



SUMMARY RECORD

26TH FLEGT/EUTR EXPERT GROUP MEETING **12 DECEMBER 2019**

1. Adoption of the agenda and of the minutes of the previous meeting

Points 2 c) and d) were merged and with this amendment, the agenda was adopted.

Competent Authorities (CAs) were reminded to submit any additional comments on the draft minutes of the previous meeting by the end of the day.

2. Nature of the meeting

The meeting was not public. EU Member States (MS) and Norway were represented by delegates from the EUTR/FLEGT Competent Authorities.

3. List of points discussed

1) Information points

a) European Green Deal

The European Commission adopted and announced on 11 December a Communication on the [European Green Deal](#), which has many areas of relevance to EUTR and FLEGT. There is a clear timeline for follow-up activities, including adoption of a biodiversity strategy on 26.02.2020, adoption of a second circular economy action plan on 4.3.2020 as well as the adoption of strategy for sustainable food systems (Farm to Fork) and a new EU forest strategy later in 2020. The European Green Deal includes a clear link to the [Deforestation Communication](#) and reaffirms the commitment that the Commission will take measures, both regulatory and otherwise, to promote products and value chains that do not involve deforestation and forest degradation.

b) Commission activities based on the Deforestation Communication

There will be an EU Forest Conference 4-5 February 2020 in Brussels – the Commission has circulated the agenda to CAs, with [registration](#) open until 08.01.2020. In addition, the [European Green Week](#) will take place during the first week of June, with a dedicated session on forests and deforestation. The EC will need to deliver proposals within 2020 on regulatory and non-regulatory demand side measures, will conduct an assessment study next year and consult widely, including an open public consultation. Linked to this are the evaluations of the EUTR (including the product scope) and FLEGT regulations. The EC is working with the Joint Research Centre on the establishment of an EU forest observatory (a one-stop-shop for accessing relevant information). The study on certification of forests and wood-based products will also be relevant in this context.

The EC recently shared the draft of a call for application to collect interest from stakeholders to join the expanded expert group and multi-stakeholder platform with CAs. This would not affect CA expert group meetings, but a meeting with a wide range of stakeholders would be held once or twice a year, preferably back-to-back with expert group meetings. The EC is also planning to launch publicly a call for application of stakeholders.

c) Outcome of the Informal EUTR Enforcement Group meeting

NL had a bilateral meeting with Indonesia in October to discuss mismatching HS codes – Dutch customs has national guidance on how HS codes are used (will share among CAs, especially in view of working towards electronic licences). The issue of FLEGT shipments sent by post was discussed. These are usually small quantities and FLEGT licences should be presented to customs but carriers often use other customs procedures and may be unaware. The possibility for approved companies to do retrospective customs declarations under special procedures was raised – CAs are encouraged to check if they allow such self-declarations and whether the data was provided by customs and was included in the 2019 FLEGT national report (see point 4.6). HU presented a case where illegal origin domestic timber that had been seized by the CA was subsequently stolen and placed on the market (including transfer of timber to another MS). There was extensive discussion on Myanmar, including that Sweden will be issuing a statement regarding teak ([Message from Skogsstyrelsen 19. Dec. 2019 \(SE\)](#)) which will clarify the position of the EUTR EG, in particular regarding the current impossibility to access all relevant applicable Myanmar legislation and thus to complete the first step of due diligence, and underlining the problem of corruption, which renders legality verification very difficult. NL presented a case where timber had been imported using a company in another MS to try to circumvent enforcement. CAs were asked to check national translations of the EUTR as the legal concept ‘adequate’ in Article 6.1c of the EUTR “adequate and proportionate” risk mitigation procedures may not have been translated accurately in some languages. A report in the Austrian media ([here](#)) regarding companies importing illegally logged timber from Ukraine and the issue of logging incorrectly declared as sanitary logging was discussed. Certification was discussed with regard to countries in which corruption is a key risk for illegality and in the broader context, particularly that the schemes need to be traceable and transparent.

