

Annex to the summary record of the 2nd Commission Expert Group/Multi-Stakeholder Platform on Protecting and Restoring the World's Forests, including the EU Timber Regulation and the FLEGT Regulation in its composition limited to Member States (EG) Meeting of 9 December 2020

Conclusions¹ of the Competent Authorities for the implementation of the European Timber Regulation (EUTR) on the application of Articles 4(2) and 6 of the EUTR to timber imports from Ukraine

These conclusions are based on Member States Competent Authorities (CAs) evaluation of articles, NGO reports, recent developments in Ukraine, experience from CA inspections and TAIEX Missions. They should be read in conjunction with the Country Overview on Ukraine¹ and the guidance document on due diligence².

Risk Assessment

A) The Forest Sector

98% of all forest in Ukraine is publicly owned³ and most of the forests (>70%) are under the control of the State Forest Resources Agency of Ukraine (SFRAU).

In 2017 and 2018, the EU undertook expert missions to Ukraine to study the problems in the Ukrainian forestry sector. The resulting report⁴ based on the testimony of key Ukrainian state authorities such as the national police, fiscal service and environmental inspectorate, noted that the “forest control system in Ukraine is not functioning properly”. It points to a culture of widespread corruption and illegal logging “with papers” in the SFRAU. The risk of corruption, illegal logging and timber sales have also been identified for other government agencies, local authorities, and private companies^{5,6}.

The report stated that contrary to the SFRAU's data, illegal logging “with papers” is by far a bigger problem than clandestine illegal felling in Ukraine, and involves “corruption of public sector

¹ The Competent Authorities pursuant to Article 7 of the EUTR meet on a regular basis in the [Commission Expert Group/Multi-Stakeholder Platform on Protecting and Restoring the World's Forests, including the EU Timber Regulation and the FLEGT Regulation](#) in its composition limited to Member States (formerly EUTR/FLEGT Expert group (EG) to ensure cooperation between Member States Competent Authorities and with the Commission in order to ensure compliance with the EU Timber Regulation and to assist the Commission in ensuring a uniform implementation of the EUTR across the EU. To this end the Expert Group makes consensual conclusions, which represent the Competent Authorities' common expert opinion and agreement on the approach to be taken with regard to specific implementation related issues. Without being legally binding they provide guidance and render the Competent Authorities' joint interpretation of the EUTR transparent to operators.

employees and forgery”, where employees might be involved in illegal logging as well⁷. The report pointed to the fundamental conflicts of interest in SAFRU. It exists because SFRAU simultaneously assumes forest manager, monitoring and control and even forest policy development functions, while proper inspections and law enforcement regarding forest resource use, protection and development are absent in Ukraine. *Operators should be aware that as long this conflict of interest remains inbuilt within the SFRAU and there is no adequate law enforcement, corruption and illegal logging risks affiliated with Ukrainian timber would remain significant.*

Ukrainian and international forestry experts have made similar findings.⁸ As late as September 2020 Ukraine agreed with many of the EU’s and NGO’s findings and has underlined⁹ the need for immediate reform of state systems¹⁰.

In October 2020 Ukraine and the EU continued their discussions based on Article 294 in the Association Agreement between the EU and Ukraine “*Trade in forest products, promote the sustainable management of forest resources and commitment to work together to improve forest law enforcement and governance and promote trade in legal and sustainable forest products*”. For the first time in several years on October 27 2020, Ukraine showed willingness in changing the organisation for a separation of functions between the management of resources and control and inspection functions. This is now included in the “Joint Statement from the meeting and operational conclusions”¹¹. The Commission will follow the progress and has invited Ukraine at a later stage to join a EUTR/FLEGT Expert Group Meeting for further discussions on the development in the forest sector and related trade.

B. Illegal logging and associated illegal practices

Corruption and affiliated illegal logging “with papers”

Transparency International places Ukraine no. 126 out of 198 countries giving a score of 30 in 2019¹², making Ukraine the most corrupt country in Europe.

The process of issuing felling tickets contains a number of irregularities, resulting in high likelihood that these licenses are affiliated with corruption or illegally issued¹³. Electronic timber tracking system and barcode tags does not minimise the risk of corruptly issued felling tickets and illegal logging ‘with papers’, which are among the main problems in Ukraine¹⁴. The system and the tags can help to minimise the risk of clandestine illegal logging, however, these will also not help when barcodes are based on fake documentation.

