Summary

In late 2010 the European Commission and EU Member States reviewed the implementation of the EU Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan. The ensuing report\(^1\) identified key observations for the period 2003–2010.

- Progress is being made with support to timber-producing countries, more responsible trade in timber and public procurement policies.
- Interest in entering Voluntary Partnership Agreements (VPAs) with the EU is growing and exceeds the capacity to respond to them all.
- Although the Action Plan is an excellent example of policy coherence, collaboration and donor harmonisation, efforts to date fall short of their potential; more harmonisation of development assistance among donors is needed.
- Several global trends have implications for the Action Plan, including climate change and REDD+, amendment of the US Lacey Act, shifts in the patterns of demand for timber and in the centres of processing, and increasing competition for land to produce food and fuel as well as fibre.
- The Action Plan remains relevant, is producing results and should be continued and expanded.

Introduction

The EU FLEGT Action Plan was adopted in 2003 to address illegal logging and related trade. The Action Plan explicitly recognised that the EU is a major consumer of wood products from regions where illegality in the forest sector is rife, and, as such, is potentially providing a valuable market for illegal wood. It sought to create incentives for responsible timber producers and thus combined policy options to address both the supply of, and demand for, illegally produced wood. The Plan consists of seven complementary measures:

- Support to timber-producing countries, primarily delivered through Voluntary Partnership Agreements;
- More responsible trade in timber;
- Public procurement of timber;
- Private sector initiatives to eliminate illegally logged timber from supply chains;
- Better financial due diligence for forestry investments;
- Supporting the Action Plan with existing legislative instruments;
- Improved understanding of the role of forests and timber in conflicts and measures to reduce such conflicts.

The Communication which launched the Action Plan describes it as:

the start of a process which places particular emphasis on governance reforms and capacity building, supported by actions aimed at developing multilateral cooperation and complementary demand-side measures designed to reduce the consumption of illegally harvested timber in the EU\(^2\) (and ultimately major consumer markets elsewhere in the world).

The Action Plan departs from traditional forms of development assistance. First, it links development with trade and goes beyond relationships with governments to work with civil society in the broadest sense. Second, it requires domestic actions by Member States themselves. Third, negotiation of Partnership Agreements, and identification of the actions which partners will take, precedes discussion of development assistance. The actions identified to improve law enforcement, governance and trade reflect the circumstances of, and negotiated outcomes between stakeholders of, each partner country, not a preconceived notion of what is right.

In these circumstances, and given that the EU responds to expressions of interest from partner countries, the Action Plan is more of a political process than a traditional assistance programme. While that permits

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\(^1\) See [http://www.euflegt.efi.int/files/attachments/euflegt/flegt_ap_progress_report_efi.pdf](http://www.euflegt.efi.int/files/attachments/euflegt/flegt_ap_progress_report_efi.pdf) for the full report, which is based on interviews with governments, not on assessments of programme impacts or stakeholder views.

\(^2\) [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?...](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?...)

Illegal logging and poor forest governance are having a devastating effect on forests and the people that rely on them. The EU FLEGT Action Plan recognises that the responsibility for stopping illegal logging is as global as its impacts.
intelligent adaptation to a range of very different, and changing, circumstances it also makes such work more difficult to plan and to monitor.

Despite these challenges, the first of a series of independent assessments of the global response to illegal logging and related trade has already been conducted. This concludes that, while illegal logging remains a major problem and there is no room for complacency, the impact has been very large with reductions in illegal logging of up to 70% in some countries.

The European Forest Institute (EFI) produced the first systematic progress report on the implementation of the Action Plan. The report presents a comprehensive picture of activities undertaken by the European Commission and Member States, and of achievements made, in the period 2003–2010. This overview summarises perceptions of progress, discusses design principles and, in the light of global trends since the Action Plan was adopted, reflects on implications for its continuation.

Findings

Support to timber-producing countries

A great deal of sustained energy, enthusiasm and financial resources have supported the development of VPAs. Interest in VPAs has grown and there has been steady, but slow, progress in preparing, negotiating and implementing them.

