to undertake further verification checks on FLEGT licences and FLEGT-licensed shipments, alongside the number of checks undertaken, are set out in Table 3-3. Not all MS have provisions in place to undertake additional verification of either FLEGT licences or physical verification of FLEGT-licensed shipments. Although the number of each additional check increased from 2017 to 2018, the numbers of checks reduced significantly to 2019 (even though there was no concurrent reduction in the number of FLEGT licences received).

Table 3-3 Further verification of FLEGT licences and FLEGT-licensed shipments

| | | 2016 | 2017 | 2018 | 2019 |
|--|------------------|------|-------|-------|------|
| Provisions for additional verification of FLEGT-licences | Number of MS | * | 22 | 21 | 22 |
| Additional checks of FLEGT licences | Number of checks | * | 1,144 | 1,782 | 676 |
| Provisions for additional verification of FLEGT-licensed shipments | Number of MS | 17 | 23 | 22 | 21 |
| Physical checks of FLEGT shipments | Number of checks | 12 | 218 | 265 | 86 |

Notes: *Not reported

3.2.3 Penalties and infringement cases

Provisions for penalties

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 MSs, 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, customs 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 MSs reported that their national legislation allowed for seizing and disposing of timber products found in breach of the Regulation.

Infringement cases (Article 6(1) and 6(2))

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 all relevant shipments from Indonesia were covered by valid FLEGT licences and thus no MSs applied Article 6(1) of the FLEGT Regulation and issued any penalties;
- In 2017, 107 FLEGT licences were not approved across 11 MSs (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 MSs rejected a total of 66 FLEGT licences, with the largest number of rejected licenses, 20, reported by France. Article 6(1) was applied by only by two MSs (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 MSs (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 MSs reported application of Article 6(2), 56 FLEGT licences were rejected and Article 6(1) was applied by two MS.

3.3 EUTR

Implementation of the EUTR in EU MSs and the European Economic Area (Norway, Iceland and Lichtenstein) involved: establishing a national legal framework for application of the EUTR and the designation of CAs to check the implementation by the operators, enforce the Regulation by issuing notices of remedial actions and apply 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 2015 (European Commission, 2016) and biennial (European Commission, 2018) (European Commission, 2020) and annual (European Commission, 2020b) reports. These are in turn informed by underlying analysis of the biannual and annual reports⁴⁴ by the MSs on EUTR application (UNEP-WCMC, 2018) (UNEP-WCMC, 2020) (UNEP-WCMC, 2020e). All information presented in this section is drawn from these sources.

It is noted that Iceland and Lichtenstein have not yet submitted a report on the implementation of the EUTR and as such there is no information on implementation in these countries.

3.3.1 Designation of CAs (Article 7(1))

All EU MSs and EEA countries have designated CAs whose primary task is to implement and enforce the EUTR regulation. Since national inspection systems differ so does the organisation of CAs. In 18 MSs, national CAs have the sole responsibility for checking operators, and for domestic timber this is the case in 11 MS. In 10 MS the responsibility for checking domestic timber operators has been partly or fully delegated to regional CAs, and in 7 MS for imported timber.

The human and financial resources available to CAs varied substantially across MSs (as reported in the 2017-2019 Biennial Report). Resources dedicated to 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 equivalent staff in Italy - however the latter may also include police, customs personal or other supporting staff. Most of the MSs, including major timber importers, have less than 10 FTE available for implementation and enforcement of EUTR. For instance, Belgium,

⁴⁴ As of January 2020, MSs are required to report to the Commission annually

Denmark, Finland, Ireland, Malta, the Netherlands and Belgium 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 nor being linked to the volume of import, however it appears that some countries have extremely limited resources dedicated to implementation and enforcement of the EUTR.

3.3.2 Checks on operators, traders and substantiated concerns (Article 10)

Between 2017 and 2019 MSs carried out 3,976 checks on importing operators (16% more than planned) and 17,280 checks on domestic operators (43 % more than planned) (UNEP-WCMC, 2020). Only a few MSs conducted more checks than anticipated (Denmark, Ireland, Italy and Slovenia). The checks undertaken account for 1% of the 3,016,544 known domestic operators⁴⁵ and 3% of the 134,113 importing operators, approximately⁴⁶. The number of checks seems to have stayed broadly constant from the 2015-17 period (no data is captured in published sources for the 2013-15 period), although the level of checks seems to have reduced slightly to 2019 (comparing annual averages).

Table 3-4 Numbers of checks on operators, traders and substantiated concerns (SCs) (from published Biennial and Annual reports)

| | | 2015 - 17* | 2017 - 19* | 2019** |
|------------------------------------|----------------------|------------|------------|--------|
| Checks on operators | Total | 20,500 | 21,256 | 9,300 |
| | Domestic | 17,700 | 17,280 | 7916 |
| | Importers | 2,800 | 3,976 | 1384 |
| Substantiated concerns - 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 | * |

Notes: No data reported in published reports; The first reporting period covers between March 2015 and March 2017, whereas the second reporting period covers between April 2017 and March 2019; **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 wide variation in the coverage of operators checked across MS: for example, Germany may have checked less than 2% of all importers (Germany estimated having 27,000 importing operators in the period 2017-2019), while Romania checked all importing operators (161 operators in 2017-2019).

For traders, the number of checks performed was broadly constant between the two biennial reporting periods (March 2015 - March 2017, and April 2017 - March 2019), but is seen to increase to the first

⁴⁵ This number is subject to uncertainty due to varying definitions across Member States.

⁴⁶ One check case may include more than one check on the same operator.

annual reporting period (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.

3.3.3 Penalties and infringement cases (Article 19)

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 type of penalty and maximum size varies 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 29 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 MSs (UNEP-WCMC, 2020).

Infringement cases and enforcement actions

For the period 2017-2019, 26 MSs reported a total of 2,273 infringements of the EUTR by operators were identified (UNEP-WCMC, 2020). Only Croatia and Greece reported no infringements based on their checks. A summary of the data presented in published reports is found in In response, 2,450 enforcement actions were taken, the majority (1,665) applied to domestic timber. The level of enforcement actions appears to have reduced more significantly to 2019 (again comparing annual averages). For domestic timber, a range of penalty types were 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 were 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. In the majority of cases, a notice of remedial action was sent, followed by administrative fines.

Table 3-5. The total number of infringements appears to reduce slightly to the 2019 annual period (comparing annual averages over the preceding period).

Most infringements (1,552) related to domestic timber, while 700 infringements were reported for importers (and 21 to unspecified timber) (UNEP-WCMC, 2020). The most common driver for infringements 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. These may suggest re-export of timber as these countries are not generally producers of timber.

Comparing between Table 3-4 and In response, 2,450 enforcement actions were taken, the majority (1,665) applied to domestic timber. The level of enforcement actions appears to have reduced more significantly to 2019 (again comparing annual averages). For domestic timber, a range of penalty types were 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 were 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. In the majority of cases, a notice of remedial action was sent, followed by administrative fines.

Table 3-5, 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 reduced more significantly to 2019 (again comparing annual averages). For domestic timber, a range of penalty types were 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 were 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. In the majority of cases, a notice of remedial action was sent, followed by administrative fines.

Table 3-5 Numbers of infringements, enforcement actions and court cases (from published Biennial and Annual reports)

| | | 2015 - 17*** | 2017 - 19*** | 2019*** |
|---------------------|----------|--------------|--------------|---------|
| Infringements | Total | * | 2,273 | 904 |
| | 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; ***The first reporting period covers between March 2015 and March 2017, whereas the second reporting period covers between April 2017 and March 2019. No explanation about the sharp changes in numbers of infringements and enforcement actions has been included in underlying reporting.

4 Methodology

4.1 Overview

To support the delivery of the Fitness Check, the methodology has closely followed the guidance on undertaking Evaluations and Fitness Checks outlined in the Better Regulation Toolbox. As with an evaluation of a single legal act, the combined Fitness Check of the FLEGT Regulation and EUTR consists of an assessment based on the five key criteria: efficiency, effectiveness, EU added value, coherence and relevance. The Fitness Check considers how the Regulations have performed **individually**, as well as **together** as a complete policy area. It further aims to clarify the differences between the Regulations and focus on potential synergies and/or inefficiencies in the delivery of the linked interventions. The study in support of the Fitness Check was undertaken between May 2020 and April 2021.

4.2 Evaluation questions

The evaluation questions are listed below together with each evaluation criterion. The full evaluation matrix describing the assessment criteria, indicators, data analysis approach, data sources and data collection methods is presented in Annex J. This is based on the sixteen areas for assessment set out in the evaluation roadmap (European Commission, 2020b). A comparison between the matrix and the original assessment areas from the roadmap is set out in Annex I.

4.2.1 *Effectiveness: To what extent do the effects induced by an intervention correspond with its objectives?*

The effectiveness criterion aims to assess the extent to which the objectives of the EUTR and FLEGT Regulation have been achieved, and the factors that may have contributed or hindered progress towards achieving these objectives.

EQ1: To what extent have the objectives of the Regulations been met? And to what extent can the observed effects be credited to the EUTR and FLEGT Regulation?

- a. What has been the effect of the Regulations on illegal logging and associated trade?
- b. What has been the contribution of the EUTR to reducing the quantity of illegally harvested timber and timber products placed on the EU market? What contribution has the FLEGT Regulation had on increasing legal timber and timber products being placed on the internal market?
- c. To what extent has EUTR improved the transparency in the supply chain?
- d. To what extent have the Regulations promoted improved forest governance and legislative change of relevant forest law?

EQ2: What factors have contributed to or hindered their achievement of their objectives?

- a. How effective has MS implementation and enforcement of EUTR been?
 - i. How effective has the establishment of the legislative framework in MSs been?
 - ii. How effective have MSs' EUTR checks been?
 - iii. How effective have EUTR MS penalties been?
- b. To what extent has due diligence under EUTR been implemented effectively by operators?
- c. To what extent has determination of negligible risk under EUTR created challenges for implementation of prohibition?
- d. How are CAs cooperating on EUTR implementation/enforcement?

- e. How are CAs providing technical and other assistance and guidance to operators?
- f. How effective has the implementation of EUTR traceability obligations been?
- g. How effective has the role and functioning of EUTR Monitoring Organisations been?
- h. What progress has been made on the implementation of the VPAs under FLEGT Regulation?
- i. How effective has the implementation of FLEGT Regulation procedures been in partner countries and MSs?
 - i. How effective are the processes and tools put in place by partner countries?
 - ii. How effective have processes and procedures put in place in EU MSs been in achieving EU MS requirements about the operation of the FLEGT Regulation?
 - iii. How effective is enforcement, both in VPA countries and in EU MS?
 - iv. How effective is communication between actors involved in the implementation of the FLEGT Regulation (within MSs, with partner countries, with other stakeholders/duty holders)?
- j. How effective has MS reporting on implementation of EUTR and FLEGT Regulation been?
- k. What has been achieved in terms of building a uniform understanding and awareness of the EUTR and FLEGT Regulation throughout the EU? Which approaches have/have not worked to raise awareness?

EQ3: What have been the unintended/unexpected effects of the intervention, including on trade?

- a. Has trade in illegally sourced timber and timber products shifted to less regulated/sensitive markets (This includes less regulated markets within EU)?
- b. Has there been a shift to non-timber-based products?
- c. Have businesses (esp. SMEs) changed business lines/closed (could also reflect shift of location outside EU to circumvent obligations)?
- d. Do smaller operators have incentive to make changes which do not work towards achieving overall objective?
- e. Have the Regulations influenced other legislation targeted at reducing illegal logging in non-EU jurisdictions?

4.2.2 Efficiency: How economically have the resources used been converted into effects?

The assessment of efficiency compares the inputs used for implementation and compliance with the FLEGT Regulation and EUTR with the outputs produced.

EQ4: To what extent has the intervention been cost-effective? What is the relation between benefits and costs?

- a. What are the costs of the implementation of the EUTR (monetary and non-monetary)? What factors have influenced these costs?
- b. What are the costs of the implementation of the FLEGT Regulation (monetary and non-monetary)? What factors have influenced these costs?
- c. What are the benefits of the Regulations (monetary and non-monetary)? What factors have influenced these benefits?
- d. To what extent are the costs justified and proportionate, given the impact of both Regulations and the benefits they have delivered?

EQ5: How proportionate were the costs of the intervention borne by different stakeholder groups and sizes taking into account the distribution of the associated benefits?

- a. How have the costs of implementing the EUTR varied across different stakeholder groups (split by type and size of actor)? What factors have influenced the distribution of costs? Have the interventions created a “level playing field” for operators?
- b. How have the costs of implementing the FLEGT Regulation varied across different stakeholder groups (split by type and size of actor)? What factors have influenced the distribution of costs?
- c. How have the benefits of the Regulations varied across stakeholder groups (split by type and size of actor)? What factors have influenced the distribution of benefits?
- d. How proportionate are the benefits to costs for each group (split by type and size of actor)?

EQ6: Are there significant differences in the impacts that fall between MSs and non-EU countries in implementation? If there are significant differences in costs (or benefits) between MSs, what is causing them? How do these differences link to the intervention?

- a. How have the costs of EUTR varied across different EUTR MSs and non-EU timber producer/supplier countries? What factors have influenced the distribution of costs? Have the interventions created a “level playing field” for operators?
- b. How have the costs associated with the implementation of the FLEGT Regulation varied across MSs and VPA partner countries? What factors have influenced the distribution of costs?
- c. How have the benefits of the Regulations varied across MSs and other countries? What factors have influenced the distribution of benefits?
- d. How proportionate are the benefits to costs for each MS and non-EU timber producing/supplier countries?

EQ7: Are there opportunities to simplify both Regulations and/or reduce unnecessary regulatory costs without undermining the intended objectives?

4.2.3 Relevance: To what extent is an intervention relevant in respect to needs, problems and issues identified in target groups?

The assessment of relevance determines whether issues targeted by the FLEGT Regulation and EUTR remain a problem (i.e. whether these Regulations continue to address current needs).

EQ8: To what extent is the intervention/initiative still relevant? To what extent do the (original) objectives of the intervention (still) correspond to the needs within the EU?

- a. Does the problem of illegal logging and trade of illegal timber and timber products persist? Is illegal timber still present on the internal market?
- b. To what extent is the current scope of products under EUTR coverage adequate in ensuring that policy objectives are reached?

EQ9: Has the initiative been flexible enough to respond to new issues?

4.2.4 Coherence: To what extent are the elements of the intervention logic complementary, mutually supportive and non-contradictory? To what extent do the objectives and activities support or contradict those of other public interventions?

The assessment of coherence looks at how well different actions work together, and thus points to synergies as well as areas where there are potentially contradictory objectives or approaches that may cause inefficiency. It is important to assess whether EU intervention is coherent internally (EUTR and FLEGT Regulation), as well externally (i.e. with other EU and international actions).

EQ10: To what extent are the Regulations consistent and coherent internally and between themselves?

- a. To what extent is the EUTR internally coherent?
- b. To what extent are the FLEGT Regulation and FLEGT Regulation Voluntary Partnership Agreements internally coherent?
- c. To what extent are the Regulations coherent with one another?

EQ11: To what extent are the Regulations coherent with wider EU policy objectives?

- a. To what extent is the initiative coherent with other EU environmental policy objectives, in particular biodiversity, deforestation, agriculture and environmental crime?
- b. To what extent is the initiative coherent with wider EU policy, including customs, trade?

EQ12: How does the intervention fit with the international regulatory frameworks, including Conventions, in the area of timber?

4.2.5 EU Added Value: To what extent is the value of EU intervention additional to the value that would have resulted from interventions at regional or national levels?

The EU added value criterion brings together the findings from all other evaluation criteria and focusses on the benefits and changes resulting from the EUTR and FLEGT Regulation that are additional to those that would otherwise have resulted from action at local, regional or national level. The key issue in answering these groups of questions is establishing what the counterfactual would have been, and what the impacts and results of this counterfactual would have been.

EQ13: To what degree have FLEGT Regulation and EUTR enabled MSs to take successful action to improve beyond what would have been possible without EU action?

4.3 Data sources and analytical support documents

4.3.1 Desk research

Desk research has comprised two strands: literature/evidence assessment and some quantitative assessment within selected questions, for example related to trends in deforestation and trade. Further detail on the approaches and methodology underpinning the quantitative assessment can be found in Annexes A, B, and C where this analysis is presented. Extensive literature review has been conducted to inform the assessment based on the evaluation criteria. It involved an in-depth review of a range of sources, including: references in the terms of reference for this support study; from current work being undertaken by project partners; from reports and other evidence signposted by EC; 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 sources have been reviewed in detail, providing evidence related to all of the evaluation criteria. These are listed in Annex O - Bibliography.

4.3.2 Field research - stakeholder consultation

A stakeholder consultation strategy was developed at the outset of the project (see Annex N). Following the strategy, a variety of stakeholder consultation methods were used to gather additional evidence and fill in data gaps from the desk research. The main consultation activities were the following:

- Feedback received on the Fitness Check roadmap;
- Online Public Consultation (OPC);
- Targeted stakeholder engagement through interviews;

- Targeted stakeholder engagement through stakeholder meetings.

A summary of the stakeholder consultation activities and findings is presented in the Consultation Synopsis report developed in line with the Better Regulation Guidelines and submitted to the European Commission on 15 February 2021. This is presented in Annex K to this report.

Feedback on the evaluation roadmap

The European Commission's roadmap on illegal logging and evaluation of EU rules⁴⁷ was open to public consultation between 31 January 2020 and 28 February 2020. The document set out the understanding and scope for the Fitness Check to examine how the existing Regulations have worked globally, how effective, efficient, relevant, and consistent they are, and whether they usefully supplement national efforts. A total of 38 comments were received through the consultation. The feedback was analysed and mapped to relevant evaluation topics and reflected within our analysis in this report.

Online Public Consultation (OPC)

An OPC is a requirement of the Better Regulation Guidelines. It offers an opportunity for any interested individual from any type of stakeholder group to give their opinion for the assessment of the evaluation criteria. The OPC for the Fitness Check was launched on the Commission's website⁴⁸ on 3 September 2020. It stayed open for 12 weeks and was concluded on 26 November 2020. The questionnaire was published in all 23 EU official languages ensuring greater accessibility. It consists of two main parts: one addressed to the general public and one to expert stakeholders. There were 175 responses to the OPC, alongside 29 position papers. The results of the OPC have been used within the analysis in this report. A detailed OPC analysis was submitted to the European Commission as an Annex to the Consultation Synopsis report on 15 February 2021. The evidence from the OPC has been used in this report.

Targeted stakeholder engagement: interviews

As a part of the targeted consultation, 14 interviews were undertaken. Of these, eight were one-to-one interviews, and six were group interviews with between three and seven participants. Altogether 37 stakeholders were interviewed. The targeted interviews covered a broad range of stakeholders including: CAs, NGOs, industry, exporting countries and the European Commission. The interview questionnaires included questions for all five evaluation criteria underpinning the Fitness Check (effectiveness, efficiency, coherence, relevance, EU-added value) which were tweaked depending on the expertise of the stakeholders. Feedback was collected regarding both the EUTR and FLEGT Regulation. Stakeholders were given the opportunity to check and approve the notes and submit additional information. Where agreed by stakeholders, the notes from the meetings would be shared with the European Commission. Only two stakeholders requested that their views are not shared with the European Commission. Further information regarding the targeted consultation was presented as an Annex to the Consultation Synopsis report on 15 February 2021.

Stakeholder meetings

The first stakeholder workshop supporting the Fitness Check study was organised as a virtual event, held on 18th September 2020. The workshop formed part of a EUTR/FLEGT Regulation Expert Group meeting, where progress with the study was also presented. The aim of the workshop was to assist the

⁴⁷ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/11630-Illegal-logging-evaluation-of-EU-rules-fitness-check->

⁴⁸ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/11630-Illegal-logging-evaluation-of-EU-rules-fitness-check-/public-consultation>

project team in gathering evidence and to discuss some in-depth questions with the MSs' CAs. Three topics were discussed:

- Definition and interpretation of 'negligible risk' and its impact on enforcement of the EUTR;
- Challenges to CAs around implementation and enforcement of EUTR;
- Progress and process of putting VPAs in place.

A second stakeholder workshop took place on Thursday 10th December 2020. This was held virtually to coincide with the Multi-Stakeholder Platform on Protecting and Restoring the World's Forests, including the EUTR/FLEGT CAs, NGOs, industry, monitoring organisations, academics and certification bodies.

Participants were split into breakout groups and three topics were discussed with each group in turn:

- DD as a concept and information gathering (EUTR);
- Effectiveness, enforcement and traceability (EUTR);
- FLEGT Regulation and contribution of VPAs to EUTR implementation.;

The agenda and notes of the webinars are presented as Annexes to the Synopsis Report.

4.3.3 Application of case studies

A case study approach was used to frame the analysis for some sub-questions. Wherever possible, the scope of the analysis was kept broad not refined. However, given the global scope of the analysis, and the limitations with regard to the data (e.g. on levels of illegal logging, see Section 4.4) in some cases it was necessary to adopt a case study approach as a greater level of targeted research and analysis was required. Where this approach was applied, case studies were selected to cover three categories:

- A case study to illustrate the operation of FLEGT Regulation licensing;
- A case study to illustrate a country going through the VPA process;
- A case study to determine how the VPA processes contribute to the EUTR implementation (or not).

The selection of case studies was determined based on a number of criteria:

- Importance of country as source for timber and timber products exported to the EU;
- Whether there are unique or important lessons to be learned from the specific country;
- Information/data availability;
- Existence and willingness of stakeholders in those countries to engage in the Fitness Check.

The core selection of case study countries is presented in

Table 4-1. For some sub-questions, the analysis has gone further to explore and analyse trends in other specific countries, where it was considered these could offer interesting insights and/or this was possible under the scope of the Fitness Check. The analysis of the case study countries is presented across the evaluation questions answers in Section 5 and the supporting technical annexes.

Table 4-1 Selection of core case studies

| Category | Case study country | Rationale |
|--|--------------------|---|
| A case study to illustrate the operation of FLEGT Regulation licensing | Indonesia | Only country issuing FLEGT licences |
| A case study to illustrate a country going through the VPA implementation process | Ghana | VPA has entered into force and has an important volume of trade with the EU, but 10 years after the conclusion has not yet been declared ready to begin licensing |
| | Cameroon | VPA has entered into force and key exporter to some MSs, but after many years negotiating the VPA there are indications that the extent of illegal logging activities in the country has not been reduced |
| A case study to evaluate, in countries not engaged in VPA processes, how the EUTR implementation contributes to relevant developments | Ukraine | Is one of the top 5 exporters to the EU. However, Ukraine has not been involved in the VPA process |
| | Myanmar | Non-VPA country, where the single state enterprise responsible for exports has created issues for operators to access information required for their DD Systems |

4.3.4 Responding to the evaluation questions

When responding to the evaluation questions presented in section 5, the evidence from literature review, consultation and the authors' own analysis has been triangulated where possible. This allows validation of data through cross verification from two or more sources. Where different sources led to different conclusions, possible reasons behind the differences have been reported. In some cases, triangulation of evidence has not been possible because of limited evidence available from one or more sources (see Section 4.4 below).

4.4 Limitations - robustness of findings

There were a number of limitations and data gaps encountered during the Fitness Check study. A detailed account of these, including the mitigation actions taken by the project team and their overall impacts to the study have been included in Annex M. The key limitations were:

- The impact of the EUTR and FLEGT Regulation on illegal logging and import of illegal timber to the EU are uncertain due to a lack of robust and comprehensive data. This is due to the fact that measuring an illegal activity is inherently challenging and therefore information needs to be derived indirectly. Therefore, the study has collated the available data around levels of illegal logging, alongside linked data sets (such as ILAT and Preferred by Nature risk scores). In addition, the study has also analysed alternative but linked metrics: trade data flows and deforestation rates. The study has also gathered stakeholder opinion through different channels and has triangulated across evidence sources to draw conclusions where possible, whilst also clearly reflecting on the strength of conclusions made.
- There is limited data on costs of implementation available from the literature. Hence the study sought to complement data from the literature with evidence from stakeholder consultation as far as possible. All cost figures and conclusions drawn from this are clearly presented alongside appropriate caveats, including regarding coverage.

- Some impacts cannot be quantified, let alone monetized and this has limited the direct comparison of benefits to costs. Quantitative data, where available, has been complemented with qualitative evidence and stakeholder sentiment to develop a narrative around the comparison of costs to benefits. The analysis also presents alternative, simplified metrics to help balance costs and benefits, albeit with appropriate caveats attached.
- Evidence provided by stakeholders can be biased and based on their subjective opinion. The study has sought to mitigate this risk through considered design of the stakeholder engagement activities (e.g. qualifying questions in the OPC, selection of stakeholders for interview). The analysis has reflected on the relative role of stakeholders with respect to the Regulations when drawing on evidence provided, which has been triangulated against other sources.
- By creating two baselines to assess the policies individually, this potentially challenges the ability to draw conclusions around the combined effects. Given the nature of the assessment is based on case studies and is predominantly qualitative (rather than a modelled, quantitative analysis), it has still been possible to draw conclusions around the combined effects whilst avoiding issues around overlaps and interactions.

It was also noted that due to the broad scope of the EUTR and FLEGT Regulation, it was not possible to investigate all aspects and effects in all countries, sectors, and products in detail. Therefore, in some instances the evaluation of certain questions considers specific case studies rather than a complete geographic, sector and product wide assessment.

Sources of evidence considered are given for each evaluation question and key data gaps and limitations are flagged. **Despite these limitations, the triangulation of different data sources has helped to elaborate the conclusions drawn from the evidence base.** In some cases, even after triangulation, these challenges have still placed a limit on the certainty of conclusions drawn from the analysis (i.e. regarding effects on illegal logging and illegal timber entering the EU, and on costs). **However, this has not fundamentally challenged the deduction of broader recommendations to support the parallel IA.**

5 Answers to evaluation questions

5.1 Effectiveness

5.1.1 Question 1: To what extent have the objectives of the Regulations been met? And to what extent can the observed effects be credited to the EUTR and FLEGT Regulation?

| Key findings |
|--|
| <p>EUTR:</p> <ul style="list-style-type: none"> 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; Comparing trade trends of wood-based to similar non-wood-based products (e.g. furniture), there has been a slower trade increase rate for EUTR-regulated products. This indicates that EUTR may have rendered the import of illegally harvested timber-based products more difficult (i.e. led to a greater lag in recovery of import volumes); EU timber imports grew more slowly from countries with a lower-risk profile relative to all imports of EUTR-regulated products over the period since implementation. The implementation of the EUTR does not seem to coincide with a shift towards lower-risk export markets (although this does not exclude the potential shift to using more transparent exporters within the same trade partner countries). Likewise, intra-EU trade (potentially lower-risk) has also grown more slowly than all extra-EU imports. That said, difference-in-difference analysis of trade data (which can more completely control for broader market influences) tentatively concluded that the EUTR may have led to a reduction in imports of illegally harvested timber to the EU of between 12-29% (albeit based on a relatively small comparator control group). Looking in specific in the development of the trade of high-risk products such as plywood and veneer, trade with higher risk countries has increased at a considerably higher pace than the relevant trade with lower risk countries; There is no evidence that illegal logging activities or deforestation has been reduced in partner countries as a result of the implementation of the EUTR; Instead, a reprioritisation of trade of illegally harvested timber products towards countries considered to have more limited or no timber legality checks (e.g. China or Vietnam) has been seen; The EUTR has led to significant improvement in the access to information for operators and the transparency of the supply chain, mainly through direct engagement from the European Commission with high-risk countries. Nevertheless, challenges remain which could be linked to the levels of corruption in exporting countries and insufficient incentive for operators to import from more transparent countries. |
| <p>FLEGT Regulation:</p> <ul style="list-style-type: none"> There is mixed evidence regarding the impact of the FLEGT Regulation on illegal logging and the import of illegally harvested timber to the EU market, with both positive and negative signals; Indonesia, is -up to present- the only country issuing FLEGT licences, commencing the flow of licenced legal timber to the EU. Since licencing commenced, and due to its implementation and the effect of relevant preparatory actions, EU-imports from Indonesia have increased, reversing a previous trend of decreasing trade volumes, albeit at a slower rate than all timber imports to the EU. Crucially, the limited numbers of relevant trade partners which have engaged in VPAs in relation to the total trade volume of relevant products (both considering total imports and imports from high-risk |

Key findings

countries) has limited its overall effectiveness, as only a relatively small part of the EU wood-based product imports originate from countries covered by VPAs (9% of total import value). The portion of EU imports from countries operating a TLAS (Indonesia) is even smaller (3%);

- Furthermore, in Indonesia the full implementation of one VPA to the point of operating a TLAS, including licensing has resulted in an improvement in the situation regarding illegal logging, though it should be taken into account that prior to engaging in the VPA process, Indonesia was already developing its own timber legality assurance system. This development and could be linked to a reduction of primary forest deforestation rates, although deforestation is driven also by factors beyond timber production reducing the FLEGT Regulation impact on overall deforestation;
- There is some evidence (stakeholders, selected reports) of a reduction in illegal logging activities in countries engaged in VPAs. But this evidence is predominantly based on stakeholder sentiment. VPA negotiations and/or implementation on the other hand have not resulted in a reduced risk profile for illegal logging for most VPA countries. Further, deforestation⁴⁹ appears to be continuing apace;
- Most VPA countries have substituted part of their exports to the EU with exports to countries, partly due to shifting trader patterns but also due to less strict enforcement regimes (e.g. China). The availability of alternative markets to absorb illegally harvested timber, and the lack of significant positive impacts on deforestation in VPA countries highlight the inability of the VPA process on its own to reduce illegal logging activities, prior to setting up a functioning TLAS. The reduced importance of the EU as trade partner over time may have impacted its negotiating position in concluding VPAs. Notably, some of the largest EU trade partners are not engaged in VPA negotiations/agreements even though they are considered high-risk countries for illegal logging activities and imports of illegally harvested timber;
- A key benefit of the VPA process has been the significant achievements in stakeholder engagement and legislative change in VPA countries. However, major governance challenges remain. For instance, only Indonesia is issuing licences and only Indonesia, Ghana and Vietnam have developed a TLAS, with the latter two not yet operational. Furthermore, many VPA countries still have high corruption indexes which indicate that corruption might be hampering the transparency of the supply chain.

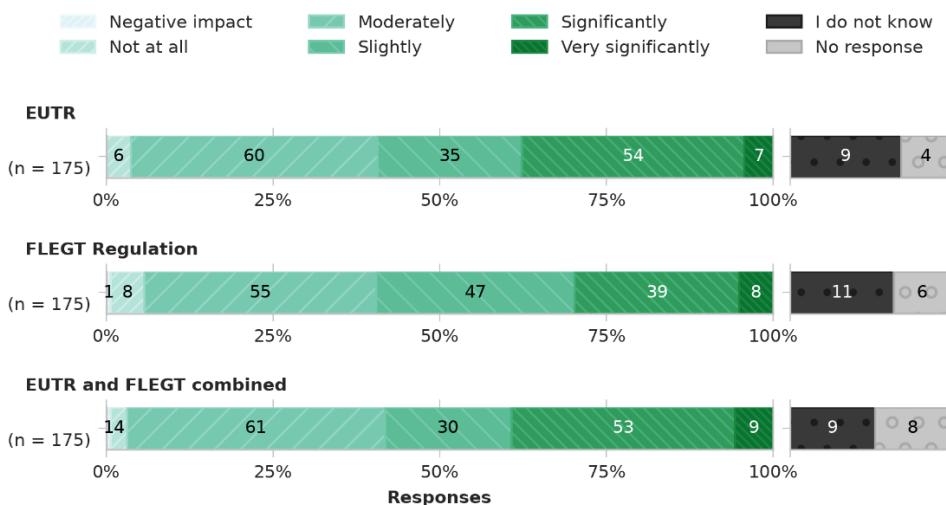
a. What has been the effect of Regulations on illegal logging and associated trade?**EUTR**

The EUTR entered into force in 2013 and provides for minimising the risk of placing illegally harvested timber on the EU market. The EUTR is therefore expected to halt the trade of illegally harvested timber and timber products and eventually result in a reduction of the incentive for illegal logging in the EU as well as in EU trade partner countries. A total of 63 out of 175 respondents to the OPC⁵⁰ 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. More than half of the respondents (95 out of 175) consider it had a moderate or slight impact while only 6 see it as having no impact at all (see Figure 5-1).

⁴⁹ Which can be attributed to both legal and illegal logging activities

⁵⁰ The OPC findings and participating stakeholders are presented in detail in Annex K

Figure 5-1: 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)



Although these point to an at least moderately effective instrument to achieve the objective of reducing illegal logging, it is important to verify whether the stricter requirements on checking timber legality, brought in by EUTR, have led EU operators to source lower-risk timber products than what would have been their usual practice. This involves assessing available trade data to try and understand whether EU operators have turned to supplying timber-based products preferring lower-risk species, from lower-risk countries and suppliers. For this analysis, trade data have been processed corresponding to the product scope as set in the EUTR, involving codes from the Harmonized System (HS) for classifying goods Chapters 44 (Wood and Articles of Wood and Wood Charcoal), 47 (Pulp of wood or of other fibrous cellulosic material), 48 (Paper and Paperboard Articles of Paper Pulp and of Paper or of Paperboard) and 94 (Furniture).

Box 5-1 Trade analysis limitations

Trade analysis limitations

As one of the objectives of the EUTR and FLEGT regulations is to minimize illegal timber harvesting activities and the trade of associated products we rely on trade data to identify changes in the level of the trade of timber products as a proxy to the impact of the specific regulations in the trade of illegal products. This is based on the assumption that an effective application of the EUTR leads to an increased requirement to assure the legality of timber placed in the EU market resulting in increased trade with lower-risk countries.

This analysis is bound by a number of limitations. First, that a shift to lower risk countries is not always an available option as there are geographical limitation to the availability of specific products in which case, a shift to lower-risk suppliers would be the way for operators to comply with the DD System requirements. Such shifts in operators, occurring within the same group of countries (i.e. higher-risk) would not be possible to capture within the trade analysis and is thus a limitation of our approach.

Another limitation is the fact that within the EUTR-regulated list of products presented in the trade statistics of each country, not all timber products present similar risks of being illegally harvested. A more nuanced approach forward would be further to the identification of high-risk products to distinguish high-risk species and high-risk products. When aiming to use **high-risk species** as a means to identify illegally harvested timber, a **first issue** is that the illegality of timber harvesting is not necessarily linked to the species, but is also related to the specific context of timber harvesting, and in specific the origin area of the harvest, the legality of the concession,

observance of timber-harvesting rules etc. These can be more impactful determinants of legality than the tree species themselves so that timber products in one country harvested in specific conditions could be legal while the same type of products originating from another operators could be illegal. Also, there is no global list of high-risk species that can be unconditionally used. Existing lists contain thousands of species (Silk, et al., 2015) (Mark., Newton, , Oldfield, & Rivers, 2014) which would be difficult to trace down to specific HS codes where they are usually treated at an aggregate level **within specific product types** at best within broader product categories such as “coniferous”, “tropical wood” or “other”.

Looking further into the risk profile of specific product categories, the trade of plywood products seems to be more infested with illegally harvested timber products, when compared to that of roundwood or lumber. However, illegal practices are far from absent from other product categories, so singling out the trade of plywood products would not provide a global understanding especially as it seems that the country of origin is a more important factor for illegality of the products as witnessed by the greater differentiations in illegality estimations based on country of origin rather than type of product concerned (CIFOR, 2021).

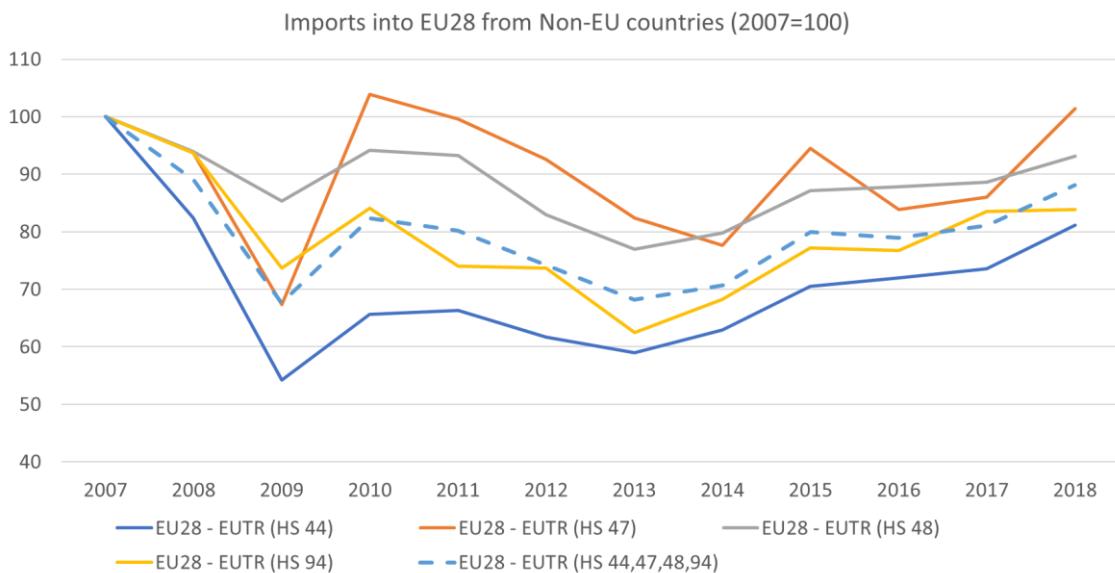
When analysing the trade data, it is important to consider trade shifts, where high risk countries export to countries with less strict requirements, thus leading to no obvious impact on illegal logging. When comparing the Eurostat trade data on imports from low-risk⁵¹ countries (see Table C-6 in Annex C), it can be seen that the growth rate of the value of imports from this set of countries has, since the introduction of EUTR in 2013, risen less sharply than the overall imports of EUTR-regulated products (see Table C-4 in Annex C and Figure 5-2 below)⁵². In particular, EU imports of the EUTR product scope from low risk countries have risen by 19% between 2013 and 2018, compared to a 29% increase for total EU imports of the same period. In comparison, imports from higher-risk countries in the same period have increased by 44% (see Table C-7 in Annex C).

These data indicate that imports from low-risk countries have increased more slowly than imports from high-risk countries, providing no apparent signal that the EUTR has been successful in reducing trade of illegally harvested timber. However, it is possible that in high-risk countries, products from legally sourced timber are prioritised for exports to the EU whereas illegally harvested timber might be exported to third countries. Such an effect would not be possible to capture by the trade analysis. An analysis of the information received through stakeholder engagement, both through the OPC and the targeted interviews, has not provided any further evidence of this possible effect for exporters. However, there has been some evidence from consultations with NGO's that that some small operators have stopped importing directly from high risk countries and source from the bigger companies within Europe now.

⁵¹ A set of 21 low-risk countries based on the ILAT risk scoring categories (Forest Trends, n.d.)

⁵² A comparison of EU imports from high and low risk countries is also provided in the next section as a response to Question 1b.

Figure 5-2 Development of the value of EU28 imports of EUTR-regulated products from all non-EU countries compared to 2007 (Data series indexed to 2007=100) (source: Eurostat ext_go_detail)



To assess the impact on illegal logging, the analysis has also considered trends in deforestation. It is important to note that there are several drivers of deforestation, with the main driver being the expansion of agriculture (estimated to have accounted for 73% of deforestation over 2000-2010 period), followed by mining, infrastructure development, urban expansion, logging, and land speculation (FAO, 2020). Furthermore, the importance of each driver is location specific and differs between regions and within continents. This means drawing conclusions regarding the link between EUTR and deforestation trends is problematic. Further to this, there will be additional factors which impact deforestation and illegal logging levels separate to the EUTR. For example, the implementation of sustainable forest practices has been a long term aim prior to the introduction of the EUTR, particularly within the EU (European Commission, 2004). Measures such as these will interact with the EUTR, increasing the challenge of isolating the impact of the Regulation. Stakeholder feedback from forest owners has suggested that although achievements had been made through reduced illegal logging levels, this was not specifically a success of the EUTR. Looking at forest cover data from some of the key EU exporter countries and noting that illegal logging for timber products is not the only factor causing deforestation as other economic activities and broader economic pressures may play a significant role. Also, it is important to acknowledge the wider policy context that along with the EUTR can be seen to lead to improvements in this area.

In specific, looking in the case of **Ukraine**, a steady reforestation rate can be observed ever since 1992 prior to the entry in force of the EUTR or other identified government measures (see case study in Annex B). This reforestation rate seems to flatten out in the years between 2000 and 2010 before picking up again from 2011 onward. Relevant literature links the reinvigorated rate of reforestation to the introduction of the national forest code and the forest management (Lopatin, Marttila, Sikanen, & Eklund, 2011) (Ukraine Government, 2012). In specific, the forest code place a requirement on commercial timber traders to submit a clear scope of activities (including plans for forest regeneration) in logging permit applications (World Bank, 2020). Under the code, a framework has also been introduced which has supported greater responsibilities for forest management for regional authorities (World Bank, 2020). Further to this, a demand by timber operators for their products to be certified through FSC accredited bodies has resulted in approximately half of Ukraine's forest to be FSC certified in 2019, a demand which has been supported by additional legislative changes. The increase in forest

area FSC certified has reportedly been driven by the introduction of the EUTR and the requirement to assure timber legality combined with the important position of the EU as a trade partner to Ukraine. The deforestation rates in Ukraine have been examined in greater detail in Annex B. Nevertheless, quantitative data on the volume of illegal logging in the country point to a steady volume of 1.0-1.25 million m³ annually in the period 2010-2018 (EU FLEGT Facility, 2019) suggesting there has not been any significant change in illegal logging levels since 2010, although it is important to keep in mind the disparities between different estimates.

In Russia the trend of slow reforestation between 2000 and 2010 has been brought to relative halt since (see case study on Russia in Annex B). The 2018 EUTR implementation guidance issued for the country identified high deforestation rates in the country in the previous years while it also identified that 20% of logging activities nationwide and 80% of those performed in the Russian Far East are linked to illegal timber harvesting indicating that Russian wood remains risky, due to widespread corruption in the country (UN-WCMC, 2018). As an EIA report highlights (EIA, 2013), much of the timber exports of the country, especially from eastern Russia is exported to China and therefore the EUTR can have little impact potential on the overall forest management practices. The literature supports the view that it is NGO's which should be credited with trying to reduce illegal logging activity within Russia (FAO, 2020). One key example is their work highlighting the limitations of the 'The Russia Forest Act' (FAO, 2007) which the FSC looked to address through a new FSC certification standard for Russian timber (FSC-STD-RUS-V6-1-2012). The impacts of the new FSC certification standard for Russian timber has been challenging to quantify. Annex A has provided a further case study on illegal logging levels within Russia, and the continued prevalence of illegal activity as identified within the recent Taiga King report (EarthSight, 2021).

The EUTR also applies to timber and timber products produced in the EU and could also deliver benefits here. In countries where there is greater risk of illegal logging (Romania and Bulgaria), there appears to have been an improvement in forest area over the period of implementation (see Annex B). But the EUTR is not expected to bring a significant impact as EU operators abide by already existing legislation in EU MSs and widely implement sustainable forest management practices (opinion shared by EU Forest Owners through interview). Although no information has been found on the effects attributed to sustainable forest management practices, their existence means it is problematic to attribute any benefits to the EUTR.

The analysis of specific case studies with key exporter countries indicates that there is no strong evidence that the EUTR was specifically led to improvements relating to the legality of logging activities, although in the case of Ukraine there are also reports indicating an improvement in timber legality but this can be also attributed to broader policy developments as well as to the large share of timber product exports from this country targeting the EU market. Overall, there is a remaining high risk of illegality in the examined trade partner countries, despite measures that might have been taken to mitigate this risk.

FLEGT Regulation

To date out of 15 countries engaged in VPAs, only 7 have been signed a VPA and of these, only Indonesia is issuing FLEGT licences and operating a full TLAS for timber products. This provides a rather limited coverage of EU timber product imports as VPA countries represent 9,1% of total EU timber imports and 20% of tropical timber product imports. However, as not all of the VPA countries have

reached the point of full TLAS operation, it cannot be expected that the intended effects of FLEGT would apply to all of them in full. Expansion of agricultural land, urban development and other pressures are also significant contributors to deforestation and complicate the causal link between VPAs and deforestation. Nevertheless, there is the expectation that, as countries advance into implementing the VPA and improving their forest governance, there would be a drop in illegal harvesting and associated trade.

The majority of respondents to the OPC (102 out of 175) identify FLEGT as an instrument slightly or moderately contributing to reducing illegal logging and associate trade (as seen in Figure 5-1). There is also a significant portion of respondents (47 out of 175) that consider it has contributed either significantly or very significantly to this target, while only a small minority (9 out of 175) think it has had either a negative or no impact.

This assumption is however not corroborated by data, as most of the countries implementing and negotiating FLEGT VPAs continue to show relatively high and constant levels of illegal logging activity (see Annex A, Table A-1). In specific VPA signatory countries are still ranked as having high risk profiles regarding this matter (Table 5-1).

Table 5-1 Risk profile scoring of VPA signatory countries (sources varied, presented in table)

| VPA countries (date of entry into force) | Timber illegality risk (Preferred by Nature, 2020) ⁵³ | ILAT ⁵⁴ Risk Score & Category (Forest Trends, n.d.) | Quantitative assessment of illegal logging (Chatham House, 2015) |
|---|--|--|--|
| Cameroon (2011) | 22/100 - high risk | 80.8 (Higher Risk) | 65% of total production (27% of total exports) |
| Central African Republic (2012) | 22/100 - high risk | 84.1 (Higher Risk) | Not available |
| Republic of the Congo (2013) | No Preferred by Nature indicator - high risk according to the US EIA | 86.6 (Higher Risk & Conflict State (World Bank, 2020)) | 70% of total production (66% of total exports) |
| Ghana (2009) | 35/100 - relatively high risk | 55.9 (Higher Risk) | 70% of total production (28% of total exports) |
| Indonesia (2014) - FLEGT licensing (2016) | Some risk as some illegal practices have been identified | 51.5 (Higher Risk) | 60% of total production (63% of all exports) |
| Liberia (2013) | 22/100 - high risk | 76.5 (Higher Risk & Conflict State) | Not available |
| Vietnam (2019) | 31/100 - relatively high risk | 64.5 (Higher Risk) | Not available (14% of total exports) |

An initial conclusion from the above findings is that despite the lack of clear and consistent data on illegal logging, this remains an important issue in all of the VPA countries. In the case of VPA countries, such as Cameroon or Ghana, illegal logging activities appear to have even increased after the start of the implementation of the VPA (see Table A-1) despite the expectation that the VPA process would lead to opposite examples. Table 5-1 shows also that wood products from illegally harvested timber continue to represent a high proportion of exports.

⁵³ Lower scores indicate higher illegality risk

⁵⁴ Illegal Logging and Associated Trade -higher scores indicate higher illegality risks

Annex A presents further information on VPA countries proving that there is sustained reporting of the continuation of illegal logging activities after the entry into force of VPAs. Although in some countries the VPA process has resulted in measures being introduced to curb illegal logging (e.g. product legality certification in Congo and Liberia's new Code of Harvesting Practices etc.), there is no indication that illegal logging activities are reduced as a result of the negotiation or implementation of VPAs. In a number of VPA countries, fraudulent activities, corruption, insufficiently effective measures and weak law enforcement (also as a result of lack of capacity) result in illegalities throughout the supply chain and sustained illegal logging activities⁵⁵.

Subsequently, deforestation (both legal and illegal) also remains an issue of concern in VPA countries and there is no evidence that the VPAs have had a significant impact in combatting this. Examining deforestation rates in selected VPA countries (see Annex B) can hint to conclusions regarding the impacts of FLEGT Regulation. Specifically, while the introduction of VPAs does not seem to be strongly correlated with a pronounced change in the forest cover trends, broader policy initiatives can be seen to lead to improvements in both the case of Indonesia and Ghana (see Annex B). However, any correlation of between forest governance measures and deforestation should account that illegal logging for timber products is not the only factor causing deforestation. In the case of **Ghana**, there is no evidence that the VPA led to a change in the rate of deforestation, which has begun increasing again in recent years after a period of stabilisation following the signing of the signature of the VPA.

The **Indonesian TLAS** is a central component of the VPA, helping to ensure compliance with the agreement and improved forest management across a range of criteria, and is considered one of the key systems to curb illegal logging and promote legal timber (Sucofindo). The establishment of the TLAS is considered to represent a new method to tackling illegal logging in Indonesia, with several new approaches introduced. One of key differences is the switch in responsibility for enforcement away from the Indonesian government and towards third parties, in an effort to improve international credibility through reduced opportunities for possible corruption (Stone et Cashore, 2014).

The full implementation of the Indonesian TLAS has improved the situation regarding illegal logging activities, but although there has been some notable success, there are still reports of some fraudulent practices taking place after the introduction of the scheme. Since its establishment two periodic reviews have been undertaken of the system, with a third periodic review due to be published in 2021. Although neither review has a strong focus on illegal logging, information from the second review (Profundo, 2019) has shown that there remains evidence of illegal logging within Indonesia, in particular in the West Papau province, with a large scale timber smuggling operation from Papau to across Indonesia uncovered in 2018. These practices are related to governance issues linked to law enforcement and in particular regarding to the implementation its SVLK system (Fern, 2017) as timber certified as legal has been found to certify illegal forest clearing, allowing such products to enter the supply chain (JPIK and EIA, 2017). Other fraudulent practices identified include that of renting legality certificates to export timber and timber products in order to bypass legality verification and avoid the costs of acquiring official legality certificates (Acheampong & Maryudi, 2020). However, independent observation by CSOs have been evidenced as playing an important role in reducing corruption in the country (particularly following VPA ratification) (Cerutti P. O., et al., 2020). The continued prevalence of illegal activity has highlighted there is a role to play for independent observers with respect to

⁵⁵ As presented in Annex A regarding the illegal logging activities in individual countries.

strengthening verification and monitoring (Profundo, 2019), to help support the work Indonesian agencies.

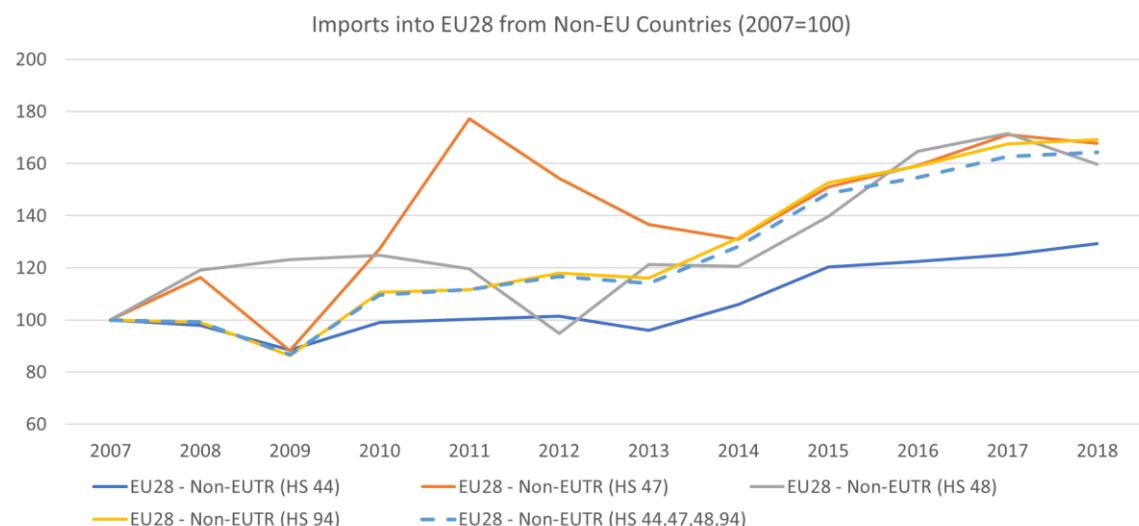
As a result, the TLAS implementation could be linked to a reduction of deforestation rates as primary forest loss in the country has progressively and significantly decreased since the entry into force of the TLAS in 2016 (Global Forest Watch, 2019). This impact should however not be considered in isolation from the country's overall trend of declining deforestation rates initiated by earlier actions to ensure timber legality in the country as even prior to signing the VPA, there were already plans to establish a VPA (EU FLEGT Facility, 2019). While there is an identified reduction in loss of primary forests in the country, UN-FAO data indicate that overall deforestation rates in the country seem to have increased in the last decade mainly as a result of the loss of forest areas designated as production forests as cultivations have increased in the same period (CIFOR, 2015) proving that combating deforestation needs to be addressed in a broader scope and not limited to timber production.

b. What has been the contribution of the EUTR to reducing the quantity of illegally harvested timber and timber products placed on the EU market? What contribution has FLEGT Regulation had on increasing legal timber and timber products being placed on the internal market?

