EFFACE
European Union Action to
Fight Environmental Crime

EUTR, CITES and money laundering

Challenges to coordinated enforcement in the global forest products sector

Work Package 4 “Case Studies”

This project has received funding from the European Union’s Seventh Framework Programme for research, technological development and demonstration under grant agreement no 320276.

ACKNOWLEDGEMENT

The research leading to these results has been carried out as part of the research project "European Union Action to Fight Environmental Crime" (www.efface.eu). EFFACE is a collaborative effort of 11 European universities and think tanks and is coordinated by the Ecologic Institute (www.ecologic.eu). The research leading to these results has received funding from the European Union FP7 under grant agreement No 320276.

AUTHORS

Jade Saunders, Associate Fellow, Chatham House

Jens Hein, Programme Coordinator, Chatham House

Manuscript completed in January 2015

This document is available online at: www.efface.eu

This document should be cited as: Saunders, J., and J. Hein (2015). EUTR, CITES and money laundering: Challenges to coordinated enforcement in the global forest products sector. A case study compiled as part of the EFFACE project. London: Chatham House.

DISCLAIMER

Table of Contents

1 Introduction

This case study aimed to provide information about three policy mechanisms operating at the EU level, which have the potential to reduce incentives for illegal exploitation of forest resources in 'producer' developing countries, and may be mutually reinforcing. These were the EU Timber Regulation (EUTR), CITES and anti-money laundering legislation.

Following significant challenges collecting data, the case study sets out the enforcement efforts related to two of the three policy areas (the EUTR and CITES) at the EU level and in partnership with two producer countries, identifying opportunities for improved cooperation and coordination by relevant government agencies and the European Commission.

Illegal logging began to attract political attention in the late 1990s as a result of its negative social, environmental and economic impacts. The political focus arose despite, or perhaps because of, the failure of multilateral processes, such as those held under the auspices of The United National Forum on Forests (UNFF), to secure a global deal on sustainable forest protection despite decades of negotiation. Tackling illegal logging became the central theme of a number of regional Forest Law Enforcement and Governance (FLEG) conferences coordinated by the World Bank as well as a component of the G8 Action Plan on Forests.

Illegal logging is commonly accepted to occur when timber is harvested, transported, bought or sold in violation of national laws. The harvesting itself may be illegal, for example as a result of corrupt means having been used to gain access to concession rights, or where extraction has taken place without permission or from a protected area. The term also refers to cutting of protected species or extraction of timber in excess of agreed limits. In addition, illegalities may occur during transport, processing and export, for example through mis-declaration to customs, or avoidance of taxes and other duties. Recently INTERPOL has documented bribes of up to US$ 20–50,000 per permit for illegal allocation of harvest rights and noted that methods of illegality have become increasingly sophisticated, focusing on laundering illegally-harvested products destined for international trade with official documentation, generally facilitated by corrupt payments.[1]

Over the last twenty years a separate policy sphere has emerged, focusing on the specific modalities of what is known as Transnational Organised Crime (TOC). Analysts have increasingly described TOC as a threat to national security and regional stability.[2] In part, this acknowledgement of the significance of this sort of crime can be linked with the emergent realisation that TOC groups are often more flexible and resilient than the government agencies which seek to control them.[3] TOC is broadly defined as criminal activity which:

- Is based on a networked structure of individual criminal actors who work in a coordinated way across national borders;
- Is entrepreneurial in nature, moving quickly to take advantage of opportunities and avoid unnecessary risks; and
- Is prone to a greying of the line between legitimate and illicit economies as a means of deception and profit maximisation.

There can be little doubt that the global trade in illegal forest products meets all of these criteria, particularly the latter. It is, for example, notable that commercial groups involved in the processing and

[1] United Nations Environment Programme & INTERPOL, Green Carbon, Black Trade. Published 2013. Available at: http://www.unep.org/pdf/RRAlogging_english_scr.pdf

[2] Woodiwiss, M. "*Transnational Organised crime: The Global Reach on an American Concept*". In Transnational Organised Crime, edited by Edwards, A. and Gill, P. 13-27, London: Routledge, Taylor and Francis group, 2007.

[3] Joutsen, M. "*International Instruments on Cooperation in Responding to Transnational Crime*". In Handbook of Transnational Crime and Justice, edited by Reichel, P, 155-275. California: Sage Publications, 2005.

trade of illegal wood are often also involved in significant legal sectors such as commercial agriculture or infrastructure[4] and invariably operate in a number of neighbouring states, or even across continents.[5]

Given this, the relatively recently implementation of the EUTR and the Chatham House experience with enforcement officials, this case study focuses specifically on responding to the following relevant questions set out in the EFFACE research framework:

1. To which extent are the enforcement procedures for discouraging environmental harmful conducts in your case study effective?
2. Why your case study is relevant to implement a coherent framework for an effective fighting of environmental crime at EU level?
3. What is the impact of EU legislation, standards and policy on environmental crime on third countries in their efforts to combat environmental crime?
4. Which parameters guide criminalization of certain types of environmentally harmful behaviour?
5. From an enforcement perspective, what are practical advantages and disadvantages of criminalisation? For instance, potential disadvantages could be cumbersome procedures; less flexibility; different rights of actors; "inflation" effect.

From an environmental perspective illegal logging causes enormous damage to habitats, leading to a loss of biodiversity, for instance through overharvesting and logging in protected areas, and can fuel the illegal exploitation of wildlife. It can also be a contributory factor to the process of deforestation, and it can increase the vulnerability of certain forest types to fires – both of which result in the release of significant quantities of greenhouse gases into the atmosphere.[6] The highly profitable trade in illegal timber also undermines the competitiveness of legitimate forest industry operations; limiting the ability of these industries to invest in operations that meet criteria for sustainable forest management, and sustainable development more generally.

The social impacts of illegal logging are diverse, ranging from extremely negative to positive, at least in the short term. Which end of the spectrum impacts fall on generally depends on the specific modalities employed by the illegal actors. For example, in some cases the harvesting and export of illegal wood products can be demonstrated to have fuelled armed conflict, such as in Liberia under President Taylor,[7] and in many smaller cases social conflict has arisen around the allocation of specific concession areas or illegal logging outside concessions.[8] However, there is also a significant body of work demonstrating that many small scale operators are unable to comply with formal forest laws despite playing a vital role in rural livelihoods for the estimated 1.6 billion people who live in, and rely on, forests.[9]

From a political economy perspective, the allocation of timber concessions has often been used as a mechanism to reward allies or engender patronage[10] and there is significant evidence that large timber companies have been able to evade national regulations with relative impunity in many situations.[11] In 2012 INTERPOL and the UN Environment Programme (UNEP) estimated that between 50 and 90 percent of logging in key tropical countries of the Amazon basin, Central Africa and South East Asia was carried out

---

[4] EIA London, *In Cold Blood: Combatting Organised Wildlife Crime*, 2014. Available at: http://www.eia-international.org/wp-content/uploads/EIA-In-Cold-Blood-report.pdf

[5] Global Witness, *Submission to the State Forest Administration regarding the forthcoming Timber Trade and Investment Guideline*. January 2014.

[6] Lawson, S. *Illegal logging and related trade: indicators of the global response.* Chatham House, 2011.

[7] Global Witness. *The Charles Taylor Verdict: A Global Witness briefing on a dictator, blood diamonds and timber, and two countries in recovery*. May 2012.

[8] Schroeder-Wildberg, E. and Carius, A. *Illegal logging and resource conflict in Indonesia*. Adelphi Research, 2005.

[9] UN FAO, see: http://www.fao.org/forestry/livelihoods/en/

[10] *Logging in the shadows: An analysis of recent trends in Cameroon, Ghana, the Democratic Republic of Congo and Liberia How vested interests abuse shadow permits to evade forest sector reforms*. Global Witness, April 2013

[11] Ibid.

by organised criminal syndicates, further suggesting that State forestry institutions may also be subject to criminal 'capture'.[12]

The economic focus of efforts to tackle illegal logging was framed by early analysis by the World Bank in 1999, which observed "In many countries, illegal logging is similar in size to legal production. In others, it exceeds legal logging by a substantial margin."[13] This figure is illustrative of the huge financial incentive for illegal actors in the forest sector, particularly combined with poor enforcement effectiveness and, in many cases, the possibility of avoiding sanctions by making corrupt payments in the event that illegal loggers or those trading in illegal forest products are caught. Profit margins in the world of illegal logging are generally high, although, as with much syndicated criminal activity, the vast majority of profits accrue with more powerful individuals whereas illegal chainsaw operators in the forest, or those working in small-scale illegal sawmills, tend to be paid very little for their work.[14]

The World Bank went on to estimate that $15 billion in forgone timber revenues and associated economic growth was being lost annually by some of the most aid-dependent countries in the world as a result of illegal logging.[15] The early focus of international activities to tackle illegal logging has therefore been in developing countries where forest management and law enforcement is hampered by limited resources and operational capacity, with a strong focus on the economic dimensions of the crime rather than its specific environmental impacts.

However, by the early 2000s, it was becoming clear that focusing solely on the 'supply' side of the problem was unlikely to result in a significant reduction in levels of illegal logging around the world, since the incentives, in form of profitable undiscerning export markets, remained higher than the likely penalties even where illegality was identified, given the systemic failures of law enforcement and judicial function in the countries in question.

In 2003 therefore, the European Union set out a proposal for a Forest Law Enforcement Governance and Trade (FLEGT) Action Plan. The critical recognition of a trade dimension to the failure of forest law enforcement and governance underpinned a number of initiatives by the EU and its member states which sought to bring commercial incentives relating to the export of timber from developing countries in line with Europe's stated environmental and social commitments. The initiatives – most notably bilateral trade agreements known as Voluntary Partnership Agreements, and the European Timber Regulation (EUTR) – had the aim of creating protected market access for demonstrably legal timber, with a view to improving the business case for responsible actors in the forest sector. It did this by explicitly aligning European legislation with the national laws in the country of origin of imported timber products. In doing so, it made it illegal under EU law to trade in unlicensed products from Voluntary Partnership Agreement (VPA)[16] partner countries, or to 'first place' illegal wood from any country on the EU market. Additionally the EUTR created a requirement for 'first placers' to exercise due diligence – assessing and mitigating the risk of illegal timber entering their supply chains, regardless of the country of origin of the wood. The twin requirements were an explicit acknowledgement by legislators of the difficultly of effectively criminalizing activities that are by nature cross-boundary, such as the trade in illegal timber. Early reviews of policy

---

[12] United Nations Environment Programme & INTERPOL, Green Carbon, Black Trade. Published 2013. Available at: http://www.unep.org/pdf/RRAlogging_english_scr.pdf

[13] Campbell, J. G. and Martin, A. *Financing the Global Benefits of Forests The Bank's GEF Portfolio and the 1991 Forest Strategy A Review of the World Bank's 1991 Forest Strategy and Its Implementation*. World Bank Operations and Evaluation Group, 2000.

[14] Mendes, A. and MacQueen, D. *Raising forest revenues and employment: Unlocking the potential of small and medium forest enterprises in Guyana*. IIED, 2006.

[15] Campbell, J. G. and Martin, A. *Financing the Global Benefits of Forests The Bank's GEF Portfolio and the 1991 Forest Strategy A Review of the World Bank's 1991 Forest Strategy and Its Implementation*. World Bank Operations and Evaluation Group, 2000.

[16] A FLEGT VPA is one of the key elements of the EU's Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan to tackle illegal logging. These agreements between wood producing countries and the EU aim to ensure that wood being exported to the EU is legal and that forest governance in the exporting country is improved. VPAs work by tackling the root causes of illegality, which include corruption and lack of clarity about land rights. They are legally-binding Trade Agreements.

options identified the US Lacey Act as a possible model for European Legislation.[17] Subsequently a 'due diligence' model was developed by the European Commission, on the basis that it would be more enforceable to have a requirement with which compliance could be judged entirely within EU legal jurisdictions; thus requiring less cooperation on the part of government officials in producer countries.

A credible due diligence system is defined as one that entails:

- Information gathering: The type of information that must be recorded includes details of product and supplier, the country of harvest and compliance with applicable forestry legislation.
- Risk assessment: Operators are required to follow risk assessment procedures that take into account information gathered about the product as well as broader relevant risk criteria, such as the incidence of illegal harvesting in the country of harvest, the complexity of the given supply chain or the availability of appropriate 'third-party' certification and verification schemes.
- Risk mitigation: If risk assessment suggests there is a risk that the product contains illegally harvested timber, risk mitigation procedures must be put in place. Risk mitigation procedures are those that allow a company to ascertain that it is not purchasing illegal wood in situations where illegal wood may be offered for sale. They can include requiring suppliers to provide detailed information on the material source and chain of custody before the products are purchased or buying only products that have an independently audited guarantee of provenance and legality.

Ultimately the European Parliament ensured that the legislation included both a prohibition on illegal wood products and a due diligence requirement, on the grounds that the broader scope would give prosecutors more options – to sanction the worst offenders and to improve standards of due diligence incrementally through increasing standards in the interpretation of appropriate risk assessment and mitigation.

The focus on national 'legality' and trade made it possible to tackle fundamental incentives at the individual, corporate and national levels, at the same time as recognizing the sovereignty issues that had formerly made it impossible to achieve a multilateral agreement on sustainable forest protection and/or management.

While the legal commitments made by the European Union in the form of Council Regulation (EC) No 2173/2005[18] and Commission Regulation (EC) No 1024/2008[19] which underpin the legally binding nature of VPAs and Regulation (EU) No 995/2010 which sets out the three core requirements of the EUTR can therefore be considered an attempt to control 'environmental' crimes in forests, none of them focus on specific infractions of forest law, but rather refer to underlying national legislation and attempt to control the commercial activities, primarily cross border trades, which occur subsequent to illegal harvesting. In this case study it is clearly the in principle illegality and potential for criminal sanction in the country of harvest which give the EU both the moral/political mandate to legislate and the confidence that such measures can be enforced without fear of a WTO challenge, as opposed to the characteristics or intensity of the negative national/global environmental impacts of the regulated sector.