Forged documents at all stages from harvesting to export is a problem in Ukraine which involves criminal groups as well as public sector employees^{15,16,17}. Illegal logging is reported to be a serious problem in protected areas and mostly justified by the need of sanitary felling^{18,19,20,21}. On top of all this comes violations of felling tickets and forest management, like cutting wrong volumes, wrong areas, wrong sizes, which are widespread²².

SFRAU is supposed to sell all timber through public auctions though it’s still not clear if this is functioning²³. In reality the procedures are often evaded and permeated with bribery and

corruption. Timber may therefore be sold through direct contracts at understated prices or under-classified timber on official documents^{24,25}.

Misclassification of timber

Misclassification of higher value logs as lower value ‘fuelwood’ or ‘technological fuelwood logs’ (often classified under HS code 4401) in breach of the log export ban, is common²⁶. Logs of this kind imply a high risk of illegality, regardless of what official paperwork they may be accompanied by. SFEs and others have been known to misclassify logs as fuel wood (440110 ‘wood for use as fuel’) by applying the Ukrainian ‘GOST’ measurement standard to classify logs, which is not aligned with the export classification standard. This is done to circumvent the Ukrainian export ban on logs, which does not apply to firewood. Therefore, logs of whichever length, classified as fire-wood by the SFRAU and imported as 4403, i.e. clearly not intended for use as fuel, are exported in breach of the customs legislation applicable to the forest sector within the meaning of Article 2 (h) of the EUTR. The risk of illegality in this regard cannot be mitigated to a negligible risk for timber imported as firewood, which the operator uses in its production of timber products and thus does not buy as ‘wood for use as fuel’.

Another reported illegal way to circumvent the log export ban is to minimally modify logs (HS code 4403) to be exported as sawn wood (HS code 4407) in breach of the Ukrainian customs legislation. Half-squared wood of this kind is commonly sent for further processing and should be refused by timber processors as illegally harvested within the meaning of Article 2 (g) and (h) of the EUTR.

During inspections, implausible changes of qualities along the supply chains were observed. In most cases, lower quality timber in the rough resulted in processed timber of high(er) quality.

Sanitary felling

Sanitary logging has been considered the principal means of illegal logging since the late 1990s²⁷. In 2018, the share of sanitary logging on total harvest was estimated at around 30–40%²⁸ or higher^{29,30}. The EU TAIEX mission to Ukraine noted³¹ that “half [of the amount of sanitary felling] was subject to misinterpretation and corruption which stemmed from the easiness of acquiring permits”. The issue of sanitary felling is also linked to wood auctioning procedures³². According to the Ministry of Environment Protection and Natural Resources all timber including sanitary loggings are to be sold through the auction system. However, it’s not clear if this is already the case or still in planning for the future. Sanitary felling is not limited to coniferous timber but is also found to occur in deciduous forest stands.

Clandestine felling

Clandestine felling is also a growing problem in Ukraine. Based on inspections of 149 sites, WWF Ukraine, extrapolating findings to the whole region, suggested that as much as 1 million cubic metres of timber could be illegally felled in the Ukrainian Carpathians alone each year, compared with 4 million cubic metres of official harvesting³³.

Letterbox companies

Use of letterbox companies as intermediaries when buying timber from SFE is common, and should be treated as an immediate red-flag. Such companies were used during the reign of former Ukrainian President Viktor Yanukovych to avoid tax and siphon funds from the budget³⁴. Ukraine's former forestry chief, who was in office from 2011-2014, is suspected of using letterbox companies based in the UK to illegally profit from the sale of Ukrainian timber to EU companies³⁵. Evidence from civil society strongly suggests that the use of these letterbox firms in corruption schemes involving sale of timber to the EU has continued in recent years³⁶.

