

# **Tackling corruption to protect the world's forests**

How the EU can rise to the challenge



January 2017



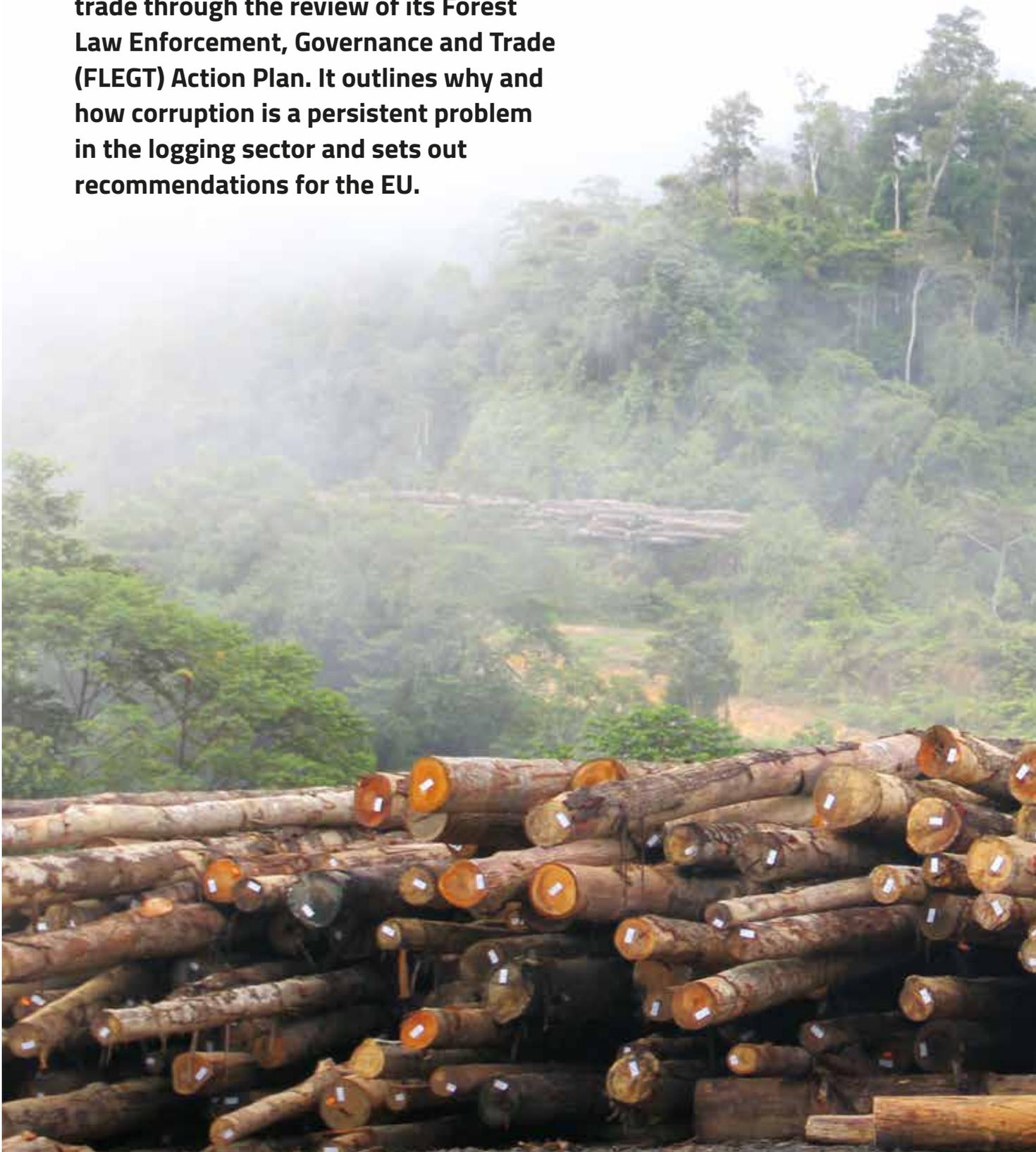
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# CONTENTS

<b>EXECUTIVE SUMMARY</b>	<b>5</b>
<b>1. INTRODUCTION</b>	<b>6</b>
<b>2. CORRUPTION IN THE FORESTRY SECTOR: SCALE AND NATURE OF THE PROBLEM</b>	<b>6</b>
<b>3. ILLEGAL LOGGING AND DRIVERS OF CORRUPTION</b>	<b>7</b>
<b>4. THE EU'S POLICY TO TACKLE ILLEGAL LOGGING - FLEGT</b>	<b>8</b>
<b>5. ANTI-CORRUPTION IN FLEGT - OPPORTUNITIES TO BETTER TACKLE CORRUPTION</b>	<b>9</b>
5.1 Accountability	10
5.2 Transparency	12
5.3 Participation	12
5.4 Integrity	13
5.5 Integrating anti-corruption principles into FLEGT	13
<b>6. ANTI-CORRUPTION BEYOND FLEGT</b>	<b>14</b>
6.1 Policy coherence with development and coordination	14
6.2 Accounting and corporate reporting directives	14
6.3 Anti-money laundering and beneficial ownership transparency	15
<b>7. RECOMMENDATIONS</b>	<b>15</b>

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**This briefing has been prepared in order to contribute to the development of EU policy on tackling illegal logging and related trade through the review of its Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan. It outlines why and how corruption is a persistent problem in the logging sector and sets out recommendations for the EU.**



## EXECUTIVE SUMMARY

Corruption is rife in many of the developing countries that supply the EU market with tropical timber. These countries are often characterised by inadequate basic freedoms (freedom of expression, freedom of information) and weak rule of law. Corruption can be found at all stages of the timber trade – from the harvesting of timber, its transportation, processing, manufacturing, exporting, importing and selling. This further exacerbates the destruction of forests with devastating consequences for local communities, biodiversity and the environment.