EUTR

As seen earlier in Figure 5-2, the overall imports of EUTR-regulated products have increased since the adoption of the regulation in 2013. However, looking at the long-term trend, this increase has not reached the pre-2008 trade levels⁵⁶ for most of the product categories. Acknowledging the fact that trade trends of different product categories are affected by different factors and may follow different trajectories, we compare the performance of EUTR-regulated products with the trade of other products of the same HS Chapters (Chapters 44 Charcoal, 47 and 48 codes not regulated by EUTR covering bamboo and recovered materials) or to other furniture products (remaining Chapter 94). In doing so it is evident that the trade of these products has increased more steeply than the EUTR-regulated ones. This may provide a first indication of a potential EUTR contribution to reducing the imports of wood-based products of high illegality risk (see Figure 5-3).

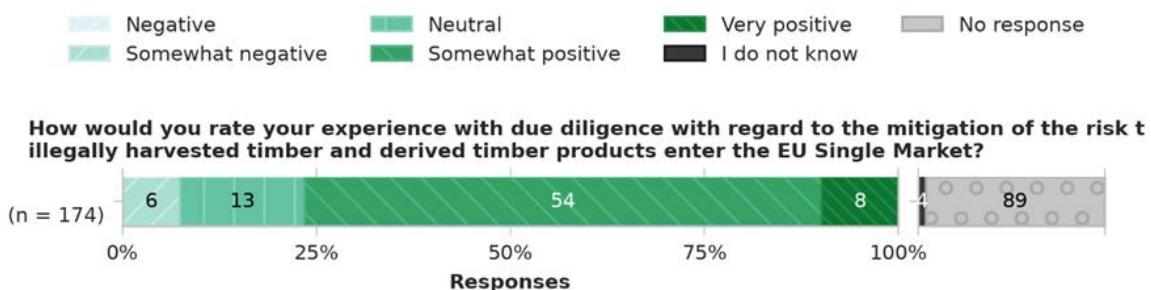
Figure 5-3 Development of value of EU28 imports of non-EUTR-regulated products compared to 2007 (Data series indexed to 2007=100) (source: Eurostat ext_go_detail)



⁵⁶ As in 2008-2009 a dip trade volumes is identified and linked to the economic crisis.

Experts responding to the OPC seemed to converge on the view that EUTR has been successful in curbing the placement of illegally harvested timber products in the EU market. As seen in Figure 5-4, while approximately half of the respondents (93 out of 174) did not express a view in this respect, three quarters of those expressing a view on the topic (62 out of 81) consider that the impact of the DD obligation in this respect has been either somewhat or very positive. From the above, we could conclude that the volume of illegally harvested timber products placed in the EU market has declined as a result of EUTR, as a result of a potential “reprioritisation” of trade destinations for illegally harvested timber from third countries.

Figure 5-4: Feedback to the OPC regarding the contribution of the DD obligation in preventing the placement of illegally harvested timber and derived products in the EU Single Market (source: OPC survey)



Aligned with this, a report (TEREA; S-FOR-S; Topperspective, 2016) claims that there has been an overall decline in the EU’s imports of illegally harvested timber products. This decline in illegal timber imports to the EU is likely to be attributable to several factors. In addition to TPPPs (Timber Public Procurement Policies) and the increased prices achieved in 3rd countries, those factors include also some of the probable EUTR impacts:

- Perceived risk leading to substitution by timber of other (legally harvested) species or other materials; and
- Corporate social responsibility policies.

In line with this finding on reprioritisation of exports, is the fact that the EU28 has, over recent years, lost significance as a trade partner for timber product exporting countries and a consequent reduction in influence over the timber production process. China has recently developed to a more important trade partner for third countries than the EU (as seen in [Error! Reference source not found.](#)).

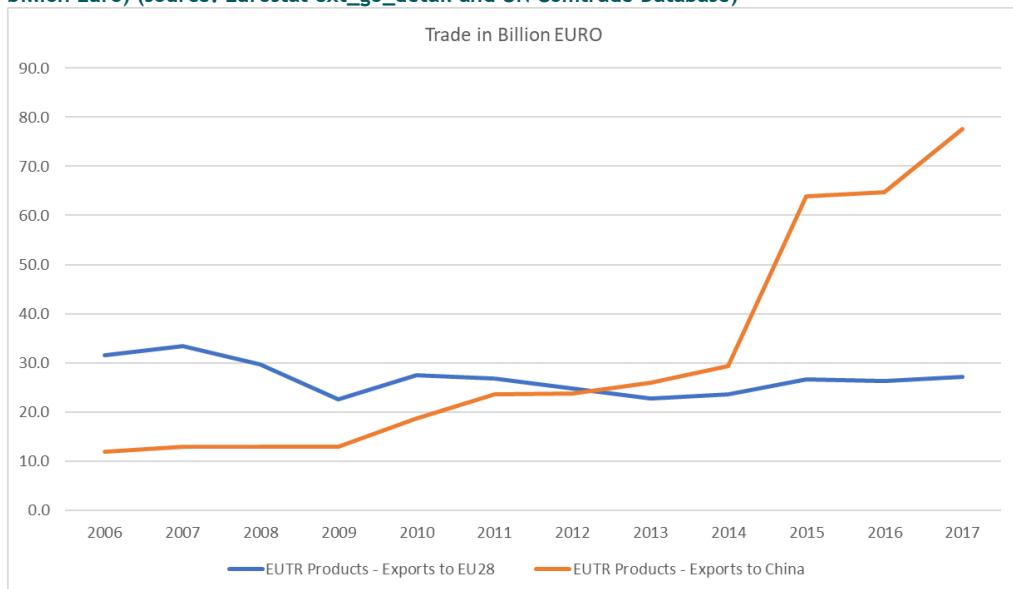
Despite these evidence supporting the effectiveness of the EUTR, the continuation of trade with countries of high illegality risk, is pointing to that the DD process has not always proven to be effective in keeping illegally harvested timber out of the EU⁵⁷ and that part of the EU imports still comprises of illegally harvested timber. This is supported by a number of relevant cases where fraudulent practices have been revealed as presented for a number of partner countries in Annex A.

For instance, there are key concerns regarding the legality of timber product imports from **Ukraine**. A 2018 investigation from Earthsight concluded that the industry was ‘steeped in illegality’ and that the primary destination for illegally sourced Ukrainian wood was the EU (Fern, 2020) as detailed in Annex A. More recent case findings arising from Earthsight investigations indicate that illegally sourced timber from the Ukrainian Carpathians continued being placed in the EU market (EarthSight, 2021). Similarly,

⁵⁷ Such as in the case of Ukraine presented in Annex B

the **Russian Taiga King scandal** in which, through fraudulent practices, illegally harvested timber was certified as legal, (EarthSight, 2021) is evident of the fact that illegally sourced timber products from the Russian Far East continued to be placed in the EU market over the period of implementation of the EUTR, with orders being placed even after the initial exposure of the scandal. This further points that PEFC⁵⁸ certifications might be insufficient to ensure EUTR compliance and to guarantee legality of timber imports.

Figure 5-5 Comparison of the value of exports of all third countries to the EU28 and China - EUTR-regulated (in billion Euro) (source: Eurostat ext_go_detail and UN Comtrade Database)

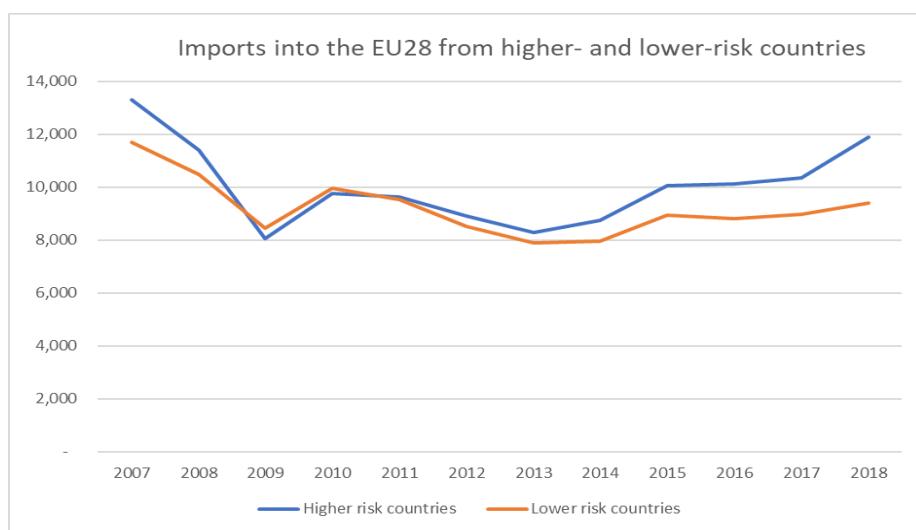


Myanmar, although a relatively minor trade partner can be also used to derive conclusions on the functioning of the EUTR as the EIA has stated that the risk of illegal harvesting is ‘extraordinarily high’. With respect to complying with the EUTR it has been noted that information to demonstrate a right to harvest has typically been either unavailable or unverifiable (Environmental Investigation Agency, 2016). The view that it has been challenging in recent years to verify the legality of timber in Myanmar was supported through stakeholder engagement and conclusions in the EUTR/FLEGT Expert Group. The high level of illegal timber seizures (as seen in the country case study in Annex A), which have not been shown to have decreased since the EUTR was implemented further highlight that illegal logging activity remains commonplace within Myanmar. Despite these, imports of EUTR-regulated products from Myanmar are on the rise since the lift of the import ban in 2012 (see Figure C-19 in Annex C).

We can also draw insights from broader analysis of aggregate trade data. Looking only at the EU suggests the levels of illegal timber placed in the EU market may not necessarily have reduced as much, since trade data indicate that EU imports from higher-risk countries seem to have risen more steeply than imports from lower-risk countries over the period of implementation of the EUTR (as seen in Figure 5-6Error! Reference source not found.). This last point does not however account for potential shifts in supplying products from lower-risk suppliers established in the same countries. A list of the lower-risk and higher-risk countries is presented in Annex C (Tables C-6 and C-7 respectively).

⁵⁸ Programme for the Endorsement of Forest Certification

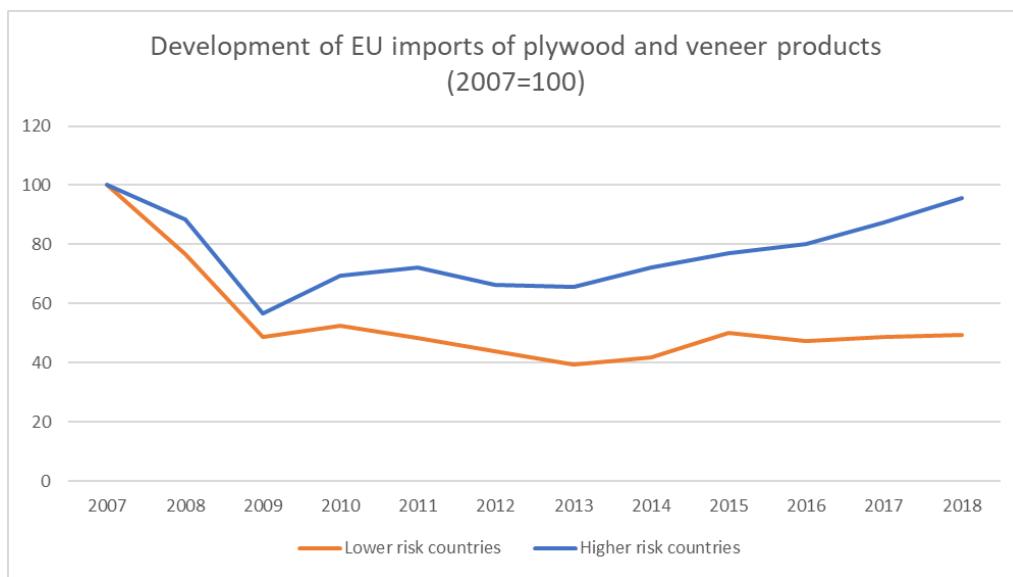
Figure 5-6: Value of EU28 imports of EUTR-regulated products from higher- and lower-risk countries (in million Euro) (source: Eurostat ext_go_detail)



Furthermore, this does not account for broader market trends which may be influencing the volume of exports from low and high-risk countries. Difference-in-difference analysis has been performed to compare the trends in imports from high and low-risk countries to the EU, to trends in imports to a selected control group (see Annex C). This analysis tentatively concluded that the EUTR may have led to a reduction in imports of illegally harvested timber to the EU of between 12-25%. A critical step of the methodology is the selection of the control group and its comparability to the EU market, to isolate the effects of the EUTR. The robustness of the conclusion and how confident we can be that the trends we are observing are due to the EUTR (and in response the reduction in import of illegal logging) hinges on how representative the control group is of an EU without the EUTR. In this case the control group comprised of four countries (Israel, New Zealand, Japan and Switzerland) which represent only a small fraction of the global market.

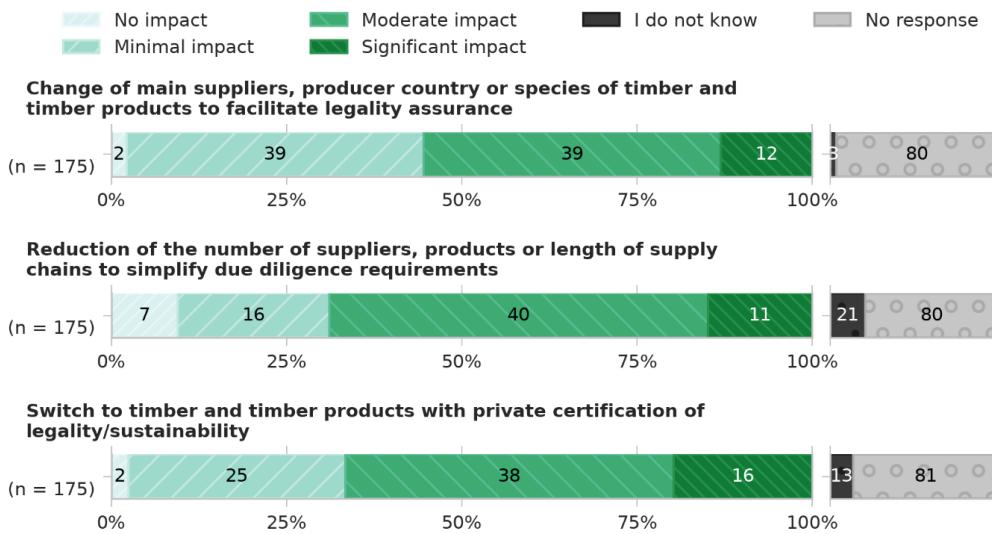
A different approach to trying to assess the impact on illegal imports is looking at products, rather than origin of import. When examining only the products considered to be of higher risk of being associated with illegal logging activities (plywood and veneer related products as represented in HS codes 4408 and 4412), imports from higher risk countries are ten times as high as those from lower risk countries. Although higher risk countries were always a preferred EU trade partner for these products, the difference has only increased in the years since the entry in force of the EUTR indicating that the regulation has not resulted in any significant shift in preferred partner countries in this respect. That said, when difference-in-difference analysis is performed comparing EUTR to non-EUTR product trends, this lends additional weight to the analysis performed on low/high-risk origin of imports: the estimated ranges of reduction in illegal logging align between the two sets of analyses, with the all-product average impact suggesting a reduction in imports of illegally harvested timber logging imports to the EU of 29%.

Figure 5-7: Development of value of EU28 imports of plywood and veneer products (HS codes 4408 and 4412) from higher- and lower-risk countries (Data series indexed to 2007=100) (source: Eurostat ext_go_detail)



What is not captured by these country level trade data is the more detailed possible responses of operators to meet EUTR requirements. As seen in Figure 5-8, experts expected a moderate or significant consequence of the EUTR could be a potential shift to supplying from timber suppliers, countries or species compliant with legality requirements (51 out of 92 respondents expressing an opinion), a shortening of the supply chain (51 out of 74 respondents) or a switch to products of certified legality (54 out of 81 respondents).

Figure 5-8 Feedback to the OPC regarding potential changes in the timber supply chain to comply with EUTR (source: OPC survey)



Nevertheless, findings from EUTR enforcement checks performed by MSs on domestic and importing operators as per the provisions of the EUTR point to potential improvements in the placing of illegally harvested timber products in the EU market.

To assure the proper implementation of the EUTR and that illegally harvested timber products do not find their way on the EU market, CAs have performed, in the 2017-2019 reporting period, 976 checks on

importing operators - a large increase (42%) compared to the previous 2 years (2015-2017).⁵⁹ The number of checks increased to 1,384 operators checked in 2019 (single year). The increase suggests an additional focus placed on EUTR compliance checks and identifying illegally harvested timber imports. This increase in checks for operators seems to be warranted when considering the high proportion of enforcement actions resulting from checks on importers (19.6% of all cases in 2017-19). Still, it signals a significant decrease in the number of overall enforcement actions taken following up on the enforcement check findings, in comparison to the 31.4% undertaken in the previous reporting period (2015-2017), potentially indicating an increased level of compliance is achieved over time.

The proportion of checks that have identified a breach of the prohibition of placing illegally harvested timber/products on the market for importers in the 2015-2017 period was lower (1.9% of all checks) than in the next reporting period (2017-2019) when such cases rose to 5.8% of all checks performed. This could be a result of more targeted and risk-based inspections as CAs have reported applying a number of criteria regarding the specific operators when choosing their inspection targets.

FLEG Regulation

In 2018, total timber and timber products imports⁶⁰ from VPA implementing and VPA-negotiating countries together amounted to approximately 9.1% by value and 3.1% by weight of the total imports (timber and timber products) into the EU. Specifically, the 8 VPA-negotiating countries are responsible for 2.9% of EU timber imports and the 7 VPA-signatory countries cover 6.2% of EU imports out of which only 3% originates from Indonesia who is operating a full TLAS. VPA countries also account for only 20% of the total tropical timber imports into the EU by value (19% by weight). Further, while in 2008 the countries that are now engaged in the VPA processes accounted for 37% of all EU imports from high-risk countries, they currently supply only 22% of the EU high-risk timber products supply (see Table C-11 in Annex C).

The above points to a lack of effectiveness of the FLEG Regulation approach in delivering VPAs for major trade partners and in particular to cover trade partner countries responsible for most of the illegally harvested timber products entering the EU market. In the meantime, imports from high-risk countries keep increasing (see overall trade value of EUTR-regulated products and its development for China, Russia, Brazil and Ukraine in Annex C).

Assessing the development of total trade value between EU and VPA countries, the involvement of partner countries in the VPA process, has not resulted in an increase in their exports to the EU - rather there was an overall decrease in volumes of EUTR-regulated products from VPA countries to the EU between 2007 and 2018 following a broader reduction of the significance of the EU as a trade partner to third countries. Additionally, EU imports from these countries have been increasing at a slower pace than imports from other countries (see

Figure 5-9)⁶¹ Although this slower performance pre-exists the entry into force of the VPAs and can be thus attributed to broader market patterns, this still means that countries successfully engaged in the VPA and FLEG Regulation are not benefiting from increased trade with the EU. These partner countries are also becoming less important in the EU's trade in wood and wood-based products placing a critical

⁵⁹ Considering the total of 134,113 EU-registered importing operators these checks accounted for less than 1% of the total

⁶⁰ EUTR annexure products (Data accessed from EU timber trade interactive dashboard - Source Eurostat)

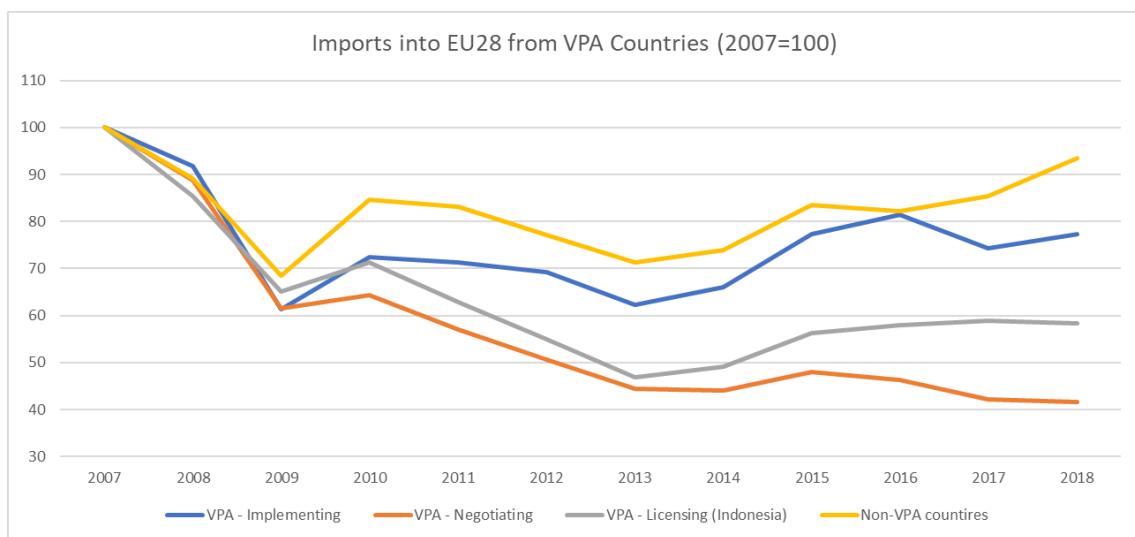
⁶¹ This can be linked also to the fact that all VPA countries are tropical wood producers and influenced further by specific trends relevant to the trade of tropical timber

boundary on the potential effectiveness of the ability of the Regulation to impact on the level of illegal timber placed on the EU market.

The comparison of the export value trends of VPA countries (i.e. VPA negotiating, VPA implementing and FLEGT licencing) with those of other exporters to the EU illustrates that even if it is assumed that the involvement of countries in the VPA process has an impact in improving the legality of timber, this is undermined by trade data indicating a preference for products from these countries to better meet the EUTR DD System requirements.

At the same time, VPA countries as a whole, have increased their exports to China where there is a rapidly increasing demand for timber-based products but also requirements for legally harvested timber are lighter than those of the EU (see Annex C, Figure C-9). As can be seen in the Annex, since 2008, timber-product exports from these countries to China have eclipsed those to the EU. Specifically, the value of exports to China has went from approximately half the value of EU imports (in 2008) to more than double of their value (in 2018), indicating that the reduction of EU imports from VPA countries is not due to an overall reduction of their exports of the specific products.

Figure 5-9 Development of value of EU28 imports of EUTR-regulated wood-based products from different country categories⁶² compared to 2007 (Data series indexed to 2007=100) (source: Eurostat ext_go_detail)

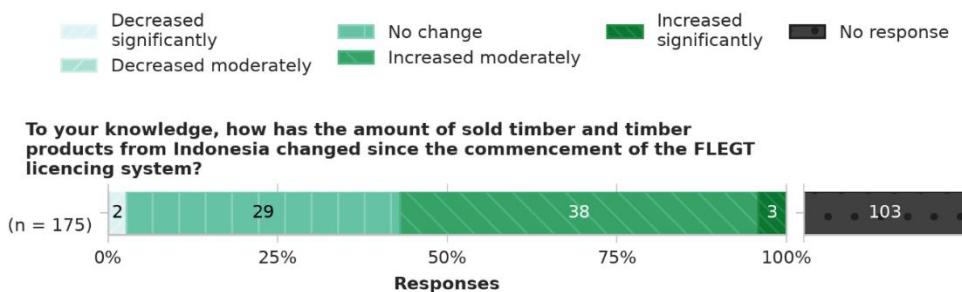


Examining in specific the only country with a fully implemented TLAS (Indonesia), we see that it is only during and after the final phase of fully implementing the TLAS (post-2014) that Indonesia enjoyed an improved trade relationship with the EU as presented in

Figure 5-9**Error! Reference source not found.** above. The view that the full implementation of the Indonesian TLAS has resulted in an improved access to the EU market is also supported by the respondents to the OPC. The majority of experts responding to this question (41 out of 72) considered that this resulted either in a moderate or significant increase in imports from Indonesia (Figure 5-10).

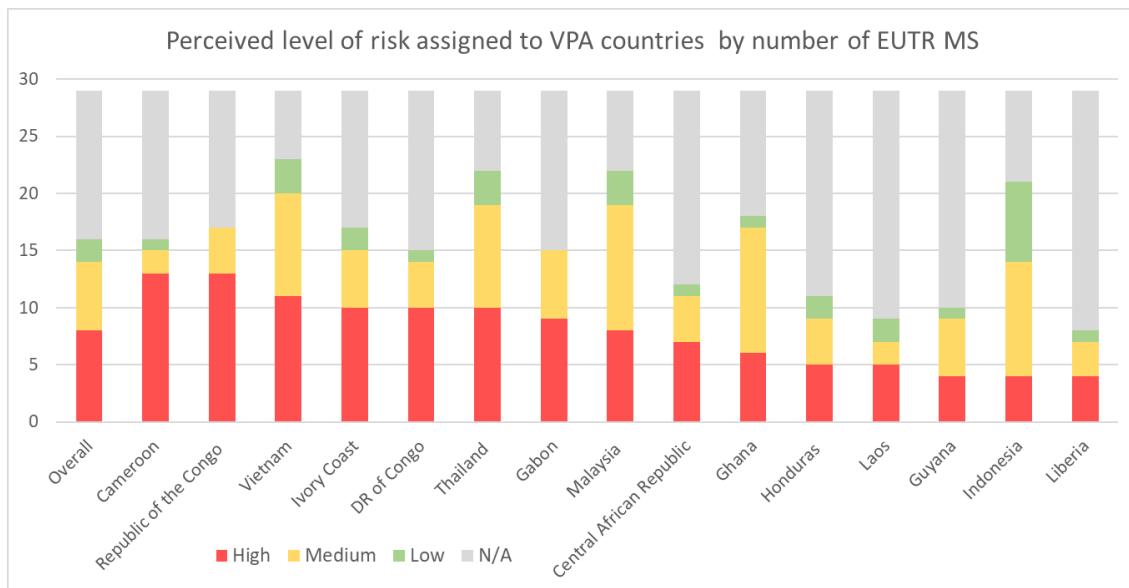
⁶² Non-VPA countries also include Russia, Ukraine, Brazil, US and China

Figure 5-10: Feedback to the OPC regarding the impact of the commencement of the FLEGT licencing scheme on timber product imports from Indonesia (source: OPC survey)



Despite the VPA process, as long as this does not result in an operational TLAS, VPA negotiating and implementing countries continue to present a high-risk profile. Specifically, all VPA implementing countries⁶³ are classified as higher-risk countries according to the ILAT Risk Score (See Table A-3 in Annex A). This assessment is supported by the risk perception of VPA countries by EUTR MSs as on average, only 6% of the respondents consider VPA countries to be of low risk (European Commission, 2020). Figure 5-11 presents the risk perception of VPA each specific VPA country by EUTR MSs. It can be realised, that for all VPA countries but Indonesia, the number of MSs perceiving the risk profile of the country as high is always larger than the number of MSs perceiving it as low risk.

Figure 5-11: Perceived level of risk assigned to VPA countries by EUTR MS (in number of MS) (source: (European Commission, 2020))

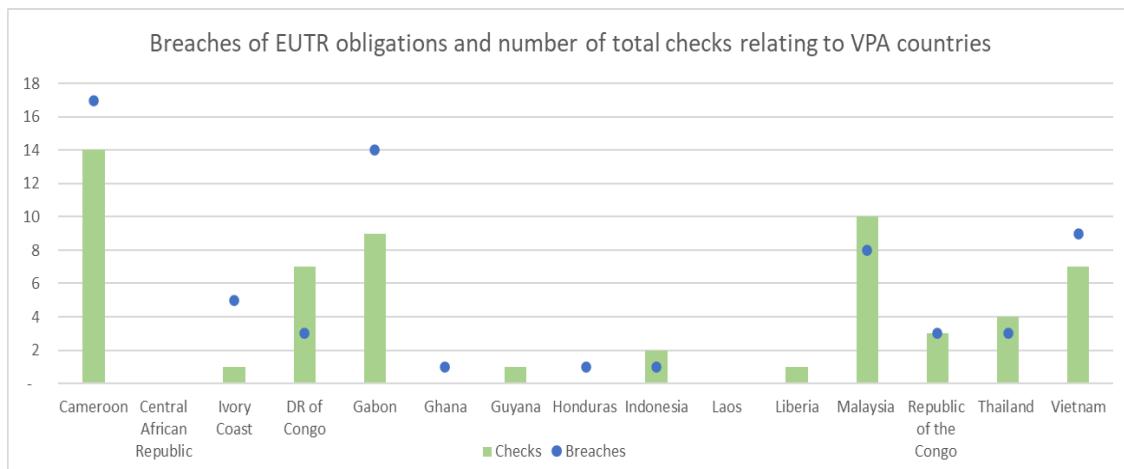


Reporting on enforcement actions⁶⁴ related to VPA countries as seen in Figure 5-12, the number of regulation breaches compared to the overall number of enforcement checks for products from VPA countries seems to be rather high, confirming the view that the VPA process, prior to the full TLAS implementation does not seem to improve considerably the legality of timber exported to the EU by VPA countries.

⁶³ Except for Indonesia

⁶⁴ Performed in the context of the EUTR

Figure 5-12: Number of breaches of EUTR obligations and total performed checks relating to VPA countries (EUTR MS reporting for 2019) (source: (European Commission, 2020))



These findings would explain the lack of improvement in the trade between EU and VPA countries, however, VPA exports to the EU seem to also perform worse than those of other countries in the same regions, (as can be seen in Annex C **Error! Reference source not found.** for Asian VPAs, **Error! Reference source not found.** for African VPAs and **Error! Reference source not found.** for VPAs in Central and South America). In fact, Member State expert feedback received during a workshop conducted to discuss the implementation of the FLEGT and EUTR regulation, pointed that when implementing the EUTR, it may sometimes be more difficult to obtain information from countries negotiating or implementing VPAs (but not yet FLEGT licensing) than for non-VPA countries. Another point raised was that there is confusion regarding the level of validity of VPA documents prior to countries reaching the licencing stage. Conflicting information on timber legality risks and progress under the VPA may present a mixed message for operators to interpret when performing their DD System obligation (European Commission, 2020).

These issues, in addition to the limited impact of the VPA process in improving the risk profile of partner countries can be seen as contributors perplexing imports from VPA countries prior to their TLAS operation compared to non-VPA countries.

Overall, with a very low volume of EU imports covered, the effectiveness of FLEGT Regulation VPAs to increase the amount of legal timber placed on the EU market can be assessed as very low, although when a TLAS is fully operational (as is currently only in Indonesia), it seems to function as intended and generally reduce the amount of illegal timber harvesting (albeit some fraudulent practices still exist) while providing a competitive advantage to the country operating it in exporting to the EU.

c. To what extent has EUTR improved the transparency in the supply chain (i.e. promoted greater knowledge of the origin of timber and timber products in the supply chain)?

The trade analysis data shows that the majority of the EU imports come from Brazil, Russia, Ukraine, the United States and China. Of these countries, only the United States has been assigned a low risk profile by Preferred by Nature, due to the US Lacey Act which amongst others tackles illegal trade of timber (Preferred by Nature, 2020). By contrast, Ukraine and Russia have been assigned high risk profiles, Brazil high and China medium (Preferred by Nature, 2020). It is also noteworthy that while a small proportion of the EU timber is imported from Myanmar, examples of Myanmar teak which the

EUTR/FLEGT Regulation Expert Group agreed to be of non-negligible risk in 2017 following an Environmental Investigation Agency report (Environmental Investigations Agency, 2016) still exist.

The reasons for imports from countries with low transparency were discussed with EUTR CAs and operators in the stakeholder webinars. The key reasons identified included the ability to source certain timber/timber products only from limited number of countries, good relationships established between EU operators and companies in exporting countries, inability to ban trade with certain high-risk countries such as Myanmar and the implications on international relations if this was possible.

To help mitigating the risks of trading with high-risk countries, the European Commission has taken several steps. Firstly, UNEP-WCMC have produced overviews of timber source countries of importance to the EU market on behalf of the European Commission, to support operators and CAs with the effective implementation of the EUTR (UNEP-WCMC, 2021). The countries include all big medium/high-risk exporters, as well as Belarus, Bosnia and Herzegovina, Cameroon, Côte d'Ivoire, Malaysia, Myanmar, and the Republic of the Congo. The profiles provide information on forest governance, key risks, information on illegal trade and bribery incidents and forest cover trends. Secondly, the EU has also been working on improving transparency through engagement with high-risk countries such as Ukraine, Myanmar, Russia and China (5.1.1.c below) and through providing risk assessments on imports from specific countries such as Brazil (European Commission, 2019a). Finally, the Commission published country conclusions on Brazil, Myanmar and Ukraine⁶⁵ drawing on experience from engagement, CAs inspections and NGO reports. The reports are to be used by operators and CAs together with country profiles and DD guidelines.

The OPC gathered feedback on the positive consequences of the EUTR. 60% of the respondents considered that the EUTR had at least moderate influence on increased reforms in timber-producing countries to achieve higher level of transparency and 75.5 % considered that the EUTR at least moderately encouraged investments in clean and transparent supply chain. Several organisations provided further detail in position papers, stating that both the EUTR and FLEGT contributed to increased supply chain transparency and the availability of documents from suppliers but key issues remained. These were linked to the uneven implementation of the EUTR (see EQ2a), subjective interpretation of sufficient proof of 'negligible risk', challenges in finding all necessary information (see EQ2b) and incomplete product scope of the EUTR (see EQ8b).

In the targeted interviews conducted as a part of this project, both NGOs and EU CAs agreed that transparency has increased due to EUTR and that operators have tried to switch to more transparent supply chains or import certified products. In addition, some exporting countries have strengthened their regulatory frameworks to ensure better transparency when trading with the EU. Another positive impact of the regulation was that operators are now more aware of the challenges associated with transparency and traceability.

Overall, the evidence suggests that while the EUTR has led to greater knowledge of the origin of the timber and timber products, identifying all necessary information and verifying documents from countries with corruption problems is challenging.

⁶⁵ <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeeting&meetingId=23097>

d. To what extent have the Regulations promoted improved forest governance and legislative change of relevant forest law?

EUTR

The EUTR has had an indirect impact on improving forest governance and inducing legislative change in countries exporting timber and timber product to the EU. Annex D describes the progress achieved through the cooperation of the EU with **Myanmar and Ukraine**. In **Myanmar** for example, despite the Expert Group conclusion since 2017 that risk cannot be mitigated to negligible levels (European Commission, 2019d), pressure from the EUTR/FLEGT Expert Group, CAs and strong enforcement actions⁶⁶ have elicited numerous improvements to forest, e.g.:

- The export of products based on confiscated timber or conversion timber from land-use change has been prohibited since 2017;
- A new Forest Law was enacted in 2018;
- A moratorium on the harvesting of timber
- in the Bago Yoma Region has been put in place for ten years, starting from the 2016-17 fiscal year;
- MONREC developed a new ‘Chain of Custody dossier’ to assist operators in their DD;
- Logging for teak is reported to be kept under 55% of the Annual Allowable Cut (MONREC, 2020);
- Increase in the online publication of key documents e.g. the Annual Allowable Cut for 2019-2020 was uploaded in November 2019 (although harvesting began in August).

Regarding **Ukraine**, in 2018, an EU Technical Assistance and Information Exchange (TAIEX) mission took place, to analyse the institutional system of forest governance in Ukraine, identify issues and develop proposals for institutional restructuring (European Commission, 2018). At the 3rd meeting of the Ukraine-EU Trade and Sustainable Development (TSD) Sub-Committee, the EU and Ukraine agreed that separation of monitoring, control and management functions was needed (European Commission, 2019a). Ukraine announced it would be launching a National Forest Inventory as well as taking steps towards introducing an electronic timber tracking system and adopting legalisation aiming at transparent regulation of timber sales. At the June 2020 EUTR/FLEGT Regulation Expert Group it was reported that the political situation in Ukraine was not very clear and that some new laws were in an uncertain state (European Commission, 2020a). In the 4th TSD meeting Ukraine presented the main developments towards ensuring the legality of harvested wood in 2020, agreeing that forest control and inspections bodies should be separate from the state forest agencies (European Commission, 2020c).

In 2016, **Russia** introduced the timber tracking system LesEGAIS which requires all legal entities involved in trade in roundwood to independently enter data. Since 2017, it includes sawn wood (only from the first processing of roundwood) (European Commission, 2019c). The system also allows tracking of individual logs of valuable species and contains tools for the conversion of wood to account for waste. Only registered entities can access all information and documents contained in the system, but there is an open portal with restricted information that can be used by EU operators and CAs (European Commission, 2019c). Nevertheless, as much as 20% of all round and roughly sawn wood may still be traded outside the system, in particular in Far Eastern Russia and involving Chinese operators and illegal export to China) (European Commission, 2019c). In 2021, Earthsight published a report on a large illegal harvest scam in Russia which led to 600,000 cubic meters of timber were illegally harvested by a single company (EarthSight, 2021). The report shows that 100,000 tonnes of illegal timber entered the

⁶⁶ For example, EU seizures and prosecutions regarding teak from Myanmar are regularly reported in the [Summary Records](#) of the EUTR/FLEGT Regulation Expert Group and in [EUTR Briefing Notes](#)

EU market, bypassing the operators' DD System. The illegal operation was revealed by the Russian federal security services in 2019, indicating that Russian authorities are investigating illegal logging incidents.

The European Commission reports that **Canadian** authorities have also worked on informing MS CAs on their forest policy, ensuring transparency and enabling DD compliance for EU operators. EUTR CAs also share information with United States and Australian enforcement agencies under the Timber Regulation Enforcement Exchange (Forest trends, 2019).

Finally, the EU and **China** have established a Bilateral Coordination Mechanism (BCM) to work together to stop illegal logging and the associated trade in illegal timber globally (Annex H). The BCM frames an integrated set of activities which are carried out through the annual work plans, such as supporting the setting up of new legislation in China by facilitating policy dialogues on the promotion of legally-sourced timber and timber products and information exchange between China, the EU and countries negotiating or implementing FLEGT Regulation VPAs (European Commission, 2020). It is noteworthy that China's forestry governance score has remained "low" since 2008 (Chatham House, 2020).

FLEGT Regulation

The FLEGT Regulation foresees the negotiation of bilateral VPAs with timber-producing countries. In all cases, FLEGT VPA countries are required to engage in stakeholder consultation to define 'timber legality' and the VPA promotes improvements to legislation, forest governance, enforcement and supply chain controls, which form the basis of a TLAS.

Evidence from the literature and stakeholders suggests that the FLEGT Regulation has led to significant positive improvements in forest governance across its VPA partner countries. This includes unprecedented stakeholder engagement with civil society, capacity building and legislative changes in many of the VPA countries. For instance, a CIFOR study conducted a survey of stakeholders who reported similar positive sentiments regard governance improvements in Cameroon, Ghana and Indonesia due to their engagement in the VPA programme (CIFOR, 2019). The VPA process has positively contributed to both a more coherent legal and regulatory framework, with sanctions being more regularly enforced and more credible due to the VPA, and to greater transparency in the forestry sector (CIFOR, 2019). In an interview with Commission services, it was highlighted that substantial improvements in governance have been noted in Guyana, Ghana and Liberia. In post-conflict countries such as the Central African Republic where timber is a key resource which partially fuelled conflicts, FLEGT is an important tool in regulating forestry and protecting it for the purpose of environment, livelihood, economic recovery and trade.

In countries such as the Republic of Congo and Cameroon, the VPA process has led to broad stakeholder engagement where there was no prior history of consulting civil society on forestry matters. In Liberia and the Honduras, the consultation was even extended to local forest communities (FERN, 2013). The stakeholder consultation in the Central African Republic and Ghana were less inclusive, though in Ghana civil society groups were eventually able to participate in effective talks after threatening legal action and by using the media (FERN, 2013). Further, Cameroon and Ghana indicated more improvement in transparency levels, with strong contribution from the VPA process.

Views on the impacts of VPAs on forest governance were collected in the OPC. The results showed that:

- 83% agreed or strongly agreed that the VPAs induced greater transparency and information availability;
- 74% agreed or strongly agreed that the VPAs induced greater traceability of timber and timber products;
- 73% agreed or strongly agreed that the VPAs improved stakeholder engagement with civil society and the private sector;
- 68% agreed or strongly agreed that led to capacity building and legal reforms.

There is some progress in the monitoring of illegal logging in the VPA countries, including at least three formal levels of monitoring to ensure implementation of the VPAs: Joint Implementation Committees (JICs), independent auditors, and independent monitors (operational in Cameroon, Republic of Congo, and Indonesia) (FERN, 2013). In addition, forms of civil society-led independent monitoring exist in Liberia and Cameroon (FERN, 2013). The number of infringements and penalties are not systematically reported which indicates that the monitoring is not effective.

Although significant improvements have been reported, there have also been challenges which have limited the ability of the FLEGT Regulation to achieve more. For example, some literature sources note that forest communities have not been comprehensively engaged in Indonesia and Ghana, and therefore the progress in protecting their rights in these countries is limited (Rebecca L. Rutta, 2018). This view was supported by an NGO position paper which stated that further focus on local livelihoods and tenure rights is needed. Another NGO stated that civil society should play a larger role in the monitoring of TLAS. In addition, the impacts of the FLEGT Regulation on governance have also been challenged by the broader issues discussed elsewhere such as the limited coverage of VPAs (see EQ2h).

Furthermore, no significant improvements have been observed in the corruption perception index (CPI)⁶⁷ of VPA countries since the beginning of the implementation period (Finally, there is ongoing debate as to whether VPAs are experimentalist governance approaches with generally positive outcomes for empowering various groups of domestic stakeholders or whether VPAs reinforce existing power inequalities . Particularly for the case of the Ghana VPA, two diametrically opposing views exist. Hansen et al. argue that "the VPA implementation in Ghana serves to stabilize and reproduce the very forest governance regime that it set out to reform", while Overdevest and Zeitlin argue that "the VPAs' (...) empower domestic non-governmental organizations with local knowledge to expose problems on the ground, hold public authorities accountable for addressing them". A further concern is that the VPA negotiation processes may be subject to elite or organisational capture, whereby some actors use the platform to strengthen their position. This can occur unintendedly, when strict export regulations exclude smaller operators from the market .

Table 5-2). In Cameroon and the Central African Republic, the CPI in 2019 was at a same or similar level to the CPI before the VPA entered into force. For Ghana, Liberia and Republic of the Congo, the CPI has actually declined after the VPA entered into force. The CPI has only improved in Indonesia and Vietnam⁶⁸. Overall, the CPIs of all VPA countries are below the average of 43 (although it should be noted that the CPI is not specific to the forestry and other sectors covered by the VPA and therefore could not be considered a conclusive indicator on forest governance). Likewise, Chatham House notes

⁶⁷ The CPI scores and ranks countries/territories based on how corrupt a country's public sector is perceived to be by experts and business executives. It is a composite index, a combination of 13 surveys and assessments of corruption, collected by a variety of reputable institutions. The CPI is the most widely used indicator of corruption worldwide.

⁶⁸ Since the Vietnam VPA entered into force in 2019, the data is limited and not conclusive.

that corruption has hampered forest governance in countries like Cameroon and Republic of the Congo and continues to rate their legislative and institutional framework as 'poor' (Chatham House, 2020).

Finally, there is ongoing debate as to whether VPAs are experimentalist governance approaches with generally positive outcomes for empowering various groups of domestic stakeholders (Overdevest & Zeitlin, 2018) or whether VPAs reinforce existing power inequalities (Hansen, Rutt, & Acheampong, 2018) (Rutt, Myers, Ramcilovic-Suominen, & McDermott, 2018). Particularly for the case of the Ghana VPA, two diametrically opposing views exist. Hansen et al. (2018) argue that "the VPA implementation in Ghana serves to stabilize and reproduce the very forest governance regime that it set out to reform", while Overdevest and Zeitlin (2018) argue that "the VPAs' (...) empower domestic non-governmental organizations with local knowledge to expose problems on the ground, hold public authorities accountable for addressing them". A further concern is that the VPA negotiation processes may be subject to elite or organisational capture, whereby some actors use the platform to strengthen their position. This can occur unintendedly, when strict export regulations exclude smaller operators from the market (Masiero, Pettenella, & Cerutti, 2015).

Table 5-2 CPI index trends after VPA entry into force

| VPA country | VPA entry into force | CPI before VPA | Trend in CPI once VPA implementation began |
|--------------------------|----------------------------|-------------------|---|
| Cameroon | 2011 | N/A ⁶⁹ | Steady between 2012 and 2019 (ranging between 25 and 27) |
| Central African Republic | 2012 | 26/100 (2012) | Steady decline between 2012 and 2016 (from 26 to 20). Steady recovery between 2016 and 2019 (from 20 to 25) |
| Ghana | 2009 | N/A | Gradual decline between 2012 and 2019 (from 45 to 41) |
| Indonesia | 2014 (licensing from 2016) | 34/100 (2014) | Gradual increase between 2015 and 2019 (34 to 40) |
| Liberia | 2013 | 38/100 (2013) | Gradual decline between 2013 and 2019 (38 to 28) |
| Republic of the Congo | 2013 | 26/100 (2012) | Gradual decline between 2013 and 2019 (24 to 19) |
| Vietnam | 2019 | 33/100 (2018) | Increased to 37 in 2019 |

Source: Transparency International (2020)

Legend: Red- Decline; Amber- Steady trend; Green - Increase.

Note: 0 represents the highest level of perceived corruption and 100 represents the lowest level of perceived corruption. The average CPI across all countries in the world is 43, the EU score is 66.

Overall, the FLEGT Regulation has led to improved forest governance and engagement of civil society in VPA countries. However, outstanding issues relate to small volumes of timber being licenced, slow progress in implementation and ongoing corruption issues.

5.1.2 Question 2: What factors have contributed to or hindered their achievement of their objectives?

| Key findings |
|--------------|
| EUTR: |

⁶⁹ Comparative data only available after 2012 due to change in methodology.

Key findings

- The DD obligation has not been effectively implemented by operators due to difficulties in: understanding what is required (i.e., what is DD, what is sufficient/adequate DD, and what to do in case of non-negligible risk), finding sufficient and/or robust information and feasibility of verifying supplier and other information. Furthermore, not all operators are aware of their obligations under the EUTR or that their activities make them operators and SMEs may not fully understand the DD requirements.
- The term 'negligible risk' in the DD provisions of the EUTR is subjective which makes gathering information to prove that a risk is 'negligible' or proving that the risk was in fact 'non-negligible' in court difficult. This issue is compounded by the variance in legal systems across the EU and the different levels of experience with such subjective concepts.
- All MS have established legislative frameworks to implement the EUTR, though the level to which the national provisions provide for enforcement differs, creating a non-level playing field. The range of possible penalties vary strongly across MSs. Low levels of sanctions for serious breaches discourage diligent implementation. Furthermore, some MS have invested too little resources and performed less (or less than extensive) checks, leading to uneven implementation and opening possibilities for operators to circumvent the EUTR by importing via weaker MS.
- Co-operation between MS CAs and the broader activities undertaken by CAs is unique and a significant positive outcome of the EUTR. Many CAs are cooperating together including at regional level, as well as with customs and other agencies to ensure effective implementation of the EUTR. Peer to peer, regional meetings like the Nordic and Central Europe meetings, joint inspection visits have been established. In addition the EUTR/FLEGT Regulation Expert Group meetings are an effective mechanism for information exchange.
- Good cooperation between MSs CAs and customs and exchange of data has shown to be essential for efficient inspection planning and enforcement. The effectiveness of one CAs' checks has been compromised by the lack of data on the number and importance (in terms of volume) of operators or access to customs data (customs have no official role under EUTR) and limited resources. The proportion of timber placed on the EU market per year checked at EU level has not been estimated.
- Multiple issues have been identified around the role of Monitoring Organisations, including a lack of provision of the intended services.
- The lack of DD requirements for traders has been found to create implementation issues and provide opportunities for operators to switch to traders (i.e. purchase from the EU rather than outside the EU) to avoid investing in DD.
- Significant amount of information and technical assistance has been provided to operators including SMEs by CAs, the European Commission, trade associations, Preferred by Nature and others.
- The EUTR reporting could be improved with questions which are clearer/easier to understand for CAs.

FLEGT Regulation:

- Since 2005, only 15 countries (all tropical) have engaged formally in the VPA process and only one (Indonesia) has progressed to licencing. Furthermore, the majority of VPA countries are not major wood exporters to the EU. It is estimated that VPA countries represent around 9.1% of imports to the EU, with FLEGT licences covering only 3% (running contrary to reporting around FLEGT Regulation which often fails to differentiate between VPA countries at different stages of negotiation and overstates the coverage and impacts). This has curtailed the ability of the FLEGT Regulation to achieve its objectives and capture synergies with EUTR.
- Slow progress negotiating and implementing VPAs reflects a raft of substantial challenges, both in engaging exporting countries (e.g. relative decline of the EU as a global timber consumer, limited Commission service resources leading to 'demand-led' approach) and advancing to licencing (e.g.

Key findings

duration and complexity of negotiation and implementation leading to 'FLEGT Regulation-fatigue', which is perpetuated by capacity and governance weaknesses in exporting countries, differences achieving agreement across regions, etc). As pre-licensing stages are protracted, issues arise outside of the process, such as ambiguity for EU CAs and operators over the status of VPAs and, once licensing, recent experience with Indonesia (i.e. the recent proposal by the ministry of trade to free exporters from the need to obtain licences) reflects the fragility of the VPAs even at this stage.

- Under the FLEGT Regulation customs have a clearly defined role. In addition, processes have been put in place across all MS to facilitate communication and information sharing between CAs and customs.
- From a process perspective, many elements of FLEGT Regulation have been implemented successfully by EU MS, and processes and systems (e.g. FLEGIT) are continuously updated and improved. Some issues have arisen, such as variance in HS codes between EU and Indonesia, which has led to processing delays, application of incorrect import duties and reporting issues. This could become more problematic should further VPA partners progress to licensing, particularly if they use a further variant of HS codes and if there are language barriers.
- There is evidence of productive communication around FLEGT Regulation - the EUTR/FLEGT Regulation Expert Group forum is an effective mechanism. Some MS have reported issues communicating with the Indonesian Licensing Unit (LIU). Although communication is improving, again such issues could substantially increase should more VPA partners progress to licensing.
- The evidence suggests that some EU operators are still unaware of the FLEGT Regulation process.
- No issues have been identified with the FLEGT reporting.

a. How effective has MS implementation and enforcement of EUTR been?

The EUTR requires MSs to designate CAs (Article 7), to develop plans for checks and perform checks on monitoring organisations (MOs) and operators (Articles 8 and 10 respectively) and to adopt effective, proportionate and dissuasive penalties for infringements (Article 19). With regards to monitoring organisations, CAs are required to carry out checks at regular intervals (minimum once every second year for the main seat of the MO) to verify that they effectively fulfil the obligations laid down in the Regulation. With respect to operators, CAs are required to monitor to ensure that operators effectively fulfil the obligations laid down in the Regulation by carrying out official checks which may also include checks on the premises of operators and field audits and should be able to require operators to take remedial actions where necessary. In both cases, checks should also be conducted when CAs are in possession of relevant information, including substantiated concerns from third parties. The Regulation does not include a formal requirement to conduct checks on traders.

i. How effective has the establishment of the EUTR legislative framework in MSs been?

From 2015 onwards, after a delay, all MSs have implemented national frameworks transposing the obligations under the EUTR (European Commission, 2018). Furthermore, all MSs have designated CAs, developed plans for checks and conducted checks on operators and MOs and adopted penalties for infringements (European Commission, 2018).

The EUTR provides flexibility for MS CAs to employ a risk-based approach and define penalty regimes suitable to the specific political and economic characteristics of the specific country. The flexibility has been highlighted by MS (CA workshop) as useful since it has provided opportunities to prioritise resources depending on the scale of domestic timber production and imports. Most MSs revised their existing legislation (e.g. Spain, France), a few introduced new regulations (e.g. Austria, Germany)

(UNEP-WCMC, 2019) and some refer to existing penalty regimes. The latter may lead to issues in the pre-existing legislation being carried over. In some cases, MS may have gone beyond the basic requirements of the EUTR: for example, Hungary issued three different decrees, under which rules are laid out for traders and transporters⁷⁰ as well, providing legal grounds for checks and penalties being imposed to these (Nebih, 2021). Information received from Italy in the latest implementation reporting indicates that proposed penalties are not applied which suggests issues with the efficiency and effectiveness of the legal framework⁷¹. Furthermore, the European Commission has identified inconsistencies in the Romanian transposition of the EUTR which prevent Romanian authorities to check large amounts of domestic illegally harvested timber (European Commission, 2020).