The regulation notes that risk mitigation should be 'adequate and proportionate' to the risk of illegal wood entering the product supply chain in question. It suggests that civil society groups provide information – in the form of 'substantiated concerns' – about companies that they consider to be failing to undertake effective due diligence or about consignments of wood that they suspect are illegal. Such formal 'concerns' are to be submitted to the competent authorities of the relevant EU member states; however, to date there are no standards or protocols defining what is an acceptable level of substantiation or how a member state ought to respond.

---

[17] Commission Staff Working Document - Accompanying document to the Proposal for a Regulation of the European Parliament and of The Council, determining the obligations of operators who make timber and timber products available on the Market. Impact Assessment, 2008. See: http://ec.europa.eu/environment/forests/pdf/impact_assessment.pdf

[18] http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32005R2173&from=EN

[19] http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008R1024&from=EN

The EUTR applies to a broad range of primary and processed wood products and it is not a border control measure – that is, compliance is not policed at the EU border but rather by enforcement agencies that scrutinize the business of a company or individual whose timber-trading activities are subject to the regulation.

A noteworthy exemption to the due diligence requirement of the EUTR is made for products imported in accordance with the EU Wildlife Trade Regulation, which implements the Convention on the International Trade in Endangered Species (CITES) in the EU. Article 3 of the EUTR states that 'timber species listed in Annexes A, B or C to Regulation (EC) No 338/97 and which complies with that Regulation and its implementing provisions shall be considered to have been legally harvested for the purposes of this Regulation'.[20]

CITES is a multilateral environmental agreement with 180 member countries. Its aim is to ensure that international trade in species of wild animals and plants does not threaten their survival. States that have voluntarily joined CITES and agreed to be bound by the convention are known as parties. Although CITES is legally binding on the parties, it does not replace national laws. Rather, it provides a framework to be respected by each party, which must adopt its own (domestic) legislation to ensure that CITES is implemented at the national level. Parties to the convention monitor and control relevant trade by requiring all imports, exports and re-exports of specimens of species covered by the convention to be authorized through a global licensing system. The parties must record all trade in listed species and report it annually to the CITES Secretariat. This information is made public through the online CITES trade database, managed by the UN Environment Programme World Conservation Monitoring Centre (UNEP-WCMC). In addition, the parties must designate at least one management authority responsible for licensing and at least one scientific authority responsible for assessing the effects of proposed and actual trade on the status of the species.

In order to authorize the export of a specimen of a CITES-listed species, a national management authority must be satisfied that the specimen has been 'legally acquired' and, in the case of species listed in Appendices I and II, that the relevant national scientific authority has advised that the proposed export will not be detrimental to the survival of the species. Species covered by the convention are listed in three Appendices.[21] Appendix I lists species currently threatened with extinction; trade in specimens of these species is permitted only in exceptional circumstances and requires an export and import permit. Appendix II lists species not necessarily threatened with extinction in the immediate term but in which trade must be controlled in order to avoid 'utilization incompatible with their survival'.[22] All parties to the convention are required to control trade in species listed in Appendices I and II in accordance with Articles III and IV of the convention, respectively, and follow the guidance of resolutions adopted by the Conference of the Parties (CoP), which meets every three years. Appendix III lists species that are protected in at least one country that has asked other CITES parties for assistance in controlling trade in those species.[23] See Appendix One below for a full list of those timber species that are commonly imported into the EU; and Appendix Three provides export data of CITES timber species for Indonesia and Ghana to the EU.

Requirements for the inclusion of products in the global trade licensing system vary depending on the Appendix in which the species is listed. Most commercially traded timber species are listed in Appendices II and III. Some of the listings are limited in scope to certain products. These limitations are set out in an annotation; for example, the listing of bigleaf mahogany in Appendix II is restricted to logs, sawn wood, veneer sheets and plywood.

[20] See Regulation, article 3.

[21] See Article II of the convention at http://www.cites.org/sites/default/files/eng/disc/E-Text.pdf

[22] See Article II 2(a) of the convention.

[23] See Articles II.3 and V of the convention.

In the case of specimens of species listed in Appendix I, II, or (for states that listed the species), III, the legality of licensed CITES products is based on the requirement that the national management authority issue an export permit only if it is satisfied that the specimens to be exported were not obtained in contravention of the national laws on the protection of fauna and flora. However, there is no guidance on how such a finding should be made or validated.

By contrast, the EUTR defines a legal product as having been produced in accordance with "all applicable legislation", including:

- Rights to harvest timber within legally gazetted boundaries
- Payments for harvest rights and timber, including duties related to timber harvesting
- Timber harvesting, including environmental and forest legislation including forest management and biodiversity conservation, where directly related to timber harvesting;
- Third parties' legal rights concerning use and tenure that are affected by timber harvesting; and
- Trade and customs, in so far as the forest sector is concerned.

Beyond that, neither the EUTR nor its supporting documents detail specific requirements for validation of legality (it is worth recalling in this context that the EUTR focuses on reducing the risk of illegal products entering a supply chain rather than licensing legal ones). However, as noted above, operators are expected to undertake an assessment of the risk of illegal wood entering a supply chain on the basis of information gathered about the product and supplier, country (and, in high-risk cases, concession) of harvest and compliance with applicable forestry legislation. Though not an explicit EUTR requirement, the demand for such information implies that, in order to deliver it, operators should expect a reliable chain of custody (CoC) system from forest to point of export.

In addition, within the framework of the FLEGT Action Plan (and its supporting guidance documents), credible legality assurance under a VPA that results in the granting of a FLEGT licence requires that compliance with relevant laws be based on a published legality standard and systematically checked and that each national licensing system be subject to regular third-party audits. While those requirements are not enshrined in the EUTR, CITES stakeholders should understand that they help shape the concept of legality that is used in discussions related to FLEGT, VPAs and, frequently, EUTR compliance, particularly in relation to 'high-risk' producer countries.

The EU single market, established in the 1990s, was a positive move towards economic integration, but the absence of systematic border controls within the union also provided new avenues for trans-boundary crime, including environmental crime, as new smuggling methods and routes are actively sought out by those seeking to avoid detection, focusing on primary entry into the EU through countries with relatively weak border controls. As a result, CITES provisions have needed to be implemented uniformly in all EU member states in order to ensure that each party within the union's internal market meets its responsibilities and is compliant. Thus, the convention is implemented through a set of regulations known collectively as the EU Wildlife Trade Regulations. The core text of these regulations (Council Regulation No 338/97 known as the 'Basic Regulation', or the EU Wildlife Trade Regulation[24]) establishes the essential CITES trade controls under EU law. Species are listed in four Annexes to the regulation, which follow the structure of the CITES Appendices; just as all relevant commercially traded timber species are listed in Appendices II and III of CITES, so those species are correspondingly listed in Annexes B and C of the EU Wildlife Trade Regulation.

Given the legal and practical relationship that this creates between compliance with the national laws that transpose the EU Timber Regulation and the various EU Wildlife Trade Regulations into national law, this case study aims to explore the extent to which institutional arrangements and information management

[24] Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein. See http://ec.europa.eu/environment/cites/legislation_en.htm

support enforcement across the EU and, to the extent relevant and possible, with key timber producer countries.

The choice of EU member states was based on their balance of tropical timber imports and domestic forest production, the status of national legislation, implementation resources and the character/expertise of the competent authority identified by the national government.

The choice of producer countries was based on the degree of engagement with FLEGT processes, the degree of CITES regulated trade and the stated national commitment to improving forest law enforcement and governance more broadly.

In light of the economic approach of FLEGT and the EUTR, the latter regulating business practices and supply chains that facilitate the trade in timber rather than specifically environmental / forest crimes, an effort was also made to consider the institutional arrangement for bringing legal powers relating to money laundering to bear in order to capture the profits of the highly lucrative global trade in illegal wood and potentially increase the levels of penalties available to sanction illegal actors.

2 Description of the methodology

The analysis and conclusions in paper are based on over a decade of experience working on the political negotiation, drafting and enforcement of the EU Timber Regulation at the EU and national levels, combined with qualitative analysis of interview data gathered from enforcement officials and experts on the EUTR, VPAs and CITES institutions in seven European and producer States: the Czech Republic, Italy, the Netherlands, and the UK; and Ghana, Indonesia and Peru.[25]

In each national case and at the European and multilateral levels, interviews were sought with relevant government officials, international experts and civil society groups.

The findings of the study were limited by the availability and willingness of key enforcement officials to make themselves available for interview, and of the partial knowledge of many of the specialists interviewed. Conclusions should also be considered time-bound because of the relatively new and untested enforcement arrangements for VPAs and the EUTR. Ultimately it was not possible to include Peru in the case study due to a failure to respond to interview requests on the part of all relevant forest authorities and enforcement agencies. Information on the interplay between financial regulation and criminal sanctions and the EUTR/CITES was also limited by a failure of financial intelligence units and other financial regulatory agencies to respond to interview requests. Some tentative conclusions have been drawn about these omissions below.

Data on the relationship between illegal logging and organised crime was drawn from a single source; analysis undertaken by the UN Environment Programme and INTERPOL in 2012.[26] Given the inherently clandestine nature of illegal activity there are few other reliable sources of data, although individual NGO investigations can elucidate individual forest areas, supply chains and criminal networks.[27]

[25] The research was undertaken in accordance with Chatham House's principles of political neutrality and ethical research. The scoping analysis carried out as part of the project did not raise any obvious political or ethical risks associated with either the data-collection or the project outputs. Structured interviews undertaken with government representatives from target EU and producer countries as well as relevant international agencies and experts was carried out on the basis of strict personal anonymity.

[26] United Nations Environment Programme & INTERPOL, Green Carbon, Black Trade. Published 2013. Available at: http://www.unep.org/pdf/RRAlogging_english_scr.pdf

[27] Environmental Investigation Agency *Routes of Extinction: The corruption and violence destroying Siamese rosewood in the Mekong,* 2014. Available at: http://eia-international.org/routes-of-extinction-the-corruption-and-violence-destroying-siamese-rosewood-in-the-mekong

3 Case presentation

3.1 Institutions

3.1.1 EU

As European legislation, the EUTR is ultimately governed by the European Union system of supranational independent institutions and intergovernmental negotiated decisions by its member states. Critical roles influencing the scope and enforceability of the legislation have been played by the European Parliament and European Commission. The legislation applies throughout the EU single market, and is one of many Acts that creates the standardised system of laws necessary for the single market to operate effectively across all 28 member states.

At the EU member state level each nation has identified a competent authority with ultimate responsibility for transposing and implementing the requirements of the legislation into national law. However, although the Regulation came into force in March 2013, as of October 2014, European Commission data suggests that four member states had still not yet transposed its requirements into national legislation, eight had not yet established any penalties for infractions and ten had not arranged for compliance checks in relation to the requirements.[28]

In each of the member states reviewed for this paper, enforcement expertise and resources have been allocated to the regulations, which are in other relevant departments/agencies with more practical remits. The Czech Republic, Netherlands and UK have transposed the legislation, established penalties and begun checks. In Italy, the legislative process has been completed but the penalties regime has not yet been fully established and checks have not yet begun.

In addition to enforcement resources, institutions are also implicated in the wider set of activity related to full implementation of the legislation (see figure one below), for example police, prosecutions agencies and the judicial establishment in each member state. The scope of powers and responsibilities in the institutions of different member states varies widely; for example in the UK and Italy the enforcement agencies also have formal powers to collect evidence akin, or equivalent, to police powers. In Italy, after investigation cases are taken up by a prosecutor's office, which decides on the strength of the case. In the UK, the National Measurement Office has the legal power to undertake formal investigations and bring prosecutions to court. In the Czech Republic investigation must be handled in collaboration with police and handed over to prosecutors. In the Netherlands prosecution is undertaken at the regional level and offenders are charged and sanctioned in regional courts. In each of these cases, the institutions in question have different levels of understanding of the relevant legal texts and practical understanding of the requirements codified in them.

Figure one: flow of EUTR implementation activity

As a multilateral agreement, CITES is governed by the Conference of the Parties under the auspices of the UN, with a secretariat. The secretariat is administered by UNEP and is located at Geneva, Switzerland. It

[28] See http://ec.europa.eu/environment/forests/pdf/EUTR%20implementation%20scoreboard.pdf

has a pivotal role, fundamental to the Convention and its functions are laid down in Article XII of the text of the Convention.

At the EU level, as with the Timber Regulation, the European Commission takes a key coordination role in policy decisions and implementation is a member state competence. Each member state has identified, in line with the requirements of the Convention, one management authority and at least one scientific authority. The scientific authorities meet regularly to establish common positions on the likely impact of the import of specific species on their survival. CITES enforcement officials meet biannually in the EU CITES Enforcement Working Group, and are supported on a daily basis by a shared communication platform known as EU-TWIX.

