



## Tackling illegal logging, deforestation and forest degradation: an agenda for EU action



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**This briefing is the contribution of the undersigned Non-Governmental Organisations to the policy debate related to the evaluation of the European Union Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan, the review of the EU Timber Regulation (EUTR), and the EU's commitment to halt deforestation and restore degraded forests by 2020.**

### Introduction and general recommendations

The FLEGT Action Plan was established in 2003 as an innovative first attempt by the EU to curb illegal logging and related trade, promote sustainable forest management, and address some of the underlying causes of deforestation and forest degradation. The central pillars of the FLEGT Action Plan are the EU Timber Regulation (EUTR), the Voluntary Partnership Agreements (VPAs) and Green Public Procurement (GPP). The Action Plan also identifies measures to stop conflict timber and prevent investment in activities which encourage illegal logging.

Illegal logging is not only confined to direct contraventions of existing (often inconsistent) national laws. It also relates to non-compliance with international human rights and environmental law standards which in many cases have direct application in national legal systems, but have not been properly integrated into national laws. The effect is to cast uncertainty over the legality of the national forestry sector, leaving it open to challenge. These broader questions of illegality are already being pressed by national civil society groups in VPA countries, and are set to become increasingly important, in particular in relation to the issue of conversion timber.

The implementation of the FLEGT Action Plan has helped increase awareness of the detrimental impact of illegal logging and provided a clear framework to address it,



global witness



*The commitments and measures contained in the FLEGT Action Plan remain highly relevant today. These measures should be further strengthened.*



with improvements already reported in certain countries<sup>1</sup>. It has triggered forest governance reforms and clarified market requirements for timber suppliers. The measures covered by the Action Plan, and in particular the VPAs, have played a significant role in empowering civil society organisations and forest communities in a number of tropical forested countries, enabling them to take a greater role in national policy processes.

Nonetheless, illegal logging remains a persistent problem across the world. In some countries, 90% of all logging activities are illegal. Given that trees are large and need infrastructure to be felled, transported and sold, illegal logging can only survive with the collusion of many people. Corruption, still widespread in most timber-producing countries, lies at the heart of the problem. Other obstacles that have complicated attempts to achieve the FLEGT Action Plan's objectives include resistance to change in the forestry sector, late adoption and weak enforcement of the EUTR, the increased importance of emerging markets (i.e. China, India), and the agricultural commodity boom driving rapid expansion into forested land.

Half of all tropical deforestation since 2000 has been the result of conversion of forests for commercial agriculture that contravened either the land rights of forest dwellers or national environmental laws<sup>2</sup>. Today, 80% of global deforestation is caused by agriculture<sup>3</sup>. According to the Food and Agriculture

Organisation of the United Nations (FAO), 8.8 million hectares of natural forest were lost each year between 2010-2015, with devastating consequences for climate change, biodiversity and the livelihoods of communities and indigenous peoples. By importing products such as palm oil, beef, leather, soy, rubber, cocoa and timber, the EU is part of this problem. According to its own 2013 study<sup>4</sup>, the EU's forest footprint has continued to increase since the FLEGT Action Plan was adopted. Still, the environmental impact of the forestry sector remains significant, especially in terms of forest degradation, which is a precursor of deforestation.

### More action needed

The undersigned NGOs consider that the commitments and measures contained in the FLEGT Action Plan remain highly relevant today. These measures should be strengthened and the EU should enhance its efforts to implement them through to completion. This includes ensuring the full EU-wide implementation and effective enforcement of the EUTR, the effective implementation of the signed VPAs, and an emphasis on a broader, more comprehensive conception of illegality which includes compliance with international human rights and environmental laws.

In addition, a number of far-reaching measures should be taken to protect forests and forest peoples' rights, and minimise the impact of EU consumption on global forests and communities' livelihoods, as part of an EU Action Plan on deforestation and forest degradation (EUAPDD). If the EU is to be a credible global force in forest protection and achieve zero deforestation by 2020, substantial progress in FLEGT implementation and agreement on further measures to exclude deforestation from supply chains must be achieved in the coming years. In 2015, governments recognised the need for urgent action when they committed themselves to the Sustainable Development Goals and the Paris Agreement on climate change. The actions set out here are essential for delivering on these international commitments.

