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Evaluation

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

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1. EXECUTIVE SUMMARY

This Staff Working Document evaluates the application of Regulation (EU) No 995/2010¹ (the Timber Regulation, hereinafter the EUTR or the Regulation) during its first two years of application.

The EUTR was adopted in December 2010 and entered into application on 3 March 2013. The interim period was intended to allow competent authorities (CAs) in the Member States and the industry to prepare for its application. The Commission elaborated during this time a delegated and an implementing act to facilitate implementation².

In accordance with Article 20(3) of the EUTR, the EC has to review by 3 December 2015, on the basis of reporting on and experience with its application, "the functioning and effectiveness of the Regulation ". The present evaluation, the first since the entry into force of the EUTR, is based on these legal requirements. The evaluation has been conducted according to the EU 'Better Regulation'³ guidelines. It provides replies to five evaluation questions: relevance, effectiveness, efficiency, coherence and EU-added value.

The EUTR is an EU legislative instrument to address the global problem of illegal logging by acting on the side of the demand for timber and timber products. It forms part of a broad set of measures introduced with the Forest Law Enforcement Governance and Trade Action Plan (FLEGT AP), the Union's overall response to the pervasive problem of illegal logging and its devastating impact on forests.

The FLEGT AP was adopted in 2003. It sets out processes and measures to reduce the marketing of illegal timber into the EU, to improve the supply of legal timber and to increase the demand for timber sourced from responsibly managed forests. A central element of the FLEGT AP are the Voluntary Partnership Agreements (VPAs) signed between the EU and non-EU timber producing countries⁴. As the FLEGT AP recognised the possibility of developing new legislation to overcome the limitations of a bilateral supply-side approach, in 2008 the Commission submitted a legislative proposal, which later resulted in the adoption as the EUTR.

The implementation of the EUTR has been slow in most Member States. While some Member States have progressed in fulfilling the obligations imposed by the EUTR, the overall implementation remains insufficient and there are still four not fully compliant Member States.

The evidence collected suggests that insufficient resources allocated to CAs are a major challenge for the effective enforcement of the EUTR. Nonetheless, it should be considered that the EUTR has been issued in a period of reduced public expenditure, which may have impacted upon resources allocation. The assessment also shows that the types and level of sanctions for infringements are highly divergent across Member States and a different understanding and enforcement of the EUTR exists among CAs. While there is indication that EU operators have increasingly applied the due diligence (DD) requirements, implementation and compliance by the private sector has been uneven.

¹ Regulation (EU) No 995/2010, OJ L 295, 12.11.2010, p. 23–34.

² Commission delegated Regulation (EU) 363/2012, OJ L 115, 27.4.2012, p. 12–16 and Commission implementing Regulation (EU) 607/2012, OJ L 177, 7.7.2012, p. 16–18.

³ Commission communication on Regulatory Fitness and Performance Programme (REFIT) - COM(2014)368

⁴ Cameroon, Central African Republic, Ghana, Indonesia, Liberia and Republic of Congo.

Since the EUTR has been in force for a relatively short period of time, it was not possible to determine, with a reasonable degree of certainty, whether it has had significant impacts on the market such as causing shifts in trade flows.

The evaluation shows that the EUTR continues to be highly **relevant** for tackling illegal logging and related trade by changing market behaviour patterns and progressively establishing supply chains free of illegally harvested timber. This is also confirmed by the 7th Environmental Action Programme⁵, which refers explicitly to the EUTR "as a legal basis for the Union to address the global problem of illegal logging through its demand for timber and timber products". The EUTR is also an important instrument in the EU's international efforts to halt deforestation and forest degradation, enhance and maintain biodiversity and address global climate change.

Internationally, the EUTR encouraged other consumer countries (such as Australia, China and Japan) to adopt similar legislative acts and created an incentive for producer countries to develop systems to verify and demonstrate compliance with the legality requirements, including by concluding VPAs with the EU.

The **EU added-value** of the EUTR continues to be valid: the objective can be better achieved by establishing uniform rules that will allow the Union and its Member States to take full advantage of their combined market leverage to ensure demand for legally-harvested timber and avoid distortion of competition.

The EUTR is **coherent** with other relevant policy instruments and, in particular, with the VPAs and FLEGT-licencing scheme, and the EU Wildlife Trade Regulations⁶. The complementarity of these two policy frameworks is demonstrated by the recognition given by the EUTR to the FLEGT licences and permits issued according to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

In terms of **efficiency**, the EUTR has entailed highly variable compliance costs for the Member States and for the private sector, which have to be considered against its expected benefits in terms of reducing illegal logging and creating a level-playing field that keeps illegal timber and timber-based products out of the market.

A quantitative evaluation of the **effectiveness** of the EUTR is challenging due to the clandestine nature of the illegal activities and the absence of precise data on their volume and cost. At EU level, insufficient human and financial resources allocated to the CAs to effectively implement the EUTR have prevented it from developing its full potential.

In conclusion, the evaluation has revealed that the EUTR has the potential to achieve its objectives. However, further consistent efforts are needed from both the Member States and the private sector before an effective and efficient application can be achieved.

The EUTR has, nonetheless, produced some first tangible results: the communication campaigns carried out by the Commission and the Member States have raised awareness of the problem of the illegal logging amongst EU consumers. It has also created an incentive for producer countries to develop systems to verify and demonstrate compliance with the legality requirements.

⁵ Decision no 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet', OJ L 354, 28.12.2013, p. 171–200.

⁶ Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, OJ L 61, 3.3.1997, p. 1–69.

2. INTRODUCTION

2.1 Purpose of the evaluation

This Staff Working Document (SWD) of the European Commission accompanies the report to Council and European Parliament on the first two years of application of the EUTR (March 2013- March 2015), as required by Article 20(2) of the Regulation.

This evaluation examines to what extent the EUTR has fulfilled its objectives to prevent the placing of illegal timber and products derived from such timber on the internal market. It looks into what works and what does not and whether some elements or features are particularly successful or not. It is an *ex-post* evaluation of the Regulation, based on a comprehensive consultation strategy, which includes the April 2015 reports submitted by the Member States, the results from the open public consultation, spontaneous inputs from stakeholders, targeted interviews with pre-defined stakeholders groups, analysis of relevant scientific articles, a trade flow analysis and findings from an evaluation report produced by an external consultant. In particular, it examines the performance of the Regulation according to the standard evaluation questions of relevance, effectiveness, efficiency, coherence and EU-added value, supplemented by replies to specific questions, as required by Article 20 of the EUTR.

The evaluation provides a summary overview of the implementation and the functioning of the Regulation during the first two years of its application. It considers how and to what extent its objectives were reached. It also describes the challenges and problems the EUTR has faced with regard to its compulsory requirements, the domestic implementation of its provisions and the shortcomings and discrepancies within its application. It additionally indicates possible solutions to improve the EUTR and its application on the basis of the gathered evidence.

The results of this evaluation will be used to further improve the implementation and application of the EUTR, through a range of measures as presented in the findings and conclusions.

2.2 Scope of the evaluation

The evaluation covers the first two years of the EUTR application. It follows the areas defined in the terms of reference and replies to the specific questions listed in the evaluation questions identified in section 4.

The evaluation has been conducted in accordance with Article 20(3) of the EUTR, which specifically requires the Commission to review "the functioning and effectiveness of the Regulation, including in preventing illegally harvested timber or timber products derived from such timber being placed on the market" on the basis of the Member States reporting and experience with the EUTR application.

Pursuant to Article 20 (3) and (4) of the EUTR, the evaluation shall additionally review:

- The effectiveness of the prohibition of placing illegally harvested timber and timber products derived from such timber on the market as set out in Article 4(1) as well as the DDS set out in Article 6 of the Regulation;
- The administrative consequences for small and medium-sized enterprises and the product coverage;
- The current Union economic and trade situation with regard to the products listed in Chapter 49 of the Combined Nomenclature, taking particularly into account the competitiveness of the relevant sectors, in order to consider their possible inclusion in the list of timber and timber products set out in the Annex of the EUTR.

Concerning the geographic scale, the EUTR applies within the EU but, by prohibiting illegal timber and timber products from being traded within the internal market, its impact is expected to go beyond the EU's boundaries. This evaluation focuses on how the EUTR is applied in the EU Member States and examines to what extent operators and traders dealing with timber products covered by the Regulation comply with the new obligations.

These guiding themes are investigated in line with the Commission policies for policy/legislative evaluations and responses are provided for each of the mentioned five evaluation questions.

3. BACKGROUND TO THE INITIATIVE

3.1 Description of the initiative and its objectives

Illegal logging is a pervasive problem of major international concern. It has a devastating impact on some of the world's remaining forests, as well as on the people who live in them and who rely on the resources that forests provide. It contributes to deforestation and forest degradation, which may be responsible for 7 to 14%⁷ 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 acting in accordance with applicable legislation.

The EU is one of the largest consumers of timber products in the world. Therefore, EU companies and governments may have a significant impact on illegal logging. If they buy illegal timber, they create profitable markets for illegal loggers and ultimately undermine efforts to enforce forest law in timber-producing countries.

Taking its responsibility as one of the biggest consumer markets and committed to fight illegal logging and associated trade, in 2003 the EU defined a comprehensive policy through the Forest Law Enforcement Governance and Trade Action Plan (FLEGT AP). The FLEGT AP sets out processes and measures to prevent the marketing of illegal timber into/in the EU; to improve the supply of legal timber and to increase demand for timber from sustainably managed forests. The VPAs signed between the Union and non-EU timber producing and exporting countries represent a central part of the EU supply-side strategy to reduce illegal logging and related trade on an international scale. The FLEGT AP has also been subject to an evaluation of the eleven years (2003-2014) from its implementation, which aimed to

⁷ <https://ec.europa.eu/jrc/en/news/reporting-greenhouse-gas-emissions-deforestation-and-forest-degradation-pan-tropical-biomass-maps>.

assess the progress achieved and its possible shortcomings. Overall, its objectives are coherent with the EUTR and reinforce its further implementation.

The FLEGT AP recognised the possibility of developing new legislation to address the demand side of illegal logging, which resulted into the adoption of the EUTR. The EUTR establishes the following three key obligations:

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

A wide range of timber products listed in its Annex, which uses the EU Customs' Combined Nomenclature, are subject to the above prohibition, DD and traceability obligations of the EUTR.

The EUTR defines the DD obligations and requests that operators develop and apply a DDS or use the DDS of a MO, foreseen by the EUTR as assistance providers to operators. In the latter case, the MO is required to verify that its DDS is properly used by operators.

The EUTR is a binding legislative instrument that must be applied in its entirety across the EU. It does not require measures to incorporate it in the national legal system of the Member States (transposition). It imposes obligations on the EU institutions, on the Member States and on the private entities to which it is addressed.

In more detail, the EUTR imposes the following obligations to the Member States:

Article 7 of the EUTR stipulates that "*Each Member State shall designate one or more competent authorities responsible for the application of this Regulation. Member States shall inform the Commission of the names and addresses of the competent authorities by 3 June 2011*".

