



# Keeping Illegal Fish and Timber off the Market

## A Comparison of EU Regulations

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### Summary points

- In response to the global problem of illegal logging and fishing, and the failure of the international community effectively to address the problem, the European Union has moved to tighten its own regulations.
- The EU regulation to combat illegal fishing introduces comprehensive certification and traceability requirements for anyone wishing to import fish products into the EU, and provides for extensive enforcement measures that can be used by European authorities to ensure compliance with the regulation.
- The EU regulation on illegal logging establishes a licensing system with countries that have entered into voluntary partnership agreements (VPA) with the EU. An additional regulation is currently being developed to try to ensure that illegal timber from all countries is excluded from the EU market.
- The broad scope of the illegal fishing regulation, in terms of its geographical reach and its emphasis on enforcement is, at least in part, motivated by the 'common property' nature of global fisheries resources, which makes it difficult to address the impacts of illegal fishing at the national level.
- The bilateral VPA process recognizes the national character of forest governance. While slow in their implementation, the VPAs – with their emphasis on capacity-building and stakeholder engagement – have the potential to trigger long-lasting governance reforms.

## Introduction

Illegal trade in natural resources is a serious global problem. Illegal fishing and logging, and the international trade in illegally sourced fish and wood products, causes environmental damage, costs governments billions of dollars in lost revenue, promotes corruption, and undermines the rule of law and good governance. It retards sustainable development in some of the poorest countries of the world. Between them, the value of illegal fish and timber could be as much as \$40 billion a year, one-eighth of the value of the illegal trade in narcotics.<sup>1</sup>

In recent years a number of international initiatives have been adopted to tackle the illegal trade; many of them focus on the role of consumer countries, which contribute to the problem by importing fish, timber and wood products without ensuring that they are legally sourced. As the world's largest trading bloc, the European Union has a particularly important role to play, and has recently adopted rules to curb illegal logging and fishing and the import of illegal products into the European market.

In each case the EU has had to deal with the difficulty of devising mechanisms to exclude illegal products without unduly impairing the trade in legal products, an important source of export revenue for many developing countries. In practice the approaches the EU has taken in the two sectors are quite different, largely because of their specific characteristics. Fisheries are not restrained by national boundaries, and fishing on the high seas in particular is often a free for all; there are obvious limits to national measures, and a very strong incentive to adopt a broader international approach. By contrast, forests always lie within national boundaries, and an approach focused more on national measures and agreements with timber-producing countries makes more sense – though it also has its limitations.

With both sets of measures at an early stage of imple-

mentation, it is a good time to compare and contrast the different approaches to similar problems, and highlight areas that might need further strengthening.

## Origins

Although both illegal fishing and logging have triggered widespread international discussions, there are still no international legally binding rules to address the problems.

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Efforts to curb illegal fishing have made comparatively more progress. The UN Food and Agriculture Organization's International Plan of Action (IPOA), agreed in 2001, sets out voluntary measures for governments to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing. The subsequent international agreement on port state measures reached in 2009 will be the first-ever global treaty focused specifically on the problem of IUU fishing.<sup>2</sup> In contrast, despite many high-level discussions, including the 1998–2002 G8 Action Programme on Forests, no concerted global action has yet been taken on illegal logging.

In response to slow progress at the international level, the EU has moved to tighten its own regulations in both

1 IUU fishing estimated at \$10–23bn a year – Marine Resources Assessment Group/University of British Columbia, *The Global Extent of Illegal Fishing* (April 2008); illegal logging estimated at £23bn a year – American Forest & Paper Association, Seneca Creek Associates and Wood Resources International, *Illegal Logging and Global Wood Markets: The Competitive Impacts on the US Wood Products Industry* (November 2004); illegal trade in narcotics estimated at \$322bn a year – UN Office on Drugs and Crime, *World Drug Report 2007* (UNODC, 2007).

2 This agreement, which was signed up to by 91 countries in September 2009, commits participants to take a number of steps to close their ports to IUU fishers. To enter into force, the agreement will have to be formally adopted by the FAO Conference (in November 2009) and ratified by 25 states.

areas. The regulation to prevent, deter and eliminate IUU fishing ((EC) No 1005/2008) was adopted by the EU Council of Fisheries Ministers in September 2008 and is set to enter into force on 1 January 2010; it will be supplemented by more detailed implementing rules. The regulation aims not only to combat IUU fishing in European waters, but also (and primarily) to close the European market to illegally caught fish from overseas.