<sup>1</sup> Hoare Alison, *Tackling Illegal Logging and Related Trade: What Progress and Where Next?*, Chatham House, July 2015 [https://www.chathamhouse.org/sites/files/chathamhouse/field/field\\_document/20150715IllegalLoggingHoare.pdf](https://www.chathamhouse.org/sites/files/chathamhouse/field/field_document/20150715IllegalLoggingHoare.pdf)

<sup>2</sup> Lawson S, *Consumer Goods and Deforestation: An Analysis of the Extent and Nature of Illegality in Forest Conversion for Agriculture and Timber Plantations*, Forest Trends, September 2014.

<sup>3</sup> Definitions and quantification of agricultural drivers remain contested, in particular in relation to subsistence agriculture. A significant number of scientific studies show that rotational systems of farming in forests are sustainable, enable forest regeneration and can enhance the diversity and richness of ecosystems (see for example Cairns, M F (Ed) (2015) *Shifting Cultivation and Environmental Change: indigenous peoples, agriculture and environmental change*, Routledge London; Balee, W (1989), "The Culture of Amazonian Forests" pp. 1-21 in D.A. Posey and W. Balee, (Eds) (1989), *Resource Management in Amazonia: indigenous and folk strategies* (Advances in Economic Botany Volume 7), New York Botanical Garden, New York; Leach, M and Mearns, R (1996), "Environmental change and policy: challenging received wisdom in Africa", pp.1-33 in Leach, M and Mearns, R (Eds)(1996), *The lie of the land: challenging received wisdom on the African environment*, James Curry, Oxford; AIPP and IWGIA (2012), *Drivers of Deforestation? Facts to be considered regarding the impact of shifting cultivation in Asia: Submission to the SBSTA on Drivers of Deforestation by Asia Indigenous Peoples Pact*

<sup>4</sup> European Commission, *The impact of EU consumption on deforestation*, 2013.



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## Recommendations to the EU

- 1 Demonstrate strong political commitment to the effective implementation of the VPAs and strengthen their impact, including through addressing governance, integrity and sustainability challenges.**
- 2 Ensure the EUTR is strictly and effectively enforced, its product scope extended to all wood-based products, and green timber procurement policies are increasingly taken up.**
- 3 Strengthen and encourage the development of rules governing the international timber trade and improve overall policy coherence.**
- 4 Adopt specific measures to address conflict timber, to stem the flow of conversion timber, and to shift investment away from forest-damaging activities as part of the FLEGT Action Plan implementation.**
- 5 Adopt additional measures to support the protection and restoration of forest ecosystems around the world and eliminate deforestation from the EU's supply chains, as part of a new EU Action Plan on deforestation and forest degradation.**

*Please find more details about our policy recommendations on the next page.*

## 1 Demonstrate strong political commitment to the effective implementation of the VPAs and strengthen their impact, including through addressing governance, integrity and sustainability challenges.

The VPAs are a key element of the FLEGT Action Plan as they are intended to improve forest governance in timber producing countries, ensure that only legally-harvested timber is imported into the EU, and promote an inclusive approach involving civil society and the private sector.

The EU has an important role to play to maintain political momentum for the VPAs. It should strengthen its diplomatic efforts, provide adequate resources and maintain its support for effective and inclusive VPA implementation processes.

In most VPA countries important challenges remain, and full compliance with the agreement's terms is far from being achieved, even where progress has been made. Corruption remains a major concern; legislation is often contradictory, unclear and unevenly enforced, and almost universally fails to integrate nationally applicable standards on human rights; processes to access information are weak; and trade models favouring large-scale logging and agriculture are increasingly prominent. These have proved bigger challenges than initially envisaged and have hindered the implementation of FLEGT.