It was clarified that it is practically impossible to verify after the harvest on the occasion of an annual visit by a representative of a certification scheme, whether the conditions for sanitary logging were actually fulfilled at the time of harvest. In this respect, certification cannot be considered an adequate measure to mitigate the risk of illegality. CAs also discussed helping operators through development of information leaflets/ handbooks etc. without reducing responsibility of companies of conducting their own DDS. The issue of sharing of data between (and within) MS was raised, as were trade patterns and how they may shift under enforcement pressure. DG OLAF will be invited to join the next informal enforcement meeting.

2) Update on FLEGT processes

a) VPA Vietnam

The VPA entered into force 1 June 2019, the first meeting of the Joint Implementation Committee (JIC) took place 15 November, with the Joint Working Group (JEM) taking place earlier the same week. VN is making considerable efforts to implement the VPA, currently focusing on the development of the VN TLAS Decree (the parts not already covered in other national laws). Their ambitious timeline could become a challenge, if they

have a Decree to fully implement the TLAS without the entire infrastructure in place to implement it.

Besides many smaller, though important issues, the EC is insisting on three issues, in particular:

- i) The VNTALS decree should contain more and better definitions that clarify concepts new to VN, such as due diligence;
- ii) a clear governmental document needs to be made publically available and updated, whenever a VPA implementing provision is changed, which references the provisions under the VPA with Vietnam with the provisions of Vietnamese law which implement these;
- iii) VN wants to try out a gradual implementation of the TLAS (e.g. starting with public bodies as operators). These stages of implementation, with timelines, must be clearly laid out in the Decree itself, in order to ensure full transparency. Also, it is crucial not to start with an implementation limited to timber exported to the EU, as the VPA covers all timber and only FLEGT licensing is limited to the exports to the EU. Only if legal harvest in the country of harvest can be ensured for all timber, FLEGT licencing may commence.

The VN TLAS Decree had been shared with the Ministry of Justice and will be shared with the government and all ministries for consultation. The EC had the impression that its concerns were understood and taken seriously and its suggestions were welcomed by its counterparts, including the Ministry of Justice. The EC has been reassured that the latest version to be submitted to the government would be shared with it in time to comment and share the comments with its counterparts before the submission. Multi-stakeholder involvement, including international NGOs, is a good sign, with good quality of input. VN is keen to learn from challenges of other VPA countries. EC considers current timelines over-ambitious (licensing suggested to commence in 2021), but VN may still push ahead and release public messages that licensing will begin soon. EC warned VN that, in its experience, rushing the process and not leaving time to ensure full coverage of the VPA in the implementing legislation, awareness raising and capacity building of all operators in VN, and effective implementation and enforcement, risks to prolong the process and reminded VN that FLEGT licencing can only start after agreement on the basis of a joint assessment that operational readiness is ensured.

EC raised the issue of confiscated timber with VN, clarifying that for FLEGT licensing, timber must have been legally harvested in the country of harvest – VN confirmed this would be the case. EC clarified it must be detailed in VN legislation that only confiscated legally harvested, low risk timber may be FLEGT licensed.

Conclusions:

VN is making good progress but timeline to reach FLEGT licencing seems to be overly ambitious.
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b) VPA JIC Indonesia

The JIC meeting on 18 November 2019 was successful, with several ministries and many industry stakeholders, including civil society participating. VPA implementation in general is going well. There are some specific aspects where improvements are needed, some are technical, others are broader. There was agreement on the summary of the second periodic evaluation, which was a well prepared document. Main EC points were concerning imports (although much smaller volume than for VN), the importance of appropriate resources and

monitoring/checks. ID is interested in learning about CA DDS checks. The team working in LIU on licensing issues is small and resources are limited; ID was encouraged to make sure that appropriate resources are available and strengthen LIU. E-licensing was also discussed and in the next year the interconnection of the two systems is expected. Addressing of non-compliances was discussed and EC received reassurances on concrete cases and was satisfied with results. There was general agreement on the 2019 report and approval of the Action Plan for 2020. ID would like more to be done on communication and promoting of the FLEGT licensing scheme (IMM working with private sector on this). The JIC in December 2020 will include conclusions on e-licencing; they are aware of issues of HS codes mismatching; ID is preparing its internal rules on what to do with licences once timber has left ID. EC raised the issue of statement letters and ID agreed these cannot be accepted anymore. EC is asking for reassurances that if there are any changes affecting the VPA that this must be discussed with the EC/EU first.