As a key consumer market for tropical timber, and with bilateral agreements in place with many of these countries, the EU is uniquely placed to promote and pursue fundamental reforms to tackle corruption in partnership with timber producing countries. Bilateral agreements currently in place (Voluntary Partnership Agreements) under the EU's FLEGT Action Plan lay some of the foundations for tackling corruption, but these have not always been followed through with meaningful reforms and have tended to emphasise technical elements without addressing more fundamental challenges in producer countries.

The scale of the corruption challenge requires a fresh approach that goes beyond these technical elements. The EU should raise the issue of corruption up the political agenda with producer country governments; re-orientate policies to address key dimensions of an anti-corruption strategy – accountability, transparency, participation and integrity; and strengthen enforcement of EU Timber Regulation to tackle corruption risks in the EU's timber supply chain.

Without this three pronged approach, corruption will continue to blight the EU's timber supply chain and fatally undermine the EU's own efforts to reform the sector and tackle the trade in illegal timber with disastrous consequences for forests, biodiversity, local communities and the climate.



Logging and forest communities in DRC. © Global Witness



Effects of illegal logging in Madagascar. © Transparency International

## 1. INTRODUCTION

The EU's imports of tropical timber come primarily from countries with high levels of corruption<sup>1</sup> in fragile and/or conflict affected countries. Current development aid programmes aiming to tackle illegal logging and improve forest governance do not adequately address the challenges of corruption. Indeed, they can perpetuate corruption by partnering with some corrupt companies, officials and politicians at the root of the problem. Without understanding the role of corruption in the sector and strengthening measures to tackle it, programmes aimed to improve forest governance are unlikely to succeed.

The link between corruption and deforestation has been almost universally recognised.<sup>2</sup> Corruption within and around the forest sector undermines the design, implementation and subsequent monitoring of policies aimed at conserving forest cover, while also jeopardising development goals and poverty alleviation in many countries.

Corruption can also increase the risk of conflict as it may fuel resentment amongst groups who lose out through corrupt practices. The revenues from the timber trade can also fund conflicts. The chaos caused by conflict may then create more opportunities for corruption. This is also true when it comes to the fragile post-conflict environment where corruption puts fragile peace at risk.

## 2. CORRUPTION IN THE FORESTRY SECTOR: SCALE AND NATURE OF THE PROBLEM

Corruption is one of the main drivers of illegal logging and the most important enabling factor behind the illegal timber trade. It runs through the whole timber production and marketing chain. Corruption in logging is usually fuelled by a lack of institutional capacity to monitor and enforce existing legal and policy frameworks, low transparency and accountability, low or non-existent civil society inclusion and participation, and overall weak governance.<sup>3</sup> Corrupt payments to key officials and politicians act as a disincentive to clean up the system and deprive the state of vital resources – reinforcing the vicious cycle of weak governance and corruption. One of the primary reasons why environmental and socially damaging activities by mining, agriculture and timber companies operating in tropical forest regions are allowed to continue with impunity.

According to a recent report by the United Nations Environmental Program (UNEP) and INTERPOL, environmental crime is growing at an alarming pace – two to three times faster than global GDP growth. Illegal logging, which has corruption and organised crime as main drivers, tops the ranking of environmental crimes with an estimated value of \$50-152 billion annually.<sup>4</sup> This makes corruption in deforestation incredibly lucrative for those involved, but incredibly destructive for both the communities subject to its consequences

and the planet. This dwarfs the funding spent trying to improve the logging sector, which has had negligible impact on tackling the corruption at the root of illegal or unsustainable logging.

Within the definition of corruption, we identify two sub-types, namely economic corruption, which involves the exchange of tangible goods (cash, official positions, material goods) and social corruption, which generally involves the exchange of intangibles (such as favours, social status or power). Corruption in the forestry sector can be both high-level, as politicians are able to influence the granting of land concessions and logging permits or even influence authorities responsible for scrutinising and policing illegal behaviour. It can also be witnessed at low levels, as officers responsible for forest law enforcement – often working alone with few resources can struggle to carry out enforcement – turn a blind eye to illegal logging or transport by fear of compromising their jobs or causing tension in their local community, or in exchange for compensation.<sup>5</sup>

## ZAMBIA

The bark of the mukula tree has medicinal properties, the outer wood is highly demanded for furniture and flooring, and the dense core is valuable to Chinese rifle manufacturers. With hundreds or thousands of dollars packed into each tree, mukula forests represent a gold mine for profit seeking agents in Zambia, while it is, on the other hand, a curse for the communities and the sustainability of their ecosystems. Illegal logging of various tree species including the mukula tree has been identified as one of the drivers of deforestation and forest degradation in the country. This is happening due to a constellation of corrupt government officials, businesspeople and traditional leaders who profit from smuggling operations and thwart law enforcement efforts. For example, Transparency International Zambia reported on the case of a police officer who intercepted a truckload of mukula logs. When he tried to bring a case and charge the suspects, he was transferred to another district. In another instance, a forestry officer discovered piles of mukula logs at the palace of a powerful chief who claimed to have confiscated them. Believing his job to be at stake, the officer never pursued the investigation. In another incident, the Forestry Department in one of the country's districts impounded a stash of illegal mukula logs discovered after the truck hauling them overturned on its way to the border. There were allegations connecting the cargo to a powerful individual.

## 3. ILLEGAL LOGGING AND DRIVERS OF CORRUPTION

In many timber-rich countries, particularly in Africa, the government is legally the largest landowner and the key actor in overseeing national logging matters.<sup>6</sup> The majority of the global timber trade is produced from logging concessions on government-owned land. These are often assigned through public tendering processes and include licenses and concessions. Such contracts concentrate power in the hands of those who award them and are highly lucrative to the companies that win them. This leads to a high risk of corruption, particularly in countries that suffer from deep-rooted governance and accountability challenges. When public contracting processes are misused by corrupt individuals who decide on the basis of self-interest, rather than the public good, environmental degradation and over-exploitation of natural resources is likely.<sup>7</sup>

In many producer countries on the African continent, land tenure is regulated by tribal, community and lineage use and exploitation of the land. So, there is a *de facto* property of the land by individuals or communities which is not recognised *de jure*. The lack of acknowledgment of this *de facto* tenure by state law often leads to illegitimate land grabbing and displacement of locals in favour of unsustainable and forest degrading economic activities. Corruption enables land grabbing in a number of ways<sup>8</sup> which undermine the principles of free, prior informed consent<sup>9</sup> and has disastrous consequences for local communities, forests and as well as the viability of subsequent land use.