In this respect, we recommend that:

- **Authorities of VPA countries** scale up their efforts to put in place reliable timber legality assurance systems (TLAS) covering all timber sources and their complete chains of custody, while at the same time building good forest governance and enhanced transparency and accountability, successfully combatting corruption, including through active involvement and oversight of anti-corruption bodies, and to bring about a sound management of forests that is environmentally and socially responsible and reflected in coherent, human rights-compliant laws. With increasing pressure to show progress, we are concerned that the EU may give countries the go-ahead to issue FLEGT licenses before the above conditions are met.
- **The EU and VPA countries** ensure that VPAs include specific, time-bound milestones and are accompanied by high-level political dialogue and coordination to ensure all parties fulfil their commitments. One of the strengths of the VPA process is that it demands stakeholders work together to craft solutions to identified problems. This principle should not be compromised.
- **The EU and VPA countries** ensure that VPAs are in line

with international human rights laws<sup>5</sup> – in particular in relation to local community and indigenous peoples' rights – environmental protection and sustainable development. VPA legality work should be explicitly aimed at driving national policy reforms and establishing legal frameworks that guarantee the conservation and genuinely sustainable management of forests, and uphold the rights of local forest communities and indigenous peoples, in line with international obligations and commitments. In addition, broader questions remain regarding the impact of VPAs in terms of sustainability. FLEGT should be used to strengthen forest sustainability, based on the best available scientific evidence, and, the EU and its Member States should observe the precautionary principle.

- **The EU** ensure that all future VPAs address the threat from increasing commercial demand for land, and promote security of tenure for communities as a fundamental principle of land governance frameworks. Efforts to tackle illegal logging and deforestation can only be successful if local peoples' land rights are strengthened and secured. There are proven links between secure community land tenure rights, sustainable management of forests and decreased deforestation; and the risks of unsustainable use when communities are squeezed by other land-users are also well known.
- **The EU** urge VPA countries to ensure proper access to information, including through the effective implementation of transparency commitments made in VPA texts. Information should be available in languages accessible to the general public and support should be provided for civil society-led independent forest monitoring.
- **The EU** step up efforts to build coherence between FLEGT and REDD+, particularly in VPA countries which are actively engaging in both processes.

## 2 Ensure the EUTR is strictly and effectively enforced, its product scope extended to all wood-based products, and green timber procurement policies are increasingly taken up.

### EU Timber Regulation

The EUTR is the most important demand-side measure under

<sup>5</sup> Relevant treaties will differ depending on the VPA country involved, but may include, inter alia: the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the International Convention on the Elimination of All Forms of Discrimination against Women; ILO Convention No. 169 on Indigenous and Tribal Peoples; the African Charter on Human and Peoples' Rights; the American Convention on Human Rights. Important international standards such as the United Nations Declaration of the Rights of Indigenous Peoples (which encapsulates the position in relation to indigenous peoples' rights set out in several of the above-mentioned treaties), and the FAO's Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the context of National Food Security, are also important measures of compliance.

the FLEGT Action Plan for protecting forests from illegal logging. Yet the regulation's effectiveness has been hindered by poor enforcement, non-harmonised penalty regimes and implementation delays by Member States, which have exacerbated operators' compliance failures. Consequently, illegal timber and timber products are still routinely placed on the EU market. This situation undermines trading partners' confidence in the EU's commitment and capacity to tackle the illegal timber trade.

**EU Member States** must demonstrate their commitment and step up their efforts to achieve the objectives of the EUTR. In particular, we urge them to:

- implement and enforce the law strictly and consistently, and routinely carry out adequate and effective checks on operators;
- impose adequate and proportionate sanctions in cases where the law is violated and on companies that do not abide by the due diligence requirement;
- provide adequate resources and staff training for EUTR enforcement authorities, and enhance structured cooperation and information-sharing at national, EU and international levels;
- investigate substantiated concerns raised by NGOs and other third parties more effectively, and create a mechanism for concerns to be raised by citizens and NGOs from VPA countries;
- increase transparency by providing publicly available and easily accessible information about national checks and resulting enforcement actions; and
- ensure other laws designed to control the illegal timber trade (EU Wildlife Trade Regulations and FLEGT Licensing Scheme Regulation) are enforced and consistently applied.