Online platform for non-compliance cases is an extremely useful tool. EC presented the high numbers of EUTR checks and penalties, which is helpful for ID to see huge effort within EU, to balance their view on efforts to export to EU.

A regional TLAS workshop between EU and ASEAN Member States, (China (CN), Korea (KR) and Japan (JP)) took place afterwards in Jakarta.

Conclusions:

Statement letters cannot be accepted anymore by EU MS

c) EU FLEGT Facility and FAO EU FLEGT Programme steering committees

These are the two main implementation bodies for supporting FLEGT Action Plan related work in third countries, funded by the EC with co-financing from different MS. The EU FLEGT Facility run by the European Forest Institute (EFI) works on providing technical support while FAO historically worked on smaller field projects, but recently broadened their role. Steering committees include EC, UK, NL, DE and sometimes other MS, but all CAs should have a say on questions on strategic issues. A FLEGT *Ad Hoc* meeting is planned, maybe back-to-back with the February expert meeting. There are changes to the financing– for EU FLEGT Facility usually financial contributions went to a trust fund, but from now on from EC side it will be direct financing for work on Asia/SE Asia and Latin America.

Different MS are financing projects on cooperation and development, e.g. UK and DE were investing this year on programmes relevant to FLEGT. The EC are interested to hear about the main objectives of relevant MS projects, how they fit into the larger picture and how this will help MS implementation etc.

Conclusions:

The importance of views/experiences of this FLEGT/EUTR expert group in broader discussions was highlighted.

3) Update on implementation of the licensing scheme under the FLEGT Regulation

a) MS updates on issues related to implementation of the FLEGT Regulation

The EC confirmed that it heard loud and clear the MS concerns voiced in the EG meeting of September 2019 regarding the fact that the EU-Ghana VPA allows for the inclusion of confiscated/legalised timber in the Ghana TLAS. The EC also had taken note of, the requests that steps be taken to ensure that confiscated/legalised timber is excluded from the legality definition. While appreciating these concerns, which aim essentially at aligning the scope of legality of the EU-Ghana VPA with the scope of the EUTR, the EC pointed out that the EU-Ghana VPA predates the EUTR. The VPA was negotiated in good faith, approved by the Council and has been in place for ten years. Legalisation of confiscated timber is an essential part of the Ghanaian national framework and negotiations to include in the legality definition both the principle and the mechanism (auctioning) .The EU side had argued against yet eventually agreed to it. Nevertheless, the MS concerns were communicated to Ghana and the EU Delegation in Accra was asked to provide figures on how much illegal timber is legalised. The information so far shows that more than 90% of these cases relate to rosewood for which the main market is SE Asia/China, not the EU. Rosewood is another issue of grave concern with links to the VPA implementation, but essentially the responsibility to tackle it lies more with the CITES framework. At the same time, the CITES Trade Database shows no source code I (seized/confiscated) exports from Ghana of this in the last five years. EIA campaigned for Ghana to properly implement a permanent ban on rosewood exports. In the context of the Independent Assessment of Readiness a closer look at the system will take place with a view to identify and flag any loopholes. Regarding the Independent Assessment of Readiness, the EU Delegation in Accra is working with Ghana to address the findings, with the support of the FAO EU FLEGT programme and the EU FLEGT Facility. The initial timeline to conclude this month has not been met. The EC agreed that the system has to be robust before licencing.

Conclusions:
EC is not stepping back from discussion on confiscated timber, but takes note of Ghana's position not to reopen the VPA. EC will explore with Ghana possible solutions.

b) FLEGT Reporting 2018

The third analysis of Member States' annual reports on the FLEGT licensing scheme covers the period January to December 2018; annual reports were received from all 28 MS. The draft analysis was circulated to CAs in early October for comments; 7 MS provided feedback. Thorough checks of data enabled a number of issues to be identified and resolved. Currently awaiting UK customs data to be resubmitted; no customs data was received from IT and RO; EL's is incomplete. There is a gap between the number of FLEGT licences received by CAs and the number cleared by customs, beyond the above missing customs data. The analysis will highlight such gaps to help find solutions. The retrospective self-declarations of licences may partially explain data gaps and EC request MS information on this; a new question on this will be included in the national reporting template. The analysis must now be finalised to proceed with the COM report and MS are invited to submit any updated information by 3 January 2020; an email to this effect will be sent to CAs today.

