

EU Timber Regulation in BE

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Some institutional vocabulary

FLEGT vs. EU TR

- FLEGT 2003 EU Action Plan on Forest Law Enforcement Governance and Trade (FLEGT)
- EU TR = REGULATION (EU) No 995/2010 laying down the obligations of operators who place timber and timber products on the market
- EU TR = one of a number of actions under the FLEGT 2003 EU Action Plan
- FLEGT Voluntary Partnership Agreements (VPAs): VPAs include commitments and action from both parties to halt trade in illegal timber, notably with a license scheme to verify the legality of timber exported to the EU
 - ⇒ *simplified procedure for entry into EU market*
 - ⇒ *At this stage: only one VPA active EU-Indonesia*



Main Actions from the forest action plan:

- Support for timber producing/exporting countries
- **Timber trade**
- Public procurement
- Private sector initiative
- Funding and investment
- Support to existing legislation
- War timber
- ...



EUTR: Legislations

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Regulation laying down the obligations of operators who place timber and timber products on the market adopt(20/10/2010)

Commission delegated Regulation on the procedural rules for the recognition and withdrawal of recognition of monitoring organisations as provided for in Regulation (EU) No 995/2010 laying down the obligations of operators who place timber and timber products on the market. (23/2/2012)

Commission implementing Regulation (EU) on the detailed rules concerning the due diligence system and the frequency and nature of the checks on monitoring organisations [...] laying down the obligations of operators who place timber and timber products on the market (6/7/2012)

Guidance Document (February 2016)



EU TR (Regulation 995/2010): general aspects

- Entry into force: 3 March 2013
- Main attention points
 - **Scope: see annex (Timber + most of timber products)**
 - Broad range of timber products including solid wood products, flooring, plywood, furniture, pulp and paper (listed in the annex using EU Customs code nomenclature)
 - Not included: recycled products, printed papers,....
 - Scope can be amended → under discussion
 - Applies to both imported and domestically produced timber
 - Timber covered by FLEGT or CITES licenses complies



EU TR (Regulation 995/2010): general aspects

- **Article 4: Obligations of operators (operators introduce timber on EU market)**
 - No illegal timber
 - Elaborate, maintain and evaluate a due diligence system
- **Article 5: Obligation of traceability**
 - For the traders (sale timber in the EU market): origin and destination of timber



EU TR (Regulation 995/2010): general aspects (2)

- **Art 6 - Due diligence systems**
- « General information»
 - Product description
 - Country of harvest
 - Quantity
 - Supplier
 - Trader
 - Documents/information indicating compliance with the applicable legislation
- **Risks Evaluation: risk analyse and evaluation**
 - Assurance of compliance with applicable legislation.
 - Prévalence of illegal harvesting
 - UN or EU Sanctions
 - Complexity of the supply chain



EU TR (Regulation 995/2010): general aspects (3)

- **Due diligence =???**

- Notion from british legislative framework
- « Do your best, in the limit of your means »

⇒ Your best = ???

⇒ Limit of your means? Which are « your means »? To which point are you ready to mobilize them?

⇒ Risk of subjective interpretation

⇒ Need of coordination and commun interpretation at EU level (between MS)

⇒ Evolutive system: « the best » of tomorrow will be more strict than today « best »

⇒ **Operators can chose: or they operate their own due dilligence system, or they use the due dilligence system of a monitoring organisations (art 4)**



EU TR (Regulation 995/2010): general aspects (4)

- Art 8 Monitoring organisations
- Role:
 - maintain and regularly evaluate a due diligence system which can be used (under certain conditions) by operators
 - verify the proper use of its due diligence system by such operators
 - take appropriate action in the event of failure by an operator to properly use its due diligence systeme
- Recognition by EU COM
- Control by national CA



Some elements from EU Guidance document

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- See: http://ec.europa.eu/environment/forests/timber_regulation.htm
- Objective: give guidance (and examples) for the good implementation of EU TR
- Legal value: none
- Reflects an interpretation consensus (on implementation) between MS and EU COM
- Only the EU Court of justice can give « the right interpretation »
- But, as consensus document, it will be considered by EU Court of Justice in case of judgement (or preliminary ruling)