The latest MS implementation reports noted significant discrepancies in the levels to which national legislation explicitly provides for enforcement of the EUTR provisions (UNEP-WCMC, 2020b). Most countries have included provisions that allow for notices of remedial action or similar to be issued in response to infringements of the prohibition, DD, traceability obligations and reporting obligations for MOs (UNEP-WCMC, 2020b). However, the timeframe in which operators and traders need to respond varies from 2 weeks to 4 months (UNEP-WCMC, 2020b). Provisions for temporary seizure of timber/timber products or temporary suspension of authority to trade were included in the legislation of approximately half of all reporting countries when it comes to the prohibition of placing illegal timber on the EU market, and less for all other obligations (UNEP-WCMC, 2020b). The maximum seizure duration varies from 40 days to 2 years whereas the maximum suspension of authority to trade varies between 40 days and 1 year (UNEP-WCMC, 2020b). Only Austria included a provision on lifting of the suspensive effect of a complaint against the enforcement measure until a final decision is reached⁷² (UNEP-WCMC, 2020b). According to feedback provided in the targeted interviews, the national legislation could limit the effectiveness of implementation and enforcement of the EUTR. These discrepancies mean that uneven level playing field is created for operators on the EU market.

In a targeted interview with NGOs, issues with the translations of the EUTR were noted, specifically around the use of terms “sufficient” or “adequate” [DD System] in Denmark and the use of “applicable legislation” and “relevant legislation” in Germany. The difference in EUTR translations may lead to inconsistent interpretation of the EUTR requirements between MSs.

ii. How effective have MSs’ EUTR checks been?

CA checks

MS CA checks of operators consist of desk-based checks, document review on site, product inspection on site or document and product inspection on site (UNEP-WCMC, 2017; 2018; 2019; 2020a). MSs perform checks based on a self-determined set of risk-based criteria prioritising different factors including: country of harvest, information provided by other CAs or other NGOs, timber species, type of product, volume, value and other (UNEP-WCMC, 2020a). The number of reported checks has increased from the start of the implementation in 2013 to 2019 (see Annex D - Implementation of the EUTR). According to the initial evaluation of the EUTR (2013-2015), all but two MSs (Greece and Hungary) developed plans or performed checks in the first two years of the implementation period. From 2015

⁷⁰ Decree No. 58/2017 on detailed rules for the transport and registration of timber products and the production and distribution of transport notes and operation sheets

⁷¹ This information was provided to UNEP-WCMC in a spreadsheet but has not been published on the IT CA website

⁷² In some cases, if an operator, trader or MO is issued with a penalty but appeals/submits a complaint, the penalty is not applied until a final decision is reached. This type of immediate interim measure lifts this suspensive effect of the appeal/complaint so that the penalty applies already before a final decision is reached on the appeal/complaint.

onwards, all MSs have been performing checks, though in one reporting cycle, some reported checking only domestic timber (Bulgaria) or only responding to complaints (Belgium) due to resource constraints (European Commission, 2018) The ratio between desk based and in-person checks varied between MSs, with Bulgaria reporting that approximately half of the checks are desk-based, Italy reporting that all checks are in person, and Germany reporting more checks in person (UNEP-WCMC, 2017; 2018; 2019; 2020a). In most reporting countries, the ratios changed on yearly basis (UNEP-WCMC, 2017; 2018; 2019; 2020a). According to stakeholder interviews, the number of desk-based or web conference checks was higher in 2020 due to the COVID-19 pandemic.

Operators sourcing timber from EU-based forests ('Domestic operators')

The approach to checks on domestic operators varies across the EU. In countries where the number of domestic operators is significant and pre-existing legislation regulating the conduct of foresters exists (e.g. Germany, Finland, Latvia, Sweden), checks are performed by forestry authorities and are not always reported as EUTR checks (e.g. exception to this is Latvia). Since checks are integrated with checks under other legislation, the number of domestic checks is significantly higher in some countries. According to CAs interviewed for this study, the checks are performed to the same standard as checks on importing operators. No significant issues with checks on domestic operators have been identified.

Operators sourcing timber from outside the EU ('Importing operators')

All MS CAs have been performing regular checks, imposing penalties and ensuring good cooperation with each other (see EQ2d). However, evidence points to several issues that might compromise the effectiveness of the CA checks on importing operators. These are as follows:

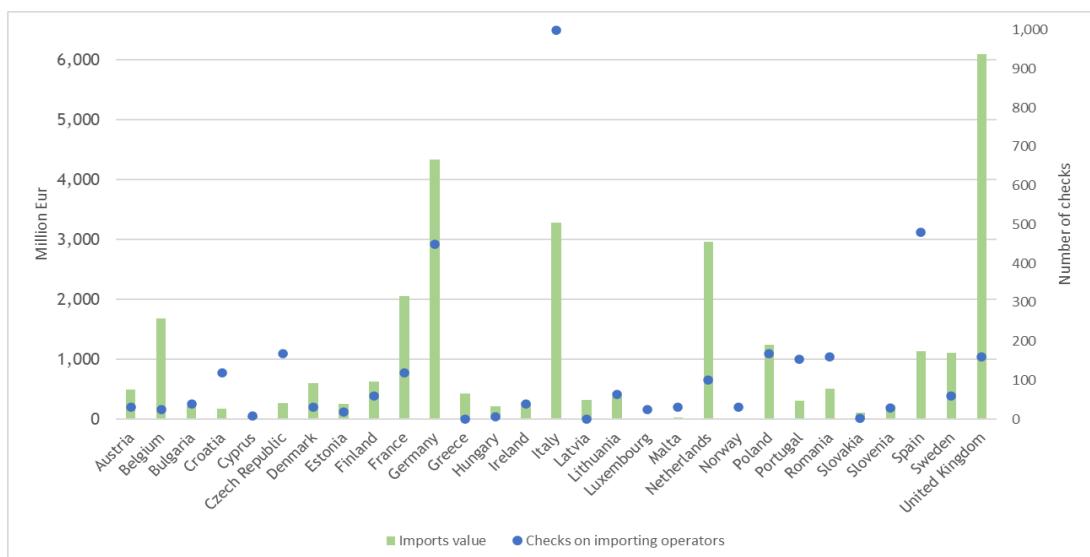
1. **CAs rely on their own registers or customs data, however the EUTR does not include a formal role for customs with an obligation to share key datasets** –Some MS CAs do not have formal Memorandum of Understanding (MoU) with customs, as recommended by the Commission (European Commission, 2017). In 2018, at least 10 countries have introduced MoUs (UNEP-WCMC, 2019). The lack of formalised cooperation with customs or prevents CAs from obtaining key data on imports and number of operators to inform their risk-based planning of checks;
2. **Some MSs' national rules do not appear to allow relevant customs authorities to share data externally, or only to share only excerpts without operator names.** Without this data, a meaningful risk analysis is not possible (European Commission, 2017). The importance of customs data was underlined by feedback received in the webinar on 18th September 2020. The Commission has encouraged MSs to introduce legal mechanisms to ensure the effective sharing of these data with CAs (European Commission, 2017). In the targeted interviews, the Spanish CA stated that national data privacy laws mean that customs cannot share data with CAs in Spain. Therefore, it is crucial for the regulation to include a specific exchange of information requirement. In Czechia, Italy and Sweden, the exchange of information was reported to work well. In Czechia, data was received once per month whereas in Sweden twice per year;
3. **No consistent information is collected or reported on the volume of the timber checked** - Overall, a relationship is observed between the level of imports and the number of checks on importing operators (e.g. in Germany, France, Netherlands, UK, Figure 5-13). However, the current reporting does not capture key information on the volumes of timber checked and the quality of the checks, and therefore is not a conclusive indicator of the effectiveness of checks across countries. Gathering systematic information on the volumes checked could improve the understanding of the effectiveness of the checks. In a targeted interview with a number of MS CAs, some information on the volumes checked was collected. Italy and Sweden stated that the checks covered 10% of all operators in 2020 and 2018 respectively, Latvia checked 60% in 2017, and Germany checked 80% of all imports⁷³ in 2020 and Denmark covered 70% of import value in 2018. Czechia stated that all the largest operators are prioritised with the risk-based criteria, indicating that a large proportion of imports is checked in countries;
4. **The proportion and quality of checks is not consistent across MSs**- The implementation data showed that the proportion of checks appears to be small (<10%) but are similar to the checks performed under other EU regulations such as physical customs checks (approximately 2%)

⁷³ Imports below 25,000 EUR are not checked.

(European Commission, 2020d)⁷⁴. The proportion of operators checked varied between countries and on year-to-year basis. According to stakeholder feedback, the quality of checks also varies due to a lack of standardised approach and the subjectivity of the ‘negligible risk’ term (discussed in section 5.1.2.c). A good example of systematic approach has been demonstrated regarding teak from Myanmar which was agreed by the EUTR/FLEGT Expert Group to be of non-negligible risk (European Commission, 2019d). Isotope tracing has been only rarely used and not in all countries due to costs. It was suggested that in future common isotope tracing databases could be developed.

5. **Substantiated concerns are not consistently addressed** - According to Article 10(2), checks may be conducted on the basis of substantiated concerns provided by third parties. In 2016, several MSs did not have a prescribed procedure on substantiated concerns. These included Austria, Belgium, Bulgaria, Denmark, Finland, Germany, the Netherlands, Romania and the UK (ClientEarth, 2018). In some countries such as Austria, NGOs did not have sufficient standing to legally challenge where CAs do not respond to substantiated concerns (ClientEarth, 2018).

Figure 5-13 Number of checks on importing operators compared to level of imports (in Million EUR, 2018)



Source: Own compilation based on ComExt and EUTR implementation reports

In the stakeholder webinar on 18 September 2020, information was requested of CAs on their views about checks and resource availability for enforcement of the EUTR. They expressed a preference for a risk-based inspection plan or ideally one based on a common approach. CAs suggested having an EU “chief inspectors” visiting each MS to monitor the quality of checks and provide feedback.

Resources

The human resources available for the implementation and enforcement of the EUTR widely varied across MSs between 2013 and 2019, ranging from 1-200 full time equivalent (FTE) in 2013-2014 (European Commission, 2016), 0.125-8 FTE for imported and 0.125-20 FTE for domestic timber in 2015-2017 (European Commission, 2018), and 0.125-601⁷⁵ FTE in 2017-2019 (UNEP-WCMC, 2020). Available financial resources varied greatly as budgets appear extremely limited in some countries (e.g. Belgium), whereas in others there is no defined budget limit (e.g. Germany). The reported data has

⁷⁴ Direct comparison between regulations is not appropriate due to the different requirements and mechanisms used.

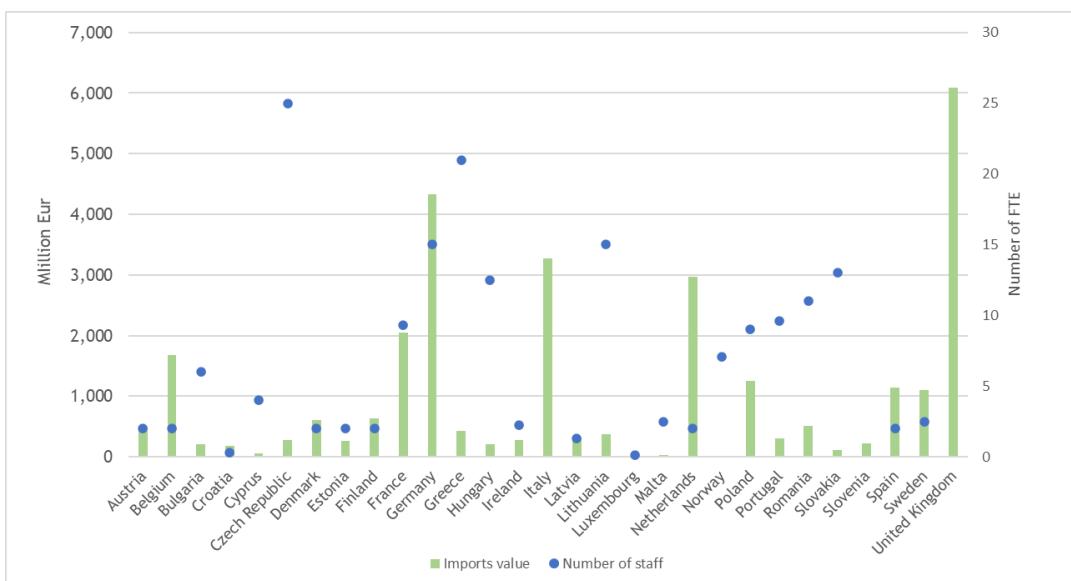
⁷⁵ It is likely that the latter number reported by Italy includes general customs personnel and forest inspectors

several limitations due to different approaches taken by CAs in calculating FTEs. For instance, the reported FTEs in Germany, Finland, and Sweden did not include the number of forestry authorities supporting the enforcement of the EUTR on domestic operators, but they did in Italy. Furthermore, some MSs may have included police officers and customs in their estimates. Therefore, the analysis of how the number of FTEs dedicated to enforcement compare to the level of imports, number of operators and number of checks presented below should be considered in light of these limitations. The analysis of resources spent on enforcement for domestic operators is more limited due to the gaps.

While the resources differ significantly between countries, there appears to be a relation between the number of FTEs and levels of imports/number of importing operators, especially in countries with high imports such as France and Germany (Figure 5-14 and Figure 5-15). The graphs indicate possible problems with implementation in some countries, such as relatively high imports in Belgium and low resources. In some countries, such as Czechia, Greece, Hungary, Lithuania, Poland, Portugal, Romania and Slovakia, the number of FTEs which is on average high could not be linked to high levels of imports and importing operators. In some countries it could link to the number of domestic operators (e.g. Czechia and Greece) and issues experienced with illegal logging domestically (e.g. in Romania). While Bulgaria reports relatively high number of FTEs compared to its imports, Sotirov & McDermott (2018) note that practical implementation had been undermined by lack of financial resources, and by insufficient human staff and willingness of forest authorities to conduct checks on timber traders and importers. The paper notes that fairly low resources were put in the implementation and enforcement of the EUTR in Italy in the first few years, though it does not provide information on the current situation (Sotirov & McDermott, 2018).

Finally, Figure 5-16 compares the number of checks on importing operators to the number of FTEs to give an indication of the intensity of the checks.

Figure 5-14 Number of FTE compared to import levels (2018)

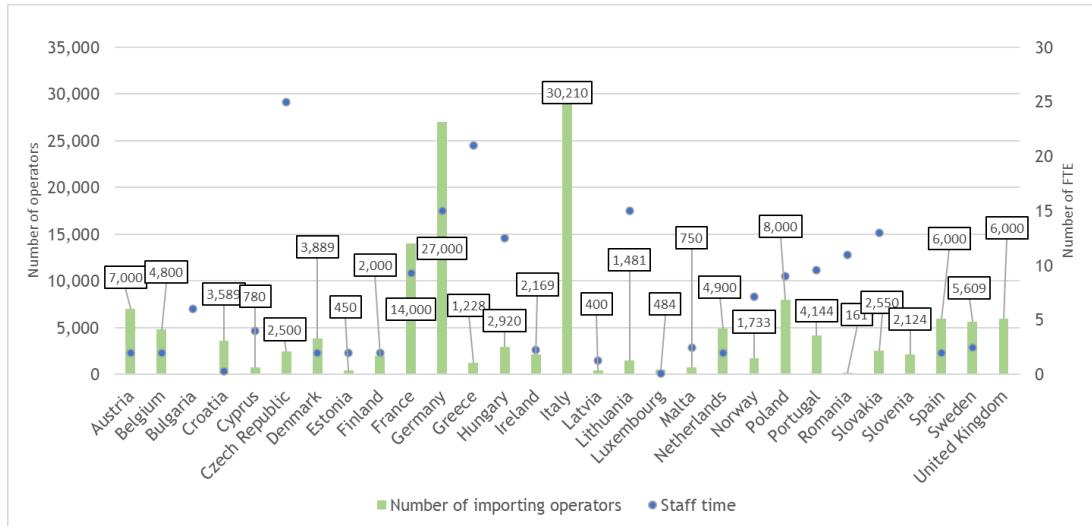


Source: Own compilation based on Comext and EUTR implementation reports; Note: Italy reported 601 full time employees many of which are likely to be forestry-related staff and have not been considered. No information on FTEs was reported by the UK and Slovenia.

The figure indicates that in some MSs such as Croatia and Spain, a fairly large number of checks are conducted compared to a small number of FTEs used. This indicates that the quality of the checks

might be compromised. Several stakeholders contributing to the consultation considered that the human and financial resources invested in some countries are disproportionately low which hampers implementation.

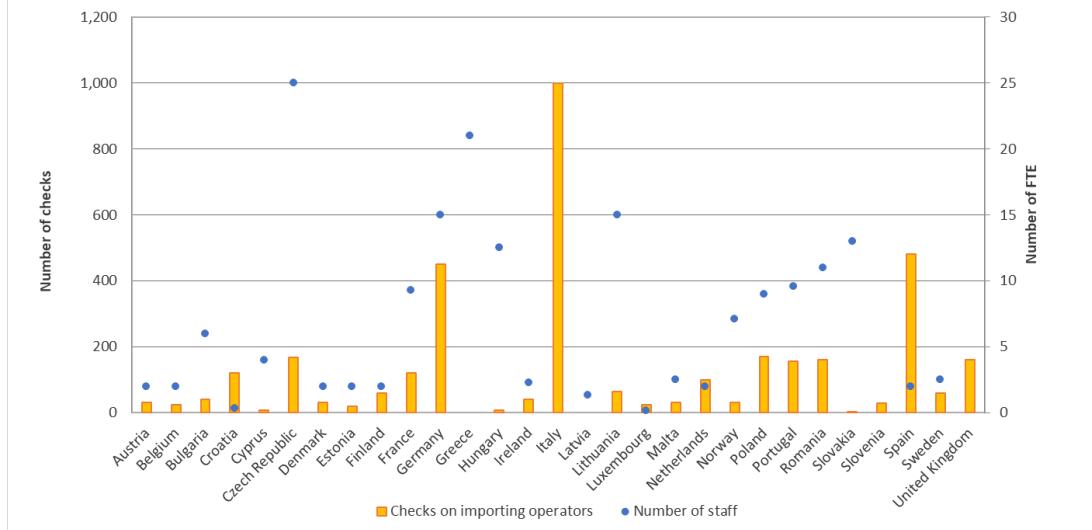
Figure 5-15 Number of FTE compared to number of importing operators (2018)



Source: Own compilation based on EUTR implementation reports

Note: Italy reported 601 full time employees which are likely to be customs staff and have not been considered.

Figure 5-16 Number of FTE compared to number of checks on importing operators (2018)



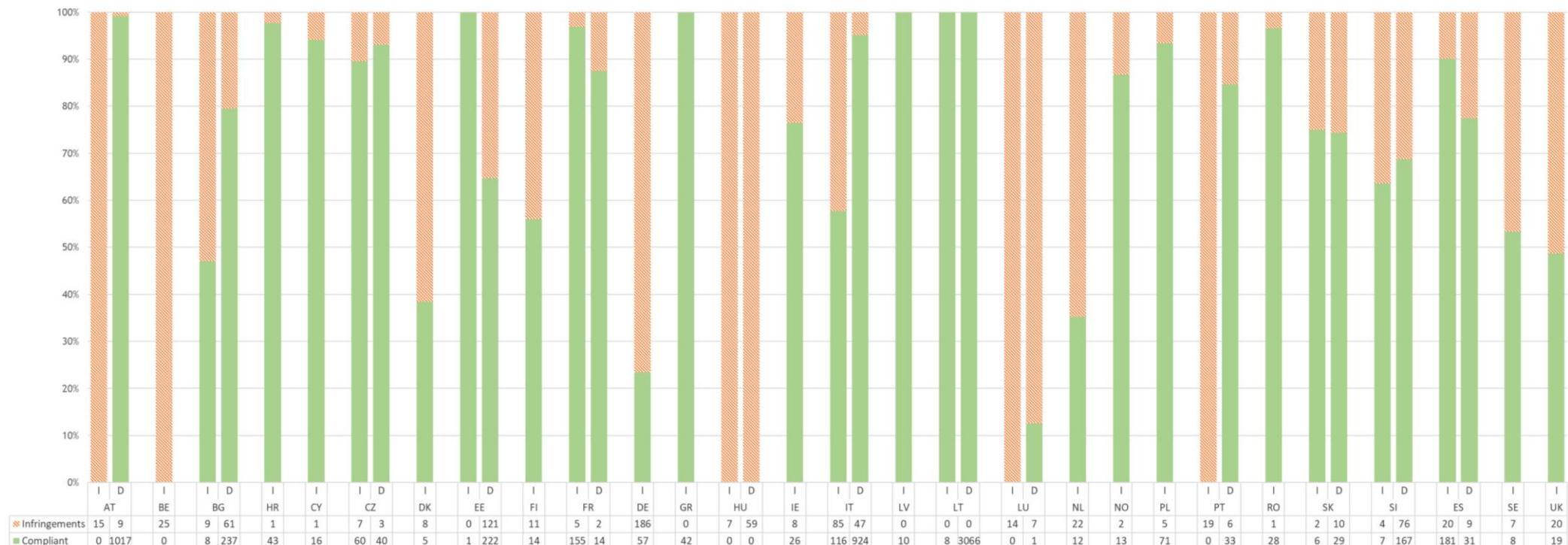
Source: Own compilation based on EUTR implementation reports

Overall, a high proportion of the checks resulted in penalties. For instance, in 2017-2018, between 10% and 50% of the checks in most countries resulted in penalties (Figure 5-17). 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. It should be noted that many of the penalties were infringements with verbal warnings. It is also possible that one check can result in several warnings.

A specific issue with the burden for CAs arising from their obligations under EUTR Article 4 and Article 6 (DD obligations) relates to the burden of collecting information. While in theory the burden of

collecting information about the legality of the timber and exercising DD should be on operators, it is in fact also on the CAs in the MSs. They have to collect information, including on the applicable national legislation of each source country, as well as to assess the risk. They further need to be aware of the risk profile of imports and establish what would be required of the DD System regardless of the product, origin of product or operator. This not only leads to a heavy administrative burden for CAs, but also leads to an opportunity for operators to try to find those MS with either the weakest control system or the weakest penalty measures to import their products, instead of actually practicing DD, as this would mean a higher (financial) burden on them.

Figure 5-17 Proportion of checks resulting in penalties (2018)



Source: Own compilation based on EU TR implementation reports

Note: Not all countries reported information on domestic operators. Malta did not report the number of checks.

iii. How effective have EUTR MS penalties been?

Penalties under the EUTR should be “effective, proportionate and dissuasive”. The Court of Justice of the European Union (CJEU) has provided further guidance on “effective, proportionate and dissuasive” in rulings concerning regulations other than the EUTR (ClientEarth, 2018):

- To assess if a penalty is dissuasive it is necessary to compare: (a) the situation of a person behaving in compliance with the law, with (b) the same person's situation after acting against the law and then receiving a penalty. If the offender is at an advantage when penalties are applied, the penalty system is not dissuasive (LCL Le Crédit Lyonnais, 2014);
- If, under national law, warnings are generally applied to only very minor offences, this could indicate that such a sanction is likely not effective, proportionate, and dissuasive for cases of employment discrimination on the basis of sexual orientation (Asociația Accept, 2013);
- In a case concerning EU fisheries law, the CJEU found that fines of less than €750 for infringements of EU conservation requirements are not deterrent (Commission v France, 2005).

In the context of the EUTR, the penalties set vary across MS. In the first two years of the implementation, four MSs did not have the legal framework to impose penalties which provided an advantage to operators and traders in these countries (European Commission, 2018). From 2015 onwards, all MSs and Norway have set penalties, but there is a significant variation in the type of penalty that can be imposed (European Commission, 2018). Depending on the MS, penalties can be both administrative and criminal, only administrative, or only criminal. In 21 countries, notices of remedial action could be issued where shortcomings are detected to allow operators to adjust their DD System prior to being re-checked. These could be combined with interim measures such as seizures of timber or suspension of permit to trade. Breaches of the EUTR are punishable by imprisonment in 15 countries, with potential maximum sentence varying from 30 days to 10 years. Factors considered by the MSs to determine the level of sanctions include the national economic conditions and levels of sanctions imposed for infringements of other comparable obligations, such as the EU Wildlife Trade Regulations and FLEGT Regulation. Further information about penalties is provided in Annex D - Implementation of the EUTR.

The variation of penalty regimes across MS is justified, since to be “effective”, penalties need to be at the same level as penalties imposed for similar infringements under national law and variations already exists due to economic factors. However, the effect of this is that operators attempt to take advantage of laxer enforcement in some MSs and use them to import illegal timber/timber products indirectly. An EIA report found that a group of European companies have been paying a Croatian company to import teak from Myanmar to Croatia in an attempt to avoid EUTR checks (Environmenal Investigation Agency, 2020). Furthermore, the Dutch and Czech CAs reported collaborating on seizures of Myanmar teak entering the Netherlands via Czechia, concluding that this could have been an attempt to avoid Dutch enforcement (UNEP-WCMC, 2020b). In the second stakeholder event under this study, it was also suggested that Italy is used as an entry point by operators importing illegal timber. Such attempts can be tackled via information sharing between CAs of different countries and customs.

The evidence also shows that the penalties are overall too low. Despite some fines defined in some MS' national laws being very high, NGO reports found, in practice, financial penalties applied remained well below maximum fines defined by the national laws, are usually in the range of only a few thousand euros and were often only applied in cases of repeated infringements (WWF, 2019; ClientEarth, 2018). CAs participating in the stakeholder event in September 2020 supported these findings, giving an example of an operator importing high-risk timber from a high-risk country without a functioning DD System in place and infringing the prohibition requirement; the operator was only fined €10,000 (10% of

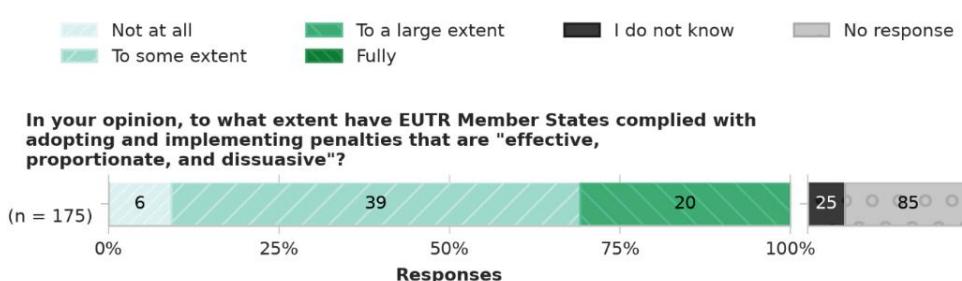
the import value before custom duty and VAT). The fine is not considered proportionate for this type of infringement and indicates that non-compliance may be cheaper for operators considering the profits that can still be achieved. In the context of the CJEU judgement mentioned above, this penalty is therefore not dissuasive (LCL Le Crédit Lyonnais, 2014).

The views of CAs, operators and NGOs on penalties were gathered in the targeted consultation. CAs provided information on how penalties are decided in their MSs. The Czech CA that regional authorities decide the penalties and have no obligation to notify EUTR CAs of the decision. Similarly, penalties in Sweden were decided by the courts. Both Italy and Czechia agreed that proving the illegality of the timber or timber products is difficult and therefore penalties for breach of the prohibition requirement were rare. Instead, CAs focus on identifying issues with the DD System. Czechia stated that in many cases, the penalties are imposed for 'lack of cooperation' and are therefore not reported as EUTR penalties. Similar examples exist in other countries such as Germany where penalties are sometimes imposed under competition law. This suggests issues with the enforcement of the EUTR.

According to the operators, penalties were sometimes too high and disproportionate compared to the value of the timber. Furthermore, penalties do not account that SMEs are more likely to breach their EUTR responsibilities due to 'genuine mistake'. NGOs, on the other hand, considered the penalties too low, though they noted that the detailed information on the penalties imposed in each MS was lacking. In many instances, warnings and notices of remedial actions were given when penalties would have been more appropriate whereas penalties are only given for repeat offence.

Only 25% of the respondents to the OPC question on penalties agreed that the penalties adopted across MSs are "effective, proportionate and dissuasive" to a large extent. 48% found that this was the case only to some extent, 7.5% stated that this was not at all the case, and 31% stated that they don't know (Figure 5-18). This is in line with the findings of our analysis.

Figure 5-18 To what extent have EUTR MSs adopted penalties that are "effective, proportionate and dissuasive"?



Some academic literature argues that injunctions may be the most effective penalties for the EUTR, e.g. not allowing illegal timber through customs but returning it at the expense of the importer (Norman M. , 2020). However, this could be only possible if the infringement is identified before the timber has passed further down the chain.

Overall, the evidence suggests that the penalties applied across MSs are not fully 'effective, proportionate and dissuasive' and create opportunities for operators to avoid their responsibilities through importing in MSs with laxer enforcement.

b. To what extent has due diligence under EUTR been implemented effectively by operators?

The evidence from the implementation reports shows that the implementation of DD System is uneven across operators and was specifically patchy in the 2013-2015 period (European Commission, 2018) (UNEP-WCMC, 2020). Key challenges noted by stakeholders consulted in the initial evaluation included:

- Perception of lack of capacity at CAs to enforce DD which discouraged implementation.
- Difficulties in gathering information on applicable legislation in producer countries in the case of importing operators.
- Difficulties in cooperating with suppliers in the case of importing operators.
- Difficulties in risk assessment and mitigation.

In the targeted stakeholder consultation, CAs noted that a current challenge is that operators do not know if their DD System is sufficient until it is checked. The challenges were higher for operators who did not specialise in timber products or did not regularly import from the same country. Furthermore, there are differences in the views of operators, CAs and prosecutors on what is adequate DD System with operators considering it a paper trail requirement, and this shows a general lack of understanding on how DD is supposed to function. Further challenges reported related to the difficulty of achieving full traceability or proving that the timber/timber products originated from illegal harvest, understanding the applicable law in exporting countries, understanding 'negligible risk', the lack of standardised DD Systems, misconception of operators that certification schemes (FSC/PFC) are a 'green lane' under the EUTR and need for a stronger common sanction mechanism from MS side for certain countries. Some of these challenges have also been highlighted by stakeholders who responded to the TREE survey (Saunders, 2020). Finally, very few operators have used DD Systems provided by MOs under Article 8. It is possible that operators are discouraged to use the DD Systems provided by MOs by the low levels of enforcement and the obligation on MOs to report on major failures of the DD Systems (European Commission, 2018).

A further challenge is that the DD requirement may disproportionately affect smaller operators. The initial evaluation of the EUTR found that, if compared to large enterprises, SMEs seem to be in a disadvantaged position as the cost of DD Systems needs to be covered by a lower turnover in SMEs (European Commission, 2016). Furthermore, the implementation of DD Systems is more difficult for SMEs due to difficulties understanding the technical requirements, lack of staff with adequate knowledge and experience necessary for exercising DD or limited financial resources (European Commission, 2018). A survey conducted by the Global Timber Forum with 27 SMEs⁷⁶ found that 25 of them had existing DD System, gathered sufficient information and kept records of the information whereas two were still developing some (Global Timber Forum, 2015). 24 respondents checked the use and functioning of the DD System on a regular basis and one did not check the system at all (Global Timber Forum, 2015). Overall, the report showed that most of the respondents, despite being SMEs, had implemented DD System. However, the sample size was too small to draw final conclusions. In a targeted interview with EUTR CAs, several CAs commented that DD requirements are too complex and resource-intensive for SMEs leading to improper implementation of DD System.

There is also evidence of challenges for domestic operators, some of which are different in nature than those facing importers. Domestic forestry associations consider the EUTR an unnecessary administrative burden given that prior to EUTR they already needed to comply with strict requirements regarding sustainable forest management which were more comprehensive than DD (this somewhat shows a

⁷⁶ The sample included seven French, eight UK, four Netherlands, five German and three Italian companies. And their wide range of sources included Brazil, Cameroon, Canada, China, Republic of Congo, Gabon, Ghana, Indonesia, Ivory Coast, Malaysia, Myanmar, Latvia, Peru, Poland, Suriname, Sweden, USA, Vietnam and EU MSs.

misunderstanding of the nature of DD and its objectives). Furthermore, it was unclear what is considered 'sufficient' DD and further guidance from the Commission was required. Another issue noted was the lack of harmonisation across countries regarding implementation and documents requirements. Other stakeholders underlined that since domestic operators are often the ones who harvest the timber, they can provide fraudulent information if they are in breach. The need of a DD role for traders was underlined to put pressure on domestic operators.

NGOs underlined that DD is the best approach for tackling illegal logging and preventing illegal timber and timber products from entering the EU market. However, NGOs highlighted that more in-depth understanding of the relevant risks and the sufficiency of DD Systems is required from CAs to enable enforcement. A systematic approach in dealing with risks from all CAs and transparency on what could and could not be considered 'negligible risk' was also needed.

The OPC gathered feedback around the challenges in implementation of DD requirements and their frequency. Regarding frequency, the most common response was that difficulties have often been encountered in implementing DD requirements (21,33%), with 39 respondents (62%) considering that they always, often or sometimes encountered difficulties. Only one respondent stated they had never experienced any difficulties. The most relevant issue for implementing DD requirements was considered to be that the definition of DD and the extent of verifications required are unclear, with 39 respondents (76%) considering this either relevant or strongly relevant. A company/business organisation stated that Article 6 (1)(c) [relating to risk mitigation] was difficult to interpret, resulting in disparities amongst MSs who accept certification schemes as risk reduction means. Other highly relevant issues identified as influencing DD requirements included that other operators do not exercise DD or are unaware they need to, the difficulty in gathering information on suppliers and the challenge in verifying information received. A company/business organisation elaborated on the latter point, stating that companies "*do not know what to expect ... when asked to present paper trails rather than prove due-diligence*"

Overall, the evidence suggests that the DD obligations have not been effectively implemented by operators due to difficulties in, amongst others, understanding what is required (i.e. what is DD, what is adequate DD, and what to do in case of non-negligible risk), finding sufficient and/or robust information and how to verify supplier and other information, the unclear role of certification.

c. To what extent has determination of negligible risk under EUTR created challenges for implementation of prohibition?

Article 6 of the EUTR states that DD System should be applied unless there is 'negligible risk'. 'Negligible risk' has not been defined within the Regulation, or the Commission Implementing Regulation no 607/2012. However, some clarifications have been provided in guidance documents (

Table 5-3). However, the definitions do not address the subjectivity of the term “negligible”.

Table 5-3 Definitions of "negligible risk"

| Guidance document | Definition |
|--|--|
| Commission Notice of 12.2.2016 Guidance Document for the EUTR⁷⁷ | “Negligible risk should be understood to apply to timber supply if a full assessment of both the product specific and the general information shows no cause for concern. The list of risk assessment criteria is not exhaustive; operators may choose to add further criteria if these would help determine the likelihood that a product’s timber had been illegally harvested, or if it would help prove legal harvesting.” |
| Expert Group on the EUTR and FLEGT Regulation , Guidance document - Risk Mitigation measures³⁰ | “Risk mitigation measures taken together must effectively reduce the risk to a negligible level. In the case where all risk mitigation measures together cannot attain a negligible level of risk, the operator must refrain from placing the timber on the EU market.” |
| Expert Group on the EUTR and FLEGT Regulation , Guidance document - DD³² | Cross-reference to definition from Commission Notice of 12.2.2016 Guidance Document for the EUTR. “If the conclusion of the risk assessment is that the risk of illegally harvested timber or derived products entering the EU market is non-negligible, the operator needs to take risk mitigation measures that are adequate to lower the risk to a negligible level. If there is no access to the applicable legislation or other relevant information, the risk cannot be fully assessed and thus not mitigated to a negligible level. If the risk cannot be mitigated to a negligible level the operator should not place the timber on the EU market” |

CAs provided their views about the challenges created by the determination of ‘negligible risk’ under EUTR and associated challenges with the implementation of prohibition at the stakeholder webinar with the FLEGT Regulation/EUTR working group on 18 September 2020. The key issues raised by MS CAs and supported by literature, included:

- **The understanding of ‘negligible risk’** is subjective, meaning that operators can have a different view than authorities on their supply chains, and the understanding may differ between MS CAs. There is no previous experience with the term in other EU legislation.
- **Demonstrating that a risk is ‘negligible’** is difficult since finding the right documentation is challenging when dealing with foreign jurisdictions, a long supply chain or with processed timber such as furniture (Leipold, 2016). Furthermore, due to corruption in source countries, it might be difficult to verify which sources are reliable (Leipold, 2016). The EUTR provisions do not sufficiently ensure operators and CAs can effectively assess risk. Finally, evidence exists of instances where the exporting country (Brazil) changed their legislation to legalise a large illegal timber export after Interpol identifying it and notifying EU CAs and the relevant US authorities (European Commission, 2020a);
- **Proving ‘non-negligible risk’ in court** is difficult since it is difficult to prove intent of ‘negligence’ (Leipold, 2016), the different circumstances of each case (European Commission, 2020a) and because of the specificities of MSs jurisdictions (Box 5-2). This has led to some hesitancy in bringing cases to prosecution. CAs reported cases where operators took the minimum action⁷⁸, which was considered to be sufficient by the court. The police and judicial system also face capacity constraints and have to be selective with the cases and the time it takes to deal with a case. Clear-cut cases such as the full absence of DD System have had better success rates. The feedback is consistent with findings of the WWF which concluded that cases presented by the CAs were not always taken up by prosecutors and that it is difficult

⁷⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2018:376:TOC>

⁷⁸ No further information was provided about what is meant by minimum action.

to prove that operators have not taken all reasonable steps to mitigate the risk (WWF, 2019). Stakeholders suggested that to improve prosecution success rates, information could be sent to help the prosecution, such as detailed reports about the gaps of the DD System, forensic evidence and the country conclusions from the EUTR/FLEGT Expert Group meetings to explain the risk levels of imports from certain countries. As discussed in section 5.1.2. **Error!**

Reference source not found.., this is linked to the burden of proof falling on CAs when cases are brought to courts and any administrative burden linked to the change of penalty. It is noteworthy that appeals from operators regarding the penalties imposed by CAs are a common route to prosecution.

- **The prosecution process is long.** Criminal cases for re-offence under the EUTR take several years and a lot of resources. This may discourage CAs from pursuing prosecution where necessary. Furthermore, according to feedback, large administrative fines could have quicker deterrent effect on EUTR breaches.
- **Appropriate mitigation of 'non-negligible risk' is challenging.** According to CAs, all actors know that certain countries such as Ukraine and Brazil are associated with high-risk however operators consider ceasing imports an excessive measure. Furthermore, the change of supplier could be associated with high costs for operators and sometimes certain products are only available from limited number of countries and supplies. Finally, ceasing trade completely with all suppliers in a certain country may be detrimental to country relations. The role of certification needs to be clarified since many operators consider certification sufficient mitigation of non-negligible risk, but it does not provide legality guarantee.

Box 5-2 The concept of 'DD' in common law and civil law jurisdictions

The concept of 'DD' originates from the Roman law *bonus pater familias* which referred to the principle that a person is liable for accidental harm (Jonathan & McCorquodale, 2017). In a modern context, the principle has been applied in international law as a duty of care standard for the state and in national law as a standard for companies and persons (e.g. 'DD' in US law⁷⁹ and 'duty of care' in the UK) (Jonathan & McCorquodale, 2017). The principle has a longer history of application in common law jurisdictions where case law is used as a primary legal source. Similar concepts have more recently emerged in civil law jurisdictions across Europe, such as that of France and the Netherlands, and are being drafted in Belgium, Denmark, Germany and Finland; however all of these have slightly different meaning and scope (European Commission, 2020a). Since these examples are recent, sufficient experience of their application in civil law courts is lacking (European Commission, 2020a). On the contrary, a significant body of case law exists that defines what 'reasonable' DD or duty of care are in common law jurisdictions. The possibility for direct application of case law precedents reduces the administrative burden on the prosecution to show that a conduct was unreasonable, i.e. that a risk taken by EUTR operators was non-negligible and increases the chances of successful litigation⁸⁰. With growing experience of applying the concept in civil law courts, there is a prospect of increase in DD cases under the EUTR where CAs cannot bring operators into compliance.

It is noteworthy that many of the successful court proceedings relate to teak from Myanmar. Successful litigation on the behalf of CAs taken place in Sweden (WCMC, 2017), Germany (ClientEarth, 2020) and the Netherlands (WCMC, 2018). However, there are other factors that may influence the courts' decisions.

⁷⁹ US Security Act of 1933

⁸⁰ Further evidence will be sought to support this conclusion.

Box 5-3 presents information about two court cases with similar circumstances that led to different conclusions.

Box 5-3 Case study on successful and unsuccessful legal proceedings**Sweden**

In a court case concerning the import of teak from Myanmar to Sweden, the Swedish administrative court announced that, unless illegality can be proven by the CA, an injunction should be the first measure taken against an operator after a non-negligible risk finding, as opposed to issuing a prohibition decision (UNEP-WCMC, 2019).

The Netherlands

In 2017, the Dutch Food and Consumer Product Safety Authority (NVWA) took administrative measures against two operators placing teak from Myanmar on the EU market, without all steps of the DD System in place. The operators were ordered to cease and desist (UNEP-WCMC, 2020b). If they continued to import without doing DD and demonstrating negligible risk, a sum of money would be forfeited. The claimant used the Swedish case as a legal grounding to contest the cease and desist order (UNEP-WCMC, 2020b). In 2020, the court ruled in favour of the NVWA and found the operators' appeals unfounded, stating that the Swedish case referred to by the claimants was not applicable to this case (UNEP-WCMC, 2020b). The court noted that not all the documents from harvest to export had been presented and that risk mitigation measures had not been undertaken (UNEP-WCMC, 2020b).

Stakeholders provided feedback on the challenges with the use of 'negligible risk' and court cases. The Belgium CA stated that Belgium courts have accepted only one case due to the difficulty in proving if the operator was complying. In this case, it is for the CA to decide the administrative penalty. In Germany, a 10,000 EUR fine was appealed by the operator and the CA lost the case since the operator presented many papers and the judge concluded that the matter is too complicated to come to the decision to impose the fine. This suggests that judges need guidance to be able to assess risk under the EUTR. Another stakeholder suggested that clearer definitions would help the enforcement across all types of jurisdictions.

Overall, the term 'negligible risk' in the DD provisions of the EUTR is subjective which makes gathering information to prove that a risk is 'negligible' or proving that the risk was in fact 'non-negligible' in court difficult. This issue is compounded by the variance in legal systems across the EU and the different levels of experience with such subjective concepts.

d. How are CAs cooperating on EUTR implementation/enforcement?

The number of CAs that reported cooperating with each other increased over the period of implementation, with cooperation being noted between more than 50% of MS CAs in 2013-2015 increasing to all CAs in 27 MSs and Norway in 2017-2019 (European Commission, 2018) (UNEP-WCMC, 2020c). CAs cooperated with each other and with customs or tax agencies, CITES Authorities, and police or other enforcement agencies to:

- Share data on customs declarations to support checks on imported timber
- Coordinate joint checks and inspection campaigns
- Investigate specific shipments and temporary seizures
- Transfer of information on substantiated concerns and trans-border follow up on inspections
- Verify documents in the country of origin
- Provide mutual information and coordination for CITES
- Provide technical support
- Test imported wood samples
- Perform risk analysis.

Furthermore, CAs reported working together with other CAs and other EU institutions through participation in EUTR/FLEGT Expert Group meetings, sharing information via the Capacity4dev platform established by the Commission in 2015, collaboration with the Commission, participation in regional CAs meetings (e.g. the Nordic-Baltic EUTR collaboration, the Central European EUTR collaboration) and using the EC TAIEX-EIR Peer2Peer to organise meetings (European Commission, 2018), (European Commission, 2018a), (UNEP-WCMC, 2020c). In the EUTR/FLEGT Expert Group meetings, issues discussed include sharing information about imports and import patterns from high risk countries such as Brazil, Ukraine and Myanmar and coordination with other countries such as the US (European Commission, 2020; European Commission, 2020a). The group has also: discussed and responded to NGO reports (European Commission, 2018), (European Commission, 2018a), prepared guidelines (European Commission, 2017) and contributing to the development of country profiles (e.g. Brazil, Myanmar and Ukraine⁸¹). The meeting minutes from June 2020 highlight that while cooperation between MSs exist, it needs to be more frequent and stronger (European Commission, 2020a). Overall, since its establishment the EUTR/FLEGT Regulation Expert Group as a platform has been used to develop guidance documents and definitions, sharing information on risk assessment approaches and on high-risk import chains and issues identified in some MSs and has proven to be an effective mechanism for cooperation.

Besides the regular FLEGT Committee and EUTR/FLEGT Expert Group meetings, Denmark, Norway, Sweden, Finland, Iceland, Estonia, Latvia and Lithuania have established the Nordic-Baltic EUTR collaboration (UNEP-WCMC, 2019). Furthermore, the Central European EUTR collaboration has been launched by Austria, Hungary and Poland, with other countries' participation (UNEP-WCMC, 2019). In addition, many of the EUTR countries have attended Timber Regulation Enforcement Exchange (TREE) meetings or hosted stakeholder events (e.g. Portugal hosted a multi-country workshop on the Implementation of the EUTR for Mediterranean MSs) (UNEP-WCMC, 2019). Finally, there has been collaboration with both the European Anti-Fraud Office (OLAF) and Interpol via the EUTR/FLEGT Regulation Expert Group regarding tracing timber and supporting enforcement (European Commission, 2020) (European Commission, 2020a).

In addition to cooperation within the EU, increasing numbers of MSs pointed out that they cooperate with non-EU agencies from Russia, Ukraine, Serbia, Indonesia, Australia, USA, Brazil, Japan, and Democratic Republic of Congo (European Commission, 2018).

Overall, the cooperation between MS CAs has proven to be effective. CAs have also gone beyond what is required from the EUTR in cooperation with exporting countries, OLAF, Interpol and others to improve the implementation of the EUTR.

e. How are CAs providing technical and other assistance and guidance to operators?

In the 2013-2015 period, only limited assistance was provided by CAs which primarily focused on supporting SMEs (European Commission, 2018). In the 2015-2017, the assistance was more widespread, with 22 MSs and Norway aiding and training operators, mainly through courses, lectures or seminars, as well as online. Seven countries also reported that training was provided to operators by NGOs and that assistance included online information, workshops, courses, printed materials and general advice on EUTR requirements (European Commission, 2018). The proportion of operators receiving training that were micro enterprises and SMEs ranged from 42 % (Spain) to 100 % (Cyprus, Czech Republic, Malta, Latvia and Portugal); on average, 88 % of the operators trained were SMEs. Overall, CAs reported having raised the awareness of operators (13 countries), traders (9 countries), industry organisations (7

⁸¹ <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeeting&meetingId=23097>

countries) and the general public (6 countries) (European Commission, 2018). In the 2017-2019 period, MSs provided further information on the assistance provided to operators (UNEP-WCMC, 2020). The most frequently reported training type was the provision of information on operators' obligations under the EUTR (24 countries) followed by the provision of specific guidance on DD Systems (20 countries), and guidance on how the checks process works (16 countries). The number of operators who received training, awareness-raising and/or capacity building activities varied widely between countries, from 7 (Cyprus) to 4,000 (Germany). The proportion of SMEs amongst those operators who had received training ranged from zero (Cyprus, Germany, Norway and Romania) to 100% (Czech Republic, Italy and Sweden); on average, SMEs comprised 59% of operators reached (for those countries which provided detailed numbers of operators reached) (UNEP-WCMC, 2020). Denmark reported reaching 100% of its importing operators. It is likely that domestic operators were targeted differently. Latvia did not have the available information to provide an estimate of operator numbers reached but noted that all were SMEs (mostly micro businesses), with a few possible exceptions. Overall, the proportion of operators reached by training varied between under 1% (Austria, Bulgaria, Cyprus, Finland, Italy, Sweden) to 57% (Ireland). Portugal reported extending their training to customs.

Besides specific training, CAs provide information about EUTR on their websites⁸², with campaigns in the UK and France dating back to 2011-2012. Additional information is also provided by the European Commission⁸³, trade associations⁸⁴ and Preferred by Nature sourcing hub⁸⁵. The information provided generally relates to the obligations imposed by EUTR and FLEGT Regulation on different actors, the scope of the Regulations and advice on their application. Preferred by Nature also conducted a series of workshops and one webinar in 12 countries to support EUTR DD requirements in 2017, with financial support from the EU under the LIFE project "Increasing Awareness and Capacity to Support Effective Implementation of the EU Timber Regulation" (UNEP-WCMC, 2018).

The EUTR CAs confirmed that these are the most common approaches in a targeted interview. Additional approaches included publishing articles in industrial magazine and using checks and penalties to educate operators. Finally, more awareness of the general public was seen as something that can put pressure on operators to conduct better DD.

f. How effective has the implementation of EUTR traceability obligations been?

Under the EUTR, traders are not required to exercise DD, but only to keep information on the operator from which they purchased the products, and if applicable, the trader to which they resold them. The Regulation does not require CAs to check whether traders fulfil their traceability obligations,. According to the EUTR, this approach is taken to reduce 'unnecessary' administrative burden on CAs and traders. The traceability obligations serve as a signpost to sufficient DD System, providing the ability to trace timber back to the operator.

In reality, most MSs' CAs performed checks on traders specifically aimed at traceability. In targeted interviews, EUTR CAs explained that check on traders are performed to understand trade patterns

⁸² E.g. France at <https://agriculture.gouv.fr/le-reglement-sur-le-bois-de-lunion-europeenne> the UK at <https://www.gov.uk/guidance/eu-timber-regulation-guidance-for-business-and-industry>; Full list of CA websites available at: [https://ec.europa.eu/environment/forests/pdf/LIST%20of%20CAs%20\(EUTR\)%20-%20updated%2017%20July%202020.pdf](https://ec.europa.eu/environment/forests/pdf/LIST%20of%20CAs%20(EUTR)%20-%20updated%2017%20July%202020.pdf)

⁸³ <https://ec.europa.eu/environment/eutr2013/>

⁸⁴ E.g. Timber Trade Federation provides information on FLEGT Regulation: https://ttf.co.uk/advance-search/?search_query=eutr&tax_category%5B%5D=flegt&orderby=relevance&order=ASC&posts_per_page=10&wpas_id=standard&wpas_submit=1

⁸⁵ <https://preferredbynature.org/certification/legalsource/eutr-which-products-are-covered>

better. In the 2017-2019 period, 23 countries reported having performed checks on traceability, an increase from 18 in the 2015-2017 period. The checks focused primarily on domestic timber. Seven countries reported enforcement actions. From the 2 333 checks on traders, 554 led to notices of remedial action or warning letters (23% of all checks) and 265 to financial penalties (11 % of all checks) (UNEP-WCMC, 2020). The majority of reported enforcement actions concerned insufficient or incorrect supplier information indicating that not all traders' records are complete (UNEP-WCMC, 2020). The proportion of remedial actions or penalties has been increasing, from 0.5-1% of all checks on traders in 2015-2017 to 23-35% in 2017-2019. It may be inferred that not all traders are therefore aware of their obligations. In the early years of the EUTR implementation, the OPC of the mid-term evaluation of the EUTR (2013-2015) found that, at that time, there were still traders who were insufficiently aware of the EUTR and its obligations (European Commission, 2018)

Several pieces of feedback received in the targeted interviews, stakeholder workshops and through position papers from EUTR CAs, NGOs and trade associations stated that the lack of DD requirements for traders significantly hampers the effectiveness of the EUTR. There was a consensus between CAs and NGOs that instances of operators changing to traders to circumvent the EUTR exist. For small companies, it is cheaper to buy products from the EU as traders rather than import them as operators and conduct extensive DD. The lack of requirements for traders creates inconsistencies. For instance, if EU-based printers purchase paper from within the EU they are considered traders, but if they purchase paper from outside the EU they are considered operators. Furthermore, the EUTR CAs reported that identifying traders is also more difficult due to the minimal role they have under the EUTR. Finally, an NGO also flagged that the German transposition of the EUTR does not mention "traders" at all.

