



## **SUMMARY RECORD**

### **24<sup>TH</sup> FLEGT/EUTR EXPERT GROUP MEETING**

**21 JUNE 2019**

#### **1. Adoption of the agenda and of the minutes of the last meeting**

An update on the recent central European EUTR enforcement group meeting was added under agenda point 5 and a point on the potential inclusion of wood charcoal under the scope of the EUTR was included under AOB. With these amendments, the agenda was adopted. The minutes of the last meeting were approved, with clarifications regarding the lack of access to information on relevant legislation in Myanmar under agenda point 2.a).

#### **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 (CAs).

#### **3. List of points discussed**

##### **1) Update on FLEGT implementation**

###### **a) MS updates on lessons learned from implementing the FLEGT Regulation**

Member States (MS) provided updates on FLEGT implementation, particularly on issues with discrepancies between licences and the actual shipments, the issuance of new/replacement licences and statement letters to explain discrepancies between licences and shipments.

#### **Conclusions:**

FLEGT-licences are legal documents, which cannot be altered by anyone but the issuing authority and only in line with the Indonesian (ID) legislation.

If an original licence was lost and has to be replaced, a replacement licence (a licence with the same number) should be issued with 'Replacement' clearly written on it.

If the information on weight/volume between the licence and the shipment (documents) differs more than foreseen by ID law, but a new licence may exceptionally be issued (e.g. more than -10% difference in weight/volume), MS need to request a new licence, and, as of now should not accept statement letters any longer.

*Explanation:* If the information on the FLEGT-licence and the shipment differs more than the tolerance foreseen in Point 4.2.2 of the ID Circular [SE.001/PPHH/NEIP/HPL.3/4/2018](#) (i.e. more than -10% difference in weight or volume), and the shipment has left ID, the exporter may propose the cancellation of the licence if, and only if, it is either a case of force majeure or the difference in weight or volume is more than -10%. The wording of Point 4.3.4 of the Circular in this regard

("a less than 10% difference in volume/weight"), is unclear, but this is the intended meaning and common understanding (an interpretation that the wording refers to a lower percentage than +/- 10% would not make sense, as that percentage is covered by the tolerance, i.e. does not require any cancellation/issuance of a new licence). After the cancellation, the exporter can request the issuance of a new license as described under Point 4.3.4 of the Circular.

MS should assess any issues with licences and associated shipments on a case-by-case basis and inform the Licencing Indonesia Unit (LIU), keeping the Commission (EC) in copy and ensuring that the Licensing Agencies coordinate with LIU. In case of new issues and solutions proposed by LIU, MSs should also inform the other MSs in order to ensure coherence in the approaches.

## **b) FLEGT Annual Synthesis Report 2017**

The EC confirmed that the COM report was adopted this month and is available online, together with the UNEP-WCMC background analysis and all MS national reports. The EC asked CAs to encourage their customs to use FLEGIT to support the reporting process.

## **2) Update on FLEGT processes**

### **a) Update on VPA process with Vietnam**

The VPA entered into force 1<sup>st</sup> of June and VN has prepared an advanced draft of the VNTLAS. The EC has received an English translation of the current draft, which is now being assessed, so that feedback can be submitted to VN. In parallel, the Rules of Procedure of the Joint Implementation Committee (JIC) are being worked on, as well as the Rules for Arbitration. The EC position regarding these will hopefully be submitted to the Council in the 3<sup>rd</sup> or 4<sup>th</sup> quarter of the year. The JIC will be established by way of exchange of letters before 30 December. A first JIC meeting is intended for the end of this year. VN aims at reaching licensing by 2021.

### **b) Update on VPA process with Lao**

The 3<sup>rd</sup> round of negotiations took place this week and Lao reported significant issues with the adoption of relevant laws. Lao shared an update on its vision for the forest, the role of VPA in developing this, the timber legality definition and the Due Diligence System (DDS). Lao confirmed that confiscated timber is to be kept for the domestic market. Therefore, supply chain controls will need to be assessed carefully. The EC highlighted that support by the FLEGT facility and other donors like DE, SE, Japan etc. is essential for the country's progress.

### **Conclusions:**

In VN, licensing may start in 2-3 years.

Lao still aims to initial the VPA in 2020. While this is considered unrealistic, Lao clearly demonstrates the political will and ambition to advance rapidly.