As a follow-up to the illegal logging discussions at the G8 level, in 2003 the EU published its Action Plan for Forest Law Enforcement, Governance and Trade (FLEGT), the most ambitious set of measures proposed by any consumer country or bloc to date. At the core of the FLEGT approach is the negotiation of bilateral voluntary partnership agreements (VPAs) with timber-exporting nations, legally binding commitments between the partner countries and the EU to trade only in legal timber products. The VPAs will establish a licensing system for legal timber, providing the means for distinguishing between legal and illegal timber that are otherwise largely lacking; although the voluntary timber certification schemes (such as those of the Forest Stewardship Council or the Programme for the Endorsement of Forest Stewardship) should guarantee legality, they are still fairly uncommon in developing countries (though they are expanding rapidly).

The VPAs are also intended to include provisions for capacity-building assistance to partner countries to set up the licensing scheme, improve enforcement and, where necessary, reform their laws. The first two were agreed with Ghana in September 2008 and the Republic of Congo in March 2009. Negotiations have concluded with Cameroon (the agreement is still awaiting signature), and are still under way with the Central African Republic, Gabon, Indonesia, Liberia and Malaysia; many other

countries, particularly in Africa and Southeast Asia, have also expressed interest. Each VPA will be tailored to the particular circumstances of the partner country, but they will all rest on similar principles. Within the EU, the regulation to introduce the requirement for licensed products from VPA countries was adopted in December 2005.<sup>3</sup>

The way in which the FLEGT licensing scheme is being built up through agreements with individual countries, however, renders it vulnerable to evasion; illegal products could simply be trans-shipped via non-partner countries to the EU to escape the need for a licence. After a long-drawn-out process of analysis and consultation, in October 2008 the European Commission published its proposal for tackling the problem through a 'due diligence' regulation (see below).<sup>4</sup> The regulation is still making its way through the EU's legislative processes.

### What is 'legal'?

The IUU fishing regulation does not define legality as such, but rather refers to national and international regulations. Importers of fish and fish products<sup>5</sup> into the EU will have to provide a catch certificate to show that the catches 'have been made in accordance with applicable laws, regulations and international conservation and management measures' – these last being only vaguely defined as 'measures to conserve and manage one or more species of living marine resources and that are adopted and in force in accordance with the relevant rules of international and/or Community law'. The flag state<sup>6</sup> will notify the relevant national laws to the European Commission.

The regulation does outline what it considers to constitute illegal behaviour by fishing vessels. In addition to citing the internationally agreed definition of IUU fishing in the FAO's IPOA,<sup>7</sup> the regulation lists a number of illegal

<sup>3</sup> European Council Regulation No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community.

<sup>4</sup> European Commission Proposal for a Regulation laying down the obligation of operators who place timber and timber products on the market, COM(2008) 644 final of 17 October 2008.

<sup>5</sup> The regulation does not cover aquaculture products and excludes certain fishery products of minor importance in terms of conservation and trade (as listed in the Annex).

<sup>6</sup> Flag state refers to the authority under which a country exercises regulatory control over the commercial vessel which is registered under its flag.

<sup>7</sup> *Illegal* fishing takes place where vessels operate in violation of the laws of a fishery; *unreported* fishing is fishing that has been unreported or misreported to the relevant national authority or regional organization, in contravention of applicable laws and regulations; and *unregulated* fishing generally refers to fishing by vessels without nationality, or vessels flying the flag of a country not party to the regional organization governing that fishing area or species.

activities, such as the use of prohibited fishing gear, fishing in closed areas, or obstructing an inspection.

There is no international agreement on illegal logging or the trade in timber.<sup>8</sup> All measures adopted against illegal logging at an international level therefore rest on definitions of what is legal in the country where the timber is harvested.

The negotiations over the VPAs include agreement on the scope of the laws relevant to ‘illegal logging’, out of the many that affect forest management and trade in timber, and these are generally drawn up after a multi-stakeholder consultation process in the VPA country. The key laws include those relating to:

- Rights allocation processes and access rights;
- Company registration requirements;
- Social obligations, including labour requirements;
- Rights of local communities and indigenous populations;
- Environmental safeguards, forest management, timber harvesting, processing operations and associated financial and fiscal obligations;
- Transport and commercialization of timber.<sup>9</sup>

For each requirement, the VPA will list criteria, indicators and concrete verifiers – such as the documents operators need to produce in order to prove compliance – that will form the basis for enforcement. In some countries, forest law is not always clear, and laws agreed by national governments sometimes conflict with those adopted by regional or local governments. Some VPAs are therefore expected to include commitments to a programme of legal reform.