Article 19 states "*The Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented*". Article 19 of the EUTR provides further guidance with regard to the type of penalties that Member States may foresee in national legislative acts, which may include, *inter alia*, fines, seizure of timber and immediate suspension of authorisation to trade. The Regulation leaves it to the Member States to further specify the type and level of penalties for infringement of the EUTR obligations. The only criteria provided by the EUTR for evaluating the appropriateness of the penalties to be chosen by the Member States are that penalties must be "effective, proportionate and dissuasive". As a consequence, penalties foreseen by Member States vary substantially among each other.

Article 10 of the EUTR requires that CAs designated by Member States carry out checks to verify if operators comply with the requirements set out by the EUTR. It specifies that checks shall be conducted in accordance with a periodically reviewed plan following a risk-based approach. Article 11 of the EUTR additionally specifies that CAs shall keep records of the checks.

In order to ensure EUTR compliance, article 12 of the EUTR provides for cooperation among CAs, among CAs and administrative authorities of third countries and among CAs and the Commission.

Additional detailed requirements for the application of the EUTR are laid down in the Commission delegated Regulation (EU) 363/2012 on the procedural rules for the recognition and withdrawal of recognition of MOs⁸, and in the Commission implementing Regulation (EU) 607/2012 on the detailed rules concerning the DDS and the frequency and nature of checks on MOs⁹. Furthermore, the Commission elaborated, in close collaboration with the Member States, a Guidance document on the application of the EUTR¹⁰.

3.2 Baseline

The EU policy regarding illegal logging and related trade was set out in the FLEGT AP, which included a number of measures to ensure that timber and timber products placed on the internal market have been legally harvested or manufactured from legally harvested timber.

One of the key measures proposed by the FLEGT AP is a licensing scheme for the prevention of illegally logged timber and products made of such timber coming into the EU. The licensing scheme would be implemented as part of the VPAs, which are negotiated between the EU and a number of timber-producing countries.

Even though the VPAs approach continues to be a key instrument, it has its limitations. First, it relies on the willingness of third countries to conclude such agreements. Second, the negotiations towards concluding VPAs have taken considerable time. Besides, it has been claimed that the VPAs could be circumvented and illegal timber could still be imported into the EU through third countries, which had not concluded VPAs with the EU. Such concerns have ultimately highlighted the need to level the playing field and, accordingly, promulgate legislative acts that could prevent timber and timber products from being traded within the EU market.

The EU FLEGT AP foresees the possibility of undertaking an analysis of additional measures, which could enhance the EU efforts to eliminate imports of illegally harvested timber and timber products into the EU market. Accordingly, in 2008 the Commission carried out a study to examine the economic (in particular, the regulatory costs for the government sector, the potential costs for the private sector and the trade impacts in both EU and non-EU countries), social (employment, other social factors) and environmental impacts of possible further policy or legislative measures to address the problem of timber and timber products originating from illegal logging and entering the EU market¹¹. The study identified and compared five options to the "baseline" scenario, which was the continuation of the existing FLEGT VPAs approach. A Commission SWD¹² on additional options to combat illegal logging was published in 2008. The Commission SWD concluded that future policy developments should include demand-side measures, especially since at that time no specific demand-side measure addressing illegal logging existed at the EU level.

Following the 2008 impact assessment, the Commission put forward the EUTR Proposal.

⁸ OJ L 115, 27.4.2012, p. 12–16.

⁹ OJ L 177, 7.7.2012, p. 16–18.

¹⁰ <http://ec.europa.eu/environment/forests/pdf/Final%20Guidance%20document.pdf>.

¹¹ Commission impact assessment report on additional options to combat illegal logging can be found here: http://ec.europa.eu/environment/forests/pdf/impact_assessment.pdf. A full consultants` report may be seen here: http://ec.europa.eu/environment/forests/pdf/ia_report.pdf.

¹² http://ec.europa.eu/environment/forests/pdf/impact_assessment.pdf.

4. EVALUATION QUESTIONS

The policy evaluation is based on a set of questions to review the progress towards the objectives and targets of EUTR. The questions address the effectiveness (the extent to which objectives have been achieved), efficiency (cost and benefits assessment), coherence (interaction with other policies and initiatives), relevance (pertinence of the objectives) and EU added value (compared to Member State action) of the EUTR.

Relevance:

- ✓ Has the EUTR contributed to address the problem of illegal logging on a global scale? (Is the objective of the EUTR relevant to meet the need to address deforestation and is its scope appropriate?)
- ✓ How does the EUTR facilitate achieving international obligations of the European Union?

EU added value:

- ✓ What is the additional value resulting from the EU intervention, compared to what could be achieved by Member States at national and/or regional levels without any EU action?
- ✓ To what extent do the issues addressed by the intervention continue to require action at the EU level?

Efficiency:

- ✓ What are the costs and benefits (monetary and non-monetary) associated with compliance with the EUTR? Can any cost be identified that are out of proportion with the benefits achieved?
- ✓ What are the administrative consequences for small and medium-sized enterprises in particular?
- ✓ What good practices can be identified in terms of cost-effective implementation of the EUTR?

Effectiveness:

- ✓ To what extent has the EUTR been effective in preventing illegally harvested timber or timber products derived from such timber being placed on the market, e.g. by change of trade flows? How has the prohibition of the placing on the market and the due diligence obligation contributed to the fulfilment of the objectives?
- ✓ What main factors have contributed to or stood in the way of achieving this objective?
- ✓ How has the EUTR reinforced the other measures of the FLEGT Action Plan and, if not, why?
- ✓ Did the EUTR achieve any other significant change (positive or negative)?
- ✓ Is the product coverage adequate to achieve the objectives of the EUTR? Given the current Union economic and trade situation with regard to the products listed under Chapter 49 of the Combined Nomenclature, should those products be included in the product scope of the EUTR?
- ✓ Can loopholes in the regulatory regime established by the EUTR be identified and, if so, what are they and how can they be remedied?

Coherence:

- ✓ To what extent is the EUTR satisfactorily integrated and coherent with other EU legislation with similar objectives?
- ✓ What gaps, overlaps, discrepancies, contradictions or similar issues can be identified in other relevant legal acts or activities, which hampered or improved the achievement of the objectives of the EUTR?

5. METHOD/PROCESS FOLLOWED

5.1 Methodology

The evaluation of the EUTR started in April 2015¹³ and covers the period of March 2013 – March 2015.

In compliance with Article 20(2) of the EUTR, the main information source for elaborating the Commission's report to the European Parliament and Council is the individual Biennial Member States' reports on the application of the Regulation submitted to the Commission by 30 April of every second year following 3 March 2013. The report format was developed in close cooperation with the Member States and endorsed at the 19th FLEGT Committee meeting on 19 November 2014.

The EUTR evaluation was also based on the following information sources:

- Information obtained at the meetings of the FLEGT committee and the FLEGT/EUTR Expert Group, as well as through direct contacts with the Member States CAs and other relevant meetings organised by the Member States CAs or other relevant stakeholders.
- A trade flow analysis carried out to assess the potential impact of the EUTR on international timber trade by analysing data on imports of timber and timber products into the EU, and taking into account the economic situation and changes in timber production within the EU. The study covers all timber and timber products regulated by the EUTR, imported into the EU and traded between the EU Member States in 2004-2014. The analysis focuses in particular on ascertaining whether available trade data indicated, during the period in question: (i) Shift between domestic production/intra-EU trade and imports; (ii) Shift in countries exporting for the EU market; (iii) Shift in entry points of imports into the EU. The analysis builds on the value and quantitative data compiled for the Baseline Report of the FLEGT Independent Market Monitoring (IMM)¹⁴. The main sources of information are EUROSTAT/COMEXT (import data) and FAOSTAT/PRODCOM databases (production data). Annex I to this document provides relevant data from the trade flow analysis.
- A multi-stakeholder consultation divided into (i) open public consultation on the dedicated website “Your Voice in Europe” (15 April-3 July 2015); (ii) Spontaneous contributions¹⁵ submitted over the period January-July 2015; (iii) Targeted email and phone consultation with national non-governmental organisations (NGO) and/or civil society organisations (CSOs)¹⁶; private operators¹⁷ within the Member States, and MOs. The findings were analysed to look for commonalities and divergences in opinions across different stakeholders' groups. An overview of the responses to the multi-stakeholder consultation is provided in Annex II to this document.

¹³ The Commission has used the services of an external contractor to support the collection and processing of relevant information.

¹⁴ See on <http://www.itto.int/imm/>.

¹⁵ 12 respondents representing industry and their interest organisations, government and certification bodies submitted feedbacks to the Commission and/ or the consultant team on an ad-hoc basis.

¹⁶ Out of the 74 organisations contacted, six responded to the questionnaire.

¹⁷ Out of the 738 operators contacted, 20 responded to the questionnaire.

- To complement the analysis, 14 relevant scientific articles, policy papers and research literature from different organisations and inputs from non-EU stakeholders made available by the evaluation of the FLEGT Action Plan were reviewed.

The evaluation included a cost-effectiveness analysis to compare the Regulation's costs against its outputs and/or benefits.

5.2 Limitations – robustness of findings

The evaluation is based on a review of evidence. However, assessing the effectiveness of an innovative legislative tool only two years after its entry into application has proved to be challenging. Limited information is available on the impacts of the legislation and it is not possible to unconditionally ascribe some of the effects and trends emerging from the analysis to the EUTR application.

In addition, the following limitations were identified in relation to the main information sources used for the evaluation:

- (1) Even though Biennial Reports were submitted by all Member States, detailed information on the nature of penalties applied and the allocation of resources for controlling domestically harvested timber and imported timber and timber products was not provided.
- (2) Whereas the public on-line consultation of stakeholders on the Commission's web portal resulted in an adequate number of responses, the level of participation in the surveys targeting non-governmental/civil society organisations and private sector operators was very low. Hence, the results were not conclusive and can only be used as examples. In particular, more representative information about costs and benefits of exercising the due diligence would be needed.
- (3) The trade flow study was a macro-level analysis, which can disclose larger scale changes in timber trade between exporting and importing countries. However, the trade statistics do not provide information on the legality of traded commodities, or indicate whether there has been a switch from high-risk to lower risk suppliers within an exporting country.
- (4) Due to the pervasive but hidden nature of the problem, data on trade in illegal timber and timber products is very limited¹⁸ and its accuracy is difficult to ascertain. For this reason, the impact of the EUTR application on trade in illegal timber could only be inferred from other available statistics like e.g. the FLEGT Independent Market Monitor (IMM) project.

6. IMPLEMENTATION STATE OF PLAY (RESULTS)

The information on the state of implementation is structured as follows:

1. Designation of CAs
2. Legal Basis for Imposing Penalties for Infringements of the EUTR
3. Checks on Operators and MOs
4. Human and Financial Resources
5. Communication, Public Awareness and Dissemination
6. Cooperation on Intelligence

(1) Designation of Competent Authorities

¹⁸ One example can be found here: <http://www.illegal-logging.info/content/illegal-logging-and-related-trade-indicators-global-response>.

27 Member States have designated CAs to monitor the compliance of operators with the requirements of the EUTR¹⁹. In this regard, it should be underlined that the CAs structures, position, powers and status vary among Member States, as they reflect the different legal and institutional frameworks of each country. The process of designation is still ongoing in Spain, which has still not fulfilled the Regulation requirements.