Conclusions:
The background analysis will be finalised in the first weeks of January, followed by production of the COM report.

c) FLEGT Reporting 2019

UNEP-WCMC provided an overview on the shift of the national reporting into the EC's DECLARE system, which is expected to be ready in February. The Excel reporting template for the licences received and quantities cleared under the FLEGT licensing scheme is not changing, other than an additional guidance tab to help with cross-checking of the data to identify and resolve potential errors. MS were encouraged to request the customs data (where necessary) already in January, independent of the shift in reporting platforms; the Excel template will be shared with MS by email.

d) FLEGIT – new features and lessons learnt from the reporting exercise 2019

The EC reported a delay of approximately 5 months in the e-licensing with ID, as there have been long periods of inactivity by ID; subsequently it is not possible to provide an estimate for when the e-licensing becomes operational. If ID do the testing over the next two months then the start of the pilot phase is expected for February. Tests on the single window are taking longer, as it is an experimental phase and the interconnection is being tested with one MS. Ghana also wants to move to e-licencing, but development has stopped because of lack of funding on Ghanaian side. The EC encourages CAs to contact Jean Willain for any questions. VN too intend to do e-licencing from the beginning in a system that is shared with the EU, which also is very ambitious.

4) Presentations

a) Use of DNA-analysis for tracing timber to the stump in Myanmar.

Dr Eleanor Dormontt presented her research on DNA identification of teak, from the Advanced DNA, Identification and Forensic Facility of the University of Adelaide. She is also a consultant for UNODC on the '[Best Practice Guide for Forensic Timber Identification](#)', to be revised next year. The project will generate genetic resources map of the natural range of teak *Tectona grandis* (India, Myanmar, Thailand, Lao PDR). A set of new DNA markers was created and the results indicate that teak populations in Lao and Thailand are different to Myanmar (MM). MM itself has several genetically distinct populations (not all states in MM were sampled, so the genetic composition of teak from un-sampled areas is unknown). A 95% of samples could be assigned to the correct area. Applications include pilot testing of claims of origin by Double Helix, by taking samples of logs prior to processing and comparing the resultant most likely area of harvest with where CoC documents claim the origin to be. It is possible to match logs to the stump, this has been piloted in Indonesia. Next steps include working with GTTN for reference data housing and to explore synergies with other timber identification methodologies (stable isotopes, DART-TOFMS). The German Thünen Institute also recently visited to see if they can improve the rate of successful extraction of DNA from teak samples.

b) ADE/CIFOR Presentation

The ADE/CIFOR project for DG DEVCO followed from the 2015 report from the Court of Auditors 'EU support to timber-producing countries under the FLEGT action plan' where a need to improve the overall outcome and impact-monitoring of the FLEGT-AP was identified. CIFOR built a Theory of Change (ToC), based on the work plan of the FLEGT-AP with 3 sections i) producing countries; ii) EU demand and investments; iii) global sphere. Indicators are needed for an operational Monitoring and Evaluation system to assess impact/change. Looked at EFI, FAO and DG ENV/UNEP-WCMC data, plus publicly available literature. In parallel, VPA impact studies are being conducted in Ghana, Cameroon and Indonesia and national VPA impact monitoring, but no data available yet. Need primary data for the ToC – will conduct a survey with MS. There will also be a

survey on how much of the overall budget is spend in different areas and another looking at sustainable development goals (so three surveys coming soon).

5) EUTR Guidance development

a) Due diligence: adoption of the guidance document

Comments were received by 3 MS after the deadline and other MS indicated they had comments. There is now a very final deadline of 20 December 2019 for final comments. EC will put this to a written procedure if appropriate, otherwise it will be tabled at the February EUTR-FLEGT EG meeting.