3.1.2 Ghana

As noted above, Ghana was chosen as a case study country because of its advanced VPA status and resulting existing links with the EU and Chatham House in the field of forest governance and law enforcement. In Ghana, CITES and forest production are both controlled by different divisions within the Forestry Commission (FC). Control of forest production is framed by the national Timber Legality Assurance System (TLAS), developed as part of the negotiation of a FLEGT Voluntary Partnership Agreement.[29] Key divisions for the generation and management of data relating to the legal forestry sector include the Timber Validation Division (TVD) and the Timber Industry Development Division (TIDD), both of which are overseen by the Timber Validation Committee (TVC). There is also an Independent Audit (IA-FLEGT) function within the national TLAS, which has been outsourced to a private sector body. Each of these institutions plays a role in collecting and collating data about the legal forest sector and, in the case of the IA-FLEGT, systemic weaknesses in the national control system in Ghana, with the TIDD responsible for issuing FLEGT licenses[30] for legal wood. Although the system is not yet fully operational, it is acknowledged that the data collected will be relevant to those seeking to enforce the EUTR and CITES in the EU, in the latter case, in the event that there is trade in relevant species.[31] The export of a shipment of CITES listed timber will require both relevant CITES documents and a FLEGT license, reinforcing the proactive validation of legal compliance regime across the two sets of legal requirements in Ghana. Data relating to the issuance of both sets of export documentation will be held within the Forestry Commission, although as noted above, it is not yet clear how this information will be shared with enforcement officials in the EU.

In addition to forestry institutions, the national customs authority plays a key role in reinforcing enforcement efforts. The agency is currently holding 25 containers of rosewood while the Forestry Commission and the exporter attempt to establish whether or not the export is legal.[32] Although there has been significant national work undertaken to establish more effective coordination between the validation and licensing functions of the Forestry Commission and the customs agency, there have not yet been discussions about how the latter can or should communicate or coordinate with enforcement officials in the EU or other trade partner countries.

Anti money laundering legislation in Ghana is dealt with by the financial intelligence unit in the Bank of Ghana and the Economic Organised Crime office, which reports to the Attorney General's office. National

[30] A FLEGT license is an export permit that attests to the legality of the product or company supply chain for which is has been issued. A FLEGT license can only be issued by an institution that has been given the mandate to issue licenses under the auspices of a legally-binding VPA agreement (see above). Once such an Agreement is in place and is fully implemented, trade between the given partner country and the EU can only take place if a FLEGT license accompanies the shipment.

[32] The legality or otherwise of the shipment depends on the timing of harvest and export with respect to a national Moratorium on the export of rosewood established, apparently without warning, in July 2014. It is expected that Nii Osah Mills, Ghanaian Minister of Lands and Natural Resources, will be called upon to adjudicate.

guidelines on coordination with other ministries have apparently been published although it was not possible to get a copy of them for this case study. Generally the legislation is used in conjunction with anti-terrorism legislation and although environmental crime is listed in the legislation as a possible predicate offense, interviewees were aware of no examples to date where AML powers have been used to prosecute individuals involved in illegal logging or the associated trade in illegal wood products. There was no known mechanism for the coordination of activities or communication of intelligence between prosecutors working on AML cases and those in the Forestry Commission.

3.1.3 Indonesia

Indonesia was chosen as a case study country for similar reasons to Ghana; it has advanced VPA status and well-developed enforcement and diplomatic links with many EU member states. Where it differs is in its institutional arrangements for validating the legality of timber exports, and as a result, in the potential for information sharing and enforcement coordination between its forest institutions and European competent authorities for the EUTR and CITES.

In Indonesia, the national control system which will ultimately be used to license legal exports is known as the (SVLK). The system operates like a certification scheme, and is based on the national legality definition.[33] It was made official in 2009 through regulations signed by the Ministers of Forestry and Forest Utilization[34] and the requirements on companies that wish to trade, as well as a number of practical arrangements to support credible validation of legality, have been established in subsequent decrees.[35],[36],[37]

From an institutional perspective, the Indonesian system is significantly less consolidated than the system in Ghana. While ultimate authority will remain with the Ministry of Forestry, the act of validation will be undertaken by private sector companies known as Conformity Assessment Bodies (Lembaga Verifikasi) which will be accredited by the Indonesian Accreditation Body (KAN) to undertake audits according to ISO/IEC standards. Once an exporting company has been audited, it will have the legal right to issue its own 'Operator-Based' FLEGT licenses for three years, with annual 'surveillance' audits. Conformity bodies are also required to reconcile trade data between the various actors in any given supply chain in order to ensure that there has been no introduction of unverified timber. Systematic sharing of data between these agencies and enforcement officials will be critical to the credible functioning of national forest control legislation.

In addition to quantifying and controlling the legal trade in order to expose the illegal activity in the Indonesian forest sector, a number of independent oversight functions have been established in order to focus attention on remaining illegal elements. Most notable of these is the establishment of the Indonesian Independent Forest Monitoring Network (JPIK), which has the right to raise objections to the quality of company and supply chain audits undertaken by any conformity body, or file complaints about specific illegalities. A Ministry of Forestry director general's decree has also been published to establish a legal basis for regular reviews of the functioning of the SVLK by a multi-stakeholder working group, in addition

[33] A Legality Definition is an agreed set of laws pertaining to the environmental, social and economic priorities associated with forestry in any given FLEGT VPA partner country. The Legality Definition does not establish laws or require the drafting of specific legislation, but is drawn from the existing national legislative codes of the country, through a stakeholder consultation process. Following the agreement of a national Legality Definition, appropriate criteria and indicators for legal compliance can be identified, in order to facilitate the validation of legality for export licensing.

[34] Decree Permenhut No. P38/Menhut-II/2009

[35] Director General of the Audit Board rules Perdirjen BPK No. P6/VI-Set/2009 dated 15 June 2009.

[36] Perdirjen BPK No. P02/VI-BPPHH dated 10 February 2010.

[37] Dir Jen Bea dan Cukai Regulation P-07/BC/2009 concerning the Revision of P-41/BC/2008 and DirJen Bea dan Cukai Regulation P-18/BC/2012 concerning a second Revision of P-41/BC/2008 all relate to the provision of clear evidence of official documents of timber products for import and export that must be demonstrated by companies and carriers in accordance with the laws and regulations.

to the Joint Implementation Committee (JIC) arrangements established in the VPA legal agreement, which commits the EU and Indonesia to trading only in validated legal forest products.

3.2 Stakeholders

3.2.1 EUTR

Key stakeholders in the design and implementation phases of the EUTR have been international NGOs focusing on the social and environmental impacts of illegal logging, particularly in tropical countries, commercial actors including relatively large companies and timber trade federations in the EU and forest certification bodies including the FSC and PEFC. The most active/vocal stakeholders have always been in north European member states.

The FLEGT Action Plan has also been influenced by civil society concerns from outside the EU. When the European Council adopted the Action Plan in October 2003, it urged the European Community and its member states inter alia to:[38]

- Strengthen land tenure and access rights, especially for marginalised rural communities and indigenous peoples;
- Strengthen effective participation of all stakeholders, notably non-state actors and indigenous peoples, in policy-making and implementation;
- Increase transparency in association with forest exploitation operations, including through the introduction of independent monitoring;
- Reduce corruption in association with the award of forest concessions and the harvesting and trade of timber;
- Engage the private sector of the timber-producing countries in efforts to combat illegal logging.

While these priorities have mainly been reflected in the negotiations of VPAs, the groups engaged in the parallel domestic and bilateral political processes involved in agreeing a VPA have also been lobbying EU and member state institutions in relation to the design of the EUTR. The Indonesian Government publicly encouraged the development of the EUTR[39] on the grounds that it would protect market access for countries willing to enter into legally-binding agreements to trade only in legal timber, and ensure that companies in countries which continued to export illegal wood could not easily undercut Indonesian forest operators who were required to pay the real cost of legal compliance and verification. Similarly a number of delegations of civil society groups from forest countries with poor governance have visited Europe to better understand the political landscape in which VPAs and the EUTR have been negotiated, and lobby for more effective implementation measures to restrict European market access for illegal wood from their countries, in an effort to increase the levels of political will to improve forest governance in their countries. The most recent of these was in October 2014 during which groups from 10 producer countries met with European Commission officials from DEVCO and ENV.[40]

[38] Council of the European Union (2003) Communication from the Commission to the Council and the European Parliament on Forest Law Enforcement, Governance and Trade (FLEGT): Proposal for an EU Action Plan – Council Conclusions. p.3 Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2003:0251:FIN:EN:PDF

[39] 2011 Indonesian Ministry of Forestry Press Statement

[40] Saskia Ozinga, FERN. Pers comm. October 2014.

3.2.2 CITES

Although there is considerable overlap in the forest-related aims of CITES and EUTR/FLEGT in the broadest sense, stakeholder groups for CITES institutions generally reflect a purer environmental agenda, compared with the development/'good governance' priorities which have been inherent in FLEGT from its political inception. Conservation groups are represented at all levels of decision-making, with more than 50 NGOs now involved in the CITES community. On-going dialogue outside of the COP is recognised as key to supporting the formal structure of CITES and determining the efficacy of the Treaty. The multilateral CITES process has long been criticized for its lack of transparency and accountability to stakeholders.[41] Economic actors, including the private sector, are less involved in lobbying at the multilateral, European and EU member state levels, although this may change as increasing number of commercially-traded timber species are listed on CITES Appendices II and III. Where timber species are listed unilaterally on Appendix III or proposed by one or more Parties for general inclusion on Appendix II, commercial actors in the relevant range states are consulted, although the extent of their involvement in decision-making varies widely between Parties.

Although it is not possible to identify groups of victims of the crimes in question in great detail, it can be assumed that impacts of commercial scale illegal logging on poor, marginalized social groups in forest rich countries can be detrimental. It should also be noted however that these groups can be illegal actors in both small-scale illegal harvesting and the trade in illegal wood, relevant to producer country forest management legislation and CITES controls.

3.3 Enforcement effectiveness

All enforcement agencies across the EU are under increasing pressure to be more effective with fewer resources. Activities therefore need to be primarily based on strategic risk profiling rather than random sampling. Generating, storing and, where appropriate, sharing information about illegality risks in timber supply chains and imports is therefore central to efficient enforcement of both CITES and EUTR requirements. Beyond information management, active coordination at the stages of encouraging compliance, and undertaking compliance checks is also likely to increase the impact of what resources are available in each national context (expert staff, budget for, for example, DNA testing or additional checking activities). Given that CITES is a border control, practical cooperation between investigative and prosecutorial agencies within the EU28 is not likely to be necessary.[42] EUTR investigation and prosecutions may require practical cooperation but the likely extent of this is hard to ascertain at this point. Requirements on all 'traders' who take ownership of regulated products subsequent to their 'first placement' on the EU market may, if complied with, lead to the accretion of a useful body of information on which prosecutors could draw if it was necessary to track products within the single market; however, since operators can only first place a product in one MS at any given time, prohibition cases are unlikely to require coordinated prosecutions. It is theoretically possible that a multinational operator could be prosecuted for inadequate due diligence in a number of MS simultaneously, but how that would be arranged is currently unclear. It is likely that any coordinated prosecution would be managed through generic existing structures for mutual legal assistance set out in Annex Three below or according to the

[41] See for example: http://www.bbc.co.uk/news/mobile/science-environment-14576516

[42] In light of the single market, and since the specific CITES crime occurs when a product is brought into an individual EU member state in a way that does not comply with the requirements of the Wildlife Regulation and associated legislation, prosecutions can generally be brought without evidence-gathering implications in another member state.

principles established under EU Regulation No 765/2008, which sets out generic arrangement for coordinated product regulation across EU member states.[43]

At the European member state level, each of the four national enforcement agencies considered here has an internal system for data collection and management to which all officials responsible for EUTR enforcement activities have access. Where investigation and prosecution require cooperation with, or handover to, other agencies (e.g. police, prosecutors office, judicial institutions) existing inter-departmental arrangements, which are generally considered to function effectively, are in place to share data/intelligence. Where CITES is enforced in the same agency (Italy, NL) there are no legal or technical barriers to all relevant risk and enforcement information being shared across teams; however in the UK it has been necessary to establish new working relationships and use arrangements such as an HMRC 'single point of contact' arrangement which allows any UK Government agency to request specific customs data, including profiling for individual companies, HS codes etc. In the UK there is no systematic access to EUTR enforcement information for CITES enforcement officials, although the role played by the Department of Environment, Food and Rural Affairs (DEFRA), holding lead competency at the policy level for both EUTR and CITES does facilitate relatively open working relationships. In Czech Republic it is expected that data sharing will happen on an ad hoc basis, which is reasonable since imports of CITES listed wood species are virtually unknown. For example in 2012 there was only a single import of a table made from *Dalbergia nigra*, a CITES-listed timber species, imported as a pre-Convention specimen for personal purposes. None of the four member states had systematic data sharing arrangements between EUTR or CITES enforcement officials and agencies responsible for investigating or prosecuting financial crime.

Coordination of enforcement staff and resources between EUTR and CITES teams is generally based on infrequent or ad hoc meetings of officials; with no systemic arrangements to coordinate with agencies or staff responsible for enforcing financial regulatory arrangements. Where coordination has been achieved between environmental and financial legislation, it has been at the point of investigation/prosecution. For example in both the UK and Netherlands, specific legal instruments have been used to 'follow the money' in previous CITES cases, although this was clearly considered a rarity. In the UK only one CITES prosecution drawing on powers established by the Proceeds of Crime Act was reported by interviewees. In 2005 an orchid smuggling case resulted in £105,000 being recovered by HMRC, through a dedicated financial crime team, which has since been disbanded/incorporated into the National Crime Agency (NCA) which theoretically takes an 'all crimes' approach to building prosecution cases but has not, since its inception, used POCA to prosecute a CITES case.[44] In the Netherlands agency responsible for prosecution has the power to retrieve profits from illegal acts under Article 36e of the national Criminal Law Code. This is not specifically related to anti money laundering legislation, but can be used in conjunction with any criminal prosecution. Information has not yet been made available for Czech Republic or Italy.