Some of the key sources and manifestations of corruption in the forestry sector are: the lack of proper public procurement practices in the awarding of licences and concessions;<sup>10</sup> the lack of both accountability and transparency in contracts; political leverage and regulatory capture in timber-producing countries; non-compliance with procedures and legal requirements; inadequate consultations with landowners, civil society and forest-dependent communities; as well as inadequate corporate accountability of multinational companies due to opaque chains of subcontracting; and the lack of annual financial reports providing a country-by-country breakdown of operations. Donor governments have also used aid programmes to favour their own companies and protect the timber supply chain.<sup>11</sup>

Moreover, in many countries political corruption in the forestry sector takes place when politicians and lawmakers have direct or indirect financial stakes in logging.<sup>12</sup> These ties, either personally or through their families, may compromise their ability to effectively regulate the industry and control corruption.

## CAMBODIA

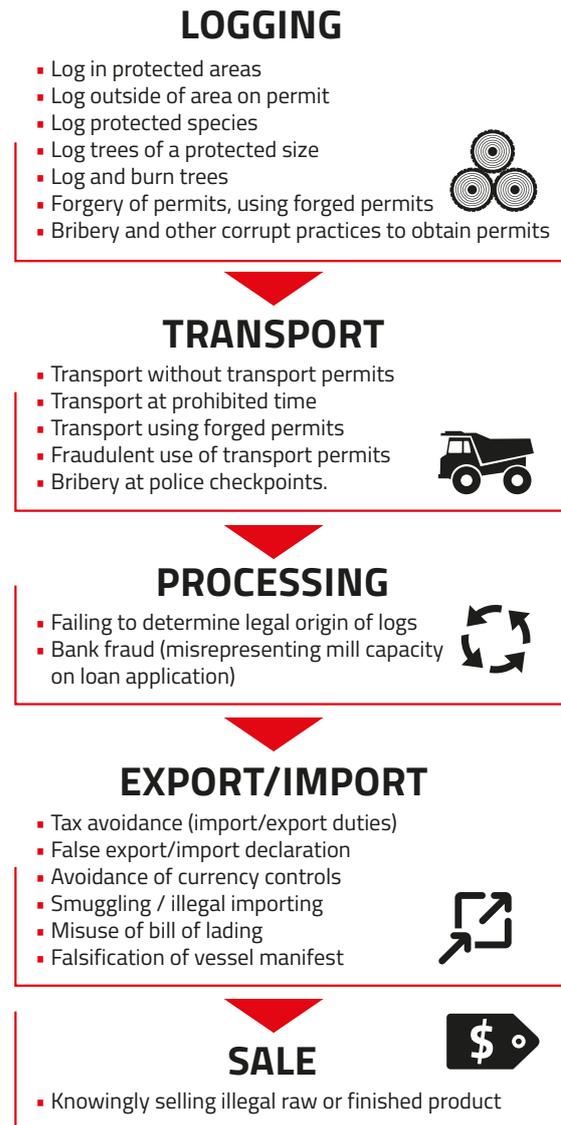
In 2001, the Prime Minister of Cambodia Hun Sen called for the Tum Ring rubber plantation to be set up as part of a 'rural development policy'. This decision came shortly after a moratorium on logging and transportation had been imposed, providing logging companies with an opportunity to re-start their activities. The plantation was located in one of Cambodia's largest and oldest forests protected by law. However, surveillance found that trees were being cut by logging firms inside and outside of the plantation. Fraudulent firewood permits issued by the Forest Administration were used to transport the wood given the moratorium on logging. Despite the logging ban, the Minister of Agriculture authorised the construction of a mill close to the site, which contravened two laws already in place. These developments raised suspicions about the government collaborating with the companies to facilitate illegal logging in and around the plantation. Further investigations found that many members of the country's most powerful syndicate had a connection to the Prime Minister, his wife and others in government.<sup>13</sup>

Forestry industry ties to politicians and political parties, by way of donations, represents another challenge. Money is a necessary element for political parties and candidates to compete in elections. The forestry sector is by far the most lucrative industry in many countries and often turns out to be the most desirable and willing donor.<sup>14</sup> Large contributions to political campaigns can allow certain industry groups and private interests to gain easier access to politicians and obtain favours from the political elites once in power. This can involve preferential treatment when companies try to obtain licences and concessions, or turning a blind eye to illegal logging activities in return for the political funding and support needed to win their elections.

Revenues from the forestry sector have also been used to fund coups and wars. There are examples of the timber trade financing conflicts across Africa and Asia,<sup>15</sup> including Cambodia in the 1990s when Global Witness's investigations uncovered the Cambodia's notorious Khmer Rouge rebel group earned between USD \$10-20 million per month from trading timber with Thailand, before international pressure helped close the Thai-Cambodia border.<sup>16</sup> Another high profile case of conflict timber emerged in Liberia, where guerrilla leader and later President Charles Taylor depended on the logging industry to prop up his regime and fund his war effort.<sup>17</sup> More recently Global Witness investigations have uncovered evidence of the timber trade financing conflict in the Central African Republic.<sup>18</sup>

The use of corrupt means to secure illegal licenses and concessions to exploit a country's forests do not stop once the contract is issued. Corruption can easily spill from licensing into other areas of forest management. After the first step, illegality can occur at all stages of the timber production and marketing chain, including logging, transporting, processing and manufacturing, exporting and importing, and selling.