EU Guidance document (2)

Content of Guidance document

1. The definition of "placing on the market" : art 2
2. Definition of negligible risk : art 6
3. Clarification of "complexity of the supply chain" : art 6
4. Clarification of the requirement for documents indicating compliance of timber with applicable legislation: art 6 (et 2)



EU Guidance document (3) Exemples of documentation

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1. Documentation for rights to harvest timber within legally gazetted boundaries	Generally available documents in paper or electronic form e.g. documentation of ownership/rights to land use or contract or concession agreements
2. Payments for harvest rights and timber including duties related to timber harvesting	Generally available documents in paper or electronically e.g. contracts, bank notes, VAT documentation, official receipts, etc.
3. Timber harvesting, including environmental and forest legislation including forest management and biodiversity conservation, where directly related to timber harvesting.	Official audit reports; environmental clearance certificates; approved harvest plans; coupe closure reports, ISO certificates; codes of conducts, etc.
4. Third parties' legal rights concerning use and tenure that are affected by timber harvesting	Environmental impact assessments, environmental management plans, <u>environmental audit reports</u> , social
	responsibility agreements, specific reports on tenure and rights claims and conflicts.
5. Trade and customs, in so far as the forest sector is concerned	Generally available documents in paper or electronic format e.g. contracts, bank notes, trade notes, import licences, export licenses, official receipts for export duties, export ban lists, export quota awards, etc.

Legislation Flegt (Licencing system)

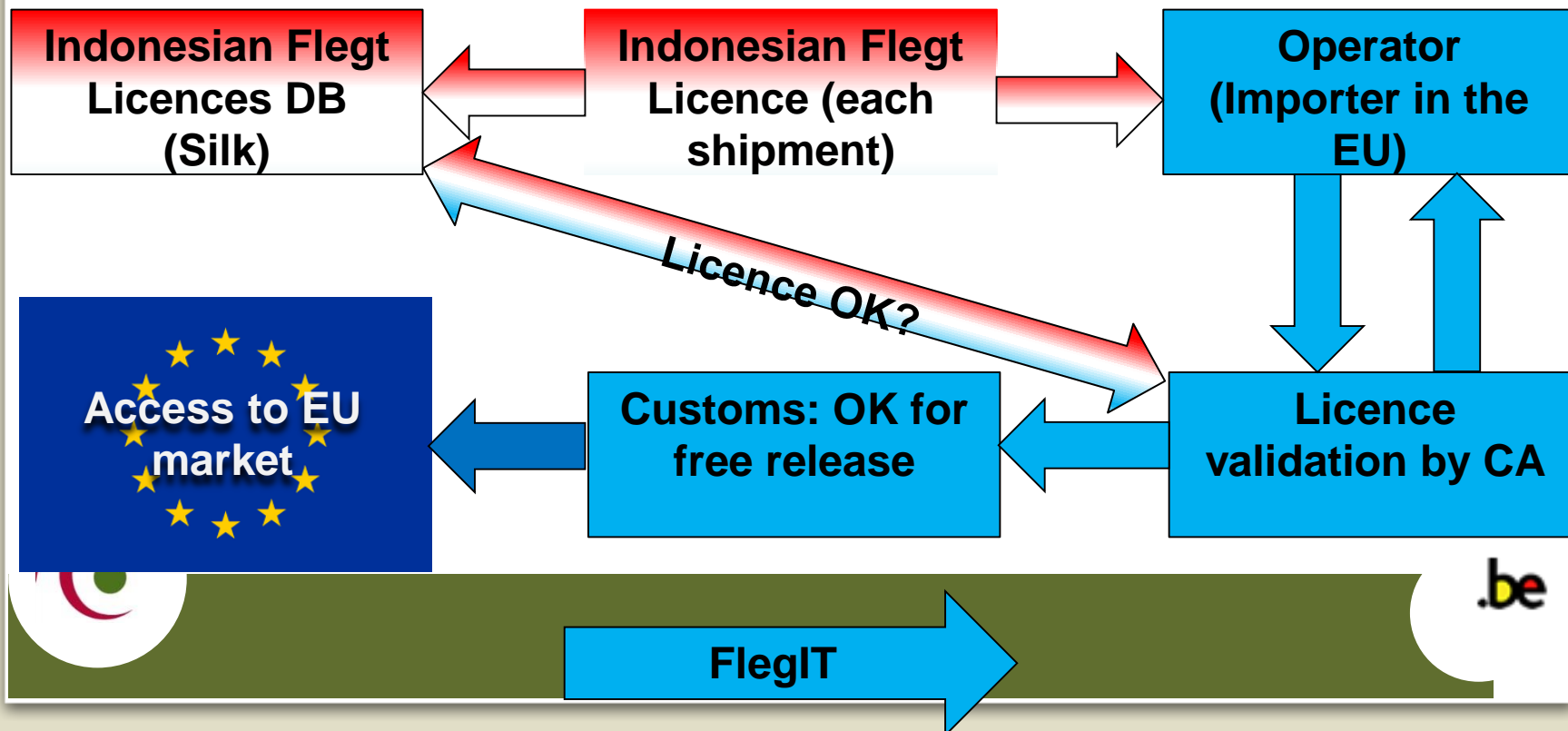
Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community