(2) Penalties for Infringements of the EUTR

In their biennial reports, 24 Member States²⁰ reported on legislative or non-legislative acts where penalties for infringement of the EUTR obligations were laid down (Table 1). Penalties range from notice of remedial actions, fines, seizure of timber, and suspension of authorisation to trade to imprisonment. Greece, Hungary, Romania and Spain have still to adopt adequate legislative acts to comply with EUTR requirements. The Commission has taken legal actions against these Member States. Bilateral dialogues were initiated with a number of other Member States and proved successful in bringing the majority of Member States rapidly to compliance.

Table 1 Member States' Legal Framework to Apply the EUTR

| Country | Applicable laws |
|--|--|
|  Austria | Holzhandelsüberwachungsgesetz |
|  Belgium | Law on Sustainable Ways of Consumption & Production (1998) |
|  Bulgaria | Forest Law |
|  Croatia | Official Gazzette JSC 54/13), and the Law on Croatian Customs Directorate (Official Gazzette 68/13). |
|  Cyprus | Law for the Regulation of Trade of Timber and Timber Products (2013) |
|  Czech Republic | Act on Placing Timber and Timber Products on the Market (2013) |
|  Denmark | Danish European Union Timber Regulation Law |
|  Estonia | Law Enforcement Act, Forestry Law, Penalty Law |
|  Finland | Laki Puutavaran ja Puutuotteiden Markkinoille Saattamisesta (Law on bringing timber and timber products to market) (2013), Criminal Law, Forest Legislation |
|  France | Law for the Future of Agriculture, Food and Forests |
|  Germany | Timber Regulation Law |
|  Greece | Draft Joint Ministerial Decision (for the Timber Regulation – EUTR) |
|  Hungary | Draft amendments to Government Decree No 143/2009 of 6 July 2009 |
|  Ireland | EU Timber and Timber Products (Placing on the market) Regulations (2015) |
|  Italy | Decree 178/14, Criminal Code |
|  Latvia | EUTR, Regulation of the State Forest (SFS) Law, Administrative Violation Code, Criminal Law, Law on Accounting, Law on Inventory of Trees and Round Timber, Forest Law, Criminal Law |
|  Lithuania | EUTR, Law on Forests and Administrative Code |
|  Luxembourg | National EUTR Law |
|  Malta | Timber and Timber Products (Placing on the market) Regulations (2015) |
|  Netherlands | Decree implementing EUTR Regulation, Administrative Law, Nature Conservation Act, Economic Offences Act, Criminal Laws, |
|  Poland | Administrative Law |
|  Portugal | Decree No. 76 (2013) |
|  Romania | Draft amendment of Act No 171/2010 |
|  Slovakia | Act on Forests (no.182/2014); Act on Environmental Protection and Landscape Preservation (no. 543/2002); Act on Internal Market and Consumer Protection (no. 128/2002) |

¹⁹ <http://ec.europa.eu/environment/forests/pdf/EUTR%20implementation%20scoreboard.pdf>.

²⁰ Greece, Hungary and Romania did not provide this information in their biennial reports. The information in Table 1 regarding these three Member States is based on direct communication with EC.

| Country | Applicable laws |
|--|---|
|  Slovenia | Forest Law, Financial legislation |
|  Spain | Project of Royal Decree/Forest Law, Project of Forestry Law/Constitution |
|  Sweden | Law on Trade of Timber and Wood Products (2014), EUTR, Environmental Code |
|  United Kingdom | Timber and Timber Products (Placing on the Market) Regulations (2013) |

Source: Biennial reports of EU Member States

In total, 13 Member States have recently adopted new laws for enforcement of the EUTR or have revised their existing national legislation in order to make a direct reference to the EUTR²¹. 11 Member States reported that they are using existing rules on penalties to sanction violations of the EUTR. Out of these 24 Member States:

- 20 apply notice of remedial actions (83%)
- 24 apply fines (100%)
- 19 apply seizure of timber (79%)
- 17 apply imprisonment (67%)
- 14 apply suspension of authorisation to trade (54%)
- 17 apply other penalties²².

The Member States that provided information on their legal framework have enacted sanctions for all three obligations of the EUTR (i) the prohibition of placing for the first time illegal timber on the internal market, (ii) the DD²³ and (iii) the traceability of timber and timber products. The type of penalties for infringements of the EUTR obligations vary: some Member States have administrative sanctions while others have made the violation of some of the EUTR obligations a criminal offence.

The range of fines and other penalties applied for violation of the prohibition is generally much higher than those applied for breach of the due diligence and traceability obligations. The range of penalties varies considerably across the Member States, which reported to have taken as criteria in determining the type and level of sanctions various factors such as the national economic conditions and levels of sanctions imposed for infringements of other comparable obligations, e.g. the EU Wildlife Trade Regulations²⁴. Since the number of cases where sanctions have been applied is still very low, more experience is necessary to accurately assess whether the penalties laid down by Member States are effective, proportionate and dissuasive.

(3) Checks on Operators and Monitoring Organisations

Article 10 of EUTR requires CAs to carry out checks to verify if operators comply with the requirements set out in Articles 4 and 6 of the Regulation. In addition, Article 8 of the EUTR subjects MOs to checks by CAs.

Article 10(2) of the EUTR further specifies that checks on operators shall be conducted in accordance with a periodically reviewed plan following a risk-based approach and, additionally, may be conducted when a CA is in possession of relevant information, such as

²¹ E.g. establishing sanctions for infringement of the EUTR obligations.

²² Other penalties are applied including written warnings (Austria), Asset Acquisition (Ireland), Forced Labour (Latvia), Confiscation of tools of which the offence was committed (Lithuania, Portugal), Withdrawal of financial subventions or other public support relating to forest activities (Portugal), and additional penalty payment's applied based on damage (Sweden).

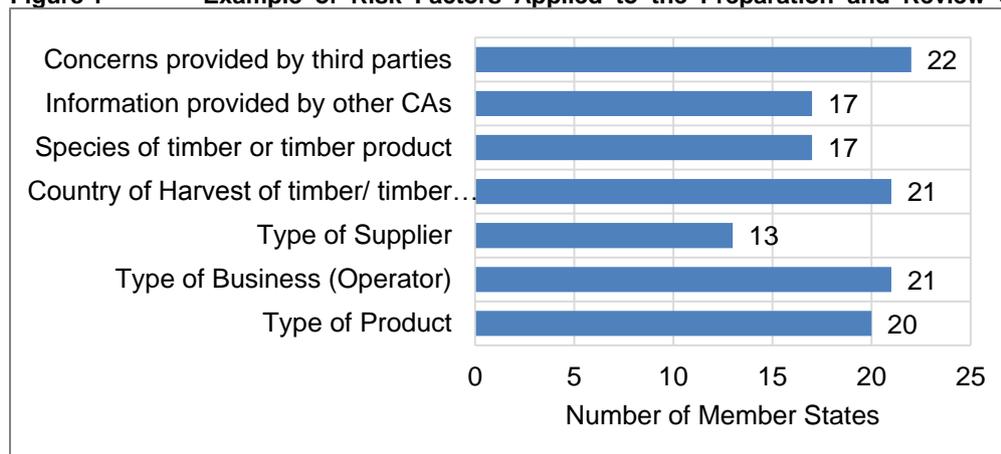
²³ Latvia, however, addresses DD obligation only in the context of notice of remedial actions and has laid down no DD related penalties.

²⁴ Council Regulation (EC) No 338/97 and Commission Regulation (EC) No 865/2006.

substantiated concerns provided by third parties concerning EUTR compliance by an operator.

26 Member States²⁵ reported that their CAs have plans in place for checking operators. All of them provide for a range of risk factors for the preparation and review of their check plans. The plans and risk factors therein address characteristics of suppliers and their products, and type of operators. Risk factors also include information received from external parties (stakeholders and/or other authorities). The most common risk factors applied by Member States are summarised in Figure 1.

Figure 1 Example of Risk Factors Applied to the Preparation and Review of the Check Plan



Source: Biennial Reports of EU Member States

The number of checks reported by Member States varies significantly and is not easily comparable. The reason is that their frequency may depend on the size of the respective country, the importance of the forestry sector in the national economy, the level of preparedness in implementing the legislation by the actual date of entry into application and, in some cases, on the different criteria being applied for reporting²⁶. Furthermore, in several Member States checks began later in the reporting period due to delays in the adoption of relevant national legislation and, in some cases, due to failure of the Member States to comply with the EUTR obligations. More time is therefore necessary to accurately assess whether the number of checks performed by Member States is adequate.

19 Member States reported having applied some form of remedial action and penalties for infringements of the EUTR after checks were conducted, as summarised in Table 2.

Table 2 Number of Checks Undertaken (March 2013 – February 2015) having resulted in Actions

| Country | Remedial Actions* | Remedial Actions that led to a penalty | Sanctions* | Other Action* |
|----------|-------------------|--|------------|---------------|
| Austria | 0 | 0 | 0 | 2 |
| Belgium | 2 | 0 | 0 | 3 |
| Bulgaria | 320 | 2 | 1 | 0 |
| Croatia | 27 | 0 | 0 | 2 |
| Cyprus | 0 | 0 | 0 | 0 |

²⁵ Greece and Hungary did not provide information on risk factors applied.

²⁶ Some Member States reported customary controls on domestically harvested timber resulting in thousands of checks, while other countries have not done the same.

| | | | | | |
|---|----------------|-----|----|-----|-----|
|  | Czech Republic | 1 | 1 | 2 | 126 |
|  | Denmark | 9 | 0 | 0 | 1 |
|  | Estonia | 0 | 0 | 131 | 0 |
|  | Finland | 2 | 0 | 0 | 0 |
|  | France | 17 | 2 | 0 | 0 |
|  | Germany | 120 | 0 | 0 | 2 |
|  | Greece | 0 | 0 | 0 | 0 |
|  | Hungary | 0 | 0 | 0 | 0 |
|  | Ireland | 0 | 0 | 0 | 22 |
|  | Italy | 0 | 0 | 0 | 0 |
|  | Latvia | 0 | 0 | 0 | 6 |
|  | Lithuania | 40 | 0 | 624 | 0 |
|  | Luxembourg | 0 | 0 | 0 | 0 |
|  | Malta | 0 | 0 | 0 | 0 |
|  | Netherlands | 24 | 0 | 0 | 0 |
|  | Poland | 0 | 0 | 0 | 0 |
|  | Portugal | 0 | 0 | 0 | 0 |
|  | Romania | 80 | 0 | 0 | 0 |
|  | Slovakia | 58 | 79 | few | few |
|  | Slovenia | 3 | 0 | 1 | 0 |
|  | Spain | 0 | 0 | 0 | 0 |
|  | Sweden | 6 | 0 | 0 | 4 |
|  | United Kingdom | 20 | 0 | 0 | 0 |

* "Remedial actions" denotes issuance of notice of remedial actions, "Sanctions" represents the total number of penalties imposed and "Other Actions" include other measures such as follow-up controls and other measures related to inadequacies in DDS, temporary seizure of timber, open cases and unspecified actions taken. The data reported by different Member States do not always refer to the same range of actions, and they are not to be used in a comparative analysis.