Figure 3.1. Flow of Illegally Harvested Logs<sup>19</sup>



## 4. THE EU'S POLICY TO TACKLE ILLEGAL LOGGING - FLEGT

The EU's flagship policy to tackle illegal logging, the Forest Law Enforcement Governance and Trade (FLEGT) Action Plan was adopted in 2003.<sup>20</sup> It aims to reduce illegal logging by strengthening legal forest management, improving governance and promoting trade in legally produced timber. FLEGT includes demand and supply side measures – including rules governing the import of timber

into the EU (the EU Timber Regulation) and programmes in producer countries. €935.5 million has been spent on FLEGT by the EU, Member States and others over the period 2003-2014.<sup>21</sup>

The FLEGT Action Plan saw the creation of Voluntary Partnership Agreements (VPAs), which are agreements between the EU and timber-producing countries outside the EU. VPAs aim to ensure that timber and timber products exported to the EU come from legal sources. They also aim to help timber-exporting countries improve regulation and governance of the forest sector. The ultimate goals of VPAs are for countries to export FLEGT licensed timber which is verified as legal by FLEGT processes in country and automatically meet EU Timber Regulation requirements, meaning that it can be imported into the EU without due diligence by private sector operators. Six countries (Cameroon, Central African Republic, Ghana, Indonesia, Liberia and Republic of the Congo) have signed a VPA with the EU and are currently developing the systems needed to control, verify and license legal timber. Nine more countries (Côte d'Ivoire, Democratic Republic of the Congo, Gabon, Guyana, Honduras, Laos, Malaysia, Thailand and Vietnam) are in negotiations with the EU. Only one country, Indonesia, has begun to issue FLEGT licensed timber to the EU, despite systemic corruption problems (as highlighted in the Indonesia case study).

The FLEGT Action Plan, VPAs and the EU Timber Regulation provide valuable opportunities to tackle corruption in the forestry sector. However, the recent evaluation of FLEGT highlighted how, despite significant spending under the FLEGT programme, corruption and governance challenges remain key obstacles to tackling illegal logging.<sup>22</sup> These are complex challenges which require a range of measures and sustained attention.

## 5. ANTI-CORRUPTION IN FLEGT - OPPORTUNITIES TO BETTER TACKLE CORRUPTION

The VPA partner countries and main exporters of tropical timber to the EU are characterised by high levels of fragility and corruption and have poor ratings when it comes to rule of law and freedom of information and expression. This is illustrated by the chart on the following page which collates the various rankings available. This demonstrates the strong probability that the EU's tropical timber supply chain is contaminated with corruption. It also highlights the importance of ensuring that the EU's policies in the forest sector prioritise the principles and policies that are essential to an effective anti-corruption policy.

Trucks transporting in Atlantic Resources logyard in Greenville port Liberia. © Global Witness



**Timber producing countries at a glance:** An overview of the main tropical timber producing countries which account for 80 percent of EU's imports of tropical timber and have a Voluntary Partnership Agreement in place with the EU. The ratings used are publicly available and cover a wide range of indicators to assess the countries on corruption, freedom, fragility and rule of law.

Country	VPA status	A. 2015 Tropical Wood Imports to EU (EUR Million)	B. Freedom in the World Country Score (0 = worst, 100 = best)	C. 2015 Corruption Perceptions Index (0 = highly corrupt, 100 = very clean)	D. Fragile States Index (0 = very stable, 120 = very fragile)	E. Rule of Law Index (1 = indicating strongest adherence to the rule of law)
Cameroon	Implementing	189.3	24	27	97.8	0.37
Malaysia	Negotiating	159.7	45	50	66.1	0.54
Indonesia	Implementing	104.6	65	36	74.9	0.52
Republic of the Congo	Implementing	70.6	28	23	92.2	N/A
Cote D'Ivoire	Negotiating	68.3	51	32	97.9	0.46
Gabon	Negotiating	59.3	34	34	72	N/A
Democratic Republic of the Congo	Negotiating	32.8	25	22	110	N/A
Ghana	Implementing	13.9	83	47	71.2	0.58
Central African Republic	Implementing	10.6	7	24	112.1	N/A
Guyana	Negotiating	3.5	74	29	70.9	0.49
Liberia	Implementing	2.8	61	37	95.5	0.45
Vietnam	Negotiating	1.9	20	31	70.7	0.51
Thailand	Negotiating	1.6	32	38	78.8	0.51
Honduras	Negotiating	0.5	45	31	79.8	0.42
Laos	Negotiating	N/A (no figures available for 2015, 0.3 for 2014)	12	25	84.4	N/A

#### Column A – Tropical Wood Imports

2014 Tropical Wood Imports to EU (EUR million) from countries with FLEGT VPAs in place or under negotiation and account for approximately 80 % of the EU-28's tropical wood imports (in value terms) during the 2000–14 period (Eurostat) [http://ec.europa.eu/eurostat/statistics-explained/index.php/Forestry\\_statistics\\_in\\_detail#Tropical\\_wood\\_imports\\_to\\_the\\_EU](http://ec.europa.eu/eurostat/statistics-explained/index.php/Forestry_statistics_in_detail#Tropical_wood_imports_to_the_EU)

#### Column B – Freedom in the World

Freedom House evaluates the state of freedom based on 25 indicators to determine ratings for political rights and civil liberties – covering both laws in place and their implementation. Analysts use news articles, academic analyses, NGO reports and experts. Freedom in the World Country Score (0 = worst, 100 =

best) (Freedom House, 2016) <https://freedomhouse.org/report/freedom-world-2016/table-scores>

#### Column C – 2015 Corruption perceptions

Transparency International scores and ranks countries/territories based on how corrupt a country's public sector is perceived to be using a combination of surveys and assessments of corruption. 2015 Corruption Perceptions Index (0 = highly corrupt, 100 = very clean) (Transparency International, 2016) <https://www.transparency.org/cpi2015/#results-table>

#### Column D – Fragile States

The Fund for Peace uses specialist software as well as quantitative analysis and qualitative inputs across 12 primary social, economic and political indicators to

assess fragility. Fragile States Index (0 = very stable, 120 = very fragile) (Fund for Peace, 2016) <http://fsi.fundforpeace.org/rankings-2016>

#### Column E – Rule of Law

The World Justice Project uses household and expert surveys to measure rule of law using 44 indicators across eight primary rule of law factors. Rule of Law Index (1 = indicating strongest adherence to the rule of law) (World Justice Project, 2016) <http://worldjusticeproject.org/rule-of-law-index>

Green:  
ratings in  
the top third

Yellow:  
ratings in the  
middle third

Red:  
ratings in the  
bottom third

In the following sections, we take the key elements of an anti-corruption strategy – accountability, transparency, participation and integrity<sup>23</sup> – and examine how action under FLEGT can ensure that each are addressed to tackle corruption more effectively.