6) Update EUTR implementation

a) Myanmar – debrief of the FLEGT multi-stakeholder group meeting on 05/11/2019 and a possible new way forward

EC reported on the participation at a national multi stakeholder group (MSG) meeting in Nay Pyi Thaw, Myanmar (MM). This group was set up in the course of the pre-preparatory process towards a VPA, but already last year it was made clear that the process was halted. Setting up this national group and the related regional groups representing government (including State-owned Myanmar Timber Enterprise, MTE), private sector and civil society organisations (CSOs), is remarkable given that great parts of the country are not under government control. Although the VPA process is stopped, having the MSG as an interlocutor is very helpful in the strife for improved forest governance and law enforcement in MM. The meeting on 5 November involved about 150 people. EC prepared a document that brings together the concerns voiced to date and a column with possible solutions, with that column being almost empty. This document has been shared with CAs and the participants of the meeting, also translated to Burmese. It will be put on the website of the MM FLEGT office. Also the FLEGT AP was translated into Burmese and shared. Representatives of the EU FLEGT facility and the FAO-EU FLEGT Programme, which also funded the event, assisted with this work. At the meeting a range of guided questions were discussed, such as what it means to enable access to relevant information under Article 6 (1) (a), including ‘applicable law’ within the meaning of Article 2 (h) of the EUTR to operators from third countries. Discussions developed, e.g., from an initial denial of any issues to agreeing that ‘public access’ means information being available at all times to anyone, e.g. online. However, it will have to be ensured that the discussion results are shared with the regional MSGs and there is a shared understanding of the issues and possible adequate solutions. There was willingness to bring the discussion back to the regions for further consideration. MM applied for funding from the FAO-EU FLEGT Programme for further multi-stakeholder meetings to prepare a work programme for activities that could be funded by the Programme from 2020-2021 and build capacity to submit quality project proposals. The intention is to ensure ownership of the process of all stakeholders and at the same time avoid the pursuit of (often costly) activities promoted by some stakeholders predominantly interested in trade, which, in the end, do not constitute adequate measures to ensure good forest governance and legal timber harvest. Following the meeting, MTE uploaded the Annual Allowable Cut (AAC) for 2019-2020 online (initially in Burmese, but now also in English). However, other legal documents are still not publically available. Moreover, harvest started in August so there is still an issue for 2019 as the ACC was only available since November. No harvesting plans or AAC for prior years were accessible for operators at the time of harvest, so, in any case, it will not be possible to exercise due diligence properly and thus not allowed to place on the EU market any timber from Myanmar harvested before. Stakeholders noted that EU and other third country companies put pressure on them to export. Some reported about highly paid

consultants, offering “traceability docket” and “independent third party verification” for containers with teak, give the exporters the impression that these docket are sufficient for their EU clients to enable them to exercise due diligence properly.

Conclusions:

Dialogue with MM has clarified what issues must be addressed in order to outline a way forward towards good forest governance and legal timber harvest, which would provide sufficient transparency to enable operators to carry our due diligence correctly and adequately mitigate to a negligible level the risk of illegal harvested timber being placed on the internal market. It also showed avenues for working together with MM in this context, without giving false expectations.
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The EG took note of the fact that the Annual Allowable Cut (AAC) for the 2019/2020 season was made available online in November. However, other applicable legislation is not fully accessible for EU operators within the meaning of Article 6 (1)(a) of the EUTR, enabling operators to fully comply with Article 5 of Implementing Regulation (EU) No 607/2012, e.g. because it is declared internal or it only exists in Burmese. Full risk assessment and choosing and applying adequate mitigation measures to address each of these risks is therefore not possible. Thus the conclusions on MM remain valid, as per prior Expert Group meetings , meaning that at present and for the reasons given in the present conclusion and those referenced in the June meeting’s summary record and the September meeting’s summary record , it still is not possible to come to a negligible risk of illegally harvested timber from MM, in particular due to a lack of sufficient access to the applicable legislation and documentation from governmental sources.

b) Imports from countries/areas with non-negligible risk of illegal harvest e.g. Brazil, Cameroon, Congo, others

Conclusions:

The conclusions regarding Brazil (19 June 2018, and 7 December 2018) are upheld.
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c) Import from Ukraine: Status on the draft guidance document

CZ presented their guidance document to assist operators, which also refers to the EUTR country overview. CZ appreciate it should stay an unofficial working document, as it would need regular updating. CZ Invited CA comments. CZ may look into translation into Ukrainian next year.

