

EU organisations reaffirm their support for FLEGT and EUTR

Feedback received by the EC on their “fitness check” of the FLEGT and EUTR regulations indicates a high degree of consensus amongst European organisations and interests on the broad aims and objectives of the policy and legislative instruments.

It also indicates a desire to extend implementation and improve enforcement of the regulations in various ways. However, the relationship between the regulations and private sector forest certification initiatives was a point of difference between European organisations.

These are conclusions of a brief review of responses, undertaken informally here by MIS (and therefore in no way to be interpreted as reflecting the views of the EU), to a public consultation undertaken by the European Commission (EC) in February and March this year.

Although relatively small in number and almost exclusively from European interests, the 39 responses received captured a wide range of regionally significant forestry, industry and trade associations, alongside some larger companies, and non-governmental organisations.

All the responses received by the EU are available at <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/11630-Illegal-logging-evaluation-of-EU-rules-fitness-check->

According to the EC, the “fitness check” examines the “effectiveness, efficiency, coherence, relevance and EU added value of both regulations in contributing to the fight against illegal logging globally”. The EC is evaluating whether the instruments are fit for purpose or need to be revised.

The “fitness check” also addresses the coherence between the regulations and, according to the EC, will “provide a very valuable input for the assessment of potential additional demand side measures.”

Most organisations responding to the fitness check agreed that the FLEGT regulation and EUTR are “fit for purpose” in the sense of delivering positive gains against their stated objectives of reducing trade in illegally harvested wood and contributing to improved forest sector regulation.

From the trade side, the European Timber Trade Federation (ETTF), representing timber trade associations in 15 European countries, stated that they “fully support the FLEGT process and ask the EU to speed up the process”. FederlegnoArredo, the Italian Federation of Wood, Cork, Furniture and Furnishing Manufacturers, said “we think that FLEGT and EUTR are key policies on improving governance of developing and emerging market countries”.

For the European woodworking industry, CEI Bois stated that, for EUTR, the “EU added value of this instrument is undeniable” and “the industry fully supports the FLEGT system and recommends the EU to speed up the process with producing countries in order to increase the volumes of FLEGT-licensed wood available for the European market”.

Similarly, the European Furniture Industries Confederation (EFIC) noted that it “sees the benefits of a wider application of the EUTR”. The Finnish Forest Industry Federation (FFIF) called the EUTR “an important tool to prevent illegally harvested timber products to be placed on the EU market” and called for the scope to be extended. The European Panel Federation (EPF), on behalf of European manufacturers of wood-based panels, said that it “embraces EUTR”.

The European Landowners Organisation, which represents the hundreds of thousands of landowners, managers and farmers across Europe, stated simply that they “consider that the EUTR is ‘fit for purpose’ and continues to be the main tool to minimize the risks of unfair competition in

market”. Furthermore that “the principle of due diligence must remain central and the implementation of the EUTR should be improved, particularly in areas deemed riskier”.

Environmental groups also remained broadly supportive of the FLEGT process. FERN said that it believes the VPAs have “prompted forest-related legal and policy reforms in all partner countries. This has improved governance, increased sustainable forest management, and reduced deforestation”. The Environmental Investigation Agency (EIA) said that the EUTR and FLEGT Regulation “provide a framework that is fit for purpose and contributes to the international fight against illegal logging and its related trade.”

ClientEarth “considers that both the EUTR & FLEGT Regulation have contributed to more legality and transparency in the global timber supply chain and have made progress towards achieving the objectives of the FLEGT Action Plan”. Earthsight noted that the EUTR is “a pioneering piece of legislation and remains a vital tool in the global fight against illegal deforestation and the associated trade in commodities”.

Call for FLEGT measures to be extended and deepened

While there was broad support for the FLEGT process and the EUTR, there was also a call for the FLEGT measures to be extended and deepened in various ways.

CEI Bois called the EUTR to be extended to “include all wood products, printed products and furniture products currently outside the scope, except for recycled materials and wood packaging for transport” and suggested this would “increase the coverage of imports of ‘high-risk’ wood by almost 30%”.

Other organisations called for more specific changes in EUTR product scope, for example EOS, the European Sawmillers Organisation wants the law to be extended to include HS4402 (charcoal), HS4404 (hoopwood, poles etc), and HS4419 (Tableware and kitchenware); EFIC asked that HS9401 (wooden seating) and 4421 (other wood products such as coffins); and the FFIF specified printed papers (HS49) as well as wooden seating.

Several commentators highlighted the need to extend FLEGT licensing to more countries as quickly as possible. ETTF said that the “FLEGT process started in 2003. Up to now there is only one country that has a FLEGT system in place, namely Indonesia – this is clearly not enough.”

CEI-Bois “recommends the EU to speed up the process with producing countries in order to increase the volumes of FLEGT-licensed wood available for the European market”.

Similarly, FederlegnoArredo observed “quantities of timber or timber products imported into the EU under the [FLEGT licensing] scheme are still too low. Speeding up the implementation of VPA’s on the Congo Basin and parts of West Africa will boost the number of FLEGT licences”.

The Italian association also mentioned “Insufficient promotion on benefits of FLEGT licensing and FLEGT VPA initiative amongst EU’s member states and stakeholders both in the EU and from countries of harvest.”

Some commentators called for further efforts to ensure effective enforcement of EUTR. CEI-Bois noted the need to “ensure a consistent implementation and enforcement by EU Member States. Different levels of stringency of the controls performed by Competent Authorities lead to an uneven playing field and ultimately undermine the goal of the Regulation”.