## 5.1 ACCOUNTABILITY

To improve accountability in FLEGT all stakeholders involved, be they public or private organisations, must be held accountable for reporting their activities and executing their powers properly. This can be through formal means, as well as daily interactions between civil society organisations and the forest authority.

There is a risk that in VPA partner countries, like Ghana and Liberia, the VPA process does not challenge contracts that should have been cancelled years ago, and in some cases never issued in the first place. VPAs should involve a review of logging concessions and cancellation of those allocated through corrupt or illegal means. VPA partner governments should also be held to account for the non-implementation of commitments made under the VPA, such as commitments concerning transparency, law reforms and implementation.

The proper enforcement of laws governing forests is essential to securing accountability and combating impunity. Despite the magnitude and diversity of corruption risks in the sector, there are few instances of prosecution and punishment. Impunity fatally undermines anti-corruption efforts. The FLEGT evaluation found that despite including Law Enforcement in the title of the programme, it is an area that has received little attention.<sup>24</sup>

In some cases, law enforcement is weak due to corruption that compromises judicial integrity. Corruption in the judiciary can turn law enforcement bodies into institutions that are unable to fulfil their obligations of upholding the law, investigating cases and prosecuting illegal logging. It can manifest itself in different forms and includes bribery, conflicts of interest and nepotism. In the case of bribery, it may manifest itself in the form of bribery of prosecutors to avoid cases going to court, bribery of judges or prosecutors for favourable verdicts in court or bribery of elected officials to use their political influence on courts. Judicial corruption can take root due to weak capacities stemming from resource constraints, i.e. technical know-how, adequate finances and sufficient staff. For instance, according to the World Bank, investigators have an insufficient understanding of recent forest laws and sanctions, court procedures and forest crimes.<sup>25</sup>

Access to justice is a critical component of effective forest governance structures. Without adequate access to justice, individuals and groups are not able to protect and enforce their rights, rendering existing forest governance structures ineffective. Different corruption risks can be deterred and addressed through appropriate access to justice and adequate enforcement. Moreover, the lack or even absence of appropriate and accessible channels to file complaints as well as the absence of effective protection for whistleblowers in most timber-rich countries, and, consequently, the lack of effective legal remedies for them, only contribute to reinforcing corrupt practices. While specific instances of corruption may be investigated by specially created and financed investigative commissions with quasi-judicial powers, the economics of enforcement should mean that any

enforcement system is self-financing and therefore self-sustaining without reliance on donor support once operational.<sup>26</sup>

The EU must promote the independence of the judiciary and the transparency of judicial processes in producer countries, through discussions at political level between the EU and the government as well as EU programmes supporting capacity building in this area. Measures to be taken by governments in producer countries to strengthen the independence of the judiciary include making the process of judicial appointments merit-based and transparent, setting clear terms and conditions for hiring judges, mandatory disclosure of assets and conflicts of interest.

Civil society monitoring, e.g. Independent Forest Monitors (IFMs), is also an essential component of accountability. In some VPA countries independent forest monitors operate under government mandates and are a formal part of the VPA, in others they are outside the formal system. The commitment to IFMs should be written into VPA texts and national laws. 'Recognition agreements' with a state authority should be promoted to provide an agreed and public set of roles and responsibilities around production, publishing and follow up to IFM reports. It is essential that IFMs have access to logging sites, retain their independence from government and can freely publish their findings. Given their key role in monitoring the forest sector, all producer countries receiving support via FLEGT (whether or not they have VPAs in place) should have independent forest monitors in place, with the EU providing adequate and sustained funding where needed.

The EU also has an opportunity to strengthen accountability through existing legislation. The EU Timber Regulation (EUTR) was adopted in 2010 and entered into force in 2013. It prohibits the placing of illegally harvested timber and derived products on the EU Market and requires companies commercialising timber or derived products to conduct due diligence to minimise the risk that timber or timber products are illegal. However if the EU Timber Regulation (EUTR) is to be an effective tool in tackling corruption rather than being undermined by it, Member States, with support from the European Commission, must improve compliance and step up their enforcement – including investigations in EU harbours to which imported timber is shipped – to ensure that operators take, and are held accountable where they fail to take, effective measures for risk mitigation with respect to corruption. Member States should also rigorously apply national anti-corruption legislation and international standards, like the OECD Anti-Bribery Convention. (More information in EUTR case study)

## EU TIMBER REGULATION

In the recent evaluation of the EUTR, implementation was found to be slow in most Member States, due in part to insufficient resources allocated by Member States, with uneven sanctions, understanding of the regulation and infringements across the EU.<sup>27</sup> Implementation and compliance by the private sector was also found to be uneven.<sup>28</sup> One of the challenges to screening out illegal timber from the EU supply chain, identified in the evaluation, was the lack of credibility of official documents issued by producer countries with high levels of corruption.<sup>29</sup>

The current European Commission guidance for the EUTR states that private sector operators should take additional steps to mitigate risks of illegality, where these are not negligible and official documents issued by authorities cannot be considered reliable.<sup>30</sup> As part of risk assessment, the guidance advises using Transparency International's Corruption Perceptions Index (CPI), as well as other sources, whilst also taking into account subnational variations and the specific situation in the forestry sector. Where corruption risks are present, the guidance only offers a few examples of risk mitigation measures including third party verification, independent audits, or making use of timber tracker technology.<sup>31</sup>

EUTR guidance should be expanded with a more detailed reflection of corruption-specific risk mitigation measures to increase compliance amongst operators subject to the Regulation.