In addition, we ask the **European Commission** to:

- ensure the complete EU-wide implementation and proper enforcement of the EUTR;
- extend the product scope of the EUTR to all products containing wood, such as musical instruments, seating furniture and printed materials; and
- issue guidance for Member States on identifying and dealing with the risks of conflict timber.



*EU Member States must demonstrate their commitment and step up their efforts to achieve the objectives of the EUTR.*

## Green Public Procurement

To date, the uptake of green public timber procurement policies by Member States has been slow and insufficient, restricting its full potential.

- **The EU and Member States** must set themselves the target of 100% green procurement of timber and wood products, ensuring that all public timber procurement comes from sustainable sources, based on the highest sustainability standards and covering all wood products, all administrative levels, and all Member States.
- **The EU** must encourage the development of green public timber procurement policies in producer countries and major consumer countries, like the US and China, as an incentive for shifting wood production and consumption towards sustainability.

## 3 Strengthen and encourage the development of rules governing the international timber trade and improve overall policy coherence.

### Legislative action by international trading partners of the EU

Like the EU, the United States and Australia have put in place illegal timber prohibition laws. It is hoped that a strict enforcement of these laws will succeed in closing access to markets for illegal timber. As a positive indication, the US authorities have taken action against companies that violated the US Lacey Act.

Other countries that depend on timber imports, such as China, Japan, Vietnam and India, do not yet have legal instruments in place to prevent illegal timber from entering their market. If the international community is to succeed in stopping illegal logging, high-level political commitments and strong policy actions from these countries are essential.

China is now the world's biggest importer and consumer of timber and wood products, and a significant share of its current raw timber supply is sourced from countries with poor forest governance and a high risk of illegal logging. China has also become a significant processing hub and a vital link in the supply chain of many European companies dealing with wood products. This highlights the importance of EUTR enforcement and due diligence on imports from China.

- **The EU and Member States** must intensify their dialogue with China, Japan, Vietnam, India and other countries dependent on timber imports, and encourage them to

introduce legislation comparable to the EUTR and Lacey Act.

The EU and Member States should make more effective use of, and increase stakeholder engagement in Forest Law Enforcement and Governance (BCM-FLEG), the bilateral cooperation mechanism. Forest law enforcement, governance and trade issues discussed within the BCM-FLEG should be brought into EU-China high-level discussions on investment, as well as those on environment, climate change and sustainable development.

## CITES

In recent years NGOs have exposed several cases in which illegal and suspect batches of CITES timber entered the EU, not least because of the weak enforcement of the EU Wildlife Trade Regulations. This situation must be urgently addressed if the EU is to prevent all illegally harvested timber of the most threatened species from entering its market.

We urge **CITES authorities in Europe** to:

- cooperate with EUTR authorities to use the powers granted under the EU Wildlife Trade Regulation and refuse to issue CITES import permits in cases where the legality of a shipment is in doubt. In particular, CITES authorities should treat timber from countries under review of Article 13 with caution and issue import permits only when the legality of the timber is not in doubt.
- suspend imports of CITES-listed timber species from countries where illegal logging is prevalent and CITES rules are not effectively enforced.

We urge the **European Commission** to issue guidance to Member States and their public authorities on how to deal with such cases of CITES timber from countries under review of Article 13, in line with the recommendations to CITES authorities above.

We urge **all parties to the CITES convention** to strengthen the international CITES regime to establish rules for “legal acquisition finding” and legal compliance and traceability in supply chains for CITES-listed species.