• The first wave of VPAs have been ratified and others are under negotiation. As of July 2012 six countries have concluded VPAs, six countries have negotiations that are ongoing or about to start and an increasing number of other countries are expressing interest. For the latest update on countries see the EFI FLEGT portal at: http://www.euflegt.efi.int/.

• So far, the VPAs have exceeded expectations in that the legality assurance schemes to be developed will apply to a wider range of products than the five categories required by the FLEGT Regulation and to all international trade, not just that with the EU. In addition, provisions for improved transparency and other aspects of governance have also exceeded the expectations of the EU.

VPAs are very demanding in terms of human resources. The European Commission estimates a requirement of between one and one and a half person-years per country of staff time from the Commission and EU Delegations. To share the burden, six Member States have seconded staff to support VPA negotiation and implementation, providing more than 32 person-years during the seven-year period under review. Clearly VPAs also require considerable investment by governments and other stakeholders in each partner country.

Although it was not possible to estimate with precision the amount of money invested in the Action Plan, because of differences in budget years and differences in defining what expenditure should count against this work, several hundreds of millions of euros have been allocated during the seven-year period under review. There has been considerable innovation in responding to demands from timber-producing countries:

• Six Member States, as well as the European Commission, have provided financial and technical support to partner countries;
• A FLEGT Facility has been established at EFI to support FLEGT, with contributions from the Commission and five Member States;
• The Africa, Caribbean and Pacific FLEGT Support Programme has been established by FAO with funding from the European Commission.

Despite the efforts that have been made, demands for technical and financial support exceed the capacity to respond to them all.

More responsible trade in timber

The EU has worked at global and European levels in an effort to galvanise action to address illegal logging and associated trade. The Commission and 11 Member States have supported international processes and forums to advance a multilateral framework to improve forest law enforcement and governance. These include the regional FLEG Ministerial Conferences, United Nations Forum on Forests (UNFF), International Tropical Timber Agreement (ITTA) and G8 as well as regional processes such as the Commission des Forêts d’Afrique Centrale (COMIFAC) and the Association of Southeast Asian Nations (ASEAN). However, no such multilateral framework has been forthcoming, nor is one likely to be agreed in the near future. Most efforts have therefore been directed at bilateral initiatives. In addition to VPAs these include collaboration with Japan and Russia and establishment of a China–EU coordination mechanism on illegal logging.

There has been a clear shift in market sentiment since the Action Plan was adopted. This is a consequence of awareness-raising efforts, NGO lobbying and the adoption of three regulations:

• The FLEGT Regulation of 2005;
• The FLEGT implementing Regulation of 2008; and
• The EU Timber Regulation of 2010. All regulations can be found on the EC’s Cap4Dev website, http://capacity4dev.ec.europa.eu/public-flegt/.

Some Member States had already designated a competent authority to receive, accept and verify FLEGT licensed timber, the first of which is expected to arrive in the EU in 2013, but almost half of Member States had not yet done so at the end of 2010.
Public procurement of timber

Public procurement policies have contributed significantly to the shift in market sentiment and practices that have been seen in the last decade. Promotion by the Action Plan accelerated the adoption of such policies and contributed to harmonisation aimed at reducing the burden of compliance. However, only 11 Member States have such policies; Denmark, the Netherlands and the UK have very similar policies in place. Nevertheless, harmonisation of existing policies has been limited.

Market pressure for legal and sustainable trade has intensified since the Action Plan was adopted and the ‘soft law’ instrument of procurement policy has been followed by the ‘hard law’ instruments of the US Lacey Act amendment and the EU Timber Regulation. It remains to be seen what role Member State public procurement policies will play once the EU Timber Regulation is in force.

Private sector initiatives

The policies and practices of EU companies and federations have changed in a number of ways as a result of the Action Plan:

- Increasing adoption of voluntary codes of conduct and procurement policies, particularly in the timber, paper and construction sectors;
- Increasing adoption, by forest owners and buyers of timber products, of standards such as those of PEFC and FSC;
- New chain-of-custody initiatives by timber trade federations and large-scale importers of tropical timber;
- A more general acceptance by the private sector of the need to verify legality.