## **3) Update EUTR implementation**

### **a) Substantiated concerns: Myanmar – application of the joint non-negligible risk assessment**

The EC referred to a recent presentation by PEFC to authorities in Myanmar (MM), in which they compared their way of assuring legality with what they referred to as 'TLAS' (Timber Legality Assurance System), a term specific to FLEGT VPAs, and therefore

incorrect in the context of MM, where the conditions for preparatory work for negotiating a VPA are currently not met. PEFC appear to want to reach a status where they can certify MM timber, while the EU have concluded that a negligible risk assessment cannot be achieved in the current situation, where the legal and forest governance framework in MM. As it stands, part of the legislation, such as bylaws and plans are still not publically available ahead of the harvest season, even according to the official Chain of Custody Dossier itself (e.g., annual harvest plan), corruption, internal armed conflict, and illegal harvest remain pervasive problems.

### **Conclusions:**

The EG maintains its assessment that it continues to be impossible to come to a negligible risk of illegally harvested timber or derived products being placed on the EU market when the timber was harvested in MM (see, in particular, Conclusions of the EG regarding timber from MM of [19 April 2019](#), [19 June 2018, following the meetings with the Delegation from MM](#), and [20 September 2017, tab 'Additional Information'](#)). To the EG's knowledge, there are currently no other cases of countries with a significant trade volume into the EU, where the deficiencies in the national systems are as clear as in MM. Cases brought to the attention of the EG demonstrate that the approach established here (making operators aware and put on notice) makes it possible to take action after that.

To make a case under Article 4 (1) of the EUTR (breach of the prohibition to place on the market illegally harvested timber or timber products derived therefrom), CAs need to prove that the timber or derived products were actually illegally harvested. To make a case under Article 6 of the EUTR, the operator has to prove that a complete DDS is in place, including documented procedures and measures to access information concerning the operator's supply of timber or timber products; in particular information on compliance with the relevant legislation, and that it has been applied, in particular, through documented adequate measures to mitigate the risk to a negligible level. It follows from the obligation to mitigate the risk to a negligible level that an operator who has no adequate measures or procedures in place or does not apply adequate measures to mitigate a non-negligible risk of illegality, may not place that timber on the market. Since illegal harvest will be difficult to prove regarding a particular item or shipment, in order to be effective, EUTR enforcement should focus on ensuring that the operators' DDS and their actual exercise of due diligence (DD) carried out before placing timber or derived products on the market, are in line with the EUTR.

EUTR countries (EU and EFTA Member States) need to ensure that they can enforce the obligation of operators to not place timber and derived products on the market, where the DDS or the actual risk assessment or mitigation measures were inadequate and negligible risk could thus not be demonstrated.

To ensure the proportionality of measures and penalties, it may be necessary to first emit a prior warning and a prohibition to place on the market non-negligible risk timber or derived products, in the future, for as long as the conditions causing the non-negligible risk or the lack of adequate mitigation measures prevail.

To ensure effective and dissuasive penalties, national systems must allow swift action and preliminary injunctions to stop the suspensory effect of appeals, particularly in cases of repeated breaches and clear EUTR EG conclusions, which reflect the expertise of the EUTR CAs regarding the risks and the inadequacy of mitigating measures.

It is, once again, highlighted that close cooperation among CAs is key to effectively addressing imports, where the risk of illegality is non-negligible and adequate risk mitigation has proven difficult, or are, as in the case of MM, up to now, impossible.

The information on the potential PEFC certification of teak from natural forests from MM is very worrying, as operators might infer from it that, even for the past and under the present circumstances, where access to relevant legislation can still not be ensured and high risk of illegality prevails, it is possible to come to a negligible risk of illegality assessment. This could lead operators to breach Article 4 (2) and (3) in conjunction with Article 6 of the EUTR, by placing timber on the market for which a negligible risk could not be established, and thus has the potential to undermine the correct application of the EUTR.

**b) Non-negligible risk in other countries/areas**

**Brazil:** The current EG conclusion says that the risk is not negligible and that DDS's need to be assessed on a case-by-case basis. MS provided inputs on recent cases.

**Conclusions:**

Current approach to Brazil still stands (Conclusions of the Expert Group regarding timber sourced from the Amazon Basin in Brazil, [19 June 2018](#), and [7 December 2018](#), pp.6ff.).

**Ukraine:** Work is ongoing to prepare conclusions on the country, and a draft is anticipated to be ready for discussion at the September EUTR EG meeting. CAs provided updates on recent checks and cases related to timber from Ukraine.