Source: Biennial Reports of EU Member States

It should be noted that checks on MOs have not been performed during the period covered by the report as the first checks on MOs are foreseen two years after their recognition and the first two MOs were recognised by the Commission only in August 2013.

(4) Human and Financial Resources

Member States were requested to provide information on their human resources available for the application and enforcement of the EUTR. A wide variation in human resources available for the application and enforcement of the EUTR was reported, ranging from approximately 1 to 200 person/month²⁷. The numbers reported should be analysed with care and any conclusion should take into consideration the specific situation of each Member State, including but not limited to, the size of the Member State and the importance of the forest-based sector in its economy.

Member States were also asked to provide the total annual budget for the EUTR enforcement. This information is further discussed under the following efficiency sub-section.

(5) Communication, Public Awareness and Dissemination

New legislation requires good communication and dissemination of its implications at the national level as well as continuous promotion of public awareness. In 2012, before the entry into application of the Regulation, the Commission carried out a communication campaign on

²⁷ Member States biannual reports.

the EUTR, which included the preparation and dissemination of audio-visual and printed material explaining the new requirements imposed by the EUTR as well as a dedicated website translated in all EU official languages²⁸. In addition, 24 Member States provided information in the Biennial Reports on how they used different communication tools to disseminate information on the EUTR. These included emails, magazines, press releases, workshops, and radio broadcasts.

(6) Cooperation and information exchange in the EU and internationally

Sharing information and building intelligence is an important aspect of the EUTR enforcement and, therefore, the success and efficiency of the EUTR depends on the ability of organisations in different Member States to cooperate and share information with each other, as well as with responsible institutions in third countries.

Cooperation between public authorities is crucial and it occurs mainly on two levels: (1) cooperation between CAs and other public authorities within a Member State; and (2) cooperation between Member States and the European Commission. Cooperation with non-Member States on intelligence-sharing is also pursued.

According to the Biennial Reports from Member States, areas of cooperation between CAs within a Member State were quite diverse and include the following: (i) sharing data on customs declarations; (ii) investigations on specific shipments and temporary seizures; (iii) verifying documents in the country of origin; (iv) mutual information and coordination for CITES; (v) technical support; (vi) import data; (vii) checks on traders; (viii) testing imported wood samples; (ix) risk analysis.

Member States reported that more than 50% of their CAs cooperates within each other. Besides the regular FLEGT Committee and FLEGT/EUTR Expert Group meetings²⁹, regular informal meetings to discuss enforcement issues are organised by Member States. Other meetings organised by different stakeholders are also used for information exchange among CAs of the different Member States. In addition to cooperation within the EU, 12 Member States pointed out that they cooperate with non-EU agencies from the following countries: Norway, Switzerland, Russia, Ukraine, Serbia, Indonesia, Australia, USA, Brazil, Japan, and Democratic Republic of Congo.

Obligations imposed on the Commission:

In accordance with Article 7(2) of the EUTR, a list of the Member States' CAs has been made publicly available on the webpage of the Directorate-General for the Environment.³⁰ This list is regularly updated to reflect changes reported by the Member States.

To comply with the obligation imposed on the Commission by Article 13(2) of the EUTR and facilitate exchange and dissemination of relevant information on illegal logging, the Commission elaborated and provided the Member States' CAs with a dedicated electronic communication platform³¹. Through this platform Member States CAs can access information on relevant legislation in EU Member States and third countries, identify useful contacts when additional information is necessary, obtain relevant documents and reports on particular cases, and actively exchange information and data to discuss the most appropriate ways to handle cases in a harmonised way.

²⁸ http://ec.europa.eu/environment/eutr2013/index_en.htm.

²⁹ Minutes of FLEGT/EUTR Expert Group meetings are available at:

<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=3282>.

³⁰ http://ec.europa.eu/environment/forests/pdf/list_competent_authorities_eutr.pdf.

³¹ <http://capacity4dev.ec.europa.eu/eutr-competent-authorities/>.

A EUTR Guidance document was developed in 2012 by the Commission in close collaboration with the Member States to provide explanation on key provisions of the Regulation in order to achieve a uniform application across the EU³². Further sections to the EUTR Guidance document can be included when there is a need to clarify additional aspects of the EUTR.

The EUTR specifies that the Commission can recognise monitoring organisations (MOs), after having consulted the Member State(s) concerned, if the applicants fulfil the requirements set out in Article 8(2) of the EUTR. The Commission began recognising applicant MOs after the adoption of a Commission implementing act and a Commission delegated act³³, which completed the EUTR legal framework, provided additional details on the requirements for MOs and established the recognition procedure. The recognition of MOs by the Commission took longer than expected due to the complexity of the recognition process. At the time of the evaluation, 9 MOs³⁴ have been recognised and further applications are currently being processed. A full list of recognised MOs is available on the webpage of the Directorate-General for the Environment³⁵.

7. ANSWERS TO THE EVALUATION QUESTIONS

7.1 Relevance

The Union is committed to fight illegal logging and related trade, which continues to be a persistent problem worldwide with far-reaching negative environmental, social and economic consequences. Originally envisaged as part of the FLEGT Action Plan, the EUTR was adopted also in response to the Sixth Environment Action Programme, which included as a priority action the examination of the possibility of taking active measures to prevent and combat trade in illegally harvested timber. The Regulation was designed to address this issue in conjunction with other measures in the FLEGT AP and other relevant international efforts to eliminate illegalities in the forest sector. Indeed, Recital 8 of the Regulation states that “*it is necessary...to complement and strengthen the FLEGT VPA initiative and to improve synergies between policies aimed at the conservation of forests and the achievement of a high level of environmental protection, including combating climate change and biodiversity loss.*”³⁶ The EUTR aims at addressing the problem of illegal logging both within and outside the EU as it covers imported timber and timber products and timber and timber products from timber harvested within the EU.

The Seventh Environment Action Programme 2013-2020 (7th EAP) follows up by declaring that the Union will continue to promote sustainable development through the negotiation and implementation of dedicated provisions in its international trade agreements and the bilateral FLEGT VPAs, which ensure that only legally harvested timber enters the Union market from partner countries. It explicitly refers in this context to the EUTR as a legal basis for the Union to address the global problem of illegal logging through its demand for timber and timber products.

³² See n. 12 above.

³³ See n. 2 above.

³⁴ After the evaluation period 3 more MOs were recognised by the Commission.

³⁵ <http://ec.europa.eu/environment/forests/mos.htm>.

³⁶ In full, Recital 8 of the Regulation states that “*Given the major scale and urgency of the problem, it is necessary to support the fight against illegal logging and related trade actively, to complement and strengthen the FLEGT VPA initiative and to improve synergies between policies aimed at the conservation of forests and the achievement of a high level of environmental protection, including combating climate change and biodiversity loss.*”

In order to protect, conserve and enhance the Union's natural capital, the 7th EAP shall ensure that by 2020 forest management is sustainable, and forests, their biodiversity and the services they provide are protected enhanced as far as feasible, and the resilience of forests to climate change, fires, storms, pests and diseases is improved.

Has the EUTR contributed to address the problem with the illegal logging on a global scale? (Is the objective of the EUTR relevant to meet the need to address deforestation?)

Feedbacks from the national CAs, provided at Commission EUTR Expert Group meetings indicate that operators progressively require suppliers to provide evidence on the legality of the products prior to their delivery to the EU market and favour third-party verified or certified suppliers as a risk mitigation tool. This proves that the Regulation has encouraged more responsible sourcing policies and, therefore, demonstrated its potential change operators' market behaviour and to establish supply chains free of illegally harvested timber.

Illegalities in the forest sector are commonly associated with deforestation and degradation of forests (Tacconi 2012; Gan 2013)³⁷. Although the demand for timber is only one factor affecting deforestation rates in supplier countries – apart from urbanisation and conversion of forests in order to meet demand for land for agriculture – the EUTR could have a positive influence on the problem of deforestation and degradation of forests if the EU market consistently requires evidence on the legality of timber supplies.

The EUTR is part of the Union's global efforts to address illegal logging and trade in illegal timber and timber products. It shares similar objectives with the US Lacey Act, the Illegal Logging Prohibition Act of Australia, and the Ordinance on Declaring Wood and Wood Products of Switzerland. Other major consumer countries such as Japan, China and South Korea are also at different stages in the process of considering or developing tools to address this issue. If effectively implemented, the EUTR due diligence requirement can influence suppliers of timber and timber products in the producer countries to provide evidence of legality of their products to their EU customers.

The requirements of the Regulation and of similar legislation in other key markets, such as the USA and Australia, are deemed relevant to address the illegal logging problem, particularly by imposing responsible sourcing practices, changing the market behaviour of operators and progressively creating supply chains free of illegally harvested timber.

The EUTR was also designed to level the playing field and recognise and further encourage the efforts made by countries which have concluded FLEGT VPAs with the EU³⁸. Provisional findings from the evaluation of the FLEGT Action Plan suggest that the EUTR has initially reinforced the implementation of national TLAS in the VPA countries.

How does the EUTR facilitate achieving the international obligations of the European Union with respect to the environment and climate change?

The EUTR contributes to global efforts to halt deforestation and forest degradation, promote sustainable forest management, enhance and maintain biodiversity and address global climate

³⁷ Tacconi, Luca. *Illegal logging: law enforcement, livelihoods and the timber trade*. Earthscan, 2012; Gan, Jianbang, Benjamin Cashore, and Michael W. Stone. "Impacts of the Lacey Act Amendment and the Voluntary Partnership Agreements on illegal logging: implications for global forest governance." *Journal of Natural Resources Policy Research* 5.4 (2013): 209-226.

³⁸ Cameroon, Central African Republic, Ghana, Indonesia, Liberia, Republic of the Congo.

change. It recognises in its Recital 1 that “forests provide a broad variety of environmental services essential for humankind, such as maintaining biodiversity and ecosystem functions and protecting the climate system”. In addition, Recital 3 states “Combating the problem of illegal logging in the context of this Regulation is expected to contribute to the Union’s climate change mitigation efforts in a cost-effective manner and should be seen as complementary to Union action and commitments in the context of the United Nations Framework Convention on Climate Change.”

The evidence gathered has shown that by requiring compliance with national legislation, the EUTR, together with the other elements of the FLEGT Action Plan, encourages better forest management. Efforts made by the countries that have concluded FLEGT VPAs with the Union and the principles incorporated in their TLAS, in particular with regard to the definition of legally produced timber, are recognised and encouraged in the EUTR. The Regulation establishes a presumption of legality for timber products covered by a FLEGT license³⁹, which ensures that only timber harvested in accordance with the relevant national legislation and timber products derived from such timber are exported into the Union. Thus, the combined effect of the EUTR and the other measures of the FLEGT Action Plan have the potential to contribute to biodiversity protection, conservation and sustainable management of forests, and climate change mitigation and adaptation. The EUTR is therefore considered relevant to help the EU meeting its commitments to address the global climate change and biodiversity conservation as well as to combat illegal logging and related trade as defined by the FLEGT Action Plan.