Overall, the information gathered suggests that the lack of DD responsibilities and checks on traders creates problems with the enforcement of the EUTR and with creating a fully transparent supply chain. Furthermore, it creates an incentive for small companies to purchase products already on the EU market. Information on the number of traders operating in each country is not consistently collected and therefore it is impossible to assess what proportion of the traders are checked in each country

g. How effective has the role and functioning of EUTR Monitoring Organisations been?

Under the EUTR, MOs can establish their own DD Systems and provide these to operators. In order to do so, MOs must be officially recognised by the European Commission and comply with a set of criteria (i.e. they must be a legal entity, based in the EU, and they must demonstrate the required expertise to implement their functions properly)⁸⁶. The role of the MOs includes (as established under Article 8 of the EUTR):

- "Maintain and regularly evaluate a DD System as set out in Article 6 and grant operators the right to use it;
- Verify the proper use of its DD System by such operators;
- Take appropriate action in the event of failure "by an operator to properly use its DD System."

⁸⁶ As established under the EU Regulation No 363/2012, 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. Available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R0363&from=EN>

As of the date of writing this report (March 2021), 13 such MOs⁸⁷ had been recognised by the European Commission. To receive recognition a detailed assessment process is required, which can take a considerable length of time between application and recognition (Terea, S-for-S, & TopPerspective, 2016). It is unclear if the length or requirements of the application process impacts the number of applicants.

There has been criticism that the criteria⁸⁸ used to recognise MOs is inconsistent (Terea, S-for-S, & TopPerspective, 2016) and unclear (Moser & Leipold, 2019), yet the Commission has recently released guidance on this process (a minimum description of the DD System and assessment tables showing the requirements, verifiers and documentary evidence for applicant MOs are available from the Commission's website⁸⁹). However, concerns on the approval procedure were not raised in consultations, despite OPC respondents being divided as to whether the compliance procedure for recognition by the European Commission of MOs guarantees a full functioning DD System for operators and the independence of monitoring authorities (OPC question 32).

Under the EUTR, MSs' national CAs are tasked with performing checks on MOs (in addition to operators and traders) to ensure they fulfil their obligations. CAs have noted that it is difficult for them to gain an overview of the number of operators who enlist the services of MOs (due to the vast number of operators (European Commission, 2017). MOs have stated that coordination with CAs is challenging (European Commission, 2014), possibly due to the lack of collaborative efforts between CAs and MOs (UNEP-WCMC, 2020). This can lead to coordination misalignment between CAs and MOs, with instances of CAs accepting documents issued by authorities in exporting countries as evidence of legality, which undermines the role of MOs (European Commission, 2014). CAs, MOs and businesses have also noted that they have focussed on gaining first-hand experience with EUTR implementation to become familiarised with what constitutes robust DD Systems, prior to operators enlisting the services of MOs to complement their operational capacities (Moser & Leipold, 2019). It is unclear if this has led to improved coordination of document-authenticity validation.

Another hindrance to the uptake of MOs is considered to be the low level of enforcement conducted by CAs, resulting in a lack of incentive to update a DD System by operators (European Commission, 2016) (Preferred by Nature, 2018). Furthermore, evidence suggests that operators are often reluctant to contract MOs as they represent 'law enforcement' (since MOs are required to report issues to CAs this may create mistrust between MOs and operators), in addition to extra costs associated with such collaborations (Zeitlin & Overdevest, 2019). Such associated costs have led to a disparity in the types of operators which rely on MOs rather than their own DD Systems, as shown by the greater number of large operators (with larger import values and number of suppliers) which implement their own DD System (UNEP-WCMC, 2019) (Kothke, 2020).

A lack of comprehensive data exists on the costs of implementing DD System across MS. OPC respondents found that FLEGT licenses reduce EU operators DD costs (102, 64%), whilst also stating that

⁸⁷ A list of recognized Monitoring Organisations can be found here:

<https://ec.europa.eu/environment/forests/pdf/List%20of%20recognised%20MOs%20for%20web%20updated%2010NOV20.pdf>

⁸⁸ A set of descriptions of what DD System should consist of is provided on the European Commission dedicated EUTR webpage: https://ec.europa.eu/environment/forests/timber_regulation.htm

⁸⁹ Minimum description requirements of DD systems can be located here: <https://ec.europa.eu/environment/forests/pdf/Basic%20minimum%20description%20of%20a%20DD%20SYSTEM.pdf> and assessment tables here: https://ec.europa.eu/environment/forests/pdf/assessment_tables.zip

the costs of DD compliance outweighed the benefits derived (3, 21%). The burden of costs is also stated in literature, where EUTR operators commonly state that the costs to implement DD System (or lack of understanding of the scale of costs) present a significant challenge to implementing DD System requirements. (UNEP-WCMC, 2019). Furthermore, some MS have stated that the costs associated with external DD System (DD System developed with input from third parties and other public sources, or developed solely by third parties) are significantly higher than implementing internal DD System (DD System developed within an organisation) (UNEP-WCMC, 2019).

Another 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 outcomes (Leipold, 2016).

Data on the proportion of imports covered by MOs’ systems could not be located. Such data would assist in gaining an overview of the extent of MOs coverage of timber or timber products, rather than simply the number of operating MOs, which is currently presented, giving some insight into the effectiveness of MOs’ operations. Furthermore, an indication of the extent to which stakeholders seek assistance from MOs was not located in literature or through consultations, nor the reasoning as to why certain organisations are motivated to become MOs. Although evidence suggests that cost factors can limit the actors who are able to implement DD System from MOs, rather than internally, no concrete evidence on the scale of cost differences could be located.

h. What progress has been made on the implementation of the VPAs under FLEGT Regulation?

Progress to date and trade coverage

After 15 years of operation, 15 countries have engaged formally in the VPA process, 7 have ratified a VPA and only one country (Indonesia) has progressed to the stage of issuing FLEGT licences (noting imports from all other countries (14 out of 15) are still subject to the EUTR requirements). Whilst this progress is an achievement in and of itself and reflects substantial efforts of both Commission services and stakeholders in partner countries, this rate of progress has had placed a severe restriction on the ability of the FLEGT Regulation to achieve its objectives, in particular impact on illegal logging and associated trade. The licensing system is the core mechanism for implementing VPAs in order to verify the legality of timber being imported into the EU (McDermott S. a., 2017). Hence no impact on illegal logging prior to licencing is guaranteed. There is some evidence that improvements may be observed prior to licencing (Commission service interview, (Cerutti P. O., et al., 2020)) although this is somewhat based on survey sentiment and is not necessarily borne out in the data, although noting that data analysis also faces key limitations (see EQ1a). However, timber legality issues are not considered to be adequately addressed until there is a functioning TLAS and FLEGT licences can be issued. The slow pace of VPA progress was highlighted in the September 2020 stakeholder workshop as a key challenge, undermining the process as a whole. In addition, the fact that only one country is issuing licences was ranked as the most important issue which has challenged implementation of the FLEGT Regulation, with over 77% of respondents suggesting this was a ‘significant’ or ‘very significant’ issue. Indeed, the coverage of EU imports by FLEGT licences was ranked as only a ‘slight’ or ‘not at all’ positive consequence of the FLEGT Regulation by the majority of respondents to the OPC.

Furthermore, the majority of countries that have engaged in the process do not represent major sources of imports of timber and timber products to the EU (as a proportion of all imports). As a consequence, VPAs only cover a small proportion of timber imported to the internal market (around 9.1% of the value of imports of products covered by the EUTR from all trading partners in 2018) and of exports globally, and FLEGT licences cover even less (around 3% of the value of all EU imports in 2018). It is important to clarify however that it was never the intention that VPAs would engage the whole timber trade, only those that are high-risk. Indeed, the countries which are currently engaged in the VPA process are typically classified as ‘high risk’ countries⁹⁰. However, VPA countries and Indonesia (as the only licencing country) also only represent a small proportion of imports from ‘high-risk’ countries (as defined by ILAT scores): 22% and 7% respectively (ComExt). The lack of main timber producing countries such as Brazil, Ukraine and the Russian Federation issuing FLEGT licences has curtailed the impact of the FLEGT Regulation and its ability to complement the implementation of the EUTR. This is supported by attendees of the December workshop and OPC respondents who ranked this issue as one of the most critical, with 66% suggesting this has been either a ‘significant’ or ‘very significant’ challenge to implementation, and participants of interviews (CAs).

An important associated issue is the frequent misrepresentation of coverage in the literature and the lack of differentiation between VPA stages. Specifically, when presenting impacts many stakeholders conflate countries in the VPA negotiation, implementation and licencing stages, with the risk that the impacts expected at licencing stage are perceived to already be accruing at implementation or even negotiation stage. For example, it is reported that between 70 % and 83 % of the EU-27’s tropical wood imports (in value terms) came from 14 FLEGT-VPA countries between 2000 and 2018⁹¹ (European Commission, 2020b). Furthermore, it is necessary to consider all ‘high-risk’ timber imports, not only those from tropical sources. Even when comparing simply to tropical imports, analysis of the trade data suggests the coverage is in fact much lower at around 20% (ComExt)⁹².

The limited number of VPAs and coverage of key exporters reflects two key challenges:

1. The interest of exporting countries to engage in the process; and
2. Once engaged, the ability of partner countries to reach licencing.

Challenges engaging exporting countries

The lack of involvement of many of the EU’s key, high-risk importers may in part reflect a perception that VPAs are designed solely for tropical countries: this was identified as a possible barrier to Ukraine’s engagement through interview with local stakeholders (despite the principles of the VPA framework aligning closely with elements of the Association Agreement). This perception may stem from the fact that:

- All existing countries engaged could be considered ‘tropical’ sources of timber;
- Financing of the programme by development funds: the FLEGT Action Plan states that, for VPAs, “the Commission will enter into discussions with interested countries” and will (inter alia) “use the funds available under the Tropical Forest Budget Line”, leading to a situation where forest legality is being implemented using the funds available, and not necessarily targeted where it might have most effect;
- The language of reporting: for example, a recent factsheet from the FLEGT Regulation Facility noted that one of the key measures under the FLEGT Action Plan is to secure bilateral trade

⁹⁰ Across different indexes: Corruption Perception Index (CPI), ILAT risk scores, Preferred by Nature

⁹¹ The UK was also part of the EU over this period, but has been excluded by the original source

⁹² Value of extra-EU imports of EUTR product coverage

agreements on legal timber with tropical timber-exporting countries (EU FLEGT Facility , 2019).

Interviews with some Commission services suggested targeting tropical countries was not a perception but was actually the intention of the programme, noting some non-tropical countries had never been approached (including Ukraine). This is despite the fact the European Commission has recognised this challenge previously and highlighted that it is of increasing importance to ensure that future VPAs are not aimed entirely at tropical countries given that imports of tropical timber have begun to fall (European Commission, 2016).

Through interviews with Commission services it was noted that an attempt was made initially to gauge interest in the VPA programme with key importers such as Brazil and Russia. However, a key sticking point was that for the system to work, one needs to assure EU citizens that the system is working, which requires the EU to have a role as part of an overseeing committee. This would open exporting countries to criticism and a perceived lack of sovereignty that was unacceptable to them. This was confirmed in interview with CAs who noted some may not engage as it may be perceived as admission that they are unable to independently enact good forest governance, and for others a perception of loss of sovereignty over forest resources. In other cases, some countries (such as Costa Rica and Brazil) also considered that they had the capacity and ability to achieve the objectives of the VPA independently (Commission service and Brazil stakeholder interview).

A major aspect of the engagement process has been the limited resources available to the Commission services responsible for the negotiating process (Rebecca L. Rutta, 2018). The issue of limited resources, and the need to divert these resources towards those countries most interested and most likely to successfully navigate the VPA process, has effectively led to engagement with the VPA process being a ‘demand-driven’ approach, pursuing countries that actively approach the EC rather than focusing on key, high-risk exporters. Indeed this ‘demand-led’ approach was flagged as a moderate challenge to implementation through the OPC. That said, it is important to note that the Commission re-affirmed its commitment to progressing VPAs at all stages in the 2018-22 Work Plan (specifically point 3.2.1) (European Commission, 2018).

The attractiveness of engaging in the VPA process may have been impacted by the declining importance of the EU as a global source of demand for timber and timber products following increasing demand from China and the U.S (largest and second largest wood importers respectively) (Environmental Investigation Agency, n.d.) (European Commission, 2016). This shift is borne out in the trade data: timber imports to China from VPA countries significantly increased between 2010 and 2019, by 155% and 106% for volume and value respectively (EUFLEGT Facility, 2020). This may have impacted the ability of the EU to put in place VPAs but has certainly influenced the progress made once VPA negotiations have begun and reduced the ability of VPAs covering exports to the EU to impact on illegal logging in the exporting country. It may also indicate that the VPA countries are more focused on export in general than on improved forest governance. This was also confirmed through interviews (with Commission services), who noted that even existing VPA countries (e.g. Ghana and Cameroon) are beginning to trade more with China, undermining the process. Given exporters are often countries with significant amounts of poverty, it was noted there are clear incentives to trade with partners who place lower requirements on exports.

Other issues are also noted to have prevented potential partners coming forward to commence VPAs, including:

- Doubts that the purported benefits would be achieved or that FLEGT-licences would be given the ‘green-lane’ treatment (TEREA, 2016) (Commission service, Ukraine stakeholder and NGO interview). This is emphasized by the emergence of China (as VPA partners trade-off what benefits there are to offset the costs relative to trading with other partners) and the issues around implementation and enforcement of the EUTR (which has undermined belief amongst VPA countries that they will have a market advantage). In connection, several stakeholders (Indonesia stakeholders, OPC, December workshop) felt more could be done to promote FLEGT licenced products in the EU (OPC and interview);
- Additional policy complexity of engaging EU neighbouring countries (Commission service interview);
- Concerns around the large amounts of transparency required but which may not necessarily be wanted (noted in stakeholder interviews and through the OPC, where the majority of respondents (>75%) ‘agreed’ that resistance to greater transparency, third-party monitoring or independent audits was a key barrier to concluding VPAs).

Although there was a decline in interest in the FLEGT Regulation after initial activity, there has been somewhat of a resurgence of interest recently, exemplified by the progression of agreements with Honduras and Guyana (Commission service interview).

Challenges to negotiation and implementation of the VPA

Alongside difficulties in engaging exporters in the VPA process, a number of issues have emerged in both the negotiation and licencing stages. A key issue is the duration and complexity of these stages. Cameroon, for instance, initially entered into a VPA in 2011 only for progress to be halted. The Commission has itself recognised that the process of negotiating VPAs has been slower than anticipated (TEREA, 2016) and the majority of OPC respondents agreed the time and resources needed to ensure national legislation is partner countries is sufficient is underestimated. FLEGT Regulation donors and those involved in negotiations have also expressed the opinion that the process is too time consuming leading to possible ‘FLEGT Regulation fatigue’ (Rebecca L. Rutta, 2018). This is supported by respondents to the OPC who ranked this issue as one of the most critical, with 66% suggesting the time and cost to negotiate VPAs has been either a ‘significant’ or ‘very significant’ challenge to implementation. The length of time, effort required and difficulties encountered in concluding VPAs has a compounding effect - they increase the pressure on already finite Commission resources, potentially deter new would-be entrants to the VPA process, and delay the point at which VPA countries can start licencing. The reasons for prolonged negotiation and implementation stages are several and often vary by country, they include:

- TLAS are very complex systems which set a high bar, and are rigorously assessed by the EU (interview with Commission services and NGOs). Indonesia stakeholders (interview) noted it takes time to develop multiple, complex systems, processes and administrative bodies which did not previously exist, and build capacity amongst administrative staff. This may now be more acute for African partners relative to Indonesia who implemented a simpler system (through use of devolved licencing). Cameroon’s second attempt to develop a supporting IT infrastructure (between 2014-15) ran into issues as this did not meet the EU’s quality standards and this disagreement has dramatically slowed the progress and evolution of the VPA

(Cameroon stakeholder interview). Likewise the development of three regional TLASs were not acceptable to the EU as viable options in executing the VPA (Malaysia stakeholder interview);

- Weak governance, lack of institutional capacity and resources, and widespread corruption cause significant issues in putting complex FLEGT Regulation procedures in place (European Court of Auditors, 2015) (Chatham House, 2020b) (corroborated by OPC responses and interviews);
- In some cases, such as Malaysia, the requirement to involve and gain agreement across multiple devolved regions led to difficulties in negotiating the VPA (TEREA, 2016). Negotiations with Malaysia has been on hold since 2014 as Malaysia opted to implement three TLAS systems, which was deemed inconsistent by the EU with the need for a time-bound commitment to implement the VPA as a whole country (Malaysian stakeholder interview). Indeed forest governance and regulation is pluralistic in Malaysia, which local stakeholders suggest the EU has failed to recognise. Time was also required under the Indonesia TLAS development to ensure different stakeholders are aligned, and build capacity throughout the timber industry (in particular amongst smaller players) (Indonesia stakeholder interview);
- Progression for some may be limited by wider infrastructure deficiencies. For example, internet and electricity coverage is a requirement for the TLAS to be operational which is not yet universal in Ghana (in particular outside the main cities);
- Ghana is now in its third attempt to successfully implement a licencing system. For the first two unsuccessful attempts, European providers set up systems which were not tailored to the country (Commission service interview). In Cameroon's first attempt to develop a supporting IT system, commercial arrangements meant that the IT system developed could not be used (Cameroon stakeholder interview);
- It is difficult for the EU to withdraw if negotiations do not seem destined for success (to be further developed). The majority (just less than 75%) of OPC respondents 'agreed' or 'significantly agreed' that the EU having no clear contingency plan or retreat strategy was a barrier to concluding VPAs.

There is also the potential for differences between the initialled VPAs and what the national government then implements. For example, during negotiations Vietnam initially signalled their willingness to engage in an ambitious agreement, but has since been criticised for failing to achieve the 'spirit of the VPA' with one former official stating that 'Vietnam is among the top countries to adopt comprehensive legislative documents, but is among the bottom [countries in terms of implementing] them' (Fern, FLEGT VPA Update, 2020).

Ultimately, political will is also a critical enabling force in positively influencing law enforcement in the forestry sector (Chatham House, 2020b). Without governmental engagement to ensure environmental ministries are appropriately funded, drive capacity building and transparency, and to ensure the independence of anti-corruption commissions, the ability to improve law enforcement and ensure the veracity of license systems is a significant challenge (corroborated by OPC and stakeholder interview).

The slow progress to negotiate and implement VPAs and achieve licencing highlights that partner countries have multiple and varying motivations and differing priorities for engaging in the process. The main driver for entering a VPA may not simply be to implement licencing and reduce illegal logging (flagged through interviews with Commission services). The need to improve governance or other development considerations were also factors that enticed countries and the EU to initiate a VPA

negotiations. Malaysia (as noted in interview with local stakeholders) initially engaged in the programme as a means to ease access to the EU market (alongside reinforcing forest law and timber legality). This continues to be the case, as exemplified by Honduras and Guyana, who are both minor exporters to the EU. Stakeholder interviews verified that the motivations of Honduras were founded primarily in a sense of obligation amongst public authorities that they should improve governance of the domestic forest sector as a point of ‘national pride’ and to create fairness for legitimate businesses.

Other challenges

Whilst there are challenges for progressing the negotiation process itself, many issues also arise during, but outside of, the process:

- Whilst part of the VPA process, deforestation rates may not necessarily decrease. For example Liberia’s VPA was signed in 2011 and ratified in 2013, however FAO forest cover data (FAOSTAT, n.d.) suggests the rate of reduction in forested land increased from a reduction of -0.9% from 2000-4 and -1.5% from 2005-9, to -1.53% from 2009-14 and -1.95% from 2015-20;
- There is ambiguity and confusion about the status of exports from VPA countries that are in negotiating or implementing stages but not yet licencing (noted in the September CA Stakeholder workshop). This may be somewhat perpetuated by VPA partner countries themselves - e.g. Myanmar and Malaysia which market their TLAS systems as EUTR-compliant (December 2020 workshop). A majority of respondents to the OPC noted that a significant challenge to implementation was that VPAs only contribute to EUTR compliance once licencing commences, which was re-iterated by Commission services through interview;
- VPA countries may ‘hide behind’ the VPA process: in some instances, gaining information on supply chains from exporters in VPA countries has been significantly difficult, which is directly contrary to the objective which VPAs are intended to achieve (noted during December 2020 workshop). This may be compounded by reluctance to enforce EUTR when VPAs are in negotiation as the VPA process is somewhat political (December 2020 workshop). Through interview Commission services noted that reluctance to engage in a different framework (EUTR) prior to licencing may be understandable given the VPA does not create obligations or liabilities for exporters before the point licencing begins;
- Even where information is made available, the strength of evidence may not necessarily be improved by the VPA process. For example, for the Democratic Republic of Congo, internal issues create substantial ambiguity about the veracity of information provided, although it is still engaged in the VPA process (noted in the September workshop).

Finally, it is also important to note that there are still challenges once licensing has begun, in particular the fragility of the VPAs. In Indonesia, the trade ministry recently issued a regulation that would free wood product exporters from having to obtain licenses certifying that the wood comes from legal sources, known as v-legal (“verified legal”) and required for wood products entering the EU market, in February 2020 (Mongabay, 2020) citing the COVID-19 pandemic as justification. The decision was later rescinded following concerns raised by stakeholders and consultation with the EU (UNEP-WCMC, 2020).

i. How effective has the implementation of FLEGT Regulation procedures been in partner countries and MSs?

i. How effective are the processes and tools put in place by VPA countries?

The literature evidence gathered indicates that the various tools and processes put in place by partner countries are exposed to numerous challenges which ultimately undermine the effectiveness of the FLEGT

Regulation. A focus has been placed on Indonesia, as they are the only country to be issuing licenses at this stage. Key challenges identified are briefly discussed here and elaborated upon in Annex E.

Pre negotiation

Overall, VPAs have been found to increase the recognition of civil society's integral role in developing and implementing national policies in partner countries, ultimately resulting in accountable forest management within these countries respected (Overdevest & Zeitlin, 2018) (CIFOR, 2020). Civil society and local community participation in VPAs has enabled a closer involvement in forest management and enhanced capacity to influence policy processes and decisions (CIFOR, 2020). Furthermore, CSOs in Indonesia are formally recognised as monitors of the SVLK system, whilst monitoring organisations (such as Independent Forest Monitoring Network- JPIK) have been established to monitor SVLK implementation (CIFOR, 2020). Such developments assist in improving stakeholder relations at national and at field-level (CIFOR, 2020). Despite these positives, VPAs are still in the process of being implemented, ratified or negotiated in multiple countries, with issues surrounding political culture, weak legal frameworks, inadequate resources and enforcement and lack of functional data systems proving to be key challenges in to VPAs (Adams, Kayira, Tegegne, & Gruber, 2020).

Negotiation

One of the benefits of the VPA process is the involvement of a broad range of forest stakeholders within the development of national legality standards. VPAs have been noted as contributing to improved governance, transparency and equitable solutions, bringing together and building the capacity of civil society and government (TEREA; S-FOR-S; Topperspective, 2016). In Cameroon, Ghana and Indonesia, the VPA process has had a positive contribution to providing civil society a greater role (than without the VPA process) in controlling legality and irregularities in the forest sector of the respective nations (Cerutti, et al., 2020) (Logging Off, 2018). Not only this, the VPA process was evidenced to play a positive role in better organizing civil society organisations (Cerutti, et al., 2020), meaning that the power and ability of such organisations to hold governmental bodies accountable has increased (Cerutti, et al., 2020) (Hansen, Rutt, & Acheampong, 2018) (Overdevest & Zeitlin, 2018). A stakeholder from the Forestry Ministry of a VPA country stated in consultations that "*all stakeholders (which) participated in the negotiation of the VPA (i.e. in the negotiation committee) are still involved in the operations of the VPA today*", indicating the continued integration of stakeholder integration from negotiation to implementation of the VPA process.

In Ghana, Civil Society Organisation (CSO) participation within VPA discussions led to a broadened governance scope, encompassing socio-economic aspects and forest user governance issues. Furthermore, the Ghanaian VPA commits to providing monitoring of social and economic effects in order to address any negative affects incurred on indigenous and local communities (Overdevest & Zeitlin, 2018). However, in certain cases, such as the VPA negotiations in Indonesia, certain groups were found to not be ingrained throughout forest rights discussions (CIFOR, 2014). Within the Timber Legality Assurance System (TLAS) (in Indonesia: Sistem Verifikasi Legalitas Kayu (SVLK)) legality standards in Indonesia, Indigenous Peoples' rights were originally included as a criterion to be assessed within the SVLK legality standard, but these were subsequently removed from such processes. Despite indication by the CSO that indigenous rights would be addressed under the social and environmental aspects covered within the SVLK, it remains a concern that such rights are not respected (Overdevest & Zeitlin, 2018).

The VPA process has also positively contributed to the coordination and management of recognised SME organisations, a critical pathway for private sector representation in VPA processes. Such improved coordination and management have (in Cameroon, Ghana and Indonesia) led to fewer disruptions in business conducted and positively impacted the recognition of such associations in the forest sector (Cerutti, et al., 2020).

Implementation

Despite considerable governance improvements still required in Indonesia, substantial improvements have occurred. Governance issues are predominantly linked to law enforcement in Indonesia, particularly regarding its SVLK system (Fern, 2017). Timber certified as legal under the SVLK system has been found to certify illegal forest clearing by organisations and allowing illegal timber to enter the supply chain, through permitting ‘systematic impunity’ across Indonesia’s law enforcement agencies (JPIK and EIA, 2017). However, through wider coordination between ministries, various sectors are now collaborating and have shown interest in implementing learnings from the SVLK scheme (CIFOR, 2020). As such, it is regarded that without the FLEGT Regulation (and FLEGT AP) governance improvements currently witnessed would not have occurred (TEREA; S-FOR-S; Topperspective, 2016). Interviews with stakeholders from Indonesia added that “concession holders and industry have become more obedient to Regulation through implementation of SVLK”, whilst greater links between various ministries (and other actors such as tax offices) have stemmed from implementing the VPA process. Despite these improvements, NGO reports question the robustness of the verification process of the SVLK system, predominantly due to continued governance and enforcement gaps (Greenpeace, 2021).

VPA countries can take numerous approaches to monitor the implementation and impacts of agreements, through independent: auditing; observation; market monitoring; or impact monitoring (European Forest Institute, 2021). Independent observation by CSOs have been evidenced as playing an important role in reducing corruption in Cameroon, Ghana and Indonesia (particularly following VPA ratification) (Cerutti, et al., 2020). In Cameroon, CAR, Indonesia, Liberia and Congo NGOs have implemented or piloted ‘self-mandated’ monitoring practices which goes beyond observing compliance, but includes elements such as assessing penalty adequacy and respect of community rights (Brack & Leger, 2013) (Overdevest & Zeitlin, 2014). Although these actions occur outside the scope of VPAs, these can eventually progress to some form of governmental agreement- ensuring robust operation of TLAS, as such approaches result in IFM implemented by numerous actors, increasing the forest monitoring coverage and involving communities most likely to be negatively impacted by unsustainable forest management (Coffey and Palladium, 2016).

In regard to barriers, funding concerns have been noted as hindering the effective implementation of monitoring activities, particularly by CSOs. Funding gaps have been stated as hindering CSO active participation in throughout the VPA process in Indonesia, (Fern, 2017) and Congo (Bollen, 2020) with short-term funding procedures resulting in CSOs gaining experience in independent observation experience in an ad-hoc manner rather than sustained, long-term exposure to such processes (Bollen, 2020). Funding concerns have also been raised in Cameroon, with the Independent Forest Monitoring (IFM) organisations (NGOs) fully reliant on external funding meaning that their financial sustainability can be questioned in the long-term. (Mbzibain & Ongolo, 2019). Examples exist in Indonesia of specific IFM funds generated from fines collected by national governments from IFM actions. Such mechanisms can ensure the continued functioning of IFM organisations (Mbzibain & Ongolo, 2019).

Delays in implementing TLAS can be attributed to low political-will to collect and manage information, a lack of infrastructure (stakeholder interview with VPA Forest Minister) (Adams, Kayira, Tegegne, & Gruber, 2020), delays in legal reforms (including the adoption of legislative documents (Fern, Logging Off: FLEGT VPA Update January 2020, How to ensure FLEGT is a success: Make sure we stay the course, 2020), as described under Annex E), a lack of human or financial resources (Adams, Kayira, Tegegne, & Gruber, 2020) (note here that the Adams et al., study is from a sample size and does not reflect all VPA countries) and disagreements between the EU and VPA countries on the scope of TLAS (stakeholder interview with VPA Forest Minister). Furthermore, disproportionate costs of establishing verified certifications has been noted as an issue for SMEs in Indonesia (Overdevest & Zeitlin, 2018).

Acheampong and Maryudi found that Indonesia partakes in the practice of renting legality certificates to export timber and timber products. This is done to bypass legality verification and avoid the costs of acquiring official legality certificates. This indicates that the technical and administrative complexities and associated costs (especially for small manufacturers) of acquiring legality certification is hindering the buy-in to formal legality procedures (Acheampong & Maryudi, 2020). Maryudi and Myers found that such bypassing of legality verification creates an 'elite capture' process, whereby larger companies gain an upper-hand in the market due to the disproportionate challenges faced by smaller companies (Maryudi & Myers, 2018). Evidence indicated that the formation of group certification cooperatives can assist in overcoming such financial burdens related to SMEs (Overdevest & Zeitlin, 2018). NGOs noted in consultations that such processes can help drive the implementation of certification services (through the sharing of costs).

Concerns have been expressed that controls required under the VPA may not be sufficiently rigorous to ensure the legality of imports to VPA countries, which may then go onto become FLEGT Regulation-licenced exports. Global Witness (Global Witness, 2019) highlight the case of exports of tropical timber from the Democratic Republic of the Congo (DRC) to Vietnam in 2018, one the DRC's two largest timber export markets (the other being China). The analysis found that roundwood exports from the DRC to Vietnam increased by almost 66% between 2017 (~40 000 tonnes) and 2018 (~90 000 tonnes). Global Witness described the increase as "a worrying trend", as Vietnam currently lack systems for ensuring legality of imports and that many of the DRC's timber exports have been considered illegal or high risk in recent years. Global Witness expressed concern that the controls required by the EU-Vietnam VPA may not be sufficiently rigorous to ensure legality of imports. In Indonesia, a stakeholder in interviews stated that labelling countries as 'high-risk' is challenging largely due to the lack of guidance provided on this.

Finally, an analysis of the resources available in VPA countries suggests that a lack of centralised resource databases and/or access to relevant information (for example, on VPA country laws and governance structures, concession issuance, harvest data) are available for actors who aim to conduct DD processes when sourcing from VPA countries. As such, the resource burden placed upon key stakeholders in VPA countries and importing countries is not alleviated through the effective sharing of key information related to assessing/ mitigating the risk of illegality. Stakeholders in the OPC reflected this, stating that a lack of centralised databases in VPA countries negatively impacted transparency, and creates a disconnect between suppliers and operators/traders.

ii. How effective have processes and procedures put in place in EU MSs been in achieving EU MS requirements around operation of the FLEGT Regulation?

Many elements of the FLEGT Regulation have been implemented successfully by many MS (Further evidence is presented in Annex E): all MS have allocated CAs and most have provisions in place to undertake additional checks (UNEP-WCMC, 2020); FLEGT measures have been fully integrated into TARIC enabling the system to automatically check for licences (interview with Commission services); and the FLEGIT system⁹³ is continuously updated and improved and the majority of (but not all) MS are using the system to process FLEGT licences (UNEP-WCMC, 2020). In addition, although there are slight variations in processes across MS, CAs agreed that there were no complaints regarding variance in implementation across MS (as there are under EUTR). These positives have been achieved in spite of initial challenges for CAs of finding resource and capacity (flagged through interviews). It is insightful that the majority respondents to the OPC considered ‘time and cost required to establish and implement the FLEGT Regulation within the EU, considering the proportion of timber covered by the licencing scheme’ a significant challenge to implementation. At the September 2020 workshop, CA stakeholders noted that resource limitations did place a constraint on the ability of MS CAs to undertake effective enforcement (confirmed also through the CA interview).

Under the FLEGT Regulation customs have a clearly defined role, co-ordinating with the CA to carry out defined acceptance and verification procedures (interview with Commission services). From a customs perspective, shipments under the scope of the FLEGT Regulation are subject to additional ‘prohibitions and restrictions’. Hence customs authorities carry out additional controls to verify the implementation of the prohibitions and restrictions. Indeed, in many cases MS have designated customs as the CA. This defined duty under FLEGT Regulation is in contrast to the involvement of customs under the EUTR (for EUTR, given the obligations concern placing on the market for the first time, implementation and enforcement are to be implemented by authorities other than customs which are competent for the internal market), which has led to implementation issues for the EUTR (see EQ2a). However, the detail of the relationships between customs and CA may still pose challenges under the FLEGT Regulation (see EQ2i(iii)).

Concerns have been flagged by Indonesian exporters that operating under a FLEGT licence could actually imply a disadvantage relative to imports from non-FLEGT licencing countries given additional complexity and extra checks required (i.e. relative to timber imported under the EUTR which requires no additional customs checks) (IMM, 2017) (interview with NGOs). However, this is only a disadvantage to the extent that imports are held up by customs for clearance: the data shows that the majority of licences are being processed relatively quickly (53% on the day or day after in 2018), but some a substantial proportion of licences progress more slowly (33% took >3 days in 2018) (UNEP-WCMC, 2020). Interviews with Commission services suggested FLEGT licenced products are cleared in the same way as all other imports, and CAs confirmed the vast majority of imports are cleared very quickly (within a day, and some MS adopt systems to clear licences in advance of shipments arriving). The CAs elaborated that when clearance does not happen quickly this is ‘for good reason’: i.e. additional checks are required to ensure compliance following the risk-based approach. Indeed, OPC respondents provided a neutral response regarding whether delays due to shipments being held at customs for physical inspection were an issue for EU operators.

⁹³ The EU FLEGIT is an IT system managed by the European Commission to be used as a central repository of all FLEGT licences intended for the EU countries.

The charging of fees by some MS but not others (and the variability across those that do) are a source of incoherence and is perceived to be counter-productive by VPA partners (IMM, 2017). OPC respondents were neutral on whether this posed an issue for EU operators.

One of the key challenges is the incorrect (but not fraudulent) completion of FLEGT licences. In particular, the mismatch of HS codes between the licence and shipment which then require adjustment by customs which is driven by the customised set of HS codes used in Indonesia. This in turn causes a number of issues including: delays to shipments being processed (IMM, 2017), application of higher import duties (Poland Customs Department and Ministry of Finance, 2017)), and is one of the factors in which makes reporting problematic (UNEP-WCMC, 2020). Other issues with completion of licences include: issuance for products outside of the VPA scope (specifically in the early stages of licencing), and cases where the documentation incorrectly states that a FLEGT licence is not required (erroneous use of box Y057. Indeed, the majority of OPC respondents 'agreed' that confusion over product scope, ineffective procedures in partner countries to challenge problematic licencing cases and different interpretation of HS codes to be moderate challenges to the implementation of the FLEGT Regulation. The significant of the issue around HS codes was also highlighted in interviews with CAs, Indonesia stakeholders and NGOs. Should further VPA partners progress to licencing, these issues could become more onerous: newly licencing countries may use a different customised set of HS codes again to those used in Indonesia and the EU, and CAs would need to simultaneously handle clarifications across multiple varying systems. This could be further exacerbated where VPA partners have less developed infrastructure - e.g. African VPA partners often rely on old outdated paper prints when declaring the goods for export, rather than an electronic system as the SILK in Indonesia.

iii. How effective is enforcement, both in VPA countries and in EU MS?

Indonesia

Stakeholders (interviews with NGOs and Indonesia authorities, December workshop) generally note that the integrity of the licencing system in Indonesia was generally under control and working. One key component of evaluating and monitoring the implementation of VPAs are periodic evaluations (PEs). Two PEs of Indonesia's TLAS have been performed in 2017 (Sucofindo, 2017) and 2019 (Profundo, 2019). The second PE assessed the control measures performed at different points in the supply chain, and although it highlighted a number of improvements, overall it concluded the system was functioning as envisioned in the VPA. Furthermore, it reported that implementation of SVLK has improved the transparency and accountability in the Indonesian forestry sector and disclosure of information, and that 11 of 20 recommendations from the first PE had been implemented while others were advised, demonstrating continued improvement in the system and effectiveness of the PE.

LIU retains the overarching role of the certification body, verifying the legality of the industry. They are supported in this role through a network of Conformity Assessment Bodies (CABs) who carry out the legality verification function. LIU do spot checks of auditors to ensure they are performing well and have in cases frozen accreditation where they have failed to perform sufficiently (Indonesia stakeholder interview).

Independent monitors are also an integral part of monitoring the Indonesian TLAS, working by agreement of the Government and are formally recognised in the VPA. The role of observer is performed primarily by JPIK, an informal network of more than 60 member organisations. Indonesia stakeholders believe the independent monitors are playing an active role in ensuring the robustness of

the system. JPIK published a report in 2018 of its monitoring activities between 2014-17 (FLEGT.org, 2018) which concluded that Indonesia's TLAS has led to "significant changes in improving good forest governance" but still has weaknesses and must be continuously improved to ensure its credibility and accountability. As part of its monitoring, JPIK actively reported concerns to responsible bodies over this period and concluded that the ability of the monitors to file complaints and the timely responses of the conformity assessment bodies are major achievements of the SVLK and the VPA. It also made several recommendations for improvements (such as putting in place penalties to deter non-compliance and increasing data availability). Separate concerns have been raised that these independent observers have insufficient (financial and human) capacity in Indonesia to effectively carry out their role, which has in turn led to a lack of auditing of operators (Overdevest & Zeitlin, 2018). Indeed through interview Indonesia stakeholder noted that monitors rely on support from donors to cover their costs, and a more sustainable solution is required going forward.

More recently, the EIA published a report (Environmental Investigation Agency, 2021) on its activities to monitor enforcement actions and the judicial process following exposure of criminal activities. EIA concluded there had been inconsistent enforcement by and lack of information from the judicial system in Indonesia of their prosecutions and court cases, and listed several notable concerns, including: that some companies that had been found guilty of illegal timber trade still held an SVLK certificate and the continued operation of some companies that had been ordered to cease. Although the report highlights issues with the judicial system (but not the VPA, TLAS, or other implementing authorities), the scope of the study is focused on a specific region and products, and as such it is uncertain to what extent these results can be extrapolated to the whole system. Concerns around enforcement under the judicial system were also flagged by Indonesia stakeholder through interview, who noted there were cases where enforcement should have been taken forward but was not.

EU MS

In the EU, MS CAs play an important role in enforcement through additional verification checks of licences and shipments. Determining whether the level of checks performed is sufficient (i.e. effectively balances the need to minimise risk of circumvention against the costs of enforcement) is challenging. Analysis performed based on the data provided by MSs through the annual reports (e.g. (UNEP-WCMC, 2020)) has highlighted that there may be important limitations in the processes which facilitate checks and the deployment of an effective risk-based approach for some CAs due to either: possible limitations in process (France, Luxembourg, Romania, Spain) or perceived limitations in data sharing with customs (Denmark).

There is considerable variation across MS approaches to and frequency of customs data exchange between CAs and customs. There is also variation between MS in terms of the arrangements for exchange of information *other than customs data* between CAs and customs, and in a number of cases MS did not confirm seemingly important processes were in place (UNEP-WCMC, 2020) (e.g. that customs would suspend release of an import for free circulation until the CA has verified the FLEGT licence - indeed in the CA interview one MS noted there had been isolated examples where this had occurred, reflecting there should be a process to prevent this and the latest Annual Synthesis Report includes data showing this has occurred across several MS (European Commission, 2020b)). Customs data is essential for the CA to perform risk-based checks and hence the exchange of data between CAs are vital for the effectiveness of the FLEGT Regulation (the importance of access to customs data, and concerns around existing arrangements, were confirmed by CA stakeholders at the September 2020

workshop and through targeted interviews). The majority of respondents to the OPC suggested co-operation between CAs and customs had been a ‘significant’ challenge to implementation (although other issues were ranked more highly). That said, participants of the CA interview noted productive ongoing relationships with customs authorities were effectively supporting implementation.

Furthermore, several MS undertake many fewer checks relative to the volume of imports received whilst also not using ‘volume’ as a risk criterion to target checks towards larger shipments to compensate. This applies to some MSs: only for licence checks (Cyprus, Ireland and Sweden), and in the case of both licence and shipment checks (Croatia, Denmark, France, Slovenia). However this analysis only uses data on numbers of licences checked, not volume: no data is available or collected by CAs on the volume of goods that the checked licences represent. Through the CA interview, participants flagged that even if they have an agreement with customs regarding the number of checks to be undertaken, the amount actually performed will depend on prioritisation of customs authorities across the risks they face (and there are other risks, more valuable items, than timber).

In response to the OPC, the majority of respondents agreed that a lack of implementation and enforcement guidance had been a challenge to implementation.

With respect to penalties, there is a large range among MS regarding the type and size of punitive measures available to CAs (UNEP-WCMC, 2020). The variance between MS in itself signals a potential coherence issue, although this could also reflect that some MS rely on legislative options outside the FLEGT Regulation to apply penalties (e.g. through customs legislation). One participant of the CA interview suggested it would be beneficial to unify penalties across the EU, but another disagreed, noting that penalties should be flexible to be proportionate to context (e.g. income levels) and level of infringement. Participants noted they had not observed re-routing of imports as a result.

To assess the dissuasiveness and proportionality of penalties, one should consider what has been implemented in practice. Data on the application of penalties is collected through the annual reporting, but penalties appear to be applied in only very few instances: e.g. no penalties were imposed in 2018 despite issues being identified through licence and physical verification checks. In the CA interview, 3 out of 4 participants noted no instances where penalties had been levied, and the fourth noted criminal, not administrative, penalties had been levied (around 8-9 times in the last year). Participants offered reasons why penalties are not often used as follows:

- A bigger penalty was to have their shipment rejected or destroyed, which does occur but participants did not provide data on how often;
- It is uncertain if these can be levied before a shipment enters EU territory;
- Errors are often due to negligence rather than fraud.

Furthermore, no data is available regarding the speed with which penalties can be levied which can also affect dissuasiveness. Generally participants agreed that they had not really observed any importers knowingly trying to circumnavigate the system.

Although this analysis poses questions around MS enforcement, an important reflection is that MS CAs perceive there to be a greater risk around imports under EUTR than under a FLEGT licence, and commit greater resources to (and place greater emphasis on) enforcement of EUTR (as flagged through CA interview). MS CAs view that a FLEGT licence equates to legality (hence implicitly relying on the

strength of processes on the side of those issuing licences), and view their role as a simple matching or checking exercise (opinions expressed through targeted interviews) and offers little 'value-added'. This is reinforced somewhat by the fact the majority of OPC respondents felt inspections carried out by MS CAs were 'moderately effective' in supporting the achievement of the objectives of the FLEGT Regulation. For further discussion see Annex E.

iv. How effective is communication between actors involved in the implementation of the FLEGT Regulation (within MSs, with partner countries, with other stakeholders/duty holders)?

There are open and active channels of communication between CAs and the Commission. For example, the EUTR/FLEGT Expert Group appears to be an effective forum for collaboration and discussion, leading to improvements in implementation. There are also examples of productive collaboration between CAs, in particular regarding goods arriving in one MS but destined for another. That said, the literature also highlights further actions that could improve co-ordination and co-operation between CAs, for example under the FLEGT Regulation that access for all CAs to SILK would be productive to further improve communications (UNEP-WCMC, 2020). In response to the OPC, the majority of respondents thought that the Regulations have led to either a significant or very significant improvement to co-operation and information exchange between MS and the EC (and this was one of the most highly scored improvements as a result of the Regulations), however a narrow majority (46%) also agreed that lack of co-ordination or sharing of information between EU MS had also been a barrier for implementation.

With respect to VPA partners, a number of MS report issues communicating with Indonesian authorities (e.g. around timing and quality of responses), although this appears to be improving (UNEP-WCMC, 2020). This is confirmed in the OPC where the majority of respondents 'agreed' that difficulties communicating with licencing authorities had been a key issue for implementation (and this ranked as one of the most important barriers) and through the CA interview, where participants noted this issue had been raised multiple times with the EC and it can take months from Indonesian licencing authorities to get a response. Participants also noted this can vary for different MS who are assigned different individuals in the LIU and expected things to improve as the EC explores a standard communication solution.

Issues also exist in communications with non-licencing VPA partners, for example about clarity of contacts and veracity of information received (see EQ2h). That said, the majority of respondents to the OPC also suggested that overall Regulations have led to moderate improvements in co-operation with civil society and private sector in countries exporting to the EU.

The literature also highlights other areas for improvement, including: The need for more and clearer communication with industry and greater data sharing with the IMM. No evidence has been found regarding issues associated with communication with other agencies (e.g. tax and transport) nor other sectors (e.g. financial institutions).

j. How effective has MS reporting on implementation of EUTR and FLEGT Regulation been?

EUTR

Table 5-4 presents the number of MSs and EEA countries that submitted their EUTR reports in time, with delay or did not submit their reports at all. In all years, a high proportion of countries reported in

time, ranging from 80% in the 2015-2017 period, 70% in 2017-2019 and 75% in 2019. Iceland and Liechtenstein did not report in all reporting rounds. Overall, the implementation information provided has been useful in assessing the countries' progress in implementing and enforcing the EUTR. Some of the data collected is imprecise, for instance, operator numbers reported by many countries are estimates provided by customs and the number of FTEs working on EUTR enforcement have sometimes included customs staff. The EUTR questionnaire did not collect information on the size of operators checked or the proportion of imported timber covered by checks. This is due to aiming for a balance between administrative burden and data needs.

Table 5-4 Countries reporting under EUTR

| Reporting period covered ⁹⁴ | No. of national reports submitted by the 30 April deadline ⁹⁵ | No. of national reports submitted late | No. of national reports not submitted |
|---|---|--|---------------------------------------|
| March 2015 - February 2017 | 25 (24 EU MS plus Norway) | 4 | 2 (Iceland and Liechtenstein) |
| March 2017 - February 2019 (or January 2017- December 2018) | 22 (21 EU MS plus Norway) | 8 | 2 (Iceland and Liechtenstein) |
| January - December 2019 | 20 (19 EU MS plus Norway), plus 3 submissions missing one or two sections | 6 ⁹⁶ | 2 (Iceland and Liechtenstein) |

The EUTR CAs provided feedback on the reporting in a targeted interview. They considered the reporting too demanding and time-consuming, with questions which are too difficult to understand and answer. Reporting on annual basis is considered easier. The high requirements of the questionnaire mean that a lot of human and financial resources are required to complete it, and since these are not always available, the reporting is of poor quality. NGOs also flagged problems with EUTR reporting, noting the numerous gaps and inconsistencies in the information reported by EUTR CAs. They agreed that the questions are difficult to understand and interpret for CAs. It was suggested that making the data publicly available on CAs websites can improve transparency.

It is noted that Iceland and Lichtenstein have not yet submitted a report on the implementation of the EUTR and as such there is no information on implementation in these countries.

FLEG Regulation

Table 5-5 presents the number of MSs that submitted their FLEG Regulation reports in time, with delay or did not submit their reports at all. The table shows that the reporting has significantly improved over time, with more MSs submitting their reports in time every year. In all years, all MSs reported with the exception of 2019 when Latvia did not submit a report in 2019.

⁹⁴ In line with the Reporting Alignment Regulation 2019, from 2020 national reports are aligned to cover the calendar year January - December

⁹⁵ In some instances, the submission date fell on/near a weekend and reports received early the following week were included.

⁹⁶ Following the shift of reporting into DECLARE, some reports were in 'draft' format and MS were not aware they needed to 'submit'.

Table 5-5 MSs reporting under FLEGT Regulation

| Reporting period covered | No. of national reports submitted by the 30 April deadline | No. of national reports submitted late | No. of national reports not submitted |
|--------------------------------|--|--|---------------------------------------|
| | | | |
| 15 November - 31 December 2016 | 15 | 13 | 0 |
| January - December 2017 | 21 | 7 | 0 |
| January - December 2018 | 22 | 6 | 0 |
| January - December 2019 | 24 | 3 | 1 |

The exchange of information between CAs and customs under FLEGT Regulation has been more consistent which has enabled the timely reporting (UNEP-WCMC, 2020d). In 2019:

- 4 MS reported that the CA was the customs authority and 4 MS reported that customs was part of the CA.
- 22 countries reported cooperation between CAs and customs; 4 countries reported not applicable since customs have been allocated as the CAs; 1 country reported no cooperation since the customs were part of the responsible CA.
- Of the 16 countries where customs were neither CAs nor part of the CAs, 8 countries reported free access of customs data to CAs; 9 countries reported that information is shared at least once a month or shared as needed or when requested; 1 country reported less than once a month and 11 countries did not specify the frequency of sharing the information.
- Of the 16 countries where customs were neither CAs nor part of the CAs, 14 countries reported that the CA informs customs upon accepting a FLEGT Regulation license and the remaining countries reported that CAs are not informing customs.

National reporting moved to the EC's DECLARE system in 2019. This caused some technical issues for some reporting countries, for instance, some of them were unaware that once the reports are uploaded, they need to click 'submit'. The DECLARE platform is open all year round to allow entering and changing the data (European Commission, 2020).

Overall, the reporting under both the EUTR and FLEGT Regulation has been efficient, with all MSs reporting every year under both Regulations. EEA countries report on a voluntary basis only and therefore, the consistent lack of reporting by Iceland and Liechtenstein is not a sign of non-efficient EUTR reporting. FLEGT CAs reported that they were satisfied with the FLEGT reporting formats.

k. What has been achieved in terms of building a uniform understanding and awareness of the EUTR and FLEGT Regulation throughout the EU? Which approaches have/have not worked to raise awareness?

EUTR

Mixed evidence exists with regard to the awareness of operators of their obligations under the EUTR. For instance, the initial evaluation of the EUTR found that the regulation contributed to increased awareness of illegal logging (European Commission, 2018). In the following period 2015-2017, the biennial report found that while awareness across operators was increasing, many were still unaware of their obligations which resulted in inconsistent implementation (European Commission, 2016). This finding was supported by the WWF which concluded that a significant percentage of operators are still not aware of the existence of the EUTR, or are only partly familiar with their obligations (WWF, 2019). In a survey investigating the performance of SMEs, all 17 SMEs surveyed were aware of their

responsibilities and could name their country's CA. This suggests that SMEs are aware of their obligations, however, the conclusion should be treated with caution due to the small sample size. The results of an operator survey conducted by Thünen Institute in 2020 regarding the implementation of the EUTR in Germany found that of those respondents that identified as operators, 34% did not know of the EUTR (whereas the remaining 66% met the prerequisites of awareness and knowledge). That said, the operators which did 'understand' the EUTR together covered about 91 % of the total import value of all imported EUTR-products in Germany (Thünen, 2020). Furthermore, it was reported that large enterprises, operators from the timber-related sector, importers from high-risk countries and of semi-finished products were significantly more likely to know of the EUTR and their obligations than others. In 2018, the Danish CA reported that when contacting operators about checks, it finds that many of them are still unaware of their EUTR obligations (approximately 18%) (EUTR.dk, 2020).

Regarding cooperation and information sharing, in 2015-2017, 19 MSs reported working together with other CAs and other EU institutions through participation in EUTR/FLEG Regulation Expert Group meetings and use of the Capacity4Dev platform to improve awareness and harmonise implementation approaches across the EU (European Commission, 2016). The number increased to 28 countries (27 MSs and Norway) in the 2017-2018 period and 29 in 2019 (UNEP-WCMC, 2020; UNEP-WCMC, 2020c)

Regarding awareness-raising approaches, CAs have provided information about the EUTR on their website, distributed emails to operators and had calls with them, organised events, and published articles in industry magazines. Furthermore, work done by the European Commission, trade associations, NGOs and others have also contributed to the awareness raising.

Finally, the results from the OPC suggest that the EUTR has increased general awareness of illegal logging, with 66% of the respondents to this question considering the impact significant or very significant. Furthermore, 90% of the respondents to the expert stakeholder questionnaire considered that the DD requirements have increased awareness of timber and timber products legality issues and their link to illegal logging. However, when noting the challenges with DD implementation, 38 out of 50 respondents (76%) other operators not exercising DD or not being aware of it is relevant or highly relevant.

Overall, the evidence suggests that some gaps in the awareness of operators may still exist, however, the operators responsible for the largest imports are aware of their responsibilities.