The European timber trade is increasingly integrated, with most significant importing, processing, construction and retailing companies operating across multiple member states. ITTO market analysts reported last month that the EUTR is expected to reinforce an existing trend whereby smaller companies increasingly withdraw from direct importing, relying instead on indirect purchases from larger operators that serve customers across a number of European States.[45] In addition, many of the organisations currently applying for accreditation as EUTR monitoring organisations expect to work across the EU. All of this has been the result of the abolition of internal border controls into a single market, as noted above, and cooperative action is therefore key to it working as intended.

---

[43] Regulation of the European Parliament and of the Council, Setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93. July 2008. Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:218:0030:0047:en:PDF

[44] Guy Clarke, UK Customs Authority (HMRC). Pers comm, November 2014.

[45] International Tropical Timber Organization Market Intelligence Service, 16-31 January 2012. Available at: http://www.itto.int/mis_detail/

At the EU level, coordination between EUTR enforcement officials is mandated by Article 12 of the EU Timber Regulation, which states:

1. Competent authorities shall cooperate with each other, with the administrative authorities of third countries and with the Commission in order to ensure compliance with this Regulation.

2. The competent authorities shall exchange information on serious shortcomings detected through the checks referred to in Articles 8(4) and 10(1) and on the types of penalties imposed in accordance with Article 19 with the competent authorities of other member states and with the Commission.

The modalities for facilitating compliance with these two elements are still being worked out. As noted above, a six monthly meeting of enforcement officials, hosted by the European Commission has recently been established, but progress on developing a data sharing platform has been slow. In February 2013, Chatham House proposed a platform be developed for the implementation of the EUTR; identifying a number of key functions for an online mailing system and database which could also provide a single point for submission of so called 'substantiated concerns'.[46] [47] The proposal was based on a review of a number of relevant options, including the European Union Trade in Wildlife Information eXchange (EU-TWIX), a tool developed to facilitate information exchange and international co-operation between law enforcement officials responsible for implementing CITES trade controls across the European Union. It has been operational since October 2005. EU-TWIX comprises a searchable database of information on wildlife seizures in the EU and an associated mailing list that allows quick and efficient information sharing between designated enforcement officers from all 28 EU member states, plus Croatia, Montenegro, Norway, Serbia, Switzerland and the Ukraine.

The system has reportedly achieved a number of positive impacts on the nature and scope of CITES enforcement, which include:

- Improved understanding of patterns of illegal imports in order to determine enforcement priorities. For example, identifying the species most commonly detected as being traded illegally, the commercial trade routes used, and the methods of dissimulation and of detection.
- Rapid resource/expertise sharing across member states in the identification of seized specimens.
- Clarification of legislative requirements in critical time periods. For example, following a seizure of traditional Asian medicines thought to contain CITES derivatives in March 2006, the Estonian Environmental Inspectorate asked for guidance on what judicial procedures were open without the necessity of carrying out laboratory analyses, which were not available to them. Responses were provided by the Hungarian and Cypriot CITES Management Authorities.
- Training of wildlife law enforcement officials. For example individual CITES management authorities report that they have used the database as a source of information for training seminars given to wildlife law enforcement officials. They have also used the mailing list to request x-ray photos of CITES goods from other EU member states to help improve identification skills.
- Sharing of emerging new best practice. For example In April 2007, the Czech Environmental Inspectorate shared news of a caviar seizure along with information about a low cost new technique for distinguishing real caviar from fake samples, which was subsequently used by other member states seeking efficiencies.
- Sharing of forensics resources and expertise between member states.
- Increased caution in the issuance of CITES import and export permits within the EU.

[46] 'Substantiated Concerns' are not yet formally defined but they are foreseen as complaints raised by non-government actors, with a degree of documentary evidence attached, which makes it reasonable to suggest that there has been some breach of the Due Diligence requirements of the EUTR or of the prohibition on the first placement of illegal wood on the European market.

[47] Saunders, J. and Unwin,(2013) E. *EUTR Inter-state Communications and Competent Authority Reporting*

Unpublished Workshop Background Paper. Chatham House.

The system is a joint initiative of the Belgian Federal Police, Customs and CITES Management Authority, and TRAFFIC Europe, who co-ordinate the system.[48]

Discussions between member states and the EC about developing and financing a mutually-supportive platform for the EUTR enforcement officials, and possibly those responsible for the US Lacey Act are ongoing, but there is consensus that such a system could have a transformative impact on the consistency and credibility of enforcement across the Union, by facilitating resource efficiency as well as encouraging peer oversight and accountability between national institutions.

A number of legal challenges exist in relation to the development of a pan-EU enforcement database, most notably in relation to the differences in data protection law in each member state, but also, depending on whether nominal data is entered into the system, on defamation laws. In addition, there may be implications for the database relating to freedom of information (FOI) legislation and the requirements of the Aarhus Convention. Legal complexities such as these will naturally be exacerbated by an expansion of the system to include officials in the USA and potentially Australia.

As noted above, CITES enforcement cooperation across the EU is supported by biannual meetings and the EU TWIX platform. It is proposed that the EUTR platform be technically harmonized with the TWIX platform in order to reduce costs and facilitate automated intelligent data-sharing where appropriate. In addition, it has been agreed that CITES and EUTR competent authorities will meet annually in Brussels, hosted by the EC, with a view to supporting closer coordination between the two legal regimes.

There is not yet any formal agreed structure in place for sharing information about suspected forest crime between the Ghanaian forest institutions described above, and European enforcement officials responsible for the enforcement of the EUTR or CITES, although it is reported that a number of options are being considered and improved transparency is a key aim of those seeking to operationalise the Ghanaian national system. The national LAS will collect information about every FLEGT license issued, and the details of each one will be published on the Forestry Commission website at least; although it is expected that the exact dataset that is ultimately chosen for publication will comply with norms relating to commercial confidentiality.

Aside from enforcement of the EUTR and CITES, it was notable that in Ghana, the Forestry Commission was recently granted the power to prosecute forestry crimes, rather than it being required to hand over to police or prosecutorial agencies with limited understanding of forest technicalities. Although there is nothing yet in place, this may have the impact of supporting better communication between enforcement officials and prosecutors in Ghana and their counterparts in the EU, because of relevant informal networks and personal relationships established as part of the on-going FLEGT policy dialogue between the two countries.

For both Ghana and Indonesia, once FLEGT legality licensing is fully operational, there will be one or a number of databases of legitimate FLEGT licenses, against which European importers and/or EUTR enforcement officials can check their validity. Although there have been some discussions about it under the auspices of the European Commission and FLEGT Committee, the exact nature of a central database has yet to be defined, and it may yet transpire that each country will have their own rather than the development of a general FLEGT license database. It is also unclear how the database will deal with any overlap between FLEGT licenses and CITES export permits, or whether this has yet been considered. If it were possible to develop a combined database for all FLEGT licenses which also incorporated legal

[48] The project has received funding from the European Commission (DG Justice and DG Environment), and a number of member state Ministries. At the end of 2010 these included: Defra (The UK Department for Environment, Food and Rural Affairs), the Dutch Ministry of Agriculture, Nature and Food Quality, the 'Ministère de l'Ecologie, de l'Energie, du Développement Durable et de l'Aménagement du Territoire' (French Government), du 'SPF Santé publique, Sécurité de la Chaîne alimentaire et Environnement' (Belgian Government), and the Latvian Government.

validation of relevant CITES export documents, it would be reasonable to assume that it would support more effective enforcement of the two regimes in both producer countries and the EU.

A recent publications by the Indonesian Civil Society group JPIK, tasked with monitoring the effectiveness of the Indonesian SVLK/TLAS system as noted above, suggests that their oversight responsibility will be taken seriously, which should support improved enforcement at the national level and also within the EU; noting:

> "The SVLK regulation that puts independent monitoring as an integral part of the system, has formally acknowledged the existence of independent monitors. This is a progressive breakthrough that provides opportunities and challenges for civil society to participate in monitoring the implementation of a government policy. Results of monitoring against 34 permit holders indicate some weaknesses in the implementation of the SVLK. Some of the issues found were weaknesses in the mechanism to trace raw materials, problems with the issuance of permits, violation of the function of the area, boundaries and spatial plan, environmental liability, conflicts especially related to boundaries and tenure, and some weaknesses associated with legality verification of timber produced from the conversion of natural forests."[49]

Furthermore the monitor found that SVLK auditors were only looking at the availability of permits without scrutinizing the process of how permits were issued, regardless, in one case, of a permit corruption case in Riau Province, in which the governor and local authorities were involved and have subsequently been sentenced.

The availability of government-sanctioned, but independently collected and published information like this could have a pivotal role in the enforcement of the EUTR, particularly in relation to the possibility of establishing an evidence base that would be necessary for prohibition cases. Even in absence of enforcement, the publication of documented criticism of this sort suggests the case for additional scrutiny on the part of European operators sourcing forest products in Indonesia; raising the bar for the practice of 'appropriate' due diligence, which is inherently normative.

3.4 Sanctions under national EUTR, CITES and money-laundering legislation

This section sets out and compares the sanctions regimes in the Czech Republic, Italy, Netherlands and United Kingdom for non-compliance with regard to the EUTR, CITES and money-laundering legislation. It focuses on the three main types of sanctions: fines, prison sentences and confiscation of the products with respect to which non-compliance took place.

Sanctions for the main categories of non-compliance in national legislation under each legal regime are summarised in the tables below, followed by brief analytical sections comparing the national sanctions within that area. This is followed by an overall comparison of the EUTR, CITES and money-laundering sanctions regimes. Where fines are listed in the national currency, equivalent amounts in Euros (rounded off) are given, based on the conversion rates as of 16 January 2015.[50]

[49] SVLK: In the Eyes of the Monitor. JPIK, 2014. Available at: http://eia-international.org/wp-content/uploads/In-the-Eyes-of-the-Monitor.jpg

[50] Conversion rates used are based on the OANDA currency converter, as of 16 January 2014. http://www.oanda.com/currency/converter/

3.4.1 EUTR

As a regulation, the EU Timber Regulation has direct legal force in each EU member state. Actors within the EU are therefore bound by the prohibition against placing illegal timber, the requirement to exercise due diligence and the requirement to keep records, without the need for additional national legislation. Enforcement of these requirements, and the sanctions employed to police them, however, are the responsibility of individual member states. Thus, it is up to each member state to designate a competent authority and to set out the sanctions for non-compliance.

Czech Republic

The regulation is implemented in the Czech Republic by Act No. 226/2013 and Ordinance No. 285/2013 on Placing Timber on the Market.

	Fine	**Prison**	**Confiscation**
Placing of timber on the market	Up to CZK 300,000 (= €10,800) Up to CZK 500,000 for repeat offences. (= c €18,000)	X	X
Exercising due diligence	CZK 200,000 (= €7,200)		
Maintaining due diligence system	CZK 500,000 for repeat offences. (= €18,000)		
Traceability	CZK 50,000 (= c. €1,800)		
Record-keeping	CZK 100,000 for repeat offences. (= €3,600)		

Italy

In Italy the EUTR is implemented through the Legislative Decree of 30 October 2014, n. 178 implementing Regulation (EC) No. 2173/2005.[51]

	Fine	**Prison**	**Confiscation**
Placing of timber on the market	Fine €2,000-50,000	1-12 months	Products can be confiscated and disposed of for educational or scientific purposes.

[51] Gazette Ufficiale (Italian) http://www.gazzettaufficiale.it/

Exercising due diligence	Fine €5-5,000 per 100kg, to a maximum of €1mln.	X	X
Maintaining due diligence system	*(Not a separate offense)*	*(Not a separate offense)*	*(Not a separate offense)*
Traceability	Fine €1,500-15,000	X	X
Record-keeping			

Netherlands

The regulation is implemented in the Netherlands by the Flora and Fauna Law, which makes it an offence not to comply with the EUTR.[52] Sanctions for this offence are contained in the Economic Offences Law.[53] A new combined Nature Protection Law, currently being drafted, is expected to take effect in 2015. This new law will have a separate chapter on FLEGT and the EUTR, and is expected to increase penalties for EUTR offences.[54]

	Fine	**Prison**	**Confiscation**
Placing of timber on the market	A fine of the fourth category (currently €20,250), or the fifth category (currently €81,000) if the value of the wood exceeds that that amount.	A period not exceeding two years (or community service).	Objects with respect to which offences are committed are liable to forfeiture.
Exercising due diligence			
Maintaining due diligence system			
Traceability			
Record-keeping			

United Kingdom

[52] Netherlands Flora and Fauna Law (Dutch), Overheid.nl http://wetten.overheid.nl/BWBR0009640/geldigheidsdatum_11-12-2014

[53] Netherlands Economic Offences Law, Overheid.nl http://wetten.overheid.nl/BWBR0002063/geldigheidsdatum_22-10-2014

[54] Correspondence with a representative of the Dutch CA, October-November 2014.