A more comprehensive suite of risk mitigation measures, as part of an operator's anti-bribery procedures, would include anti-bribery terms and conditions in contracts with suppliers, the implementation of anti-corruption compliance provisions, and the provision of audited financial statements. If the supplier were a trader, rather than a company harvesting or processing timber, such terms and conditions would require the supplier to adopt terms and conditions of comparable rigour with the next party in the chain. Terms and conditions with companies harvesting and/or processing timber in the country of harvest, where corruption risks were present, would include a requirement to conduct anti-corruption audits, by experienced anti-corruption auditors such as forensic accountants trained in local and international anti-bribery laws. They would also comprise an audit for compliance with the company's anti-corruption compliance programme and include tests for substantive compliance.<sup>32</sup>

## 5.2 TRANSPARENCY

VPA provide opportunities to increase transparency in the forest sector. Notably, some VPAs include a specific annex setting out the information which should be made available as well as a general article on information disclosure.<sup>33</sup> However, in practice there has been a lack of impetus towards their fulfilment.<sup>34</sup> Whilst in some countries VPAs have led to the publication of information on forest legislation and permits on websites, this information rarely includes up-to-date data or key documents linked to timber concessions. VPAs should be clearer about the information that should be made available, including specified minimum content across VPAs. VPA should also specify which information should be proactively published or made available on request.<sup>35</sup> There should be proactive publication of up to date information with processes to make it accessible to the general public, including in relevant local languages.

Freedom of information laws are important for establishing a broader framework requiring public authorities to publish information and respond to requests. The implementation of freedom of information laws relies on a clear division of powers, including independent Information Commissioners or Ombudsmen and strong judicial measures in the event of non-compliance. In order to be made more directly applicable to forest authorities, supporting regulations are necessary to specify what information needs to be made available (including material that may otherwise be considered as commercially sensitive) to support transparent decision-making procedures.

## 5.3 PARTICIPATION

Failure to ensure full and effective participation during policy development and implementation significantly compromises the ability of stakeholders to effectively hold government actors accountable, therefore undermining one of the key democratic checks on corruption.

Improved stakeholder participation is cited as the principal achievement of the FLEGT Action Plan,<sup>36</sup> in particular where FLEGT facilitators are in place to support stakeholder participation. It is important that any improvements in participation are sustainable and maintained after a FLEGT facilitator or VPA support project has ended.

In order to facilitate proper participation all new draft laws, regulations, and procedures (like guidelines on social agreements) should be subject to a public review period. This provision should be enshrined in law, as it is in Liberia, and should be applied in practice across all new measures.

Genuine participation can be particularly challenging in fragile and conflict-affected states, where activists are often persecuted and sometimes killed<sup>37</sup> and civil society organisations are unable to participate freely and safely in multi-stakeholder processes or challenge corruption. More support is required to establish safeguards, raise awareness

and build the capacity of stakeholders, including underrepresented groups, local communities, district-level administrations, parliamentarians, law enforcement and anti-corruption entities. Ultimately if free, safe and inclusive participation by civil society and stakeholders is not possible due to the situation in the producer country, then the VPA model may not be appropriate and donors should instead address political concerns directly with the producer country government.

Implementation of the right to freedom of expression is a prerequisite for ensuring the voice and participation necessary for a democratic society.<sup>38</sup> The promotion and protection of both access to information itself and flows of information that exist between constituents, government, parliament, community groups, civil society organizations and the private sector are of equal importance. Freedom of expression laws are strictly linked to public participation, which is one of the fundamental principles of democratic governance.

Through its political dialogue with producer country governments, the EU must emphasise the importance of the fundamental rights of freedom of information and expression, including freedom of the media. Journalists provide an important oversight mechanism to report suspected or actual corruption and should not be subject to punitive laws. Additionally, governments must also take measures to improve the reporting of corruption, where required with support from the EU. These systems can include codes of conduct, measures aimed at the protection of whistleblowers or mechanisms to ensure anonymous reporting from civil society and companies.

#### 5.4 INTEGRITY

Corruption in public tendering processes leading to the awarding of fake licenses and concessions is one of the drivers of illegal logging in many forest-rich countries. The significant areas for corruption in logging licences and concessions include bribery of government officials, collusion and lack of transparency surrounding the award of contracts. A major issue in the awarding of contracts to timber companies, either as licences or concessions, has been the lack of a transparent, competitive and public process. Many times, contracts have been awarded under the fair market value and without disclosing where the land is located and the identity of the concession holder.<sup>39</sup>

To ensure the integrity of the whole system of government, ministers and officials must be held to account for their actions. Where they are found to have acted without integrity they should not be allowed to continue in post nor moved to another role. Similarly, infractions in the forest sector must be prosecuted and companies linked to criminal activities must not receive public subsidies.

As highlighted in the Indonesia case study, the land allocation is not always addressed by the timber

legality assurance system involved in FLEGT licensing. This loophole means that corruption could continue unchallenged whilst the timber makes its way unchecked into the EU. The EU must make use of its leverage when negotiating VPAs and bilateral trade agreements to ensure that corrupt land allocations are not legitimised through the VPA process and to strengthen public procurement practices – increasing their transparency and accountability, improving audit and control systems and setting up effective complaints and appeals mechanisms accessible to competitors.

#### 5.5 INTEGRATING ANTI-CORRUPTION PRINCIPLES INTO FLEGT

Whilst VPAs lay some of the foundations for improvements in accountability, transparency, participation and integrity which are essential to tackling corruption, these have not always been followed through with meaningful reforms. Indeed, the FLEGT evaluation points to an overemphasis on technical aspects of legality assurance systems at the expense of work on legal frameworks, law enforcement and capacity to administer and monitor VPA implementation.<sup>40</sup> Those responsible for the design and implementation of FLEGT and VPAs must prioritise redressing this imbalance in the next stage of FLEGT's development. The progress of FLEGT should not be judged by the number of countries able to issue FLEGT licensed timber, but by the quality of the governance reforms in country irrespective of whether any licences have been issued. The EU should resist pressures to speed up VPA negotiations. A phased or 'stepwise' approach risks allowing a lower or partial level of compliance. Instead there should be a renewed focus on measures that will tackle corruption and deliver meaningful reforms to address the root causes of illegal logging.