FLEG Regulation

Limited evidence exists of the awareness of operators of FLEG Regulation and FLEGT licencing system. Operators who deal with imports from Indonesia receive information directly from customs whether an import has a valid licence (UNEP-WCMC, 2020). A survey of the Independent Market Monitor showed that only 2% of operators and traders were totally unaware of the FLEG Regulation process, and 35% were somewhat aware (IMM, 2017). While the results indicate that 98% of operators and traders surveyed are aware of the FLEG Regulation process, the sample size was 126 companies which is a minor fraction of all operators dealing with FLEG Regulation imports. It is unclear if the survey targeted exclusively companies importing from Indonesia or VPA countries in process. Overall, further evidence is required on the levels of awareness and understanding.

According to feedback received from FLEGT CAs, small operators are not aware of the specific procedures of importing FLEGT-licenced timber from Indonesia.

In separate interviews, a CA and NGOs stated that FLEGT-licensing will benefit from better promotion in the EU, both in terms of a general FLEGT “branding” and in terms of promoting the VPAs to exporting countries. An example was provided that the UK accepts FLEGT-licensing on equal footing with FSC and PEFC certification which sends a strong signal of trust in the system, and it actively promotes FLEGT-licenced timber as a sustainable product which is not happening in other countries. It was suggested that a FLEGT label can improve general awareness of consumers.

Similarly to the EUTR, the OPC results suggest that FLEGT has increased general awareness of illegal logging, with 58% of the respondents to this question considering the impact either significant or very significant. Furthermore, 86% of the respondents to the expert stakeholder questionnaire considered that concluding VPAs with exporting countries increased awareness of timber and timber products legality issues and illegal logging.

5.1.3 Question 3: What have been the unintended/unexpected effects of the intervention, including on trade?

| Key findings |
|--|
| <p>EUTR:</p> <ul style="list-style-type: none"> • There is no evidence of a large-scale shift of imports to the EU towards MS with less strict enforcement regimes, although such a shift has been reported for specific product cases (e.g. teak imports); • Over the period of implementation of the EUTR, the import volume of EUTR-regulated products has decreased while China has risen as a major trade partner globally; • Stakeholder views support that EUTR requirements may have created pressure to shorten/simplify supply chains, supply certified products or shift in supplying products from alternative species, countries or producers to simplify DD System reporting requirements; • It is also supported that it might have produced a minor push for a shift towards the use of substitute products that are not made of wood can also be attributed to the stricter EUTR obligations for importing wood-based and processed timber containing products; • Further, according to the views of stakeholders, there has been a transition of some operators that cannot cope with the DD System requirements, towards a trader’s function. |
| <p>EUTR and FLEGT Regulation:</p> <ul style="list-style-type: none"> • The value of exports to the EU from countries negotiating and implementing VPAs have decreased in recent years, while exports from these VPA countries to the rest of the world and to China in specific, have considerably increased in the same period. This indicates a shift of trade of VPA partner countries to third countries with less strict regulations; • Reporting from a sample of VPA countries indicates that the Regulations might be responsible for some employment generation; • There is evidence that the EUTR and FLEGT Regulation legislation has influenced the development of legislation in at least six non-EU countries, including Switzerland, Australia, Japan and South Korea. |

a. Has trade in illegally sourced timber and timber products shifted to less regulated/sensitive markets (including MS with weaker implementation and enforcement of EUTR)?

Shift of import points in the EU

In a workshop with EUTR MS representatives the differences in enforcement capacity between CAs have been identified in the volume of timber products and number of operators they could check. Ways to overcome these differences in the implementation of the EUTR were sought. (European Commission, 2020) It is expected that such implementation differences might give rise to operators in breach of the regulation trying to circumvent the stricter enforcement regimes by shifting imports to alternative entry points in the EU.

For example, exports of illegal timber from Congo and Gabon have been reported to be imported to the EU via MS associated with weaker levels of implementation and enforcement, with operators perhaps taking advantage of the uneven playing field (see country cases elaborated in Annex A). It is reported by US EIA (Environmental Investigation Agency, 2019) that some MS CAs adopt a “softer” enforcement approach. CAs from Belgium, France, Greece, Italy, and Spain have been mentioned as such cases. Such statements can be also supported by the fact that imports from Myanmar (a country for which a notice of extreme risk of product illegality has been issued) have seen a significant change in the point of their entry to the EU since the trade embargo was lifted. For some countries the value of timber imports has nearly reached pre-embargo levels (e.g. Italy, Belgium) or even increased in value (e.g. Greece, Croatia), while for others (e.g. Germany, the Netherlands, France etc.) trade has reduced significantly compared to the pre-embargo levels.

Some further identified cases reported on attempts of importers to evade checks from EU MS with harsher enforcement regimes by changing supply routes:

- An investigation by the Environmental Investigation Agency (EIA) has uncovered EU operators are attempting to evade the EUTR DD requirements and avoid EUTR enforcement, by importing illicit teak from Myanmar via a Croatian company. Of the six companies named in the report (Environmenal Investigation Agency, 2020), five are based in MSs where there have been crackdowns on the trade in teak from Myanmar, and three companies have themselves been found trading teak which did not comply with the EUTR. In February 2020, the Croatian Ministry of Agriculture conducted a check on the Croatian company’s DD System for four shipments and found it to be inadequate. In their own investigation of documents relating to 10 shipments, the EIA concluded that documentation was inadequate in all cases, hence timber placed on the market from these shipments would have been in contravention of the EUTR;
- Potential efforts to circumvent Dutch enforcement have been also identified as in 2019 Dutch authorities identified illegal teak imports from Myanmar being funnelled in the EU market through the Czech Republic. (UNEP-WCMC, 2020b)
- Stakeholder feedback from selected NGO’s has suggested there has been an attempt made to shift trade towards MS’s with less stringent enforcement mechanisms. For example, some operators are setting up schemes to circumvent their DD obligations formally through establishing shell companies importing illegal wood via other MSs with less strict controls. It has also been noted that many NGO’s are witnessing these changes of patterns in trade routes (and are drafting reports on this topic) but further elaboration was note provided.
- Stakeholder engagement also revealed that the differences in enforcement between MS which sometimes has resulted in direct impacts on business such as price under cutting by companies performing minimal DD. Moreover, companies exercising less stringent DD have a larger

supplier base than companies with higher standards. An example for impacts on trade patterns of this is that timber imports from Myanmar in some countries went to practically zero over the last two years (e.g. Belgium and Germany) but continued to be high or even rising in other countries (e.g. Italy, Croatia).

Despite these incidents, when analysing the development of imports to the EU and specific MS (see Annex C, Table C-8), despite the differences in the development of the trade volumes between MS, there is no significant identified shift in the entry point to the single market for extra EU imports.

Shift of exports of VPA countries to non-EU countries

As seen in previous sections, it is unclear whether the EUTR has led to an actual decrease in the level of illegal logging in EU trade partner countries. Looking into the selection of high risk trade partners represented by the VPA countries, their export statistics to the EU and all countries provide a better understanding of whether these countries exported timber products to other (less) regulated markets after the entry into force of the EUTR in 2013.

Under EQ1, a comparison is performed of the development of the value of timber exports of VPA countries to the EU and to China. There it can be seen that China is increasingly substituting the EU as the major trade partner for VPA countries. This trend is examined in detail for four of the largest VPA partnerships in matters of total export value to the EU in Annex C (Figures C-10 for Indonesia, Figure C-11 for Vietnam, Figure C-12 for Malaysia and Figure C-13 for Cameroon) concluding that for three of these four countries China has surpassed the EU as the most important trade partner (a marked difference to the situation ten years ago).

To further the assessment of the potential change in trade partners for VPA countries, a trend comparison is performed between the exports of wood products from VPA countries to the EU (EUROSTAT data⁹⁷) and exports to all other countries (UN COMTRADE Data), for those countries either at the implementation stage (Cameroon, Central African Republic, Ghana, Liberia, Congo and Vietnam) or that have already begun issuing FLEGT licences (Indonesia) (Figure 5-19). The observed trend indicates that EU imports from VPA countries have decreased over time. At the same time VPA countries' exports to all other countries have increased over the same period at least three-fold. This could indicate a shift of illegally harvested timber products away from the EU market and towards countries with less strict legality restrictions, undermining the objective of reducing illegal logging and the EU's broader objective to protect the world's forests.

A similar comparison for VPA-negotiating countries (Eight: Côte d'Ivoire, Democratic Republic of the Congo, Gabon, Guyana, Honduras, Laos, Malaysia and Thailand) is presented in Figure 5-20. The trend for VPA-negotiating countries' exports to the EU is showing a slightly steeper increase in total trade value than that of VPA-signatory countries as a relative increase in trade has been observed post-2016. This difference might be due to the issues identified with the EUTR implementation for products from VPA countries as identified in question 1b. It is worth noting that a similar but more intense increase is observed in the same period regarding the overall exports of these countries. Similarly, to the conclusion for VPA countries, this could still indicate a shift of trade to less strictly regulated markets.

⁹⁷ EUROSTAT Data - Tropical wood imports to the EU from chapter 44 of the Harmonised System

The aggravation of the trade volume decrease for the VPA countries after the EUTR comes into force, may indicate that the stricter legality requirements could have contributed to the observed trends.

Figure 5-19 Development of export value from VPA-signatory countries - to the EU and all other countries (2007=100) (source: Eurostat ext_go_detail, Comtrade)

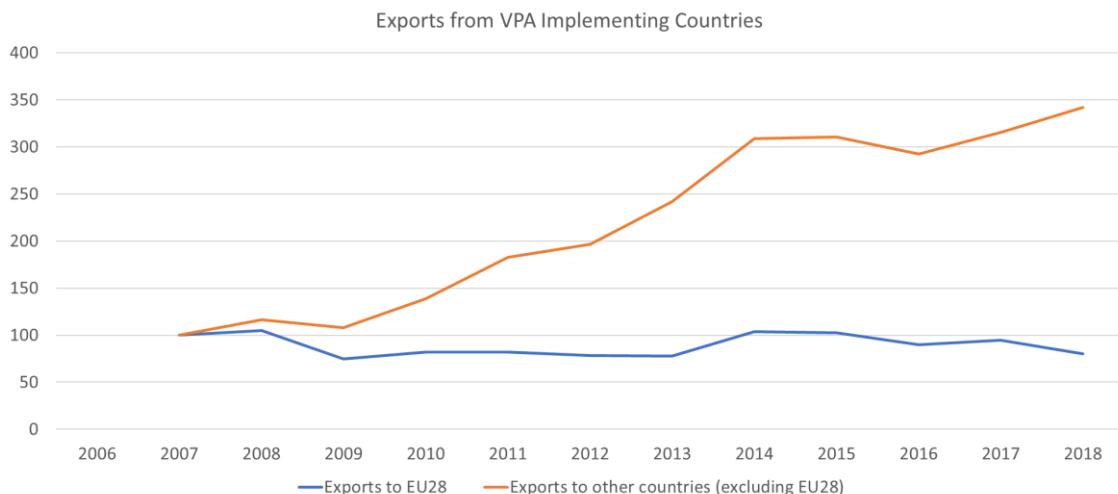


Figure 5-20 Development of export value from VPA-negotiating countries - Total and to the EU (2007=100) (source: Eurostat ext_go_detail, Comtrade)



In addition to the statistics presented above, a number of timber producers in Indonesia have reported that they shifted to doing business locally by focusing more on the domestic market rather than the export market. The reasons for this behavioural change include the competitiveness of the domestic timber market due to the high demand for timber domestically. A contributing factor is the fact that domestic customers were considered to be less concerned about the origin of timber or its legality. The administrative complexities involved in acquiring V-legal documents and FLEGT Regulation licenses, the cost involved in acquiring legality licenses, and the high demand for timber products on the domestic market were reported as the key reasons motivating them to concentrate on the domestic market. A similar trend has been observed in Ghana where some timber producing firms reported that they used to export to Europe but have now shifted their focus to the domestic market (Acheampong & Maryudib, 2020). Another such example comes from Cameroon where timber producers have been

observed to re-orientate their exports to Asian countries as they are seen as less strict regarding their legality requirements compared to the EU.⁹⁸

To conclude, it is observed that the EUTR implementation has led, in some cases, to operators seeking to circumvent strict enforcement regimes by shifting the EU entry point for their imports. There is however no significant shift change in the EU entry points when looking into the greater picture of EUTR-regulated product imports. Additionally, the volume of wood-based products from VPA countries to the EU has decreased over time while their exports to non-EU countries have either decreased at a considerably lower rate or have increased over the period of this analysis. Specifically, China has replaced the EU as a preferred trade partner for the most important VPA countries (in matters of trade volume).

b. Has there been a shift to non-timber-based products?

EUTR

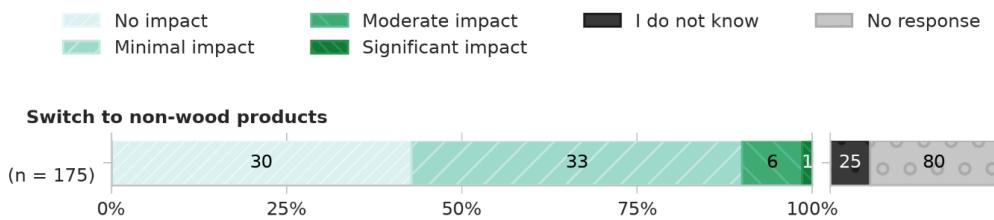
In assessing a potential shift to non-timber based products, we first aim to compare the trade value performance of wooden furniture (EUTR-regulated) with furniture made from other materials. Since 2008, the increase in the value of wooden furniture products have been slower compared to furniture from other materials, with the latter having already increased above their 2008 total trade value (see development of the value of HS 94 code in Figure 5-2 for wooden furniture and in Figure 5-3 for non-wood furniture). A draft conclusion from this is that the EUTR might have contributed to the substitution of wooden products with those of other materials.

Trade trends and a future-focused outlook for the wood furniture sector was presented briefly at the Timber Regulation Enforcement Exchange (TREE) meeting (Forest trends, 2019). There it was mentioned that, due to increased scrutiny of supply chains, timber is often replaced in a range of products (e.g. furniture or tools) with cheaper metals, particularly where supply chains are challenging to trace. Furthermore, many traders have been reported to be asking their suppliers to change where they source their materials from if risks of illegal logging or other negative impacts is not negligible. It was also mentioned that while major retailers may have the means to check the sources of their suppliers, SMEs would usually rely on the honesty of their suppliers to avoid products from illegally harvested timber.

However, in the view of nearly half of the experts responding to the OPC, the EUTR may have had only a minimal potential impact in substituting of timber products with non-wood-based ones (33 out of 70 respondents expressing an opinion). Only seven of the respondents considered this to be a moderate or significant impact of the entry in force of the EUTR as seen in Figure 5-21, while the rest considered there was no impact at all.

⁹⁸ According to an interview with the Ministry of Forestry of Cameroon

Figure 5-21: Feedback to the OPC regarding potential changes in the timber supply chain to comply with EUTR (source: OPC survey)



c. Have businesses (esp. SMEs) changed business lines/closed (could also reflect shift of location outside EU to circumvent obligations)?

EUTR

No information has been identified on EU companies which might have closed or changed their business lines or closed due to the EUTR requirements. Impacts on a change of their business model to shift from operators to traders are assessed in EQ3d below.

FLEGT

Outside the EU, a study (Acheampong E. &., 2020) based on interviews with timber businesses and actors in Ghana and Indonesia, found that in Ghana, some of the timber processing firms and exporters are going out of business, or turning to exporting to non-EU countries, potentially as a result of the Regulations implementation. Eventually, this trend was attributed primarily to unavailability of timber resources to feed the processing firms. Similarly, in Indonesia, their research found several timber product manufacturers changing their trade partners (See also Annex C trade analysis for Indonesian external trade)⁹⁹. The motivations for this shift were primarily difficulties in getting timber supplies for their business, the many rules and regulations (FLEGT Regulation & EUTR) that timber producers need to contend with, the administrative complexities involved in demonstrating timber legality verification documents and the high cost of legality verification. Further, it was found that timber businesses see the verification process as complicated and costly with no significant benefits to them. They maintained that there were more promising businesses with less complicated procedures and requirements compared with the timber business.

However, a report looking in the impacts of VPAs in Cameroon, Ghana and Indonesia paints a brighter picture, it suggest that in Cameroon and Indonesia job opportunities have been created either due to new types of jobs created in logging and processing activities or an increase in business. The impact in Ghana was less easy to distinguish (CIFOR, 2020).

d. Do smaller operators have incentive to make changes which do not work towards achieving the overall objective?

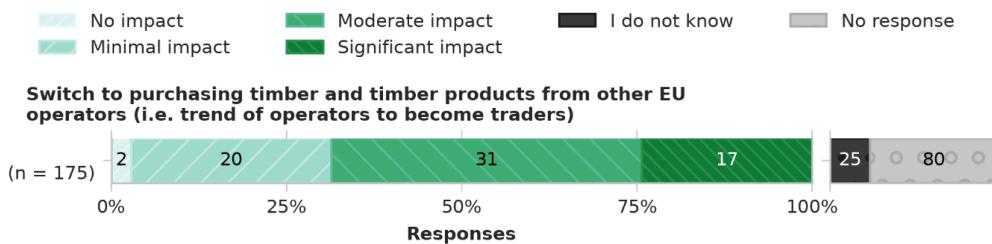
EUTR

No higher level data has been identified yet regarding behavioural changes of smaller operators to cope with the regulatory requirements. Such behaviours could for example be that smaller (SME) operators would switch to purchasing imported timber from larger EU operators to avoid DD obligation (i.e. by becoming traders) or relocating in MS perceived as being weaker at implementing and enforcing EUTR.

⁹⁹ The shift in trade with China is highlighted in Evaluation Question 1 and in Annex C, we present shifting trade patterns for specific VPA countries validating this finding.

Nevertheless, the majority of OPC respondents (48 out of 70 respondents expressing an opinion) have considered that a switch from functioning as an operator to the function of a trader has been either a moderate or a significant impact of the EUTR as a means of avoiding the burdensome DD System requirements (see Figure 5-22). Finally, indicative of other possible shifts in market behaviour there are some anecdotal evidence of emerging companies specialised in DD for trade partners.

Figure 5-22: Feedback to the OPC regarding potential changes in their operations to comply with EUTR (source: OPC survey)



e. Have the Regulations influenced other legislation targeted at reducing illegal logging in non-EU jurisdictions?

EUTR

There is evidence that the EUTR has had a direct impact on the new legislation regulating illegal timber sales in China. China amended their Forest Law in 2019 to include a ban on buying, processing and transporting of illegal timber (LawinfoChina, 2019). The EU has influenced its preparation through the EU-China Bilateral Coordination Mechanism (BCM) on Forest Law Enforcement and Governance (FLEG). (European Commission, 2020).

Direct evidence of the impact of the EUTR on the Swiss legislation is found in the rationale of the 2019 amendment of the Environmental Protection Act (EPA) and in the wording of the draft Timber Trade Ordinance: the Federal Council was commissioned to create a legal framework identical to the EUTR in order to prohibit the marketing of illegal timber and remove unnecessary trade barriers for Swiss companies in the EU (Government of Switzerland, 2020; Schafer, Bohnenblust, & Truffer, 2020).

The Illegal Logging Prohibition Act 2012 (No. 166, 2012 ILPA) in Australia restricts the import of illegally logged timber into Australia, and it is in many ways similar to the EUTR, including its requirement for DD. According to two evaluations of the FLEGT Action Plan, the EUTR has encouraged Australia to expand its national legislation (European Commission, 2016). The 2018 statutory review of the ILPA, states that ILPA is intended to act together with the EUTR and the Lacey Act to address illegal logging and contribute to international efforts (Australian Government, 2018). Australia's stance on the role of FSC/PEFC in DD is similar to the EU's thinking, in that it contributes to risk assessment but does not in itself constitute proof of legality (Australian Government, 2018; Australian Government, 2017) - for example, in 2018 the Senate disallowed a reform that would have established a new "deemed to comply" arrangement for FSC and PEFC certified products. This may be seen as an example of where the EU continues to have an influence on (or alignment with) other non-EU sensitive markets legality (Australian Government, 2018; Australian Government, 2017).

The US Lacey Act (LAA) that was amended in 2008, and the Canadian Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (WAPPRIITA) from 1992 are both older

than the EUTR, and thus it is problematic to conclude that the EUTR has had a strong impact on them (Jonsson, 2015) (Government of Canada, 2020b).

Indirect evidence of the impact of the EUTR on the legislation of non-EU countries can be found in the content of the legislation: the requirement for DD or acceptance of the FLEGT licence as a proof of legality. DD is required in the Japanese “Clean Wood Act”, adopted in May 2016 and in the Indonesian import control system that came into force in 2016. In Vietnam, an import control system with a DD requirement is expected to come into force by 2021 (Norman M. &., 2017; EU FLEGT Facility, 2017). The FLEGT Regulation license is accepted as proof of legality in the revised Act of the Sustainable Use of Timbers in the Republic of Korea, which entered into force 1 October 2018 and long-term co-operation with Indonesia was noted as a key factor inducing revision of the Act (EU FLEGT Facility, 2018).

FLEGT

The evidence gathering did not identify strong evidence or examples of any legislative developments or improvements in forest governance and timber legality in non-VPA producing countries that have been specifically attributed to the influence of FLEGT Regulation. Although there is no positive affirmation of an effect, this is not the same as concluding that it has had no effect: given the profile and international nature of the policy, it is challenging to conclude that there has been no wider influence here. Indeed there are cases where improvements can be somewhat attributed to both EUTR and FLEGT Regulation: e.g. on China through the EU-China Bilateral Coordination Mechanism, and improvement to China’s legislation and timber legality. Likewise the recognition of FLEGT licenses in other DD Systems (e.g. Republic of Korea) clearly demonstrates some influence, albeit it on a demand rather than supply-side policy.

It is also worth noting that EC action has likely had an influence on efforts to tackle forestry issues at a global level. The United Nations Forum on Forests (UNFF) adopted the Non-legally Binding Instrument on All Types of Forests on 17 December 2007 (becoming the United Nations Forest Instrument (UNFI) in 2015). Its objectives and actions, although broader, strongly align with the EUTR and FLEGT Regulation. In the UNFF 11th session report (United Nations, 2021), a total of 69 countries reported on steps taken since 2007, and in many cases, these were EU MS noting their involvement in EUTR, or exporting countries involved in the FLEGT Regulation VPA process.

5.2 Efficiency

5.2.1 Question 4: To what extent has the intervention been cost-effective? What is the relationship between benefits and costs?

| Key findings |
|--|
| <p>EUTR:</p> <ul style="list-style-type: none"> • Data from the literature on the costs of implementing and the functioning of the EUTR is incomplete. Useful data on the costs to CAs and operators is available, but less data on costs for importing operators and even more limited data on costs for domestic operators, exporters, traders and MOs. The data available suggests the total costs for operators are significantly higher than estimated in the EUTR Impact Assessment; |

Key findings

- An aggregate estimate suggests implementation costs of mEUR 722 pa (range mEUR 79 - 1,079 pa), of which costs of EUTR implementation for operators placing imported timber on the EU market are the key cost.
- A broad review of the literature has identified a range of benefits that have been attributed to the EUTR. However, in many precise impacts cannot be quantified, limiting the potential for direct comparison between monetised benefits and costs. The majority of OPC respondents believe that the benefits of the EUTR outweigh the costs. Furthermore the costs of the EUTR are small relative to overall value of trade covered and sector revenue. Hence with moderate confidence it can be concluded that the EUTR is cost-effective.
- MS CA resources appear to be being deployed efficiently and the activities bring a range of positive outcomes which enhance the effectiveness of the EUTR.

FLEGT Regulation:

- Information on the aggregate costs of implementing the FLEGT Regulation are limited in the literature. Combining data from the 2016 FLEGT AP Evaluation with further information provided by Commission services presents expenditures of mEUR 420 in VPA process by Commission services and EU MS to 2020 - the most significant cost. There are also significant costs for partner countries in negotiation and implementation stages, but most importantly once licencing has commenced. In addition, there are ongoing costs to EU CAs, customs and importers but these are small relative to other actors
- An aggregate estimate suggests implementation costs of mEUR 574 since 2020.
- A broad review of the literature has identified a range of benefits that have been attributed to the FLEGT Regulation. However, in many precise impacts cannot be quantified, limiting the potential for direct comparison between monetised benefits and costs. The majority of OPC respondents believe that the benefits of the FLEGT Regulation outweigh the costs. But the resources invested are high relative to the value of trade covered. Cost-effectiveness might improve should more VPA partners manage to halt illegal logging and progress to licencing, and as the period of operation under TLAS' increases. But at this stage it is not possible to conclude that the FLEGT Regulation has been cost-effective to date.

a. What are the costs of the implementation of the EUTR (monetary and non-monetary)? What factors have influenced these costs?

The implementation of the EUTR carries with it a range of costs for a range of actors, including:

- Establishment of the function of CAs, and laying down the rules on penalties applicable to infringements of the provisions of the Regulation;
- Costs for implementation and enforcement in MSs - both monetary and non-monetary, which also include additional travel and subsistence costs;
- Additional legal costs associated with enforcement and prosecution for MSs;
- Additional costs associated with seizing goods for MSs;
- DD System and traceability requirements for the private sector;
- Costs of using Monitoring Organizations (MOs) for the private sector;
- Costs of MOs (developing their internal competences, capacities and systems to comply with requirements set for MOs);
- Other costs (such as for communication, cooperation between MSs, and providing technical assistance, e.g. training of CAs).

Note that, overall, there was little information on the costs of EUTR in the literature and from the consultation activities. Existing cost estimates are based on small samples and should be considered with caution. Where possible, the analysis provides range estimates of low and high to improve accuracy as single points estimates will not accurately represent variation between operators, MSs, etc, and such ranges reflect the uncertainty around certain data points. Where available, several sources of information were triangulated to support the conclusions. Supporting evidence is presented in **Error!** **Reference source not found..** The following table presents and summarises the cost information gathered (and the gaps) to present as close to a complete estimate of costs as the evidence base permits.

Several studies have considered costs to **operators**. Costs of due diligence will vary across operators and will be driven by a number of factors, including: number of products, numbers of suppliers, length (and complexity) of the supply chain, country of harvest, availability of existing supplier information, etc. The greater the number of products or suppliers, the larger the costs. Indeed the size of the operator may be correlated with the number of products or suppliers, but importantly it is the latter factors which will drive the costs. Furthermore, more complex or longer supply chains, and where low levels of information are available initially, in theory will both lead to higher costs. It may be the case that importers have already put in place processes or systems on a voluntary basis which fulfil part (or all) of the requirements under the EUTR: e.g. importers may monitor supply chains for certification purposes. In such cases the additional burden of the EUTR will be lower, but this also may create uncertainty around the ability to attribute costs to EUTR or otherwise.

Operators recognised that EUTR had created additional obligations, burden and bureaucracy through a survey carried out by Global Timber Forum (Global Timber Forum, 2015). That said, 53% of respondents suggested EUTR implied no additional cost. A sample of operators engaged in the 2016 evaluation (European Commission, 2016) broadly suggested costs had been manageable. The table below provides an overview of cost of compliance to EUTR for operators, including a summary of the sample composition and underlying assumptions. It is noted that all four sources of cost ranges for operators present comparable ranges of costs, however, key elements of uncertainty are set out below:

- The quantified cost ranges provided in the literature (from previous surveys) all rely on samples of small size, e.g. between 3 and 16 respondents. The latest source (Norman, 2021) does not clearly state how many of the total 72 survey respondents answered the question of costs and therefore the numbers of respondents in this study is unknown.
- In most sources, it was difficult for respondents to directly attribute costs to the EUTR specifically. This was noted in the reports from Norman, GTF and the survey from the previous evaluation in the EUTR. Although not explicitly noted in the WCMC report, only 16 respondents out of 122 provided a quantification of costs, which may reflect the difficulties to attribute costs directly to EUTR. It is possible that the costs ranges shown above cover other elements of legal and environmental compliance, wider than the EUTR.
- The participation of operators to such surveys relies on their awareness of the EUTR and its related obligations, which may result in skewed results. It is possible that a share of operators not aware of the obligations under the EUTR would not take part in the surveys. Likewise participation in such surveys is also 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. Although there are ways to avoid sample bias, it is not clear whether such methods were applied in all the above studies. Nevertheless, some of the studies

provide an estimate of the share of importers not having a DD Systems in place: while two studies report similar figures (e.g. 53% in the previous COM evaluation and 50% for the Norman study of importers not having DDS in place), the WCMC study indicated that 36% said the EUTR resulted in no additional or in negligible costs.

- It is unlikely that the samples appropriate 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. However, such a difference was not specifically reported in the consultation and the figures across the studies show that SMEs had comparable costs to large companies. In addition, most samples shown in the above table have a good (if not representative) contribution of SMEs.
- 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 scores).

Table 5-6 - Summary of DD costs across identified sources

| 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 | <p>Small sample.</p> <p>Problem of attribution: it is reported that only 20 out of the 72 respondents reported a specific company budget for compliance to EUTR.</p> <p>The report also states that half of surveyed operators had developed a timber sourcing policy.</p> |
| 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 | <p>Small sample.</p> <p>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.</p> |
| 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 | <p>Small sample. Problem of attribution: most companies were unable to respond to the question on costs.</p> <p>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.</p> <p>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.</p> <p>83% of respondents 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.</p> |
| 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 interviewed combined the cost of legal and environmental compliance. |

Table 5-7 - Summary of EUTR cost data

| Type of stakeholders | Main obligations | Cost estimates | Robustness of estimate |
|-----------------------|---|--|---|
| Operators (importers) | <ul style="list-style-type: none"> • DD requirement • Costs of using monitoring organisations | <p>Costs for the private sector depend on the existence of previous responsible sourcing policies, the type and complexity of traded products, the number and geographic location of suppliers, complexity of supply chains and number of products. Several studies provide estimates of the costs of EUTR compliance per year per importing operator as shown in the previous table. In order to reflect the above uncertainty due to expected problems of awareness and of attribution, the following reduced range for annual compliance costs for DDS under the EUTR are used in the subsequent calculations:</p> <ul style="list-style-type: none"> • Low estimate: EUR 1,000 (low range from the Global Timber Forum, 2015) • High estimate: EUR 15,000 (best estimate from the most recent source Norman, 2021) • Best estimate: EUR 10,000 (mid-point, taking into account uncertainties around the studies gathering cost data). <p>UNEP-WCMC provides estimates of the number of importing operators (indicative of 2019 below): Total number of importing operators: 142,825. It should be noted that the estimates indicate large variations across Member States. There can be many factors affecting the reported number of operators, so these data are therefore considered to be subject to some uncertainty - e.g. it is not certain whether all those included are actually 'active' each year (i.e. placing products on the market).</p> <p>Data is also available from Eurostat detailing number of enterprises operating in different economic sectors¹⁰⁰. This data provides some disaggregation by industry, but it does not provide sufficient disaggregation to isolate those businesses engaged in trade of products under the scope of EUTR specifically, nor does it differentiate those that are placing products on the market for the first time. Given the UNEP-WCMC data is more specific in this respect, this is considered the best data for use as a proxy for the number of operators.</p> <p>Both the 2016 evaluation and Norman (2021) noted that only about half of operators had timber specific policies / DDS in place. Furthermore, the surveys which gathered the cost data frequently note that a proportion of operators did not face an additional compliance burden as a result of the EUTR. Indeed</p> | Medium confidence for importing operators: cost data somewhat consistent across multiple source and number of operators taken from reporting data, but attribution and small sample issues remain |

¹⁰⁰ See Eurostat's Structural Business Statistics (SBS)

| Type of stakeholders | Main obligations | Cost estimates | Robustness of estimate |
|----------------------|---|---|--|
| | | <p>this was validated through stakeholder interview where participants (NGOs) noted that some companies had been implementing responsible purchasing policies (either voluntary or mandatory) before the EUTR entered into force: surveys from IMM showed that many of those companies did not experience significant extra cost to comply with the EUTR, as they were already implementing similar systems.</p> <p>Based on the assumption that the reported number of operators may be overestimated due to survey awareness bias (see section on uncertainty above), the number of importing operators effectively implementing the DD System and/or that face additional costs was assumed to be around 50%. This leads to a best estimate of the total number of operators based on the UNEP-WCMC reported data of around 71,413.</p> <p>Based on the above number of operators and estimated costs of compliance to EUTR, the following ranges were calculated: Total annual costs of EUTR compliance for importing operators per year: best estimate mEUR 714 (within a range mEUR 71 to mEUR 1,071)</p> <p>Based on extra-EU28 exports (approx. 62.5 million tonnes), the following is estimated: EUTR costs of compliance per tonne imports (for importing operators): best estimate EUR 11 (within range EUR 1 - 17)</p> | |
| Operators (domestic) | <ul style="list-style-type: none"> DD requirement Costs of using monitoring organisations | <p>There is substantially less information available around costs to domestic operators. Some of the studies carried out so far indicate that for domestic operators, the additional costs from EUTR have been manageable. Furthermore, it is notable that the COWI study into expanding the product scope did not estimate costs for domestic producers (only importers), and EUTR does not place additional requirements on EU forest owners in terms of ensuring legality (Stakeholder interview). However, more broadly stakeholders agreed that there was some additional burden from setting up systems, collecting and managing information required to underpin due diligence systems, and as such the costs of EUR are not zero in all cases. One study estimated that the costs of implementing the DDS in the Czech Republic was found to be EUR 550 for small forest owners, and EUR 1600 for large forest owners (Sisak et al, 2016).</p> | Low confidence for domestic operators: cost data not widely reported, but some triangulation between sources. Number of operators taken from Annual Reporting data, but very uncertain how many place timber on market each year |

| Type of stakeholders | Main obligations | Cost estimates | Robustness of estimate |
|----------------------------------|---|--|---|
| | | <p>UNEP-WCMC provides estimates of the number of importing and domestic operators (indicative of 2019 below): Number of domestic operators: 5,122,897. However, it is estimated that domestic operators reported will often include all forest owners. For example, this figure includes over 1.5m forest owners in Germany, many of those own very small patches of forest, and will not be acting as operators (and hence undertaking due diligence) every year, and a proportion of those will never place products on the market. Therefore, it is assumed that about 50% of the above reported domestic operators will be operators under the EUTR every year, approx. 2,561,450. The same assumption was made on the effective number of domestic operators having timber specific policies in place, and therefore, this number is further halved, to 1,280,724 effective domestic operators.</p> <p>Given the uncertainty both around the level of additional costs, the proportion of operators facing additional costs and the numbers of <i>domestic operators</i> active in the market each year, it is not possible to produce a reliable quantitative estimate of cost. Based on the evidence available, it is likely that the burden placed on domestic operators by EUTR is not zero in all cases. However, it is likely that the costs are lower than for importers, this was confirmed in an interview with EU forest owners, indicating that pre-existing requirements for the sustainable management forest plan (in place before the EUTR) were more demanding than EUTR.</p> | |
| Traders | <ul style="list-style-type: none"> Traceability requirements | <p>There were no further estimates of costs to comply with traceability requirements for traders. These costs were assumed to be negligible in the COWI product scope impact assessment study.</p> | Medium confidence |
| Exporters in producing countries | <ul style="list-style-type: none"> Provision of information / evidence on legality of timber | <p>There were no further estimates of costs for exporters in producing countries. One study provided estimates for the cost of the DD System in SMEs in producing countries and notes that exporters must consider both domestic legislation and the requirements of their customers who have to comply with the EUTR. Based on a small sample of 6 companies, the average annual costs due to the EUTR was EUR 33,083 (from a range of EUR 10,500 and EUR 85,000 per year). Interviews with exporting country partners also confirmed that there were additional costs (e.g. in Ukraine, Cameroon), but in other cases costs were negligible (e.g. in Brazil where necessary documentation is already required to accompany all exports as a consequence of domestic legislation)</p> | <p>Low confidence: only one literature study found which suggested costs may be comparable to EU importers where incurred; interviews suggest costs for some are non-negligible. But number of exporters and proportion who</p> |

| Type of stakeholders | Main obligations | Cost estimates | Robustness of estimate |
|----------------------|--|--|--|
| | | | experience additional costs are unknown. |
| MSs | <ul style="list-style-type: none"> • Costs of implementation • Costs of enforcement • Additional costs associated with seizing goods • Cooperation with other MS • Providing technical assistance | <p>MSs CAs provide an estimation of the number of FTEs covering EUSTR duties for both domestic and foreign imports, in the biennial reports. Given these gather data directly from MS and cover the implementation period, these are used as the basis for the analysis of CA implementation costs in this study. However, there are several important caveats and uncertainties associated with the reported figures:</p> <ul style="list-style-type: none"> ○ the majority of the figures provided by MSs are difficult to compare due to the varying levels of detail provided by countries in their national reports ○ MS CAs were asked to report figures split by domestic and imported timber. In some cases, it is unclear whether these are separate resource or overlap, nor whether human estimates relate to FTEs or numbers of people working on EUSTR ○ In many, cases, MS do not report or were not able to specify quantitative estimates. In addition, for financial resources, in some cases it is not possible to split out the budget dedicated to EUSTR. ○ Some countries which reported unusually high numbers of FTEs might have reported also those not specifically devoted to EUSTR (e.g. Latvia, Italy and Spain) ○ It is important to note that in some cases, MS have gone beyond the basic requirements of the EUSTR - e.g. checks on transporters and traders in Sweden and Hungary, It is not clear whether the resources dedicated to these 'additional' activities are included in the reported figures, but technically these costs should not be attributed to the EUSTR ○ In some cases the requested split of resources changed between reporting periods - namely the requested split of financial resources between the 2015-17 period to the 2017-19 period. <p>Given the data across MS is more complete for human resources, this is used as the basis of the estimated costs in this study. Furthermore, given the clarity improved on the overlap between resources dedicated to imports and domestic operators, and specifying the number of FTEs, the results from the 2017-19 and 2019 reporting periods are deemed more reliable. We have also decided to exclude the human resource estimates provided by Latvia, Spain and Italy given their estimates, are outliers compared to the rest of the MS and do not seem to represent a credible estimate of FTEs dedicated to the implementation of EUSTR. This presents an average annual resource deployed by MS CAs to</p> | Medium Confidence: cost data taken from Annual Reporting and corroborated in interviews with CAs |

| Type of stakeholders | Main obligations | Cost estimates | Robustness of estimate |
|--------------------------|--|--|---|
| | | <p>implementing and enforcing the EUTR of between 168 - 223 FTEs. Noting the caveat that these estimates may include resources dedicated to 'additional' activities not required under the EUTR, the study selects the lower bound as its central estimate of costs.</p> <p>The total number of FTEs across the EU is 182. Based on an average wage across MSs in the EU of EUR 40,000 per year, the total costs of EUTR compliance for MSs CAs is approx. mEUR 7.2 per year.</p> <p>This cost is comparable to the total cost of EUTR compliance reported for MSs CAs in the 2016 evaluation of the EUTR, which provided a range of EUR 20,000 to EUR 466,000 per year, depending on the MSs. This corresponds to an approximate cost per MS of EUR 243,000, and results in total costs for the EU of mEUR 6.8.</p> | |
| European Commission | <ul style="list-style-type: none"> Developing and issuing guidance Co-ordination of expert groups | <p>It was reported that DG ENV contracted consultancy services to support the implementation of approximately EUR 800,000 between the end of 2016 to 2020.</p> | High confidence: Data provided directly by Commission services |
| Monitoring organisations | <ul style="list-style-type: none"> Costs of developing their internal competences, capacities and systems to comply | <p>There were no further estimates of costs for monitoring organisations. But what is available suggests costs are comparable to those where operators develop own systems. There has also been limited take up.</p> | Medium confidence: limited information available. Given operator cost estimates include all operators (i.e. do not split out those using MOs), assume costs captured as part of operator estimates. |
| Aggregate costs | | mEUR 722 (range from mEUR 79 - 1,079) | Low to Medium confidence |

Several studies provide estimates of the costs of EUTR compliance per year per importing operator as shown in the previous table. In order to reflect the above uncertainty due to expected problems of awareness and of attribution, the following reduced range for annual compliance costs for DDS under the EUTR are used to produce an estimated annual compliance cost:

- Low estimate: EUR 1,000 (low range from the Global Timber Forum, 2015)
- High estimate: EUR 15,000 (best estimate from the most recent source Norman, 2021)
- Best estimate: EUR 10,000 (mid-point, taking into account uncertainties around the studies gathering cost data).

This is combined with the best estimate of the total number of *importing operators* in the EU active in a typical year (based on the UNEP-WCMC reporting data from 2019) to produce an estimate of the total cost for operators that import timber and timber products of mEUR 714 per annum (range mEUR 71 and mEUR 1,071 per annum). These costs for operators are significantly higher than initial cost estimates for the application of a timber Regulation included in the European Commission's Impact Assessment preceding the EUTR (European Commission, 2008). The study estimated the likely combined regulatory and private sector costs for implementing a DD System and enforcing legislation on trade of legally harvested timber and timber products to be mEUR 16 and mEUR 1 pa respectively.

There is substantially less information available around costs to *domestic operators*. Some of the studies carried out so far indicate that the additional costs from EUTR have been manageable (indeed as the EUTR does not place additional requirements on EU forest owners in terms of ensuring legality). However, more broadly stakeholders agreed that there was some additional burden from setting up systems, collecting and managing information required to underpin due diligence systems, and as such the costs of EUR are not zero in all cases. Given the uncertainty both around the level of additional costs, the proportion of operators facing additional costs and the numbers of domestic operators active in the market each year, it is not possible to produce a reliable quantitative estimate of cost. Based on the evidence available, it is likely that the burden placed on domestic operators by EUTR is not zero in all cases, and it is likely that the costs are lower than for importers.

Exporters in producer countries have also been affected by the introduction of the EUTR indirectly, through requests from EU operators for DD related information. In practice, supplying companies are required to provide evidence on legality of their timber supplies for the EU market. Companies had to invest time in providing the requested "documentation", and those that did not provide documentation in time lost their EU customers. In other cases, mostly where companies already had FSC (Forest Stewardship Council) or PEFC (Programme for the Endorsement of Forest Certification) certification, no requests were made by EU operators on DD related information (TEREA; S-FOR-S; Topperspective, 2016). A survey carried out by the Global Timber Foundation (GTF) in 2015 which assessed the approach to DD System of 15 SMEs in producer countries (in Cameroon, Democratic Republic of Congo, Gabon, Ghana and Vietnam) found that the cost induced by the EUTR DD System requirement led to an additional 17 hours per week of work for legal compliance per SME. In terms of absolute expenses, six of the companies that participated in the GTF survey reported that the average annual compliance costs due to the EUTR was EUR 33,083, ranging between EUR 10,500 and EUR 85,000 per year (that said the finding of this study seems questionable when comparing time spent, the costs and the wage levels in the countries of concerns). Overall, the GTF Supplier and Consumer DD Analysis suggested that even if the EUTR sets requirements for operators to exercise DD on their imported timber supplies, the actual burden of proof of legality is largely passed on to the exporting suppliers (Global Timber Forum,

2015). Findings from the OPC indicated that non-EU businesses were expected to be impacted to a similar degree to EU medium businesses, with large EU businesses expected to be the least affected. This corroborates with further findings from the OPC which showed that a 67 (38%) respondents considered that the costs to implement EUTR were too high for businesses in third countries. It should be noted that the costs related to exporters in third countries are closely related to the governmental governance performance, level of corruption, money laundering and transparency in the country of export. Therefore a small sawmill in Canada most likely will not be affected while a similar size sawmill in Peru might do.

Limited if any cost data has been found for *MOs* and *traders* EU.

The literature presents some information about the costs for *MS CAs*, which include: the establishment and the function of CAs, and laying down the rules on penalties applicable to infringements of the provisions of the Regulation, costs for implementation and enforcement, legal costs associated with enforcement and prosecution, costs associated with seizing goods, activities to support businesses (e.g. online seminars for SMEs, providing tools to help better DD implementation) and other costs such as communication and cooperation (European Court of Auditors, 2015). Resources deployed by MS CAs to implement and enforce the EUTR have been captured over the period of implementation by the biennial (now annual) Synthesis reports (UNEP-WCMC, 2018), (UNEP-WCMC, 2020), (UNEP-WCMC, 2020). A simplified summary of the data reported is captured in the following Table 5-8.

Table 5-8 - Summary of information presented in regular Synthesis Reports

| Cost type | Unit | Between March 2015- | Between March 2017- | 2019 |
|--|------|------------------------------|------------------------------|-------------|
| | | February 2017, focused on | February 2019, focused on | |
| Total human resources | FTEs | 2,897 | 1,372 | 1,291 |
| Total human resources (excl. Latvia, Italy, Spain) | FTEs | 369 | 168 | 223 |
| Total financial resources (where data provided) | EUR | > 3,000,000 | > 1,980,000 | > 1,980,000 |

Given these gather data directly from MS and cover the implementation period, these are used as the basis for the analysis of CA implementation costs in this study. However, there are several important caveats and uncertainties associated with the reported figures in particular: national reports provide varying levels of detail, lack of clarity around the data provided, inability of MS CAs to provide all data requested, some countries which reported unusually high numbers of FTEs might have reported also those not specifically devoted to EUTR (e.g. Latvia, Italy and Spain), and in some cases, MS have gone beyond the basic requirements of the EUTR (e.g. checks on transporters and traders in Sweden and Hungary) and it is not clear whether the resources dedicated to these 'additional' activities are included in the reported figures, but technically these costs should not be attributed to the EUTR. Given the data across MS is more complete and clearer for human resources in 2017-19, this is used as the basis of the estimated costs in this study. (Excluding the human resource estimates provided by Latvia, Spain and Italy) This presents an average annual resource deployed by MS CAs to implementing and enforcing the EUTR of between 168 - 223 FTEs (noting the caveat that these estimates may include resources dedicated to 'additional' activities not required under the EUTR, the study selects the lower bound as its central estimate of costs).

Although there is uncertainty around the reported figures, these estimates indicate the cost to CA are much less significant than those for operators. Additional results from the OPC showed that a small number of respondents have attributed high costs to the implementation of the EUTR, with only 31 (18%) respondents agreeing that the costs were too high for authorities.

Combining the information on costs together, this provides an aggregate implementation cost estimate of mEUR 722 pa (range mEUR 79 to mEUR 1,079 pa). This is partial as it does not include costs to domestic operators.

b. What are the costs of the implementation of the FLEGT Regulation (monetary and non-monetary)? What factors have influenced these costs?

Information on the aggregate costs of implementing the FLEGT Regulation are limited in the literature. Where possible this has been supplemented by information gathered through stakeholder engagement. The following table presents and summarises the cost information gathered (and the gaps) to present as close to a complete estimate of costs as the evidence base permits. Further information on the underlying evidence and calculations are presented in Annex F.

The FLEGT Regulation places costs on a range of different actors at different stages of the VPA process. At *implementation* stage, VPA partner country authorities incur costs to put in place processes and systems that will issue FLEGT licences and ensure the veracity of the system. These costs include: agreeing on a definition of legally-produced timber; define roles and governance structures across public bodies (including setting up new entities where required); set up of administrative and certification systems (including IT systems); training of staff; developing tools and guidance and capacity building with industry; inspection and certification of different elements of the domestic supply chain (e.g. forests, plantations, stocks of raw materials, storage sites and warehouses, processing and manufacturing plants, exporters, etc), etc. Costs also fall on exporters in the VPA partner countries as they prepare for licencing, such as adjusts to standard operating procedures, investment in software, rescheduling of positions and responsibilities or even addition of new staff, and compliance with non-forest legislation (e.g. health and safety, social security, etc) (TEREA, 2016). There are also costs for the EC (and in some cases EU MS) at this stage to support the development and implementation of TLAs.

Once *issuing licences*, there are costs for:

- Actors in VPA partner countries, associated with all elements of the system to control the supply chain and trace wood products though production, from harvesting to export, including: application for and issuing of licences, ongoing renewal of certification of all elements of the supply chain, maintenance of IT systems (e.g. SILK in Indonesia), customs inspection of all exports, verification activities to confirm that the requirements of the legality definition and the supply chain have been met (e.g. monitoring and audit), corrective and preventive actions where non-compliance is detected, and ongoing review and improvement of the systems.
- Actors in EU MS: in particular, MS CAs must set up IT systems to handle FLEGT licences received, verify licences received, undertake additional checks (licence and physical), follow up on irregularities, provide guidance and training for importers, co-operation across MS, participation in joint implementation committees and reporting to the Commission. Where customs are separate from the CA, there will be costs of co-operation between the two and

additional costs for customs handling. MS which receive few licences are still required to have relevant systems in place, so there is a certain level of fixed costs for 'stand-by' systems that will be incurred. There are also costs for importers to arrange FLEGT licences and CA handling fees (in some MS).

Furthermore, it is not pre-determined who ultimately will bear these costs and this could vary depending on the licencing system developed (e.g. whether exporters are charged to attain FLEGT licences or not) and implementation in EU MS (e.g. whether a MS levies a charge for processing FLEGT licences or not). Table 5-9 presents the cost information and data collected under this study.