## Human rights laws

The EU has adopted an Action Plan on Human Rights and Democracy (2015-2019) which is intended to guide actions in its external activities. It is important that the actions and priorities outlined in the Human Rights Action Plan are explicitly integrated and mainstreamed in the implementation of the FLEG Action Plan.

We urge the **European Commission** to:

- include explicit language on compliance with international human rights law as an element of “legality” in FLEG generally, and VPAs and TLAS systems specifically.
- include VPA countries’ international human rights law obligations as a required agenda item in VPA dialogues and negotiations between the EU and producer countries, including discussions about legal reforms and good governance of tenure.
- ensure individuals and communities have accessible methods to challenge legality verification methods and the allocation of timber concessions that infringe on their human rights or undermine their land and livelihood security.

## 4 Adopt specific measures to address conflict timber, to stem the flow of conversion timber, and to shift investment away from forest-damaging activities as part of the FLEG Action Plan implementation.

### Conflict timber

Although FLEG includes an action area on conflict timber, no specific action has been taken to date<sup>6</sup>. An inadequate response from the EU to outbreaks of conflict in producer countries could legitimise and encourage the timber trade and its role in financing conflict<sup>7</sup>.

Conflict timber is not specifically mentioned in the EUTR or in European Commission guidance on the EUTR. This gap should be addressed as a matter of urgency by the Commission by issuing guidance for Member States on identifying and stopping conflict timber from entering the EU market.

We recommend that:

- EU and VPA signatories set out measures in VPA annexes addressing the risk of conflict timber.
- the EU develops procedures which foresee the possible suspension of a VPA where there is an outbreak of conflict in a VPA country. Such action should only be triggered in consultation with key stakeholders, and should include pre-defined steps to address the risk of conflict finance from the timber trade, accountability and enforcement mechanisms should the need arise.<sup>8</sup>
- establish measures to avoid the risk that in transition or immediate post-conflict environments, forest concessions are

<sup>6</sup> The last FLEG action plan progress report 2003 – 2010 (Jan 2011) highlighted the area of conflict timber as receiving insufficient attention and insufficient results.

<sup>7</sup> As with other natural resources, the role of the timber trade in financing conflict is well documented – including in Cambodia, Liberia, DRC, Burma and most recently in the Central African Republic.

<sup>8</sup> EITI (Extractive Industries Transparency Initiative) and Kimberly Process both have formal processes which are triggered by changes in a participating country, notably the outbreak of conflict or overthrow of a recognised government, and could inform the development of such a procedure within the FLEG-VPA process

allocated in violation of national and international laws, and of the resurgence of conflict finance from the timber trade<sup>9</sup>.

## Conversion timber

The EU FLEGT measures were designed in the late 1990s and early 2000s, before the boom in agriculture expansion. One of the consequences of this boom has been that globally-traded tropical timber increasingly originates from areas that have been clear-cut for agriculture instead of areas under forest management. Recent research has found that half of the tropical timber available on the international market comes from forest conversion operations (Forest Trends, 2014). This 'conversion timber' has a large carbon and ecological footprint, and often adversely affects local forest-dependent communities, their land tenure and human rights. National governments, the EU and the international community must address this new trend, protect forests from deforestation and stem the flow of conversion timber.

We urge the **EU** to:

- adopt new measures as part of an action plan on deforestation and forest degradation (see section 5).
- effectively apply existing FLEGT policy instruments according to their full potential (see recommendations in sections 1 and 2).

## Finance and investment

At the start of 2015, the top EU-based financial institutions (including banks, institutional investors and alternative investment funds) had provided nearly US\$18 billion in outstanding loans and recent underwriting services to foreign agriculture companies based in developing countries<sup>10</sup>. EU financial institutions are also major holders of shares in stock-market-listed agricultural companies based in developing countries; in early 2015 the top 20 institutional investors held US\$2.8 billion. The original FLEGT Action Plan was committed to improving due diligence in this area, but little was achieved.