The European Commission and Member States have promoted such changes by:

- Working with the private sector to advance the aims of FLEGT within their own countries (17 Member States) and in partner countries (4 Member States and the European Commission);
- Providing support so that the private sector in partner countries can contribute more effectively to VPA negotiations;
- Providing support to the private sector in developing countries and important processing countries through the Global Forest and Trade Network of WWF and The Forest Trust;
- Supporting business-to-business links between EU importers and producers in developing countries, through country and regional trade events, international meetings and provision of customised trade information;
- Seconding staff to trade federations to develop collaborative work.

Better financial due diligence

This aspect of the Action Plan was included because of evidence that the pulp and paper sector in Indonesia was expanding rapidly without security of raw material supplies and this was driving illegality (it is not to be confused with the early draft title of the EU Timber Regulation.). It has received relatively little attention: only three Member States and the European Commission have done any work with financial institutions. This may be in part because meetings with finance sector representatives and a report by Chatham House\(^6\) identified few possible points of intervention and failed to generate much interest among financial institutions. However, interest could grow now that the EU Timber Regulation and US Lacey Act have raised the risk profile of forest sector investors.

- Some banks and other institutions have changed their policies and practices, for example, adhering to the Equator Principles\(^7\); requiring independent evidence that timber operations or sources of supply are legal and sustainable; and dropping customers who fail to comply.
- The Norwegian Pension Fund has divested from a company allegedly involved in illegal activities.

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\(^7\) http://www.equator-principles.com/
• Price Waterhouse Coopers and the World Business Council for Sustainable Development have developed a Sustainable Forest Finance Toolkit\(^8\) and advise clients on financial due diligence.

• The Forest Footprint Disclosure Project\(^9\), backed by 55 financial institutions with over US$5 trillion in assets under management, has been created to help investors identify how an organisation’s activities and supply chains contribute to deforestation.

**Existing legislative instruments**
Prior to negotiation and adoption of the FLEGT Regulation a number of Member States reviewed their domestic legislation to assess whether it could be applied to tackle forest-related crimes. Germany and the Netherlands lead an EU-wide information campaign and brought finance, enforcement and forestry experts together. While in some cases existing legislation could in theory be used to prosecute forest crimes, difficulty in gathering evidence and preoccupation with other higher priority areas of crime, suggested that new legislation was required. Most Member States are of the view that further work on this aspect of the Action Plan is of low priority.

**Conflict timber**
While the European Commission and five Member States have supported work related to forests and conflict during the period under review, the concept of ‘conflict timber’ has not captured attention in the way that ‘conflict diamonds’ did. Conflicts related to forests, and natural resources in general, will continue to be a matter of concern for development agencies but Member States appear to be of the view that the topic of conflict timber as such is no longer a priority for the Action Plan.

**Progress: what is working?**
As Figure 1 shows, the perception of the European Commission and Member States is that most progress is being made with support to timber-producing countries, more responsible trade in timber, and public procurement policies. The view is that these areas of work are delivering or offer promise of delivering the desired results. The perception of progress with private sector initiatives is more mixed while most Member States consider that better financial due diligence, the use of existing legislation and addressing the issue of conflict timber have either received insufficient attention or have not proved relevant to furthering the aims of the Action Plan and are therefore not delivering the desired results.

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\(^8\) [http://www.pwc.co.uk/eng/issues/forest_finance_home.html](http://www.pwc.co.uk/eng/issues/forest_finance_home.html).
The focus on legality is appropriate. It is seen by developing countries as reinforcing their national sovereignty rather than detracting from it. This encourages discussion of sensitive issues such as corruption, which were formerly taboo.

Working with the private sector and harnessing the power of the market changes the dynamic of the debate about forests and governance.

Linking demand-side and supply-side measures demonstrates good faith by the EU, showing that it is willing to change its own behaviour, not just make demands of other countries.

Separation of the discussion of governance reforms from the discussion of financial assistance changes the nature of the relationship between the EU and developing countries. It becomes a political dialogue between more equal partners rather than a negotiation between donor and beneficiary.