Table 5-9 - Summary of VPA cost data

| Type of stakeholders | Main obligations | Further estimates | Robustness of estimate |
|--|--|---|--|
| European Commission and EU Member States | <ul style="list-style-type: none"> Conduct negotiations to conclude FLEGT VPAs. Costs to develop the IT system FLEGIT | <p>Between 2003 and 2014, an estimated mEUR 346 was spent by the Commission and MSs on all activities under the FLEGT Action Plan related to VPA countries (Signed and negotiating). (FLEGT AP evaluation) Note: this excludes reporting funding under the Action Plan in non-VPA/non-MS countries, as it is uncertain what proportion may relate to 'VPAs'.</p> <p>Since 2014, an approximated mEUR 70.3 was spent by the former DG DEVCO (now DG International Partnerships) in terms of financial commitments to the FLEGT VPAs, in addition to requiring 0.25 of an FTE to cover each individual VPA in an EU Delegation (noting that this varies from one country to another) (data provided directly by INTPA). DG ENV have also invested resources over the period from 2014. This includes around EUR 400,000 in consultancy support for monitoring, around mEUR 1.4 investment in FLEGIT and IT systems, and human resource costs of 2.5 FTEs (Data provided directly from DG ENV). To estimate total resource costs, total FTEs are combined with an average assumed wage of EUR 60,000 over 6 years of implementation from 2014.</p> <p>Together this presents a total cost of mEUR 420.</p> | High confidence: Expenditure to 2014 reported in FLEGT AP evaluation; costs since 2014 provided directly from Commission services. |
| Partner country governments - VPA negotiation and implementation | <ul style="list-style-type: none"> Conduct negotiations to conclude FLEGT VPA. Developing a license schemes via a timber legality assurance system (TLAS). Initiate legal and governance reforms. | <p>Between 2003 and 2014, an estimated mEUR 38 was spent by partner countries on all activities under the FLEGT Action Plan related to VPA countries (Signed and negotiating) (of which mEUR 20 was invested by Indonesia). (FLEGT AP evaluation)</p> <p>In an interview, the government of Malaysia noted it had incurred costs of developing 3 TLAS (for each State): mMYR 55, or an equivalent mEUR 11 (conversion rate MYR 1 = EUR 0.2) (although these do not yet formally issue FLEGT licences).</p> <p>Figures above present a total cost of mEUR 48.5. No additional costs for Indonesia for the final stages of TLAS development from 2014 to 2016 could be found, nor costs for VPA negotiating or implementing countries since 2014.</p> | Low confidence: due to remaining gaps in post 2014 spend |

| Type of stakeholders | Main obligations | Further estimates | Robustness of estimate |
|-----------------------------------|---|---|--|
| Partner country TLAS operation | <ul style="list-style-type: none"> Operation of LIU and issue of licensing Monitoring and enforcement | <p>Costs for a licensing country: Indonesia</p> <ul style="list-style-type: none"> <i>Indonesian public authorities:</i> <ul style="list-style-type: none"> The 2016 evaluation of FLEGT reported that the Indonesian government invested approximately mEUR 20 into the VPA process. (FLEGT AP evaluation). The Indonesian LIU invests around USD 100,000 pa in maintaining the ILK system, and has a budget of USD 200,000 for office and staff, with additional support from FAO to fill in the gaps. There are also costs for developing the online traceability system and system integration (Data provided through stakeholder interviews) <i>Independent monitors</i> <ul style="list-style-type: none"> The FLEGT AP evaluation reported that No data is available on the costs to certifiers / licencers (although these may be covered by the charges levied for issuing certificates / licences, nor for periodic evaluations <p>In an interview, the government of Malaysia noted it had incurred to following costs:</p> <ul style="list-style-type: none"> Costs for one-off audit of the system: MYR 500,000 or an equivalent of EUR 100,000 Costs of annual implementation: mMYR 3.5, or an equivalent of EUR 700,000. Note that it was not clear from the interview whether this also covered some costs for exporters, licensing, etc.. Assuming 8 years of implementation since the Peninsular Malaysia TLAS came into force in 2013, this equates to a total cost of mEUR 5.6. <p>Together, this presents a total licensing cost to partner governments of mEUR 16.6.</p> | Medium confidence: Evidence collected through stakeholder engagement with Indonesia and Malaysia representatives. But FLEGT AP evaluation provided illustrative monitoring costs, which appear high and drive this cost category |
| Partner country - exporters | <ul style="list-style-type: none"> Acquiring FLEGT licences for exports | <p>Costs for a licensing country: Indonesia</p> <ul style="list-style-type: none"> <i>Indonesian exporters (Certification):</i> <ul style="list-style-type: none"> The 2016 evaluation of FLEGT reported that the: <i>direct costs of SVLK certification (compulsory for most companies) are approximately Rps 30 - 40 M per company; a company has to be re-audited every 1-2 years (at similar costs)... So far approximately 1,000 big companies have been certified and 2,350 SMEs (Gol subsidises certification of SMEs), with a total estimated cost of €5 M.</i> (FLEGT AP Evaluation) Interview with stakeholder in Indonesia suggested the costs of certification were in the range of USD 600-700 for smaller players. There was a budget of mUSD 1.2 per annum to cover certification of | Medium confidence: Costs for obtaining certification and licences by exporters were provided through interview with Indonesia stakeholder and directly by EU FLEGT Facility and |

| Type of stakeholders | Main obligations | Further estimates | Robustness of estimate |
|----------------------|------------------|---|--|
| | | <p>smaller players (although it is not clear if this is all spent each year). Interviewee also noted there were around 4,200 players in the system, but was unable to provide a split by size (Stakeholder interview)</p> <ul style="list-style-type: none"> ○ Data provided by the EU FLEGT facility suggests certification costs range from EUR 392 - 1690 depending on size of actor, but that these are fully subsidized for households and small businesses (data provided directly) ○ The data presents a wide range of costs with some, but not close corroboration. The annual budget to cover small businesses (mEUR 1.2 per annum) corroborates with the costs estimated in the FLEGT AP of the initial certification costs. This value also sits within the range when combining the certification costs provided by the FLEGT facility with overall numbers of operators. As such a total certification cost to date of mEUR 5 is adopted for this analysis. <ul style="list-style-type: none"> • Indonesian exporters (licences): <ul style="list-style-type: none"> ○ Interview with stakeholder in Indonesia suggested the costs per licence of USD 8-15 (Stakeholder interview) ○ Data provided by the EU FLEGT facility suggests licence costs range from EUR 12-15 (data provided directly) ○ <i>Combining the top and bottom values of this range with the numbers of FLEGT licences received to date suggests a cost range of mEUR 0.9 - 1.7</i> • Indonesian concessions: <ul style="list-style-type: none"> ○ The 2016 evaluation of FLEGT reported that the: <i>cost for certification of concessions is estimated to be 300 M Rps/concession of 100,000 ha. Based on distribution of concession size an estimated €15 M has been invested in certification of natural forest and an additional €10 M might be needed every 2 years for certification of plantation forest. The above mentioned direct certification costs only refer to the audit costs. Indirect certification costs (i.e. cost for preparation of the company in order to reach a certifiable level) are generally estimated to be at least as high as the direct costs. There would thus have been required an additional (one time) €25 M for indirect certification costs.</i> ○ No further information on costs to concessions was provided by interviews <p>Together these present a cost to exporters under licencing systems of mEUR 76.3.</p> | corroborate each other. But costs for certifying concessions were provided by the FLEGT AP evaluation - these costs drive the total figure for this category and appear high |

| Type of stakeholders | Main obligations | Further estimates | Robustness of estimate | | | | | | | | | | | | | | | | | | | | | | | | |
|----------------------|--|--|--|-----|-----------------|----------------------------------|---------|---|--------|-------|-------------|---|--------|-------|---------|-----|---------|-------|-------|-----|---------|-------|-------|----|---------|--------|---|
| MSs CAs | <ul style="list-style-type: none"> Support negotiations and implementation. | <p>Some interviewed MSs CAs provided estimates for their costs, either in FTEs or in costs. Costs were deduced from FTEs, by applying an average wage in the EU public sector of EUR 40,000 per year.</p> <table border="1"> <thead> <tr> <th></th><th>FTE</th><th>Equivalent Cost</th><th># licenses cleared by CA in 2019</th></tr> </thead> <tbody> <tr> <td>Belgium</td><td>1</td><td>40,000</td><td>2,531</td></tr> <tr> <td>Netherlands</td><td>2</td><td>80,000</td><td>9,034</td></tr> <tr> <td>Germany</td><td>3.5</td><td>140,000</td><td>4,853</td></tr> <tr> <td>Spain</td><td>3.5</td><td>140,000</td><td>1,764</td></tr> <tr> <td>Total</td><td>10</td><td>400,000</td><td>18,182</td></tr> </tbody> </table> <p>Based on the above figures, the average cost by a MS CA per license is approximately EUR 22. From the start of licencing in 2016, to the end of the 2019 reporting period, 93,636 licences have been validated by CAs. This results in a total estimated cost for MS CA (in terms of staff) mEUR 2.1</p> <p>The above costs only cover staff costs of monitoring and enforcement. Through the interviews, 2 MS (Belgium and Spain) reported an estimate of upfront costs to set up IT systems of respectively EUR 200,000 and EUR 260,000. Two more MS reported no upfront costs. It is possible that other MS also incurred upfront costs, but without a wider sample, these are challenging to estimate.</p> | | FTE | Equivalent Cost | # licenses cleared by CA in 2019 | Belgium | 1 | 40,000 | 2,531 | Netherlands | 2 | 80,000 | 9,034 | Germany | 3.5 | 140,000 | 4,853 | Spain | 3.5 | 140,000 | 1,764 | Total | 10 | 400,000 | 18,182 | Medium confidence: No evidence in literature. Estimates of staff time provided through stakeholder interview by 4 MS, and scaled up based on number of licences received. Some upfront costs also reported by 4 MS included, but this does not include upfront costs which may have been incurred by other MS |
| | FTE | Equivalent Cost | # licenses cleared by CA in 2019 | | | | | | | | | | | | | | | | | | | | | | | | |
| Belgium | 1 | 40,000 | 2,531 | | | | | | | | | | | | | | | | | | | | | | | | |
| Netherlands | 2 | 80,000 | 9,034 | | | | | | | | | | | | | | | | | | | | | | | | |
| Germany | 3.5 | 140,000 | 4,853 | | | | | | | | | | | | | | | | | | | | | | | | |
| Spain | 3.5 | 140,000 | 1,764 | | | | | | | | | | | | | | | | | | | | | | | | |
| Total | 10 | 400,000 | 18,182 | | | | | | | | | | | | | | | | | | | | | | | | |
| MSs customs | <ul style="list-style-type: none"> Ensure only FLEGT licensed timber enters the EU. | Interviewees from both the European Commission and CAs noted that customs also incurred costs, in order to carry out checks on timber imports. The majority of checks on imports are routine checks and the time spent can thus be minimal; however, the time spent by customs can become significant in cases where there is an issue with the license. CAs through interview indicated that the costs for customs were approximately the same as the costs incurred by the CAs, so it is assumed that customs authorities incur a cost of approximately mEUR 2.1 , as MSs CAs. | Low confidence: No information available from literature. Stakeholder interviews suggest costs are similar to those for CAs | | | | | | | | | | | | | | | | | | | | | | | | |
| Importers | <ul style="list-style-type: none"> Cost of coordinating FLEGT licence Cost of changing supply chains | CA interviewees noted that importers faced costs between EUR 60 (low estimate) and EUR 100 (high estimate) per license to arrange import under a licence. Based on the number of licenses (93,636), it is estimated that total costs for importers would be between mEUR 5.6 and mEUR 9.4 . | Low confidence: Only limited information available | | | | | | | | | | | | | | | | | | | | | | | | |
| Aggregate cost | | mEUR 574 | | | | | | | | | | | | | | | | | | | | | | | | | |

An evaluation in 2016 (European Commission, 2016) estimated the costs related to the FLEGT Action Plan as a whole (it is important to note that the scope of this Fitness Check does not cover the FLEGT Action Plan as a whole). Furthermore, it is important to note that this cost only covers to 2014, and hence would not capture costs over the subsequent 5 years to 2020, but still provides a valuable source of evidence for the period to 2014. This study estimated the costs of the Action Plan as a whole to be EUR 935 million for the period 2003-2014. A breakdown of the costs details estimated expenditure on VPA-signed and VPA negotiation to be mEUR 384 (across *Commission services, EU MS and partner countries*). The evaluation found that the cost of the VPA process in terms of time was substantial, reflecting its complex and comprehensive nature. Additional data has been provided by *Commission Services* setting out their costs since 2014, amounting to a further mEUR 74 of funding commitments and other resource costs. The above findings were confirmed in the online public confirmation given a high number of respondents stated they agree or strongly agree that the costs of implementation for the FLEGT Regulation were too high for businesses (73, 46%) and authorities (68, 44%).

Through stakeholder interviews, information was provided regarding the costs for public authorities and exporters (certification and licencing) of the Indonesian licencing system (with some cost items corroborated against further evidence provided directly by EU FLEGT Facility). These were combined with evidence from the FLEGT AP Evaluation regarding the costs of monitoring and certifying concessions and used to estimate the costs since licencing commenced of around mEUR 87 (however, the highest costs are for those items provided by the FLEGT AP Evaluation which appear high, in particular when considering the cost estimates made for items for which further data has been gathered). Furthermore, interview with Malaysian stakeholders provided information on developing and implementing the Malaysia TLAs, which has cost around mEUR 16.6 over the appraisal period (although the Malaysia system is not yet formally recognised as the VPA negotiations are on hold, these costs have been included as the development of this system was instigated by the commencement of the VPA process). No further information was available from the literature or stakeholders on costs of further development of the Ghanaian TLAs.

No evidence is available in the literature regarding the costs to *EU CAs* for implementing FLEGT licencing systems. Valuable evidence was collected through interview with CAs, with some (but not all) CAs reporting upfront costs and all reporting fairly consistent ongoing costs, with CA's interviewed committing between 2-3.5 FTEs per annum to FLEGT Regulation activities. Approaches from CAs to establish IT systems differed, with some MSs developing new systems entirely dedicated to FLEGT (an example cost for the IT system in one MS was about EUR 200k), while others have expanded existing systems at a relatively low cost and others use the EU system (FLEGIT) and such IT costs are minimal compared to staff costs. No evidence was available in the literature also for the cost to customs authorities. Interviewees from CAs noted that *customs authorities* incurred costs comparable to the ongoing costs incurred by CAs. CAs were also able to provide limited insights into the costs for EU importers of importing under a FLEGT licence, which when combined with the number of licences validated was used to estimate a cost.

Combining the information on costs together, this provides an aggregate implementation cost of least mEUR 574 to 2020. It is important to caveat that there is varying degrees of confidence around the different items that comprise this total, and for some costs no evidence could be found (e.g. further investment by partner countries in the VPA programme since 2014).

c. What are the benefits of the Regulations (monetary and non-monetary)? What factors have influenced these benefits?

EUTR

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. 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 literature (e.g. (Patel, 2019)) and by stakeholders in their responses to engagement activities. DD Systems are now in place covering the majority of imports - although some operators already had systems in place prior to the EUTR, stakeholders consider that the EUTR has led to a positive step-change in transparency and the availability of information and documentation around timber supply chains (in particular regarding species and origin). Stakeholders also report that there has been a modest switch by operators to more transparent supply chains, and also that EUTR has led to reforms in timber producing countries to improve transparency (e.g. in Ukraine as flagged by local stakeholders through interview).

Through the EUTR, MSs 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). The majority of respondents to the OPC report the EUTR has led to a 'significant' or 'very significant' increase in the awareness of the problem of illegal logging and in consider confidence in the EU timber market (the latter combined effect with FLEGT Regulation). It has also encouraged other non-EU states to comply with the requirements (e.g. Norway), and to implement their own demand-side legislation to combat the problems associated with the timber industry (Australia, Switzerland, China, Japan and Korea) (See EQ3g for further analysis) - the fact that other key consumer countries have followed the EU's example was noted as a 'moderate' positive consequence by respondents to the OPC. The EUTR has had an indirect impact on improving forest governance and inducing legislative change in countries exporting timber and timber product to the EU (e.g. Ukraine, China and Myanmar). Local populations in exporting countries are also reported to benefit somewhat as a result of the EUTR through promotion of the rule of law including the rights of indigenous peoples and local communities (Patel, 2019) (See EQ1d).

Implementation of the EUTR has been linked to reducing deforestation and forest degradation, as well as reducing emissions from deforestation and improving their sustainable management (European Commission, 2016). The evidence for such effects has been reviewed as part of this Fitness Check study (see EQ1a and EQ1b), and the evidence that there have been significant improvements is not clear cut. 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. It is clear that the EUTR has achieved some success but has not completely achieved its objective. With respect to effects on illegal logging in exporting countries, drawing firm conclusions is even more problematic. Again the evidence is mixed, but the EUTR appears less successful in this respect.

In addition, other benefits which are less significant or more isolated have also been identified as follows:

- Significant improvement in co-operation between CAs and EC, and between retailers/operators and traders and a moderate improvement in co-operation with civil society and private sector in countries exporting to the EU (OPC);
- EU operators have benefitted from the creation of a level playing field and a better understand their supply chains (OPC and interviews with CAs and NGOs). Some respondents to the OPC felt EU operators had also benefited through improved reputational values, although this is in contrast to the general opinion that consumers lack awareness of the EUTR specifically;
- A number of exporters have considered the Regulation to have been advantageous to their business (Jonsson et al, 2015). Stakeholders in Malaysia attribute an increase in exports to the EU to both EUTR and their VPA. However stakeholders in Ukraine suggested there have been no material benefits for exporters generally, only the ability to continue exports to Europe but it had strengthened the position of legal producers. Hence, given the nature of this impact and the conflicting evidence, how wide-spread this benefit has been is uncertain;
- EU residents and communities have in few instances positively benefited through redistribution of confiscated illegal timber (e.g. by Hungarian authorities) (UNEP-WCMC, 2020);
- Additional revenues could also accrue to EU MS CAs: for example, the case study of Romania which reported a total additional benefit of €235.4m per year (TEREA, 2016).
- Respondents to the OPC also felt the EUTR had somewhat led to job creation in the EU.

Although many benefits have been identified, many have not been quantified nor monetised. In addition some are noted only in single sources. Hence it is difficult to conclude how significant or broad-based benefits might be and limits the extent to which costs can be compared to benefits (see EQ4d).

FLEGT Regulation

A range of benefits that have been attributed to the FLEGT Regulation. Benefits have been identified for countries at negotiating, implementing and licencing stages, although the impacts vary between stages. The most significant and most widely cited benefit of the introduction of VPAs and the associated improved policy dialogue is the improvements in governance and legal reform that flow from this process (see EQ1d). The importance of these benefits are consistently flagged in both the literature (see e.g. (European Commission, 2018a)) and across the stakeholder engagement activities. This benefit can begin to be felt in negotiation stage (VPA partners in this stage report benefits), and can continue to grow in implementation and licencing stage. The VPA process has led to:

- unprecedented engagement of stakeholders and civil society in forest governance (e.g. in Republic of the Congo, Cameroon and the DRC where VPA process was credited with helping to ensure a wide-ranging and thorough consultation process on the Forest Code reform);
- capacity building (both financial and technical support has also been provided through the VPA programme to partner countries to help ensure its objectives can be met) and
- legislative change to define a coherent legal and regulatory framework (in some cases helping to actually define what is legal in some VPA countries - e.g. Ghana).

Furthermore, there is also experience and learning being shared across and outside VPA countries: the interview with the Indonesia stakeholder highlighted that experience of the SVLK had been shared with countries such as Myanmar, Vietnam, Ghana, Chile and China.

The impacts of the FLEGT Regulation on illegal logging and illegal timber imported to the EU have been examined under this Fitness Check study (see EQ1a and EQ1b). It is not possible to conclude with certainty that the FLEGT Regulation has had a non-negligible, positive impact on illegal logging in the VPA countries and/or on the level of illegally logged timber entering the EU. That said specific benefits have been identified: Indonesia has started to issue licences and has observed a significant reduction in the rate of forest loss (FAO data, stakeholder interview), even before issuing licences there is some sentiment that illegal logging has reduced in Ghana (Cerutti P. O., et al., 2020) and a decrease in illegal logging has reportedly led to increased tax revenue in the Republic of Congo (through higher permitting of timber organisations) (European Commission, 2016). In Cameroon stakeholders (interview) recognise that there has been an improvement in reported timber (and consequently government revenue). No data exists as to whether tax revenues from timber activities have increased in Indonesia as a result of the SVLK, but certainly stakeholders (Indonesia stakeholders interview) perceive industry to be more willing to pay tax and acquire permits, and has noted the public authority responsible for tax is making use of industry data collated under the SVLK. As v-legal licences accompany all Indonesian exports, the SVLK has increased assurance for exports to other world markets alongside the EU and has hence reduced the level of illegal timber trade globally (Indonesia stakeholder interview).

There is some evidence that once licencing, exporters experience a benefit from FLEGT licencing. But overall the benefit to Indonesian exporters has been limited to date. A small survey of 40 Indonesian exporters in 2017 found more than 70% reported that exporting wood had become easier as a result of licencing and expected an increase in European demand once the concept of FLEGT licencing was more widely known (IMM, 2017). The majority (almost 75%) of OPC respondents 'agreed' or 'significantly agreed' that better access to the EU market is a key benefit of concluding VPAs, and the majority felt the amount of timber and timber products from Indonesia had at least 'increased modestly' since commencement of licencing. CAs through interview noted they also perceived an increase in Indonesian imports since licencing but countered that it is unclear whether this was being driven by FLEGT licencing or another factor. However, 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). The potential impact of FLEGT licencing on exports has perhaps been limited by the fact that licences are only one of a number of parameters which importers consider (alongside price, product type, quality, reliability of supplier, etc), limiting the ability for importers to switch (CA interview). Even where exports may not have increased to the EU, Indonesian stakeholders (interview) highlight that as a consequence overall timber exports have increased (almost doubled from 2013 to 2020) alongside the number of export destinations (150 to 195 countries), reporting that confidence of the market in Indonesia products returned. Stakeholders in Malaysia also attribute an increase in exports to the EU to the combined effect of the EUTR and their VPA - although this has not yet reached formal licencing. Three regional TLAS operate in Malaysia and issue licences which they believe has led to increasing acceptance under DD. However, the potential size of this benefit is challenged by the trade data which suggests imports have grown by only 4% to 2018 since the Peninsular Malaysia TLAS began operation in 2013 (Malaysian Timber Industry Board (MTIB), 2018), and by 0.3% to 2018 since the Sabah TLAS commenced operation in 2016 (relative to 29% and 12% growth for all EU imports over those periods respectively).

Another key benefit for EU importers as importing under FLEGT licences supports the achievement of compliance with EUTR requirements (European Commission, 2018a) (See also EQ10c for further detail). The majority of OPC respondents agreed this was a key benefit of concluding VPAs and through the

interview CA's reported a clear preference for operators to import under FLEGT licences as this is simpler, poses lower risk and reduces costs of DD (assuming that DD is being undertaken correctly). That said, given only one country is currently issuing licences the majority of OPC respondents ranked this as only a 'slight' or 'not at all' positive consequence and the vast majority agreed that EUTR compliance costs have not been reduced for all importers. However, there is an expectation that this benefit will increase as more countries move to licensing (OPC). As noted above, Malaysia has also seen an increase in exports following the issuance of 'licences' (which are not official FLEGT licences) by its three regional TLAS systems, which suggests this has perhaps informally helped DD burdens for EU operators.

As for the EUTR, the majority of respondents to the OPC report the FLEGT Regulation has led to a 'significant' or 'very significant' increase in the awareness of the problem of illegal logging and in consider confidence in the EU timber market (the latter combined effect with EUTR). The majority of OPC respondents also noted the FLEGT Regulation had improved co-operation between EU-based and exporting country stakeholders, and a slight increase in investment in clean supply chains.

Although many benefits have been identified, many have not been quantified nor monetised. In addition some are noted only in single sources, and for others the evidence presents opposing views. Hence it is difficult to conclude how significant or broad-based benefits might be.

d. To what extent are the costs justified and proportionate, given the impact of both Regulations and the benefits they have delivered?

EUTR

Evidence on the costs of implementing and the functioning of the EUTR is incomplete (see EQ4a). Useful data on the costs to CAs and operators is available, but only limited data on costs for traders, MOs, domestic operators and exporters. An aggregate, but partial, estimate of implementation costs is of mEUR 722 pa (noting that this is partial as it does not include costs to domestic operators and exporters) (range mEUR 79 - 1,079 pa). A wide range of benefits (e.g. increased awareness, inspiring other importing countries to implement demand-side regulation, etc.) have been identified - however many of these benefits cannot be quantified, let alone monetised, and also may be difficult to attribute to the EUTR. This critically limits the ability to directly compare costs and benefits (as also highlighted by CAs through interview).

Further insight into cost effectiveness can be gleaned from stakeholder opinion. In response to the OPC some stakeholders recognised that administrative burdens were necessary or proportionate to the risks and impacts of illegal logging (5, 9%), or offered the opportunity to establish a new 'baseline' of business best-practice (3, 5%). Indeed the majority of OPC respondents 'agreed' or 'strongly agreed' that the total benefits of EUTR outweighed the costs, and likewise for the traceability obligations of traders, although this opinion was not universal and for some this would depend on being able to prove EUTR was having a positive effect on illegal logging. This perception was re-iterated through the targeted interviews with various stakeholders.

As a secondary indicator, the costs can be set against their coverage of timber and timber products placed on the EU market and the overall size of the EU timber industry:

- Looking specifically at the costs of importing operators (where there is more confidence in the estimates), this suggests the *cost per tonne of import* was approximately EUR 11 (within a range of EUR 1 to 17). Taking the aggregate costs and comparing to the total mass of extra and

intra-EU trade in timber and timber products covered by the EUTR in 2018 (around 290 million tonnes, noting this does not include domestic consumption which would also be covered by EUTR), implies a combined cost per tonne covered of around EUR 2.5 per tonne traded (range EUR 0.3 to 3.7 per tonne).

- The total value of trade covered by the EUTR (imports and intra-EU trade) in 2018 was bEUR 136 (ComExt), and the total turnover of the EU timber sector¹⁰¹ was bEUR 542 in 2018¹⁰². Although the benefits of the EUTR cannot be monetised, *relative to the total value of the timber sector*, the costs of the EUTR are small and hence can be concluded more confidently that the Regulation is cost-effective. This is also corroborated by a study (European Commission, 2016b) which estimated that forest-based legislation costs about 0.2% of the value added in forest-based industries in the EU (main part of the costs related to EUTR).

With respect to MS CA specifically, these actors incur a reasonable cost to implementing and enforcing the EUTR (around mEUR 7 per annum). However, these resources appear to be being deployed efficiently and the activities bring a range of positive outcomes which enhance the effectiveness of the EUTR. CAs perform a combination of desk-based and in-person checks have been employed (EQ 2.a.ii) and the risk-based approach allows them to prioritise checks. Checks are prioritised on risk criteria which vary by MS, but there are several key criteria deployed by the majority (>22) MS: country of harvest, type of timber product, timber species, high volume/weight of products, and area/region of harvest (UNEP-WCMC, 2020c). This efficiently focuses checks on operators dealing with more complex supply chains, high-risk countries, and those responsible for large proportion of the imports. This has meant that a large proportion of the timber or timber products entering the EU market have been checked (see EQ 2a.ii), especially coming from high-risk countries. More broadly, cooperation through the EUTR/FLEGT working group between CAs and with OLAF and Interpol, as well as joint inspections have allowed more efficient enforcement and identification of fraudulent practices (see EQ 2d).

FLEGT Regulation

For the FLEGT Regulation, cost data in the literature is more limited. This has been complemented where possible by evidence gathered through stakeholder engagement. This evidence suggests an aggregate implementation cost of at least mEUR 574 to 2020. Again, as per the EUTR, a wide range of benefits have been identified which can be set against these costs (e.g. improvements in governance, access to markets for exporters) - however many of these benefits are not quantified, let alone monetised, and also may be difficult to attribute to the FLEGT Regulation. This critically limits the ability to directly compare costs and benefits.

Further insight into cost effectiveness can be gleaned from stakeholder opinion. It is insightful that the majority respondents to the OPC considered 'time and cost required to establish and implement the FLEGT Regulation within the EU, considering the proportion of timber covered by the licencing scheme', was a significant challenge to implementation. That said, the majority (>75%) still 'agreed' that the total benefits of the FLEGT Regulation outweighed the costs of its implementation.

As for the EUTR, a simple comparison can be made between costs and the coverage of imports. It is reported that around 2m tonnes of timber and timber products have been imported under FLEGT

¹⁰¹ Combining four NACE sectors: Manufacture of wood and of products of wood and cork, except furniture; manufacture of articles of straw and plaiting materials; Manufacture of paper and paper products; Printing and service activities related to printing and Manufacture of furniture.

¹⁰² Eurostat - Structural Business Statistics - Annual detailed enterprise statistics for industry

licences since the start of Indonesian licencing in 2016¹⁰³. Set against the estimated costs to 2020, this implies a cost per unit of import covered of around EUR 280 per tonne. A key caveat is that this simple metric does not capture future benefits associated with resource investment to date - namely that further partner countries may progress to FLEGT licencing stage: indeed Commission services through interview flagged many building blocks to achieve the ultimate objective have been put in place. Looking specifically at the costs of the Indonesian TLAS, this implies a cost of EUR 71-91 per tonne of import.

The EU imported around mEUR 1,900 from Indonesia since licencing began over the period for which data is available (ComExt) from 2016-18. Relative to this figure, the mEUR 574 invested in the FLEGT Regulation to date appear high. However again this does not include potential future benefits of other countries issuing licences as a product of investment over this period. Hence should more VPA partners achieve licencing, this will help improve the cost-effectiveness (although given the status of many VPAs, it is uncertain when other partner countries may commence licencing). Furthermore, at this stage the upfront negotiation costs comprise a significant proportion of the costs - for example, the ongoing costs of operating the Indonesian TLAS comprise a small proportion of the overall cost presented (around mEUR 16). Hence the longer TLAS's are operated for, the more cost-effective the FLEGT Regulation is. However, at this stage, the costs invested are high relative to the benefits achieved to date, suggesting that the FLEGT Regulation cannot yet be considered cost-effective.

Comparing the costs of the EU TR to the FLEGT Regulation

A direct comparison to the cost per tonne figure for EU TR should be done cautiously given both are approximate and partial estimates. It is estimated that cost per tonne of product covered by EU TR is between EUR 0.3 to 3.7 per tonne, relative to a figure over EUR 280 per tonne for the FLEGT Regulation (noting both are partial and could exclude key costs). This perhaps signals more that it is a more 'efficient' approach to reduce the risk that illegally logged timber is imported to the EU market through an obligation on EU operators (as under EU TR), relative to attempting to negotiate comprehensive licencing agreements with exporting countries. That said, it is important to caveat that this is a very simplified comparison in lieu of better data. Not least this comparison implicitly assumes that the effectiveness of reducing the risk of illegality is the same between both Regulations, whereas it is unlikely that the risks are equivalent under a system that certifies the legality of imports through a detailed assurance system relative to an EU based system where important issues have been identified. Furthermore, this does not capture the potential benefit of additional imports covered by licences in the future, where the investment in these systems has occurred over the implementation period. Comparing the data available regarding costs of the Indonesian TLAS only to imports covered by Indonesian FLEGT licences, the cost per import is lower EUR 71-91 /tonne, which is more aligned with the EU TR, but there is no guarantee that the progress of the Indonesian TLAS is representative of how other TLAS's will develop.

5.2.2 Question 5: How proportionate were the costs of the intervention borne by different stakeholder groups and sizes taking into account the distribution of the associated benefits?

| Key findings |
|--------------|
| EU TR: |

¹⁰³ Analysis based on totals aggregated from Annual Synthesis reports - based on volumes on FLEGT licences cleared by CAs

Key findings

- Costs of compliance vary significantly across operators depending on a range of factors (e.g. number and location of suppliers, number of raw material inputs, etc).
- There is no strong evidence of a disproportionate burden placed on SMEs. Some insights are provided in the literature and by stakeholders, which allude to the burden of compliance having been proportionately higher for SMEs. Larger companies seem to have been able to adapt better and more quickly to the new requirements than SMEs, which may seem to be in a disadvantaged position due to their low economies of scale as the costs of the DD System need to be covered by a lower turnover. However, the evidence for this conclusion is not strong and based predominantly on stakeholder opinion.

FLEGT Regulation:

- Information on costs for businesses resulting from the FLEGT Regulation found thus far has been fragmented and mainly qualitative. Cost data collected suggests the EC and MS have invested substantially more in the VPA process than exporting country national governments, civil society, and private sector enterprises (noting data relates to period from 2003-14), and relative to EU CA implementation costs. This highlights a contrast between the Regulations: the EUTR as decentralised obligation places greatest costs on EU operators whereas the FLEGT Regulation is led centrally and hence places greatest burden on the EC and MS.

a. How have the costs of implementing the EUTR varied across different stakeholder groups (split by type and size of actor)? What factors have influenced the distribution of costs? Have the interventions created a “level playing field” for operators?

As discussed under EQ4a, the costs of implementing the EUTR are many times greater for operators than for the CAs (no cost information has been found for MOs nor traders). Furthermore, costs will also fall on exporters in producing countries, and some sources have suggested that the costs to these actors could be as significant as for EU based operators (Global Timber Forum, 2015).

Within EU operators, several sources (for example, (Kothke, 2020)) highlight that different operators face varying costs of compliance. The 2016 Evaluation of the EUTR found only 47% of companies had incurred additional costs for developing and/or operating their DD System. For those that faced additional costs, the total annual cost of operating a DD System was reported to vary between EUR 10,000 and EUR 50,000 (TESAF, 2016). The cost of implementation was estimated as a percentage of the annual turnover by 19 operators from six countries and ranged from below 1% to over 25% (TESAF, 2016). A more recent study carried out by UNEP - WCMC in 2019 based on a survey of operators, trade associations and CAs underlined this variance facing different operators: it found annual implementation costs per company ranged from EUR 0 to 8 million (UNEP-WCMC, 2019). This report (alongside several other sources) indicate that these small and medium sized enterprises were more substantially affected by the costs incurred given their reduced capacity in terms of turnover and staff to time to incur additional administrative burden from the EUTR. The impacts on SMEs specifically are considered more fully in the following Box.

Box 5-4 SME impact test - EUTR

Step 1: Identification of affected business

The EUTR places obligations on all domestic and importing operators that place timber and timber products (as defined under the scope of the EUTR) on the market for the first time. A proportion of this group will be SMEs, however there is very limited data to assess what proportion of this group are SMEs in practice. Reporting data (UNEP-WCMC) which gathers data on the number of operators from CAs does

not split between size of operator. Eurostat data¹⁰⁴ exists which splits businesses by size, but this data is only available at an aggregated NACE level (and hence cannot isolate those placing products under the scope of the EUTR on the market for the first time) and does not split between operators and traders. For illustration, the Eurostat data for a selection of relevant, higher-level NACE codes (A, C16, C17 and C31) suggests that only 4-5 % of businesses importing these products in 2018 were large businesses. This means that approximately 95% of all importing operators might be SMEs.

The EUTR also places an obligation on traders, and again SMEs are likely to represent a significant share of this group. However, as noted under EQ4a, additional costs for this group appear to be negligible.

Step 2: Consultation (and broader evidence review) that captures the SMEs angle

The literature contains useful insight into the potential impacts on SMEs. In some cases, the costs to SMEs of DD may be smaller than for larger firms: larger, more complex and a greater number of supply chains imply higher costs for practicing DD (TEREA; S-FOR-S; Topperspective, 2016), and SMEs may also deal more directly with suppliers and face less pressure to change production seasonally (and hence may also be more effective in attaining robust information than larger players).

However, although *absolute* burdens may be smaller, there is evidence to suggest that the *relative* burden has posed a greater challenge for SMEs. The 2016 Evaluation found that large companies seem to have been able to adapt better and more quickly to the new requirements than SMEs, which were in a disadvantaged position due to their low economies of scale and turnover (TESAF, 2016). Responses by SMEs to a survey conducted for that report indicated that they needed more for external support (e.g. MO services) than large companies. In addition, almost 60% of large companies disagreed that they were burdened because of changes in geographic supply of sources, suppliers and timber species. The study found that the EUTR compliance costs for SMEs can be reduced if companies apply cost effective practices; avoid expensive IT solutions; and benefit from external technical support for developing and applying adequate DD System (European Commission, 2016). A separate study (TEREA; S-FOR-S; Topperspective, 2016) also concluded that the relative burden of the cost of DD depends on the size of the company: some SMEs had reportedly stopped importing directly and instead source tropical timber from larger importers or focus on temperate timber to avoid high costs of DD (TEREA, 2016).

Evidence of the pattern of greater burdens being placed on smaller actors is also found for domestic operators (e.g. small forest owners in Czechia were found to be less aware of the existence of the EUTR (Dudik, 2016)) and indeed exporters - for the latter, there is some evidence to suggest some EU operators have shifted away from sourcing from smaller operators in (tropical) producer countries (TESAF, 2016).

The OPC confirmed the above findings and showed that in general EU smaller businesses were expected to incur the greatest increase in administrative costs. Furthermore, when asked as to whether the EUTR contributed to the creation of a level-playing field among the market players within the EU, OPC respondents provided a very mixed response, whilst the statement that the burden of EUTR implementation is shared among different stakeholder types in a fair and equitable manner was met a strong level of disagreement.

¹⁰⁴ Trade by NACE Rev. 2 activity and enterprise size class [EXT_TEC01__custom_758561]

This pattern of disproportionate impacts was also reported in interviews. CAs noted that the relative cost (of compliance) is not substantial for larger importers whereas smaller companies (which make up the majority of companies affected by the EUTR) are subject to a higher burden as they are likely to be unable to invest the time and economic resources needed compared to other medium or large companies. Business associations (BA) also reported that the administrative burden on SMEs has been disproportionately high, when importing from both FLEGT and non-FLEGT countries. One BA stated that some small businesses needed 2 FTEs dedicated to work on the EUTR. Furthermore, the cost of DD Systems provided by MOs were inaccessible for many SMEs, ranging from 2,000 to 10,000 EUR per year, with additional costs for translation of documents and dealing with supplies and sub-suppliers.

Step 3: Measurement of the impact on SMEs

Quantitative information on the impacts on SMEs has several limitations. In terms of the number of SME operators, as noted above, there is no accurate data set that can clearly define the number of operators that are SMEs (with the best estimate being provided by Eurostat that 95% of importers might be SMEs).

With respect to costs of due diligence, again as described above, several studies have explored the costs to operators, including SMEs. However, these studies are subject to a number of limitations (e.g. sample size, attribution, sample selection bias) which create uncertainty around their application, and in particular for trying to extract a compliance cost specifically for 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. However, such a difference was not specifically reported in the consultation and the figures across the studies show that SMEs had comparable costs to large companies - indeed costs are driven more by the size, number and complexity of supply chains, than by business size.

As such it is not possible to quantify the compliance costs for SMEs directly with any certainty. This study estimates that the compliance costs for all importing operators is around mEUR 714 (see Table 5-7). SMEs are likely to present a large proportion of this group (referring to the Eurostat figure of 95% for illustration), but are likely to present a smaller proportion of the costs (assuming that in general SMEs will have fewer supply chains than a typical larger business).

Although costs cannot be quantified, what evidence there is available appears to suggest that the *EUTR may have placed a disproportionate burden on SMEs* given the greater relative cost to underlying turnover. This is reported through the literature and by stakeholders. Evidence of this can also be seen in the behaviour of some SME operators, who have instead switched to trading with intra-EU operators as opposed to importing (i.e. becoming traders - see EQ3d). However, it is important to note that there does not appear to be a strong evidence base underpinning this conclusion: there is no robust data displaying higher costs for SMEs (the surveys available are based on small samples) and hence the evidence mainly draws on stakeholder opinion.

Step 4: Mitigating measures

According to the implementation reporting, most MSs have provided some technical support and training to SMEs to assist with compliance (see EQ2e). However, through interview stakeholders (BAs) noted that further technical assistance and guidance for SMEs was needed to alleviate the

administrative burden and respondents to the OPC noted that burden continued to be greatest for this cohort of businesses.

b. How have the costs of implementing the FLEGT Regulation varied across different stakeholder groups (split by type and size of actor)? What factors have influenced the distribution of costs?

As set out under EQ4b above, there are a range of different costs for different actors at different VPA stages. Generally, information on costs resulting from the FLEGT Regulation was found to be fragmented and mainly qualitative. From the evidence collected, the most significant costs appear to have fallen on the EC and MS associated with the negotiation and implementation of VPAs with partner countries (i.e. prior to licencing). The 2016 evaluation presented a split of costs for involvement in the VPA programme over the 2003-14 period which suggests that the EC and MS incurred the greatest proportion of costs over that period (EUR 346m of the EUR 384m total spend). Evidence provided from Commission services suggested there had been further investment since 2014, although evidence received was partial. A second key cost over the implementation period are those incurred by partner country governments, although these are somewhat smaller than the amounts invested by the EC/MS (remaining EUR 38m of total EUR 384m from 2003-14). There are several key drivers of costs at implementation stage, including: the number of VPA partner countries, their existing legal, governance and administrative structures, the timely progress towards licencing, etc.

Once licencing has commenced, the cost to VPA partner country authorities to oversee and administer the licencing system present a relatively moderate cost overall (relative to other costs of the FLEGT Regulation), and costs to exporters have been more significant. As noted above, it is not predetermined who will face the costs of the VPA system and where these will eventually fall, and this will be determined by the VPA country in the detailed design and implementation of its TLAS: e.g. in Indonesia, exporters face large costs as they cover the costs of applying for a FLEGT licence and also their overarching certification. The cost burden placed on exporters depended on the existing processes exporters had in place, and in turn the treatment of such systems by the TLAS. For example, companies that had private sector certification before TLAS generally did not have to make major adjustments. Some VPAs recognise such certifications. In Indonesia, where SVLK certification is obligatory for most companies, FSC certified companies had to invest additionally in SVLK certification, at a cost of EUR 2,000 - 3,000 every two years (TESAF, 2016).

The FLEGT Regulation also places costs on the EU entities (EU CAs, EU customs, exporting country governments, customs, private businesses). No information could be found in the literature related to the costs for EU customs and CAs with respect to implementation of licencing. However evidence gathered through interviews suggests these costs are small relative to the other cost categories. Once again their distribution is not predetermined, but have been driven by the implementation of the FLEGT Regulation in each MS and the decision by some MS to charge a fee for processing licences. Overall, the OPC indicated a mixed response was provided as to whether the burden of FLEGT licencing schemes and its implementation was shared among different stakeholder types in a fair and equitable manner.

The following Box looks specifically at the impacts of the FLEGT Regulation on SMEs.

Box 5-5 SME impact test - FLEGT Regulation

Step 1: Identification of affected business

The FLEGT Regulation could impact on three cohorts of SMEs: SMEs in licencing countries (i.e. Indonesia), VPA negotiating and implementing countries, and in EU MS. Very limited information exists regarding the number of businesses that may fall under each group. For Indonesia, the only source of data is the 2016 Evaluation which reported that to 2014, 1,000 large companies and 2,350 SMEs had been certified to date (not data provided through interview with Indonesia stakeholder on SMEs but total number of operators corroborates this figure). With respect to EU MS, there is no data regarding the number of businesses who have imported using FLEGT licences nor their split by size, hence as an illustration, the best data is likely to be as that discussed in Box 5-4 above related to the EUTR. For countries in VPA negotiating and implementing countries, no data was gathered.

Step 2: Consultation (and broader evidence review) that captures the SMEs angle

There is very little information on the impact on SMEs of the Indonesian licencing system. Where such impacts are considered, impacts on SMEs broadly are not identified as a critical issue (e.g. (Rahmanta Setiahadi, 2020)) and in others, SMEs are reported to have potentially benefited: e.g. a survey of FLEGT stakeholders (Cerutti P. O., et al., 2020) reported a majority opinion that the VPA had played a positive role in improving access to export markets for at least some SMEs. Through stakeholder interview, it was noted that SMEs face lower fees for certification and FLEGT licences (although these may still present a higher proportional cost relative to turnover in comparison to larger companies). That said, MoEF set aside specific budget to cover the certification and licence costs of household and small exporters (mUSD 1.2 per annum), which aims to negate impacts on SMEs. Indeed in response to the OPC (question 14), respondents suggested the impact on administrative burdens of non-EU businesses was relatively constant across business size.

With respect to SMEs in VPA negotiating and implementing partner countries, they will face the same costs to prepare for licencing as larger firms (e.g. adjustment to operating procedures, staff roles and training, compliance with non-forest legislations). Again, given there is a level of fixed costs to be incurred, these may present a higher hurdle for SMEs proportionate to their turnover. That said, there is uncertainty around what, if any, costs incurred before licencing has commenced. Only limited insight was provided in this respect from the stakeholder engagement, however the interview with stakeholders from Cameroon noted that small forest operators faced an additional cost of using geo-referencing of tree bases, which was less difficult for larger companies (some of whom were already using such techniques).

SMEs in EU MS face costs to arrange FLEGT licenced imports and processing fees (where applied by MS). Both will scale with the number of FLEGT licenced imports, which in turn is likely to be greater for larger relative to smaller businesses. Hence it is unlikely that there will be a strong distributional effect. This is corroborated somewhat by the OPC, where respondents provided similar responses as to the impact of the FLEGT Regulation on administrative burdens across different sizes of business (question 14).

Step 3: Measurement of the impact on SMEs

In Indonesia, MoEF sets aside mUSD 1.2 per annum to cover the licencing and certification costs of SMEs. Assuming this budget is comprehensive, this will significantly reduce the costs for SME exporters. What is not clear from the evidence gathered under EQ4b is whether SMEs will be present in any of the other cost categories (e.g. forests or plantations that also require certification).

For SMEs in VPA countries, no data on the number of SMEs has been found. Furthermore, given there is also uncertainty around what, if any, costs operators will incur whilst in the implementing VPA stage, no quantitative estimate of impacts can be made with any certainty.

Businesses in EU MS have faced an estimated cost between mEUR 5.6 - 9.4 since licencing commenced. However, this estimate has a low confidence rating given the limited data underpinning this estimate. Furthermore, no data is available setting out what proportion of FLEGT licences cover products imported by SMEs. Again it is likely that SMEs may present a sizeable proportion of this amount (e.g. bearing in mind that 95% of importers in relevant economic sectors are SMEs), but the proportion of costs is likely to be less than this (assuming larger firms tend to import a broader range of products).

Although there are issues in estimating the size of the effects, the mitigating policy by MoEF and the absence of evidence identifying a disproportionate cost for EU SMEs, it is likely that FLEGT Regulation is not overly burdensome for SMEs in general.

Step 4: Mitigating measures

As noted above, MoEF have adopted a policy of covering the costs of certification and licencing for exporting SMEs. In the EU, some CAs through interview noted having undertaken awareness raising activities around the FLEGT Regulation (although these were not reported to be targeted specifically at SMEs).

c. How have the benefits of the Regulations varied across stakeholder groups (split by type and size of actor)? What factors have influenced the distribution of benefits?

EUTR

Several benefits can be attributed to the EUTR, albeit to varying degrees of confidence. It is clear that some of the benefits of the EUTR are not exclusively accrued by a single stakeholder group, but are societal benefits: the influence on other countries adopting demand-side policies and impacts on illegal logging and illegal timber entering the EU (although the evidence is inconclusive regarding these effects). In some instances, benefits have accrued to a more defined group of actors: improved transparency in supply chains and awareness (benefits for EU operators and consumers), and improved co-operation (EC, CAs, operators, exporters). In other cases, the benefits accrue to a single group: EU citizens benefiting from greater consumer awareness (OPC), and less so through redistribution of confiscated timber (UNEP-WCMC, 2020) or job creation (OPC); exporters benefitting from increased trade (Jonsson et al, 2015); EU MS public authorities benefitting from increased tax revenue (as in the example of Romania); and finally local populations in non-EU exporting countries benefiting from the promotion of the rule of law, including the rights of indigenous peoples and local communities (Patel, 2019). It has not been possible to quantify many of these impacts and the evidence for some is somewhat anecdotal, which has prevented a detailed or conclusive assessment of any distributional patterns. That said, given many of the most important benefits are societal (e.g. impacts on illegal logging) or accrue to a wide group of actors (e.g. greater transparency), it is likely that there is no strong distributional patterns to benefits of the EUTR across actors.

FLEGT Regulation

Benefits can also be attributed to the FLEGT Regulation, again (as with EUTR) to varying degrees of confidence. As with EUTR, many of the key benefits are societal and difficult to attribute to a single stakeholder, namely any impact on levels of illegal logging and import of illegal timber to the EU

(although again the evidence is inconclusive regarding these effects). Some key impacts fall to a group of actors, namely the improvements in governance, transparency and stakeholder engagement which provide a benefit to all actors in the non-EU exporting country. Other benefits are attributed to single actors: expectations of greater access to EU markets will benefit exporters operating under the VPA, and EU operators have noted FLEGT Regulation has aided compliance with EUTR. It has not been possible to quantify many of these impacts and the evidence for some is somewhat anecdotal, which has prevented a detailed or conclusive assessment of any distributional patterns. That said, given the most significant and widely reported benefit is improved governance, this suggests that all stakeholders in exporting countries has perhaps benefitted the most from the FLEGT Regulation.

d. How proportionate are the benefits to costs for each group (split by type and size of actor)?

Across both Regulations, the comparison of benefits and costs is limited by the information available in the literature. In many cases, impacts are identified in general and not attributed to particular groups (in particular in the case of benefits). In other cases, where impacts are mentioned, they may be based on anticipation or expectation of effects, rather than observed changes. Also impacts on specific groups are only quantified in specific cases. This limits the extent to which costs can be compared to benefits for specific groups. That said, one can extrapolate some general themes from the evidence. For example, there is a variance in the costs and benefits that fall on different actors. As such the net impact (i.e. combining costs and benefits together) is also likely to vary between different actors, both in terms of direction (i.e. net cost or net benefit) and size of the net effect.

EUTR

Under EUTR, for some the net balance of costs and benefits is likely to be positive given that few, if any costs, are reported in the literature. For citizens in exporting countries, a range of benefits are reported whereas no costs are identified, such as the benefits of reduction in poverty, and greater promotion of the rule of law for indigenous people.

For others, the balance is likely to be negative given that no or limited benefits are reported. For example: MS CAs incur costs to implement EUTR, as do customs and the EC. Costs, rather than benefits, are predominantly reported for EU operators who are required to implement and operate DD Systems under EUTR. However, some noted they were also able to raise prices for products which suggests that some costs can be passed through resulting in an increase in revenue. The costs of DD under the EUTR appear to place a higher burden on SMEs. The majority of respondents agreed or strongly agreed that costs of implementation were 'high' for businesses and authorities.

There are also costs for businesses in exporting countries: exporters have noted they have had to invest time in providing the requested "documentation" (although no quantitative estimates have been reported). Some that did not comply soon enough reportedly lost their EU clients. Again the burden appears to be greater on SMEs in exporting countries, where the burden of providing information is particularly felt. That said, a number of exporters have considered the Regulation to have been advantageous to their business (Jonsson et al, 2015) (stakeholder interviews), although it is anticipated that the costs for exporters outweigh the benefits (again The majority of respondents agreed or strongly agreed that costs of implementation were 'high' for businesses in third countries).

For others, both costs and benefits are reported. However, in many cases these are not quantified so it is challenging to deduce the net balance. For EU citizens, some benefits were noted, for example increased awareness and transparency, the distribution of confiscated timber to disadvantaged

households in Hungary for firewood, job creation. However operators have also noted passing costs through to consumers.

It is difficult to conclude with certainty how the costs and benefits compare for each group individually. Although the stakeholder engagement did not offer additional evidence on the trade-offs for individual actors, the majority of OPC respondents agreed or strongly agreed that the total benefits of the traceability obligations and of the EUTR as a whole outweighed the costs.

FLEGT Regulation

With respect to the FLEGT Regulation, for some actors the net balance of impacts is likely to be positive given that few, if any costs, are reported in the literature:

- For EU importers, the costs of a FLEGT licence is likely to be considerably lower than the cost of doing EUTR DD on timber not covered by a FLEGT licence (CA interview, OPC) (European Commission, 2018a).
- Likewise for MS CAs, although they incur costs of implementation (the majority of OPC respondents agreed costs for authorities had been ‘high’), the costs of implementing FLEGT licencing are lower than enforcing the EUTR, hence FLEGT licencing has also reduced costs for MS CAs (CA interview).
- A range of benefits are reported for citizens in exporting countries, (e.g. reduction in poverty, reduction in corruption, training for workers, greater voice in policy making) whereas no costs are identified (although benefits are likely only to occur in earnest once licencing starts).

For others, the balance is likely to be negative given that no benefits are reported: there are costs to the Commission for negotiation of the VPAs themselves.

For others, both costs and benefits are reported (however, in many cases these are not quantified so it is challenging to deduce the net balance):

- There are also costs to VPA country Governments for negotiation of the VPAs (the majority of OPC respondents noted costs for third country authorities had been ‘high’), but once operational (i.e. for Indonesia) there may also be an increase in tax revenues alongside governance improvements.
- Businesses in exporting countries face a cost to obtain licences (the majority of OPC respondents noted costs for third country businesses had also been ‘high’) but also report (a perceived) increase in competitiveness for legal firms or those exporting under a FLEGT licence, and an increase in exports (IMM, 2017) (although this is somewhat not reflected in the trade data). In the IMM survey, more than 90% of Indonesian operators either agreed or partially agreed with the statement that ‘Implementing the VPA and getting SVLK certified has been worth the effort’. Again the burden appears to be greater on SMEs in exporting countries, where the burden of providing information is particularly felt. But SMEs have also reported receiving specific benefits through the FLEGT, for example a greater voice, inclusion and recognition in policy making. For instance in Ghana, an amendment has been made to extend the availability of ‘timber use contracts’ to small organisations, as these were previously only available to large companies.

It is difficult to conclude with certainty how the costs and benefits compare for each group individually.

5.2.3 Question 6: Are there significant differences in the impacts that fall between MSs and non-EU countries in implementation? If there are significant differences in costs (or benefits) between MSs, what is causing them? How do these differences link to the intervention?

| Key findings |
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| <p>EUTR:</p> <ul style="list-style-type: none"> Human and financial resources invested by CAs varied greatly across MSs, which partly reflects that role and procedures for enforcing legal sourcing of timber also vary significantly between the MSs, as do the size of the timber sector in each MS. However, it is not clear whether this reflects genuine variance in risk, or simply a variance in how effectively EUTR is implemented across MSs; Costs were also identified for exporting companies in third countries, which could be as high as costs for EU-based operators. |
| <p>FLEGT Regulation:</p> <ul style="list-style-type: none"> Information on the variation of costs between different MS and VPA countries in the literature is limited. Those sources which have considered costs, clearly show that the costs of implementation have fallen significantly more so on the EC and MS, relative to other actors (in particular exporting countries). Furthermore, as expected, more has been invested in VPA partners that have been engaged in the process for longer. |

a. How have the costs of EUTR varied across different EUTR MSs? What factors have influenced the distribution of costs? Have the interventions created a “level playing field” for operators?