The current draft of the ‘due diligence’ regulation – which will apply to all timber entering the EU, regardless of source – adopts a similar but less elaborate approach, defining any activity as illegal that is not ‘in accordance with the applicable legislation in the country of harvest’

(Art. 2(d)). The scope of the legislation is simpler than in the VPAs. However, the European Parliament is attempting to broaden this, and the final regulation may adopt a scope more like that used in the VPAs.

### How is legality determined?

Any imports of fish or fish products into the EU have to be accompanied by a catch certificate to show that catches have been made legally.<sup>10</sup> The certificates will need to be passed along the entire supply chain, including processors that import and then re-export fish to the EU, to prevent illegally caught fish being channelled through third countries. Catch certificates are issued by the flag state of the vessel(s) which made the catch from which the fishery products have been obtained. The onus thus rests on the flag state to ensure that the catches have indeed been made legally. How it validates this is up to the flag state.

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For catch certificates to be accepted by European authorities, the flag state initially has to notify the Commission that it has suitable national arrangements in

<sup>8</sup> Apart from the Convention on International Trade in Endangered Species (CITES), which covers a small number of tree species.

<sup>9</sup> Falconer, J. (2009). FLEGT VPA Update. Presentation at the Illegal Logging Update Meeting, Chatham House, June 2009. The VPA texts themselves are not yet publicly available, but are expected to become so soon.

<sup>10</sup> European will not have to submit a catch certificate provided that the catch is not exported to a third country and then re-exported to the EU. These vessels instead fall under the control scheme of the EU’s Common Fisheries Policy.

place. The Commission can request additional information if the notification does not cover all the elements set out in the regulation. EU member states will only accept certificates from importers once the details of the flag state's competent authorities have been published in the *Official Journal* of the EU and on the website of the Directorate General for Maritime Affairs and Fisheries (DG Mare).

In theory, this notification requirement could provide a lever to encourage flag states to strengthen their fisheries management and conservation measures, but it remains to be seen how effective it will be. As of 6 October 2009, 36 flag states<sup>11</sup> had submitted complete notifications while a number of other countries had been asked for additional information. It is unclear on what basis the notifications were judged to be sufficient, and in particular whether the Commission assessed not only whether an authority existed to implement and enforce conservation measures, but also whether such measures were in place and effective. The EU regulation does not provide for a mechanism to monitor changes after the initial notification or assess whether the measures are being enforced.

European member states can carry out verifications on a case-by-case basis, for instance if they have grounds to question the authenticity of the catch certificate or have information to indicate that the importer has not complied with the relevant laws. In determining illegality, European authorities can use a wide range of information, including port inspections, a Community alert system, sightings at sea, an IUU fishing information system, catch and trade data, vessel registers and databases or regional fisheries management organization (RFMO) catch documents, among others.

In the case of timber, the VPAs similarly establish a licensing system to guarantee legality. Any operator exporting timber from a VPA partner country into the EU will have to provide a FLEGT licence, which will be issued by a designated licensing authority in the partner country. As with the IUU fishing regulation, responsibility for ensuring that the timber has indeed been

legally sourced rests with the partner country. However, in contrast to the fishing regulation, the VPAs will contain provisions for independent third-party monitoring of the functioning of the system in the partner country. The VPAs set out the terms of reference for the monitoring organizations, and the extent to which their findings will be made public. Either party – the EU or the partner country – will be able to suspend the agreement if it believes it necessary.

The VPAs will contain provisions for traceability systems to track the timber through the supply chain. It is hoped that this will include imports from third countries into the VPA partner country, and the FLEGT licence will indicate the country of harvest. The Cameroon VPA will restrict imports to products already possessing a FLEGT or other authorized licence, and in both Cameroon and Congo mills will be required to source only legal timber, whether domestic or imported.

In contrast to the IUU fishing regulation, the licensing system will only apply to timber products traded between the VPA partner countries and the EU; there is no requirement for FLEGT licences for products from other countries, even if these originated in partner countries (for example, timber produced in Ghana and processed in China would not need to show a licence at the EU border). All the partner countries which have agreed VPAs so far, however, intend to license all their timber exports regardless of destination, so the system may begin to spread beyond the direct trade between the partner countries and the EU.