The legally binding bilateral treaty nature of VPAs introduces a status that attracts key actors from beyond the forest sector whose engagement is essential if the status quo is to be challenged. In doing so it also raises the profile of the sector.

Patient support for genuinely inclusive (and therefore inevitably slow) national multistakeholder processes helps to deal with difficult, deep-rooted governance issues that earlier initiatives have failed to influence.

Coalitions of interest involving representatives from governments, NGOs and the private sector create opportunities and help to maintain momentum for change in ways that none of the parties could do alone.

Conclusions and issues for consideration

Many policies that affect forests have changed since the Action Plan was launched in 2003. As Figure 3 shows, the global trends which the European Commission and Member States consider to be most important are: climate change and REDD+; the US Lacey Act amendment; shifts in the patterns of demand for timber and in the centres of processing; and increasing competition for land to produce food and fuel as well as fibre.

The Action Plan arose out of concern about illegal logging in tropical forests. But governance challenges reach beyond illegal logging in these forests. The trend away from dependence on natural forests to investment in plantations is well advanced, especially in Asia but also in Latin America, and will become much more important in Africa within the next decade. To the extent that plantations usually have clearer property rights than natural forests (though experience shows that they are not always acquired fairly or legally) and represent significant investments that their owners want to protect, some aspects of legality may be less important in these forests than they are in natural forests.

However, other governance issues are likely to manifest themselves in different ways in different places: ‘land grabbing’, conversion of forests without due legal process and the conflicts these raise with local people who rely on forests for their livelihoods. The Action Plan, with its emphasis on nationally-driven, broad-based governance reforms can be of value in dealing with these challenges.

Each of these global trends has implications for the Action Plan and a number of questions arise when considering how it should be continued and expanded. They can be categorised in terms of: purpose and scope of engagement; geographical scope; ways of working and financing; positioning; and communicating.

Purpose and scope of engagement

Given the importance of climate change, should the Action Plan expand beyond legality associated with timber to that associated with conversion of forests to other land uses, such as agricultural production or mining?

Do the lessons learned from the application of demand-side measures to timber have relevance for other commodities?
What attention should be paid to public procurement policies for timber once the EU Timber Regulation is operational?

Should financial due diligence focus more on revenue capture and benefit sharing arrangements, which REDD+ will make even more important than before, and less on commercial forestry investments?

**Geographical scope**

The level of demand for VPAs and the evidence of impact to date argue for a much bigger Action Plan. Demands for support to VPAs already exceed the capacity to respond to them all and some Member States also wish to work with neighbourhood countries (Belarus, Russia and Ukraine) or regions (Western Balkans) which account for a larger share of their trade than tropical developing countries.

How should geographical priorities be defined? How should development aims, political objectives, legal obligations and constraints, operational realities and value for money (relative return on investment) be reconciled if they do not all point in the same direction?

**Ways of working**

The Action Plan is an excellent example of policy coherence, collaborative working and donor harmonisation in forest sector development assistance but it falls short of its potential and short of the commitments donors have made to harmonisation of development assistance.

Most Member States have focused their FLEGT-related efforts on meeting the legal obligations introduced by the Regulations developed under the Action Plan. Only eight Member States have been actively involved in providing support to VPAs through their bilateral assistance programmes. Timber trade and international development policy are important determinants of the nature of a Member State’s engagement in the Action Plan. In these circumstances, how can the number of Member States that contribute staff and money be increased to achieve the potential that exists and to respond to the imperative that the current spotlight on forests represents?

**Positioning and communicating**

The argument that the success of REDD+ is dependent on governance reforms as well as incentive mechanisms has now been widely accepted. In this regard how can the synergies between FLEGT and REDD+ be better communicated?

Member States (and others) have different understandings and expectations of the Action Plan. This is partly a consequence of insufficient investment in communications but it is mainly a reflection of the complexity of the issues and differences in motivations, as explained above. In these circumstances, how can the aim and scope of the Action Plan be communicated more effectively to different audiences?
The EU FLEGT Facility, hosted and managed by the European Forest Institute, supports the European Union, Member States and partner countries in implementing the EU FLEGT Action Plan.

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