FSC certification

According to Assurance Services International (ASI), voluntary standards like FSC certification were not designed to address corruption³⁷. Illegal sanitary felling, bribery of officials, and illegal timber export have been observed by third parties in enterprises with FM certification. Despite such observations of illegality, these forests have usually continued to hold valid certification. FSC auditors do not proactively look for information on corruption within a given SFE³⁸. Also FSC-CW certification is unable to eliminate corruption risks due to its heavy reliance on official documentation and self-declarations by suppliers. Violations of FSC rules, lack of proper stakeholder engagement in FSC auditing processes and poor performance by auditors have also been observed in Ukraine³⁹. Problems with regard to the functioning of FSC certification has been raised on several occasions and most recent by Earthsight^{40,41,42}. In 2020 FSC has initiated multiple concrete actions⁴³ to possibly overcome the current gaps/weaknesses in their certification system in Ukraine.

Final Conclusion:

Sourcing timber and wood based products from Ukraine is connected with high risk of sourcing products being in breach with applicable legislation in the country.

Neither official documents including certificates of origin nor electronic timber tracking system relying on them will alone be sufficient to minimise risk of sourcing timber in contravention of the applicable legislation in Ukraine. Nor may FSC or other private third part verification schemes stand alone as risk mitigation measures to be able to reach negligible risk.

Additional information to be used for the obligatory Due Diligence can be found in the annex.

If it is not possible to carry out adequate risk mitigation measures or if the risk of corruption and illegality associated with timber shipments is still non-negligible despite taking the appropriate steps, operators should refrain from placing the timber and products thereof on the EU market.