The 2016 evaluation found that, for CAs, the allocated human resources varied greatly, ranging from 1 to approximately 200 people per MS, and financial expenditure ranged from EUR 20,000 to EUR 466,000 per year (TESAF, 2016). A more recent study analysing 2017-2019 biennial reports on the implementation of EUTR, published in 2019, underlined that human and financial resources available to CAs varied greatly across the MSs. 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, although it is noted that this number of FTEs is unusually high and it is assumed that not all 601 FTEs will be devoted specifically to EUTR). Furthermore, the annual budget for the implementation and enforcement of the EUTR for domestic and imported timber by country also varied greatly, with the highest value being EUR 677,000 for the UK and the lowest value EUR 5,000 for Cyprus. The reports generally show that countries that are smaller in size have lower allocations of resources than larger ones, however, the variations of government expenditures cannot be explained simply by the difference in the size of the forest sector across MSs alone. It is worth noting that the figures provided by MSs are difficult to compare due to the varying levels of detail provided in the national reports. For instance, some countries which reported unusually high numbers of FTEs might have also reported those not specifically devoted to EUTR (UNEP-WCMC, 2020). In addition, the variance could also reflect differences in the role and procedures for enforcing legal sourcing of domestic timber across MSs, which reflects a variance in risk and the ‘sufficiency’ of implementation, as explored under EQ2a above. Indeed there is evidence that there is an uneven European playing field that can be exploited by operators, as important differences exist in practice in terms of enforcement across MSs (a “soft” enforcement approach is attributed to CAs in Belgium, France, Greece, Italy, and Spain), which has a bearing on how effectively the EUTR can protect European markets from illegal timber (EIA, 2019).

While there was no evidence in the literature, results from the OPC showed that a large number of respondents (90, 55%) agreed or strongly agreed that the costs of implementing the EUTR varied for

authorities across MSs. A relatively mixed response, leaning towards agreement was provided with respect to variation in EUTR implementing costs for businesses across MSs. Interviewees noted that the costs of CAs for the EUTR would depend on the number of operators within a specific country. An example was given that Germany has a large number of operators, between 20,000 and 30,000 operators, which in turn, requires about 15 FTE. Landlocked countries are likely to involve less staff as there are no ports, although they may receive high volumes of timber indirectly via other MSs.

b. How have the costs associated with the implementation of the FLEGT Regulation varied across MSs and VPA partner countries? What factors have influenced the distribution of costs?

Evidence shows there has been more investment in the VPA programme by the European Commission and MSs than from other actors (i.e. partner country governments, civil society and public and private sector enterprises). The 2016 FLEGT AP evaluation also indicated that the total amount invested by the EC and EU MS in specified producer countries amounted to EUR 569.4 million between 2003 and 2014 (out of the EUR 935 million spent on the FLEGT AP; other investments covered 'global' activities and 'multi' activities) (TEREA, 2016). Furthermore, the study also found that there have been differences in investments for countries that have either: signed VPAs, are negotiating VPAs and non-VPA/non-MS countries. The reason for these differences may partly be due to a generally longer involvement of the VPA signed countries in the VPA process than the countries that are negotiating a VPA. In addition, this could also reflect the advance towards implementation of the TLAS elements.

There was no information in the literature around implementation costs to MS. Some cost data was gathered through the stakeholder interview with CAs. Although the overall level of resources committed was broadly consistent and all CAs agreed a greater amount of resource was focused on EUTR implementation, the information provided suggested some variation in the level of implementation costs across CAs which could not wholly be explained by levels of licences received: although the average cost was EUR 22 per validated licence in 2019, this metric ranged from EUR 9 - 79 per licence validated in 2019.

c. How have the benefits of the Regulations varied across MSs and other countries? What factors have influenced the distribution of benefits?

EUTR

There is very limited commentary in the literature and no feedback from the stakeholder engagement activities around potential distributional patterns of benefits between countries (perhaps suggesting that this is not an important consideration and/or that effects fall as expected). Given the nature of the impacts, it is possible to draw some hypothetical conclusions regarding the distribution of benefits. Some benefits are social - such as the environmental benefits delivered through reduction in illegal logging (although noting the evidence for these effects is not conclusive). Some of the key benefits of the EUTR will accrue outside of the EU: for example, the influence on third-country legislation; the reduction in illegal logging (which delivers economic and social benefits specifically for the exporting country (Patel, 2019)); and the (limited) benefits for exporters. Several benefits accrue to EU MS (e.g. increased transparency in supply chains, consumer awareness, co-operation, etc) but there is no evidence of a variance across MS. That said, it could be expected that the benefits may higher where: there is greater timber consumption or timber processing, there is a higher level of imported timber (relative to domestic), timber is more typically imported from higher-risk sources, or where the EUTR has been more robustly implemented and enforced (see EQ2a).

FLEGT Regulation

There is very limited commentary in the literature and no feedback from the stakeholder engagement activities around potential distributional patterns of benefits between countries, but again hypotheses can be drawn. Any benefit delivered through reduction in illegal logging will have associated societal benefits, but also important economic and social benefits for the exporting country (e.g. increased tax revenue in the Republic of Congo (European Commission, 2016))). Likewise the improvements in governance and greater access to EU market (and other sensitive markets such as the US and Australia) will accrue to exporting countries. The literature has also identified benefits for EU based operators, in particular helping to reduce the burden of the EUTR: these benefits will be higher for MS who import greater volumes of imports under FLEGT licences. In 2019, Netherlands received the largest number of FLEGT licences (8,048), followed by Germany (5,460), France (3,362), Belgium (3,088) and Spain (1,884) (UNEP-WCMC, 2020c).

d. How proportionate are the benefits to costs for each MS and non-EU timber producing/supplier countries?

The evidence available around the distribution of impacts (in particular benefits) is limited. In addition many benefits cannot be quantified or monetised. This limits comparison of costs to benefits for specific countries. That said, one can extrapolate some general themes from the evidence.

EUTR

The literature review has provided some insights into how costs (and benefits) fall between different EU MS, and there is a variance. MS CAs incur varying costs to implement the EUTR (as elaborated under EQ4a). An assessment by EFI in 2015 found that operators in EU MS that played a more active advisory role in the creation of the EUTR incurred fewer costs than those in countries which did not. That said, although assessed hypothetically, it is considered likely that benefits would be higher for MS states with higher implementation costs (assuming costs are a signal that the EUTR has been more robustly implemented and enforced in these MS). For exporting countries, insights can be drawn from stakeholder engagement: local stakeholders in Ukraine noted in interview they considered the costs for exporters were compensated for by positive consequences when the state of domestic forests were considered. Furthermore, the majority of OPC respondents agreed or strongly agreed that the total benefits of the traceability obligations and of the EUTR as a whole outweighed the costs.

FLEGT Regulation

With respect to FLEGT Regulation, as could be expected, the greatest costs have fallen on those exporting countries that have been engaged in the FLEGT VPA process for the longest and are further forward in terms of implementation. However, it is also reported that the benefits achieved through the FLEGT Regulation are also likely to be greater in countries which have begun the process of implementing a VPA, for example through higher revenues or capacity building and improved governance. For EU MS, there has been a strong variance in support to the VPA programme which has been limited to essentially eight countries: with the United Kingdom providing the largest contribution, followed by Germany, the Netherlands, Sweden, Denmark, France, Finland and Luxembourg. From the CA interview, it also appeared that the levels of resources allocated to implementation were small but broadly consistent across MS. However, the number of FLEGT licences received were not: those that have received the largest number of FLEGT licences will have benefited with fixed implementation costs making the trade-off less cost-beneficial for those receiving less licences. Furthermore, those who

receive the most licences may not necessarily correspond to those who have provided greater support to the VPA process.

5.2.4 Question 7: Are there opportunities to simplify both Regulations and/or reduce unnecessary regulatory costs without undermining the intended objectives?

| Key findings |
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| <p>EUTR:</p> <ul style="list-style-type: none"> • Several opportunities for improvement have been identified in the literature and through stakeholder engagement; • Suggestions in the literature focus on: centralised evidence gathering to inform risk assessment (e.g. timber source country overviews), development of uniform systems, enhanced information exchange and limiting the application of DD. Although many suggestions could reduce costs, they could also impact on the potential effectiveness of the EUTR and some would not be feasible, and hence would need further careful consideration. |
| <p>FLEGIT Regulation:</p> <ul style="list-style-type: none"> • Several opportunities for improvement have been identified in the literature and through stakeholder engagement; • With respect to the VPA process, the literature has identified some improvements - e.g. pilot schemes. However, these are unlikely to resolve all issues associated with the VPA model (e.g. the declining importance of the EU as a global importer impacting the incentive to engage in the process); • A range of improvements have been identified for process once VPA licencing has commenced, in particular increasing use of FLEGIT and reducing burden created by licence mismatches (e.g. HS code mismatches, typos, differences in volume and weight, etc). |

EUTR

The EUTR evaluation carried out in 2016 (European Commission, 2016) found that, in the course of the EUTR implementation, several cost-effective practices were identified. This included cooperation between MSs authorities as well as between them and counterparts in third countries. Secondly, the use of substantiated concerns received from third parties concerning compliance with the Regulation and operators developing DD System, which meet not only the EUTR requirements but also other legal instruments (for instance, the USA Lacey Act and the Australian Illegal Logging Prohibition Act) was identified as another cost-effective practice. Another cost-effective practice identified was for operators to use voluntary third-party verified schemes (voluntary forest certification) in the risk assessment and risk mitigation process. Finally, the use, for DD purposes, of the results from the EU negotiations with the VPA countries concerning legality definitions and contacts with national authorities was also identified as a way of reducing costs.

A range of ideas and suggestions for improving the cost-effectiveness of implementation through both the literature (European Court of Auditors, 2015) (UNEP-WCMC, 2019) (UNEP-WCMC, 2020) and stakeholder engagement. These suggestions can be grouped around several common themes:

- Co-ordinate consistent implementation and enforcement across the EU (OPC)
- Central resources or assessments to help the risk assessment, e.g. more timber source country overviews, production of EUTR approved supplier lists etc. This was also supported by a number of respondents to the OPC and underlined through interviews with CAs that noted significant time is required on behalf of CAs to research legislation, risks, etc. ;

- Common processes or procedures: e.g. common risk assessment tool, lists of required documents or a uniform checks process;
- Enhanced exchange of information, such as customs data, between MS (highlight in interviews with CAs);
- Limits to the application of DD: e.g. introducing thresholds for placing on market under which DD would not be applied exempting plantations from DD, DD being applied by centralised authorities, moved to exporters, or applying DD only to CITES licenced imports. CAs (through interview) suggested considering reducing requirements based on amounts/values basis.

In a recent study on EUTR carried out in 2019 by UNEP-WCMC (UNEP-WCMC, 2020), MS suggested an investigation of whether the EUTR should be amended, explaining that the Regulation has a “vague legal basis, with much uncertainty for CAs and operators”. Greater clarification of definitions (particularly in relation to risk mitigation) and defining adequate DD Systems were both noted through the OPC as areas for improvement: Stakeholders also referenced a lack of clear definitions within the EUTR as compromising the objectives of the Regulation (6, 10%), particularly in regard to risk mitigation (Article 6), legality (Article 2), and defining adequate DD Systems (Article 6). A final suggestion in the UNEP-WCMC report was the timely drafting and adoption of proposals of CAs based on legal cases, facts and inspection practices, which can facilitate successful court cases and increase the awareness and adherence to EUTR obligations.

Several of the above recommendations found in the literature were further reported in the OPC. For example, 9 (15%) stakeholders stated that the Regulation did pose additional burdens, citing the need for centralised, electronic databases to prevent the duplication of DD on timber sources used in multiple products, increase transparency and ease the administrative burden placed on operators and traders. 8 (14%) stakeholders offered positive opinions on the burden: stating that administrative burdens were necessary or proportionate to the risks and impacts of illegal logging (5, 9%), or offered the opportunity to establish a new ‘baseline’ of business best-practice (3, 5%).

The potential use of certification as a proxy for legality was flagged by a number of respondents to the OPC as warranting further consideration, and through interview with local stakeholders in Ukraine. The role of certification schemes was also highlighted in the 2016 review (Hoare, 2015a). Furthermore, certification was also a theme which emerged in Annual Synthesis Reports (UNEP-WCMC, 2020), with CAs suggesting the following improvements: recognition for FSC, PEFC and other “credible certification schemes” as a route to EUTR compliance (six respondents); creation of a certification for wood origin (one respondent); or third party certification of legality (one respondent). At least the role of third-party verified schemes with respect to the EUTR could be further clarified. Since the entry into force of the EUTR, the main timber certification schemes have adapted their standards to reflect the scope of the legality definition embedded in the Regulation. However (as explored in EQ12), concerns have been raised regarding the certification schemes, in particular around their potential to be susceptible to fraudulent practices (European Commission, forthcoming study on certification).

It is important to note that in some cases these options are unlikely to be feasible: e.g. an approved supplier list would become outdated in a short time span and translating it into all EU languages would be burdensome, in addition to there being a very large amount of suppliers under the scope of EUTR. Others may impact significantly on the effectiveness of the EUTR, and would need careful consideration: e.g. thresholds and exempting plantations, or limiting DD only to CITES licenced imports.

FLEGT Regulation

As for the EUTR, a range of improvements to the FLEGT Regulation have been identified in the literature.

With respect to the VPA process, some donors and stakeholders involved under the FLEGT Regulation have expressed the opinion that the process is too time consuming, and suggestions for preparatory activities such as FLEGT Regulation piloting have been made to speed up the process (Rebecca L. Rutta, 2018). There has also been evidence of communication issues between VPA countries and the EU with respect to the overarching FLEGT Regulation objectives which could perhaps be improved (European Commission, 2016). Stakeholders in Cameroon (interview) noted that always needing to be in agreement prevented progress. In response to the OPC, the predominant suggestion to improve the VPA process was to increase resources and support to partner countries, and increase sharing of best practice, whilst others suggested no simplification should be undertaken as this risks undermining the original objectives.

A range of potential improvements are explored in the literature also around the process once licencing has commenced (in particular explored by CAs through the Annual Synthesis Report). Once again, the EUTR/FLEGT Expert Group has been a productive, ongoing means of actioning improvements. Some of the key operational improvements considered include:

- Increasing the use of the FLEGIT system to process FLEGT licences across more MSs which could help address reporting issues (e.g. license data submitted not in the reporting format reducing risk of data loss, processing difficulties and otherwise improving efficiency). Lack of use of the FLEGIT system was considered a moderate challenge to implementation by OPC respondents. However, in the CA interviews some using their own systems noted the benefits of doing so, e.g. direct connection to customs systems enabling immediate notification and faster processing;
- Action around mismatches between licences and shipments (e.g. HS codes and typos) both around minimising their incidence and processes to resolve them. Interviews conducted confirmed that there were inconsistencies of codes used within VPAs, further leading to administrative burden;
- The need for more practical guidance (e.g. for customs officers). Ideas flagged through the CA interview included pictures or use of existing apps to help identify species;
- Interviewees also noted that it would be more appropriate to specify the weight rather than the volume of shipments under FLEGT licences, and indicated that the Y057 certificate (on the exemption from the requirement of presenting FLEGT licence) could be misused.

Further use of electronic systems could reduce burden (Interviews with CA, December 2020 workshop). In the CA interview, participants agreed that paper licences placed excessive burden on all actors. One CA noted it had stopped accepting paper licences and only accepted e-licences, and that this had significantly reduced burden on them, and another CA was piloting e-licences. Separately, a pilot phase is also underway to test e-licensing with Indonesia (i.e. interconnection of FLEGIT with SILK) that started on 1 November 2020 and will run for 6 months. When asked about opportunities to simplify the FLEGT Regulation or reduce unnecessary regulatory costs without undermining its intended objectives, the predominant theme of OPC responses (9) related to the need for the development of an electronic licensing platform (2 campaign responses were isolated from the analysis which further stated this).

In addition, 4 (16%) OPC respondents stated that support from certification schemes should be enabled. Consideration of linkages with certifications schemes were also highlighted through the interviews (Malaysia stakeholders).

5.3 Relevance

5.3.1 Question 8: 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?

| Key findings |
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| <p>EUTR and FLEGT Regulation:</p> <ul style="list-style-type: none"> Policies to reduce and avoid illegal trade of timber remain relevant. Evidence suggests that the illegal timber trade at a global level has remained persistent; However, the strong focus of the Regulations on legality (rather than sustainability) and timber (rather than a wider range of commodities) only partially contributes to a linked but broader policy goal of halting deforestation, in particular since legal logging can be unsustainable. There is now greater attention on the need to tackle deforestation and forest degradation more broadly. Increasing EU policy ambitions with respect to reducing deforestation requires both the design of additional policy instruments targeting deeper drivers of deforestation, such as agricultural expansion, as well as to partner more strongly with other timber-trading countries |
| <p>EUTR:</p> <ul style="list-style-type: none"> In terms of value, the market for secondary timber products not covered under EUTR is sizeable. The costs of expanding the EUTR product scope should be scored against the gains in reductions of illegal timber trade. A detailed study reveals that costs relative to gains are lowest for the case of charcoal, and increase for certain types of furniture, musical instruments. They are particularly high for printed media. Similarly, various stakeholders in the OPC called for an expansion of the product scope, with agreement on the need to include charcoal and remaining furniture items. There was also some push for the inclusion of all timber products and/or printed media; Despite ongoing discussion on the definition of waste and recycled products, both are currently exempt from EUTR in order to stimulate reuse or recycling of timber products. The OPC did not reveal any opposing views for this exemption; Various technical options in use or under development can be used to determine the species and sometimes origin of wood imports. But, as mentioned by CAs their use remains limited due to practical issues and costs. |
| <p>FLEGT Regulation:</p> <ul style="list-style-type: none"> Changing patterns of trade suggest a declining relevance of the VPAs already concluded with tropical exporting countries. |

a. Does the problem of illegal logging and trade of illegal timber and timber products persist? Is illegal timber still present on the internal market?

Policies to reduce and abolish illegal trade of timber remain relevant. Between 2000 and 2012 net losses of areas with more than 50% tree cover amounted to about 8% globally (Hansen, et al., 2013). The rate of tree cover loss is found to be increasing in tropical rainforest ecozones (Hansen, et al., 2013) and these trends remain in the most recent estimates (e.g. (Curtis, Slay, Harris, Tyukavina, &

Hansen, 2018) (Global Forest Watch, 2020)). Figures provided by FAO, using a different methodology, point to equally large losses in primary forest cover for Africa, Asia and Latin America (FAO, 2020) between 2000 and 2020. But FAO estimates suggest that the global rate of primary forest cover loss has slowed between 2010 and 2020 as compared to preceding decennium, except for Africa.

While the EU remains an important market for timber and timber products, a steady decline in imports since the early 2000s by EU MSs has been apparent (Masiero, Pettenella, & Cerutti, 2015) (Becher, 2019) (Moral-Pajares, Martinez-Alcalá, Gallego-Valero, & Caviedes-Conde, 2020) (see also Section 5.1.1). This decline commenced before the implementation of EUTR and FLEGT suggesting a decline in relevance of both policy instruments for stemming the global trade in illegal timber. Meanwhile, imported volumes of tropical timber increased considerably in China, while the EU-28 partially substituted timber from temperate regions for tropical timber.

Estimates of illegal logging and related trade differ substantially, due to the nature of illegality and differences in the scope of estimation, definitions, data and estimation methods (Kleinschmit, Mansourian, Wildburger, & Purrett, 2016; Pepke, et al., 2015). The illegal timber trade at a global level has remained persistent since the FLEGT Action Plan was initiated in terms of geographic location (Russia, Brazil, Indonesia and Malaysia) (Kleinschmit, Mansourian, Wildburger, & Purrett, 2016), driven by high profits and forest conversion - with timber entering domestic, or Chinese markets. Some of the latter flows may be re-exported to the EU markets as secondary products (See section 5.3.1.b). Like legal imports of tropical timber, illegal imports by the EU-28 may have decreased as well, but nonetheless remain present in EU markets ((TEREA; S-FOR-S; Topperspective, 2016) (European Commission , 2020)).

Various organisations have observed that the exclusive focus of EUTR and FLEGT Regulation on illegal timber trade fails to address the concurrent policy goal of halting deforestation fully ((Rutt, Myers, Ramcilovic-Suominen, & McDermott, 2018) (Tegegne, Cramm, & van Brusselen, 2018)).

Deforestation is often caused by multiple factors simultaneously, mostly agricultural expansion, infrastructure expansion and logging. As Geist and Lambin (2001) and Austin et al. (2018) suggest legal or illegal logging is rarely the sole factor causing deforestation. Expansion of agriculture and livestock rearing are, most often, the dominant drivers of tropical deforestation (Geist & Lambin, 2001), themselves shaped by increasing population and domestic or regional demand for food ((Alexandratos & Bruinsma, 2012) (Ordway, Asner, & Lambin, 2017) (Curtis, Slay, Harris, Tyukavina, & Hansen, 2018)). Stakeholders, similarly observing this point, noted that when the FLEGT Regulation and later the EUTR were introduced, a broader goal of sustainability was identified, while tackling legality was seen as a first step in achieving it.

Meanwhile, the EC has been stepping up its ambitions. The recent EU Green Deal, building on the 2019 Communication on Stepping up EU Action to Protect and Restore the World's Forests (European Commission, 2019), reemphasises the need to “take measures, both regulatory and otherwise, to promote imported products and value chains that do not involve deforestation and forest degradation”. These goals are more ambitious than those underlying FLEGT and EUTR.

But the narrow focus of FLEGT Regulation and EUTR policies on combatting trade in illegal timber should not be problematic. They remain highly relevant for achieving these objectives, even though the effectiveness of the Regulations can be improved (see also Section 5.1). But their scope for addressing

the deeper drivers of deforestation is limited. Addressing such policy objectives requires complementary policy instruments that target other dominant drivers of deforestation. Indeed, a recent European Parliament study (European Parliament, 2020b) stated that the ‘existing EU regulatory and policy framework aimed at stopping global deforestation is incomplete and has not achieved its set goals thus far’.

b. To what extent is the current scope of products under EUTR coverage adequate in ensuring that policy objectives are reached?

Various actors have called for an expansion of the product scope to further minimize the risk of illegal timber entering EU markets. The current product list covered by the EUTR (Annex of Regulation (EU) No 995/2010) excludes various secondary or processed timber products such as some types of furniture, musical instruments, charcoal, coffins and various paper products. A key inconsistency worth noting is that EUTR also covers some non-wood products made of bamboo and rattan fibre. When products not covered by EUTR are associated with illegal logging the current scope is inadequate and needs expanding. This should be informed by the additional volume of, potentially illegal, timber covered and the associated additional regulatory costs to operators.

Several studies ((Probos, 2014) (Weimar, Janzen, & Dieter, 2015) (Barker, 2016)) assess volumes and values of timber imports covered by the current product scope, and increases thereof due to an expanded product coverage. Volume and value both have merit in assessing the impact on illegal timber trade. On one hand, low volumes of some products (e.g. high-value tropical wood species used in boats) may still lead to pronounced losses in biodiversity. On the other hand, low-value timber used in wood pellets or charcoal may impact forest loss considerably due to large volumes imported.

Estimates of volume and values covered by EUTR differ between the studies, but suggest high coverage in terms of volume (80%-90% of imports of timber products (Probos, 2014) (Weimar, Janzen, & Dieter, 2015)), while in terms of value, EUTR may cover only about 30% - 50% ((Probos, 2014) (Weimar, Janzen, & Dieter, 2015) (Barker, 2016)).

Probos (2014) estimates that for the period 2008-2013 18.6 % of the total volume of timber imports, and 49.9% of the value are not covered by EUTR. The Thünen Institute (Weimar, Janzen, & Dieter, 2015) estimates that in 2013, the EUTR covered 90% of imports by volume and 74% by value. But the latter study excludes a range of processed products containing wood such as matches, musical instruments, pencils and wooden puzzles. It also considers waste and scrap paper or paperboard as products not covered by EUTR even though these are exempt (Barker, 2016). Barker (2016) estimates that in 2014 EUTR covered 86% of wood imports by volume, but 33% of imports by value. However, the latter calculations are based on the whole product, not the proportion that is wood-based, overstating the actual value of wood imports.

The risk that products not covered by EUTR are produced from illegally-sourced timber depends on the country of origin. For most of these, China and the USA are the largest supplying countries. A key exception is charcoal which is imported from a wide array of countries including Ukraine, Nigeria, Paraguay, Cuba and Argentina (Probos, 2014). At the same time, China may be the largest importer of illegal timber globally (Environmental Investigation Agency, 2012).

Cowi A/S, Indufor and Milieu (2019) assess options to increase EUTR product coverage and the impact in stemming illegal timber trade. An expansion implies costs to the operators involved, which at some point may outweigh the gains. The study finds that the inclusion of charcoal, all remaining furniture and wooden tools would yield considerable gains in coverage at the lowest additional costs to operators. Similarly, gains from including boats and musical instruments exist, but at slightly higher costs to operators.

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 items (IEEP, 2020). 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; and WWF, 2016). According to the report by COWI (Cowi A/S, Indufor and Milieu, 2019), many stakeholders did not consider the product scope of the EUTR as optimal, and felt that more timber products should be included.

In the Fitness Check OPC, many stakeholders pointed to products that should be included under EUTR, some calling for the inclusion of all timber products under EUTR, similar to the US Lacey Act. However, several NGOs and traders point to specific product categories, most often charcoal, next to including all remaining furniture categories. It was noted also that the EU-Indonesia VPA covers furniture categories but not the EUTR, creating an unequal playing field between VPA and non-VPA countries. Several stakeholders raised the issue of cost-effectiveness, particularly on the inclusion of printed media. While various representatives of paper mills and printers called for its inclusion, in order to create a level-playing field, an organisation representing publishing houses signalled that this would create a too strong regulatory burden for small and medium publishing houses. The latter is also noted by Cowi A/S (2019) suggesting low gains in stemming illegal timber trade when including printed media, but high regulatory costs to operators involved.

Further discussion exists as to the status of waste and recycled products. Currently, timber waste products are exempt from the EUTR. Recycled products are excluded for some products in the annex while the use of recycled materials as raw materials for other products is not clear from the Regulation itself. When importing recycled timber products with an HS code in the annex, the operator should demonstrate if the product is made of recycled timber (European Commission, n.d.). If able to forward evidence of recycled origin, the operator will be exempt from the requirement in Article 6 on the country of origin, region and if applicable the concession of harvest. While this has inspired discussion on the precise definitions of 'waste' and 'recycled products', the OPC did not reveal any views opposing the current exemptions.

The unclear description in the EUTR (and FLEGT Regulation) on how to treat recycled, end consumer consumption (or other wordings for reused material) has challenged the inspection system. The EU definition of waste is not recognised internationally. This means that operators may source products produced of waste as defined in the exporting country, but when entering into the EU with an HS code covered by the annex, the product would fall under the full requirements of due diligence in the EUTR. The same goes for the VPAs where recycled raw material are hardly dealt with. The problem regarding recycled raw materials has been seen in carton, furniture produced of drift timber/old furniture/recycled veneer, transport pallets, old newspapers, train sleepers etc.

A final consideration relates to the options for CAs to enforce the EUTR, in particular to determine the species used in, and origin of, timber products. One option is to use isotope tracing (Vlam, et al., 2018) (Wageningen University & Research, n.d.) (GTTN, n.d.), potentially allowing species and region of origin to be determined, conditional on the availability of sufficient reference samples. Such a reference database is currently being developed by The Global Timber Tracking Network (GTTN, n.d.). For charcoal, isotope tracing is not an option, but 3D reflected light microscopy can be used to assess wood species used (Haag, et al., 2020). While these methods can reveal the wood species or origin, they will not reveal whether it was harvested legally or illegally in a specific region. So far, as also pointed out by several CAs in the stakeholder consultations, use of either technique remains limited due to high costs, the (so far) limited reference database and discussion remains in some countries as to whether such methods provide permissible evidence in court.

5.3.2 Question 9: Has the initiative been flexible enough to respond to new issues?

| Key findings |
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| <p>EUTR:</p> <ul style="list-style-type: none"> • The EUTR is generally seen as having been flexible in responding to new issues but responses have generally been slow. Gaps arise when unclear regulations and variance between MS have hindered effective implementation; • Some issues which arose as the EUTR was being developed and implemented have not been completely addressed. One is the declining share of the EU in the global timber market (with China becoming the biggest global importer and processor of timber), this may reduce the impact of the EU and other sensitive markets on reducing levels of illegal timber globally. |
| <p>FLEGT Regulation:</p> <ul style="list-style-type: none"> • Issues arising as and after the FLEGT Regulation and VPAs were developed and implemented which have not been addressed include growing flows of timber to China and deforestation by timber as a traded commodity, which have been out of the current scope of FLEGT Regulation and VPAs with their focus on legality, even though this become a focus in more recent VPA negotiations. |

One key challenge for the effectiveness of EUTR and FLEGT has been the changing global structure of timber trade, with China sourcing more timber from Africa and Asia, while EU imports decreased. This also holds for timber trade between EU and VPA countries, which has been decreasing, while exports from VPA countries to non-EU markets rose (Masiero, Pettenella, & Cerutti, 2015) and (Section 5.1.1). Furthermore, more complex timber markets have developed since the EUTR was negotiated, with one channel of legal tropical timber exports oriented towards Northern countries; another channel of timber that does not have full evidence about its legal status towards non-EU markets; and a growing, and potentially predominant, South-South trade (for example, Laos, Vietnam and China) for tropical wood products that often include illegal and informal chainsaw lumber markets, especially in Central Africa (Masiero, Pettenella, & Cerutti, 2015). Moreover, illegal timber may be shipped through intermediary countries, for instance from Brazil to countries in West Africa and vice versa, before being relabelled and re-exported to EU markets (UNEP-WCMC, 2018). Other developments, such the economic crisis; changing substitutes and consumer concerns about timber; and national log export bans (e.g. Ghana, Gabon and Myanmar) to encourage local processing (Centrum tot bevordering import uit ontwikkelingslanden (CBI), 2017), also affect the share of imports to EU markets. Given the focus of EUTR on EU imports only, and the limited number of FLEGT-VPA countries, both instruments jointly have limited flexibility to address such global changes in timber trade.

Arresting global trade in illegal timber therefore increasingly calls for stronger complementary international collaborations which so far been limited and need to be upscaled. This means that the conclusion of the Evaluation of the EU FLEGT Action Plan 2004-2014 still holds: international coalitions and systematic data collection are needed to tackle illegal logging and timber trade worldwide and meet the commitments in the United Nations Strategic Plan for Forests 2017-2030. Equally, the Fitness Check OPC consultations called for stronger partnering with key timber-trading countries, particularly China, for making the initiative more responsive to changes in global timber trade. This is acknowledged by the EU itself (European Commission, 2019), particularly when the policy ambition shifts more strongly towards stemming global deforestation: “It is clear that the EU by itself cannot reverse the trend of deforestation. It needs to be part of a global alliance”.

A second key challenge for the effectiveness has been differences between MSs' enforcement. EUTR regulation permits flexibility at national level but does not create a level playing field (European Court of Auditors, 2015). Considerable differences in EUTR implementation between MSs, despite progress in harmonisation (UNEP-WCMC, 2020) (WWF, 2019), mean illegal timber from high risk countries are tackled very differently across MS. Evidence has emerged of operators importing teak from Myanmar using Croatia as an ‘easier’ point of entry to the EU market (UNEP-WCMC, 2020). This calls for a uniform and effective application of the EUTR across MSs, as uneven implementation restricts the EUTR effectiveness and a level playing field for operators from emerging. Progress has been made up to 2019 to harmonise the implementation of EUTR, however differences continue to exist (UNEP-WCMC, 2020) (WWF, 2019).

But the statutory nature of EUTR has limits. ‘Command and control’ approaches such EUTR’s, have resulted in less institutional change and cross-national convergence in implementation across EU member states, than alternative ‘communicative’ or ‘competitive’ approaches, owing to their relative costs of compliance (McDermott & Sotirov, 2018), suggesting that combinations of statutory and other approaches (voluntary, fiscal) may help it respond to new issues.

Finally, the flexibility of FLEGT in fostering institutional change in partner countries is being questioned. Given the complex global trade flows the FLEGT VPA approach appears as an attractive option to reduce costs and complexity at the source of the supply chain (Masiero, Pettenella, & Cerutti, 2015). But progress in concluding VPAs has been slow and complex, and their bilateral, country-specific nature has made it difficult to be flexible in response to changes in trade flows and risk. Moreover, a debate (so far inconclusive) has emerged as to whether VPAs are experimentalist governance approaches with generally positive outcomes for empowering various groups of domestic stakeholders (Overdevest & Zeitlin, 2018) or whether VPAs reinforce existing power inequalities (Hansen, Rutt, & Acheampong, 2018) (Rutt, Myers, Ramcilovic-Suominen, & McDermott, 2018) (see EQ1d) with little (if any) effect on illegal logging.

5.4 Coherence

5.4.1 Question 10: To what extent are the Regulations consistent and coherent internally and between themselves?

| Key findings |
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| <p>EUTR:</p> <ul style="list-style-type: none"> • EUTR is seen as being internally coherent, with little evidence of significant issues negatively affecting the functioning of the Regulation; • A lack of clarity surrounding the definitions and applicability of Articles 6 (1b), Article 6 (c) and Article 5 have been identified as resulting in: lack of clear legal responsibilities of owners of timber/timber products throughout the supply chain; subjective views of 'negligible risk'; and a lack of a standardised approach to data record keeping by traders resulting in contrasting traceability data available between traders and operators; • Transposition of the DD requirements into national legislation has been found to be challenging for numerous MS, particularly due to difficulties in interpreting DD concepts into the legal approaches of national laws. |
| <p>FLEGT Regulation:</p> <ul style="list-style-type: none"> • No coherence issues related to the text of the Regulation itself were identified; • Although the Regulation contains a minimum scope of products, the precise scope of VPAs is determined during negotiation. This, coupled with the fact that HS codes differ internationally, creates additional complexity for CAs. The most commonly-cited issue relates to inconsistencies between FLEGT Regulation license forms on the one hand, and shipping documents and/or customs declarations on the other, mostly due to mismatching HS codes. Mismatches can be time consuming to resolve (see EQ2.i.i), potentially taking valuable time away from ensuring that no high-risk timber is imported; • Issues in the collaboration with Indonesia revolve around slow or insufficient cooperation (e.g. to resolve issues with SILK), but some recent improvements have been noted (including collaboration on e-licensing); • It has also been noted that coherence is enhanced when VPAs include a basic minimum content (e.g. a definition of legality aligned with EU definition, as elaborated upon in EQ10c) and when licenses ensure legality (i.e. based on a credible and well-functioning TLAS); • Reporting varies across MS, with some submitting delayed and/or incomplete information. This can lead to issues surrounding comparability of data, delays in identifying and solving issues, and transparency concerns; • Procedures for licence checks also vary across MS, possibly leading the creation of a non-level EU playing field. Sharing of Indonesian exporters' risk-profiles between the custom authorities of EU MS, which is a standard practice, can contribute to minimising the risk of an uneven playing field. |
| <p>EUTR/FLEGT Regulation:</p> <ul style="list-style-type: none"> • The EUTR and FLEGT Regulation are broadly coherent - although not fully, as detailed in the bullet points below - and their effectiveness is partly linked: the implementation of VPAs and development of Timber Legality Assurance Systems can help achieve compliance with EUTR, while EUTR can incentivise countries to pursue VPAs; • Some stakeholders have highlighted the contradiction that additional costs (through checks of FLEGT Regulation licenses at customs) are placed on supposedly less risky imports: i.e. all imports with FLEGT Regulation licenses are validated by MS customs whereas imports from other third countries will be cleared by standard custom procedure without any additional requirements. However, as a counter-argument, it is important to note that additional costs of obtaining licenses and delays in processing to exporters needs to be contrasted to the benefits for operators under the FLEGT Regulation who face lower compliance costs; • Stringent enforcement of the EUTR relating to timber from countries negotiating VPAs may complicate that diplomatic process by causing tensions between the parties. It has been reported that some VPA |

| Key findings |
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| <p>countries have used the FLEGT process as a shield, and it is not necessarily easier for operators to obtain information from VPA countries relative to non-VPA countries;</p> <ul style="list-style-type: none"> • Product scope of EUTR and VPAs differs, creating complexity around the requirements applying to different imports and from different sources (this partly relates to the problem identified in EQ10b, namely that licenses are sometimes issued for products not covered by the Indonesian VPA); • Another issue surrounds the definition of legality in the EUTR, which does not align with VPAs in Vietnam and Ghana. |

a. To what extent is the EUTR internally coherent?

Overall, the EUTR is seen as being broadly coherent internally, however several important issues have been identified as discussed under other evaluation questions. For example, the transposition of EUTR requirements into national laws is considered uneven amongst MS (McDermott & Sotirov, 2018) (see EQ2a). This is particularly pertinent for DD, as CAs during interviews stated that the application of DD (which is derived from English law) is problematic as it is a new legislative approach and concept for many MS, making it difficult to implement and enforce (see EQ2b). See also discussion of ‘negligible risk’ under EQ2c.

Other indications of coherence issues have also been raised:

- Providing a concise definition of ‘supply chain’ would clarify ownership and responsibilities amongst actors (European Commission, 2020);
- data discrepancies related to traders suggest the need for standardised reporting procedures (Hungarian Government, 2018);
- The difference of interpretation between Articles 4 and 6 can lead to difficulties in establishing infringement cases (personal communication with the European Commission, 2020);
- country profiles produced by WCMC are useful sources of information for CAs when they assess risks, which could - but may not necessarily - hold up in courts as they are guidance documents (as mentioned during a workshop held on the 10/12/2020). Including a link to such documents in the Regulations may provide a more robust legal basis for this in the future;
- Another point, which was not directly reflected upon in the consultations but was discussed by NGO stakeholders, is that courts regularly do not use the law to its full potential (to penalise those found breaking the law), with MS courts often misinterpreting the EUTR and related enforcement proceedings to enforce EUTR provisions. As such, it was stated that a greater need of training for judges and MS CAs on how serious offences would be tackled is required to maximise the effectiveness of the EUTR within MS, and coherence with national legislations;
- Furthermore, due to the contrasting manner in which CAs and NGOs interpret ‘substantiated concerns’, difficulties have been noted as proving to courts that operators have not taken sufficient actions to mitigate risks and this may also lead to a delay in concerns being raised before a perceived threshold has been met (WWF, 2019).

Feedback provided by the Environmental Investigation Agency (European Commission, 2020) to the Fitness Check Roadmap suggests instances of companies avoiding DD requirements through registration loopholes occurring under the EUTR. The literature has revealed that there is some disparity between the enforcement approaches in different EU MSs, with many, such as Belgium, France, Greece, Italy, and Spain considered to be taking a ‘soft’ approach (EIA, 2019). Various companies avoid compliance

with DD by clearing their goods at customs in a country where they are not registered (European Commission, 2020), leading to further difficulties in understanding who is placing timber/timber products on the market. It is worth noting here that customs data is not routinely shared within and between MS and CAs (often due to data protection laws), which can prevent MS CAs from garnering an overview of customs data. Consultations with NGOs stated that such problems are due to the terminology used within the EUTR, rather than a failing of the legislation itself, as such issues could “be fixed at the point of interpretation and implementations rather than there being a problem with the overall mechanism”.

Contrasting levels of penalties applied for EUTR infringements were identified as potentially creating an uneven playing field in the internal market (WWF, 2019), (also stated by 2 business associations, 2 company/business organisations, and one stakeholder from NGO, environmental organisations and public authorities, during the OPC through open text responses), yet there is a lack of evidence which details if this impacts the overall effectiveness of the EUTR and the alignment with the objectives of broader legislation.

b. To what extent are the FLEGT Regulation and FLEGT Regulation Voluntary Partnership Agreements internally coherent?

Evidence suggests that the FLEGT Regulation is a good example of internal policy coherence, with the main previous evaluation of FLEGT Regulation reporting positively on the internal coherence of its provisions (Terea, S-for-S, & TopPerspective, 2016). This view was corroborated in the online public consultation, with 53% of respondents stating that there were no coherence issues (question 54). Nevertheless, several points on which coherence could be improved have been identified.

Points for improvement identified in literature primarily concern the alignment of procedures and cooperation, both across MS and between MS and exporting countries. The most commonly cited issue relates to the inconsistencies between the information on FLEGT licenses on the one hand, and actual shipment documents/shipments and customs declarations on the other, and most notably in the interpretation of HS codes. Almost one third (29%) of respondents to an OPC 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. Mismatches can be time consuming to resolve (see EQ2i(i)), potentially taking valuable time away from ensuring that no high-risk timber is imported. For instance, the Dutch CA reported in its 2019 annual FLEGT Regulation report that mismatches and incorrect use of HS codes remains an issue on which they are working (NVWA, 2020). These complexities are also felt in Indonesia, where exporting companies remain divided on whether FLEGT Regulation has made exporting to the EU easier (ITTO/IMM, 2019).

In the case of Indonesia, the only country to be issuing FLEGT Regulation licenses, issues surrounding the alignment of procedures and cooperation are known to authorities on both sides and steps have been taken towards discussing and addressing some of them, including via a pilot project on e-licensing (European Commission, 2019a) (EU FLEGT Facility, 2019). However, stemming from the cooperation issues identified with Indonesia and issues with SILK (e.g. instances of lack of data access by CAs, license data not existing in the database, and missing signatures), the potential of e-licensing to be put in place and to work effectively remains uncertain. More generally, an increased alignment of procedures between MS national authorities, as well as an increased degree of cooperation between MS

national authorities, and between these authorities and exporting countries, would further support the achievement of the objectives of the FLEGT Regulation. An example of coordination issue is the Hermanos B.V case on which Kaoem Telapak - an Indonesian NGO - reported. It argues that the EU CA involved could have better communicated with Indonesian authorities to work on a case of fraudulent use of HS codes (Kaoem Telapak, 2020). Furthermore, it is worth repeating that even if issues of coherence are addressed, the legality of harvest and the risks relating to imported products licensed by Indonesia depend upon the effective implementation and enforcement of the licensing system in the exporting country. As explained in EQ2i, the Indonesian VPA remains fragile and dependent upon the support of the Indonesian government. In light of these circumstances, provisions for independent monitoring (in Indonesia, Cameroon and the Republic of Congo, as stated in EQ1d) have been set up.

As a foundation on which internal coherence can be built, VPAs should have a minimum content (TLAS, monitoring and evaluation frameworks, and commitments to improving transparency and forest governance) and licenses should ensure legality (i.e. the TLAS should be effective) (EU FLEGT Facility, n.d.). As stated in effectiveness EQ1a, 16 MS do not know whether VPA processes have contributed towards minimising the presence of illegally harvested timber and timber products on the EU internal market, and 1 MS thought they did not contribute to the objective (UNEP-WCMC, 2019). This raises questions as to whether the efforts made to resolve coherence issues during the custom checks at EU borders are worth pursuing, considering the uncertainty about the impacts that VPAs have had on curtailing illegal logging in exporting countries in the first place. Nevertheless, in the case of the Cameroon VPA, and even without licensing in place yet, the Ministry of Forestry expressed the view that its VPA is clear, and that it contributed to better enforcement of existing forest protection regulations, amongst other benefits (e.g. transparency and stakeholder engagement) (targeted consultations).

c. To what extent are the Regulations coherent between each other?

The EUTR, Voluntary Partnership Agreements, and the FLEGT Regulation all stem from the FLEGT Action Plan, and as such display high levels of coherence (European Commission, 2016). This view was confirmed in interviews with DG TAXUD and FLEGT CAs, and in the OPC (questions 7 and 54). Notably, stakeholders reported few challenges relating to a lack of coherence between the obligations under the FLEGT Regulation and the EUTR, with 23% stating it was not a challenge at all (question 7). From the perspective of exporting countries, out of three Indonesian stakeholders who commented on the coherence of the FLEGT Regulation with the EUTR in the OPC, one argued that they were coherent, while another referred to misalignment in product scope (see more details below).

The effectiveness of the two Regulations is partly linked. VPA processes facilitate compliance with EUTR requirements, where there are positive and reinforcing interactions between the Regulations (see EQ4c). Meanwhile, in theory, the EUTR pushes countries to agree to VPAs to help gain preferential access to EU markets (European Commission, 2016). In practice, stakeholders have observed that if the EUTR was more effectively implemented, there would be significantly less imports of wood-based products into the EU, which would in turn motivate producing countries more to engage in the VPA process (2 NGOs and 1 CA, stakeholder workshop held on 10/12/2020). Another linkage is that FLEGT licensing reduces costs of DD for operators, with this benefit expected to increase as more countries start issuing licenses (see EQ4c).

While the Regulations can reinforce each other, issues relating to the uptake of VPA processes or licensing can potentially impact government revenues (see EQ2h). Moreover, from the importing side, there is a contradiction in that additional costs through checks of FLEGT Regulation licenses at customs are placed on supposedly less risky imports (i.e. coming from countries with TLAS), whereas under the EUTR, imports are cleared under standard custom procedure. This, however, is balanced by a reduction in costs for operators through FLEGT Regulation licensing, as they do not have to undertake DD.

Finally, the product scope of the EUTR and specific VPAs differs, as all VPAs are required to cover a minimum number of products (logs, sawn wood, veneers, plywood and railway sleepers) but can expand on this base, thus leading to variations per VPA (FLEGT-licensed timber products, n.d.). For instance, Ghana added furniture only to this initial list, while Indonesia added furniture, fuel wood, wooden tools, wooden packing material, wood pulp, paper and paper products, and kitchen and tableware (EU FLEGT Facility, n.d.). Moreover, some HS codes are covered under FLEGT, but not under the EUTR (e.g. HS Code 4417, 4419, 9401.61, and 9401.69) (input from third country agency, OPC). This issue was also mentioned in the OPC (question 54) as well as during a stakeholder workshop (held on the 10/12/2020). In the latter, stakeholders tended to converge on the view that the product scope should be enlarged and harmonised (2 NGOs, 2 CAs, DG ENV). In addition, imports from Indonesia currently need to be accompanied by a FLEGT license if the product is covered by the VPA, otherwise imports need to comply with the EUTR, creating a first layer of complexity. If more VPA countries reach the licensing stage, the level of complexity is expected to increase, for the MS authorities tasked with verifying legality and carrying out DD but especially for numerous operators in each MS.

There are also coherence issues linked to the implementation of the VPAs. If licensing schemes are not properly implemented or enforced, they could be used to circumvent EUTR requirements. If this occurs, the EU could decide to suspend the VPA (according to articles 20 and 21 of the VPA with Indonesia). Evidence suggests that there are several implementation challenges in Indonesia, and that enforcement could also be improved (see questions 2.i.i and 2.i.ii). Authorities in countries with VPAs under negotiations can be reluctant to share information requested by CAs for DD under the EUTR (DG ENV and NGO, December 2020 stakeholder workshop). There is also a risk that activities related to the effective implementation and enforcement of the EUTR may hinder negotiation processes and ultimately the operation of FLEGT Regulation licensing schemes (See Annex H). An ongoing and more specific issue exists surrounding the definition of legality in relation to confiscated timber, which impacts the coherence between the EUTR and FLEGT Regulation processes in the cases of Vietnam, Ghana and Cameroon. Although the issue is being resolved in the case of Vietnam, this is not currently the case for the two latter countries (European Commission, 2019) (targeted consultations with Cameroonian Ministry of Forestry) (See Annex H).

5.4.2 Question 11: To what extent are the Regulations coherent with wider EU policy objectives?

| Key findings |
|---|
| <p>EUTR:</p> <ul style="list-style-type: none"> • The basic objectives of the EUTR align with the objectives and provisions stated under recent policy developments such as the European Green Deal, Renewable Energy Directive, Farm to Fork Strategy, EU Biodiversity Strategy and Circular Economy Action Plan, and there is no indication of coherence issues occurring (further supported by evidence from the OPC); |

| Key findings |
|---|
| <ul style="list-style-type: none"> • The legality finding by national authorities for timber/timber products traded under the EU Wildlife Trade Regulations (EUWTR) is narrower in scope and potentially less comprehensive than EUTR DD, but the impacts of this on the legality of timber placed on the internal market are not validated in the literature; • The issue of disparities in penalties for EUTR non-compliance between MS has been noted by NGOs and independent consultants as creating imbalance in the internal market through creating incentives for companies to relocate operations to MS with weaker legislation and/or law enforcement; however there is no evidence that this is happening on a large scale. • Overall, there was limited evidence of the practical implications of any differences or incoherence between various policies. |
| <p>FLEG Regulation:</p> <ul style="list-style-type: none"> • The basic objectives of the FLEG Regulation align with the objectives and provisions stated under recent policy developments such as the European Green Deal, Farm to Fork Strategy, EU Biodiversity Strategy and Circular Economy Action Plan and there is no indication of coherence issues occurring; • The FLEG Regulation is coherent with EU trade policies and actions by the EU, supporting reforms that promote sustainable development, social and safety standards, communities' rights, and respect for the environment; • The robustness of evidence would be enhanced by a greater diversity of views from different stakeholder groups, particularly from VPA countries. |

a. To what extent is the initiative coherent with other EU environmental policy objectives, in particular biodiversity, deforestation, agriculture and environmental crime?

To date the evidence identified in the literature suggests that EUTR and the FLEG Regulation are broadly aligned and coherent with other EU policies analysed. Differences in scope, objectives and ambition of the various policy domains is apparent, but instances of this leading to issues which could hinder the goals of the EUTR and FLEG Regulation are not evident.

Regarding recent/upcoming key legislation to be implemented, the EUTR and FLEG Regulation traceability and legality measures align with the Farm to Fork Strategy objective of providing a “legislative proposal and other measures to avoid or minimise the placing of products associated with deforestation or forest degradation on the EU market” (also echoed in the Biodiversity Strategy to 2030 “EU actions do not result in deforestation in other regions of the world”), and the European Green Deal objective of ensuring “imported products and value chains that do not involve deforestation and forest degradation”. The product scope of the EUTR and the Circular Economy Action Plan (CEAP) (European Commission, 2019) also demonstrate alignment, particularly in regard to the potential role of legally sourced timber products being utilized in construction within the EU.

With regard to the EU Wildlife Trade Regulations, the scope of legality is narrower than that considered under the EUTR, there is less emphasis on tracing legality back to the place of harvest, and certain sources of timber under EUWTR/CITES require no verification of legal acquisition (pre-Convention - source O and monospecific plantations - source A) (Womack L. , Glaser, Sinovas, & Malsch, 2019).

A key limitation of the analysis which must be taken into consideration is the limited amount of literature sources which directly analyse the EUTR and/or FLEG Regulation against the policy fields

explored under this evaluation question. As such the majority of the analysis has been developed through exploring the (legal) texts of the policy documents in question.

Stakeholders throughout consultations did not raise any issues surrounding the coherence of EUTR or the FLEGT Regulation with EU environmental policy, as outlined in the results to question 16 of the OPC, indicating that there are not considered to be any substantive coherence issues at present.

b. To what extent is the initiative coherent with wider EU policy, including customs, trade?

The continued rate of import volume of wood products from outside of the EU even after the implementation of the EUTR indicates that the Regulation has not hampered EU operators' interest in importing from external markets. However, a number of issues have caused significant variances in implementation and enforcement amongst MS, including: disparity in conducting checks (UNEP-WCMC, 2020) (European Commission, 2020), differences in MS legal frameworks to enforce the EUTR (McDermott & Sotirov, 2018) (UNEP-WCMC, 2020), and contrasting levels of penalties to tackle EUTR breaches (Kettunen, Bodin, Davey, Gionfra, & Charveriat, 2020). As such, these imbalances can create incentives for some companies to relocate their operations to MS with less stringent enforcement and less severe penalties (Kettunen, Bodin, Davey, Gionfra, & Charveriat, 2020).

Stakeholders in the OPC stated that due to the EUTR and FLEGT Regulation relying heavily on both legality and traceability of correctly labelled timber species entering the EU market, coherence with customs policy should be improved. CAs elaborated on this in interviews, stating that national data protection laws can prohibit the sharing of information to customs and vice versa. This results in CAs being unaware of operators/consignments of particular interest, with difficulties in sharing information between MSs on indirect imports (shipment imported via one MS but destined for another), ultimately creating barriers to checks on operators and enforcement actions.

FLEGT Regulation

The evidence reviewed highlights that the FLEGT Regulation and associated VPAs are coherent with EU trade policies and actions by the EU, supporting reforms that promote sustainable development, social and safety standards, communities' rights, and respect for the environment. This does not necessarily mean that VPAs and FLEGT Regulation licensing have been effective in reducing illegal wood imports, as previously discussed in the effectiveness section. Trade agreements with third countries do not contain articles on forests that directly contradict requirements set in the FLEGT Regulation, and FTAs remain vague and lack enforceability or financial sanctions. However, it must be noted that FTAs are primarily designed to minimise negative impacts on the environment rather than actively driving positive environmental and social impacts (Kettunen, Bodin, Davey, Gionfra, & Charveriat, 2020) or tackle illegal harvesting.