EC provided an update on bilateral work with Ukraine (UA). Noting Article 294 (trade in forest products) of the 2014 EU-Ukraine Association Agreement, Parties commit to working together to promote trade in legal and sustainable forest products. Work on the UA conclusion has been put on hold as at the recent subcommittee meeting, UA informed DG TRADE that they had no mandate to discuss forestry issues (due to staff changes at the ministry). They agreed to have a video conference early 2020. EC will prepare discussion points, avoiding distracting discussions on forest management and instead focus on transparency, inspection regime, corruption etc. Prefer no conclusions on UA until after this meeting to ensure all can enter dialogue positively.

Conclusions:

Finalisation of conclusions on UA are postponed until after the video conference with UA authorities in February 2020.
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d) EUTR reporting 2019

UNEP-WCMC presented and thanked CAs for their input on the draft analysis. The final version is being prepared for January 2020. The next reporting cycle will be annual and is shifting to ECs DECLARE system. This platform will be open all year round to enter and change data. DECLARE has static sections, annual sections and the option to declare check related activities throughout the year. Data in DECLARE are not visible to anyone else until CAs submit the national report (confidential data is also removed at this stage).

e) EUTR reporting 2019 debrief from the WebEx training session

A WebEx training session was held on Monday, 9 December 2019 there was a technical issue on sharing the recording but this should be resolved. Received a list with links to all the parts of the tool so that this can now be tested by CAs online in a test environment; will send via mailing list. CAs are encouraged to provide feedback by email. Developers will not be able to digest all feedback immediately – send to EC who can synthesize the comments.

Conclusions:
MS are free to use DECLARE's 'declaring' optional function if they wish to reduce the burden of reporting by entering data over the year. It will be available in 2020 for 2020 reporting and will be assessed at the end of the year. Call upon CAs to see if this tool is helpful and to provide feedback in due course.

7) A.O.B

a) Spain presentation on Certification bodies – lack in transparently

The EUTR refers to certification systems, but they require further scrutiny. When an operator checks the FSC certificate data online, it may appear as valid, but there may be a period for which the certificate was suspended and this is not visible online. This is an important lack in transparency at the first step. The chain of custody audit report by ASI is not public for FSC; only current status is available but the full history is not available and 99 companies have “hidden” suspended periods. Cautions against using certification for DDS, if there are elements, which are not transparent. PEFC and other schemes may even be more opaque. Urge the EC and EG to ask FSC and PEFC to publish the past status of certificates and to provide the reasons, why some were suspended. So far, no response from FSC International, and PEFC say they are working on it.

4. Conclusions/recommendations/opinions

See individual points

5. Next steps

See individual points

6. Next meeting

The next EUTR/FLEGT Expert Group meeting will take place on 19 February 2020, preceded by an Informal EUTR Enforcement Group meeting on 19 February p.m.

7. List of participants

CODE	ORGANISATION
BE	FPS Health, Food Chain Safety and Environment
BG	Executive Forest Agency
CZ	Forest Management Institute of Czech Republic
CZ	Ministry of Agriculture
DK	Ministry of Environment and Food, Environmental Protection Agency
DE	Bundesanstalt für Landwirtschaft und Ernährung (BLE)
DE	Federal Ministry of Food and Agriculture
DE	Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH
IE	Department of Agriculture, Food and the Marine
ES	Ministry of Agriculture, Fisheries and Food
FR	Ministry of Agriculture and Food
IT	Arma Carabinieri
IT	Ministry of agriculture, food and forestry policies
CY	Ministry of Agriculture, Natural Resources and Environment - Department of Forests
LV	State Forest Service
LT	Lithuanian State Forest Service
HU	National Food Chain Safety Office (NÉBIH)
HR	Ministry of Agriculture
NL	The Netherlands food and consumer product safety authority (NVWA)
AT	Federal Forest Office
AT	Federal Ministry for Sustainability and Tourism

PL	Chief Inspectorate of Environmental Protection
PL	Ministry of Finance
PT	Instituto da Conservação da Natureza e das Florestas, I.P.
SI	Ministry of Agriculture, Forestry and Food
SK	Ministry of Agriculture and Rural Development of the Slovak Republic
FI	Finnish Food Authority
SE	Swedish Forest Agency
NO	Norwegian Environment Agency