The regulation is implemented in the UK by the Timber and Timber Products (Placing on the Market) Regulations which provides powers of enforcement, establishes offences for non-compliance with EUTR and mandates sanctions.[55]

<table>
<tr><th></th><th>Fine</th><th>Prison</th><th>Confiscation</th></tr>
<tr><td>Placing of timber on the market</td><td rowspan="4">A fine (no upper limit)</td><td rowspan="4">Up to 2 years</td><td>Products may be seized where there are reasonable grounds for believing that an offence has been committed. Such timber can under court order be destroyed, sold or otherwise disposed of.</td></tr>
<tr><td>Exercising due diligence</td><td rowspan="3">X</td></tr>
<tr><td>Maintaining due diligence system</td></tr>
<tr><td>Traceability</td><td rowspan="2">Up to level 5 on the standard scale (currently £5,000 = €6,500)</td><td rowspan="2">X</td></tr>
<tr><td>Record-keeping</td></tr>
</table>

Comparison

The main point standing out in a comparison of the sanctions mandated by EUTR implementing legislation is that the Czech sanctions regime differs from that of the other countries by being basically administrative rather than criminal, and by not mandating either prison sentences or confiscation. This eases the administrative burden in sanctioning, as it does not require the Czech competent authority (the Ministry of Agriculture) to proceed through the courts, and presumably reflects a view of non-compliance as primarily committed by corporate bodies for economic gain. In contrast, Italy, the Netherlands and the United Kingdom have all taken a predominantly criminalising approach, allowing for stricter penalties. Even then, the approach differs somewhat. For example, the UK competent authority (the National Measurement Office) can impose no sanctions whatsoever, whereas fines can be imposed directly by the Italian competent authority (the Corpo Forestale). This latter approach has the potential to be the most effective, in that it gives the competent authority flexibility in deciding whether or not to pursue a harsher, and presumably more effective, criminal penalty with a greater burden of proof and demand for resources. The Dutch legislation still implements the EUTR through an extension of its existing Flora and Fauna law, and at the moment of writing the planned combined Nature Protection Law has still to be drafted.

Whether EU member states are obliged to criminalise EUTR non-compliance is an open question. EU Directive 2008/99/EC of 19 November 2008, carries a general provision that environmental crimes should be subject to criminal sanction for serious or repeated breaches. The list of relevant crimes in the annex

[55] 'Timber and Timber Products (Placing on the Market) Regulations', legislation.gov.uk http://www.legislation.gov.uk/uksi/2013/233/pdfs/uksi_20130233_en.pdf

does not explicitly include EUTR, since this was drafted subsequently, but given that the EUTR was drafted under the environment pillar of the EU Treaty, it might be considered environmental law and therefore covered by the provision.

Apart from this the sanctions regimes are broadly similar. Both the Dutch and the Italian legislation contain provisions for adjusting the size of a fine to the quantity or value of timber in question, whereas in the UK the absence of a maximum amount for fines imposed leaves this issue to be determined by the courts. Confiscation is mandated in all countries except the Czech Republic.

In terms of enforcement, much of the difference between member state enforcement will relate to the severity of the sanctions imposed by the courts, within the range given by the national legislation. Considering the very limited number of prosecutions under the EUTR so far, whether or not this gives rise to a lack of consistency in enforcement between member states must be considered an outstanding question.

3.4.2 CITES

As noted above, CITES is implemented in the EU through a set of Regulations known as the EU Wildlife Trade Regulations. These are directly applicable in EU member states, though enforcement provisions must be transferred into national law.

Czech Republic

CITES is implemented in the Czech Republic by Act No. 100/2004 Coll. (Act on Trade in Endangered Species) as last amended by the Act No. 420/2011 Coll. and the Act No. 467/2011 Coll.[56]

	Fine	**Prison**	**Confiscation**
Importing or exporting a specimen in contravention of the relevant legislation.	Up to 1,500,000 CZK (= €54,000)	X	Confiscation of specimens illegally held or traded
Sending specimens into, out of, or through the country in contravention of the relevant legislation.			
Purchasing, selling, offering for sale or transporting for the purposes of sale, a specimen in contravention of this act or the legislation on trade in endangered species.			
Falsifying or altering a registration document for the purpose of sale or obtaining a permit, certificate or registration document.			
Dealing with a specimen in contravention of	Up to 500,000	X	Confiscation of

[56] Czech CITES legislation, Ministry of the Environment website http://www.cizp.cz/files/=3520/CITES_legislation_EN%20_2012-20120214.pdf

the import permit or other authorisation.	CZK (= €18,000)		specimens illegally held or traded
Using a permit or certificate with a specimen other than the one for which the document was issued.			
Providing a false or incomplete information in order to obtain a permit, certificate or registration document.			
Exporting or attempting to export a specimen without a permit.			
Using a falsified or invalid permit or certificate.	Up to 100,000 CZK (= €3,600)	X	Confiscation of specimens illegally held or traded

Italy

Sanctions for CITES are implemented in Italy through Law n° 150/92: Procedures related to violations to the Washington Convention.[57]

	Fine	**Prison**	**Confiscation**
Trading in, or holding, specimens of species listed in Annex A, B or C without the required licence or certificate.	15-150m Italian Lira (€7,000–75,000) Recidivism: 20-200m Italian Lira (= €100,000 - €1,000,000)	3-12 months Recidivism: 3-24 months.	Confiscation of goods.

Netherlands

CITES is implemented in the Netherlands by the Flora and Fauna Law, which makes it an offence not to comply with the Convention. Sanctions for this offence are contained in the Economic Offences Law. [58]

	Fine	**Prison**	**Confiscation**
Acquiring or making available protected species, or products made from these.	A fine of the fifth category (Max €81.000)	Up to 1 year	Confiscation of specimens illegally held or

[57] Law n° 150/92: Procedures related to violations to the Washington Convention (Italian), Normattiva website http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1992;150

[58] Netherlands Flora and Fauna Law (Dutch), Overheid.nl http://wetten.overheid.nl/BWBR0009640/geldigheidsdatum_11-12-2014; Economic Offences Law (Dutch), Overheid.nl http://wetten.overheid.nl/BWBR0002063/geldigheidsdatum_22-10-2014

			traded

United Kingdom

The Control of Trade in Endangered Species (Enforcement) Regulations creates offences in relation to Regulation 338/97 and allows CITES to be enforced within the UK.[59]

	Fine	**Prison**	**Confiscation**
Purchase and sale of Annex A specimens or illegal purchase/sale of Annex B specimens	Up to level 5 on the standard scale (currently £5,000 = €6,300)	Up to 3 months.	Forfeiture of the item with respect to which the crime was committed, as well as any equipment used.
Misuse of permits and certificates			
Non-compliance with permits and certificates			
Illegal movement of live specimens			
Making false statements			

Comparison

The sanctions regimes for the four countries, both in terms of fines and prison sentences, are roughly comparable, with the substantial exception that imprisonment is not mandated for CITES offences in the Czech Republic. This mirrors the sanctions regime under the EUTR, under which the sanctions in Italy, the Netherlands and the UK are based on criminal law and focus to some extent on custodial rather than financial punishment. The prison sentence mandated in the Netherlands (up to six years) is significantly harsher than in the other countries, though this may reflect the fact that the provision in question covers a multitude of offences (which is also shown in the very general wording of the legislation) and actual convictions may ultimately fall in the lower end of the range mandated. Once again the practical application of the law by the courts is likely to make as great a difference as the sanctions regimes themselves.

3.4.3 Money laundering

Czech Republic

The criminal offence of money laundering is contained in the Criminal Code of the Czech Republic.[60]

[59] The Control of Trade in Endangered Species (Enforcement) Regulations, legislation.gov.uk http://www.legislation.gov.uk/uksi/1997/1372/contents/made

[60] Criminal Code of the Czech Republic (with commentary), Codexter http://www.coe.int/t/dlapil/codexter/Source/country_profiles/legislation/CT%20Legislation%20-%20Czech%20Republic%20Criminal%20Code.pdf

	Fine	Prison	Confiscation
Concealing, transferring a thing, or what was acquired for that thing, obtained through a criminal act	CZK 2,000-5,000,000 (= €75-180,000)	Up to two years If acquiring large-scale benefit: two to eight years.	Forfeiture of the property of a person given a prison sentence for a crime through which he attempted to acquire a property benefit.
Enabling another to conceal the origin or determination of the origin of a thing obtained through criminal activity	CZK 2,000 - 5,000,000 (= €75-180,000)	Up to two years If committed in connection with serious crime: 2-8 years.	Forfeiture of the property of a person given a prison sentence for a crime through which he attempted to acquire a property benefit.
Negligently concealing or transfering to oneself or another a thing of significant value (CZK 40,000+ = €1,500+) acquired through a crime committed by another person.	A pecuniary penalty.	Up to 6 months	X

Italy

The criminal offence of money laundering is contained in the Italian Penal Code.[61]

	Fine	Prison	Confiscation
Replacing or transferring money, goods or other property deriving from a crime.	€1,032-15,493.	4-12 years	Confiscation of the goods or profits obtained, unless they belong to someone unrelated to the crime.

Netherlands

The criminal offence of money laundering is contained in the Dutch Penal Code (1881).[62]

[61] Italian Penal Code (Italian), Altalex http://www.altalex.com/index.php?idnot=36775

[62] Netherlands Penal Code (English) [Excerpts], legislationonline.org http://www.legislationline.org/documents/action/popup/id/4693

	Fine	Prison	Confiscation
Hiding the nature, origin, location or disposal of an object originating from a crime, or the identity of its beneficiary or possessor.	A fine of the fifth category (Max €81,000)	Up to 4 years Recidivism: up to 6 years.	The objects with regard to which the crime was committed can be confiscated.
Acquiring, holding, using or transferring an object originating from a crime.			

United Kingdom

The principal criminal offences covered by the term 'money laundering' are contained in the Proceeds of Crime Act (2002).[63]

	Fine	Prison	Confiscation
Concealing, transferring or removing criminal property	A fine (no upper limit)	Up to 14 years	Confiscation of property following a criminal conviction
Entering an arrangement which is known or suspected to facilitate acquisition, retention, use or control of criminal property by or on behalf of another person			
Acquiring, using or having possession of criminal property			

Comparison

The United Kingdom and Italy provide for rather higher prison sentences than the Netherlands and the Czech Republic. Whereas the stipulated maximum fine in Italy is also rather low compared to the other countries, provisions are in place for increasing the fine if the crime was committed in the course of doing business. Significantly, the money laundering legislation in all four countries provide for the confiscation not only of the proceeds of the crime, but of the specific objects, such as forest or wildlife products, with respect to which the crime was committed.

3.4.4 Comparison of sanctions regimes

The EUTR and CITES implementing legislation carry a broadly similar range of penalties across the member states, though CITES has a somewhat higher range of penalties in fines (Czech Republic) and prison sentences (the Netherlands) in some countries. The implementing legislation in Italy and the Czech Republic generally spell out offences in greater detail, whereas that of the UK and Netherlands make do with more general provisions or references to the EU legislation in place. Within this range, it will be the

[63] Proceeds of Crime Act (2002), legislation.gov.uk http://www.legislation.gov.uk/ukpga/2002/29/contents

level of penalties meted out by national courts in individual cases that will determine the severity of EUTR and CITES enforcement. There have yet to be any criminal prosecutions under the EUTR, and so the way in which offences under this regulation are applied compared to CITES remains to be seen. It would seem reasonable to assume that, as similar sanctions regimes have been imposed for both, then the courts would apply similar sanctions. For the reasons stated above there is unlikely to be any 'forum shopping' by prosecutors, deciding to favour one legislative route rather than another.

The options for pursuing criminal and administrative sanctions for the EUTR and CITES are also very similar within a given country. The Czech Republic is alone in focusing on administrative penalties, whereas the other countries have instituted criminal penalties, in some cases complemented by administratively imposed fines. Ultimately the choice of whether to rely on administrative or criminal penalties appear to be more a question of the severity of the sanctions envisaged, and therefore of the burden of evidence and resources to be expended, than of a pre-determined notion of whether the environmental regulations in question ought to carry criminal offences due to their nature.

In terms of the severity of its sanctions, money laundering legislation offences generally carry higher penalties than the implementing legislation for either CITES or the EUTR. Furthermore, money laundering legislation generally provides for penalties in cases where the offender should have realised that the object in question resulted from criminal activity – possibly establishing an effective due diligence requirement.

However, money laundering enforcement possesses a number of characteristics that may limit its usefulness in tackling illegal logging and other environmental crime. First of all, some money laundering legislation requires the existence of a 'parallel offence'; the offence from which the laundered money derives must exist also in the legislation of the country of enforcement.[64] The proceeds of timber that was illegally logged in one country could therefore not be pursued under a money laundering offence unless the prohibition that was broken in the producer country also exists in the jurisdiction where it is enforced. Another challenge in applying money laundering legislation is the relatively low level of experience of dealing with environmental crime on the part of money laundering enforcement agencies, and the low priority given to the issue when compared with crime associated with immediate physical or social harm such as narcotics and prostitution. The challenge of proving the link between the funds in question and the original criminal offence in another country is also likely to prove challenging.

In relation to Ghana, it was noted by interviewees that the decision to train expert prosecutors in the Forestry Commission, rather than rely on police action, also had implications for possible sanctions. Although the Forestry Commission has less 'punitive' sanctions available to it in theory, it is expected that significantly more infractions will be subject to prosecutions and, in practice, the sanctions applied will not be less onerous, since, in practice, police prosecutors have not called for the full set of sanctions available to be used in forest cases.

4 Conclusions and policy implications

4.1 Policy effectiveness

The European policy response to illegal logging has been significantly more coherent and effective than that of other 'consumer' regions, but that is not to say that it has had the hoped for impact on illegal logging or deforestation globally. The EUTR is a key element of the FLEGT Action Plan, already arguably an equal to the VPAs, which began to be negotiated almost a decade ago. The decision to link the EUTR explicitly with the legal framework for the enactment of CITES in the EU could appear at first view to create a loophole in

[64] Money Laundering and Illegal Logging - Application of UK legislation http://goo.gl/3EGvVm

the EUTR, since the legal validation element of CITES export permitting is significantly weaker in some timber range states than would be expected under a VPA or the EUTR. However there appears to be political will in Brussels to continue to drive up standards in the enforcement of CITES trade controls both at the point of import to the EU and, through capacity building investment, in key producer/range states.[65] It was not possible to establish contact with any of the European institutions responsible for anti-money laundering legislation in the EU, and evidence of relevant national laws being used to prosecute CITES infractions is extremely limited; however, it is not clear whether this is a failure of policy design or a failure of the institutional arrangements at EU member state level to investigate and prosecute the crimes in question using AML powers. A trend away from expert environmental prosecutions teams towards investigation and prosecution being undertaken in larger police/prosecutions agencies may be one reason for the scarcity of such prosecutions. Others may include the complexity and attendant expense of building financial cases compared with using the relatively simple measures available under the primary legislation. It could also suggest that there is a tacit consensus among investigators/prosecutors that the sanctions regimes for CITES are relatively proportionate to the severity of the crimes in question. Since there have not yet been any EUTR prosecutions it is too early to comment on the effectiveness of the relationship between it and AML at policy or enforcement levels. Detailed analysis of the national transposition of the three legal regimes into member state legislation was beyond the scope of the resources available for this case study.