- ¹ UNEP WCMC/European Commission. Country Overview on Ukraine. (2020). Available at: https://ec.europa.eu/environment/forests/pdf/Country%20overview%20Ukraine%20_17.05.2020.pdf
- ² EUTR Guidance Documents: https://ec.europa.eu/environment/forests/pdf/28_02_2020_Guidance_on_Due_Diligence.pdf; https://ec.europa.eu/environment/forests/pdf/Guidance%20conflict%20timber_EG%20Agreed.pdf; <https://ec.europa.eu/environment/forests/pdf/Guidance%20-%20Risk%20mitigation%20measures.pdf>; and the Guidance Document for the EU Timber Regulation, adopted on 12 February 2016.
- ³ UNEP WCMC Country Overview on Ukraine
- ⁴ EU TAIEX expert mission report
- ⁵ European Commission. EU Technical Assistance and Information Exchange (TAIEX) expert mission report - reform of forest governance in Ukraine, February 2018. (2018). Available at: https://ec.europa.eu/neighbourhoodenlargement/sites/near/files/eu_taiex_mission_report_january_2018_public.pdf.
- ⁶ Earthsight. Complicit in Corruption. (Earhtsight 2018). Available at: <https://www.earthsight.org.uk/news/investigations/complicit-in-corruption-report>
- ⁷ EU TAIEX expert mission report
- ⁸ See for example: Environment People Law. Policy brief on problems and urgent solutions in the forest management sector in Ukraine. Friday, September 21, 2018. (2018). Available at: <http://epl.org.ua/en/eco-analytics/policy-brief-shhodo-problem-u-lisovij-galuzi-ukrayiny-ta-pershochergovyh-rishen-dlya-yih-podolannya/>, Press Release by Earthsight in November 2018: <https://www.earthsight.org.uk/reformsstallevenasnewstudiesrelease> [this link doesn't work anymore]
- ⁹ <https://www.me.gov.ua/Documents/Download?id=e4802a5c-2d62-4a27-a59e-9ddeb4e2aa88>
- ¹⁰ European Commission. Summary Record: FLEGT/EUTR Expert Group Meeting, 7 December 2018. (2018). Available at: <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=32791>
- ¹¹ https://trade.ec.europa.eu/doclib/docs/2020/october/tradoc_159003.pdf
- ¹² Transparency International. Corruption Perceptions Index 2019. (2020). Available at: <https://www.transparency.org/en/cpi>
- ¹³ EU TAIEX expert mission report
- ¹⁴ EU TAIEX expert mission report
- ¹⁵ EU TAIEX expert mission report
- ¹⁶ Earthsight, Complicit in Corruption
- ¹⁷ https://wwf.panda.org/our_work/our_focus/governance/?355710/WWF-and-INTERPOL-Ukraine
- ¹⁸ Transcarpathian Regional Prosecutor's Office. Uzhhorod local prosecutor's office demands in court to cancel logging tickets issued without proper permits. Wednesday, October 12, 2016. (2016). Available at: https://zak.gp.gov.ua/ua/news.html?_m=publications&_c=view&_t=rec&id=198078&s=print
- ¹⁹ State Financial Inspection. The State Financial Inspection found illegal felling of trees for 132 million hryvnias and expropriation of lands for over 36 million hryvnias in state forestries. Thursday, June 9, 2016. (2016). Available at: <http://www.dkrs.gov.ua/kru/uk/publish/article/128806;jsessionid=099C27DFBDC6400C04A5678574C387A4.app1>
- ²⁰ Chernihiv Region Prosecutor's Office. The prosecutor's office is carrying out systematic work to combat illegal deforestation in the region. Friday, April 14, 2017. (2017). Available at: https://chrg.gp.gov.ua/ua/news.html?_m=publications&_c=view&_t=rec&id=206178
- ²¹ Zakarpattia online. In Transcarpathia, 22 criminal proceedings in the forest sector committed by officials were investigated. Thursday, January 2, 2020. (2020). Available at: <https://zakarpattia.net.ua/News/198441-Na-Zakarpatti-rozsliduvaly-22-kryminalnykh-provadhennia-u-lisovii-sferi-vchynenykh-posadovtsiamy>
- ²² EU TAIEX expert mission report
- ²³ <https://ukr-online.com/economy/36787-kabmn-virshiv-prodavati-derevinu-za-novimi-pravilami.html>
- ²⁴ EU TAIEX expert mission report
- ²⁵ Earthsight, Complicit in Corruption
- ²⁶ Country Overview on Ukraine
- ²⁷ Kuemmerle, T. et al. Forest cover change and illegal logging in the Ukrainian Carpathians in the transition period from 1988 to 2007. *Remote Sens. Environ.* 113, 1194–1207 (2009).
- ²⁸ EU TAIEX expert mission report
- ²⁹ <https://www.wwf.de/fileadmin/fm-wwf/Publikationen-PDF/WWF-Report-Sanitary-logging-Ukraine.pdf>
- ³⁰ <https://www.earthsight.org.uk/news/investigations/complicit-in-corruption-report>
- ³¹ EU TAIEX expert mission report
- ³² EU TAIEX expert mission report
- ³³ <https://www.earthsight.org.uk/news/press-release/complicit-corruption/ukraine-fate-forests-in-balance-new-report-confirms-scale-illegal-logging>
- ³⁴ See for example: The Guardian. Viktor Yanukovich is gone, but where are Ukraine's missing millions?. Tuesday, February 25, 2014. (2014). Available at: <https://www.theguardian.com/commentisfree/2014/feb/25/viktor-yanukovich-gone-where-ukraine-missing-millions> or Washington Post. Stopping the Flow of Corruption. Friday, December 26, 2014. (2014). Available at: <https://2009-2017.state.gov/j/drl/rls/rm/2014/235524.htm>
- ³⁵ Lb.ua. Yanukovich's forestry chief said reaped 140m hryvnias in bribes. Thursday, May 26, 2016. (2016). Available at: https://en.lb.ua/news/2016/05/26/947_yanukovychs_forestry_chief_said.html

³⁶ Earthsight, Complicit in Corruption

³⁷ Assurance Services International. ASI assesses State Forest Enterprises in the Ukraine. Friday, November 30, 2018. (2018). Available at: <http://www.asi-assurance.org/s/post/a1J1H000001maBLUAY/p0679>

³⁸ Earthsight, Complicit in Corruption

³⁹ Environment People Law. Why Forest Certification Does Not Work Properly in Ukraine?. Tuesday, October 2, 2018. (2018). Available at: <http://epl.org.ua/en/announces/chomu-v-ukrayini-lisova-sertyfikatsiya-ne-pratsyuye-na-povnu/>

⁴⁰ <https://www.earthsight.org.uk/flatpackedforests-en>

⁴¹ <https://fsc.org/en/newsfeed/fsc-statement-on-earthsight-report-2020>

⁴² <https://fsc-watch.com/2020/07/02/ikeas-ukrainian-illegal-timber-problem-that-fsc-didnt-notice/>

⁴³ <https://fsc.org/en/document-centre/documents/resource/381> &

<https://fsc.org/en/newsfeed/fsc-strengthens-efforts-to-solve-forestry-issues-in-ukraine>