High level political commitment from the EU and partner governments is required to tackle corruption and make real progress on the areas outlined above. However, this commitment has not been evident so far in the actions of the EU and partner governments under the FLEGT Action Plan. If progress on reforms to tackle corruption fails, VPA suspension and withdrawal of FLEGT-related donor support should be considered. This should apply in circumstances where the principle of mutual accountability, as outlined in the Paris Declaration on Aid Effectiveness, such as VPA transparency obligations, is not being met, where civil society space is being compromised or where there is inadequate law enforcement and independent monitoring. Otherwise there is a risk that initial gains made in terms of greater information disclosure and civil society participation will be lost as vested interests reassert their control over timber resources. The potential of using 'results-based financing' more progressively to support countries to fulfil their FLEGT priorities also needs to be explored.<sup>41</sup>

## INDONESIA

Indonesia was the first country to start issuing FLEGT licensed timber on 15 November 2016.<sup>42</sup> This means that importers of timber into the EU from Indonesia are not required to conduct due diligence and instead rely on FLEGT licenses to verify the legality of the timber. Whilst Indonesia's Timber Legality Assurance System, which forms the basis of FLEGT licenses, has gone some way to addressing transparency and accountability, concerns remain about how far it will address persistent corruption in Indonesia's logging sector.

Corruption in the forestry sector in Indonesia has been rampant,<sup>43</sup> often involving collusion between the private sector and government officials. According to Indonesia's Corruption Eradication Commission (Komisi Pemberantasan Korupsi, KPK), Indonesia lost nearly \$9 billion in state revenue from unreported timber sales between 2003 and 2014 – over four times the volume recorded officially.<sup>44</sup> Corruption in the forest and palm oil sector has also played a role in Indonesia's devastating annual forest and peatland fires.<sup>45</sup> The KPK has found that most logging licensing processes in Indonesia are riddled with corruption.<sup>46</sup> However, the land allocation process and decisions relating to forest clearance are not addressed by the timber legality assurance system.<sup>47</sup>

Indonesia has made some progress in recent years in tackling illegal logging and corruption. The KPK has developed a strong track record for investigating, researching, and trying high-level targets<sup>48</sup> and has

turned its attention to the timber sector. In 2014 it signed a Memorandum of Understanding with Ministries to address corruption in the forest sector, in particular to address the illegal issuance of forest use permits.<sup>49</sup> The KPK has adopted a “multi-door approach” making use of multiple laws to tackle forest crimes, which recognises the overlap between forest crimes and corporate criminal liability, money laundering, tax avoidance and corruption.<sup>50</sup> Officials have been prosecuted, as well as the high profile example of Labora Sitrous, a corrupt policeman sentenced to 15 years for large-scale timber theft.<sup>51</sup>

The integrity of FLEGT licensing will depend on Indonesia's ability to address outstanding challenges and root out corruption in the timber sector. This will require prompt action to follow up any incidents of corruption in the forest sector so that any companies involved in corruption lose their ability to issue FLEGT licensed timber. Law enforcement, monitoring, accountability and access to information must be strengthened to address concerns expressed by Indonesian civil society.<sup>52</sup>

Corruption in the land allocation process and decisions relating to forest clearance must be addressed through FLEGT.<sup>53</sup> The EU should also seek assurances that the Independent Forest Monitor will have the necessary security and access to information required to act as an effective watchdog. The EU delegation working on the FLEGT VPA must support the KPK and coordinate efforts to improve governance and tackle corruption in Indonesia's logging sector.

## 6. ANTI-CORRUPTION BEYOND FLEGT

For FLEGT to be an effective tool for the promotion of good governance, the EU must take steps to address further transparency and anti-corruption measures that go beyond the FLEGT Action Plan. This can be done through improved coordination with existing EU instruments, and the incorporation of new actions into the EU's partnerships with producer countries.

### 6.1 POLICY COHERENCE WITH DEVELOPMENT AND COORDINATION

More coherence between FLEGT and the EU's development aid policies and instruments should be established, for instance on funding for infrastructure, agricultural or food security programmes or investment in extractive industries. The EU should also coordinate its work in VPA countries with other donors by sharing complete information about projects and development aid flows. This information should include project budgets as well as budgetary support, individual financial

transactions, spending reports, project reports and evaluations. Without adequate accountability checks in place, donors may effectively support corruption. Better donor coordination could also be used to incentivise the adoption of anti-corruption measures including the uptake of transparency, improved accountability and enforcement in timber-producing countries. Moreover, the EU should ensure that all its actions in the field of forest governance, including its efforts to revise FLEGT and strengthen VPAs, are addressed within its overarching commitments to the 2030 Agenda for Sustainable Development by prioritising the effective implementation of the 17 UN Sustainable Development Goals (SDGs) and the Paris Agreement on Climate Change, as highlighted in its recently adopted European Consensus on Development.<sup>54</sup>

In addition to improving coherence among its own instruments, the EU's action aimed at combatting illegal logging and corruption in the forestry sector should also be better coordinated with that of other international

actors, such as the UN Office on Drugs and Crimes (UNODC), UNEP and Interpol, which are active in the same field and may complement FLEGT's efforts, e.g. by building capacity in third countries, and by directly tackling forest crimes in a supra-national scheme. In particular, the EU should step up efforts to build coherence between FLEGT and REDD+, particularly in VPA countries which are actively engaging in both processes.<sup>55</sup>

## 6.2 ACCOUNTING AND CORPORATE REPORTING DIRECTIVES

FLEGT should be coherent with existing EU legislation, in particular the EU Accounting and Transparency Directives (ATD) and the EU Non-Financial Reporting Directive (NFRD).<sup>56</sup> Companies' first financial and non-financial reports will be published in 2017 in accordance with the two directives.<sup>57</sup>

The ATD, adopted in 2013, requires large oil, gas, mining and logging companies<sup>58</sup> listed and headquartered in the EU to disclose their payments<sup>59</sup> of €100,000 and over to the governments of the countries in which they are active. These measures are critically important, as the disclosure of this information provides civil society, local communities and the international community with the tools needed to hold governments to account for any income made through the exploitation of natural resources by EU multinationals and monitor whether it is used for a public good. During its review in 2018 it will be critical to address the ATD's current loopholes regarding its high threshold for payments, which make the legislation less effective in the logging sector.