The EU and its Member States are actively implementing a number of forest-related multilateral agreements. The EU is a Party to the United Nations Convention on Biological Diversity (CBD) and has adopted a series of legislative and non-legislative measures in order to implement the Convention, such as the EU Biodiversity Strategy to 2020⁴⁰. The EUTR contributes directly to the achievement of the Strategic Goal B of the CBD to “reduce the direct pressures on biodiversity and promote sustainable use”, particularly Target 5 (*by 2020, the rate of loss of all natural habitats, including forests, is at least halved and where feasible brought close to zero, and degradation and fragmentation is significantly reduced*) and Target 7 (*by 2020 areas under agriculture, aquaculture and forestry are managed sustainably, ensuring conservation of biodiversity*).

The EU is also a Party to the International Tropical Timber Agreement, 2006 (ITTA)⁴¹. The EUTR contributes to the achievement of the ITTA objectives to promote the expansion and diversification of international trade in tropical timber from sustainably managed and legally harvested forests and sustainable management of tropical timber producing forests.

Regarding deforestation and climate change issues, in 2008 a Commission Communication⁴² on addressing deforestation and forest degradation set out a target aiming to halt global forest cover loss by 2030. Ongoing UNFCCC negotiations on reducing emissions from deforestation and forest degradation, conservation of forest carbon stocks, sustainable

³⁹ Article 3(1) of the EUTR.

⁴⁰ Our life insurance, our natural capital: an EU biodiversity strategy to 2020 European Parliament resolution of 20 April 2012 on our life insurance, our natural capital: an EU biodiversity strategy to 2020 (2011/2307(INI)) OJ C 258E , 7.9.2013, p. 99–114.

⁴¹ <http://www.itto.int/itita/>.

⁴² [COM (2008) 645 final – Not published in the Official Journal]. The Communication informed the European Parliament resolution of 23 April 2009 on addressing the challenges of deforestation and forest degradation to tackle climate change and biodiversity loss (OJ C 184 E/41).

management of forests, and enhancement of forest carbon stocks (REDD-plus) could provide an important tool for achieving this goal⁴³. The purpose of the REDD-plus mechanism is to incentivise the reduction of emissions from deforestation and forest degradation and to promote the conservation and sustainable management of forests and enhancement of forest carbon stocks in developing countries, while enhancing the non-carbon benefits of the multiple functions of forests, including alleviating poverty and building ecosystem resilience. The EU also supported the New York Declaration on Forests⁴⁴, pledging to cut the loss of forests by half by 2020 and, for the first time, to end forest loss by 2030. The EU and its Member States also subscribed to the UN Non-legally Binding Agreement on all types of Forests (Forest Instrument) adopted by the UN General Assembly in 2007 and to its four global objectives on forests⁴⁵.

7.2 EU Added Value

The added value of the EUTR was originally identified in Recital 31 of the Regulation: “*Since the objective of this Regulation, namely the fight against illegal logging and related trade, cannot be achieved by the Member States individually and can therefore, by reason of its scale, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union.*” In consultation with stakeholders, the current evaluation attempts to establish whether this reasoning is still valid.

What is the additional value resulting from the EU intervention, compared to what could be achieved by Member States at national and/or regional levels without any EU action?

In the absence of a common EU forest policy, there are variations between Member States in forest legislation standards and systems to control the legality of domestically harvested timber. The EUTR establishes a common baseline in prohibiting the placing on the EU market of illegal timber, in defining what constitutes illegal timber and requiring all operators to exercise DD to ensure that only legally harvested timber and derived products are placed on the market, thereby creating a level playing field within the EU.

Before the EUTR was adopted, domestic harvesting was regulated by Member States' rules while there hasn't been an obligation for operators to ensure that imported and domestically produced timber and timber products had been harvested in compliance with applicable legislation in the country of harvest. In other words, in the majority of the EU Member States it was not illegal to source timber and timber products made of illegally harvested timber in third countries. The only incentive for procurers to supply sustainable and legally harvested timber existed in public procurement timber policies, applied by some Member States based on EU public procurement rules, which required that public buyers source legal and/or sustainable timber.

The EUTR introduced an additional control layer that sets uniform obligations to all operators placing timber products on the EU market. It requires that Member States systematically carry out checks on operators and lay down rules on penalties for infringement

⁴³ http://unfccc.int/land_use_and_climate_change/redd/items/7377.php.

⁴⁴ United Nations. (2014). 2014 Climate Change Summit - Chair's Summary. Retrieved 22 April, 2015, from http://www.un.org/climatechange/summit/wp-content/uploads/sites/2/2014/05/Climate-Summit-Chairs-Summary_26September2014CLEAN.pdf.

⁴⁵ UNFF, The Non-Legally Binding Instrument on All Types of Forests, 28.04.2007, http://www.un.org/esa/forests/pdf/ERes2007_40E.pdf.

of the Regulation that must be effective, proportionate and dissuasive. There are no concrete indications that any of the Member States would have developed national legislation similar to the EUTR in the absence of an EU intervention. By establishing uniform rules at the EU level, the EUTR allows the EU and its Member States to take full advantage of their combined market leverage to ensure demand for legally-harvested timber and avoids market distortions, which would have occurred if varying rules have been put in place by individual Member States. Specific areas that benefit from actions coordinated at EU level include (i) systematic and effective use of DDS by operators, (ii) effective checks on operators and MOs by the national CAs, (iii) imposition of effective, proportionate and dissuasive penalties for infringements of the EUTR across the EU, (iv) systematic application of the traceability obligation by traders and (v) communication and transparency.

To what extent do the issues addressed by the intervention continue to require action at the EU level? What would be the most likely consequences of stopping or withdrawing the existing EU intervention?

Illegal logging and associated trade remain a pervasive problem at global level and in the EU. Continued action at the EU level and stronger international cooperation between the EU and both, producing and consuming third countries, remain necessary.

Withdrawing or weakening the EUTR would be a step backwards. It would deprive the Union of a modern legislative tool to reach its goal and tackle illegal logging and the ensuing negative consequences for the environment and climate change. The process of establishing a level playing field for economic operators would be reversed, leaving operators that have applied the DD requirements of the EUTR in a disadvantaged position, especially as potentially cheaper illegal timber would freely enter the EU market. This would entail significant reputational damage for the EU and would have negative consequences for the EU businesses, which have invested in legality assurance systems. Without the EUTR the progress achieved on other elements of the FLEGT Action Plan such as VPAs, as well as the possibility for the EU to make commitments to combat illegal logging in recent bilateral trade agreements, would be seriously undermined. The strong point consisting in close collaboration between Member States CAs and the Commission, which creates an important leverage at the global level and in bilateral relations with third countries (both producing and consuming), would be lost. It would undermine the achievements from the application of the Regulation and would halt the momentum gained during its first two years of application in developing a new culture for responsible sourcing and consumption of timber products.

7.3 Efficiency

The EUTR requires that the EU Member States and private sector operators count with appropriate financial and other resources in order to properly apply and comply with the Regulation. While assessing *Efficiency*, particular focus is on monetary and non-monetary costs of compliance, and corresponding results and benefits achieved.

What are the costs and benefits (monetary and non-monetary) associated with compliance with the EUTR? Can any costs be identified that are out of proportion with the benefits achieved?

Public sector costs:

The EUTR entailed compliance costs for the Member States. The resources allocated by the Member States for monitoring the application and enforcement of the Regulation depend on the size of the country and its institutional structure and governance, the characteristics of the forest sector, including land tenure and traditional management systems, as well as legality risks involved. The Biennial Reports demonstrate that small countries have lower allocations of resources than larger ones but the pattern of government expenditures includes variations that cannot be explained by the size of the forest sector alone. The allocated human resources of Member States⁴⁶ range approximately from 1 to 200 persons-month per year. Only 9 Member States provided quantitative information on their financial expenditure, which vary approximately between EUR 10 000 to EUR 370 000 per year for monitoring the application of the EUTR, including information-sharing activities and enforcement⁴⁷. It should be underlined that some Member States have allocated no additional financial resource for the implementation and enforcement of the EUTR⁴⁸.

Since the implementation process has been generally slow in most Member States, checks carried out by the CAs on operators were relatively limited during the evaluation period. In many cases, the allocation by Member States of trained staff to exercise control on operators looked highly disproportionate compared to the number of operators in those countries, leaving the deterrent effect of the enforcement activities rather limited. Therefore, the impact of enforcement activities was not yet sufficient, which has not stimulated companies to actively develop and use a DDS, neither could it guarantee the robustness of existing systems.

Private sector costs:

The EUTR entails compliance cost to the private sector as well, which are mainly related to the resources for setting up and maintaining a DDS. There are many factors, which have an impact on the resources needed for meeting the EUTR obligations, such as the existence and the quality of internal control systems prior to the entry into application of the EUTR; the number and geographic location of timber suppliers; the type of products traded and the complexity of the supply chains; the size of the business. Costs reported by operators for developing and operating a DDS vary significantly. Data extracted from consultations with operators and a survey carried out by the Global Timber Forum (GTF) on the DDS, which were based on a limited sample, show that development costs could range between EUR 5 000 – 90 000 and annual operating costs between EUR 1 000 – 70 000. Costs of developing a DDS and exercising due diligence seem to have only marginally (if at all) been passed on to clients.

The above assessment largely concurs with the cost prognosis in the Impact Assessment carried out in 2008 when the Commission put forward its proposal for a Regulation. Compliance cost for the prohibition obligation was expected to be neutral while compliance cost for the DD obligation were deemed to depend on previous existence and the quality of control systems in the companies` supply policy.

In the opinion of the few private sector representatives that responded to an independent consultancy survey⁴⁹, the economic consequences of the EUTR are manageable, particularly for companies already applying responsible sourcing policies. This may also be the case for

⁴⁶ 23 Member States included this information in their biennial reports.

⁴⁷ Biennial Reports of the EU Member States.

⁴⁸ Biennial Reports of the EU Member States.

⁴⁹ 16 companies identifying themselves as "operators" and 4 companies identifying themselves as "traders".

those opting for cost-effective practices or trading in timber products with relatively simple supply chains. However, it should be noted that a limited number of firms replied out of those targeted. For this reason, the results cannot be considered as fully representative of the all SMEs within the forestry sector. In addition, it is not possible to assess, with the information currently available, whether resources allocated by the private sector have been sufficient for ensuring the legality of the timber placed on the EU market. There are some indications that not all operators have an adequate DDS in place, meaning that the initial application of the Regulation has not yet sufficiently contributed to levelling the playing field for the economic operators.

International and EU benefits: On an international scale, the EUTR is perceived as an important legislative instrument to combat and reduce illegal logging and trade in illegal timber and timber products. According to the online public consultation, the Regulation has increased consumer confidence in timber products, awareness of the problem of illegal logging and understanding of the importance of sustainable management of forests. It has created an incentive for producer countries to develop systems to verify and demonstrate compliance with the legality requirements, including by concluding VPAs with the EU. It has also, together with the US Lacey Act, contributed to the development of similar legislation by other consumer countries such as Australia and Switzerland or to the ongoing discussions on possible legislative or non-legislative measures in other consumer countries such as Japan, Korea and China. With the adoption of the EUTR, the EU sent a signal to the world that it would no longer tolerate trade in illegally harvested timber and timber products.