The 'due diligence' regulation is designed to provide the underpinning for the FLEGT licensing system; it will apply to all timber imports, including those from non-VPA countries, and also to domestic EU production. It is still unclear, however, precisely how it will guarantee legality. According to the original draft of the regulation, formal proof of legality is not required for every timber product. Instead, all operators who first place timber on the EU market are put under an obligation to possess a due diligence system designed to ensure legality. The system will need to provide access to information on the origin of the

<sup>11</sup> The list of flag states is available at [http://ec.europa.eu/fisheries/cfp/external\\_relations/illegal\\_fishing\\_en.htm](http://ec.europa.eu/fisheries/cfp/external_relations/illegal_fishing_en.htm).

products as well as on compliance. In its accompanying Q&A document, the Commission specifies that the risk of illegality must be minimized rather than fully excluded: ‘it is not required that [operators] ensure legality beyond reasonable doubt. Operators have to show due diligence. In other words, they need to ensure legality to their best ability.’<sup>12</sup> Any products accompanied by a FLEGT licence, however (or a CITES export permit) will be accepted as legal.

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It remains to be seen how this will work in practice. The level of proof of legality which timber operators will need seems likely to vary with the degree of risk associated with the source; the regulation includes a risk assessment procedure, though no details are yet available. The notion of ‘first placer’ is also ambiguous, given the complexity of timber supply chains, and may need to be further defined. Enforcement will be up to member states, which have to name a competent authority.

The draft regulation also allows operators to use ‘recognised monitoring organisations’ to run the due diligence system for them if they prefer not to set up their own. Again, it is not yet clear how this will work, but it seems likely that all operators, whether or not they use monitoring organizations, will make extensive use of the voluntary certification schemes and a range of simpler legality verification schemes currently in existence or under development. This will direct attention in turn on whether these schemes are really robust enough to guarantee legality.

## What measures can be taken against illegal fishing/logging?

Under both the IUU fishing regulation and the VPAs, the certification or licensing scheme is designed to guarantee legality; fish and timber products that are not accompanied by a catch certificate (from a flag state) or a licence (from a VPA partner country) will be barred from entry to the EU. As noted, ensuring the integrity of the licensing system will be the responsibility of the flag state or partner country, subject to independent monitoring in the case of timber.

In addition, the IUU fishing regulation provides for a range of enforcement measures, both against vessels that engage in illegal activities and against countries that fail to take effective action against IUU fishing. The decision on whether these measures will be applied rests primarily with the European authorities, i.e. the competent authority of the EU member state, the European Commission or the Council (depending on the measure). European authorities can also request the flag state to investigate and enforce measures against IUU fishing. Examples of measures include:

- EU member states can apply financial and/or criminal sanctions against anyone found to have violated the regulation.
- The Commission can add boats that have engaged in IUU fishing to its ‘Community IUU vessel list’ if the flag state fails to investigate and enforce measures against them. Among the punitive actions, listed boats will not be allowed to fish in European waters, enter the port of an EU member state, and import to or export from the EU.
- The Council can identify a country as a so-called ‘non-cooperating third country’ if it has failed to implement adequate measures to deal with recurrent illegal fishing by vessels flying its flag, fishing in its waters or using its ports, as well as to prevent market access for illegally caught fishery products. Actions against such countries include prohibiting imports

<sup>12</sup> European Commission (2008). Questions and Answers on the Proposed Regulation laying down the obligations of operators who place timber and timber products on the EU market. October 2008, question 18.

of fish products from vessels flying their flag and a freeze on negotiating new fisheries partnership agreements with the EU (to grant European fleets access to a listed country's waters), as well as possible termination of existing agreements.

- The EU can implement short-term emergency measures if actions by a third country undermine conservation and management measures by an RFMO. This provision could potentially strengthen the enforcement mechanisms of RFMOs, which to date have generally proved to be rather weak.

In the case of the VPAs, should major compliance problems arise, they would be discussed in the joint oversight committee comprising representatives of both the partner country and the EU. The ultimate sanction, should the system fail, would be suspension of the agreement, which either party can do.