4.2 Enforcement effectiveness

Since enforcement, prosecution and sanction for all three regimes are member state competences, a number of nascent themes at the national level emerged from the research, despite the relatively early stage of enforcement activities:

- Given the relatively broad range of institutions involved in the full set of implementation activities in each member state (including prevention/education, compliance checks, formal investigation, prosecution and sanction), and the varying powers/responsibilities of national competent authorities along this chain, making direct comparisons of enforcement activities between member states challenging.
- The variance in activities of competent authorities with expert knowledge of EUTR and CITES, combined with the very distinct nature of investigation and prosecution cultures in different member states also suggests that coordination and information sharing in the earlier stages of implementation (specifically in relation to prevention/education and compliance checks) will be easier to achieve and more likely to improve enforcement outcomes.
- Where member states have statistically significant CITES imports, there are relatively well managed flows of information/activities between relevant enforcement departments for EUTR and CITES.
- Personal communication with enforcement officials suggests that it has occasionally been possible to use CITES and AML in parallel, but that it is not always considered the most cost-efficient way to tackle the crimes in question.

[65] The ITTO-CITES Project is a multi-year collaborative project between ITTO and CITES with financial support of the European Union through the European Commission together with other ITTO donors (U.S.A, Switzerland, Germany, Norway, Netherlands, Japan, New Zealand and the private sector), that provides specific assistance to countries throughout the tropics to design forest management plans, forest inventories, provide guidelines and case studies for making Non Detriment Findings (NDFs) for CITES listed tree species, and to develop and disseminate tools for timber identification. This project plays an important role in implementing the recommendations of the CITES Mahogany Working Group (MWG) and CITES Plants Committee on mahogany and other tropical tree species such as ramin and afrormosia listed in CITES Appendix II. For more information see: http://www.itto.int/cites_programme/

- In Italy and Czech Republic, enforcement activities are made by forest specialists, although their expertise is primarily domestic forestry which is, arguably, relatively less risky than imported wood products. By contrast, the Netherlands and UK use agencies that have no specific forestry expertise, but enforce in a number of regulatory sectors which implicate global supply chains and powers. It is not yet clear which approach works better, or how the differences might be reflected in relative use of the prohibition element of the EUTR compared with the due diligence element.
- In the context of the relatively recent EUTR requirements, there is a clear distinction in enforcement culture between the UK, which has a business regulatory agency leading, and has focused significant resources on outreach and support for compliance among regulated entities, and Italy, where enforcement is undertaken by the forest police and is based on investigation and sanction rather than education.
- Enforcement officials in the Czech Republic work closely with the team responsible for enforcing the domestic forestry code and, notably, see the EUTR legislation as an additional tool for prosecuting illegal loggers in their own country, since it establishes higher/additional possible sanctions and has resulted in more resources being allocated to enforcement.

A number of conclusions can also be drawn at the European level, despite the legal responsibility for enforcement resting with member states:

- The structure of the legal relationship between CITES and the EUTR focuses on mutual compliance and arguably allows for the prohibition on placing illegal products on the EU market to reinforce CITES standards rather than allow CITES relatively less robust validation of legal compliance to become a 'loophole'. This arrangement will require political will on the part of the EU and its member states to push for more credible legal acquisition findings in CITES timber range states, but it has potential to have a positive impact on the enforceability of both legal regimes in both the EU and the countries which export CITES timber to it. The arrangement was developed by the European Commission and there has been a demonstrable willingness to explore options for improvement and mutual enforcement cooperation on the part of key officials in the relevant DG.
- The European Commission has been relatively slow to support enforcement cooperation and capacity, and as a result there are 2 or 3 'tiers' of member states now. While enforcement is a member state competence, there are still a number of areas where a more proactive facilitation/funding by the EC could have encouraged consistency and robustness across the Union.
- EUTR/CITES officials will now have an annual policy meeting hosted by Brussels; however there are still no joint enforcement meetings planned.
- The European Commission is considering providing resources to establish a platform to allow EUTR enforcement officials to communicate with each other and store data in a shared 'institutional memory', akin to EU TWIX, which currently links up around 800 CITES enforcement officials across the EU in real time. Despite its lauded positive impact on enforcement however, EU TWIX is not financially secure. The financial instability of TWIX is being used as an argument to putting an EUTR platform on a less searchable/useable system, without an expert administrator.

Producer country conclusions:

- Although the legal arrangements in both Ghana and Indonesia include relevant predicate offenses, there is little evidence that AML powers are being used to pursue the profits arising from illegal logging and the subsequent trade in illegal forest products. This would be the most appropriate and potentially impactful point at which to leverage the power of AML, since, once the supply chain and attendant profits have left the producer country there is little anecdotal evidence to suggest that money is 'laundered'. Most finances, for example of large retail companies importing wood, are managed in accordance with European AML legislation since it is assumed that they are derived from legal activities and it would be extremely challenging to prove otherwise.

- There appears to be relatively good coordination between VPA and CITES institutions in the two producer countries studied. This suggests that, as SVLK/TLAS implementation becomes established, there is room to be optimistic about the credibility of CITES export permitting also improving in those countries.
- The potential for implementation coordination and information sharing between Ghana and EU enforcement officials appears to be stronger – in part because Ghana is a smaller country with a smaller and less diverse forest sector, and in part because of the decision to keep the verification and independent audit functions of the TLAS relatively centralized, as well as training specialist forest prosecutors. Whether these assumptions are born out in practice will become clear when FLEGT licensing is functioning and the EUTR is further into the enforcement phase.

4.3 Policy and enforcement implications

- While enforcement is a member state competency under the current Treaty, European Commission leadership is essential to establish consistency across the EU and avoid a "race to the bottom" in enforcement quality. Given the single market, European legislation that attempts to control the trade in environmentally sensitive/harmful products is only as strong as its weakest member state.
- Establishing norms and timelines for implementation and enforcement, as well as identifying those MS that fall below them, through benchmarking, best practice transparency measures and peer accountability mechanisms, would significantly improve the consistency of implementation of environmental legislation across the EU.
- Experience working with enforcement officials for EUTR and CITES has shown that there are significant lessons to be learned from the implementation of legislation in other regulated sectors, whether strictly categorised as 'environmental' or not.
- The due diligence requirement of the EUTR was not simple to transpose into national law in some countries, as the concept does not easily translate into different legal approaches. However, once established, this complex concept creates a 'dynamic' norm, which can allow for improvements in expected levels of understanding and responsibility taking in the purchase of wood products over time. For example, as the cost of technical solutions to supply chain control problems reduces over time, enforcement officials are likely to expect that these relatively secure systems will be used as appropriate risk mitigation. At the point of drafting the legislation however, it would not have been politically feasible to include a specific requirement for high-tech supply chain controls, since the cost, at that point in time, was not viable within the value chains for many forest products. It is therefore recommended that this potential for incremental increases in the level of due diligence be actively pursued by the European Commission, once basic implementation is in place in all member states.

4.4 Research questions summary conclusions

1. ***To which extent are the enforcement procedures for discouraging environmental harmful conducts in your case study effective?***

The primary conclusion drawn in relation to this research question is that the enforcement procures are reasonably effective given the newness of the key piece of legislation. Improvements to the procedures among the most progressive member states have been happening at an impressive pace over the last two

years and the European Commission has recently signalled its willingness to increase political pressure on those member states who are not yet actively engaged with the enforcement process.[66]

2. ***Why your case study is relevant to implement a coherent framework for an effective fighting of environmental crime at EU level?***

The case study shows the challenges of coordinating enforcement activities in situations where fundamentally different institutional arrangements and underlying legal principles (for example in the distinction between criminal and administrative illegalities) operate across the EU28. It also demonstrates the importance of European Commission leadership on enforcement coordination despite the limitations of its mandate in this area.

3. ***What is the impact of EU legislation, standards and policy on environmental crime on third countries in their efforts to combat environmental crime?***

It is extremely difficult, if not impossible, to disaggregate the impacts of the many campaigns and initiatives for improving and enforcing legislation which protects forests and could therefore be considered to be within the purview of this case study; however it is generally politically accepted within Europe that EU legislation should be put in place to support the business case for better environmental regulation globally. European consumers should not generate demand for products that are inherently damaging to the environment in countries outside the EU and similarly should not generate products (such as hazardous electronic or chemical wastes) which are able to leave the EU and create harm. The findings of this case study suggest that coherent policy mechanisms which target both the 'supply' and 'demand' for timber (e.g. the VPA in Ghana and the EUTR in the EU) can be both mutually supportive and have dynamic impacts on the enforcement of other, linked, bodies of environmental legislation – in this case CITES.

4. ***Which parameters guide criminalization of certain types of environmentally harmful behaviour?***

The primary conclusion drawn in relation to this research question is that it is the severity of the sanction associated with the legislation that determines whether or not non-compliance is criminalised, not an abstract notion about whether or not certain types of environmentally damaging activities should be criminalised. The UK and the Czech Republic go for opposite approaches (criminal or administrative sanctions respectively), whereas Italian CAs have the choice.

5. ***From an enforcement perspective, what are practical advantages and disadvantages of criminalisation? For instance, potential disadvantages could be cumbersome procedures; less flexibility; different rights of actors; "inflation" effect.***

The primary conclusion drawn in relation to this research question is that whether or not an environmentally damaging act is deemed to be criminal or administrative, the key principle is that the potential severity of the penalty should reflect both the environmental impact and the economic scale of the illegality and any profits associated with it.

[66] Pers comm. January 2015.

5 Annex One - CITES-listed timber species exported to the EU in significant volumes from 2000 to 2011

According to trade data reviewed by the monitoring network TRAFFIC, only six timber species listed in Appendix II and six listed in Appendix III were exported to the EU in significant volumes during the period 2000–11.[67]

Appendix II	**Appendix III**
Pericopsis elata (African Teak, Afromosia, Afrormosia)	*Cedrela odorata* (Spanish Cedar)
Swietenia macrophylla (Bigleaf Mahogany, Caoba)	*Dalbergia stevensonii* (Honduras Rosewood)
Swietenia humilis (Mexican Mahogany, Honduras Mahogany)	*Dalbergia retusa*
Guaiacum species (Lignumvitae)	*Dipteryx panamensis*
Gonystylus species (Ramin)	*Cedrela fissilis*
Aquilaria species (Eaglewood)	*Podocarpus neriifolius*

Source: Ferriss, S, (2014): An Analysis of Trade in Five CITES-listed Taxa, London: Chatham House/TRAFFIC.

[67] See Ferriss, S., (2014), An Analysis of Trade in Five CITES-listed Taxa, London: Chatham House/TRAFFIC, background paper for the workshop at Chatham House on 12–13 December 2013.

6 Annex Two - Mutual Legal Assistance

6.1 Introduction and relevance for information-sharing in EUTR enforcement

Mutual legal assistance (MLA) is the formal way in which countries request and provide assistance in connection with criminal investigations, proceedings or enforcement. As part of this, one country may request information from another.

MLA may be requested and granted on the basis of multilateral or bilateral agreements, or on the basis of national legislation. Within the EU, MLA is mandated and regulated by a number of instruments, and bilateral agreements exist between the target states (UK, Netherlands, Italy and the Czech Republic) and many non-EU countries. Where no agreement exists it is up to national legislation whether or not an MLA request can be granted.

MLA requests are typically mandatory for types of information which it requires a court order or coercive measures to obtain. In some countries, such as the UK, this distinction is one of 'evidence', but this is not universal. Apart from this, MLA requests are often made where the requesting state is not sure where to obtain the information it requires.

In cases where links already exist between agencies in two countries requests can often be made directly where no court order is necessary to obtain the information or where this mandated by an agreement. Some types of cooperation, such as police-to-police cooperation, are the subject of separate agreements, initiatives and institutions.

MLA requests relate to well-defined information required for the prosecution of a specific criminal case. MLA requests therefore are not intended for on-going information-sharing or non-criminal cases.

6.2 Mutual Legal Assistance Requests

6.2.1 Definition

Mutual legal assistance (MLA) is the formal way in which countries request and provide assistance in obtaining evidence located in one country to assist in criminal investigations or proceedings in another country.[68]

6.2.2 Legal basis

MLA may be requested and granted on the basis of multilateral or bilateral agreements, or on the basis of national legislation that either implements the relevant treaties or enables mutual assistance in their absence.

6.2.3 Letters rogatory

In the absence of a treaty or agreement, or of national legislation providing otherwise, some countries use letters rogatory as the customary method of obtaining assistance from abroad. A letter rogatory is a request from a court of one country to the judiciary of a foreign country requesting an action or information. Letters rogatory may be used in countries where multilateral or bilateral treaties on

[68] *Wildlife and Forest Crime Analytic Toolkit*, UNODC 2012. http://www.unodc.org/documents/Wildlife/Toolkit_e.pdf

assistance are not in force to effect service of process or to obtain evidence if permitted by the laws of the foreign country.