Similarly the NFRD, adopted in 2014, requires large EU companies considered public-interest entities to disclose non-financial reports on the impacts of their activities on environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters, including risks and the due diligence processes implemented. The disclosure of this information will be useful to monitor the risks associated with companies' business operations, especially if they are engaged in high-risk sectors such as extractives and logging; carry out business operations in high-risk countries; or where supply chains are involved.

FLEGT and VPAs should consider the analysis of the first batch of corporate reports. New measures should reflect and draw upon the potential loopholes and anomalies that may emerge from the reports. The results of the reports' analysis should inform the calls for actions to be taken in order to improve clean procurement systems, open tendering processes and the access to information and data on how money from licensing fees is used by governments.

## 6.3 ANTI-MONEY LAUNDERING AND BENEFICIAL OWNERSHIP TRANSPARENCY

The involvement of transnational organized crime and advanced laundering is becoming more and more evident in forest crimes.<sup>60</sup> Corruption in the forestry sector often manifests itself through corporate crimes, involving a system of fraud, tax fraud, forged permits or permits acquired through bribes, laundering of illegally procured timber and extensive smuggling operations. Complex schemes of multi-layered shell companies based in offshore jurisdictions are often used in the sectors of palm oil production, agricultural plantations or grazing (that rarely produce any primary products) for the acquisition or lease of land officially for agricultural purposes. In reality this serves as a way to clear forests for timber trade and pulp supply.

The recent reopening of some sections of the EU's Fourth Anti-Money Laundering Directive (AMLD) due to the Panama Papers scandal provides an opportunity to address this issue by ensuring that beneficial ownership information of both companies and trusts is publicly disclosed in registers that are freely available and in open data format.<sup>61</sup>

## 7. RECOMMENDATIONS

As the EU considers the recommendations of the FLEGT evaluation, Council conclusions<sup>62</sup> and Staff Working Document<sup>63</sup> and develops its work plan, Global Witness and Transparency International EU believe that the EU's FLEGT Action Plan must prioritise anti-corruption measures in the forestry sector if it is to be effective.

In order to tackle corruption effectively, the EU and Member States should refocus FLEGT action to address the essential elements of an anti-corruption strategy, namely accountability, transparency, participation and integrity, instead of merely prioritising technical elements and licence processes. These measures should include:

### ACCOUNTABILITY

- End the impunity in the forest sector by ensuring that infractions are prosecuted and companies linked to criminal activities do not receive or benefit from public subsidies and donor funds.
- Introduce stronger measures to ensure fair and transparent law enforcement, including capacity building for the judiciary and for officials responsible for enforcing the law and dealing with infractions in the field and along the supply chain, as well as support for independent, anti-corruption commissions.
- Encourage the adoption of self-financing and self-sustaining enforcement systems in timber rich countries that are subject to public scrutiny.

- Ensure adequate and equitable access to justice and encourage measures aimed at improving the independence and transparency of the judiciary as well as training for judges and their staff.
- Require that all producer countries receiving support via FLEGT have independent forest monitors in place and operate accountability mechanisms for acting upon independent forest monitoring reports.
- Expand EU Timber Regulation guidance to include more detailed corruption-specific risk mitigation measures to increase compliance, including anti-bribery terms and conditions in contracts with suppliers, the implementation of anti-corruption compliance provisions, audited financial statements, and anti-corruption audits.
- Better enforcement of the EU Timber Regulation, including more regular and systematic controls and investigations in EU harbours, to ensure that operators take effective measures for risk mitigation with respect to corruption, and are held accountable where they fail to do so.

## TRANSPARENCY

- Better implementation of information disclosure in VPAs, including common minimum standards, ensuring that information is easily available and in a format and language accessible to the general public.
- A system, including a web-portal, should be established and maintained where the public can check information related to the forest sector, concessions, infractions, court cases etc.

## PARTICIPATION

- Adequate support and well-defined procedures for citizens' participation within FLEGT and for addressing concerns about civil society space.
- Require commitment to fundamental rights, in particular freedom of expression and information, and respect of free, prior and informed consent by producer country governments.

## INTEGRITY

- Assure the integrity of FLEGT licensed timber by tackling concerns about corruption in the land allocation process, including logging concessions.
- Improve public procurement systems, for instance through open tender systems, the disclosure of information on funds paid for licenses and concessions, increased data on how money from licensing fees

is used by governments as well as complaints mechanisms accessible to competitors, with penalties for contraventions.

- Encourage the adoption of measures reducing opportunities for conflicts of interest, such as mandatory disclosure of companies' political donations and political parties' funding, declarations of interest by officials and politicians, as well as measures aimed at controlling and regulating lobbying on forestry issues.

Moreover, for FLEGT to be an effective tool for the promotion of good governance, the **European Commission** must take steps to address further transparency and anti-corruption measures that go beyond the FLEGT Action Plan and have not yet been included in it. These steps include:

- Strengthen coordination in VPA countries with other donor agencies and international actors, in particular with REDD+.
- Improve policy coherence between FLEGT and other development aid policies as well as EU legislation on corporate accountability and anti-money laundering.
- Improve policy coherence between FLEGT and its commitments at the global level, in particular the UN SDGs and the Paris Agreement on Climate Change.

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## global witness

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