As noted above, the 'due diligence' regulation does not demand proof of legality of timber products; it simply requires timber operators who place products on the EU market for the first time to possess (or subscribe to, through monitoring organizations) due diligence systems. Member states' competent authorities will take action against timber operators who do not possess such systems, and are also responsible for overseeing the effectiveness of the systems in general. They would therefore presumably act against operators whose systems proved incapable of excluding illegal timber.

The regulation will *not*, however, establish an offence of importing or selling illegal products – in sharp contrast to the US Lacey Act.<sup>13</sup> This has been criticized as a key weakness of the draft regulation – if illegal products do manage to penetrate the EU market, perhaps through 'first placers' in EU member states with poor enforcement capabilities, there is no possibility of interdiction further down the supply chain, as timber operators other than first placers have no

requirements placed on them at all. This is currently an area of debate.

### Are there exceptions for small operators?

The IUU fishing regulation does not distinguish between small and large operators. In response to concerns that small-scale fishers are likely to find it particularly challenging to comply with the new regulations owing to their large number, geographic range and informal operations, the Commission will introduce a simplified catch certificate in the implementing rules. Thus only one certificate will be required to cover a single consignment of catches landed in a flag state by several small fishing vessels (as defined by length, build or tonnage).

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In contrast, no special licensing arrangements are provided for small operators under the VPAs; all products exported from the partner countries to the EU will be licensed, regardless of the size of the producer. Similarly, there is no exception for small producers in the 'due diligence' regulation. Concerns have been raised about the impact on small producers inside the EU, but it is difficult to see how any exemption could be included without at

<sup>13</sup> The Lacey Act, dating from 1900, makes it 'unlawful for any person ... to import, export, transport, sell, receive, acquire, or purchase in ... foreign commerce ... any fish or wildlife taken, possessed, transported, or sold ... in violation of any foreign law'. This was extended to plants, including timber, in 2008. By establishing an underlying offence of handling illegal timber, and leaving it up to operators to work out what steps to take to avoid doing so, the Lacey Act is a mirror image of the EU 'due diligence' regulation, which establishes no such underlying offence, and thus needs to go into some detail on what timber operators need to do to avoid handling illegal products.

the same time exempting imports from small producers outside the EU (because of the WTO requirement not to discriminate against imports), which would risk creating an obvious loophole.

### Broader impacts: governance reform and capacity-building

To what extent are these approaches likely to strengthen natural resource governance? The IUU fishing regulation includes a number of provisions that could help to strengthen governance systems. Anyone who wishes to land or export fish and fish products to the EU can only do so if the country under whose flag the fish was caught can show that it has relevant rules in place and complies with international conservation measures. The regulation also has the potential to strengthen regional fisheries management by allowing the Commission to adopt emergency measures in the event of a third country undermining the conservation and management measures of an RFMO.

“The wide scope of the fisheries regulation, including its emphasis on verification and enforcement by European authorities, is at least partly motivated by the “common property” nature of global fisheries resources.”

However, in the absence of clear criteria for accepting flag states’ notifications of their conservation rules, and a mechanism to monitor enforcement of the notified regulations, there is a risk that acceptance simply becomes a rubber stamp. The EU regulation appears to focus more on punishing violations than on preventing them from occurring in the first place. Capacity-building

assistance is not built into the regulation and there is little acknowledgment of the difficulties developing countries may face with the new arrangements, other than taking them into account when deciding on non-cooperating states and introducing a simplified catch certificate for small vessels in the implementing rules (see below). The regulation also does not envisage any transition periods for developing countries. The European Commission is organizing a series of regional seminars for authorities in developing countries. It is unclear whether additional capacity-building activities will be carried out to assist with implementation of the regulation.

In contrast, the inclusion of capacity-building support for the establishment of the licensing system, and for improving governance and enforcement, was always an important part of the VPAs. Although funding for the *operation* of the licensing system will have to be provided by the partner country – though of course the process is designed to reduce the level of illegal behaviour and thereby increase tax revenues – it was always recognized that in most cases EU assistance would need to be provided with its *establishment*.

The VPAs have also offered an important means of improving forestry governance in the partner countries. All the VPAs so far agreed will include:

- An analysis of existing legislation, as part of the process of drawing up the legality definition, together with a gap analysis of existing legislation and commitment to reforms where necessary.
- Agreement on independent monitoring of the functioning of the legality assurance and licensing systems, with outcomes available to the public.
- A commitment to national stakeholder involvement in the joint committees to be set up to oversee the process.
- Improvements in transparency, including annual reporting on the functioning of the system and in some cases agreement to make more information available on forest sector management (e.g. on production, rights allocation, finances and audits).