6.2.4 Requirements and procedure

States generally require MLA requests to be made formally and to a National Central Authority, though certain types of information may fall outside the scope of MLA legislation and be subject to other requirements. Examples of types of information that may fall outside the scope of MLA legislation, and which may therefore be subject to more or less stringent requirements, might include:

- Information that does not need to be collected through the judicial authorities, e.g. because it requires a court order to obtain or must be sworn in by a jury.
- Information related to cases that are not criminal in nature, such as civil matters and in some countries administrative sanctions.
- General, on-going exchange of information, as opposed to information required for the prosecution of a specific case. MLA requests are normally considered on a case-by-case basis.

6.2.5 Limitations

In granting MLA requests, states may require reciprocity (i.e. that the state from which the request originates itself grants similar requests) and/or dual criminality (i.e. that the investigation for which the information is required concerns an offense which is also criminal in the recipient country).

A number of countries also reserve the rights to refuse requests that are considered disproportionate, that would harm the national interest, or which are made in the course of prosecution for offenses that the state considers should not be criminalised.

Furthermore, MLA agreements are generally subject to the rules for data projection, confidentiality and disclosure of either the state making the request, the state receiving the request, or both.

6.3 Relevant international conventions and institutions

6.3.1 European Council Convention on Mutual Assistance in Criminal Matters (1959)[69]

Under this convention, the parties agree to afford each other the widest measure of mutual assistance in proceedings in respect of offences the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting party. The convention sets out the requirements that must be met with regard to the form of the request, and requires the requested state to specify how and where requests are to be made.

The convention has been ratified by most EU countries, as well as other European countries such as Turkey and Ukraine, and the implementing legislation serves as a legal basis for MLA in these countries.

6.3.2 Schengen and the Schengen Information System (SIS)

The Schengen Agreement was incorporated into European Union law (with opt-outs for the United Kingdom and Ireland) with the Amsterdam Treaty in 1999. New EU member states are obliged to join Schengen as a condition of membership.[70]

[69] Council of Europe website

http://conventions.coe.int/Treaty/en/Treaties/Html/030.htm

The *Schengen Information System (*SIS) is used by border guards as well as by police, customs, visa and judicial authorities throughout the Schengen Area.[71] It holds information on persons who are wanted or missing, as well as on certain property that may have been lost or stolen. Information is entered into the SIS by national authorities and forwarded via the Central System to all Schengen States. Each Contracting Party have designated an authority which has central responsibility for its national section of the Schengen Information System - SIRENE (Supplementary Information Request at National Entry) through which it submits information and issues alerts.

Although not parties to the Schengen Agrement, the Schengen Acquis allows the United Kingdom and Ireland to take part in all or part of the Schengen convention arrangements, and both countries use the Schengen Information System for law enforcement purposes.

In April 2013, the second generation Schengen Information System (SIS II) entered into operation. SIS II has enhanced functionalities, such as the possibility to use biometrics, new types of alerts, the possibility to link different alerts (such as an alert on a person and a vehicle) and a facility for direct queries on the system. It also ensures stronger data protection. One of the world's largest IT systems in the field, it consists of three components: a Central System, EU States' national systems and a communication infrastructure (network) between the Central and the national systems.[72]

6.3.3 Prüm Convention[73]

The Prüm framework aims to introduce procedures for promoting fast, efficient and inexpensive means of data exchange. Under this framework, EU States grant each other access rights to their automated DNA analysis files, automated fingerprint identification systems and vehicle registration data.

Germany, Spain, France, Luxembourg, the Netherlands, Austria and Belgium signed the Prüm Treaty in the German town of Prüm in 2005. Given the considerable interest from the other EU States, the Commission supported the German initiative to transform this Treaty into an instrument binding all EU States. Consequently, the Council adopted the Prüm Decision and its implementing provisions in 2008.

Access to DNA profiles and fingerprints held in national databases is granted on a "hit/no-hit" basis, which means that DNA profiles or fingerprints found at a crime scene in one EU State can be compared with profiles held in the databases of other EU States. Car registration data (including licence plates and chassis numbers) are exchanged through national platforms that are linked to the online application "EUCARIS".

Each signatory state maintains a national contact point for each type of information exchanged. The Convention also widens the opportunities for joint police operations, such as patrols, inspections in border regions, and cooperation at large public events such as football matches.

---

[70] European Commission DG Home Affairs website: Schengen Area

http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen/index_en.htm

[71] European Commission DG Home Affairs website: Schengen Information System

http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen-information-system/index_en.htm

[72] European Commission DG Home Affairs website: Schengen Information System II http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen-information-system/index_en.htm

[73] European Commission DG Home Affairs website: Prüm Decision http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/police-cooperation/prum-decision/index_en.htm; Policing in the Netherlands, Ministerie von Binnenlandse Zaken en Koninkrijksrelaties (2009) http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32008D0615; Policing in the Netherlands, Ministerie von Binnenlandse Zaken en Koninkrijksrelaties (2009)

6.3.4 The Swedish Initiative[74]

The "Swedish Initiative" on simplifying the exchange of information and intelligence between law enforcement authorities was adopted in 2006.

This instrument sets out rules for the cross-border exchanges of criminal information and intelligence, ensuring that these rules are not stricter than those applying to data exchanges at national level (principle of equivalent access). It introduces an obligation on EU States to answer to information queries from other EU States and regulates the conditions for the provision of information and intelligence, including time limits, requests, communication channels and languages, as well as data protection measures.

6.3.5 Convention on Mutual Assistance in Criminal Matters between the member states of the European Union (2000)[75]

This convention supplements the European Council convention of 1959, extending the scope of commitments and harmonising procedures for EU member states as well as Norway and Iceland.

Under the convention, a judicial authority or a central authority in one member state may make direct contact with police, customs authorities or administrative authorities from another member state. Furthermore, mutual assistance is to be granted in proceedings brought by administrative authorities regarding acts that are punishable under national law. In urgent cases, MLA requests may also be made via Interpol.

A spontaneous exchange of information (i.e. without prior request) may take place between member states regarding criminal offences and administrative infringements the punishment or handling of which falls within the competence of the receiving authority.

The interception of telecommunications may be done at the request of a competent authority from another member state - a judicial authority or an administrative authority designated for the purpose by the member state concerned. The convention also envisages joint investigation teams, set up for a specific purpose and for a limited time.

6.3.6 Europol[76]

Europol is the European law enforcement organisation, headquartered in The Hague. It has no executive tasks and is limited to dealing with certain types of serious crime involving two or more member states.

These do not in the first instance include the trade in illegal goods, though their operational activities on organised crime, money laundering and asset tracing may be relevant.

6.3.7 Eurojust[77]

Eurojust is an EU body established by Council Decision 2002/187/JHA to improve judicial cooperation in the fight against serious crime (amended by Council Decision 2003/659/JHA and Council Decision 2009/426/JHA). Since 2003, its seat has been in The Hague.

Regarding investigations and prosecutions concerning at least two EU countries in relation to serious crime, Eurojust has the task to:

---

[74] European Commission DG Home Affairs website: The Swedish Initiative http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:386:0089:0100:EN:PDF

[75] European Union website http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_criminal_matters/l33108_en.htm

[76] Europol website, https://www.europol.europa.eu/content/page/mandate-119

[77] European Commission website http://ec.europa.eu/justice/criminal/judicial-cooperation/eurojust/index_en.htm

- Promote coordination between the competent authorities of the various EU countries. For example, Eurojust may organise meetings to set up a common strategy and coordinate the actions of various national authorities (planning simultaneous arrests, searches, seizures of property);
- Facilitate the execution of requests and decisions relating to judicial cooperation. For example, European Arrest Warrants and other mutual recognition instruments.

Eurojust may fulfil its tasks through one or more of the national members, or through the staff seconded to Eurojust by member states. Each EU member states must appoint a national member of Eurojust, either a judge, prosecutor or police officer.

6.3.8 Interpol

The International Criminal Police Organization (Interpol) is an intergovernmental organization that facilitates international police cooperation. Interpol teams are deployed in member countries and its Command and Coordination Centre functions provides 24-hour support and coordinates international police operations as they take place. Interpol operates a communications system, I-24/7, which allows law enforcement officials around the world to access Interpol's databases on criminal activity.[78]

Interpol establishes task forces with representation from agencies with different expertise, such as police, customs, forestry authorities, financial and tax regulators. One of these is the National Environmental Security Task Force which brings together compliance and enforcement agencies. Interpol also leads Project Leaf (Law Enforcement Assistance for Forests) which provides analysis, training and operational support to develop law enforcement capacity and enhance information and intelligence sharing.[79]

6.4 MLA rules and institutions in target countries

6.4.1 The United Kingdom

Legal basis

The UK has ratified the European Council Convention on Mutual Assistance in Criminal Matters and the Convention on Mutual Assistance in Criminal Matters between the member states of the European Union. Furthermore, the Schengen Acquis allows the United Kingdom to take part in Schengen convention arrangements, and the UK participates in the Schengen Information System.

The UK also has bilateral MLA agreements with a large number of non-European countries, including Australia, Brazil, Malaysia, Uruguay, Chile, USA, Colombia, Vietnam, Ecuador, Guyana, Paraguay.[80]

However, the UK can also provide most forms of legal assistance without bilateral or international agreements.[81]

A foreign state may request MLA from the UK via a letter of request, and requests are not required to come via diplomatic channels.

Guidelines for authorities outside of the United Kingdom on requests for mutual legal assistance in criminal matters is made available by the UK Home Office.[82]

---

[78] Interpol website http://www.interpol.int/INTERPOL-expertise/Data-exchange

[79] Interpol, website http://www.interpol.int/Crime-areas/Environmental-crime/Projects/Project-Leaf

[80] UK Government website https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/249275/Treaty_List.pdf

[81] *Requesting mutual legal assistance in criminal matters from G8 countries: A step-by-step guide*, Commission on Crime Prevention and Criminal Justice (2011) http://www.coe.int/t/dghl/standardsetting/pc-oc/PCOC_documents/8_MLA%20step-by-step_CN152011_CRP.6_eV1182196.pdf

Reciprocity

Reciprocity is not required: The UK can assist any country or territory in the world, whether or not that country is able to assist the UK.[83]

Dual criminality

The UK generally only requires dual criminality for coercive investigative measures (such as search and seizure, restraint and confiscation of assets) and takes a "conduct" based approach. This means that the conduct underlying the alleged offence is considered when assessing dual criminality, rather than seeking to match the exact same term or offence category in both jurisdictions. [84]

Central Authority

In effect the UK has three central authorities:

- Requests relating to in England, Wales and Northern Ireland except tax and fiscal customs, should be directed to the UK Central Authority ('UKCA').
- All MLA relating to tax and fiscal customs matters should be sent to HM Revenue and Customs: Criminal Law and Information Law Advisory Team HM Revenue and Customs - Solicitor's Office.
- Requests relating to Scotland should be sent to the Crown Office International Co-operation Unit.

Limitations

Where a requesting authority wishes to use evidence obtained from the UK for a different purpose to that stated in the original MLA request, or to share the evidence with a third country, a formal request to do so must be made in writing by the original requesting state to the relevant central authority in the UK unless otherwise stated in treaty.

Non-evidence

For information that is not evidence, foreign agencies can request intelligence directly from UK agencies. Where direct contact already exists, the following agencies can receive intelligence enquiries directly from law enforcement officers in foreign jurisdictions:

- Europol via the National Crime Agency (NCA)
- Interpol via NCA
- UK Visas & Immigration
- HMRC
- Police Forces

If direct contact between a foreign police force and a UK police force has not already been established, the NCA should be contacted with the request. The NCA acts as the UK Interpol gateway for all incoming and outgoing police to police enquiries. The NCA will forward requests through the Interpol network to the relevant police force or other law enforcement agency who will then execute the request, subject to any data sharing agreement.

---

[82] *Requests for Mutual Legal Assistance in Criminal Matters: Guidelines for Authorities Outside of the United Kingdom*, UK Home Office Judicial Review Unit (2014) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/269208/MLA_Guidelines_2014.pdf

[83] *Requesting mutual legal assistance in criminal matters from G8 countries: A step-by-step guide*, Commission on Crime Prevention and Criminal Justice (2011) http://www.coe.int/t/dghl/standardsetting/pc-oc/PCOC_documents/8_MLA%20step-by-step_CN152011_CRP.6_eV1182196.pdf

[84] *Requesting mutual legal assistance in criminal matters from G8 countries: A step-by-step guide*, Commission on Crime Prevention and Criminal Justice (2011) http://www.coe.int/t/dghl/standardsetting/pc-oc/PCOC_documents/8_MLA%20step-by-step_CN152011_CRP.6_eV1182196.pdf

6.4.2 The Netherlands[85]

Legal basis

The Netherlands has ratified the European Council Convention on Mutual Assistance in Criminal Matters, Schengen, the Prüm Convention, the Swedish Initiative and the Convention on Mutual Assistance in Criminal Matters between the member states of the European Union.

Agencies

The central authority for MLA requests is the Ministry of Security and Justice's Office for International Legal Assistance in Criminal Matters.

The Dutch national contact point for international police cooperation is the National Police Services Agency (KLPD)'s International Police Intelligence Department (IPOL). The Department includes the Dutch branch of Interpol (internationally known as 'NCB The Hague'), the Dutch Europol National Unit, and the Dutch office of SIRENE (Supplementary Information Request at National Entry), making it the Dutch centre of the Schengen Information System (SIS). It also contains a unit that coordinates criminal intelligence.[86]

The National International Legal Assistance Centre (LIRC) plays a key part in implementing international information exchange and legal assistance. The LIRC is co-managed by the National Public Prosecutors' Office and the KLPD. Administratively, it is part of IPOL. The LIRC is the national hub via which all Interpol and Europol messages pass and are processed. The SIRENE office, which is part of the LIRC, facilitates international information exchange round the clock. As well as assisting foreign liaison officers stationed in the Netherlands, the LIRC also oversees a network of 35 Dutch liaison officers attached to Dutch embassies abroad, who work for all the Dutch investigative services and justice authorities. [87]

Dual criminality

In case of a request for coercive measures, like search or seizure, double criminality is required.