**Conclusions:**

Ukraine as a whole is considered a risk country of harvest, requiring the provision of adequate risk mitigating measures and taking them, to be able to come to a negligible risk assessment. Where such an assessment cannot be reached, the timber should not be placed on the market.

**c) MS updates on other issues related to the implementation of the EUTR**

CAs provided updates on recent checks on timber from other countries of harvest.

**Conclusions:**

The validity of FSC and other certification, where used as part of the risk mitigation, should be assessed by CAs as part of the DDS checks.

**d) Sharing experience: risk based planning; collaboration with prosecutors; judges**

The EC will look into working with prosecutors, MS' lawyers etc. to improve understanding of the EUTR, and in particular DD. As a first step, a prosecutor was invited to the Nordic Baltic meeting. NEPCon will work with CAs on training under a new LIFE project, which may be an opportunity for MS' experience sharing. The EC are mapping other possibilities and welcome information on national initiatives on training and any information networks.

**Conclusions:**

The sharing of experiences on successful prosecution across MS is crucial to ensure a coherent enforcement.

#### 4) Presentations

##### a) Presentation of the Swiss draft legislation regarding wood and wood product to be placed on the Swiss market

Switzerland are working on implementing an equivalent legislation as the EUTR, the Swiss Wood Regulation, and propose to introduce a new Article 35 into their regulation, which will be the Swiss timber regulation. The implementing ordinance is expected to be adopted in Spring 2021.

##### b) Presentation on risk-based inspection planning

IMPEL presented on the network of CAs across Europe who are working on risk assessments and inspections, e.g. on waste and water. The resulting risk assessment method IRAM could also be adapted for use for EUTR checks.

<b>Conclusions:</b>
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The risk assessment method IRAM is potentially of interest and ways to adapt it to the EUTR context will be assessed.
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#### 5) Discussion points

##### a) **EUTR and FLEGT Reporting – state-of-play**

The EC presented the general objectives of the reporting and the legal obligation of national reporting under the regulations, as well as the importance of the data for the 2020 assessment of the EUTR. A working group to test the new templates was requested.

<b>Conclusions:</b>
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The reports for 2018 need to be submitted without further delay. The data requested for the 2018 report can be expected to be requested again for 2019. Before making the reporting format legally binding through an implementing act, the questionnaire should be stable. A team of CAs and the EC will work on this, while simplifying as much as possible the questionnaire and preparing the transition to the reporting tool DECLARE.
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##### b) **Proposal to expand the EUTR/FLEGT Expert Group to observers**

As explained in the draft concept paper distributed, the EC proposed to expand the EG to include observers for some meetings, without changing the way the EG operates, the membership and working arrangements. Instead, stakeholders would attend back-to-back meetings with EUTR/FLEGT EG meetings to share experiences and good practices. The first meeting is planned for February 2020.

<b>Conclusions:</b>
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General support to the expansion of the EUTR/FLEGT EG as proposed.
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#### 6) Information points

##### a) **Update on support services for implementing the EUTR and FLEGT Regulation**

The update primarily focussed on the national reporting on EUTR and FLEGT for 2018 and the upcoming shift of the reporting into the EC's DECLARE system; sections will be shared with CAs for review when they are available.

<b>Conclusions:</b>
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Constructive CA input is essential to ensure that the DECLARE platform will align
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with the workflow of CAs and support planning, recording, self-assessment and reporting.