The VPA negotiation process itself has helped to improve governance, primarily through the inclusion of partner-country civil society.

The ‘due diligence’ regulation contains no provision for capacity-building or governance reforms, but it seems likely that its introduction will accelerate the update of the voluntary certification and legality verification schemes, with an accompanying general improvement in forest governance. The European Commission, several EU member states and some EU timber trade federations are already providing assistance with these kinds of developments.

### Conclusion: strengths and weaknesses

The analysis above highlights some of the main differences between the approaches that the EU has taken to curb illegal fishing and logging and prevent imports of illegal fish and timber products. The IUU fishing regulation centres on a globally applicable system of legality certification and traceability, and relies on wide-ranging enforcement measures to ensure compliance, which are largely applied at the discretion of the European authorities.

The VPA process similarly focuses on the establishment of a licensing system, but is building it up through a network of bilateral agreements rather than imposing it globally. This approach has certain advantages over the fishing regulation’s system: it is consensual, it delivers capacity-building support and it has triggered long-lasting governance reforms in the partner countries. It shows that bilateral agreements can still be valuable as a way of making progress on international problems, in the absence of a wider multilateral agreement. It also has important lessons for the current attempts, within the climate change regime, to devise a mechanism for making payments to developing countries for avoided deforestation. The packages of measures embodied in the VPAs show how capacity-building, improvements in governance and independent monitoring – all likely to be needed for reducing deforestation – can be delivered in a mutually agreed manner.

However, it is also slow and limited in geographical coverage. Because of this it has proved necessary to introduce a means of dealing with potentially illegal products originating in non-partner countries; whether the ‘due diligence’ regulation, with its major weakness of applying only to ‘first placers’, will do this effectively remains to be seen.

‘Imposing a fisheries-type approach would have effectively closed the EU market to all timber products from high-risk sources, which includes most developing countries. The optimum solution in the long run is the evolution of the VPA network into a global licensing system governing trade in timber.’

When judging the two sets of regulations, it is important to bear in mind that they are dealing with quite different sectors. The wide scope of the fisheries regulation, including its emphasis on verification and enforcement by European authorities, is at least partly motivated by the ‘common property’ nature of global fisheries resources. Illegal activities will impact on the availability of the resource overall, given that fish are a mobile and generally shared resource, including the fishing interests of Europe’s distant water fleets. Fish caught by one vessel will affect the supply for all others, both immediately and in the long term owing to the impact on reproduction rates. Fishing on the high seas is largely a free for all, unless a species is covered by an RFMO – and even then management tends to be weak – while many national fisheries are poorly managed. Even if fishing efforts are regulated in one

country, illegal fishing in another will still affect trans-boundary stocks. As a result, national measures are inherently limited in their ability to address illegal fishing.

By contrast, all forests lie within clear national boundaries – which is why agreeing common international or regional rules for forest management has proved much more difficult. By choosing the one-to-one approach of negotiating bilateral agreements, with country-specific legality definitions, the EU has recognized the reality of the decisively national character of

forest governance. Imposing a fisheries-type approach would have effectively closed the EU market to all timber products from high-risk sources, which includes most developing countries. The optimum solution in the long run is the evolution of the VPA network into a global licensing system governing trade in timber. Whether this will be practicable remains to be seen – but the importance of forestry in the international climate change regime gives a powerful incentive for further action on the timber trade and forest governance.