Benefits for the private sector: Operators participating in the private sector survey did not provide information about any direct monetary benefits. Not all operators have a DDS in place, leaving the playing field on the market so far unlevelled. Non-monetary benefits are generally associated with the benefits of compliance and reducing the risk of reputational damage.

What are the administrative consequences for small and medium-sized enterprises in particular?

The DD obligation of the EUTR applies to both large and small and medium-sized enterprises (SMEs). If compared to large enterprises, SMEs seem to be in a disadvantaged position due to their low economies of scale, as the costs of the DDS need to be covered by a lower turnover. However, there are no clear indications that being a smaller business is a barrier to apply an effective DDS. At the same time, it could be observed that SMEs have the advantage of more organisational flexibility, higher level of specialisation and more direct contacts with a generally more limited number of suppliers. It must, however, be recalled that the evaluation is based on a very small sample of SMEs, which responded to the survey.

There seems to be a rather wide variety of costs spent by SME operators on their DDS. High-end development costs include investments in IT-based information systems and intensive training of staff, whereas low-end costs include operators with no need for major development of their systems and resources due to the simplicity of the supply chains, limited number of products and/or suppliers, suppliers' ability to demonstrate legal compliance or other reasons making the sourcing of legal timber less challenging.

There are indications that some SMEs are finding compliance with the EUTR a challenge. They may face difficulties to understand the technical requirements of DDS, lack staff with adequate knowledge and experience necessary for exercising DD or have only limited

financial resources to update their existing control systems to the required level. Evidence, however, has shown that the EUTR compliance costs for SMEs can be reduced if companies apply cost-effective practices (see below): avoid expensive IT solutions, and benefit from external technical support for developing and applying adequate DDS. These enterprises would, nevertheless, have benefitted from more technical information and affordable technical assistance, as recommended in Article 13 of the EUTR.

What good practices in terms of cost-effective application of the EUTR can be identified?

Cost-effective practices to implement the EUTR have been identified in the following fields: (i) cooperation between Member States' authorities as well as between them and counterparts in third countries, where a problem has been identified (ii) CAs use of substantiated concerns received from third parties concerning the compliance with the Regulation of operators or MOs and (iii) operators developing DDS which meets not only the EUTR requirements but also those of other existing legal instruments (i.e. the Lacey Act and the Australian Illegal Logging Prohibition Act); (iv) operators using voluntary third-party verified schemes (i.e. voluntary forest certification) in the risk assessment and risk mitigation process; (v) use for due diligence purposes of the results from the EU negotiations with the VPA countries concerning legality definitions and contacts with national authorities.

Cooperation between CAs and other agencies in other EU Member States or non-EU countries brings up a clear potential to reduce their cost of the Regulation's application and enforcement. At national level, cost savings can be achieved by involving the forest authorities, if they do not coincide with the EUTR CAs, in the control of the legality of domestically harvested timber, and by CAs cooperating with the customs authorities in controlling the legality of imported timber products. Sharing of intelligence between CAs from different institutions can lead to cost-effective development of knowledge about legality requirements in different countries of harvest and more efficient checks on and investigation of operators. Coordinated approaches with authorities in supplier countries to investigate cases involving more than one Member State, and maintaining frequent relationships with the authorities, can lead to cost-effective exchange of information between the two parties.

Articles 8(4) and 9(2) of the EUTR empower the CAs to carry out checks on the basis of information from third parties on the compliance/non-compliance of an operator or a MO with the Regulation. In the Biennial reports, Member States reported that the CAs have conducted a number of checks on the basis of substantiated concerns submitted by third parties and have included such information in their plans for checks. Signals from third parties, when substantiated, have proven to be an efficient tool for identifying products or operators to be prioritised in carrying out risk-based checks. Substantiated concerns were widely used in the first two years of application of the EUTR. A clear benefit from this tool is its cost-efficiency: it can reduce the cost of intelligence gathering and increase the ability of CAs to identify possible infringements.

A number of operators subject to the EUTR are also ISO, FSC and/or PEFC-certified. Since the entry into force of the EUTR, the main certification schemes have adapted their standards to reflect the scope of the legality definition embedded in the Regulation and have emerged as a practical option that can be used by EU operators to contribute to their risk assessment and risk mitigation process. The role of third-party verified schemes in the implementation of the legislation could be further clarified in the EUTR Guidance document.

Commercial service providers, like the MOs recognised by the Commission, exist on the market and can help operators set up a DDS compliant with the EUTR.

By March 2015⁵⁰, the Commission has assessed and recognised nine MOs that can provide operators with appropriate DDS and related services. Despite the availability of MOs, interest amongst operators for the services of MOs has been low across the EU. According to the results of the conducted surveys, only a fraction of operators currently use the DDS of MOs and their verification services. At the same time, while only a small number of operators decided to sign fully-fledged contracts with MOs to use their DDS and being verified for their implementation, MOs have reported having provided technical assistance to thousands of operators to develop their own DDS. Two factors deterring operators from making use of a MO may be the fact that MOs have an obligation to report to the CA on major failures in the use of a DDS by operators, and that engaging an MO involves an additional cost for a company.

7.4 Effectiveness

The Regulation prohibits the placing on the EU market of illegally harvested timber and timber products and requires that the DD is exercised to minimise the risk of illegally harvested timber being placed on the internal market. It additionally lays down a traceability obligation for traders who must know from whom they bought products and to whom they sold them.

Has the due diligence obligation been effective in preventing illegally harvested timber or timber products derived from such timber from being placed on the market?

Article 4 of the EUTR states that “Operators shall exercise due diligence when placing timber or timber products on the market. Each operator shall maintain and regularly evaluate the due diligence system which it uses, except where the operator makes use of a due diligence system established by a monitoring organisation”. In addition, Article 6 of the Regulation outlines the compulsory elements of a DDS i.e. (1) measures and procedures providing access to information concerning operator’s timber supplies, (2) risk assessment procedures and (3) risk mitigation procedures.

Checks carried out by the CAs on operators` DDS were sporadic in the beginning of the evaluation period; they became more systematic and rigorous over time, also as a consequence of the bilateral dialogue initiated by the Commission with the MS, lagging behind with their obligation to organise compliance control. CAs have increasingly aligned the way checks are carried out but many differences still exist in the interpretation and application of the EUTR, which makes the enforcement actions non-uniform across the EU. Some Member States have reported having imposed sanctions for irregularities, particularly in the DD system used by operators. A few investigations have been initiated on the basis of substantiated concerns from third parties but these did not result in the imposition of sanctions.

A strong perception exists among stakeholders, notably the civil society and the private sector, that CAs have not yet the capacity they need to apply the Regulation. The online public consultation and direct consultation of MOs strongly suggest that technical expertise and resources (both human and financial) of CAs should be improved so that the CAs could

⁵⁰ By October 2015 the recognised number of MO increased to 12.

increase number and quality of compliance checks, which in turn would prompt operators to ensure that they have a workable DDS in use.

The Biennial Report and circumstantial evidence from the public on-line survey suggest that appropriate DDS have not yet been put in place by all operators and that the "innovative" due diligence approach still needs to be fully internalised by the forestry sector and remains a work in progress. The CAs have detected shortcomings in some of the DDS checked upon and issued notices of remedial actions requiring operators to make improvements to their systems. All in all, DDS have proved to be challenging to set up since a number of operators consider the rules not sufficiently clear. Feedback from the CAs have also indicated that operators increasingly require from suppliers evidence on the legality of products and favour third-party verified or certified suppliers as a risk mitigation tool, which suggests that the Regulation encourages responsible sourcing practices.

The results from the open public consultation point out as main challenges for setting up an effective DDS (i) difficulties in gathering information on applicable legislation in producer countries, (ii) the cooperation with suppliers and (iii) the risk assessment and mitigation, which are generally considered a challenge for operators.

While there are indications that operators are gradually implementing DDS, demanding more and more information and legality assurance from their suppliers' evidence collected for the purposes of this evaluation show that the application of the DD obligation remains patchy across the EU. For this reason the obligation could not have achieved tangible results in preventing illegally harvested timber from being placed on the market. It is fair to say therefore, that while the due diligence obligation has the potential to change the market behaviour of operators and thus create supply chains free of illegally harvested timber, more time and effort must be invested in its application before more tangible results are achieved in preventing illegally harvested timber or timber products derived from such timber from being placed on the market. More time is therefore needed before a definitive assessment can be made.

*Has **prohibition** been effective to prevent the placing on the market of illegally harvested timber and timber products derived from such timber?*

24 Member States⁵¹ reported that they have enacted rules on penalties for infringements of the prohibition obligation. The Reports indicate that some countries have enacted only administrative sanctions while others have also opted for criminal penalties. All of them provide for fines and some provide for imprisonment for infringements of the EUTR. Seizure or confiscation of illegal timber is only provided for in 19 Member States. A reason for the differences in the enforcement regime in the Member States is the fact that the Regulation leaves it to each Member State to lay down sanctions and only mentions seizure of timber as a possibility, without obliging Member States to provide for it in their national legislation. Overall, the Biennial Reports do not provide sufficient information for an analysis of the type of sanctions enacted for infringements of the prohibition by each Member States.

As regards the way the prohibition has been enforced, in a few individual cases, investigations of legality of imported timber products have been carried out based on substantiated concerns raised by third parties. However, the Member States have not reported

⁵¹ Greece, Hungary and Romania did not provide this information in their biennial reports since they were still in the process of elaborating their EUTR-related legislation. In Spain the drafting phase was ongoing at the time of reporting.

any closed investigation cases for violation of the prohibition obligation⁵². Therefore, given the insufficient experience with the enforcement of the prohibition, no conclusion could be drawn regarding the effectiveness of this obligation in preventing illegally harvested timber or timber products derived from such timber from being placed on the market.

A serious challenge for implementing the prohibition is the assessment of the risk of timber and timber products covered by official documents from relevant authorities in the country of harvest with high levels of corruption. Furthermore, if authorities of the country of harvest refuse to cooperate, CAs may lack the knowledge and/or the resources to find evidence of the illegality of the shipment that would be brought before the court.

The traceability obligation

Article 5 of the EUTR lays down an obligation for traceability requiring "traders" (all market participants other than operators) to keep records of their suppliers of timber and timber products and their customers. The rationale behind the traceability obligation is that, in case of an infringement of the prohibition, a product could be traced back to their first placing on the market. Traceability is considered as a non-burdensome requirement having an ancillary supporting function in relation to the prohibition and the DD. This also explains why the EUTR does not establish an obligation for CAs to conduct checks for compliance of traders with the traceability obligation.

The online public consultation indicates that there are still traders who are inadequately aware of the EUTR and its obligations.

Has the EUTR as a whole been effective in preventing illegally harvested timber or timber products derived from such timber from being placed on the market?