5.4.3 Question 12: How does the intervention fit with the international regulatory frameworks, including Conventions, in the area of timber?

| Key findings |
|---|
| <p>EUTR:</p> <ul style="list-style-type: none"> • There are differences in alignment between CITES and the EUTR, surrounding the concept and scope of legality and comprehensiveness of legality findings, as well as certain sources of CITES-listed timber being exempt from verification of legal acquisition. However, CITES is implemented in the EU through |

Key findings

- the EU Wildlife Trade Regulations, which imposes certain stricter measures (such as the requirement for MSs to verify legality) and some efforts for closer alignment have been made (e.g. 2018 guidance document on timber legality);
- EUTR is coherent and complements other national regulations tackling illegal deforestation, such as the US Lacey Act or Australia's Illegal Logging Laws. Limited evidence could be obtained regarding the EUTR coherence with the China Bilateral Coordination Mechanism. Research indicates that there appear to be some coherences, but the China Bilateral Agreement process has remained untransparent and thus the extent of coherence remains unclear.
- Some coherence issues between EUTR and private certification schemes have been noted, primarily the difficulty of private certification schemes to operate effectively in countries with high levels of corruption, and a lack of transparency of these certifications potentially undermining EUTR objectives.

FLEGT Regulation:

- In general, the FLEGT Regulation is coherent with broader international agreements, certification schemes and national initiatives (outlined in Annex H) and has been shown to set higher standards locally when enforced correctly in VPA countries;
- Minor issues between FLEGT Regulation and FSC/PEFC certification schemes has been noted, with the lack of transparency of these certifications potentially undermining FLEGT Regulation objectives.

The evidence reviewed to date identified that EUTR and FLEGT Regulation are in line with ambitions of international agreements, assisting the EU in achieving its commitments to the SDGs, the Paris Agreement, the International Tropical Timber Agreement and the Convention on Biological Diversity, among others. Furthermore, the structure and framework of both comply with multilateral agreements of trade set forth by the WTO. In coherence with international agreements, EUTR and FLEGT Regulation have shown to have the potential to set high levels of protection and implementation of international environmental policies, if and when implemented and enforced appropriately. EUTR and FLEGT have considerable overlap with the objectives of CITES, in ensuring the legality of timber in international trade. However, a number of coherence issues have been explored, largely relating to the broader scope of legality under EUTR, the comprehensiveness of DD obligations foreseen under EUTR versus the methodology for legal acquisition under CITES being left to the discretion of the Parties, and various exemptions under CITES for the need to verify legal acquisition (e.g. pre-Convention timber) (Womack L. , Glaser, Sinovas, & Malsch, 2019). One potential issue that could undermine EUTR and FLEGT Regulation objectives is for timber species newly added to CITES Appendices/EU Annexes, particularly if large stockpiles exist which were harvested prior to the date of listing; such 'pre-Convention' timber could be imported without a requirement to verify its legal acquisition (Womack L. , Glaser, Sinovas, & Malsch, 2019). Overall, stakeholders in the OPC felt that the EUTR and FLEGT were moderately to highly coherent with international agreements, with 63% of respondents believing there to be high coherence between CITES and EUTR/FLEGT (OPC Question 17).

In relation to private certification schemes, while they can assist in providing evidence of legality and sustainability, hence contributing to EUTR DD, they do not provide an exemption from the legality requirements of EUTR or the FLEGT Regulation. Concerns have been raised that voluntary certification may not be adequate in countries where corruption and bribery are commonplace, and the State is implicated in the illegal timber trade. Furthermore, a forthcoming study evaluating private certification schemes found that certified timber/timber products can often exceed the volume of certified raw material purchased- indicating discrepancies in certification schemes (EC, Forthcoming). In addition,

certification schemes such as FSC and PEFC have been noted as lacking transparency, particularly relating to information on the temporary suspension of certifications, which cannot be traced by operators checking the certificates (FLEGT/EUTR Expert Group, 2019) (EC, Forthcoming). The inability to track the progress of temporary suspensions has raised concerns regarding DD and as such, the Commission has cautioned against using certifications for DD, and have requested FSC and PEFC to publish past statuses of certificates (FLEGT/EUTR Expert Group, 2019).

The EUTR and FLEGT regulation appear to be coherent with a number of other national legislations, and as noted by an NGO stakeholder in interview, the EUTR has been taken as an example of functioning legislation around the world. Research showed that EUTR and FLEGT were overall coherent with national laws such as the U.S. Lacey Act, Australia's Illegal Logging Prohibition Act, South Korea's Sustainable Use of Timber Act and Japan's Clean Wood Act.

The EU and China have established a Bilateral Coordination Mechanism (BCM) in order to work together to stop illegal logging and the associated trade in illegal timber globally. While the BCM is closely coordinated by EU MSs and China, there is limited information available regarding the progress on activities that support the BCM objectives or whether they are fully coherent with the EUTR and FLEGT. China is one of the world's largest importer, consumer and exporter of wood-based products, with almost half of the wood processed in the country sourced from imports (UNEP-WCMC, 2018). While the majority of imports stay within China to service domestic demands, there is still an estimated 2.5 million m³ round wood equivalent of potentially illegal wood entering the EU market from China (UNEP-WCMC, 2018; Indufor, 2016). In 2019, China adopted a revised Forest Law prohibiting operators from knowingly purchasing, processing or transporting illegally sourced timber (Chinese Academy of Forestry, 2019) (UNEP-WCMC, 2019¹⁰⁵). In interviews with NGO stakeholders, it was noted that amendments brought into the Chinese timber law saw an effort from the timber authorities to try and replicate, to some extent, the EUTR into their own national law. This potentially greater coherence with China's national laws and the EUTR will depend upon how the law will be implemented^{106 107}. Additionally, given the importance of China as a major exporter to the EU, progress under the BCM should be made more transparent to allow critical assessment of the coherence but also effectiveness of the EUTR in relation to China.

5.5 EU-added value

5.5.1 Question 13: To what degree have FLEGT Regulation and EUTR enabled MSs to take successful action to improve beyond what would have been possible without EU action?

| Key findings |
|---|
| <p>EUTR:</p> <ul style="list-style-type: none"> There is strong evidence that the EUTR has provided EU added value. It has clearly increased ambition relative to that which existed at national level; there are clear benefits to co-ordinated action (ensuring simplicity for operators, enabling co-operation and learning across MS, ensuring wider policy coherence); |

¹⁰⁵ UNEP-WCMC Briefing note for the CAs implementing the EU Timber Regulation, December 2019: https://ec.europa.eu/environment/forests/pdf/EUTR_Briefing

¹⁰⁶ https://www.globalwitness.org/en/blog/new-chinese-rules-on-illegal-timber-could-help-safeguard-the-worlds-climate-critical-forests/?utm_source=hootsuite&utm_medium=twitter

¹⁰⁷ <https://www.clientearth.org/latest/latest-updates/opinions/china-introduces-new-law-to-safeguard-forests-and-improve-governance/>

| Key findings |
|---|
| <ul style="list-style-type: none"> • Action at EU level has also provided a benefit by somewhat creating a level playing field for operators, however the underlying flexibility and subsequent divergence at national level with respect to DD Systems and implementation have limited the ability of the EUTR to realise its full potential |
| FLEG Regulation: <ul style="list-style-type: none"> • There is strong evidence that the FLEG Regulation has provided EU added value. There are substantial doubts as to whether equivalent action could have been taken at national level, and there are clear benefits to co-ordinated action (enabling co-operation and learning across MS, ensuring coherence with wider policy). Given FLEG licence is issued by exporting countries, there is a level playing field for operators and a low risk associated with variance in implementation across MS. However, there have been challenges which have limited the effects of the FLEG Regulation leading its full potential not to be realised (namely that only one country has progressed to licencing). |

EUTR

At the time the EUTR was introduced, there were no policies at MS level aimed at comprehensively tackling illegal logging or the entry of illegally logged timber to domestic markets. A number of MS had public procurement policies in place applicable to timber products. Other initiatives existed with related objectives, such as voluntary certification. But as noted by stakeholders (NGO interview), there are doubts that these initiatives would not have been able to reach the whole of market as the EUTR has. In theory, MS could have introduced demand-side measures at national level, however (as flagged in the initial EUTR IA) this could pose substantial challenges to the smooth functioning of the internal market which is safeguarded through harmonised action (European Commission, 2008). There is also doubt around whether many MS would have taken unilaterally (CA interviews). The initial EUTR IA did not signal that any policies were planned or being considered at MS level. Hence by putting in place a comprehensive policy covering all demand for timber and timber products, the EUTR has clearly increased ambition relative to that which existed at national level at the time (as verified by interview with NGOs who consider the EUTR to have provided a major step forward).

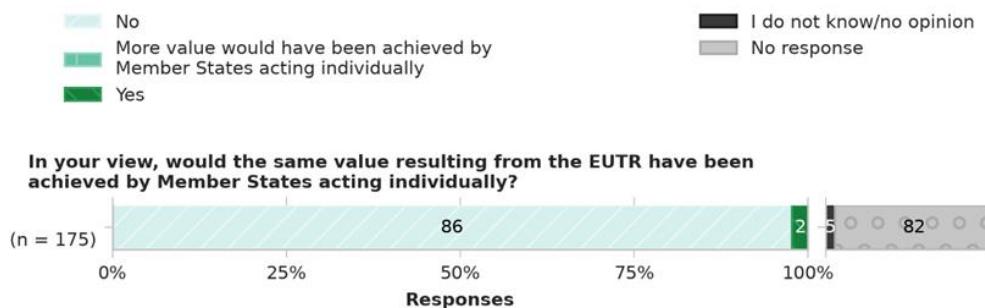
In terms of the benefits delivered (as discussed in EQ1a and 1b), given limitations of the data and information available it is very difficult to draw robust conclusions regarding the effects of the EUTR on illegal logging and trade. This would be even more difficult at MS level. That said, there is evidence that co-ordinated action has improved implementation and hence the effectiveness of the EUTR: for example, the positive role of the EUTR/FLEG Expert Group has facilitated the sharing of best practice across MS (see EQ2i(iv)) and having a common risk management system has allowed MS to exchange information effectively (interview with Commission services). Action at EU level has also helped to minimise cost on the timber industry as a whole: The EUTR places DD obligations only on operators, with more light-touch obligations placed on traders. Were similar legislation implemented at MS level, some of these traders would become operators subject to more burdensome obligations. Furthermore, a consistent product scope across all MS has minimised the risk of varying scopes between MS, leading to circumvention (this is a real risk as exemplified through the experience of printed paper).

There are also benefits to EU action with respect to coherence: specifically taking action at EU level has ensured the EUTR has been broadly consistent with other EU policy areas and trade policy (see EQ11). It has also allowed the EUTR to be a greater influence internationally - it has influenced several demand-side policies in other countries, which may not have been the case with multiple MS level actions (EQ3e - flagged by Commission services as a key benefit of EU-level action). Likewise it has

allowed a consistent approach to coherence with other international initiatives (EQ12), namely certification, on which there are varying opinions which could have led to multiple approaches should MS have taken action unilaterally, leading to a more complex set of arrangements.

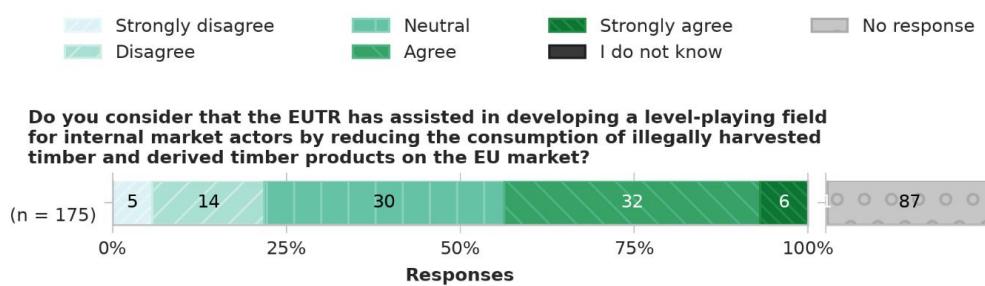
Stakeholders strongly believe (signalled through the OPC and interviews) that Regulations together have provided additional value: over 92% of OPC respondents answered that the same value resulting from the EUTR would not have been achieved by MSs acting individually (see Figure 5-23).

Figure 5-23 OPC question 37: In your view, would the same value resulting from the EUTR have been achieved by MSs acting individually?



The majority of OPC respondents also noted that this was partly through the fact that the EUTR has created a level playing field for operators, providing a benefit both for EU importers, but also exporters through provision of a clear, simple and consistent set of requirements (although it this was a less commonly held perception and the response more balanced - see Figure 5-24).

Figure 5-24 OPC question 21: Do you consider that the EUTR has assisted in developing a level-playing field for internal market actors by reducing the consumption of illegally harvested timber and derived timber products on the EU market?



That said, there are also signals that EUTR has not achieved its potential. Although the high-level obligations are common, flexibility at a more detailed level has somewhat driven inconsistency across MS: for example, CAs through interview highlighted that operators have developed multiple, varying DD Systems which cause the CAs difficulties and increase costs of enforcement. Again perceived variation in robustness of enforcement by CAs across MS has somewhat challenged the level playing field created. MOs (see EQ2g) have also not provided the benefits envisioned and multiple stakeholders have signalled the need for further guidance on DD.

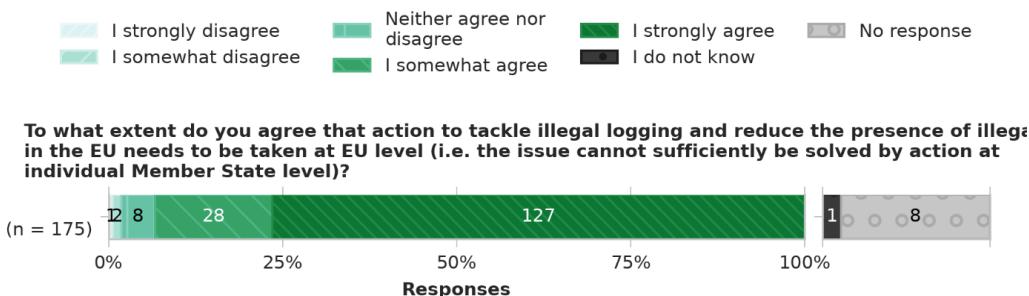
FLEGT Regulation

At the time the FLEGT Regulation was introduced, there were no policies at MS level aimed at comprehensively tackling illegal logging or the entry of illegally logged timber to domestic markets. It is questionable whether an individual MS could pursue a similar policy given the efforts and resources

required. Furthermore, were MS to try to take unilateral action, the incentive for exporting countries would be substantially reduced, increasing the risk that exporting countries would not engage and/or leakage to other countries with lower requirements (which may include other MS). An interview with Commission services noted the EU can serve as a platform to bring stakeholders together and is associated with co-operation projects, and individual MS may have struggled in this respect. This was corroborated by interview with Ukrainian stakeholders who underlined the positive influence that the EU collectively has had on the forestry sector in Ukraine, and the positive effect of co-operation. The initial FLEGT IA also did not signal that any policies were planned or being considered at MS level (European Commission, 2006). Hence by putting in place a novel supply-side policy, the FLEGT Regulation has clearly increased ambition relative to that which existed at national level at the time.

Stakeholders strongly believe (signalled through the OPC and interviews) that EU-level action has provided additional value: over 92% of OPC respondents answered that effects of the Regulations (collectively) would not have been achieved by MS acting individually (see Figure 5-25).

Figure 5-25 OPC question 18: To what extent do you agree that action to tackle illegal logging and reduce the presence of illegal timber in the EU needs to be taken at EU level (i.e. the issue cannot sufficiently be solved by action at individual MS level)?



There is evidence of benefits being provided to MS through collective action. Firstly, FLEGT licences are issued (and the guarantee of legality ensured) by the exporter, hence minimising the burden of implementation for all MS collectively. By extension, this also minimises the risk of variance in implementation between MS. As under the EUTR, the EUTR/FLEGT Working Group has served as a productive means to share experience across MS. The FLEGT Regulation has also added value outside the EU, by the ability for other countries to use the licencing system as an indicator of legality (as is the case for Indonesia where V-licences are issued for exports to other countries - the fact that FLEGT licences are seen as a clear EU benchmark for timber legality that could encourage improvements in other countries was reported as a benefit by the majority of OPC respondents). There are also benefits to EU action with respect to coherence: specifically taking action at EU level has ensured the FLEGT Regulation has been broadly consistent with other EU policy areas and trade policy (see EQ11). Likewise it has allowed a consistent approach to coherence with other international initiatives (EQ12), namely certification, on which there are varying opinions which could have led to multiple approaches should MS have taken action unilaterally, leading to a more complex set of arrangements. However, there are clear signals that the FLEGT Regulation has not achieved its full potential, in particular given only one country has progressed to licencing.

6 Conclusions

6.1 Summary of results of the assessment against the evaluation criteria

Effectiveness

EUTR

The EUTR is an important step forward in tackling illegal logging and associated trade. However, a number of challenges have been identified which have somewhat limited progress towards its objectives. DD Systems should consist of: (i) measures and procedures providing access to all relevant information about the country of harvest and the timber or timber product to be acquired, (ii) Procedures to collect and analyse relevant information and documents in order to establish links among these, in order to assess the risk properly and in order to ensure the proper verification of information and application of criteria to assess the risk of illegally harvested timber being placed on the EU market, and (iii) Foreseeing adequate and proportionate measures and procedures to mitigate the risk should it be assessed as non-negligible. DD as a mechanism is viewed positively by MS CAs, NGOs, industry and other stakeholders - indeed DD has the advantage to be able to cover all types of operators and can be applied no matter the size or complexity of the operators activities including forest owners. If applied correctly by and is supported by management teams in operators, the system as such is capable of efficient risk mitigation. That said, some important challenges have been identified in both the detailed design of the DD System, but also in the way EUTR has been implemented in some MSs.

All MSs have established legislative frameworks to implement the EUTR and are using a risk-based approach to efficiently deploy resources available to operator checks. However, the level to which the national provisions provide for enforcement differs, creating a non-level playing field. MS risk based inspection plans have resulted in the verification of well-functioning due diligence systems covering the majority of the timber and wood products being placed on the EU market: CAs reported covering large proportion of timber imports in checks (up to 80%), suggesting that most of the timber entering the EU is either subject to sufficient DD, or operators are notified of any issues with their systems during checks. The risk-based approach for checks has been viewed positively by CAs as it allows cost-effective enforcement, covering cases where issues are anticipated (e.g. imports from countries with high corruption problems). However, there is some evidence of operators perceiving there is variation in the stringency with which the EUTR is enforced across MSs (e.g. number of checks, level of penalties), with attempts observed to import timber which has likely been illegally harvested via some MSs with perceived weaker implementation and enforcement.

It is clear that the EUTR has achieved some success in terms of its impact on the levels of illegally logged timber and timber products placed on the EU market but has not completely achieved its main objectives. There are both positive and negative signals regarding the impact of the EUTR on reducing the risk of illegally logged timber being placed on the EU market. Firstly considering implementation: (i) DD Systems appear to cover the majority of (but not all) timber placed on the EU market (representing a step-change relative to the situation pre-EUTR); (ii) there are high levels of awareness and understanding of DD amongst operators; and (iii) the EUTR is widely reported (in literature and by stakeholders) to have led to significant improvements in transparency (i.e. availability of information and documentation around timber supply chains, in particular regarding species and origin, which places pressure on ensuring legality throughout the supply chain). However, several

difficulties challenge the implementation and the effectiveness of systems once in place, in particular: (i) the ability of operators (and CAs) to verify the robustness of information obtained, and (ii) interpretation of ‘negligible risk’ which is subjective, making information gathering to prove risk is ‘negligible’ difficult for operators and interpretation varies between operators, suppliers, CAs and the courts. Proving ‘non-negligible risk’ in court is difficult, and this has led to some hesitancy in bringing cases to prosecution. Other challenges include: lack of, or conflicting understanding of what is required (i.e. what is DD, what is sufficient DD, and what to do in case of non-negligible risk), and lack of resources.

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. Also the metrics to assess risk (e.g. ILAT scores) may not be sensitive to changes in practices made by a subset of exporters in a given country. 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). Stakeholders are more definitive in their opinion that the EUTR has had at least a ‘somewhat positive’ impact on placement of illegal timber on the EU market.

With respect to ‘domestic’, EU-based producers of timber, there is also mixed evidence. In countries where there is greater risk of illegal logging (Romania and Bulgaria), there appears to have been an improvement in forest area over the period of implementation perhaps signalling a benefit of the EUTR. But the impact of the EUTR over and above the robust set of legislation that already existed is questionable.

It is difficult to conclude what the overall impact has been: the EUTR has achieved some level of success (e.g. the application of DD to the majority of imports, significant increase in transparency), but it has not fully achieved the prevention of illegally logged timber and timber products being placed on the EU market (e.g. application of DD has not been universal and imports continue to arrive from known high-risk sources).

With respect to effects on illegal logging, drawing firm conclusions is even more problematic. Again the evidence is mixed. There is strong evidence that the EUTR legislation has directly inspired the development of demand-side legislation in other non-EU countries, including Switzerland, Australia, Japan and South Korea (although any subsequent impact on levels of illegal logging relies on the effectiveness of these policies, for which no assessment could be found to date). There is also evidence that forest cover has not declined (Russia) and has even increased (Ukraine) in some of the EU’s key sources of imports. However, wider legislative changes in these countries complicate attribution to the EUTR and there are continuing reports of illegal activity in some of the EU’s key sources of imports

(again Russia and Ukraine). Furthermore, appears there has been some diversion of trade (in particular amongst VPA partner countries) to China, and the higher compliance burden of the EUTR is noted by stakeholders to have played some role in this trend, undermining its potential impact in exporting countries. This is corroborated somewhat by respondents to the OPC who present a very varied response as to whether EUTR has influenced levels of illegal logging.

MS CAs have provided substantial and productive support to operators, while the system of Monitoring Organisations have not delivered the levels of support expected. The proportion of imports covered by MOs' systems is not available and only 13 MOs have been officially verified and uptake by operators is reportedly low. This is for a number of reasons, including: operators implementing DD Systems themselves through adjusting the responsibilities of existing staff; costs; reluctance to contract MOs as they are obliged to report discrepancies where operators do not use their DD System properly; lack of incentive due to perceived low level of enforcement by CAs.

MS CAs are engaged in a wide range of supporting activities with positive outcomes for the effectiveness of the EUTR (in particular co-operation across CAs and with other stakeholders to ensure effective implementation). CAs have been cooperating productively together through the EUTR/FLEGT working group and independently via regional groups, meetings, exchanges of information and joint inspections. Cooperation has also taken place between CAs and the European Anti-Fraud Office (OLAF) and Interpol to identify illegal imports. CAs have also proactively engaged in a number of other activities to support effective implementation. **In the majority of MS, cooperation between CAs and customs has effectively supported enforcement, however in isolated cases the relationship have posed a challenge.** Co-operation between MSs CAs and customs and exchange of data is critical to efficient inspection planning and enforcement. Despite the lack of an obligation for exchange of information with customs, most CAs have effectively established a relationship where customs share data on regular intervals. However the effectiveness of a small number of CAs' (one in a sample of 8 CA's interviewed flagged this issue) checks has been compromised by the lack of formalised cooperation with customs. Without a complete set of basic data on all operators and the import of timber and timber products, a meaningful risk analysis is not possible.

FLEGT Regulation

It is not possible to conclude with certainty whether the FLEGT Regulation has had a significant, positive impact on illegal logging globally and on the levels of illegal timber and timber products placed on the EU market.

Low interest amongst exporting countries and slow progress implementing VPAs have critically limited achievement against these objectives. Since 2005, 15 countries (all tropical) have engaged formally in the VPA process, 7 have ratified agreements and one (Indonesia) has progressed to licencing. In 2018, the 15 VPA countries represented 9% of the total value of EU imports of timber and timber products, with FLEGT licences (from Indonesia) covering 3%. With regard to high-risk countries, which are the original targets of the Regulation, VPAs still cover only 22% of all imports from these countries. Furthermore, many of the most important exporters to the EU which are not deemed low risk have never engaged in the VPA process. Hence the FLEGT Regulation can only have a significant impact on a small proportion of imported timber and timber products to the EU.

There are several barriers which have prevented key export partners from engaging in the VPA process. Issues identified in the literature and confirmed through stakeholder engagement include: a perception that VPAs are designed solely for tropical countries, country selection led by a ‘demand-driven’ approach, concerns around the additional transparency required and doubts around the purported benefits of greater EU market access (particularly given the rising importance of China as a player in the global timber market). For some large exporters a key concern was ‘sovereignty’ over forest resources or felt they already had internal capacity to effectively govern their domestic forest resources.

For VPA countries, there is mixed evidence that engagement in the process (prior to licencing) has led to any improvement in illegal logging. Significant and collaborative efforts and investment of resource on behalf of Commission services has been spent with partners in VPA countries. Given the challenge and complexity of the process, progress made on VPAs to date is regarded by some stakeholders as an achievement in itself. A handful of studies in the literature suggest there may have been an effect (e.g. (Cerutti P. O., et al., 2020)), which is also somewhat supported by feedback from some stakeholders, however these studies focus on specific case studies and are reliant on surveyed opinion. On the other hand, stakeholders suggest that any impact can only be assured once licencing has started, and many VPA countries continue to be rated as ‘high risk’ (ILAT and Preferred by Nature scores) with available evidence suggesting high levels of illegal logging after a country has engaged in the process. Furthermore, in many cases deforestation has continued at a high rate with no sign of meaningful change and many have also seen a marked shift in exports of VPA countries from the EU to China. The uncertainty around impacts prior to licencing and strong divergence of trade to China undermines any impact on the legality of timber and timber products placed on the EU market. That said, stakeholders report that VPA partners are taking steps in the right direction and putting in place the foundations for improvements in the future, such as perceived improvements in governance, civil society participation, clarifications around existing definitions and legislation.

Where exporting countries have engaged in the VPA process benefits have been identified in terms of improvements in forest governance and of reforms and enforcement of forest law. There is strong evidence of unprecedented stakeholder engagement with civil society in the VPA negotiation phase, including in countries with no prior history of consulting civil society on forestry matters. Furthermore, there is evidence of progress in the monitoring of illegal logging in the VPA countries.

The process of negotiating and subsequently implementing the VPA, is long, complex and fraught with challenges. The Commission has itself recognised that the process of negotiating VPAs has been slower than anticipated. This challenge has even been assigned its own terminology: ‘FLEGT fatigue’. The length of time, effort required and difficulties encountered in concluding VPAs have a compounding effect - they increase the pressure on already finite Commission resources, potentially deter new would-be entrants to the VPA process, and delay the point at which VPA countries can start licencing. This is supported by stakeholders who identified this as a critical challenge to the FLEGT Regulation. There are a number of reasons driving prolonged negotiation and implementation stages which are identified by the literature and verified by stakeholders, including: the conditions for a TLAS set a high bar; weak governance, lack of institutional capacity and widespread corruption in partner countries; issues gaining agreement across multiple regions; lack of communications infrastructure; and the potential reputational damage for the EU of withdrawing from negotiations once started. Perhaps the most critical driver is political will: a step change is often required and there will be stakeholders who

lose out, so real political commitment is needed to drive progress. The slow progress in negotiating and implementing VPAs highlights that partner countries have multiple and varying motivations and differing priorities for engaging in the process, the top of which might not be to achieve licencing.

Whilst there are challenges for progressing the negotiation and implementation stages, many issues also arise related to, but outside of, the VPA process itself. The VPA is binary in approach - either a country issues FLEGT licences or not and it is only when a partner country reaches licencing that any impact on illegal logging and the legality of exports can be concluded with any confidence (although there is some evidence in the literature and a minority of stakeholders have suggest impacts may begin to be observed prior to licencing). Indeed whilst part of the VPA process, deforestation rates have actually increased for some partner countries. There is also confusion around the status of countries implementing a VPA that have not yet reached licencing: in some cases EUTR operators are unsure how imports from these countries are treated with respect to their DD obligations. Furthermore, even where a country is negotiating or implementing a VPA, the information made available to operators conducting DD may not necessarily be improved or robust: for example the Democratic Republic of Congo, whose internal issues create substantial ambiguity about the veracity of information provided. In addition, information may not necessarily be more forthcoming: anecdotally some stakeholders have noted that some VPA countries have used the FLEGT process as a shield, and it is not necessarily easier for operators to obtain information from VPA countries relative to non-VPA countries.

Indonesia started issuing FLEGT licences in 2016 and evaluations of the system appear to show it is broadly working as intended. These evaluations also suggested continuing improvements are needed, in particular regarding the processes handling of imports. The system is being actively monitored, although there have been some issues identified here and in enforcement through the judicial system. This suggests that although the Indonesian TLAS is broadly working well, it cannot fully assure the legality of all exports. Considering broader indicators, Indonesia continues to be ranked as 'high-risk' by the ILAT scores. The rate of deforestation has declined since Indonesia has been engaged in the FLEGT Regulation but any benefit from the Indonesian TLAS involves an issue of attribution given that Indonesia was already developing a system for licencing timber (the SVLK) prior to involvement in the FLEGT Regulation (although stakeholder believe that involvement in the VPA programme sped up and strengthened in many areas the development of the Indonesian TLAS). By extension, the commencement of licencing has provided some (but not total) assurance that a (small) proportion of timber and timber products placed on the EU market come from legal sources. In addition, stakeholders report that EU operators express a clear preference for FLEGT licenced timber. That said, although exports from Indonesia to the EU increased in absolute terms over the implementation period, the increase was lower than overall imports and switching to Indonesian exports is limited for EU operators given the other variables involved in timber sourcing decisions.

However challenges remain even once licensing has begun. From a process perspective, many elements of licencing have been implemented successfully by EU MS, and processes and systems are continuously updated and improved. Some issues have arisen, such as variance in HS codes between EU and Indonesia. However both MS CAs and Indonesian authorities have invested effort (and continue to do so) in an attempt to overcome these issues. Additional implementation challenges might be expected should further VPA partners progress to licencing, although a great amount of learning can be drawn from the Indonesia experience. EU MS CAs rely on the FLEGT licence and the processes put in

place in Indonesia to verify legality. Indonesia's experience has also highlighted that once in place, VPAs are still fragile to political will.

EUTR and FLEGT Regulation combined

The main goal of the EUTR and FLEGT Regulation is to halt illegal logging and the placing on the marked illegally harvested timber and derived products therefrom. A key challenge to review if this goal has been met successfully or not has been the lack of robust data set tracking levels of illegal logging globally and of illegal timber entering the EU market over time. Given the key objective of the EUTR and FLEGT Regulation are to tackle these issues, this has presented a substantial challenge to the assessment of the effectiveness of the Regulations.

In combination the EUTR and FLEGT Regulation may have had a positive effect on levels of illegal logging - though data are not very strong on this. Indonesia has commenced the issuance of FLEGT licences and the system appears to be working as intended. There is some evidence that VPAs may be having an effect before licencing (although this has limitations). However, the limited coverage of VPAs and licencing to date has critically limited the effectiveness of the FLEGT Regulation and there has been no clear change in the risk rating around key exporters (VPA and non-VPA) to the EU. Nor have there been clear changes in the behaviour of EU importers which would drive illegal logging activities (e.g. switching trade to low risk countries, and/or stopping trade with countries where legality is known to be particularly challenging - Myanmar, Ukraine).

There are more tangible signals that the Regulations together have been more successful in their aim of prohibiting the placement of illegally logged timber on the EU market, but their overall performance is difficult to quantify with any certainty and it is clear this objective has not been fully achieved. The majority of timber imports are covered by DD Systems with their operators showing high awareness of the EUTR. CAs are performing checks on operators and focusing their efforts using a risk-based approach. On the supply-side Indonesia is issuing FLEGT licences and an increase in exports has subsequently been observed, suggesting an increase in the volume of legal timber entering the EU market. However, again the limited coverage of VPAs and licencing to date has critically limited the impact of the FLEGT Regulation. Furthermore, although the majority of imports are covered, this is not universal and several EUTR implementation issues have been identified (i.e. the ability to validate information and the channelling of imports through MS with perceived weaker implementation) which pose a challenge to the veracity of the DD Systems deployed.

Efficiency

The Fitness Check study has identified a number of benefits associated with the EUTR and FLEGT Regulation. However, the most important benefits cannot be quantified nor monetised, preventing a direct comparison between monetised benefits and costs.

The costs of implementing the EUTR are many times greater than those anticipated in the initial Impact Assessment, but around the same order of magnitude as those of the FLEGT Regulation. Cost data around the implementation and functioning of the EUTR in the literature is incomplete, and even more sparse for the FLEGT Regulation. Through stakeholder engagement, this Fitness Check study has been able to complement the data from the literature with additional source material, but gaps remain in presenting an overall cost for each Regulation. EUTR places compliance costs on a range of actors. The most important cost is associated with the implementation and operation of DD Systems by EU

based operators. Estimated aggregate implementation costs for EUTR are mEUR 722 pa (range mEUR 79 - 1,079 pa). These are much greater than those anticipated in the initial 2008 Impact Assessment. For the FLEGT Regulation the aggregate estimate of costs to 2020 is mEUR 574, covering importantly costs to Commission Services and EU MS, and also the operation of licencing in Indonesia from 2016.

There is no strong evidence of a disproportionate burden placed on SMEs by either the EUTR or FLEGT Regulation. Costs of compliance vary significantly across operators depending on a range of factors (e.g. number and location of suppliers), not simply volume of trade. Some insights are provided in the literature and by stakeholders which provide some indication that the burden of compliance has been proportionately higher for SMEs. Larger companies seem to have been able to adapt better and more quickly to the new requirements than SMEs, which may be in a disadvantaged position due to their low economies of scale (widely reported in the literature and stakeholder opinion). There is evidence from stakeholders that some smaller operators may have switched to becoming traders rather than continuing to import, although the scale of this effect is unclear. However, the evidence for this conclusion is not strong and based predominantly on stakeholder opinion and it is not possible to conclude any disproportionate effect with certainty given information limitations. There is no strong evidence that the FLEGT Regulation has had a disproportionate impact on SMEs in both exporting countries and EU MS, however on whom the costs actually fall is not predetermined and will depend on the detailed design of each individual TLAS.

Implementation costs for CAs are greater for the EUTR relative to the FLEGT Regulation. Costs also vary far more significantly across MSs for the EUTR relative to the FLEGT Regulation. Through the targeted interviews, all those interviewed agreed that a greater level of resource was committed to implementing the EUTR relative to the FLEGT Regulation, reflecting that risk around EUTR imports is much greater than those under FLEGT licence (and since EUTR is an onsite inspection system while FLEGT is a border license system), and also that FLEGT licences are only issued by Indonesia whereas EUTR covers imports worldwide and domestic production. Human and financial resources invested by CAs in EUTR implementation varied greatly across MSs. This can be partly but not wholly explained by the difference in the size of the timber sector across MSs (i.e. volume of import, number of operators, , etc). This also reflects (and underlines) the variation in the effectiveness of implementation of EUTR across MSs. That said, the resources that are deployed by appear to be being deployed efficiently using the risk-based approach to performing checks and the activities bring a range of positive outcomes which enhance the effectiveness of the EUTR

Although the EUTR has not fully achieved its objective regarding limiting the placement of illegal timber and timber products on the EU market, it does appear to be cost-effective. A broad review of the literature has identified a range of benefits that have been attributed to the EUTR. However, in many precise impacts cannot be quantified, limiting the potential for direct comparison between monetised benefits and costs. The majority of OPC respondents believe that the benefits of the EUTR outweigh the costs. Furthermore the costs of the EUTR are small relative to overall value of trade covered and sector revenue. Hence with moderate confidence it can be concluded that the EUTR is cost-effective.

The FLEGT Regulation does not appear to be cost-effective based on the costs and benefits delivered to date. Again the literature has identified a range of benefits that have been attributed to the FLEGT Regulation but which cannot be quantified. The majority of OPC respondents believe that

the benefits of the FLEGT Regulation outweigh the costs. But the resources invested are high relative to the value of trade covered. Cost-effectiveness will improve should more VPA partners progress to licencing, and as the period of operation under TLAS' increases. Still it is uncertain whom will pay for the VPA licence and certification schemes when up and running (i.e. where the costs will fall between: exporters, the EU, MS or importers). But at this stage it is problematic to conclude that the FLEGT Regulation has been cost-effective to date.

Suggested improvements have been made both in the literature and by stakeholders for both the EUTR and FLEGT Regulation. The EUTR/FLEGT Expert Group has been a productive means of identifying, discussing and implementing improvements on an ongoing basis for both the EUTR and FLEGT Regulation, in addition to the EUTR and FLEGT Regulation national reports which canvass ideas from CAs regarding potential improvements. Several suggestions - some of them already implemented - for improvements to EUTR have emerged through both the literature and stakeholder engagement. These focus on: centralised evidence gathering to inform risk assessment (e.g. timber source country overviews), development of uniform inspection systems, and enhanced information exchange. Although many suggestions could reduce costs, they could also impact on the potential effectiveness of the EUTR and some would not be feasible, and hence would need further careful consideration. With respect to the VPA process, the Fitness Check study has identified some improvements, e.g. the use of pilot schemes, allowing progress even where disagreements persist, and increase in resources provided to partner countries. However, these are unlikely to resolve all issues associated with the VPA model (e.g. the declining importance of the EU as a global importer impacting the incentive to engage in the process) and indeed stakeholders (interviews with NGOs, VPA partner countries) note that there are key factors driving the length of the process (e.g. increasing capacity and knowledge, putting in place systems), limiting the potential to shorten these stages. A range of improvements have been identified for process once VPA licencing has commenced, in particular reducing burden created by licence mismatches (e.g. HS code mismatches, typos, differences in volume and weight, etc), take up of e-licencing and linking EU and Indonesian licence systems, some of which are already being piloted.

Relevance

The priorities of the EU have changed since the adoption of the EUTR and FLEGT Regulation. Although robust evidence around the levels of illegal logging globally and the level of illegal timber entering the EU are challenging to obtain, the available evidence suggests that these issues persist. However, the exclusive focus of EUTR and FLEGT Regulation on legality (rather than sustainability) and timber (rather than a wider range of commodities) only partially contributes towards a concurrent policy goal of halting deforestation and forest degradation more broadly. This is particularly the case as legal logging can be unsustainable. Since adoption, the prioritisation of 'needs' has changed (which may have occurred in part due to implementation itself), reducing the relevance of the Regulations to fully meet the EU's objectives to protect and restore the world's forests. The European Green Deal has also served to increase focus on sustainability.

There may be opportunities to broaden 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. Several studies have looked at the proportion of timber imported into the EU covered by the current product scope, not least the European Commission's own Impact Assessment into revision of the product scope of the EUTR in 2017. Sources estimate that in terms of volume the current EUTR scope covers 80%- 90% timber products, whilst only 30-50% in terms of value. The European Commission

Impact Assessment 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. In particular, gains might be made from including boats and musical instruments, which are often associated with illegally harvested timber. However, expanding the coverage of products also implies a 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.

The policy mechanism underpinning the EUTR allows greater flexibility to respond to new and emerging challenges (e.g. changes in trade patterns and risk). The EUTR is generally seen as having been flexible in responding to new issues: the general DD requirement placed on all EU based operators in theory allows the Regulation to be flexible to changes in trade patterns. On the contrary, the direct, one-to-one VPAs with exporting countries have not been flexible in responding to the changing importance of key trading partners. Indeed the emergence of China as a key player in the global timber market has reduced the incentive for exporting countries to engage in the VPA process, and for those that are engaged, has changed the incentives and bargaining power around the VPA, and has hence challenged progression to licencing.

Coherence

The EUTR is seen as being internally coherent, but a lack of clarity around key definitions and transposition into national legislation have posed critical challenges for implementation. A lack of clarity surrounds the definition of 'negligible risk' under Article 6 (c), which is viewed as somewhat subjective. Furthermore, the transposition of the DD requirements into national legislation has been challenging for numerous MSs, particularly due to difficulties in interpreting DD concepts into the legal approaches of national laws (literature, roadmap feedback). Together, these issues have made it difficult for MS CAs to pursue enforcement through the courts, which has posed a broader risk for the ability to implement the EUTR. Current resources that may provide useful guidance to CAs and operators and assist in uniform interpretation across MSs (e.g. EUTR country overviews, conclusions of the EUTR/FLEGT Expert Group) would not necessarily hold up in court. Disparities in penalties between MSs has been noted by some stakeholders (NGOs and independent consultants) to create incentives for companies to relocate operations to MSs with weaker legislation and/or law enforcement, although there is no data reporting the extent to which this is the case.

The FLEGT Regulation is also seen as internally coherent (literature, OPC, interviews). Although the VPA minimum content is viewed as beneficial, the ability to then vary the content (in particular product scope) between VPAs creates additional complexity. Coherence is enhanced through the existence of the minimum content that VPAs must contain (i.e. TLAs, monitoring and evaluation frameworks, and commitments to improving transparency and forest governance, definition of legality aligned with EU definition - notably on the treatment of confiscated timber - and product scope) (views of stakeholders). But the precise scope of VPAs is determined during negotiation. This, coupled with the fact that HS codes differ internationally, creates additional complexity for CAs and operators. The most commonly-cited issue relates to inconsistencies between FLEGT Regulation license forms on the one

hand, and shipping documents and/or customs declarations on the other, mostly due to mismatching HS codes, which can be time consuming to resolve.

There is strong evidence that FLEGT licences are reducing the costs of timber imports for some operators. A strong message from the stakeholder engagement was that the costs of importing under a FLEGT licence are significantly lower than compliance with EUTR DD for EU operators: operators have a preference to import under FLEGT licences. However, the availability of a FLEGT licence is one of a number of variables which operators take into account when considering sources of imports (including product type, quality, price, etc). This, coupled with the fact that Indonesia is the only licencing country, has limited the ability of operators to import under FLEGT licences and reduce the costs of compliance with DD requirements..

However, there are a number of areas where coherence has been less than sufficient between the EUTR and FLEGT Regulation. Product scope varies between the EUTR and the VPAs, creating complexity around the requirements applying to different imports and from different source countries. This has created complications for EU operators, EU MSs and VPA exporters: For example, licenses are sometimes issued for products not covered by the Indonesian VPA. This issue may continue to grow as more VPA countries proceed to licencing, each with their own variation around product scope. Another issue surrounds the definition of legality in relation to confiscated timber in the EUTR, which does not align with VPAs in Vietnam and Ghana. An issue that has been highlighted, which is perhaps less important, is the supposed contradiction identified by exporters that additional costs (through checks of FLEGT Regulation licenses at customs) are placed on FLEGT licenced imports which are supposedly less risky, relative to non-licensed imports from elsewhere. However, reporting and further engagement with MS CAs suggests that the vast amount of FLEGT licenced imports are cleared in a very short timeframe, and where this does not occur is where there are issues which need to be resolved before the shipment can be cleared.

Both the EUTR and FLEGT Regulation appear broadly coherent with wider EU policy. The European Green Deal offers greater ambition than the EUTR and FLEGT Regulation through seeking to “minimise the risk of deforestation and forest degradation associated with commodity imports in the EU”, as such encompassing a greater range of commodities currently under the scope of the Regulations. Similarly, the Farm to Fork and EU Biodiversity Strategy to 2030 exhibit greater ambition through aiming “to avoid or minimise the placing of products associated with deforestation or forest degradation on the EU market”. More broadly the basic objectives of both the EUTR and FLEGT Regulation align with the objectives and provisions stated under other recent policy developments such as the Farm to Fork Strategy, EU Biodiversity Strategy and Circular Economy Action Plan, and there is no indication of coherence issues occurring. The legality of timber/timber products is emphasised to a lower extent in the EU Wildlife Trade Regulation (EUWTR) relative to the EUTR, but the impacts of this on the internal market are not validated in the literature. The FLEGT Regulation is coherent with EU trade policies and actions by the EU, supporting reforms that promote sustainable development, social and safety standards, communities’ rights, and sustainable forest management. 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 international action. EUTR and FLEGT overlap with the objectives of CITES but differ in broadness of scope and methodology for

determining timber legality. The EUTR is coherent with (and in many cases inspired) other national regulations targeting illegal logging, such as the US Lacey Act or Australia's Illegal Logging Laws. The FLEGT Regulation is generally coherent with broader international agreements, certification schemes and national initiatives and has been shown to set higher standards locally when enforced correctly in VPA countries. It is important to note minor issues have been identified between the EUTR and certification schemes (e.g. FSC/PEFC), such as the contribution of certificated timber under the EUTR and with the lack of transparency of these certifications potentially undermining FLEGT Regulation objectives. The EC have commissioned a study to add greater clarity around these issues.

EU Value added

There is strong evidence that the EUTR has enabled successful action beyond what would have been possible without EU action. It has clearly increased ambition relative to that which existed at national level and there are clear benefits to co-ordinated action (ensuring simplicity for operators through a consistent obligation and product scope, enabling co-operation and learning across MS, ensuring wider policy coherence). Action at EU level has also provided a benefit by somewhat creating a level playing field for operators. However the underlying flexibility and subsequent divergence at national level with respect to DD Systems and implementation have limited the ability of the EUTR to realise its full potential.

There is strong evidence that EU-level action through the FLEGT Regulation has provided added value above that possible at MS level. There have been clear benefits to co-ordinated action (enabling co-operation and learning across MS, ensuring coherence with wider policy) and there are substantial doubts as to whether equivalent action would even be feasible at national level. FLEGT licences issued by exporting countries naturally create a level playing field for all EU operators and minimise risk associated with variance in implementation across MS. However, there have been challenges which have limited the ability of the FLEGT Regulation achieve its potential value added (namely that only one country has progressed to licencing).

6.2 Summary of issues identified and lessons learned for the IA

Table 6-1 summarises the main issues and challenges related to the implementation of the EUTR and FLEGT Regulations that have been identified as part of this evaluation. These issues may help to identify areas for further action.

Table 6-1 Summary of issues identified broken down by theme

| Theme | Issue / challenge |
|---|--|
| Lessons learned on 'needs' and 'objectives' | |
| Prioritisation of 'needs' has shifted since implementation | <p>Sustainability was a key issue at the time of implementation, and legality was considered a 'first-step'. Since implementation, the 'needs' of the EU appear to have shifted (which may have occurred in part due to implementation itself) more to sustainability and the avoidance of deforestation and forest degradation. This also provokes a broadening of scope to consider other commodities which are important drivers of these issues. 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.</p> |
| Design and application of DD Systems and/or other demand-side measures (lessons learned from EUTR) | |
| DD can be widely applied | The DD requirement in the EUTR can be implemented regardless the size and activities carried out by the operator - from forest owners to international corporations. A system based on DD such as the EUTR, if improved and adapted to the new political context, could be fit for purpose. |
| There is limited understanding of the concept of DD | <p>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). There is an ongoing need for guidance and information for effective implementation, and more awareness raising among operators. 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.</p> <p>Additional tools, beyond DD as described in EUTR, might be necessary to overcome these difficulties. Country-overviews, country conclusions and other EC resources to guide operators and CAs are not linked to an Article in the Regulation. Hence although these materials may provide useful guidance, they may not necessarily hold up in court. Hence including these specifically in the legislation can help reduce administrative costs for operators whilst also better supporting enforcement by CAs.</p> |
| Validation of information collected under DD | Even where DD is well understood by all those who need to implement it, it may be virtually impossible to fully validate the information collected and ensure that it is trustworthy and free from corruption. |
| Central DD definitions | The term 'negligible risk' has proved somewhat subjective, which makes information gathering difficult for operators and can lead to differences in interpretation. Lack of clarity, ambiguity and lack of consistency in interpretation of definitions at the core of DD can pose critical issues for successful enforcement. Improved information and guidance on DD is still necessary for operators and authorities, including prosecutors and courts |

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| | across the EU. 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. |
| Importance of customs authority role and data | As the issue concerns trade, customs have an integral role to play, as does the data and information they hold. Close corporation between MSs CAs and with custom authorities is necessary for an effective and efficient enforcement of the EUTR. Without a complete set of basic data on all operators and the import of products, a meaningful risk analysis and enforcement by CAs is not possible. The DDS can be improved, <i>inter alia</i> through a better defined role for customs authorities and a clearer interplay between the latter and CAs. The role of customs could be strengthened and defined more precisely, also with a view to overcoming difficulties with building solid court cases. |
| DD could place a greater burden on particular groups | The costs of DD vary according to a range of parameters, not just volume of imports. Burden is higher for more complex supply chains or those using multiple raw material inputs. Hence the cost of DD can often be quite similar for small and large companies, but therefore could place a greater burden on smaller companies. It is important to weigh up the burden on SMEs (and potential impact on competition) with the risks SMEs pose. That said, 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. |
| More precise description of the obligations of traders and the related actions by CAs is necessary to avoid possible loopholes in the system | The coverage of the supply chain is a balance between costs and reinforcing the effectiveness of the Regulation: for EUTR, there is some evidence of isolated operators changing to becoming traders, whilst still acting as effective operators, in order to circumnavigate the Regulations. However, what limited evidence there is around such behaviour does not suggest that this is widespread, and indeed these issues in theory should be resolved through effective implementation. Whereas extending obligations to other groups of actors almost certainly increases compliance cost and affects further groups of SMEs. |
| Selection of product scope is critical to effectiveness (and efficiency) | Where the issue at hand is driven by trade in a range of commodities, there is a balance to be struck in terms of coverage: greater coverage of products may achieve a greater impact, but also higher complexity (<i>i.e.</i> where products with more complex supply chains are included) and costs. It is also important to consider products at different stages of the lifecycle, to avoid simple changes in point of export to evade obligations (product scope of the EUTR seems to have achieved this somewhat as no significant switching between products has been observed). The product scope need to be updated and made clearer regarding forest plants not being wood/timber and the inclusion of recycled and reused wood fibres. |
| Monitoring organisations have not functioned as expected | The proportion of imports covered by MOs' systems is not available and only 13 MOs have been officially verified and uptake by operators is reportedly low. This is for a number of reasons, including: operators implementing DD Systems themselves through adjusting the responsibilities of |

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| | existing staff; costs; reluctance to contract MOs as they are obliged to report discrepancies where operators do not use their DD System properly; lack of incentive due to perceived low level of enforcement by CAs. |
| Design and application of VPAs and/or other supply-side measures (lessons learned from FLEGT Regulation) | |
| Lack of engagement in VPAs | Several barriers have prevented key exporting countries to the EU (not deemed low risk) from engaging in VPAs. Perhaps the most important are feelings of 'sovereignty' over domestic resources and regulation, some feel they have the capacity to do things themselves and more recently the rise of China as an important player in the global timber market. These are likely to continue to prevent engagement in the future |
| Length of VPA negotiations and implementation | VPA negotiations are long and complex, leading to what some term as 'FLEGT-fatigue'. The processes required to make the VPA operational are complex (even though they focus on the relatively 'simple' concept of legality and consider one group of commodities), and partner countries often suffer capacity and resources limitations, weak governance, lack of political will and corruption. Ultimately political will is a critical driver of progress, and legality of timber may suffer from its profile relative to other key topics such as climate change and its importance economically. |
| Challenges arise for EU operators during VPA negotiation and implementation | Whilst in negotiation or implementation, the status of exports from these countries is not always clear and CAs/operators report it can be harder to obtain necessary information for DD from VPA countries versus non-VPA countries. Hence it has been challenging for EU importers to exercise DD on timber and timber products derived from VPA partner countries that have not reached FLEGT licensing yet, due to insufficient knowledge and available information regarding their VPA level of implementation. Implementation and enforcement of EUTR can be perceived as jeopardising or counter-productive to FLEGT negotiations. |
| Challenges also arise once licencing commences | Systems need to be continually improved (both in licencing countries and EU MS), and (given they rely on participation of the exporting country) once in place, the legal system in the partner country continues to be subject to political and policy changes (as evidenced by the recent proposal by Indonesian authorities that would free wood product exporters from having to obtain licenses ensuring legality of exports). |
| Other design/implementation issues lessons learned (applicable to demand and supply-side action) | |
| Flexibility to adapt to challenges, in particular changes in trade flows | The rise of China as a global player in the timber market, and the changes in trade flows as a result, have been an important context for both Regulations. This underlines the importance of the ability and flexibility to adapt to changes in trade flows of commodities. 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. |
| Flexibility to adopt to technological advances | Equally technological advances continue to be made that could help improve the effectiveness of policy in this space - e.g. apps that identify species, use of satellite data to track deforestation, isotope-tracing and other advances in timber identification, etc. It is also important that Regulations are flexible to also be able to take advantage of such developments (where appropriate) to continually improve implementation. |

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