Table 1: Comparison of EU regulations on illegal fishing and logging

	IUU fishing regulation	EU FLEGT: VPAs and 'due diligence' regulation (DDR)
What 'proof of legality' must be submitted?	<ul style="list-style-type: none"> <li>● Catch certificate.</li> </ul>	<ul style="list-style-type: none"> <li>● VPAs: FLEGT licence for timber shipments.</li> <li>● DDR: no proof of legality required, but risk of illegality must be minimized.</li> </ul>
How is 'legality' defined?	<ul style="list-style-type: none"> <li>● Catch certificates certify that catches 'have been made in accordance with applicable laws, regulations and international conservation and management measures'. Relevant national laws are notified by the flag state.</li> </ul>	<ul style="list-style-type: none"> <li>● VPAs: defined in relation to laws of country of harvest; scope set out in VPA.</li> <li>● DDR: timber must be harvested 'in accordance with the applicable legislation in the country of harvest'.</li> </ul>
Who issues the proof of legality?	<ul style="list-style-type: none"> <li>● A public authority from the flag state of the vessel(s) which made the catches from which the fishery products have been obtained.</li> </ul>	<ul style="list-style-type: none"> <li>● VPAs: Designated licensing authority.</li> <li>● DDR: 'first placers' must possess a due diligence system which can provide access to information that legality is 'reasonably assured'.</li> </ul>
What is the condition for authorities to be allowed to issue proof of legality?	<ul style="list-style-type: none"> <li>● The flag state has shown that 'it has in place national arrangements for the implementation, control and enforcement of laws, regulations and conservation and management measures which must be complied with by its fishing vessels'.</li> </ul>	<ul style="list-style-type: none"> <li>● VPAs: licensing scheme in place, with functioning subject to independent monitoring.</li> </ul>
Who is required to submit the proof of legality?	<ul style="list-style-type: none"> <li>● Anyone importing fish or fish products into the EU (excluding aquaculture products and some marine products).</li> </ul>	<ul style="list-style-type: none"> <li>● VPAs: any operator in a VPA partner country exporting timber to the EU.</li> </ul>

	<ul style="list-style-type: none"> <li>● Catch certificate not required for catches for EU vessels unless they are exported to third countries and then re-exported to the EU.</li> </ul>	<ul style="list-style-type: none"> <li>● DDR: Any operator in the EU who first places timber on the EU market (imports or domestic production) must possess due diligence system.</li> </ul>
Which information can the EU use to determine occurrence of illegal activity?	<ul style="list-style-type: none"> <li>● Port inspection (at least 5% of designated ports in each member state).</li> <li>● Catch certificate.</li> <li>● Community alert system.</li> <li>● Sightings at sea.</li> <li>● IUU fishing information system.</li> <li>● Other information e.g. catch data, trade information, vessel registers and databases, RFMO catch documents etc.</li> </ul>	<ul style="list-style-type: none"> <li>● VPAs: licensing system subject to independent monitoring; Joint Implementation Committee provides oversight.</li> <li>● DDR: risk assessment process will be used, but no details yet available.</li> </ul>
Enforcement/ sanctions	<ul style="list-style-type: none"> <li>● Immediate sanctions against vessel.</li> <li>● Request flag state to investigate vessels and enforce measures.</li> <li>● Joint investigation between port Member State and flag state (and coastal state if in waters of third country) for specific vessels.</li> <li>● Measures against vessels placed on a Community vessel list (by decision of the European Commission).</li> <li>● Measures against non-cooperating third countries (identified by the European Council).</li> <li>● Emergency measures against measures by a third country found to undermine the conservation and management measures adopted by an RFMO.</li> </ul>	<ul style="list-style-type: none"> <li>● VPAs: Non-licensed timber from partner country cannot enter the EU. VPA compliance overseen by joint committee; agreement can be suspended by either party.</li> <li>● DDR: member states' competent authorities monitor implementation and effectiveness of due diligence systems and define penalties.</li> </ul>
Treatment of small operators	<ul style="list-style-type: none"> <li>● No differentiation between large and small operators in the IUU fishing regulation, but simplified catch certificate in implementing rules.</li> </ul>	<ul style="list-style-type: none"> <li>● VPAs: no different treatment.</li> <li>● DDR: no different treatment in draft regulation, but discussions ongoing.</li> </ul>
Addressing capacity constraints	<ul style="list-style-type: none"> <li>● Consider capacity constraints when deciding on the designation of non-cooperating third states.</li> <li>● Simplified catch certificate for small vessels.</li> <li>● Regional seminars for authorities in developing countries.</li> </ul>	<ul style="list-style-type: none"> <li>● VPAs: capacity-building components built into agreements.</li> </ul>
Governance impacts	<ul style="list-style-type: none"> <li>● Catch certificates only accepted from countries with relevant laws in place.</li> <li>● Strengthen RFMOs through emergency measures against RFMO violations.</li> </ul>	<ul style="list-style-type: none"> <li>● VPAs: includes gap analysis of existing forest legislation and reform process; transparency of information; multi-stakeholder engagement.</li> <li>● DDR: likely to increase uptake of forest certification and legality verification schemes.</li> </ul>

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