Given the slow and incomplete application of the Regulation by the Member States and private sector during the first two years of its application, no definitive conclusion can be drawn regarding the effectiveness of the Regulation as a whole in preventing illegally harvested timber or timber products derived from such timber from being placed on the market.

One indicator for the effectiveness of the Regulation could have been a change in trade flows. However, the trade data analysed⁵³ have not disclosed any clear change in the imports of timber and timber products into the EU or in the intra-EU trade within the first two years of application of the EUTR. Some evidence has, nevertheless, demonstrated that operators have changed their suppliers when it was not possible to mitigate the risk of buying illegally harvested timber. Furthermore, it should be considered that many other factors affect the EU timber market and that the economic cycle, long-term trends and evolving international trade play a major role in this respect.

Even if the macro-level trade statistics do not provide sufficient evidence of the EUTR impact on trade, it cannot be concluded that the Regulation has had no impact. It should be

⁵² In a few individual cases, investigations of legality of imported timber products have been carried out based on substantiated concerns.

⁵³ Baseline Report of the FLEGT Independent Market Monitoring (IMM), see n. 16 above.

noted that a macro-level analysis does not, for example, disclose if there has been a switch within an exporting country to suppliers that can provide evidence on the legality of their products or if the legality requirements of importers have actually resulted in better compliance with legislation of their suppliers. It should also be underlined that individual changes in the supply sources do not appear in a macro-level analysis. For this reason, more experience of the Regulation and more data are needed to make any conclusive statement on trade statistics.

A quantitative evaluation of the impact of the EUTR on trade in illegally harvested timber or products derived from such timber is even more challenging, considering the clandestine nature of the illegal activities and the absence of reliable data on their volume and cost.

How has the EUTR reinforced the other measures of the FLEGT Action Plan or why did it not?

The introduction of the EUTR responds directly to the provision in the FLEGT AP for adopting additional legislation to reduce the volumes of illegal timber/timber products entering the EU market (Activity area number 2: trade in timber). The Regulation has also increased the general awareness about the risk investors in the forest sector and importers of timber products may face (Activity area number 5). Positive influence is also found in the use of existing legislative instruments for forest-related crimes (Activity area number 6) and the fight against trade in conflict timber (Activity area number 7). The EUTR, together with the US Lacey Act and similar legislation in other consumer countries, has indirectly targeted timber producing countries (Activity area number 1) and private sector initiatives (Activity area number 4). The EUTR has influenced developments in public procurement timber policies in Member States (Activity area number 3).

Did the EUTR achieve any other significant changes (positive or negative)? Can any unexpected or unintended changes resulting from the EUTR be identified?

The application of the EUTR is still in its early days and, therefore, it is not possible to determine significant impacts with a good degree of evidence. At the same time, it is possible to say that the Regulation and the communication campaigns carried out by the Commission and the Member States has increased awareness of the problem of illegal logging. The Regulation, a text with EEA relevance, has been included in the Agreement on the European Economic Area (EEA) and is currently implemented also by Norway, Iceland and Lichtenstein. It has created an incentive for producer countries to start the development of systems to verify and demonstrate compliance with the legality requirements, and prompted third-countries to conclude FLEGT VPAs with the EU⁵⁴. Furthermore, it has, together with the US Lacey Act, encouraged other consumer countries to expand their national legislation with similar legislative acts (Australia, Switzerland) or to start considering measures with similar objectives (China, Japan, Korea). The EUTR also has influenced amendments of the EU Wildlife Trade legislation⁵⁵ where the Commission regulation was reinforced with a

⁵⁴ There is evidence that exports from Indonesia into the EU increased over the past 2 year, which can be attributed to the facilitated compliance with the EUTR of timber covered by a SVLK: the Indonesian Timber Legality Assurance license, which is a predecessor of the FLEGT license.

⁵⁵ Commission Regulation (EU) 2015/870 of 5 June 2015 amending, as regards the trade in species of wild fauna and flora, Regulation (EC) No 865/2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97, OJ L 142, 6.6.2015, p. 3–20.

provision of legal basis for the Member States' Management Authorities to refuse the issuing of an import permit in case of serious doubts as to the legality of a shipment of CITES specimens.

Can loopholes in the regulatory regime established by the EUTR be identified and, if so, what are they and how can they be remedied?

Scope of the obligations: The EUTR focuses on the placing of timber and timber products on the internal market for the first time. Thus, both the prohibition and the DD obligation apply to operators while the remaining actors are liable for the traceability obligation.

The EUTR was built on the assumption that operators' compliance with the prohibition and the due diligence obligations will ensure the legality of timber and timber products throughout the entire supply chain. Furthermore, in case of an infringement of any of the obligations, traceability would help trace the product back to its first placing on the market or down to the supply chain; therefore, it was deemed unnecessary to extend the obligation of DD to traders as well.

However, the possibility exists that, even if a rigorous DD has been applied, some illegal timber and timber products are placed on the EU market. The problem with this narrower scope of the obligations is that it puts most of the burden on the operators, leaving the remaining actors without much incentive to address the legality of their timber supply. If the illegal timber is not identified at the point of the first placing on the market, enforcement of the Regulation becomes more difficult. Further, the obligation to demonstrate the DD discontinues after the first placing of timber and timber products on the EU market and information regarding their legality is not transmitted further and is lost at the time the timber products leave the EU. This poses difficulties, in particular, when timber products are exported to third countries with requirements similar to the EUTR. It creates difficulties also in situations where raw material or wood parts are exported only for the purposes of assembling or processing and are later imported again into the EU.

The CAs are not obliged to conduct checks on compliance with the traceability obligation but, if this was a regulatory requirement, confidence in the effectiveness of the EUTR would be likely to increase. Experience with the application of the EUTR will show whether the traceability obligation for traders is sufficient to achieve the goal of the Regulation.

CITES and EUTR: In line with Recital 10 and Article 3(2) of the EUTR, timber products listed in Annexes A, B and C to Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein (the EU Wildlife Trade Regulation) should be considered as legally harvested for the purposes of the EUTR. However, since the legality verification requirements and the control mechanisms differ for timber species listed in the three annexes, concerns have been raised regarding the adequacy of the automatic exemption. These concerns already prompted amendments in Commission Regulation (EC) No 865/2006 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein but, if necessary, further amendments could be explored.

Exports of timber to third countries: The EUTR applies to the "placing on the market" of timber and timber products. The precise moment when the placing on the market is effectuated in each particular case could be subject to interpretation. Some private sector representatives argue that exports of domestically harvested timber directly to third countries

do not constitute "placing on the market" and therefore, the EUTR should not apply to such cases. This interpretation poses problems as it would allow a significant portion of EU-harvested timber to escape from the EUTR requirements and from checks by the CAs. It would further subject imported timber to much stricter requirements as part of domestically harvested timber would de facto be exempted from any regulation and control. Such an application would weaken the EUTR and could jeopardise the achievement of its objectives.

Levelling playing field: As enforcement resources and sanctions differ from one Member State to another, operators feel unequally treated when they place timber and timber products on the internal market. More effective controls and a uniform interpretation and application of the Regulation are necessary to ensure that operators complying with the EUTR have a measurable economic advantage.

Is the product coverage adequate to achieve the objectives of the EUTR? Given the current Union economic and trade situation with regard to the products listed under Chapter 49 of the Combined Nomenclature, should those products be included in the product scope of the EUTR?

The Product coverage of the EUTR is defined in an Annex using a combination of references to codes from the EU Combined Nomenclature⁵⁶ (CN) and description of products. Exemptions of products exist in the text of the Regulation⁵⁷ and in its Annex and concern a) timber products or components of such products manufactured from timber or timber products that have completed their lifecycle and would otherwise be disposed of as waste, as defined in Article 3(1) of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste (the Waste Framework Directive); b) products covered by a valid FLEGT licence or CITES permit. The EUTR covers a significant number of products but not all timber products are included in its product scope.

Consultations with stakeholders, carried out in the framework of the EUTR evaluation, show that many do not consider the current EUTR product scope optimal and think it should include more timber products such as wooden seats, musical instruments, printed paper and wooden coffins. Non-inclusion of these and other similar products is inconsistent. Some stakeholders have also suggested that the product scope should not be expanded to cover all wood-containing products before the EUTR is fully implemented and effectively applied.

Article 20(4) of the EUTR requires that the first review of the Regulation “*includes an evaluation of the current economic and trade situation with regard to the products listed under Chapter 49 of Combined Nomenclature, taking particularly into account the competitiveness of the relevant sectors*”. CN Chapter 49 includes "Printed books, newspapers, pictures and other products of the printing industry, manuscripts, typescripts and plans".

Under the current situation, the European printing industry is obliged to exercise due diligence when importing raw materials for its business. At the same time, publishing houses inside the EU and printing houses outside the EU can freely import printed media products for the EU market without being subject to the EUTR requirements. This means that imported printed products do not undergo DD and are not checked for the legality of the

⁵⁶ The latest version of the EU Combined nomenclature could be found here:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2015:076:FULL&from=EN>.

⁵⁷ Art. 2(a) and (b); and Art. 3 of the EUTR.

wood imbedded in them. Timber products used for the production of imported printed products escapes any legality control and could in theory, originate from illegally harvested forests. In such cases, the difference in treatment of domestically-produced and imported printed products is perceived as inconsistent and giving an unfair advantage to non-EU based printing companies over EU-based ones. This issue would be overcome if printed paper were included in the product scope.

If printed media were included in the product scope, the EUTR would cover a noticeably larger share of products containing wood fibre and be more powerful in fighting illegal logging and associated trade and in levelling the playing field between printing industries inside and outside the EU.

In accordance with Article 290 TFEU and Article 14 of the EUTR, the list of timber and timber products set out in the Annex can be amended or supplemented through the adoption of a delegated act, without changing the Regulation itself. In line with the Commission's Better Regulation Guidelines, any changes would be subject to a prior impact assessment study.

7.5 Coherence

The EUTR contributes to the implementation of the FLEGT Action Plan and complement other EU policies and legal instruments to ensure legal production and trade of commodities made of natural resources.

To what extent is the EUTR satisfactorily integrated and coherent with other EU legislation with similar objectives?

In terms of objective and scope, the EUTR, being part of the FLEGT Action Plan, is coherent with other EU legislative and policy initiatives. Together with the FLEGT licensing scheme⁵⁸ and the EU Wildlife Trade Regulation⁵⁹, the EUTR aims at preventing the trade in illegal or unauthorised timber and ensuring its legal production

With regard to enforcement, provisions are laid down in national legislation for each of the legislative acts listed above. Member States are required to appoint CAs responsible for monitoring the application and for enforcing the legislation, and to report to the Commission on the application of the EUTR every two years.

Regarding the rules on penalties for infringements, the legislative acts studied vary to some extent. The Regulation establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (IUU Regulation) is more prescriptive with regard to the range of sanctions to be laid down by the Member States and establishes a maximum threshold in cases of "serious infringements", which are defined by the Regulation. It also requires that Member States impose immediate enforcement measures and specifies their type (cessation of fishing activities, seizure of fishing gear or fisheries products, etc.)⁶⁰.

⁵⁸ Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community. OJ L 347, 30.12.2005, p.1- 6.