Limitations

The evidence of execution of a request for mutual legal assistance may only be used for the objective for which it was requested.

6.4.3 Italy

Legal basis

Italy has ratified European Council Convention on Mutual Assistance in Criminal Matters, Schengen, the Prüm Convention, the Swedish Initiative and the Convention on Mutual Assistance in Criminal Matters between the member states of the European Union. The Italian Code of Criminal Procedure contains implementing legislation.

Furthermore, Italian authorities may provide judicial assistance (including mutual legal assistance and extradition) in the absence of conventions in which case the Italian Code of Criminal Procedure applies (see below).[88]

---

[85] *Evaluation Report on the Netherlands on Mutual Legal Assistance and Urgent Requests for the Tracing and Restraint of Property*, Council of the European Union (1998/1999). https://www.consilium.europa.eu/ueDocs/cms_Data/docs/polju/en/EJN353.pdf

[86] *Policing in the Netherlands*, Ministerie von Binnenlandse Zaken en Koninkrijksrelaties (2009) http://www.government.nl/issues/police/documents-and-publications/leaflets/2009/01/01/policing-in-the-netherlands.html

[87] *Policing in the Netherlands*, Ministerie von Binnenlandse Zaken en Koninkrijksrelaties (2009) http://www.government.nl/issues/police/documents-and-publications/leaflets/2009/01/01/policing-in-the-netherlands.html

[88] *Requesting mutual legal assistance in criminal matters from G8 countries: A step-by-step guide*, Commission on Crime Prevention and Criminal Justice (2011) http://www.coe.int/t/dghl/standardsetting/pc-oc/PCOC_documents/8_MLA%20step-by-step_CN152011_CRP.6_eV1182196.pdf

Non-Treaty Letters of Request

In case of absence of provisions under international conventions or if they provide otherwise, a specific law provision provided for in the Code of Criminal Procedure shall apply. Such a rule is provided for in articles 696, 723 et seq. of the Code of Criminal Procedure. In general, the Code of Criminal Procedure provides that the Minister of Justice, once the letter of request is received, will order that it be executed, unless he believes that:

- The documents requested may prejudice the sovereignty, safety or other essential interests of the State;
- The acts requested are expressly forbidden by the law or are contrary to the fundamental principles of the Italian legal system;
- The criminal proceedings may be prejudiced by discriminatory reasons.
- The Minister of Justice, if he believes that the letter of request is enforceable, shall forward it to the Court of Appeal which has jurisdiction over the acts requested. The Court of Appeal, unless it believes that the reasons set out in b) or c) recur, or if the fact is not regarded as an offence under Italian law, shall execute it.

Italian Central Authority

MLA requests should be submitted to the Central Authority for international judicial assistance in criminal matters, which is at the Italian Ministry of Justice: Ufficio II, Directorate General of Criminal Justice, Department of Justice Affairs

Dual criminality

Dual criminality is generally not required, and only applies if the multilateral or bilateral convention so specifies.

6.4.4 The Czech Republic

Legal basis

The Czech Republic has ratified European Council Convention on Mutual Assistance in Criminal Matters, Schengen, the Prüm Convention, the Swedish Initiative and the Convention on Mutual Assistance in Criminal Matters between the member states of the European Union. The implementing legislation is the Act on International Judicial Cooperation in Criminal Matters, 104/2013 Coll.

Recipient

The Czech central authority depends on the stage of the investigation for which the MLA request is made:

- Pre-trial stage: Supreme Public Prosecutor's Office, Department of International Affairs
- Trial stage: Ministry of Justice of the Czech Republic, International Department for Criminal Matters

Unless stipulated otherwise by the European Convention on Mutual Assistance in Criminal Matters, Additional Protocols thereto or a bilateral treaty, according to Section 8 of the Act on International Judicial Cooperation in Criminal Matters the judicial authorities will liaise with foreign authorities through their central authorities. The central authorities will liaise with foreign authorities via diplomatic channels.

6.5 MLA Agreements with non-EU countries

6.5.1 The United States

Legal basis

MLA between the United States and the European Union is covered by the Agreement on mutual legal assistance between the European Union and the United States of America.[89] (signed 2003, entered into force 2010).

The agreement applies provisions on the following in addition to, instead of or in the absence of authority already provided under bilateral treaty provisions between member states and the US:

- Provide for the identification of financial accounts and transactions
- Authorise the formation and activities of joint investigative teams
- Authorise the taking of testimony of a person located in the requested State by use of video transmission technology between the requesting and requested States
- Provide for the use of expedited means of communication
- Authorise the providing of mutual legal assistance to the administrative authorities concerned
    - Only where it is investigating conduct with a view to an eventual criminal prosecution of the conduct.
- Limitations on use of information or evidence provided to the requesting State, and the conditioning or refusal of assistance on data protection grounds.
    - Only for the purpose of its criminal investigations and proceedings or administrative or judicial proceedings directly related to it. Any other use requires the permission of the requested state.
- Circumstances under which a requesting State may seek the confidentiality of its request

The agreement requires a 'written instrument' from each member state acknowledging the application of its bilateral mutual legal assistance treaty in force with the United States of America in the manner dictated by the US-EU Treaty (Article 3.2).

The legal basis for US MLA to and from the target states is as follows:

- UK
    - Mutual Legal Assistance Treaty between the United States of America and the United Kingdom of Great Britain and Northern Ireland. Signed at Washington January 6, 1994.
    - Instrument contemplated by article 3(2) of the Agreement on mutual legal assistance between the United States of America and the European Union signed at Washington on 25 June 2003, as to the application of Mutual Legal Assistance Treaty between the United States of America and the United Kingdom of Great Britain and Northern Ireland. Signed at Washington January 6, 1994 [also contains article 3.2 instrument for extradition treaty of 2003.]
- Netherlands
    - Mutual Legal Assistance Treaty Between the United States of America and the Netherlands. Signed June 12, 1981.
    - Mutual Legal Assistance Agreement Amending the Treaty of June 12, 1981 Between the United States of America and the Netherlands. Signed at The Hague September 29, 2004.[90] (Instrument contemplated by article 3(2) of the EU-US Agreement).
- Italy
    - Mutual Legal Assistance Treaty Between the United States of America and Italy. Signed November 9, 1982
    - Mutual Legal Assistance Instrument Amending the Treaty of November 9, 1982 Between the United States of America and ITALY. Signed at Rome May 3, 2006.[91] (Instrument contemplated by article 3(2) of the EU-US Agreement).
- Czech Republic

[89] European Commission website http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?redirect=true&treatyId=5441

[90] US Department of State website http://www.state.gov/documents/organization/189592.pdf

[91] US Department of State website http://www.state.gov/documents/organization/189224.pdf

- Mutual Legal Assistance Treaty Between the United States of America and the Czech Republic. Signed at Washington February 4, 1998.[92]
- Mutual Legal Assistance Supplementary Treaty Between the United States of America and the Czech Republic Signed at Prague May 16, 2006. (Instrument contemplated by article 3(2) of the EU-US Agreement).

Institutional context

The US central authority is the Attorney General.

When the EU-US agreement was signed, contacts were also established between the EU body for judicial cooperation in criminal matters EUROJUST and US law enforcement authorities. A cooperation agreement is apparently under negotiation.

6.5.2 Australia

Legal basis

Mutual assistance to and from Australia is governed by the Mutual Assistance in Criminal Matters Act 1987 (the Mutual Assistance Act). The Mutual Assistance Act enables Australian authorities to execute search warrants, take evidence from a witness in Australia (including by video link), arrange for the production of documents or other articles, arrange for prisoner witnesses to travel with their consent to a foreign country to give evidence, and take action to enforce orders restraining and forfeiting the proceeds of crime. Australia can also provide other assistance such as voluntary witness statements and service of documents.

Australia can consider a request for assistance from any foreign state in the absence of a treaty or convention.

Relevant legislation

- Mutual Assistance in Criminal Matters Act 1987[93]
- Mutual Assistance in Criminal Matters Regulations 1988
- Mutual Assistance in Criminal Matters Amendment Regulations 2004 (No. 1)

Other types of information exchange (to obtain evidence that does not require the use of coercive powers).[94]

- Police-to-police assistance
- Agency-to-agency assistance

Bilateral MLA agreements with target states[95]

- UK
- Netherlands
- Italy

Institutional context

Australia's Central Authority is the International Crime Cooperation Central Authority (ICCCA). Requests from Australia to other countries are made by Mutual assistance requests are made by the Attorney-General and Minister for Justice.

---

[92] US Department of State website http://www.state.gov/documents/organization/107829.pdf

[93] Australian Government ComLaw website http://www.comlaw.gov.au/Details/C2012C00180/Html/Text

[94] Australia Attorney-General's Department http://www.ag.gov.au/Internationalrelations/Internationalcrimecooperationarrangements/MutualAssistance/Pages/default.aspx

[95] *Australia's Bilateral Mutual Legal Assistance Arrangements*, Australia Attorney-General's Department http://goo.gl/8hQDPW

6.5.3 Indonesia[96]

Legal basis

Indonesia provides mutual legal assistance (MLA) in criminal mattes under Indonesian Law Number 1 Year 2006 on Mutual Legal Assistance (Law 1/2006).[97]

An appeal for assistance must be related to an investigation, prosecution or examination before a court in accordance with the state law provision and required regulations of the requesting state.

Mutual legal assistance may be provided based on a treaty, but in the absence of treaty the assistance may be provided based on good relationship under the reciprocity principles (with other forms of statement of the reciprocity).

Dual criminality is mandatory for extradition. The requirement is conduct-based, and this conduct must be summarised in request documents. Indonesia has the discretion to refuse a request under Article 7 (a) Law 1/2006 on MLA.

Indonesia has reportedly experienced problems in implementing its bilateral MLA agreements.[98]

Bilateral MLA agreements with target states

- Indonesia doesn't appear to have agreements with target states

Institutional context

The Minister of Law and Human Rights is Central Authority of the Government of the Republic of Indonesia.

[96] *Requesting Mutual Legal Assistance in Criminal Matters from G20 Countries – A Step-By-Step Guide* (2012) G20 website https://www.g20.org/sites/default/files/g20_resources/library/MLA_Guide.pdf

[97] Indonesia *Law on Mutual Legal Assistance in Criminal Matters*, OECD website http://www.oecd.org/site/adboecdanti-corruptioninitiative/39839768.pdf

[98] Basel Institute on Governance http://www.baselgovernance.org/fileadmin/docs/pdfs/Bali/Romli_Atmasasmita.pdf

7 Annex Three - CITES wood export data for Indonesia and Ghana for the period 1 October 2010 - 31 December 2013.

Indonesia

Year	CITES Appendix	Family	Taxonomy	Import country	Importer reported quantity	Exporter reported quantity	Product	Unit	Source
2010	II	Cyatheaceae	Sphaeropteris glauca	DE		2000	timber pieces	kg	W
2010	II	Dicksoniaceae	Cibotium barometz	FR		500	timber pieces		W
2010	II	Thymelaeaceae	Gonystylus bancanus	DE	364,944		sawn wood	m^3	W
2010	II	Thymelaeaceae	Gonystylus bancanus	DK	21		sawn wood	m^3	W
2010	II	Thymelaeaceae	Gonystylus bancanus	IT	800,403		timber	m^3	W
2010	II	Thymelaeaceae	Gonystylus bancanus	IT		703	timber pieces	m^3	W
2010	II	Thymelaeaceae	Gonystylus bancanus	NL	2,016,529		sawn wood	m^3	W
2010	II	Thymelaeaceae	Gonystylus bancanus	NL		132	timber pieces	m^3	W
2011	II	Thymelaeaceae	Gonystylus bancanus	DK	20		sawn wood	m^3	W
2011	II	Thymelaeaceae	Gonystylus bancanus	DK		40	timber pieces	m^3	W
2011	II	Thymelaeaceae	Gonystylus bancanus	IT	474,779		timber	m^3	W
2011	II	Thymelaeaceae	Gonystylus bancanus	IT		814	timber pieces	m^3	W
2011	II	Thymelaeaceae	Gonystylus bancanus	NL		21	timber pieces	m^3	W
2012	II	Thymelaeaceae	Gonystylus bancanus	IT		80	plywood	m^3	W
2012	II	Thymelaeaceae	Gonystylus bancanus	IT	365,563		timber	m^3	W
2012	II	Thymelaeaceae	Gonystylus bancanus	IT		444	timber pieces	m^3	W

Source: CITES trade database

Ghana

Year	CITES Appendix	Family	Taxonomy	Import country	Importer reported quantity	Exporter reported quantity	Product	Unit	Source
2010	III	Meliaceae	Cedrela odorata	GB		2928	sawn wood		A

2010	II	Leguminosae	Pericopsis elata	DE	64,653		sawn wood	m^3	W
2010	II	Leguminosae	Pericopsis elata	DE		14	sawn wood		W
2011	II	Leguminosae	Pericopsis elata	DE		10,406	sawn wood	m^3	A
2011	II	Leguminosae	Pericopsis elata	DE		17,535	sawn wood	m^3	W
2011	III	Meliaceae	Cedrela odorata	DK		323,350	sawn wood	m^3	A
2012	III	Meliaceae	Cedrela odorata	DK		175,793	sawn wood	m^3	A

Source: CITES trade database

Source legend:

W: Harvested in the wild.

A: Artificially propagated specimens of Appendix 1 species for non-commercial purposes.