Commission Regulation (EC) No 1024/2008 of 17 October 2008 laying down detailed measures for the implementation of Council Regulation (EC) No 2173/2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community



VPA's: Practices

- Since 15/11/2016: VPA with Indonesia is active
 - => only Indonesian timber under VPA is allowed to enter to the EU market



Belgian institutional actors

1. SPF SPSCAE - DG Env. (Belgian federal administration for Environment)- Product Policy Unit:
 - Competent authority
 - Responsible for the market surveillance strategy and its implementation
 - Responsible for BE positions: UE and international level
 - Interface with EU UE COM

2. SPF SPSCAE - DG Env. - Inspectorate
 - Implementation of controls: EU entry points and national harvest
 - Collaboration with customs



Belgian institutional actors (2)

3. SPF Finances - Customs

- Implementation of controls: EU entry points (with Inspectorate of SPF SPSCAE - DG Env.)

4. SPF Affaires étrangères (Foreign affairs) - Direction générale Coopération au développement et Aide humanitaire (DGD) - D2.4 Climat, environnement, ressources

- Support for the VPA's, capacity building in developing countries (limited to traditional BE partners), support for REDD+

5. Royal Museum for Central Africa (RMCA):

- Scientific expertise (timber identification)



Market Surveillance

- Actors: cf. here above: Insp DG Env (SPF SPSCAE) and customs
- Risk of different levels of enforcement (between MS) => creation of an informal enforcement group
 - ⇒ Create an EU *level playing field*
- Evolutive system: notion of evaluation and improvement
 - ⇒ What is « good » today will not be « sufficient » tomorrow



Market Surveillance (2)

- Transposition of EU TR Regulation into Belgian law (law of 21/12/1998 on sustainable products)
- Sanctions:
 - [Art. 17.§](#) 1st: jail (8 days => 3 years) and/or fines (160 euros => 4.000.000 d'euros)
 - Administrative fines (80 euros => 200 000 euros)



Market Surveillance (3)

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Due diligence Jurisprudence: recent court case convictions change the playfield:

- Swedish case on Myanmar (5/10/2016):
 - Documents from the state-owned company MTE not sufficient because corruption and governance challenges and no risk mitigation measures adopted
 - Commun interpretation on Myanmar at EU level, also 2 warnings in Belgium
- Dutch cases:
 - Cameroon (24/05/2017) : importer collected insufficient verifiable information
 - Brazil (04/07/2017): checks on Brazilian imports after a complaint of Greenpeace resulted in several warnings, dutch CA charged by Greenpeace → sanctions (=warnings) of the dutch CA were not sufficient



Some additional information

DG Environment UE:

http://ec.europa.eu/environment/forests/timber_regulation.htm

<http://ec.europa.eu/environment/forests/flegt.htm>

DG DEVCO (EUROPEAID): <http://capacity4dev.ec.europa.eu/public-flegt/>

Interactive map (DG DEVCO):

<http://ec.europa.eu/europeaid/temp/flegt/>

EFI (EU FLEGT Facility): <http://www.euflegt.efi.int/portal/>