#### **b) Outcome of the Informal EUTR Enforcement Group meeting of 20 June**

The Informal EUTR Enforcement Group touched upon the issue of ensuring a strict segregation of supply chains of internationally operating companies between those leading into the EU and those leading elsewhere (but possibly ending in the EU), if different legality scrutiny is applied. CAs exchanged views on how to ensure that the information regarding a supply chain is, indeed, correct and agreed that companies should be able to explain how they make sure that supply chains are separated in such cases. In case of partial certification the volume of certified timber going in the supply chain versus that coming out is an issue. There is agreement that, where documents are presented in a foreign language, a collaborator of the operator has to be able to read and interpret the relevant rules and document and the operator needs to be able to explain them upon inspection. Otherwise the operator is not compliant. Ways of supporting operators, in particular small and medium sized enterprises (SMEs) were recalled, such as the [overviews of timber source countries](#) of the European Commission (subsection Implementation and Enforcement of the Timber Regulation page on the Europa website), publically available due diligence system templates of monitoring organisations (MOs), CAs and business associations, non-governmental sourcing hubs and NGO websites and reports. Checks on MOs, their role and functioning and related issues were discussed. For salvaged timber (e.g. oak from bogs) the operators need to either prove legality of harvest, or, where that is impossible due to the passage of time or ‘felling’ though natural disasters, dispose of a permit to collect such timber. In countries, where transport is not legal without a prior harvesting permit, such timber of unknown origin shall not be placed on the market. [Assurance Services International](#) (ASI) presented its work. It is an organisation owned by the Forest Stewardship Council (FSC), which assesses and accredits certification bodies related to forestry, fishery, palm oil and other products on the basis of privately set standards. ASI checks whether the certifying bodies certify the certificate holders according to the procedures of the scheme. Audits at certified organisations are annual but the certificate has a validity of five years. Certificate holders can choose to sell very little or even no certified material and, in the latter case, can forego an annual check once during the certificate’s validity period. While forest management reports are public, chain of custody reports are only accessible upon request. Invoices must follow the rules of the scheme to carry the claim, but may also contain uncertified timber. Species and products outside what is certified, i.e. what is listed in the database, cannot be covered by a claim. Auditors do not automatically check volumes going in and going out of a company. Formerly suspended licenses cannot be identified in the database, leading to an uncertainty with respect to the validity at the time of entering the supply chain. Corruption in the chain (e.g. when allocating concessions) must be addressed during the audit. CAs would consider reporting to the relevant authorities of criminal activities detected during audits desirable.

#### **c) Outcome of the Nordic Baltic network meeting 17 to 19 June**

CAs discussed checks conducted in the Nordic Baltic countries, risk-based planning and the Russian timber tracking system. A prosecutor shared experiences in assessing DDS in court and the sharing of information within a confidential space will be tested.

#### **Conclusions:**

The EC encourage regional enforcement coordination in line with EUTR EG and EC objectives.

**d) Outcome of the Eastern European network meeting end of May**

CAs discussed bark beetle, sanitary cutting, forest management in protected areas, checks on traders, legality of timber in Ukraine, and a national timber tracking system.

<b>Conclusions:</b>
The EC encourage regional enforcement coordination in line with EUTR EG and EC objectives.

**7) EUTR Guidance development**

**a) Due diligence: draft update of the guidance document (ver. February 2016)**

EC informed CAs that the working group is working on a short description of what DD is (they are not working on the main commission guidance, these are separate).

**b) Consideration of the need for Commission guidance on risk based planning**

The EC was approached by CAs who were having difficulties with risk based planning and the success rate of checks differs across MS, which may also be related to identifying operators that may be more risk-prone. This work would support CAs and is a longer-term project, and may include training and adjustment of the tool (agenda point 5.b)).

<b>Conclusions:</b>
The development of guidance on risk-based planning was welcomed by the EG, but it was felt that first best practice should be collected and serve as a basis for the guidance.

**8) A.O.B.**

The EC explained that the review of the EUTR, which will happen in 2021 will be combined with the follow up on the study on the product scope and an assessment of certification systems. All this work will involve consultation with MS.

**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 12 September 2019, preceded by an Informal EUTR Enforcement Group meeting on 11 September p.m.

**7. List of participants**

<b>CODE</b>	<b>ORGANISATION</b>
BE	FPS Health, Food Chain Safety and Environment

BG	Executive Forest Agency
CZ	Forest Management Institute of Czech Republic
CZ	General Directorate of Customs
DK	The Danish Ministry of Environment and Food, Environmental Protection Agency
DE	Bundesanstalt für Landwirtschaft und Ernährung (BLE)
EE	Ministry of Environment
IE	Department of Agriculture, Food and the Marine
ES	Dirección General de Desarrollo Rural, Innovación y Política Forestal (MAPA)
HR	Ministry of Agriculture
IT	Arma Carabinieri
IT	Ministry of agriculture food forestry and tourism 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
MT	Ministry of Environment, Sustainable Development and Climate Change
NL	Ministry of Agriculture, nature conservation and food quality
NL	The Netherlands food and consumer product safety authority (NVWA)
AT	Federal Forest Office
PL	Chief Inspectorate of Environmental Protection
PL	Ministry of Finance
PT	Autoridade Tributária e Aduaneira
PT	Instituto da Conservação da Natureza e das Florestas, I.P.

RO	Ministry of Waters and Forests
SI	Ministry of Agriculture, Forestry and Food
SK	Ministry of Agriculture and Rural Development of the Slovak Republic
FI	Finnish Food Authority
SE	Permanent Representation of Sweden to the EU
UK	Office for Product Safety & Standards
NO	Ministry of Climate and Environment