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COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE FITNESS CHECK

on Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (the EU Timber Regulation)
and on
Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community (FLEGT Regulation)

Accompanying the document

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

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The **Fitness Check** of the EU Timber Regulation (EUTR) and the Forest Law Enforcement, Governance and Trade (FLEGT) Regulation evaluates their implementation and functioning. It assesses whether these two instruments are fit for their purpose to halt illegal logging and related trade as set out in both Regulations. The EUTR focuses on preventing the placing of illegally harvested timber and timber products on the EU market and the FLEGT regulation focus on preventing illegally harvested timber from being exported to the EU from producer countries. The main findings are that the general objectives of the two Regulations have not yet been fully met. A system based on due diligence (DD), such as the EUTR, could be better fit for purpose if improved and adapted to the new political context Regarding the FLEGT Regulation, the main instrument for its operationalisation, i.e. the Voluntary Partnership Agreements (VPAs), has not delivered.

With regard to **effectiveness,** the **EUTR** is seen as an important tool to tackle illegal logging and associated trade. However, a number of challenges concerning the functioning of the DD scheme and the EUTR's implementation have held back progress towards this objective. DD is used to ensure negligible risk of illegally harvested timber and wood products being placed on the EU market. While the EUTR has achieved some success, its application it has varied across the EU and there has been no significant effect on the volume of timber import from known high-risk sources. Especially smaller operators face a number of challenges in establishing DD systems, partly due to limited awareness and understanding of the obligations. The most critical issues for operators is the ability to validate information obtained from their supply chains and the level of governance in exporting countries. This may undermine the reliability of documents supposed to demonstrate the legality of products, and ultimately the robustness of the systems. The concept of 'negligible risk' is subjective. This impedes the EUTR's implementation and enforcement, because it affects the gathering and interpretation of information needed to prove that a risk is 'negligible' for operators, Competent Authorities (CAs) and the courts. Difficulty in challenging inadequate DD in court has led to CAs hesitating to file lawsuits. In addition, while all Member States have established legislative frameworks to implement the EUTR, there are differences in the level to which the national legislation allows an effective enforcement. Operators see variations in the stringency of enforcement (e.g. number of checks, level of penalties) and attempt to import and place on the market risk products via specific EU MS. The trade data also presents a mixed picture: intra-EU trade and trade with countries deemed 'lower risk' showed weaker growth over the period of implementation relative to imports as a whole but difference-in-difference analysis of trade data (which uses two different control groups) concluded that the EUTR may have led to a reduction in imports of illegally harvested timber imports to the EU

of between 12-29%. The EUTR appears less successful in halting illegal logging globally than keeping illegally harvested timber and wood-based products out of the EU market. Exports from countries with known issues of illegal logging (e.g. Ukraine, Myanmar and Belarus) continued and actually grew over the last years, although the EUTR has led to significant improvements in raising awareness and transparency of information in the supply chains.

For the **FLEGT Regulation**, a number of critical challenges have been identified, in particular with regard to Voluntary Partnership Agreements (VPAs). While VPAs have led to enhanced stakeholders' participation and positive results in terms of improvement of forest governance in some countries, negotiations proved lengthy, progress in their implementation has been very slow and there is no clear evidence of their impact in terms of stopping illegal timber from being placed on the EU market, and/or reducing illegal logging globally. While the FLEGT licencing system implemented by Indonesia and the EU appears to broadly be working as intended, the limited number of countries involved in VPA processes and the limited trade volume covered have curtailed the ability of the FLEGT Regulation to achieve its objectives. After more than 15 years, only one country out of 15 has an operating licensing system in place (Indonesia). In 2018, the timber products covered by FLEGT licences amounted to only 3% of EU timber imports and those from all 15 VPA countries combined represented only 9%. Many important countries exporting to the EU, although not deemed low-risk, have never shown interest in engaging in the VPA process.

The evaluation of **efficiency** has compared the inputs used for implementation and compliance with the Regulations with the outputs produced. There is however limited quantitative information available to underpin any assessment of efficiency.

The EUTR places compliance costs on a range of different actors. The most important costs are associated with the implementation of DD system by EU operators. Regarding the FLEGT Regulation, costs generated by VPA processes have been comparatively high both for the EU and for VPA countries, given that only a small fraction of trade is actually covered by FLEGT licences. At the same time, additional costs might be indirectly transferred to EU operators via increased prices of FLEGT licensed timber products. In addition, CAs have argued that sometimes it is more difficult to get the information necessary to exercise DD from VPA countries without an operational FLEGT licensing system than from non-VPA countries. The burden of compliance under the EUTR is expected to be proportionately higher for EU SMEs due to their low scale economies. Compliance costs vary significantly across operators depending on a range of factors (e.g. number of suppliers, supply chain complexity, highly processed or low processed products and location of suppliers), including volume of trade. Given the small number of operators importing FLEGT licensed timber, CAs commit more resources to implement the EUTR than the FLEGT Regulation. Therefore, proportionally, the resources invested in FLEGT Regulation are much higher. Resources invested by CAs in implementation of the EUTR seem to vary greatly across MS. This can be partly explained by the different sizes of the respective domestic timber sectors, the trade structure and the number of operators in the MS.

The EUTR is **internally coherent**. The transposition of the DD requirements into national legislation has been challenging for some MS, and this has created difficulties for CAs to successfully pursue cases in courts. A compounding factor is that the EUTR does not have a mechanism to prohibit trade from particular high-risk sources, species or supply chains. Current tools providing useful information (e.g. EUTR country overviews) might not hold up in court, as they are only guidance documents and are not referred to in the Regulation. The FLEGT Regulation has a narrower product scope than the EUTR and varies across VPAs depending on negotiations. In case more countries reach the state of operational licensing systems, this may create additional complexity and challenges for CAs, EU customs and

importers around the requirements applying to different products and from different source countries. Both Regulations appear broadly coherent with wider EU policy, although increased ambition through the European Green Deal and the new focus on sustainability would call for a move away from mere legality. Both also seem broadly coherent with international action. The EUTR supports the objectives of the CITES but differs in scope and methodology for determining timber legality.

As regards **relevance**, the issue of illegal logging and related trade remains an important challenge, even though it is no longer the dominant driver of deforestation and forest degradation. The policy mechanism underpinning the EUTR allows flexibility to respond to new and emerging challenges linked to changes in trade patterns and country risk profiles. The EUTR product scope may be changed if needed by a delegated act, while adjusting the product scope for VPAs (or any other change) needs to be negotiated with each individual partner country. Both Regulations focus only on legality: especially in countries with high corruption, this may lead to applicable rules and their implementation to be subject to political and policy changes. This creates difficulties for operators to understand and prove what is legally harvested/produced. Furthermore, the EU policy objectives have now moved towards avoiding deforestation and forest degradation, which is not necessarily ensured by national legislative frameworks.

EU value added has been provided by both Regulations compared to MS action alone. The EUTR has created a level playing field for operators, even though divergences at national level in resources devoted to inspections and enforcement have jeopardised the ability of the EUTR to realise its full potential of keeping illegal timber and derived products out of the EU market. The value added by the FLEGT Regulation has been affected by the limited number of countries having engaged in VPA processes and reaching the stage of issuing FLEGT licences. In addition, the preparatory, negotiation and implementation processes are complex and resource intensive. The implementation is often marked by a lack of political will in partner countries to invest in implementation as well as by the absence of a robust administration. The prevalence of corruption in many countries remains an issue.