- **The EU** must introduce regulatory requirements that all institutional investors undertake due diligence of new and ongoing financial relationships to ensure that they "know their project" in terms of identifying and mitigating land tenure and deforestation risks.
- **EU Member States** should require investors to regularly and publicly disclose their exposure to such risks and outline the engagement strategies they have employed with investee companies to manage and reduce them.

## 5 Adopt additional measures to support the protection and restoration of forest ecosystems around the world and eliminate deforestation from the EU's supply chains, as part of a new EU Action Plan on deforestation and forest degradation.

The 7th EU Environment Action Programme – for the EU recognised the need for an action plan against deforestation and forest degradation. In November, the Commission announced that it was finally starting a process to assess the feasibility of such an action plan.

We urge the **EU and its Member States** to develop an EU Action Plan and urgently adopt new measures for forest protection to help the EU to meet its global commitments, including:

- the Sustainable Development Goals 12 and 15: Ensure sustainable consumption and production patterns, sustainably manage forests, halt deforestation, restore degraded forests and substantially increase afforestation and reforestation globally by 2020.
- the 2014 New York Declaration on Forests: end deforestation, reduce forest degradation, and restore 350 million hectares of forests, while respecting the customary rights of indigenous peoples and local communities.
- the COP21 Paris Agreement on climate change.

- **Action is required on the full suite of drivers of deforestation and forest degradation. This would reinforce the EU's position as a leader on biodiversity conservation, sustainable development and climate action.**

The EU can demonstrate leadership on global issues and thereby respond to the concerns of EU citizens, in ways that member states cannot achieve individually. It can set in place smart legislation and incentives that will create a level playing field for the private sector and speed up the implementation of sustainable supply chains. It can support ongoing efforts to address unsustainable logging practices and improve forest governance in countries which export to the EU.

- **Action to take deforestation out of global supply chains, which will match private commitments and speed up market transformation.**

Major private sector actors have pledged to eliminate deforestation from their supply chains and investments. Examples include the Consumer Goods Forum's zero net deforestation by 2020 initiative, the Banking Environment Initiative to provide deforestation-free financing; numerous commitments by individual retailers, brands and traders; and place-specific actions such as the Brazilian soy industry's moratorium on purchasing soy from lands that have been deforested in the

<sup>9</sup> As recommended by experts including UN bodies and USAID, "Forests and conflict: A toolkit for intervention", USAID, 2005, p8.

<sup>10</sup> <http://www.fern.org/sites/fern.org/files/Clear%20Cut.pdf>

Amazon. Amongst those are some of the largest EU retailers, importers, processors, producers and banks such as Danone (France), Reckitt Benckiser Group (UK), Unilever (UK) and banking and financial services giant HSBC (UK), to name but a few.

As a major trading bloc, the EU must rise to the challenge and reinforce private sector efforts through policies and regulatory measures, creating a level playing field. This would boost pledges, generate trust and make the companies more accountable to their commitments.



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## The EU should set out action to:

- **Establish a regulatory framework to ensure that all supply chains that feed the EU market are sustainable, free from deforestation and forest degradation and comply with international laws and standards on the rights of indigenous peoples and local communities, in particular their land and tenure rights.**
- **Introduce forest-specific provisions in EU trade and investment agreements, and require due diligence measures to ensure that the banking sector, financial institutions and public agencies (Development Finance Institutions) do not lend to companies or invest in activities that contribute to deforestation, forest degradation, or encroachment on customary lands.**
- **Provide more financial and technical assistance to producer countries to protect, maintain and restore forest ecosystems, including by improving governance; clarify and strengthen land tenure and respect human rights, including the rights of indigenous peoples; support protected areas that uphold community rights; ensure that FLEGT and REDD+ strategies contribute to addressing commodity supply chain-related drivers of deforestation and forest degradation; and improve the productivity of smallholder farmers through ecological farming practices.**
- **Minimise Europe's food waste and overconsumption of goods, by ensuring the EU Circular Economy Package puts in place new policy mechanisms to deliver sustainable, resource-efficient consumption and production methods**