⁵⁹ Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein. OJ L 061 , 03/03/1997 P. 0001 – 0069.

⁶⁰ Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999. OJ L 286, 29.10.2008, p.1.

Under the EUTR, the FLEGT Regulation, and the Wildlife Trade Regulation, Member States have the freedom to lay down sanctions for infringements which have to be effective, proportionate and dissuasive.

In terms of transparency, Member States reported to the Commission on the application of the Regulations and the Commission published summaries of these reports. Further, the Commission periodically reports to the European Parliament and/or the Council on the application of the legislative measures. The EUTR has reporting and information procedures coherent with those applied by the other legislative acts studied.

In addition, the EU Directives on accounting and transparency set requirements to report and provide access to information on private sector payments to governments of producing countries if a company is engaged in the harvesting of a primary forest in a country. This requirement is applicable to operators whose payments exceed the thresholds specified by the Accounting Directive.

What gaps, overlaps, discrepancies, contradictions or similar issues can be identified in other relevant legal acts or activities, which hampered or improved the achievement of the objectives of the EUTR?

The adoption of the EUTR gave an additional motivation to timber producing countries to enter into FLEGT VPA negotiations with the EU or to speed up ongoing negotiation processes, with a view to establishing operational FLEGT licensing schemes providing an automatic EUTR recognition to FLEGT licensed timber and timber products on the EU market. After an initial boost, however, and due to its slow implementation and enforcement, the EUTR is perceived in some countries or by some operators as not robust enough and easier to comply with than the more complex and demanding TLAS negotiated in the framework of VPAs. To change this perception, which is not evidence-based, an effective and rigorous enforcement of the EUTR is necessary. The VPAs processes and the EU Wildlife Trade Regulations complement and strengthen the EUTR objectives as they provide the assurance of legal and authorised supply of timber from specific geographic regions and of particular timber species. The EUTR makes an explicit reference to CITES and recognises the achievements of the CITES Convention by introducing a presumption of legality for timber and timber products covered by CITES permits. Experience with the application of the EUTR triggered debates on the legal acquisition of CITES listed timber species and prompted amendments in Commission Regulation (EC) No 865/2006 by introducing, *inter alia*, a legal basis for the Member States to refuse issuing an import permit in case of serious doubts as to the legality of a shipment of CITES products. These developments provide an interesting example of how the two legal frameworks can reinforce each other.

8. CONCLUSIONS

Relevance

Although the evaluation of the Regulation comes after only two years of application, evidence shows that the Regulation has encouraged more responsible sourcing policies where they already exist and for engaging in new ones. In addition, it has demonstrated its potential to change operators' market behaviour. Moreover, the Regulation has created an incentive for suppliers in third countries to demonstrate the legality of their timber products and has the

power to establish supply chains free of illegally harvested timber, thus contributing to the achievement of the objectives of the FLEGT Action Plan.

The relevance of the Regulation was confirmed by the 7th EAP, which refers explicitly to the Regulation "as a legal basis for the Union to address the global problem of illegal logging through its demand for timber and timber products".

The evaluation has shown that the Regulation is also regarded by many stakeholders as adding significant value to the international efforts to halt deforestation and forest degradation, to conserve biodiversity and address global climate change, thus contributing to compliance with the international obligations of the EU.

EU Added Value

Before the EUTR was adopted, domestic harvesting was regulated by Member States' rules while imported timber and timber products were not subject to any legality requirements or control.

The EUTR aims at creating a level playing field by setting equal requirements for legality on both domestically harvested timber and imported timber and timber products, thus respecting World Trade Organization (WTO) requirements and introducing an additional control layer applicable to all operators across the EU. It also requires Member States to lay down effective, proportionate and dissuasive penalties for infringements of the Regulation and conduct systematic checks on operators and MOs. There are no indications that the EU Member States would have developed national legislations similar to the EUTR in absence of the EU intervention. By reason of its scale, the objective to curb illegal logging and related trade can be better achieved at Union level.

Without the EUTR, the process of establishing the level playing field for economic operators would be discontinued leaving operators that apply the DD requirements in a disadvantaged position, especially as cheaper illegal timber would freely enter the EU market. This would entail significant reputational damage for the EU and would have negative consequences for the EU private sector, which has invested in legality assurance systems. Without the EUTR, the progress achieved on other elements of the FLEGT Action Plan, such as VPAs, would be seriously undermined.

Efficiency

The EUTR is perceived as an important legislative instrument to combat and reduce illegal logging and trade in illegal timber and timber products. According to the online public consultation, the Regulation has increased consumer confidence in timber products, awareness of the problem of illegal logging and understanding of the importance of sustainable management of forests. It has created an incentive for producer countries to develop systems to verify and demonstrate compliance with the legality requirements, including by concluding VPAs with the EU.

The EUTR entails compliance costs for the Member States. The implementation process has been generally slow in most Member States and, although a number of countries carried out checks on operators, those remained relatively limited during the evaluation period. In many

cases, the allocation by Member States of trained staff to carry out checks on operators appeared disproportionate compared to the number of operators in those countries. Therefore, the impact of enforcement activities was not yet sufficient: only a fraction of operators were subject to checks by CAs, which did not stimulate companies to actively develop and use a DDS, neither it could guarantee the robustness of existing systems.

The EUTR also entails compliance costs to the private sector. The overall assessment is that large companies seem to have been able to adapt better and more quickly than SMEs to the new requirements and that the range of compliance costs for the private sector depend on the previous existence of responsible sourcing policies, on the type and complexity of trade products and on the number and geographic location of suppliers. While the economic consequences of the EUTR may be bearable for large and some medium-sized firms, many small and micro firms have not only not implemented the Regulation and are still unaware of its implications. The Regulation has not yet generated the expected benefits for the business in terms of creating a level playing field against illegal traders, a situation which has been aggravated by the uneven enforcement efforts across the EU. With the information currently available, it is not possible to assess whether resources allocated by the private sector have been sufficient for ensuring the legality of the timber placed on the EU market. There are indications that not all operators have a DDS in place, meaning that the initial application of the Regulation has not contributed to levelling the playing field for the economic operators yet.

The evaluation is based on a very small sample, which responded to the survey. Some SMEs replying to the surveys have indicated that are finding compliance with the EUTR challenging. This may be due to difficulties to interpret the technical requirements of DDS, lack of staff with adequate knowledge and experience necessary for exercising the DD or limited financial resources to update their existing control systems to the required level. These enterprises would have benefitted from more technical information and affordable technical assistance, as recommended by Article 13 of the EUTR.

Cost-effective practices to implement the EUTR have been identified in three fields: (i) cooperation between Member States' authorities as well as between them and counterparts in third countries, (ii) CAs use of substantiated concerns received from third parties concerning the compliance by an operator with the Regulation and (iii) operators developing DDS which meet not only the EUTR requirements but also those of other legal instruments like the US Lacey Act Amendment (2008) and the Australian Illegal Logging Prohibition act; (iv) operators using voluntary third party verified schemes (i.e. voluntary forest certification) in the risk assessment and risk mitigation process; (v) use for due diligence purposes of the results from the EU negotiations with the VPA countries concerning legality definitions and contacts with national authorities.

Since the entry into force of the EUTR, the main certification schemes have adapted their standards to reflect the scope of the legality definition embedded in the Regulation and emerged as a practical option that can be used by EU operators to contribute to their risk assessment and risk mitigation processes. The role of third-party verified schemes in the implementation of the legislation could be further clarified in the EUTR Guidance document.

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|----------------------|
| Effectiveness |
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EUTR implementation efforts by the Member States have been generally uneven and in most Member States they have been limited. However, this situation should be seen in the context of the stringent economic circumstances in which the Regulation has come into force. Checks carried out by the CAs were sporadic at the beginning but became more systematic (risk-based), frequent and rigorous over time. Some Member States imposed sanctions for irregularities, particularly in the DDS used by operators. A few investigations were initiated on the basis of substantiated concerns from third parties but no sanctions were imposed.

Evidence collected for this evaluation suggests that insufficient human and financial resources of the CAs are a major challenge to apply the EUTR effectively. Furthermore, types and range of sanctions for infringement of the EUTR are highly divergent across Member States. Notwithstanding the efforts by the Commission to ensure harmonised interpretation and implementation of the Regulation, different understanding and application of parts of the Regulation exist among CAs. All the above resulted in uneven enforcement, which creates a non-level playing field for economic operators. While there is an indication that operators have increasingly applied the DD requirements and adopted the required risk mitigation measures, compliance with the Regulation by the private sector remains uneven and insufficient. Many operators have some type of DDS in place but checks by CAs show that their DDS does not always meet the EUTR requirements. Some stakeholders stated that the DD obligation poses a significant implementation challenge due to its novelty and insufficient guidance.

A closer look at the effectiveness of the DD obligation reveals that it has the potential to change the market behaviour of operators, thus creating supply chains free of illegally harvested timber. However, more time is needed before a definitive assessment can be made.

Given the insufficient experience with the enforcement of the prohibition, no definitive conclusion could be drawn regarding the effectiveness of this obligation in preventing illegally harvested timber or timber products derived from such timber from being placed on the market.

The EUTR covers a significant number of products but not all timber products are included in its product scope. Some stakeholders suggest inclusion of additional products, such as printed products, wooden seats, musical instruments and wooden coffins, with a view to strengthening the instrument. However, others consider that the product coverage should not be expanded to cover all timber products before the EUTR is fully implemented and effectively applied.

In terms of market share, an important group of products currently exempted is "printed books, newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans" (Chapter 49 of the Combined Nomenclature). Unlike domestically printed media, where imported pulp and paper material is controlled for legality, imported printed media do not undergo DD and are not subject to checks for the legality of wood fibre imbedded in them. Therefore, they may carry a higher risk of originating from illegally harvested timber. The difference in treatment of domestically and imported printed products would be overcome if printed paper were included in the product scope. The variety and complexity of printed goods will be taken into account in a specific Impact Assessment. In accordance with Article 290 TFEU and depending on the results of a prior impact assessment study, the list of timber and timber products set out in the Annex can be amended or supplemented through adoption of a delegated act, without changing the Regulation itself (Art 14 of the EUTR).

The application of the EUTR is still in its early days, and therefore it is not yet possible to determine significant impacts caused by the Regulation with a good degree of evidence. At the same time, the evaluation has shown that the Regulation and the communication campaigns carried out by the Commission and the Member States have increased awareness of the problem of illegal logging. The Regulation has created an incentive for producer countries to start the development of systems to verify and demonstrate compliance with the legality requirements, and has also encouraged third-countries to conclude FLEGT VPAs with the EU. Furthermore, it has, together with the US Lacey Act, encouraged other consumer countries to expand their national legislation with similar legislative acts (Australia, Switzerland) or to start considering measures with similar objectives (China, Japan, Korea). The EUTR also has influenced amendments of the EU Wildlife Trade legislation. On an international scale, the EUTR is perceived as an important legislative instrument to combat and reduce illegal logging and trade in illegal timber and timber products.

Coherence

The EUTR is coherent with other relevant legislative acts in the forest and other sectors and, in particular, with the VPAs and FLEGT licensing scheme and the EU Wildlife Trade Regulation.