EFIC said that “the experience shared by EFIC members demonstrates a lack of correct implementation of the existing EUTR rules” and called on the EC to “coordinate a more consistent enforcement of the EUTR....in particular, there is an urgent need to close existing gaps and harmonise rules”.

EOS called on the EC to give “clear indication on respective legality risks in different countries and on the appropriate and expected risk mitigation measures for ALL market participants encountering these risks”.

IKEA said that “we see implementation issues severely slowing its potential to contribute to responsible wood sourcing. Current processes put up obstacles for both large and small operators” and suggested that “Member States define ‘acceptable due diligence systems’ in different ways”.

According to IKEA, “this makes it difficult for operators to efficiently meet the requirements without changing the process for each Member State. This, combined with inconsistent enforcement and auditing procedures (at times procedures varying from case to case within the same Member State), is inefficient and expensive for everyone involved.”

Fedustria, the Belgian timber industry association, said that “there is no clear guidance on what is exactly expected from the operators. It is essential that the necessary guidelines and recommendations are provided, which give the companies the opportunity to improve their due diligence system. We have repeatedly indicated that the objective of the EUTR should not be to punish, but to work towards a better system with all stakeholders in a constructive manner.”

Fedustria raised concerns about the methodology for targeting specific operators in EUTR; “We have observed that the same (major) players are continually subject to inspections, while many small-scale operators slip through the net. However, it is precisely the major players who have developed and continuously refine good due diligence systems”.

Fedustria also identified a possible loophole in the EUTR: “companies being registered in a European country, custom clear goods in another European country than their registered country. As a consequence, they are not being controlled by the Government of the importing country, since they are not registered with any legal set-up (imports are done through fiscal representation) and furthermore they are also not controlled by their governments in their home countries, since there are no registries of any imports”.

Some NGOs were also critical. Earthsight observed that “while there have been laudable steps taken by a few Member States to enforce this law over the years, these instances have remained the exception rather than the rule. It has now been seven years since the EUTR entered into force and the enforcement response to illegal logging cases, even cases where plentiful evidence of illegality related to specific companies or supply chains has been made public, has been poor”.

Global Witness said that they “undertook several investigations on trade of illegal timber in the past years which showed how illegally harvested tropical timber is still being placed on the EU market. These revealed weaknesses in the enforcement of EUTR by certain member states which are undermining the effectiveness of the law”.

The NGO France Nature Environnement requested that “the quality assessment of the EUTR and FLEGT explore and identify the factors hindering the application of the EUTR. Indeed, this assessment must assess the legal and operational elements preventing its effective implementation” and suggested that “in France, only 30 agents from the regional forestry and timber services have

been trained to control nearly 5,000 loggers and sawyers. With such a limited resource, the EUTR cannot apply properly”.

Disputed role of certification in EUTR

A point of difference amongst organisations providing feedback to the EU is the role of private sector certification systems like FSC and PEFC in EUTR. Some private sector interests suggested there should be greater recognition for the risk mitigation role of certification in the regulation.

EPF said that EUTR should “recognise 3rd party verification and certification bodies (e.g. SFI, ATFS, FSC, PEFC or ISO 38200) as enough risk minimisation especially for complex supply chains such as panels and paper since operators do not always have access through the supply chain to all the necessary information on the origin of the processed wood in their purchased product.”

The FFIF didn’t go so far to ask for a green lane through EUTR for certified products but called for “greater coherence with forest certification initiatives” and that the “role of forest certification, as tools to verify the legal origin of raw-materials, should be better acknowledged when evaluating needs of possible revision of the EU legislative framework”

Similarly IKEA said that the EU should “create a common approach to third-party certification: agree upon and recognize internationally-accepted forest certification systems, like FSC, as one important part of the many parts necessary to build a solid due diligence system”.

However, this proposal for a greater role for certification was flatly rejected by some. For example, the NGO Earthsight said that:

“Our organisation has researched and documented several instances where timber products at very high risk of being procured or traded illegally have entered EU states, and have made them publicly available via our Timberleaks platform or in-depth reports. We have also sent these directly to EUTR competent authorities.

“One of the common threads running through our investigations is that almost all the companies we have named in them as being connected to illegal deforestation, bribery or corruption, are certified, mainly buy certified wood, and source timber from certified forests”.

Earthsight went on to suggest that “Timber industry bodies have acknowledged that certification is no guarantee of legality and that companies must do more to ensure products they are importing are not illegally sourced. Although certification can lead to better forest governance and protection in some cases, reports have shown this impact is reduced in countries with high levels of corruption and poor levels of governance. The FSC has acknowledged that voluntary standards were not designed to deal with corruption and that certification is no substitute for the role of the state”.

A call for a more measured role for certification in EUTR also came from the Polish State Forests National Forest Holding (PSNFH), particularly significant because this organisation oversees about 7.5 million hectares of forest in Poland, of which nearly 7 million hectares are FSC certified.

PSNFH noted that “having in mind that in accordance with EUTR ‘... certification or other third party verified schemes that include verification of compliance with applicable legislation may be used in the risk assessment procedure’, it must be emphasized that forest certification is mostly [a] marketing tool. It means that, operators placing timber or wood products on a market, should rely on their own risk assessment and mitigation of the risk identified. Operators fulfilling requirements of this Regulation must be fully responsible for their DDS”.